



## Indian Competition Law Roundup: January 2019

In this Roundup, we highlight the main developments in Indian competition law in January 2019.

### Cartels and Other Horizontal Agreements

#### Dry Cell Batteries

Following a leniency application filed by Panasonic Corporation, Japan, the CCI found that Panasonic Energy India (Panasonic India) and Godrej & Boyce Manufacturing (Godrej) had participated in a cartel for the sale of dry-cell batteries from January 2012 to November 2014.<sup>1</sup> This cartel was ancillary to a cartel between Panasonic India, Eveready Industries and Indo National, which was the subject of an order in April 2018.<sup>2</sup> The CCI found that Panasonic India and Godrej had entered into a product supply agreement under which they had agreed not to take any steps detrimental to each other's market interests and that there was a price monitoring system and maintenance of price parity in the market.

The CCI imposed a penalty on Panasonic India of 1.5 times its profit for each year of the cartel, amounting to INR 31.75 crores (USD 4.5 million approximately) and on its officials the maximum penalty of 10% of their average income for the past three financial years. However, the company and its officials benefitted from a 100% reduction in penalty as they had satisfied the conditions for leniency. Given that Godrej was a very small player and it had made a complaint about the

possibility of a cartel, the CCI imposed a lower penalty of 4% of its turnover for each year of the cartel amounting to Rs. 8.5 million (USD 119,600 approximately). However, it imposed the maximum penalty on four of its officials of 10% of their average income for the last three financial years.

#### The Pharmaceutical Sector

The CCI finally decided on a case initiated on a 2009 complaint against the *Chemist and Druggists Association of Baroda (Association)*, finding that the Association had required a No-Objection Certificate before a chemist could become a stockist for a pharmaceutical company and that it had fixed the trade margins for certain drugs.<sup>3</sup> Finding that the Association was in breach of Section 3(3) read with Section 3(1) of the Competition Act, the CCI issued a cease and desist order on the Association and imposed a penalty of 10% of its average relevant turnover for 2006-2009 amounting to only INR 32,724 (USD 460 approximately). In another case, against the *Retail and Dispensing Chemists Association (RDCA)*,<sup>4</sup> the CCI considered allegations that the RDCA was collecting Product Information Service (PIS) Charges from pharmaceutical manufacturers in breach of Section 3 of the Competition Act. The CCI distinguished between *mandatory* PIS charges, which would be in breach of Section 3, and *voluntary* PIS

### In this Issue

#### Cartels and Other Horizontal Agreements

- Dry Cell Batteries
- The Pharmaceutical Sector

#### Vertical Agreements

- Resale Price Maintenance in the On-Line Sector

#### Abuse of Dominant Position

- The National Stock Exchange
- Horse-Racing

#### Due Process

- Madras High Court Stays Change in General Regulations
- Dawn Raid Powers

charges, which would not. The CCI found no cogent evidence that the charges were mandatory and held that there was no breach of Section 3.

## Vertical Agreements

### Resale Price Maintenance in the On-Line Sector

In an important and long-standing case against *KAFF Appliances (KAFF)*, a manufacturer and supplier of kitchen appliances, the CCI considered the applicability of Section 3(4) of the Competition Act, dealing with vertical agreements, to agreements with providers of online market platform services.<sup>5</sup> *Snapdeal*, the informant in the case, had alleged that KAFF had attempted to impose a minimum operating price (MOP) on its website and that this amounted to resale price maintenance (RPM) prohibited by Section 3(4). The CCI roundly rejected a finding by the investigating Director General that, as Snapdeal was only a market platform, it was not part of the vertical chain and could not be subject to a vertical restraint. It held that: (i) Snapdeal performed important functions making it part of the vertical chain; (ii) that the resale of the product was effected through the platform, fulfilling the essential ingredients of RPM; and (iii) in deciding on incentives and discounts, the platform clearly influenced the price. The CCI concluded that Snapdeal was offering an on-line distribution service to various distributors/dealers; it was part of the vertical chain and could not be regarded merely as a market place facilitating the on-line interaction of sellers and buyers.

Though holding that Section 3(4) of the Competition Act *could* apply, the CCI held that there was no RPM in this case. The CCI stated that the right of manufacturers to choose the most efficient distribution channel should not be interfered with unless this led to anti-competitive effects. The CCI found no evidence of price restrictions imposed on dealers by KAFF. Attempts by KAFF to secure that products sold on Snapdeal's portal were sold at the MOP had no appreciable adverse effect on competition (AAEC) as sales of KAFF's product on the portal

increased and there was significant intra-brand competition. The CCI therefore ordered that the case be closed.

## Abuse of Dominant Position

### The National Stock Exchange

In a complaint made by an individual advocate against the *National Stock Exchange of India (NSE)*, the CCI considered an allegation that the NSE, in providing co-location services to trading members, had provided preferential access to some of them in breach of Section 4 of the Competition Act.<sup>6</sup> The CCI noted that the provision of co-location services, and the exact role of the NSE in relation to the alleged wrongdoing, was being investigated by the Securities Exchange Board of India (SEBI). Although discriminatory and abusive conduct falling foul of the Competition Act could be examined by the CCI, allegations against the NSE had yet to be established in an appropriate proceeding and there was insufficient information about the role of the NSE to arrive at a *prima facie* view. The CCI therefore ordered the matter to be closed.

### Horse-Racing

The CCI considered a complaint that the *Royal Western Turf Club (RWITC)*, based in Mumbai, had abused its dominant position in the field of horse racing.<sup>7</sup> The CCI *prima facie* defined the relevant market as that for the organisation of horse races by turf clubs in India. The RWITC was not the only entity providing horse racing services and it hosted only 23% of the major horse races organised in India. Better and horse owners had sufficient options all over India to avail of such services. Since RWITC was not dominant, there was no need to examine abuse of dominance and the CCI therefore closed the case at the *prima facie* stage.

## Due Process

### Madras High Court Stays Change in General Regulations

In early January, the Madras High Court stayed the newly introduced Regulation 46A of the

## In this Issue

### Cartels and Other Horizontal Agreements

- Dry Cell Batteries
- The Pharmaceutical Sector

### Vertical Agreements

- Resale Price Maintenance in the On-Line Sector

### Abuse of Dominant Position

- The National Stock Exchange
- Horse-Racing

### Due Process

- Madras High Court Stays Change in General Regulations
- Dawn Raid Powers



Competition Commission of India Regulations, 2009, which bars advocates from interacting with persons summoned by the Director General and provides for debarment by the CCI of advocates it finds guilty of misconduct.

## Dawn Raid Powers

In an appeal brought by the CCI, the Supreme Court has clarified the powers of the Director General in relation to the search and seizure of documents by the Director General (DG) in dawn raids.<sup>8</sup> In June 2016, the Delhi High Court had made an order restraining the CCI/DG from using the material seized during a dawn raid on JCB India on the grounds that the search warrant

issued by the Chief Metropolitan Magistrate, New Delhi, authorised only the entry into and search of premises, and not the seizure of documents.<sup>9</sup> The Supreme Court allowed the appeal, holding that the relevant provisions of the Companies Act 1956 which applied to searches under the Competition Act extended beyond authorisation for a *search* to authorisation of a *seizure*: unless seizure was authorised, a search by itself would not be sufficient. The High Court had blocked the investigation on the basis of an erroneous construction of the powers of the DG. The Supreme Court therefore vacated the High Court injunction.

## In this Issue

### Cartels and Other Horizontal Agreements

- Dry Cell Batteries
- The Pharmaceutical Sector

### Vertical Agreements

- Resale Price Maintenance in the On-Line Sector

### Abuse of Dominant Position

- The National Stock Exchange
- Horse-Racing

### Due Process

- Madras High Court Stays Change in General Regulations
- Dawn Raid Powers

- 1 *Suo Motu* Case No. 3 of 2017 *In Re: Anticompetitive conduct in the Dry-Cell Batteries Market in India* (15 January 2019).
- 2 *Suo Motu* Case No. 2 of 2016 *In Re: Cartelisation in the Zinc Carbon Dry-Cell Batteries Market in India* (19 April 2018).
- 3 Case No. C-87/2009/DGIR *Vedanta Bio Sciences, Vadodara v Chemist and Druggist Association of Baroda* (15 January 2019).
- 4 Case N. 60 of 2015 *Shri Nadie Jauhari v Retail and Dispensing Chemists Association* (8 November 2018).
- 5 Case No. 61 of 2014 *Jasper Infotech (Snapdeal) v KAFF Appliances* (15 January 2019).
- 6 Case No. 47 of 2018 *Advocate Jitesh Maheshwari v National Stock Exchange of India* (7 January 2019).
- 7 Case No. 40 of 2018 *Mr. Habib Rajmohamad Patel v Royal Western Turf Club India* (15 January 2019).
- 8 Criminal Appeal Nos. 76-77 of 2019 *Competition Commission of India v JCB India and Ors.* (15 January 2019).
- 9 W. P. (CRL) 183/2016 *JCB India and Ors. v Competition Commission of India and Or.* (2 June 2016).

## COMPETITION LAW TEAM

### Pallavi Shroff

Managing Partner  
pallavi.shroff@AMSShardul.com

### John Handoll

National Practice Head - Competition Law  
john.handoll@AMSShardul.com

### Naval Satarawala Chopra

Partner  
naval.chopra@AMSShardul.com

### Shweta Shroff Chopra

Partner  
shweta.shroff@AMSShardul.com

### Harman Singh Sandhu

Partner  
harman.sandhu@AMSShardul.com

### Manika Brar

Partner  
manika.brar@AMSShardul.com

### Aparna Mehra

Partner  
aparna.mehra@AMSShardul.com

### Gauri Chhabra

Partner  
gauri.chhabra@AMSShardul.com

### Yaman Verma

Partner  
yaman.verma@AMSShardul.com

### Rohan Arora

Director  
rohan.arora@AMSShardul.com

## Disclaimer

This is intended for general information purposes only. It is not a substitute for legal advice and is not the final opinion of the Firm. Readers should consult lawyers at the Firm for any specific legal or factual questions.