BRICS COMPETITION NEWSLETTER 2016

Introduction

Since the first conference of the BRIC (later BRICS) Competition Authorities was held in Kazan (Russia) in 2009, the Agencies have come a long way to develop an effective dialogue of all five countries, at the level of both senior officials and experts.

At the same time, there is room for significant improvements in the field of competition, particularly with regard to creating the necessary expertise in practical interaction of 'the five' format and developing working mechanisms of multi-sided collaboration.

An effective way to realise this potential is to gradually transform interaction of the BRICS Competition Authorities into a full-fledged mechanism of strategic and ongoing engagement in the key issues of competition policy and enforcement.

During the 3rd BRICS Competition Conference which took place on November 21-23, 2013 in New Delhi (India), the Head of the FAS Russia Mr. Igor Artemiev proclaimed an idea of creation of the BRICS Working Groups on socially important markets. As BRICS countries are amounted to almost a half of consumers of the whole world, it seems very important for the Competition Authorities to control over compliance with "rules

Such an idea was supported by all the BRICS countries and was reflected in the Article 4.1 of the Memorandum of Understanding for Cooperation in the Field of Competition Law and Policy, signed by the Heads of the BRICS Competition Authorities within the framework of the International Legal Forum in St Petersburg on 19 May 2016. So far, working groups on pharmaceuticals, food and automotive industry have been established.

The BRICS Competition Authorities noted the necessity of ensuring a detailed and comprehensive approach towards examination of competition-related issues in socially important economic sectors of the five countries and effective cooperation within the framework of the existing working groups, this had resulted in establishment of the BRICS Coordination Committee on Antimonopoly Policy, a kick-off meeting of which was held during the International Event "The Russian Competition Week" in Moscow region (Russia) on September 27, 2016. So far, the Coordination Committee met two times. The next session is planned to be organized during the Russian Competition Week in September 2017.

BRAZIL

Competition Law and Policy Development

Since May 2012, with the entry into force of the Brazilian competition law – Law N° 12,529/11, the Brazilian Competition Policy System – SBDC – went through significant changes. The pre-merger review system has been consolidated, engendering remarkable improvements in CADE's merger assessment. Fast-track cases, approximately 80% of all merger cases, are decided in less than 30 days, whereas ordinary cases are reviewed in an average of 60 days. Contested mergers and those considered complex are analyzed on an average of 200 days. In addition, many institutional improvements were taken in the merger decision-making process. As the majority of merger cases are concentrated at the General Superintendence, CADE's Administrative Tribunal is able to focus on the contested and complex merger cases, on cartels and other anticompetitive conducts cases, and in its decision-making and normative competences. In other words, this institutional configuration allows the Tribunal to focus its resources on those cases that may affect most significantly the Brazilian market and the Brazilian consumers.

The improvements resulted from the changes in the merger evaluation regime and CADE's organizational set-up benefitted developments and achievements in the investigation and assessment of anti-competitive conducts. The internal organization of the General Superintendence and in particular the implementation of a Screening Unit, responsible for receiving and assessing complaints and leniency applications, contributed to the detection and effective evaluation of anticompetitive cases, identifying and prioritizing the harmful ones. Regarding cartel detection, the General Superintendence activities gained even more efficiency with the implementation of an Intelligence Unit, which is in charge of ex officio cartel detection, particularly in public procurement. Its action happens by means of partnerships with public institutions that can provide big data on public procurements in Brazil and the development of procedures, based on international best practices, and technological means, oriented to apply screens and data mining, in order to identify potentially harmful conducts to the economic order.

BRAZIL

Competition Law and Policy Development

In 2016, CADE published the Resolution 16, establishing a deadline of 30 days to complete the analysis of fast-track mergers. In the same year, CADE published Resolution 17, regulating the cases concerning the notification of associative contracts. In 2015, CADE published Resolution 11, which implemented the Electronic Information System as the authority's official system for information management. The initiative aims at reducing the duration of competition cases, contributing to public transparency and decreasing public expenses. Moreover, all citizens have online access to the public versions of CADE's files and documents. This feature is particularly appreciated by the companies that have to notify or negotiate cases with the authority.

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In order to increasingly promote transparency and legal certainty, and to provide guidance for stakeholders, companies and the competition community, CADE has also published in the last years guidelines regarding its Leniency Program, its cease and desist agreement policy, competition compliance programs, horizontal merger analysis and the assessment of previous consummation merger transactions.

The permanent improvement of settlements programs has been one of CADE's priorities in the last years. CADE's Leniency Program and the cease and desist agreement policy have been important mechanisms for a quicker and more efficient detection and enforcement of anticompetitive practices.

The continuous collaboration with criminal enforcers, as the Prosecution Services, has resulted in the increasing number of leniency applications and consent settlements signed over the past years. CADE has also been collaborating with the Office of the Comptroller General and other institutions from the public administration, engendering efforts to integrate and improve its investigations, especially those which comprehend both anticompetitive and antitrust matters.

The international cooperation is also an important feature of competition law and policy in Brazil. CADE has cooperated with several foreign jurisdictions in the resolution of anticompetitive cases and the assessment of merger cases. In addition, the Brazilian competition authority is a part of relevant international competition fora, as the ICN, OECD and UNCTAD, with an active and fruitful participation, which contributes for the development of the best practices within the international competition community.

Finally, in 2016, regarding its bilateral cooperation policy, CADE has signed a Memorandum of Understanding with the Competition Commission of South Africa and the Program on Cooperation for 2016-2017 with the Federal Antimonopoly Service of the Russian Federation. These documents demonstrate the importance that CADE gives to its relationship with the other BRICS countries and to

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RUSSIA

Competition Law and Policy Development

The Russian Law on Protection of Competition was adopted in 2006. During the last 10 years, there was a number of amendments to the law.

Last amendments – the so-called "fourth antimonopoly package" - were adopted in 2016 and enabled liberalization of the legislation, as well as reduction in the administrative burden on business.

With the entry into force in 2016 of amendments to the Law on Protection of Competition, business in Russia have experienced many positive changes, one of the most prominent of which was further shift to preventive control. The FAS Russia extended the institution of warnings and cautions almost on all Articles of the Law, which provide severe sanctions, which resulted in 55% reduction in the case load. In 2015, the FAS Russia initiated and considered more than 9 thousand cases. In 2016, there were only 4 thousand cases; the number of warnings and admonitions almost doubled: last year, the FAS Russia issued more than 5 thousand warnings, 77% of which were executed. This was one of the reasons for decrease in number of proceedings initiated by the antimonopoly body.

The provision on possibility to define dominant position of a business entity with less than 35% share on a particular commodity market, with the exception of collective dominance, as well as maintenance of the Register of business entities with over 35% market share were abolished.

Furthermore, within the framework of development of new provisions of the Law on Protection of Competition, the FAS Russia adopted an Order that made important additions to the Procedure for analyzing the state of competition in the commodity market. The new version of the Procedure establishes an obligatory analysis of the state of competition within the necessary limits for those categories of cases on violation of the antimonopoly legislation, for which such an analysis was not required earlier.

The amendments that came into force allowed reducing the burden on the judicial system. Thus, in the frame of the FAS Russia's Central Office a Collegial Body was formed that is empowered to review the decisions and orders of the Regional Offices. Over the past year, the Presidium of the FAS Russia considered several dozens of acts of Regional Offices. During the course of 2016, the Presidium of the FAS Russia prepared 7 clarifications, which were widely discussed with the business community and played an important role in the formation of judicial practice. This allowed forming common approaches to the enforcement of antimonopoly legislation.

Another important event in 2016 was the review of the judicial practice of the Supreme Court of the Russian Federation on the application of the Law on Protection of Competition. It reflected key points for antimonopoly regulation. This is, in fact, a major document summarizing the practice over the last years (a previous similar document was prepared by the Supreme Court of Arbitration in 2008).

RUSSIA

Competition Law and Policy Development

Throughout the time of the antimonopoly reform in Russia, there were policy documents defining the direction of antimonopoly regulation development. An enormous number of acts of the Government were issued, primarily concerning the rules of non-discriminatory access in such sectors as energy and other spheres of natural monopolies; in more than 200 federal acts, antimonopoly norms were introduced, in particular such fundamental laws as the law on bioresources, law on mineral resources, law on land (in each of them there are chapters devoted to antimonopoly regulation). The Action Plan ("road map") "Development of Competition and Improvement of Antimonopoly Policy" was approved.

At the regional level, positive changes have also taken place in recent years. The Government of the Russian Federation approved the Standard for the Development of Competition, in which specific parameters were set, for example, how many private preschool institutions, private schools, private companies that carry passenger transport in cities should be by 2018 in the percentage.

In 2016, the FAS Russia developed a draft Decree of the President of the Russian Federation, which establishes the promotion of competition in Russia as a priority for the activities of authorities at all levels, and which approves the National Competition Development Plan for 2017-2018.

The National Plan significantly contributes to the reduction of the share of the public sector in the economy and the development of support for small and medium-sized businesses. It defines the goals and principles of the pro-competitive policy, the tasks of the authorities to achieve them, as well as specific activities and instructions. Among them, an order to the Government to approve Plans for the development of competition in industries, as well as indicate the expected results of the development of competition in them. For instance, the measures taken in health care will allow improving the availability of medicines and reducing the prices for them.

In the agro-industrial sector, it is planned to increase the share of Russian elite seeds and breeding animals in the domestic market, which will reduce the dependence of the domestic market on foreign breeding material. In addition, there should be an increase in competition on a global scale. The actions set forth in the National Competition Development Plan form the Russian offer on the world market of modern agricultural technologies.

RUSSIA

Competition Law and Policy Development

The document provides, inter alia, the development of draft federal laws that provide, among others:

- prohibition of the creation of unitary enterprises in competitive markets and the liquidation, as of February 1, 2018, of the organizational and legal form of a unitary enterprise;

- specific features of the management of unitary enterprises reorganized by the sectoral authorities;

- prohibition of direct or indirect acquisition by the state and municipal entities of shares of business entities operating in commodity markets in a competitive environment;

- obligation of legal entities that receive state and (or) municipal preferences, to purchase goods, works, services from small business entities in a certain amount;

- possibility, in the interests of national security, protection of life and health of citizens, to allow the use of an invention, utility model or industrial design without the consent of the patent holder, with prompt notification and paying him commensurate compensation (compulsory licensing);

- legal regulation of the system of internal compliance with the requirements of the antimonopoly legislation (antimonopoly compliance).

In January 2016, the Federal Law was enforced, which introduced the administrative appeal in the construction sphere. The FAS Russia obtained functions on consideration of complaints in relation to state bodies, municipalities and utility organizations in the construction sphere in case of violation of rules for provision of services.

The legal entities could submit a complaint in the period of 3 months from the date of the alleged violation. It is considered by the FAS Russia for 7 days. In case the FAS Russia establishes the violation, the obligatory prescription will be issued. Besides, the Law provides for imposition of administrative sanctions.

In 2016, the FAS Russia worked to improve regulatory legal acts of the Eurasian Economic Union (EEU) such as: methodology of competition assessment, calculation and procedure for imposition of fines, definition of monopoly high and monopoly low prices, etc.

The FAS Russia sets the following goals for 2017:

- the draft law on antimonopoly compliance ;

- the draft law on state regulation of prices (tariffs);

- amendments to the Code of Administrative Offences of the Russian Federation that specify the system of sanctions;

- prohibition for the state to acquire interests and shares of business entities undertaking activities on competitive markets;

- the draft law that specifies application of the antimonopoly legislation to actions and agreements on use of intellectual property rights (pharmaceuticals);

- exclusion of possibility to define business entities that undertake activities in the competitive fields as natural monopolists.

INDIA Competition Law and Policy Development

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Competition Commission of India
Fair competition For Greater Good

Statutory and Policy Developments

No statutory amendments have taken place during the period of July, 2015- December 2016. Amendments have been made to the merger regulations during the period and the same are discussed in detail below.

Amendment of Regulation and Issue of Notification concerning Merger Review

The merger review process under the Competition Act, came into force on 1 June 2011. Since then there have been 5 amendments to the Competition Commission of India (Procedure in regard to the transaction of business relating to mergers), Regulations 2011 (Merger Regulations) dealing with merger review. All of these amendments were to clarify and simplify the process of merger filing and to bring about greater transparency in the merger review process.

During the period of report for the newsletter, there was one amendment of the Merger Regulations in January, 2016. One of the notable changes made through this amendment is the provision for giving an opportunity of hearing to the parties before invalidating a notice of the proposed merger filed by them. It has also been clarified that minority acquisition of less than 10% of the shares or voting rights of an enterprise shall be treated solely as an investment, without attracting the requirement of filing a notice with CCI, where the acquirer does not seek to exercise control over the enterprise through such acquisition.

Separately, through a Notification issued by the Central Government on March 4, 2016, the thresholds for notifying a merger to CCI have been enhanced, with the value of assets and turnover being increased by 100%. The thresholds for the de minimis exemption have also been increased. An acquisition involving a target enterprise, which has assets of not more than INR 3.5 billion (approx. USD 52 million) in India, and turnover of not more than INR 10 billion (approx. USD 148 million) in India has now been exempted from the filing requirement for a period of 5 years. The existing exemption to a 'group' exercising less than 50% of the voting rights in another enterprise, from the requirement of filing of notice has been further extended for period of 5 years.

CHINA Competition Law and Policy Development

SAIC

By 2016, China's anti-monopoly law has already implemented for eighth years. China's competition law and policy has undergone a new development which reflected in the following two aspects:

First, antitrust law enforcement continued to focus on social livelihood issues.

Second, the government gave a fuller play to the basic role of the competition policy, and prompted the implementation of fair competition review system. In June 2016, the State Council issued the "establish fair competition examination system in the construction of market system" (GF [2016]34), pointed out that administrative organs and public affairs organizations which has public management function in accordance with law should carry out fair competition review when they set policies and normative documents of market access, industrial development, investment, biding and tendering, government procurement, management norms, and market entity qualifications. The document [GF(2016)NO.34] explained that policy-making authorities should carry out fair competition review from 4 aspects, in total 18 standards: market access and exit, commodity factor free flowing, production cost and business operations. The policy and documents which limit competition and without a fair review are not allowed to release.

MOFCOM

The Anti-Monopoly Law of the People's Republic of China was promulgated in 2007 and became effective in 2008. In response to new conditions and problems in merger control review regarding the concentration of undertakings, competent authorities have been enhancing supporting legislations since the Anti-Monopoly Law became effective.

As of now, there have been one administrative regulation by the State Council, one guideline by the Anti-Monopoly Committee of the State Council and seven department rules and regulatory documents by the Ministry of Commerce.

To facilitate the effective implementation of supporting legislations, the Ministry of Commerce also promulgated seven practice guidelines and guidance documents to improve the transparency of law enforcement and provide clear guidance for the parties. In 2016, the Ministry of Commerce studied the Anti-Monopoly Law with a view to amending sections such as those on filing thresholds, review procedures and liabilities. To advance law enforcement in a strict, standard, impartial and civilized manner, the Ministry of Commerce is amending the Measure for the Notification of Concentration of Undertakings and the Measure for the Review of Concentration of Undertakings, strengthening work procedures and institution building and allowing such review to become further regulated, standardized and institutionalized. To regulate government acts, prevent introduction of policies or measures eliminating or restricting competition, and identify and abolish regulations and practices impeding the uniform market and fair competition throughout the country, the Ministry of Commerce, the Development and Reform Commission and other departments have worked closely to advance the release of the Opinions of the State Council on Establishing a Fair Competition Review Regime in the Market System, according to which the Ministry of Commerce shall conduct fair competition review.

SOUTH AFRICA

Competition Law and Policy Development

The Competition Commission of South Africa (CCSA) is the investigative and executive body with responsibility to investigate mergers and anti-competitive conduct. The CCSA is guided by a Competition Act No. 89 of 1998 (as amended) (Competition Act) which sets up three institutions; namely the CCSA, Competition Tribunal (Tribunal) and Competition Appeal Court (CAC). The Tribunal is the adjudicative body that rules on cases referred to it by the CCSA and makes final decisions on large mergers. The CAC is the appellate and review court in relation to decisions of the Tribunal and has the status of a High Court.

Below is a summation of competition law developments in South Africa over the previous year.

Criminal Prosecution of Cartel Conduct

Section 73A of the Competition Act came into force on 1 May 2016. The purpose of section 73A is to hold directors and persons in managerial positions criminally liable for "causing or permitting the firm to engage in cartel conduct". This alongside the civil/ administrative liability in terms of section 4(1)(b) of the Competition Act. To date, no director/manager has been prosecuted in a criminal court in terms of section 73A of the Competition Act.

Section 73A introduces a new dynamic to the South African legal system in that the firm is prosecuted in terms of the civil/ administrative process under section 4(1)(b) of the Competition Act, while the individual directors/managers of the firm found to have transgressed section 4(1)(b), is to be prosecuted in terms of the criminal justice system (section 73A). This provision therefore ushers a new interrelation between competition law and criminal law enforcement in South Africa. Currently, the CCSA's team of lawyers, in consultation with various Criminal law and Constitutional law experts, have been tasked with ensuring the smooth implementation of section 73A. Amongst primary considerations are best practice by South African regulating authorities as well as international competition law authorities.

The CCSA is determined to facilitate an efficient and constitutionally compliant implementation of this new era in South African Competition law.

competitioncommission
south africa

BRAZIL

Enforcement Actions

In 2016, CADE has opened several administrative proceedings on alleged cartels in public procurement (bid rigging) and for the manipulation of foreign exchange rates, both involving Petrobras. The investigated practices of bid rigging were also related to public infrastructure works, health products and services, and subcontractor services. In addition, CADE has been investigating cartels in the automotive industry – especially in the auto parts sector, the electric and electronic industry and their component markets and the distribution and resale of petroleum derivatives.

In this sense, in 2016, CADE reached historical records in the number of approved Cease and Desist Agreements and Leniency Agreements. The authority approved 54 Cease and Desist Agreements and eleven Leniency Agreements were signed. Furthermore, CADE collected almost BRL 800 million to the Fund for the Defense of Diffuse Rights (FDD in its acronym in Portuguese) of the Ministry of Justice. This is the highest amount collected by the Fund. 93% of the resources collected to the FDD are related to pecuniary contributions obtained by means of Cease and Desist Agreements. The amount also comprises imposed fines, plea agreements and merger control agreements.

Main cases:

1.CADE signs agreements with Andrade Gutierrez and UTC concerning cartel investigations in Petrobas and Eletronuclear public bids.

The construction companies Andrade Gutierrez and UTC – as well as current and former employees from both companies – signed separate Cease and Desist Agreements (TCCs in its acronym in Portuguese) regarding proceedings conducted by CADE's General Superintendence investigating a cartel within the scope of the so-called "Car Wash Operation". Both companies signed agreements concerning two administrative proceedings. The first proceeding investigates a cartel in Petrobras' public bids in the onshore engineering services, construction and industrial assembly markets. The second proceeding investigates collusion in public bids conducted by Eletronuclear regarding electronuclear assembly works for the Angra 3 power plant. The agreements foresee a pecuniary contribution totaling BRL 195,160,775.95. It is worth mentioning that the agreement signed with UTC concerning the cartel in Petrobras' public bids, which corresponds to BRL 129,232,142.71, is the biggest pecuniary contribution ever negotiated between CADE and a company.

With the TCCs signed with UTC, nearly 30 new documents that evidence the conduct were presented and 10 new public bids were identified as being affected by the cartel. The TCCs signed with Andrade Gutierrez generated around 20 new documents that evidence the anticompetitive conduct and that six additional public bids were affected by the conduct. Andrade Gutierrez obtained an additional reduction in the final amount of the referred pecuniary contribution set out in the TCCs, since it signed a leniency plus agreement with CADE.

Enforcement Actions

In this agreement, the company reported a cartel in the market of construction, modernization and/or renovation of sportive facilities in the context of the 2014 World Cup in Brazil.

2. CADE signs five agreements regarding a cartel investigation in the foreign exchange market and opens a new cartel investigation in the Brazilian exchange market

CADE's Administrative Tribunal signed five TCCs in an investigation of cartel in the foreign exchange market (offshore), involving the Brazilian currency (Real/BRL) and foreign currencies as well as the manipulation of benchmark rates in the exchange market, such as the WM/Reuters and the European Central Bank rates. The amount of pecuniary contributions collected totals BRL 183.5 million. CADE signed the TCCs with Barclays PLC, Citicorp, Deutsche Bank S/A, HSBC Bank PLC and JP Morgan Chase & CO.

Among the conducts that involved the Brazilian currency, it is worth emphasizing the agreements to fix prices or price levels (spread) and to prevent or hinder the action of certain operators in the exchange market. These practices affected mainly financial products called Non-Deliverable Forwards Real (NDF BRL), which are derivatives normally used as a hedge instrument. The contractor of one NDF ensures a future exchange rate to the base currency of the contract, reducing the risks of potential exchange rate fluctuations.

CADE also investigates the coordination between the banks in order to restrain competition in the purchase and sale of foreign currencies, as well to affect benchmark rates (or exchange rates of reference), which are calculated based on the exchange rates published in the market and the rates publicized periodically by public and private entities – such as WM/Reuters and the European Central Bank.

CADE's General Superintendence has also opened an administrative proceeding to investigate an alleged cartel in the national exchange rate market (onshore), involving the Brazilian currency. CADE's General Superintendence has also opened an administrative proceeding to investigate an alleged cartel in the national exchange rate market (onshore), involving the Brazilian currency. The anticompetitive conducts would have happened mainly in the FX spot and futures market (derivatives). The investigated conducts would have been practiced by financial institutions and individuals located in Brazil. They are related essentially to spot, forward and future operations conducted and settled in Real.

The investigation reaches 10 financial institutions based in Brazil and 19 of its employees and former employees. There is strong evidence of anticompetitive conduct regarding at least five banks: Banco BBM S/A; Banco BNP Paribas Brasil S/A; Banco BTG Pactual S/A; Banco Citibank S/A; and HSBC Bank Brasil S/A. In addition, there is also evidence that the following banks are involved in the practice to a lesser extent: Banco ABN AMRO Real S/A; Banco Fibra S/A; Banco Itaú BBA S/A; Banco Santander Brasil S/A; and Banco Société Générale Brasil S/A.

Enforcement Actions

The evidence indicated that the communication between the companies was conducted in Bloomberg's chat rooms at least between 2008 and 2012. The evidence analyzed also suggests attempts to coordinate exchange operations and exchange risk positions; to define prices and/or level of prices to exchange and differential spreads (such as FRP); to affect the PTAX reference index of the Brazilian Central Bank; and to share market sensitive information, such as risk positions, prospective activities of negotiation and clients information.

3. CADE's General Superintendence investigates cartel of replacement auto parts

CADE's General Superintendence initiated an administrative proceeding to investigate the practice of cartel in the independent replacement auto parts market. According to the opinion, there is evidence that 28 companies that operate in the sector shared market sensitive information. The objective of the conduct was to establish standards to set the decision-making process related, for example, to the transfer of cost increase on products' prices. The exchange of information would have enabled the companies to anticipate prices, projected sales, production and business strategies of each other to structure a coordinated

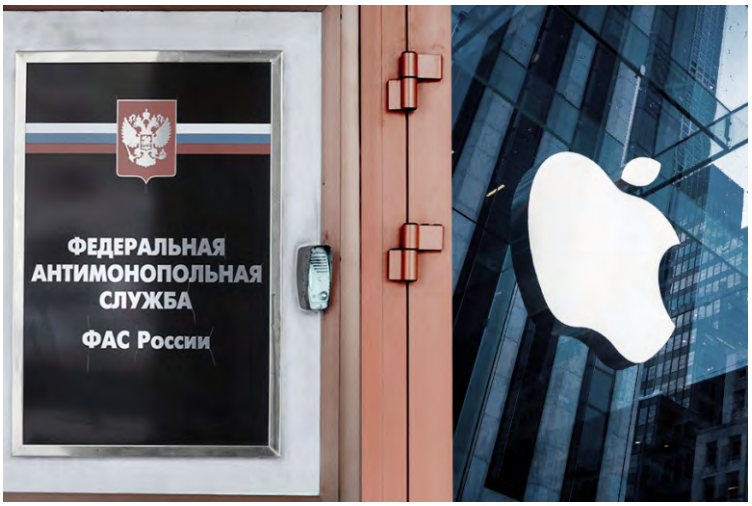
According to the General Superintendence, at least, 66 individuals related to the companies conducted all of these adjustments. The practices would have been conducted by e-mails, telephone calls and data sheets, as well as face-to-face meetings periodically held in the companies' facilities and in restaurants. These anticompetitive conducts would have possibly occurred between 2003 and 2016.

RUSSIA

Enforcement Actions

The FAS Russia pays a particular attention to the digital economy. In 2016, the FAS Russia found violations in the Google's actions, which resulted in prohibition of pre-installation of other developers' competing applications. The FAS Russia's Decision on violation of the antimonopoly legislation by Google and Prescription for the company to correct its market activity and to pay a 438 million RUB fine were confirmed by courts of two instances and took legal effect. In the beginning of 2017, the FAS Russia reached a settlement with Google; the company paid the fine in full.

Furthermore, the FAS Russia initiated two proceedings against Apple. One of them was related to repairing Apple products. The FAS Russia found that Apple does not supply necessary spare parts for repair, resulting in the infringement of consumers' rights. The second case concerned coordination of economic activity of the largest Apple products resellers in Russia.



Case on price coordination by Apple

On August 8, 2016 the FAS Russia initiated proceedings having regard to signs of violation of Part 5 Article 11 of the Federal Law of 26.06.2006 No.135-FZ "On Protection of Competition" (prohibition to coordinate the economic entities' activity) by Apple Rus Ltd. (Russia), Apple Holding B. V. (the Netherlands), Apple Sales Ireland (Ireland), Apple Operations International (Ireland), Apple Inc. (the USA) . The case was initiated based on a citizen's complaint concerning the coincidence of prices set by the 16 main resellers (MTS, M.Video, Beeline, Eldorado, Evroset', OZON, Re:Store and others) for new models of the Apple's iPhone 6s and iPhone 6s Plus smartphones.

The investigation showed that since the start of official sales of the Apple iPhone 5s, iPhone 5c, iPhone 6, iPhone 6 Plus, iPhone 6s and iPhone 6s Plus models in Russia, most of resellers fixed the same prices for the smartphones, as recommended by Apple Rus Ltd., and maintained them for approximately three months.

In its final decision the FAS Russia established the following circumstances that allowed it to accuse Apple Rus Ltd.:

- after the start of sales of new Apple iPhone models, the majority of resellers in Russia set and maintained for a certain period of time the same retail prices for smartphones iPhone 5s, iPhone 5c, iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, iPhone SE, at the level set in press releases published by Apple Rus Ltd.;
- representatives of Apple Rus Ltd. sent e-mails with price lists and press releases with retail prices for Apple iPhone smartphones from the apple.com domain to authorized resellers purchasing smartphones both from Apple Rus Ltd. and distributors;

RUSSIA

Enforcement Actions

- Apple Rus Ltd. monitored retail prices for Apple iPhone smartphones, fixed by resellers for online-stored and retail outlets, and if “inappropriate” prices were fixed, the Russian subsidiary of Apple sent e-mails to resellers asking them to change the prices;
- the retailers' compliance with the recommended retail prices could have resulted from the provisions of the contracts between Apple Rus Ltd. and the resellers, according to which Apple Rus Ltd. can terminate contracts at any moment without any reasons;
- purchase prices for Apple smartphones, as well as price-setting mechanisms used by resellers differ, and while determining prices different factors are taken into account (costs on transportation to the regions, advertisement costs, other costs related to the products' retail sale, anticipated sales volume etc.) .

During the investigation Apple Rus Ltd. voluntarily terminated the violation.

In its final decision the FAS Russia accused Apple Rus Ltd. of coordinating the prices, and as a result the company will be imposed a fine amounting to 1-5 million roubles (16,000-80,000 euros) . Apple Holding B.V., Apple Sales Ireland, Apple Operations International, Apple Inc. were not admitted guilty by the FAS Russia.

In the end of 2016, the FAS Russia initiated proceedings on abuse of dominant position by Microsoft. In June 2017, the Authority issued warnings to the company to stop actions that have signs of violating the antimonopoly law (Clause 8 Part 1 Article 10 and Articles 14.2, 14.8 of the Federal Law “On Protection of Competition”). The FAS Russia also found violations of Articles 14.2, 14.8 of the Federal Law “On Protection of Competition”: distribution of Windows software applying 10 methods of cooperation with users, aimed at stimulating the use to refuse using third-party antivirus software and activate Microsoft antivirus software (Windows Defender). The FAS Russia continues investigating the case.

The year of 2016 as a whole has been highly efficient for the FAS Russia with regard to combating unfair practices of large international companies.

RUSSIA

Enforcement Actions

Case against 5 largest liner shipping companies

In 2013 FAS Russia opened a case against A.P. Moller-Maersk A/S (Denmark), CMACGMSA (France), Hyundai Merchant Marine Co., LTD (Korea), Orient Overseas Container Line Limited (Hong Kong), Evergreen Marine Corp. Ltd. (Taiwan). The FAS Russia found that companies violated Clause 1 Part 1 Article 11.1 of the Federal Law "On Protection of Competition". The above mentioned companies are competitors and they exercised prohibited concerted actions that led to fixing mark-ups (extra payments) to freight rates on the market of liner container shipping on the Far East / Southeast Asia – the Russian Federation (St Petersburg, Ust-Luga) routes in 2012-2013.

FAS established that in 2012-2013 information about mark-ups to freight rates (General Rate Increase, GRI) was published on a website of one of the carriers, after which other market participants fixed the same mark-ups. Such concerted actions are prohibited for competitors, whose consolidated share of a relevant market exceeds 20% and the market share of each entity exceeds 8%.

The annual container turnover from Asian ports to Big Port St Petersburg is around 550,000 loaded containers. Repeated introduction of mark-ups within a year by US $250-950 per container, even when partial or temporary, have an adverse impact upon foreign trade in the Russian Federation and upon the costs of goods for Russian consumers.

Domestic participants of international economic activities fully depend on the quality and costs of services rendered by foreign companies because there is no single Russian company among 16 container operators in the market.

The Law on Protection of Competition applies to the relations associated with protecting competition, particularly, involving foreign legal entities and actions exercised by them if such actions affect the state of competition in the Russian Federation. In the case investigated by the FAS Russia, all organizations that violated the law are foreign legal entities registered in Denmark, France, Korea, Hongs Kong and Taiwan.

Russian courts supported the FAS Russia's decision on violation of the antimonopoly legislation by the above-mentioned 5 largest liner shipping companies. In the beginning of 2017, the FAS Russia reached a settlement with companies, within the framework of which the carriers stopped the violation and undertook obligations, executing which will enable fair conditions for consumers of liner shipping services. Currently, the Antimonopoly Service, together with the market participants, is devising the Guidelines to determine the common conduct rules and principles on the market of liner marine transportation.

RUSSIA

Enforcement Actions

Cartel of an unprecedented scope

In 2016, the authority exposed the most wide-scale cartel in Russia. The FAS Russia made a decision on a cartel case opened in the course of competitive bidding for supplying military uniforms and gear for the needs of the Russian Ministry of Internal Affairs, the Federal Security Service and the Federal Customs Service.

118 legal entities were brought in the case as respondents. The FAS Russia established that cartel participants were involved in 18 open electronic auctions for the total sum exceeding 3.5 billion RUB.

90 companies were found guilty. Some cartel participants simultaneously managed 3-4 legal entities and put them at auctions to create a veneer of competition.

Price bids were often filed by a single company in spite of 11 to 40 bidders that took part in an auction. Other bidders refused to compete to ensure that the "right" bidder would win and prices were maintained.

Cartel members devised their own "quota" system; when quotas were estimated in view of the original contract price pro rata to the number of auction bidders. "Quotas" could be obtained, changed or accumulated. When a particular amount of "quotas" was accumulated, and arrangements with other cartel members were reached, one of the cartel participants became a "contract holder" for the auction.

Several respondents that approached the FAS Russia under the frame of the leniency programme made confessions about forming the cartel and participating in it.

A number of cartel participants committed a repeated violation: in 2012 some of them were already held liable for a similar violation. At that time the antimonopoly body exposed and proved participation of more than 30 legal entities in a cartel. Courts supported the FAS Russia's decision. Cartel members paid big administrative fines.

The decision and case materials were forwarded to the Main Department for Economic Security and Countering Corruption of the Ministry of Interior to open a criminal case under Articles 178 and 210 of the Criminal Code of the Russian Federation. The decision was also forwarded to the Federal Security Service and the Federal Customs Service for awareness.

INDIA

Enforcement Actions

1.Builders Association of India Vs Cement Manufacturers' Association & Others (Cement Cartel Case)

The information filed with CCI by the Builders Association of India (BAI) alleged that the Cement Manufacturers' Association (CMA) and the 11 cement companies had formed a cartel, indulged in collusive price fixing, and limited and restricted the production and supply of cement as against the available capacity of production. It was alleged that these acts were in the nature of horizontal restraint prohibited by Section 3 of the Competition Act, and abuse of dominance, prohibited by Section 4 of the Act.

The Commission had issued an order in 2012 finding violation of the provisions of Section 3 of the Competition Act, and imposed monetary penalties on them under Section 27 of the Competition Act. However, this order was set aside by the appellate authority, the Competition Appellate Tribunal (hereinafter 'COMPAT'), and the case was remanded back to CCI for fresh adjudication.

In accordance with the directions of COMPAT, a fresh order was passed by the CCI on August 31, 2016.

The CCI looked at evidence such as the target and production data that was filed by the cement companies with the CMA, sharing of that information with its members by the CMA, and the price increase that happened pursuant to meetings of the CMA.

The CCI noted that there was considerable decline in total capacity utilization by the cement companies in 2009-10 and 2010-11. The DG's investigation report showed that the total capacity utilization of the cement companies had come down from 83% in 2009-10 to 73% in 2010-11. The data available with CMA showed that the capacity utilization of 9 cement companies (excluding ACC Ltd and ACC) on March 31, 2011 was 75% of the total installed capacity. The fact of low capacity utilization by the cement companies was also corroborated by the total capacity utilization reported by these companies in their annual reports.

After considering the aforementioned circumstantial evidence, the CCI came to the conclusion that the platform provided by CMA was used by the cement companies to share details relating to prices, capacity utilization, production and dispatch, which enabled them to restrict production and supplies in the market. Accordingly it found the CMA, and the cement companies to have entered into a horizontal agreement to limit production and supply of cement, in contravention of provisions of Section 3(1) read with Section 3 (3) (b) of the Competition Act.

In addition to the price parallelism that was established through the evidence on record, CCI also found the cement companies to have acted in concert in fixing prices of cement, in contravention of the provisions of Section 3 (1) read with S. 3 (3) (a) of the Competition Act.

In its order dated August 31, 2016, the CCI directed the cement companies and the CMA to cease and desist from indulging in any activity concerning any agreement or understanding between them, on prices, and production and supply of cement in the market.

Enforcement Actions

It directed the CMA to disengage and dissociate itself from collecting wholesale and retail prices of cement from the member companies or otherwise. It also restrained the CMA from collecting and circulating the details relating to production and dispatch by the cement companies.

CCI imposed monetary penalties aggregating to INR 67 billion Indian rupees (approx. USD 993 million) on all the cement companies it had received complaint against. The penalties were calculated at the rate of 0.5 times of the net profits of the respective companies, under provision to Section 27(b) of the Act, which concerns levy of penalty on cartels. It also imposed a monetary penalty of INR 7.3 million (approx. USD 108,195) on the CMA, calculated at the rate of 10% of its total receipts for two years.

CCI did not find a contravention of the provision on abuse of dominance (Section 4). It observed that the cement market in India is characterized by an oligopoly, with no single firm being dominant within the meaning of Section 4 of the Act.

2. M/s Maruti & Company Vs Karnataka Chemists & Druggists Association & Others

The information filed with CCI by a drug stockiest - M/s Maruti & Co. (Maruti) against a regional association of chemists and druggists - Karnataka Chemists and Druggists Association (KCDA) and a pharmaceutical company - Lupin Ltd. (Lupin), alleged that it was denied supply of drugs for want of obtaining a no-objection certificate (NOC) from KCDA.

The evidence reviewed by Director General (DG), included emails/ letters exchanged between the parties, minutes of meeting of KCDA, depositions of witnesses etc. Based on this evidence, the DG arrived at the finding that KCDA was carrying on a practice, wherein to be appointed as a drug stockist, one had to obtain an NOC issued by the KCDA. It was also found by the DG that Lupin had in fact refused to supply drugs to Maruti, despite having appointed Maruti as its distributor.

CCI in line with its previous orders, held that the practice of mandating NOC as a pre-requisite for appointment of stockists, amounts to limiting and restricting the supply of pharmaceutical drugs in the market, in violation of the provisions of Section 3(1) read with Section 3(3) (b) of the Competition Act.

INDIA

Enforcement Actions

CCI took serious note of the practice of various regional associations of chemists and druggists, of mandating the NOC requirement, either verbally (in order to avoid any documentary evidence/proof), or in the guise of congratulatory/intimation letters, to hide their apparent anti-competitive conduct. It held that the use of benign nomenclature for any communication mandating an NOC does not absolve these associations from legal consequences of their anti-competitive conduct.
CCI observed that the pharmaceutical companies by cooperating and acquiescing with the chemists' and druggists' associations in respect of the NOC requirement, were a party to the anti-competitive agreement prohibited by Section 3 (1) of Competition Act. Accordingly it held Lupin to be liable for contravention of the provisions of the Act.

CCI directed the KCDA, Lupin and their officers in charge to cease and desist from the practice of mandating NOC, for the appointment of stockists, or for dealing with them. It imposed monetary penalty of about INR 860,000 (approx. USD 12,746) on KCDA, calculated at the rate of 10% of its average income. It also imposed monetary penalty on officials responsible at KCDA at the rate of 10% of their income.
With respect to Lupin, CCI considered the refusal to supply drugs to its appointed stockist for a brief period of six months to be a mitigating factor. Consequently it imposed a reduced penalty of INR 720 million (approx. USD 10.6 million), calculated at the rate of 1% of its turnover. It also imposed a monetary penalty on the officers responsible at Lupin, calculated at the rate of 1% of their income.

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CHINA

Enforcement Actions

SAIC

In 2016, the industrial and commercial authorities to promote the anti-monopoly law enforcement steadily, a series of cases has achieved good social effects, there are some typical cases as follow:

1. Tetra Pak case-for abusing market dominant position

After 4 years in-depth investigation, Tetra Pak Group has been fined 66.7 million RMB for abusing market dominant position, and was ordered to stop the illegal practice. In order to guarantee the legitimate rights of party, SAIC communicated with Tetra Park many times during investigation. Tetra Pak Group already accepted the penalty. It will take further measures to ensure the practice lawfully. The penalty decision of the case can be checked on the website of SAIC.

2. Chongqing province Xinan pharmaceutical No.2 factory-for abusing market dominant position

XiNan pharmaceutical No.2 factory is the only company which produces phenol APIS in China. The company stopped phenol APIS supply from February to April 2014,which caused supply shortage in market. Although the company began to supply it to market from May 2014 to October 2015, there only 6 enterprises were supplied, and most of the manufacturing enterprises can not be fulfilled. But XiNan pharmaceutical factory profits have surged during this period. After investigation of SAIC, it concluded that XiNan Pharmaceutial No.2 factory violated Antitrust laws and Rules of prohibiting abuse of dominant market position of SAIC. It has been fined 17240 RMB, as a percent of sales of 2015,and has been confiscated illegal income 482833.9 RMB. It were ordered to stop the illegal acts.

3. Anhui province monopoly agreement case

Beijing Zhaori technology Co. Ltd, XinYaDa system Engineering co. Ltd, Shanghai HaiJiYe high-tech Co. Ltd are companies which products and sales e-payment cipher. In December 2010, the three companies with more than 20 financial institution participated product promotion conference which organized by the People's Bank of Anhui province. They reached an agreement on market allocation, product model, sales price, product promotion, sales plan, training course and course-related costs. Subsequently the three companies carried out the sales activities with the plan. After investigation of SAIC, it concluded that the three companies violated Antitrust laws and of Anti-monopoly Rules. It has been fined 29,759,307.35 RMB, as eight percent of sales of previous year.

CHINA

Enforcement Actions

MOFCOM

Pursuant to the Anti-Monopoly Law, the Ministry of Commerce is responsible for investigating and imposing penalties on illegal concentrations of undertakings in accordance with the law. In 2016, the Ministry of Commerce announced penalties on five cases for failure to notify, including the establishment of a joint venture between Bombardier Transportation Sweden AB and New United Group Corporation, Ltd., and the establishment of a joint venture between Beijing CNR Ltd. and Hitachi Ltd., which enhanced corporate compliance awareness and upheld the authorization of the Anti-Monopoly Law.

One of the important functions of the Ministry of Commerce is to guide Chinese enterprises to respond to antitrust lawsuits overseas. In 2016, under the guidance of the Ministry of Commerce, North China Pharmaceutical Group Corporation successfully defended itself in the United States against antitrust claims involving Vitamin C and received a judgment in its favour in this 11-year lawsuit.

The Ministry of Commerce has launched a regime for the filing and publication of simplified cases to allow eligible cases to undergo simplified filing and review procedures and to promote efficiency in its review. In 2016, 324 cases were concluded in Phase 1 (within 30 days), accounting for 82% of all cases and up by 8 percentage points from 2015. Simplified cases accounted for 76% of the total number of cases in 2016, and 98.6% of simplified cases were concluded in Phase 1.

SOUTH AFRICA

Enforcement Actions

ArcelorMittal Settlement Agreement

In August 2016, the CCSA reached an agreement with the steel manufacturer ArcelorMittal South Africa Ltd (AMSA) in terms of which AMSA admitted to involvement in various prohibited practices, including collusion in flat steel, long steel and scrap metal markets.

AMSA agreed to pay an administrative penalty of R1.5 billion (approximately USD106 million), the largest such administrative penalty imposed on a single firm in the 17-year history of Competition law enforcement in South Africa.

Dawn raids

The CCSA kicked-off 2016 with four search and seizure operations. The first was at the premises of glass suppliers and their affiliated companies, namely: PG Glass, Glasfit, Shatterprufe and Digicall.

The latest raid of 2016 was conducted at the premises of various margarine, edible oils and baking fats manufacturers namely: Wilmar Continental Edible Oils and Fats (Pty) Ltd, DH Brothers Industries (Pty) Ltd t/a Willowton Oil and Cake Mills, FR Waring Holdings (Pty) Ltd, Africa Sun Oil Refineries (Pty) Ltd and Epic Foods (Pty) Ltd. A total of 5 search and seizure operations were conducted by the CCSA in 2016.

Traditionally, the CCSA relied on other investigative tools to gather evidence of collusion. Summons and information request letters were preferred over dawn raids because of the invasive nature of dawn raids. The CCSA has however begun to utilise dawn raids as one of its most effective tool to secure evidence of collusion.

This has provided a healthy balance in the utilisation of all investigative tools instead of heavy reliance on just a few, thereby increasing the effectiveness of evidence gathering as well as developing the skills of investigators.

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BRAZIL

Merger Review

In 2016, CADE approved a total of 360 mergers and acquisitions without restrictions and six with restrictions. Most of the mergers reviewed are in the chemical and the financial markets. CADE also cooperated with several other jurisdictions regarding the analyses of worldwide mergers, such as Latam/IAG and FedEx/TNT.

1. TNT's acquisition by FedEx is approved without restrictions

CADE's Administrative Tribunal upheld General Superintendence's opinion for the unconditional approval of the merger related to the acquisition control of TNT by FedEx.

UPS do Brasil Remessas Expressas Ltd., qualified as third party, filed an appeal against the decision. In its request, the rival company questioned the analysis made on the market of small packages express delivery for international destinations. According to the Reporting Commissioner, despite the fact that FedEx and TNT have a high joint participation in this market in Brazil, it is unlikely that the companies exercise their market power after the merger. Also, there are observable and measurable efficiencies that show that the net effect of the merger is, at least, non-negative.

This way, the Council accepted the appeal and dismissed it in the merits, upholding, therefore, the General Superintendence's opinion for the unconditional approval of the merger.

2. CADE approves with restrictions joint venture between Saint Gobain and SiCBRAS in the silicon carbide market

CADE's Administrative Tribunal approved with restrictions the proposed joint venture between Saint Gobain of Brazil and SiCBRAS Silicon Carbide of Brazil Ltda., conditioned to the compliance with a set of measures provided by the Merger Control Agreement (ACC for its acronym in Portuguese) signed between the companies and CADE.

The purpose of the new company is the joint management of a silicon carbide factory by both Saint Gobain and SiCBRAS, which is being constructed in Paraguay. However, the main destination of the production is the Brazilian market and each party will be able to acquire up to 50% of the joint venture's annual productive capacity.

The Reporting Commissioner explained that the joint action of Saint Gobain and SiCBRAS in the Paraguayan plant raises competitive concerns, such as the risk of exchange of sensible information amid competitors; the companies' joint strategic decision-making; and possible reduction of competitive incentives, considering that the companies became partners.

Merger Review

CADE's Tribunal has determined a set of behavioral measures, by means of the ACC, to resolve the competitive problems and to ensure the operational independence of the joint venture. The ACC also determines that CADE will conduct inspections in the companies' areas of activity related to the joint venture's manufacturing and commercialization of silicon carbide, as long as the joint operation remains.

3. CADE authorizes HSBC's acquisition by Bradesco

CADE's Administrative Tribunal approved the merger between HSBC and Bradesco. The decision was conditioned to the signature of a Merger Control Agreement (ACC for its acronym in Portuguese).

When pronouncing his vote, the Reporting Commissioner proceeded both to an assessment of the specific operation and of the Brazilian banking market. He indicated that HSBC's acquisition by Bradesco leads to an increase of the market concentration levels, especially within the specific markets directed to a large amount of consumers, such as the cash deposit market (current accounts) and the free credit to natural or legal persons market.

According to the Reporting Commissioner, the banking sector is characterized by low competition levels, not only in Brazil, but also in other parts of the world, due to the information asymmetry and transaction costs to which the consumers are subject. In addition, the merger analysis demonstrated the existence of a minimum scale required to enable the entrance of new competitors in the market.

With the purpose of achieving a solution for the competition issues, the Tribunal required remedies, foreseen in the ACC signed between the antitrust authority and Bradesco. Bradesco is required to implement behavioral measures organized in six different lines, namely, communication and transparency, credit portability incentives, training, quality indicators, compliance and restrictions regarding the acquisition of financial institutions for 30 months.

The ACC also foresees that Bradesco should offer incentives to former HSBC clients from 106 municipalities to transfer their credit operations (consumer credit modalities) into other financial institutions, with the exception of Caixa Econômica Federal, Banco do Brasil and Itaú, which are among the largest banks in the country.

Finally, Bradesco undertook the responsibility, among other measures, to improve the procedures applied in the credit and wages portability, to implement measures that enhance transparency and to conduct training sessions to its personnel aiming at improving the services provided to its clients.

CADE
Conselho Administrativo de Defesa Econômica

RUSSIA

Merger Review

Procedure

Application to the FAS should be provided together with information and documents as required by the Competition Law. All documents should be provided in hard copy or in electronic form. If the package of documents is not complete, it may be returned to the applicant. When obtaining preliminary consent, the FAS has a basic period of one month to review the application from receipt of a complete filing (Phase I). The FAS may then open a Phase II investigation, lasting a maximum of a further two months (i.e., three months in total). If the FAS decides to issue a decision on conditions that must be implemented by the parties before its final clearance decision, it can postpone the final decision and set the period for implementing said conditions, which could be up to nine months. In the latter case, the total period for obtaining preliminary consent could be a maximum of 11 months. Cases where it is necessary to implement said conditions and then negotiate the deal are extremely rare. The post-merger notification procedure does not stipulate any review term. Since it is not a clearance procedure but simply a notification requirement, the FAS is not officially required to issue any decision. If the FAS believes that the transaction restricts competition, it can issue an obligatory order to the parties within a reasonable time (within one year) upon receipt of notification.

In 2016, the FAS Russia reviewed 1 379 pre-merger notifications and 83 post-merger notifications, out of which 1 441 were considered or satisfied (including with remedies for 39 notifications). The antimonopoly body prohibited 21 transactions. For 100 notifications, review in Phase II was initiated.

Mylan/MEDA merger

In 2016, FAS Russia considered the application of 'Mylan N.V.' about the acquisition of rights allowing to define terms for business activity of 'Meda Pharma' LLC and 'Rottapharm Madaus' LLC by purchasing shares in 'Meda AB' totaling up to 66% of total voting shares, and in July 2016 issued a decision about approval of the acquisition.

Due to the necessity for further consideration of the application, as well as receiving additional information, the FAS Russia decided to extend the time frame for consideration till August 28, 2016.

'Mylan N.V.' (and its group of persons) and 'Meda AB' (and its group of persons) supply medications to the Russian Federation that belong to the same type of musculoskeletal medications. Both medications contain the same substance 'hyaluronic acid' and are being produced in the form of liquid for injections.

Merger Review

From the information submitted with the application it is established that 'Meda AB' is a producer of the intra articular viscosupplement GO-ON, while 'Mylan N.V.' is a producer of the intra articular viscosupplement Suplasyn.
In accordance with information presented in the State Register of Medical Products and Organizations (self-employed entrepreneurs) that currently produce medical products in the territory of the Russian Federation, there are 14 medical products (with the same formula) of different manufacturers.
The FAS Russia requested information from the Roszdravnadzor (Federal Service for the Supervision of Public Health and Social Development) on possibility to replace the above-mentioned medical products with medical products of other manufacturers with the same indication and counterindication for use by the same group of patients with equal therapeutic effect, as well as on their differences.
Of the responses from the Roszdravnadzor, it was defined that medical products have different indication for use, route, specification (parameters). Therefore, no basis was found to block the merger or approve it with conditions under the antimonopoly legislation.

Acquisition of Biosynthesis by Ranbaxy

In December 2016, the FAS approved the notification of Ranbaxy, a subsidiary of the Indian company Sun Pharmaceutical Industries, to acquire 100% of Biosynthesis OJSC, while imposing a number of conditions. According to the FAS Russia's Determination, Ranbaxy must fulfill all the contracts previously concluded by Biosynthesis with counterparties, and should not reduce the production and sale of medicines, unless this is an economically or technologically sound measure.
In addition, the company must develop and publish on its official website a document regulating the interaction of the company Ranbaxy (Netherlands) B.V. with counterparties in order to ensure transparency of such interaction's terms.

Acquisition of Bashneft by Rosneft

In 2016, the Government of Russia approved the acquisition of NK Rosneft PJSC by another large Russian oil company, ANK Bashneft PJSC. The FAS Russia reviewed the notification of Rosneft and decided to satisfy the transaction with the simultaneous issuance of the Determination to Rosneft with structural and behavioral remedies, including divestiture of refueling stations within two years in those regions where the total share of Rosneft and Bashneft in the retail markets for motor fuel will exceed 50%.
In addition, the FAS Russia ordered Rosneft to regularly and uniformly sell its petroleum products on the Saint-Petersburg International Mercantile Exchange, as well as develop and submit for approval amendments to its trade policy for the development of wholesale trade in petroleum products to the FAS Russia, taking into account the criteria of transparency and goods' availability for buyers. According to the Determination, it is necessary to ensure the publicity and accessibility of information on the pricing procedure and respect the prohibition of economically and technologically unjustified refusals to entering into contracts with buyers in the company's trade policy.

INDIA

Merger Review

1. DLF Utilities Limited/PVR Limited merger

PVR Limited (PVR) filed a notice for acquisition of DLF Utilities Limited's (DUL) film exhibition business i.e. DT Cinemas, comprising of 39 screens (including 29 existing and 10 upcoming screens). It was a horizontal merger involving the acquisition of all the screens of a company's closest competitor. The merger, if allowed, would eliminate the fiercest and closest competitor to PVR Cinemas, viz., DT Cinemas, the reason being that the parties collectively operated 27 out of 34 screens in one of the relevant markets. The merger granted PVR a near-monopoly position in the affected market, which could give rise to increases in the price of tickets and food & beverages.

CCI defined relevant market (product and geographic) as (i) market for exhibition of films in multiplex theatres in Gurgaon; (ii) market for exhibition of films in multiplex theatres in NOIDA; (iii) market for exhibition of films in multiplex theatres in Chandigarh, (iv) market for exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi; (v) market for exhibition of films in multiplex theatres and high-end single screen theatres in North, West & Central Delhi.

Based on the assessment, CCI decided that the proposed merger is not likely to result in appreciable adverse effect on the competition in India in the two relevant markets i.e. (1) relevant market for exhibition of films in multiplex theatres and high end single screen theatres in North, West & Central Delhi; and (2) relevant market for exhibition of films in multiplex theatres in Chandigarh.

However, it is likely to result in appreciable adverse effect on the competition in rest three markets: (1) market for exhibition of films in multiplex theatres in NOIDA; (2) market for exhibition of films in multiplex theatres in Gurgaon, and (3) market for exhibition of films in multiplex theatres and high end single screen theatres in South Delhi. The CCI further observed that such adverse effect can be eliminated by suitable modifications. PVR offered behavioral remedies in the form of caps on ticket prices and food/beverage prices, quality commitments and a freeze on organic and inorganic expansion, for a period of 5 years. The CCI did not accept the proposal because fixed prices cannot fluctuate and react to market forces; they could be too high or too low. Price caps could also favor the market entity as future market conditions were difficult to predict. Moreover, CCI had concerns over the difficulty in monitoring the price and quality commitments for a long period of 5 years.

CCI instead proposed structural remedies in the form of divestiture of 11 screens in the relevant market. PVR indicated in response that there were several contractual impediments to divestiture and that divestiture would be too costly to implement. They offered to exclude 7 screens from the acquisition and committed to freeze future expansion plans for a period of 5 years.

The revised remedy was found to be sufficient to preserve the level of competition in the affected market as other competitors had proposed to enter the relevant market in the coming years and would add 14 new screens to the market. CCI thus approved the merger subject to these revised remedies.

2. Anheuser-Busch In Bev SA/NV/SABMiller merger

Anheuser-Busch InBev SA/NV (ABI) and SABMiller plc (SABM) jointly filed a notice in relation to the acquisition of entire issued and to be issued share capital of SABM by ABI, pursuant to the execution of a Co-operation Agreement. The two companies are engaged in production, marketing and distribution of some global brands of beers in India like Budweiser, Budweiser Magnum, Grolsch, Miller Genuine Draft and Pilsner Urquell.

The CCI noted that the relevant market for beer is distinguishable from that for other beverages such as wine and distilled spirits and the beer market may be further segmented in different ways such as, (i) by alcohol content (strong/regular);(ii) by price (premium/standard etc.); and by (iii) type (lager/small) etc.

Accordingly, for the assessment of the proposed merger, CCI considered each of the sub-segments of the beer market and observed that the increment in the market share of ABI resulting from the proposed merger is insignificant. Further, CCI noted that the combined entity would continue to face competitive constraints on account of the presence of other competitors such as, United Breweries Limited (which is a market leader in all the segments/sub-segments of beer in India) and Carlsberg etc. Based on the above CCI approved the merger under sub-section (1) of Section 31 of the Act.

3. Reliance Communications Limited/Sistema Shyam Telservice Limited merger

The CCI received a notice from Reliance Communications Limited (RCom). The proposed merger related to the demerger of the telecom business of Sistema Shyam Teleservices Limited (Target / SSTL) and subsequent acquisition of the same by RCom pursuant to a Merger Agreement and Shareholders Agreement.

It was observed that the overlap in the operations of RCom and SSTL existed in nine (9) telecom service areas in the mobile telephony service and one service area in case of wireline telephony service.

a. Regarding long distance services, it was noted that RCom offers both NLD (National long Distance) and ILD (International Long Distance) services. On the other hand, SSTL's network for NLD services was currently used for captive purposes and it did not provide ILD services.

b. With regards to the passive infrastructure services, it was noted that none of the telecom towers of SSTL would be transferred to RCom as part of the proposed merger.

c. With regards to the internet data centre's, it was observed that while RCom renders internet data centre to related services of others, SSTL's internet data centers are captively used.

Merger Review

Based on the information furnished by the Acquirer, it was noted that:

a. With regards to mobile telephony service, while the market shares of RCom in the overlapping telecom service areas are in the range of 5-20 percent, the combined market shares would remain in the same range and there are other significant service providers active in the provision of similar services.

b. Regarding the wireline telephony services, it is observed that the combined market share of the Parties, would be in the range of 0-10 percent only and there are other significant competitors active in the provision of similar services.

c. In relation to the vertical relationship, it was noted that SSTL had taken tower tenancies from Reliance Infratel Limited (RITL), a subsidiary of RCom and those tower tenancies of SSTL would become internal tenancies of RCom. In terms of tenancies, Indus towers is the market leader (35-40 percent) followed by ATC Towers (including Viom) (15-20 percent), RITL (10-15 percent), Bharti Infratel (10-15 percent), BSNL (5-10 percent) etc.

Based on the above, the CCI approved the merger under sub-section (1) of Section 31 of the Competition Act.

CHINA

Merger Review

MOFCOM

In 2016, as a result of the rapid development of the merger and acquisition market, cases reviewed by the Ministry of Commerce increased dramatically. The Ministry of Commerce was notified of 378 cases in total initiated 360 cases and concluded 395 cases, with a year-on-year growth of 7.4%, 6.5% and 19% respectively. Pursuant to the Anti-Monopoly Law, to the extent that a concentration of undertakings leads or may lead to elimination or restriction of competition, the Ministry of Commerce shall make a decision to prohibit or impose remedies on the concentration. Among the cases concluded by the Ministry of Commerce in 2016, two were cleared with remedies.

1) Conditional approval of Anheuser-Busch InBev's acquisition of SABMiller

Anheuser-Busch InBev and SABMiller are mainly engaged in beer production and sales. Following the concentration, Anheuser-Busch InBev will further enhance its control in the relevant markets, reduce the competition between two market-leading and competing companies, raise market entry barriers and further impair the interests of downstream distributors. The Ministry of Commerce found that the proposed concentration would have the effect of eliminating and restricting competition in the relevant markets and would ultimately impair the interests of Chinese consumers. The Ministry of Commerce requested Anheuser-Busch InBev to spin off its 49% equity in China Resources Snow, and such decision enhanced the order of fair competition in the Chinese beer markets and consumers' interests.

2) Conditional approval of Abbott's acquisition of St. Jude

Abbott and St. Jude are respectively global medical care and medical device companies. Upon review, the Ministry of Commerce found that the proposed concentration would have the effect of eliminating and restricting competition in the market of small vascular closure devices. After the transaction, Abbott will have stronger market control, and have an incentive to increase the prices of relevant products, delay price decreases or lower service quality, causing damage to consumers' interests. The Ministry of Commerce cleared this concentration with remedies and enhanced fair competition and consumers' interests in the Chinese small vascular closure devices.

3) Close examination of Lam Research' s acquisition of KLA-Tencor

The Ministry of Commerce requested the filing parties to resolve competition concerns. The parties eventually called off the transaction, and the potential anti-competitive impact on the semiconductor market was avoided.

SOUTH AFRICA

Merger Review

Ab Inbev/ SabMiller Merger

The CCSA recommended to the Tribunal that the large merger whereby Anheuser-Busch Inbev SA/NV (AB InBev) intended to acquire SABMiller plc (SABMiller) be approved with conditions. The proposed merger raised several competition and public interest concerns.

The conditions imposed were vast and covered a number of areas related to a shareholding in a competitor, Distell; Coca-Cola and Pepsi bottling arrangements, supply of tin metal crowns, access by rivals to cold room and fridge space, the creation of a development fund in the amount of R1 billion (approximately USD70 million), preservation of employment, protection of small beer producers, commitments on local production, protection of suppliers of input products, preservation of inclusive ownership (BBBEE shareholding) and protection of owner drivers.

The Tribunal ultimately approved the transaction subject largely to the same conditions as recommended by the CCSA.

Hollard Holdings (Pty) Ltd and MotoVantage Holdings (Pty) Ltd and Regent Insurance Company Limited, Regent Life Assurance Company Limited, SA Warranties (Pty) Ltd, Motor Compliance Solutions (Pty) Ltd, Paintech Maintenance (Pty) Ltd and Anvil Premium Finance (Pty) Ltd

The CCSA recommended to the Tribunal the prohibition of a large merger involving firms that offer short-term and long-term insurance policies and insurance and non-insurance value-added products (VAPs). The CCSA found that the proposed transaction is likely to substantially prevent or lessen competition in the markets for credit life and shortfall cover and that the transaction also raises public interest concerns.

The CCSA found that the proposed transaction will result in increased levels of concentration in the affected markets which are characterized by high barriers to entry. In particular, the merging parties will hold the largest market share in the market for the provision of short-term motor insurance credit life cover and the market for short-fall cover if the merger is allowed. The merging parties are likely to have the ability to increase prices (i.e. premiums) on new policies that will be underwritten post-merger. This is likely to harm consumer welfare.

With regards to public interest concerns, the CCSA found that the proposed merger is likely to lead to substantial job losses within Hollard, Regent Insurance and Regent Life Assurance. The Commission considered potential remedies that would address the harm arising from the proposed transaction and did not find workable remedies.

Public interest Guidelines

In 2016, the CCSA also issued Public Interest Guidelines in relation to merger control. The guidelines are largely aimed at providing guidance to practitioners when making merger notifications, with the aim of providing certainty and predictability amongst practitioners and businesses. This was a major milestone as public interest considerations are a key element of the South Africa competition law regime.

BRAZIL

Advocacy Initiatives

In Brazil, the responsible public body for competition advocacy, according to the Brazilian Competition Law, is the Secretariat for Economic Monitoring (SEAE) of the Ministry of Finance. Nevertheless, it is also part of CADE's mission to promote the culture of competition in Brazil. In this sense, in 2016, the antitrust authority developed a few advocacy initiatives, such as the publication of new competition guidelines and economic studies, the launch of a new institutional website and the contributions to the Brazilian Partnership and Investment Plan (PPI in its acronym in Portuguese).

CADE's new website

In June 2016, CADE launched its new institutional website that met accessibility standards and presented an English language version. The website follows the Brazilian Government standards for digital communication identity and was elaborated in accordance with the Law on Access to Information, which recommends the active transparency of data and relevant information of the authority in an accessible language.

In addition, the website is integrated with the concept of digital accessibility, presenting its content in Brazilian Sign Language – Libras, through the automatic translator, VLibras. Thanks to this tool, deaf people may seek for contents in their natural language, reducing communication barriers and increasing the access to information and services. There is also an area intended for social participation, which gathers mechanisms to report violations, submit suggestions and compliments or to discuss any relevant matter to the competition policy and law.

CADE's new statistical data platform was also launched in 2016. "CADE in Figures" presents, in a dynamic panel, the main data about the activities of the authority. In the statistical panel, there is information available on judged proceedings, mergers, imposed fines, Cease and Desist Agreements, among others. The platform provides institutional and administrative information on the authority. The tool also enables the elaboration of graphs and tables, by selecting the categories of interest.

Publications of New Guidelines

CADE has recently published guidelines on important competition matters: horizontal mergers assessment; antitrust leniency program; cease and desist agreements for cartel cases; competition compliance programs; and, gun jumping. All documents have English language versions, except the Horizontal Mergers Guidelines, and may be accessed in CADE's institutional website.

All guidelines were elaborated in accordance with CADE's competition law and policy. The documents aim at consolidating the procedural information and being reference materials for civil servants, lawyers, economists and other stakeholders, promoting transparency, predictability, effectiveness and celerity to CADE's activities. The English language versions enhance CADE's dialogue with the international competition community.

BRAZIL

Advocacy Initiatives

ICN / World Bank Group Advocacy Contest 2015-2016

In 2016, CADE submitted one advocacy initiative that has been awarded honorable mention by the 2015-2016 Advocacy Contest, promoted by the International Competition Network (ICN) and the Word Bank Group. The advocacy initiative included the elaboration of two economic studies related to the entrance of Uber in the Brazilian market, the publications' impact within the public debate and CADE's dialogue with stakeholders about this specific disruptive innovation. In fact, since the release of the studies, local governments, such as the Municipal Government of the city of São Paulo, have been consulting the Brazilian competition authority on the regulation of ridesharing platforms and the market for individual passenger transportation services.

Brazilian Partnership and Investment Plan

Another noteworthy advocacy initiative concerns CADE's contributions to the Brazilian Partnership and Investment Plan. The Plan aims at expanding and strengthening the relationship between of the Brazilian Federal Government and the private initiative in order promote the economic growth by means of new investments and infrastructure projects.

CADE elaborated measures to stimulate the competitive environment in the bidding process. The authority's recommendations aim at integrating in the new public procurement procedures key elements that could destabilize and deter any collusive practice. CADE's suggestions include, then, the elaboration of public bid notices that stimulate competition among economic agents and make it difficult to have concerted actions in the biddings. CADE's initiative follows several recommendations of the Organization for Economic Cooperation and Development (OECD).

RUSSIA

Advocacy Initiatives

The FAS Russia continued to improve its performance as one of the most open Russian authorities. The Authority worked out the Concept of the New Information Policy, aimed at improving awareness of different groups of stakeholders (regulatory bodies, courts, business, citizens, academic community, etc.) on functions and principles of the FAS's activity. Within the framework of the concept's implementation, the Authority conducts the analysis of global and regional competition systems; cooperates with relevant international publishing houses, embassies, trade missions of Russia in other countries; makes efforts to expend the presence in the Internet, and so on.

The FAS Russia updated its official website in English and Russian, created English-language webpages on Wikipedia and Facebook, and launched a weekly, English-language digest of news. There was a 27.4% increase in the publication of documents in the Base of Decisions compared to 2015, and 231 video reports on the FAS Russia's activity were posted on the Internet (there were 87 in 2015). A podcasts featuring weekly news, international practice reviews, commentary from speakers on relevant topics and interviews was launched and is now available on the FAS Russia's website. Video lectures on the specifics of antimonopoly regulation, with contributions from the FAS's representatives, have also been posted on the portal for LF Academy, the new online legal education project. A number of meetings with business representatives held at Russia-based chambers of commerce of foreign countries.

Workshops for representatives of the competition authorities of Kazakhstan and Belarus were organised, covering issues of detection and investigation of cartels, the carrying-out of an analysis of commodity markets, etc.

The Authority organized an international event “The Russian Competition Week” with participation of more than 400 competition experts from all over the world (Moscow region, September 2016). In December 2016, it organized the II Annual International Conference “Antimonopoly Policy: Science, Education, Practice” (Moscow, December 2016) attended by about 250 experts. The VIII Annual Conference “Antimonopoly regulation in Russia”, which is traditionally organized by the Association of antimonopoly experts and “Vedomosti” newspaper with the support of the FAS Russia, was held in Moscow in October 2016.

RUSSIA

Advocacy Initiatives

The significant source of publicly available information and analytical articles on the topic of competition protection in the Russian Federation is the journal “Russian Competition Law and Economics”. Its editorial board is composed of the FAS Russia's top officials, including Head Igor Artemiev, as well as well-known Russian experts in law and public policy.

Representatives of the FAS Russia are also members of the editorial board of the electronic and printed journal “Competition and Law” (www.cljournal.ru), which prepares analytical materials and weekly reviews of the Russian competition law enforcement.

In 2016, the FAS continued actively working on the promotion of its initiatives at an international level. This includes projects within the framework of UNCTAD; active participation in sessions of the OECD competition committee and the OECD global forum on competition, ICN working groups; and traditional cooperation within the framework of the CIS and the EEU.

In 2016, nine international agreements and Memoranda of understanding (MoUs) were signed with foreign competition authorities in order to develop antimonopoly regulation.

Moreover, on 19 April 2016, the Code of Good Practices in the Pharmaceutical Industry, which was developed by the Association of European Businesses jointly with the FAS, was adopted.

The Code includes a number of progressive points that clarify certain legislative provisions. It is aimed at improving transparency in business and the homogeneity of approaches acceptable for business. The document is a result of dialogue between business and regulators; it aims at improving mutual understanding and cooperation. At the moment, there are 13 largest pharmaceutical companies that acceded to the Code.

The Code will prevent inflated prices of medicines; unreasonable denials in supply; violation of the antimonopoly legislation; and corruption. In order to improve transparency and openness in the sphere, it provides an obligation to publish requirements and documents containing procedures of contractors' selections and the conditions of interaction with them.

INDIA

Advocacy Initiatives

The CCI in the past one year has undertaken several initiatives to spread the message of Competition and its benefits to all the concerned stakeholders including the consumers.

1. Competition Resource Persons

As a measure to promote competition advocacy, CCI has framed the 'Resource Person Guidelines', under which a panel of 'Competition Resource Persons' are to be identified. The Resource Persons will organise competition advocacy programs for different groups of stakeholders to supplement CCI's efforts on competition advocacy. The selected candidates under the scheme will undergo an initial training program on competition advocacy conducted by the CCI with its partner institutions. An internal committee of CCI has prepared stakeholder specific study material for training of resource persons as well as advocacy material to be used by the Resource Persons for different stakeholders during the seminars / workshops.

2. Competition Assessment Guidelines

In keeping the mandate envisaged under the Competition Act and the role of competition in economic development, CCI has started an initiative to assess selected legislation and policies (Acts, Bills, Rules, Regulations and Policies) from a competition perspective, and share the assessment with the associated stakeholders. The Guidelines are called the Competition Commission of India (Competition Assessment of Legislations and Bills) Guidelines, 2015, it invited expression of interest, along with a sample of competition assessment of an economic legislation, from eligible institutions. Based on evaluation of the samples of competition assessment submitted by institutions, CCI has empaneled 7 academic institutions.

CCI recently organized a capacity building exercise for competition assessment of seven selected legislations / polices with empanelled institutions and officers. Chairperson and Members of CCI attended various sessions to provide guidance to the participants on the importance of the Competition Assessment and overall rationale behind various legislations. As part of this exercise, a preliminary draft assessment by both the empaneled academic institutions and CCI officers was undertaken. At the workshop, preliminary documents were put across for brainstorming and discussion, to evaluate and improve upon the preliminary competition assessment.

3. The National Conference on Economics of Competition Law

CCI organized the 'First National Conference on Economics of Competition Law' on March 3 and 4, 2016 in New Delhi. The conference was organized to bring together scholars, practitioners and experts working in the area of competition law from across the country to present papers and deliberate on various economic theories, tools and applications. The 2-day Conference comprised of 2 Panel Discussions, and 6 Technical Sessions, besides the Inaugural and the Valedictory Sessions. The conference witnessed thought provoking sessions on wide ranging topics like 'Role of Economics in Competition Law Enforcement', 'Competition and Innovation' 'Economics of Cartels', 'Defining and Measuring Market Power", Economic Analysis in Merger Review, Emerging E Commerce: Implications for Competition, Interface between Competition law and IPR etc.

Advocacy Initiatives

4. The 7th Annual Day celebrated by CCI

CCI celebrated its 7th Annual Day on May 20, 2016, which marks the day on which the substantive provisions of the Competition Act, 2002 were brought into force. The Annual Day lecture was delivered by Mr. Arun Jaitley, Hon'ble Minister for Finance, Corporate Affairs and Information and Broadcasting, on "Competition, Regulator and Growth". In his lecture, he emphasized the role and importance of competition in stimulating growth and increasing welfare. He advocated that regulators must have independence and accountability to provide a level playing to participants in both public and private sector. He concluded by saying that fair competition would stimulate investment which would create more jobs and promote economic growth.

Mr. Devender Kumar Sikri, Chairperson, CCI, in his welcome address gave a regulator's perspective of the Competition Act. He spoke of the responsiveness of the Commission to the stakeholders concerns, pointing out that on the basis of their feedback, merger regulations had been amended twice in the past one year. He also emphasized on the use of sound economic analysis and hard evidence in decisions of the Commission to ensure fair and consistent enforcement of competition law.

The chairperson of the Competition Appellate Tribunal, Hon'ble Justice Mr. G.S. Singhvi, who was the Guest of Honour, in his speech, remarked that the power and duties conferred on CCI are enormous, and need to be exercised carefully. He appreciated the role of CCI for developing a sustainable jurisprudence on Competition law in India.

5. MoU with Institutions

To disseminate the message of competition law and to augment its own efforts in competition advocacy, the CCI has signed MoUs with 2 professional institutes -the Institute of Company Secretaries of India and Institute of Cost Accountants of India.

6. Signing of MoU amongst the BRICS competition authorities

A Memorandum of Understanding (MoU) has been signed amongst the competition authorities of the BRICS countries on 19 May 2016. The MoU aims to further strength ties in the area of capacity building, research and cooperation. The MoU also proposes to undertake joint studies in competition issues concerning the authorities.

CHINA

Advocacy Initiatives

SAIC

Competition advocacy is not only significant measure to promote the implementation of competition policy, but also an important guarantee of development of anti-monopoly law enforcement. SAIC has strengthened competition policy propaganda in recent years, for instance, to publicized the results of major cases of anti-monopoly enforcement through press media, to organized and participate international anti-monopoly academic activities(EU-China competition policy and St. Petersburg International Legal Forum), to introduce new development of anti-monopoly enforcement to government departments and agencies, colleges and universities, enterprises in China and abroad, to exchange ideas widely and study competition policy deeply. All those activities has contributed to competition implementation.

MOFCOM

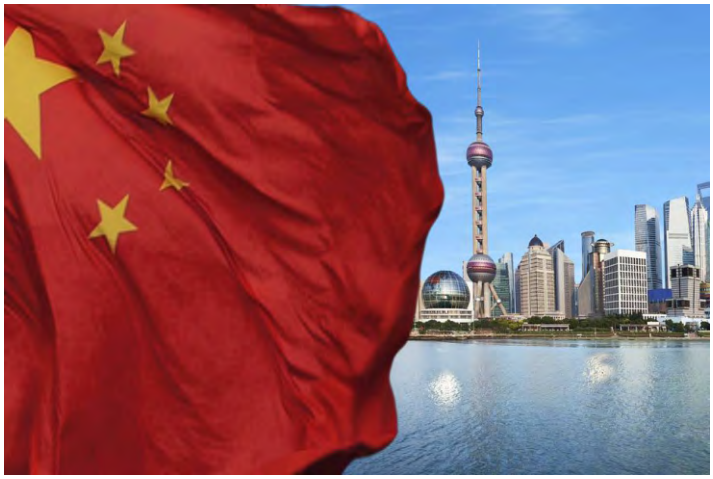
The Ministry of Commerce held the third US-China high-level antitrust dialogue. Positive results have been achieved through participations in discussions over competition issues, including at the US-China economic dialogue and Joint Commission on Commerce and Trade. A Memorandum of Cooperation in the field of antitrust was signed with the competition authority in Japan. Law enforcement cooperation over more than ten major international merger and acquisition cases was conducted with competition authorities in the United States and Europe to jointly safeguard market competition. The Ministry of Commerce had dialogues with the industrial and commercial sectors in the United States, Europe and Japan, proactively addressed corporate concerns, enhanced trust, removed misgivings and improved the images of law enforcement.

CHINA

Advocacy Initiatives

The Ministry of Commerce participated in the St. Petersburg International Legal Forum in Russia and signed the BRICS memorandum of understanding in relation to competition during the meeting. The Ministry of Commerce promoted discussions on competition issues under the Regional Comprehensive Economic Partnership and other free-trade agreements, enhanced multilateral cooperation in response to monopolistic conduct in international trade and investments, and contributed to the development of regional and bilateral relationships in economy and trade.

The Ministry of Commerce attended international competition meetings held by WTO, OECD, UNCTAD and other international organizations, strengthening communications with the competition authorities in other jurisdictions.



Anti-Monopoly Committee

The Anti-Monopoly Committee of the State Council is responsible for organizing, coordinating and guiding antitrust work, with its office under the Ministry of Commerce. The Ministry of Commerce has actively implemented the proposed initiatives of the Anti-Monopoly Committee of the State Council, fulfilled the duties of the office of Anti-Monopoly Committee effectively and made solid progress in drafting various anti-monopoly guidelines. The Ministry of Commerce has completed its market competition assessment and research in power, Internet and other sectors, and gathered market competition data on six sectors (including steel) in addition to the existing market competition data in 41 industrial sectors to provide statistical support for antitrust law enforcement. In alliance with the State-owned Assets Supervision and Administration Commission and All-China Federation of Industry and Commerce, the Ministry of Commerce held training programs on the Anti-Monopoly Law to enhance publicity on the Anti-Monopoly Law, advocate competition, and improve corporate legal awareness in relation to competition.

SOUTH AFRICA

Advocacy Initiatives

School Uniform Advocacy

The CCSA has engaged in a school uniform advocacy initiative.

The initiative is informed by a number of complaints from parents and school uniform suppliers that school uniform is expensive due to exclusive agreements between schools and certain school uniform suppliers. School uniform suppliers complained that these exclusive agreements prevent them from competing to supply school uniform to schools.

The Competition Act prohibits competing firms, such as different suppliers of school uniforms to schools, from entering into agreements which result in the fixing of prices, the division of markets and/or customers and the rigging of bids . In addressing the competition concern, the CCSA engaged with the National Department of Basic Education ("DBE") and the School Governing Body Federations with the objective of raising awareness about the competition effect of exclusive agreements in the procurement of school uniform.

The Commission drafted a Circular on "Exclusive Agreements in the procurement of school uniform" for the DBE. The Circular recommended that school uniform be procured through a competitive bidding process and that agreements should be of a limited duration. The Circular was sent to provincial education departments and schools by the DBE on the 11 May 2015.

The Commission also drafted an education leaflet for use by the School Governing Body Federations. The Commission is currently conducting an ex-post evaluation to test whether schools are complying with the Circular sent by the DBE on the 11 May 2015.

Impact assessment

Impact assessments refer to the economic studies the CCSA undertakes to evaluate its work in specific markets. The purpose is to demonstrate to stakeholders the harm of anti-competitive conduct and the gains arising to the public from interventions by the CCSA.

Impact assessment studies are carried out under three main categories:

- Estimation of the impact of anti-competitive conduct.
- Ex-post evaluation of specific enforcement interventions.
- Evaluation of the broader impact.

SOUTH AFRICA

Advocacy Initiatives

In the past year, the CCSA has sought to deepen its knowledge of the effects of its competition enforcement interventions by undertaking several ex-post evaluations of specific enforcement interventions and their impact on the affected market(s). Furthermore, the World Bank Group also carried out its own evaluation of the broader impact of competition policy on economic growth and poverty alleviation. These are the outcomes of these studies.

The World Bank Study – South Africa Economic Update:

Promoting Faster Growth and Poverty Alleviation through Effective Competition Policy The World Bank Group's eighth edition of the South Africa Economic Update, published in February 2016, included a special focus section which examined how competition policy could contribute to promoting faster growth and poverty alleviation.

The study examined South Africa's strong track record in addressing competition issues. Reviewing actual cartel cases completed by the competition authorities over the past decade, the study found that, on average, sanctioned cartels lasted for a period of eight years.

Affected sectors included those which directly impact consumers, such as food markets and healthcare, as well as those which impact the expenses faced by firms and agricultural producers, including inputs to the manufacturing, construction and agricultural sectors. The study used these cases to identify the factors that facilitate cartel activity in South Africa and to map connections between firms in cartels. The study explored how competition policy can promote lower prices on key inputs and enhance competitiveness and growth.

Using the example of the cement sector, the study showed how stronger competition that resulted from the sanctioning of a cartel in the sector lowered prices of cement (cement accounts for 2% of all industry inputs) and spurred new investment and job creation in the sector. The study also found that strong competition enforcement needs to be supported by an appropriate regulatory environment to encourage healthy competition between firms and new market entrants, especially in network sectors. To illustrate this point, the study reviewed the telecommunications sector, especially broadband services, and showed how the regulatory environment has contributed to costly and poor-quality broadband services in South Africa.

The study also estimated the potential gains to the poor should the lack of competition in key food markets be addressed. The study found that the sanctioning of cartels in the maize, poultry and pharmaceuticals sectors stood to lift an estimated 202 000 people above the poverty line through lowering the retail prices of these goods that form a large part of the poor's consumption basket.

SOUTH AFRICA

Advocacy Initiatives

The study explained what steps could be taken to further promote competition. For example, the study estimated that if South Africa reduces regulatory restrictiveness of professional services sectors, growth in value add in industries which use professional services intensively would, other things being equal, be between $1.4–1.6 billion. This is equivalent to an additional 0.4–0.5 percentage points of GDP growth.

Entry of Wal-Mart In October 2012, was brought about by the CAC's approval of the merger between Wal-Mart and Massmart subject to public interest conditions. One of the main concerns that arose from the transaction was that the merged entity would switch some of its procurement away from domestic suppliers to imports post-merger.

Such import substitution would compromise the sustainability and participation of small firms and historically disadvantaged firms in productive sector activities, with adverse knock-on effects on employment and output. In addition, cheaper imports posed a threat to Wal-Mart's suppliers and competitors.

In order to assess the impact of the merger on imports, suppliers and competitors, the Commission undertook a study which supplements a prior impact assessment which focused on the impact of the merger of small businesses (see the Commission's 2015 Annual Report). The study found that the Massmart Supplier Development Fund that was established as a condition to the merger, had facilitated the entry and expansion of suppliers in the agriculture, agro-processing and manufacturing sectors into Massmart's supply chain, and had positively contributed to job creation.

The recent study found that there are no substantial changes to the proportion of imports pre and post-merger. The study also found that Massmart suppliers have not been adversely affected by the entry of Wal-Mart.


ORDEM E PROGRESSO