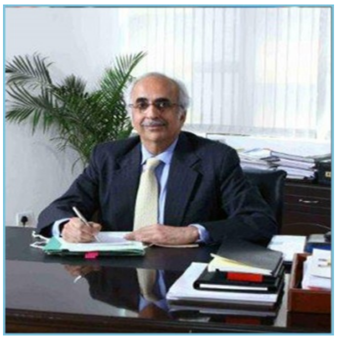
BRICS Competition NEWSLETTER

2015

INSIDE

MESSAGE FROM COMPETITION COMMISSION OF INDIA



It gives me immense pleasure to bring to you the first issue of the BRICS Competition Newsletter on behalf of the BRICS competition authorities. The newsletter is in pursuance of commitment of cooperation expressed in the "Delhi Accord" during the 3rd BRICS International Competition Conference held at New Delhi in November 2013. Experience sharing in enforcement and advocacy was considered vital for developing cooperation and to meet the challenges of competition enforcement; hence, the newsletter.

The BRICS countries together represent the aspirations of nearly three billion people. This represents both a heavy responsibility as well as a rich resource. The aspiration for a better life is universal and finds particular resonance amongst the people of the emerging BRICS economies. The efficient functioning of markets is crucial to fulfilling this aspiration which is ensured in no small measure by the competition law.

All the BRICS economies have embraced modern competition law and are actively enforcing it. A fundamental change in the focus of international competition enforcement has occurred. As in most other areas, a bipolar world focussed on the US and EU, has become multipolar in the world of competition. Companies around the world realise that they must be aware of merger control and competition enforcement developments in Brasilia, Moscow, New Delhi, Beijing, and Pretoria.

BRICS countries face several similar challenges in the enforcement of competition law – challenges such as institutional design problems, government regulations and inadequate awareness of the law. In such a situation, it stands to reason to cooperate and learn from each other rather than reinventing the wheel. BRICS Competition platform is an apt Forum for this. BRICS Competition Authorities are also ideally positioned to bridge the gap between mature competition authorities and nascent ones.

The BRICS Competition Newsletter has been conceived as an annual publication and it is a privilege for the Competition Commission of India to bring out the first issue of the Newsletter. It covers important competition policy developments in the BRICS countries in the last few years as also the enforcement and advocacy activities of the BRICS Competition Authorities during 2014.

This newsletter is a modest but, we believe, crucial step towards cooperation of the BRICS Competition Authorities and could help in heralding a vibrant competition culture in all the BRICS countries.

(Ashok Chawla)

Brazil, Russia, India, China and South Africa have played an instrumental role in globalization of competition law. Competition law and policy in BRICS countries have undergone modernisation or been newly established in the last ten years so as to be aligned with domestic and international economic developments. All of them have now modern competition authorities equipped to enforce competition law with substantial teeth.

The BRICS competition authorities have started competition enforcement in the backgrounds of different domestic legislative mandates, yet they do reflect certain similarities. All the BRICS competition authorities have been empowered by their legislative processes to act tough on cartels and encourage effective use of leniency programmes. The rules on unilateral conduct and merger control enforced by competition authorities in the BRICS match with international best practices and have been able to draw confidence of local and multinational businesses. All BRICS countries have adopted merger review with Brazil being first one to introduce in 1994 and India being the last to enforce in 2011. China's merger control has been only few years old but is being rigourly enforced. The emphasis on developing local competition culture has made their progress remarkable in the last couple of years. As young competition authorities, BRICS competition authorities understand that promotion of competition in market forms the necessary base for strong economic growth and development, and have therefore laid emphasis on aggressive competition advocacy.

BRICS countries share to a great extent similar phases of economic development. These similarities transpired existence of anticompetitive practices and conducts across the markets of BRICS countries. Given the fact that they have got their modern competition law and authorities in the last ten years only, they are still grappling with the herculean task of freeing their economies from the clutches of anticompetitive practices and conducts.

Brazil

The Brazilian Congress approved a new antitrust and unfair competition law in October 2011, which came into effect on May 29, 2012. The new law has been an attempt to resolve issues in the old law and to restructure Brazilian competition policy system (BCPS). The new law has triggered complete change in the structure of government agencies in charge of completion law enforcement in Brazil. The functions of investigation of anticompetitive conduct, analysis of merger filings and the final decision are joined together into a single independent agency, the Administrative Council for Economic Defense (CADE).

The new BCPS or the CADE consists of three main institutions – The Administrative Tribunal, Superintendence General and Department of Economic Studies. Cumulatively they enforce the BCPS.

The Administrative Tribunal: Administrative Tribunal is the main decision making body in charge of making final and binding administrative decisions in both merger and conduct cases. The Tribunal consists of six commissioners and a President, who are appointed by the President of the Republic and approved by the national Senate for four years term.

The Superintendence General: This body is headed by a Superintendent General appointed by the president of the Republic and takes office after approval by the Senate for a term of two years, which can be renewed once. The Superintendence General is in-charge of investigating anticompetitive conducts and responsible for granting clearance to less complex transactions and for challenging transactions deemed harmful to competition before the Administrative Tribunal.

The Department of Economic Studies: This department of CADE is entrusted with the economic analysis of mergers and behavioural cases. It is headed by CADE's Chief Economist, who is responsible for providing non-binding economic opinions and preparing economic studies for the Administrative Tribunal.

Thus, in line with the international best practices, new competition architecture in Brazil has moved from an intricate three-agency structure to a single autonomous body to reduce overlapping functions, accelerate merger review, and to fortify legal certainty. It has substantially contributed to the modernization of Brazil's competition law enforcement system.

Federal Antimonopoly Service of the Russian Federation

Russia

The 2015 is a year of the Russian Federation Chairmanship in BRICS. Moreover this year the FAS Russia celebrates its 25 years anniversary since its establishment. During last few years the FAS Russia has made significant efforts to improve competition legislation and enforcement practices. FAS has improved its antimonopoly legislation by following the world practices and has also developed so-called "fourth antimonopoly package" of amendments to the antimonopoly legislation, which includes significant amendments to the law "On protection of competition" and other related laws. The "fourth antimonopoly package" has been drafted in close cooperation with respective representatives of business society and competition layers and economists. This new package of amendments to Russian antimonopoly legislation has been prepared in accordance with OECD Recommendations and best international experience in the field of competition policy and enforcement.

The main focus of the fourth antimonopoly package, is on the elimination of excessive powers and functions of the FAS, considerably reducing the administrative constraints for business and simultaneous reduction of state involvement in the economy.

The draft law excludes from the purview of antitrust legislation activity on cross-border markets, which is now under the control of the Eurasian Economic Commission. It excludes the possibility of recognizing the dominant position of an economic entity if its market share in certain product does not exceed 35 percent, except in the case of collective dominance, as well as other cases specially provided by the law. The acceptance criteria on "vertical" agreements have been specified. Such agreements are acceptable if the seller or the buyer does not exceed the proportion of 20 per cent on the commodity market, which is the subject of "vertical" agreements.

From the jurisdiction of the FAS have excluded actions of economic entities with dominant position related to the infringement of the interests of citizens and organizations in cases not related to business activities. Concerted actions of economic entities under joint venture agreements concluded with the prior consent of the antimonopoly body are allowed.

The draft law clarifies the determination of "cartel" and prohibits the creation of state and municipal unitary enterprises without the prior consent of the FAS Russia. Cartel agreements recognizes not only economic entities involved in the sale of goods on one and the same market, but also economic entities involved in their acquisition, that is, as competitors in the consumption of such goods / cartel buyers.

The draft law defines the legal status of the Board of the Members of the FAS Russia. The Board of the Members of the FAS study provides explanations on the enforcement of antitrust law. The Board of the Members of the FAS Russia is empowered to review the decisions on antimonopoly law infringement in case such decision violate the uniformity in the interpretation and application by the antimonopoly authorities of the antimonopoly law, or violate the rights and legitimate interests of an indefinite number of persons and other public interests.

Overall fourth antimonopoly package is aimed at substantially reducing the administrative intervention in economic activities of the market participants and reduce the administrative burden on business, while strengthening control over transactions within the group and compliance with the rules.

In March 2015, amendments to the Art. 178 of the Criminal Code of the Russian Federation were adopted, which states that the person who participated in the cartel may be exempted from criminal liability, if it is the first of the cartel participants voluntary reported the crime, actively participated in its disclosure and compensated the caused damage, and in case, their actions do not contain elements of other crimes.

The amendments also made changes in the procedure for determining the damage: for example, large scale damage is damage more than 10 million Rubles (earlier 1 million Rubles) and especially large scale damage is more than 30 million Rubles (earlier 3 million Rubles).

The amendments are expected to lead to increased cartels detection and exempting small and medium-sized businesses from criminal liability for participation in a cartel.

Fair Competition For Greater Good

India

The Competition Act, 2002 (the Act hereinafter) enacted by the Parliament of India established the new competition regime in India and repealed the earlier Monopolies and Restrictive Trade Practices Act, 1969, India's earlier version of competition law. Under the Act, CCI has been established as a statutory authority to enforce the provisions of the Act throughout India.

CCI comprises of chairperson and six members, who are appointed by the Government of India. The day-to-day affairs of CCI are coordinated by a secretariat headed by the Secretary. The investigation arm of CCI is called the office of Director General which investigates contravention of the provisions of the Act on direction of the Commission.

Organisational structure of CCI comprises of various divisions: Advocacy, Anti-trust, Capacity Building, Combination, Economic, Investigation, Legal and Administration and coordination. The divisions are manned by qualified cadre of professionals.

CCI established in March, 2009 has legal mandate to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India. CCI has powers to investigate and levy heavy penalties under the Act. Section 3 & 4 relating to anti-competitive agreements and abuse of dominance were enforced from May 2009 while Section 5 & 6 relating to mergers was enforced from June 2011.

Section 64 of the Competition Act empowers the Commission to make regulations consistent with the Act and rules made thereunder to carry out the purposes of the Act. Regulations so far framed by the Commission are; Competition Commission of India (General) Regulations, 2009, Competition Commission of India (Determination of Cost of Production) Regulations, 2009, Competition Commission of India (Lesser Penalty) Regulations, 2009, Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011, Competition Commission of India (Meeting for Transaction of Business) Regulations, 2009, Competition Commission of India (Procedure of Engagement of Experts and Professionals) Regulations, 2009, Competition Commission of India (Procedure in regard to the Transaction of Business Relating to Combinations) Regulations, 2009. These regulations have smoothened the process of enforcing competition law in India. Besides, these regulations give clarity to the stakeholders, and bring transparency & fairness in procedural aspects of administering the competition law in India.

CCI has completed five years of competition enforcement in 2014. In order to develop a robust system of Merger review, CCI amended the Merger (Combinations) regulations thrice, i.e, in February, 2012; in April, 2013 and in March, 2014. CCI has set for itself a vision to promote and sustain an enabling competition culture through engagement and enforcement that would inspire businesses to be fair, competitive and innovative; enhance consumer welfare; and support economic growth.

China

China's Antimonopoly Law, or AML, came into effect in August, 2008. In order to ensure the effective implementation of the AML, the State Council established the Anti-Monopoly Commission, which is responsible for organising, coordinating and guiding anti-monopoly efforts in China. The AML applies to all kinds of market entities, namely, the operators. Any operator, whether state-owned or private or domestic-founded or foreign-invested must abide by the AML, anyone who violates the regulation bears legal liability. In terms of the application scope of region, the AML applies not only to those behaviours that take place within Chinese territory, but also to those overseas behaviours that will lead to exclusion and restriction of competition in the domestic market.

There are three main government players, who play roles in competition enforcement in China. These are: the Ministry of Commerce (MOFCOM), the State Administration of Industry and Commerce (SAIC) and the National Development and Reform Commission (NDRC). Each of these government bodies house an AML enforcement department.

SAIC: SAIC is an administration level organisation with several roles, including the companies' registry, trademark office, and regulator of market order. The SAIC administers the Anti-unfair Competition Law (AUCL) and the Consumer Protection Law, both of which came into existence in 1993. The SAIC is responsible for supervising the monopoly agreement, abuse of market dominant position and the exclusive and restrictive competitive behaviour by abusing administrative powers (price monopoly behaviour is not included). China's State Administration for Industry and Commerce (SAIC) has announced that it has formally begun the task of revising the Anti-Unfair Competition Law (AUCL). Revision is intended in considerable part to harmonize the AUCL with the AML.

MOFCOM: MOFCOM has responsibility for domestic and international commerce including approval of foreign investment in China. Together with SAIC, MOFCOM was responsible for handling antimonopoly filings under the 2006 provisions on the Acquisition of Domestic Enterprises by Foreign Investors. Now MOFCOM had established a Bureau of Anti-monopoly Investigation. MOFCOM handles merger reviews and assists Chinese companies with cases in other jurisdictions and international co-operation. The MOFCOM is also responsible for the investigation of operators' concentration. The AML does not oppose operators becoming bigger and stronger legally, but it stipulates that the operator concentrations must be reported to the state anti-monopoly committee in advance. For those, who do not report are not allowed to carry out the concentration.

NDRC: NDRC has evolved from the State Planning Commission and, as the name suggests, has primary responsibility for state economic planning, including industrial policy. NDRC administers the pricing law, which includes provisions on price fixing, price discrimination, false or misleading pricing, etc. NDRC's Department of Price Supervision is responsible for dealing with monopoly agreements in abuse of dominance matters, which involve pricing. NDRC also deals with anti-cartel investigations.

South Africa

The origin of competition law in South Africa may be traced to the Regulation of Monopolistic Conditions Act, 1955. Later on, a new law, the Maintenance and Promotion of Competition Act, 1979 was enacted, which was administered by the Competition Board, Subsequently, a modern law, the Competition Act, 1998 came into effect in 1999. This law fundamentally reformed the country's competition legislation substantially strengthening the powers of the competition authorities as per best international practices. The power of decision was taken away from the Minister and given to an independent Competition Tribunal. The Competition Act was amended in 2000, in part to clarify the relationship between general competition law and other regulatory bodies. The Competition Act sets up three institutions, to be directly involved in its application:

Competition Commission: The Competition Commission of South Africa is the investigative and executive body with responsibility to investigate mergers and anti-competitive conduct. It has the power to disallow small and intermediate mergers, and makes recommendations on larger mergers to the Competition Tribunal.

Competition Tribunal: The Competition Tribunal is the adjudicative body that rules on cases referred to it by the Competition Commission. The Tribunal is the first-instance decision-maker about larger mergers and complaints about restrictive practices and abuse of dominance. It also adjudicates appeals from Commission decisions about smaller mergers and exemptions.

Competition Appeal Court: Appeals from decisions of the Competition Tribunal, and reviews of decisions of the Tribunal and the Commission, are heard by the Competition Appeal Court, which has the status of a High Court and has power of appeal and review.

The Department of Economic Development guides the work of the Competition Commission and the Competition Tribunal. The Competition Law Amendment Act, 2009 introduced measures such as concurrent jurisdiction between the competition authorities and other sector specific regulators, market inquiries, personal (criminal) liability for cartel conduct, complex monopolies; and the Competition Commission's corporate leniency policy. Although the Act was signed into law by the President in 2009, only the market inquiries chapter of the Act has been made effective from 1 April 2013 (without any reference to the balance of the provisions contained in the Act).

In line with international best practice, the Commission directs its resources and capacity through the prioritisation of the sectors in which it undertakes investigations and advocacy. Prioritisation ensures meaningful and maximum impact and mobilises resources effectively and efficiently. For 2014, the Commission's priority sectors were:

1. Food and agro-processing
2. Intermediate industrial products (such as steel, plastics and polymers)
3. Construction and infrastructure.

Law is live and changing

Competition law in BRICS countries is still evolving in its various contours and growing steadily with international peers. Although BRICS competition authorities may be recognised as relatively young competition authorities, their investigations and enforcement actions in the last couple of years have carved a niche in the international competition map.

All the BRICS competition authorities have tough legislative mandate to deal with cartels and abuse of dominance and have wide ranging powers to penalise them. All of them are very active in their enforcement actions. Some of key cases handled by them in 2014 are briefly highlighted below:

Brazil

1. CADE condemns bid-rigging cartel for refuse collection in Rio Grande do Sul

In February 2014, the CADE condemned three companies and six employees connected to them for big-rigging cartel intended to hire garbage collection services in the cities of Santa Rosa, Bozano, São Paulo das Missões, and Estância Velha, in the state of Rio Grande do Sul (RS) and fined total of BRL 1.2 million. Four individuals involved in the process were acquitted for lack of evidence.

The companies viz., Coletare Serviços Ltda., Simpex Serviços de Coleta Transporte e Destino Final de Resíduos Ltda. and Wambass Transports Ltda. received letters of invitation from city halls to compete in bidding processes for urban or hospital refuse collection. However, they previously agreed as to how they would act or who would win the bid. In the investigation, anticompetitive conducts such as price-fixing between the companies that disputed the bidding process to prevent final prices falling below a determined level were detected. The Reporting Commissioner highlighted that the "severe competition violation" caused losses to municipal treasuries. He reminded that, according to the Organization for Economic Cooperation and Development (OECD), cartels generate waste of resources, inefficiency and cause harm to consumers.

The evidence that led to the condemnation of the cartel was obtained through phone call interceptions, in addition to search and seizures at the company's headquarters, performed by the Rio Grande do Sul State Prosecutor's Office (MP/RS) in 2008. The Administrative proceeding (08012.011853/2008-13) was opened in 2009 after a complaint made by the MP/RS. CADE's General Superintendence had rendered an opinion asking for the condemnation of the three companies and the six individuals and sent the case to be judged by CADE's Tribunal.

All the fines applied by CADE are destined to the Ministry of Justice's Federal Fund for the Defense of Collective Rights (FDD for its acronym in Portuguese) that transfers the raised resources to projects that aim at the recovery of collective rights and goods, such as the environment, the historical and cultural heritage, the consumer protection, among others.

2. Cement cartel in Brazil penalised BLR 3.1 billion

In May 2014, the CADE condemned unanimously the so-called cement cartel. CADE's Tribunal fined six companies, six individuals, and three associations around BLR 3.1 billion. The Council also imposed the first ever structural remedy by way of divestment of plants, and prohibition of carrying operations in the cement and concrete sector until 2019. It was estimated that the infringement caused damages of at least BRL 28 million to the society over twenty years.

The cartel acted in the Brazilian cement and concrete market by fixing prices and sales quantity, and by sharing regionally the market and the allocation of customers amongst the cartel members. The companies, managers and class associations condemned also acted to prevent the entry of new competitors in these segments. The body of evidence included emails, notes and several documents seized during the dawn raid. Documents included notes in which the colluded members distributed customers and sales quotas among themselves and a cartel's "common understanding" document, describing rights and obligations of the members. In this document, "common objectives" are also mentioned and expressions like "prices" will be agreed among the parties throughout time, aiming at harmonizing the maximization of results and avoid the entrance of new players", as well as "efforts to control the total output of the other players of the region", and "previous agreement of these parts and further acknowledgement of other parts".

In the cement market, the collusion controlled the inputs sources needed for manufacturing the product. Thus, it prevented other competitors from accessing the raw material and compete in the market with the cartel members.

Due to the integration between cement and concrete plants, which was used as basis for the cartel functioning and market closure, CADE imposed the divestment of cement and concrete plants aiming at reducing entry barriers and encourage rivalry in the sectors. The cement companies must divest completely any shareholding interest, minority or not, and eventual corporate crossings made by the cartel's cement and concrete companies.

CADE also imposed the divestment of 20% of the concrete production capacity in the regions in which the condemned companies own more than one concrete plant. These assets can be sold conjointly or separately to any buyer that did not have any participation in the collusion. The 20% proportion was defined according to a technical analysis and it is believed to be a minimum participation percentage to be owned by a competitor to enable effective rivalry in one market. All the divested assets and shareholding interests are confidential in order not to harm their social and economic value. Furthermore, the condemned companies are prevented from carrying operations between themselves in projects in the cement sectors and to acquire any asset in the concrete market for five years. The assets divestment obligation, as set forth by law, is a new remedy in cartel condemnations by CADE. All the Commissioners that voted in the case agreed with the need to apply a structural measure.

3. Cartel in the market of medical and hospital services

The General Superintendence of the Administrative Council for Economic Defense – CADE recommended in an opinion published in June 2014 condemning the União Nacional das Instituições de Autogestão em Saúde – UNIDAS (National Union for Self-Management Institutions in Healthcare) and three hospitals for infringements in the market of medical and hospital services in the Federal District (Administrative Proceeding no. 08012.006969/2000-75).

According to the investigation, in 2000 the hospitals Santa Luzia, Santa Lúcia and Anchieta collectively negotiated with health insurers higher prices for the provision of medical and hospital services in virtually identical levels. After healthcare insurance companies refused to accept the claimed rise in prices, the competing hospitals communicated, in parallel, the termination of contracts or suspension of services provided to healthcare insurances' beneficiaries.

The conjoined establishment of prices and other conditions by the three hospitals, which were considered to have higher quality in the Federal District at the time, characterizes the practice of cartel. According to the opinion, the conduct would have caused the increase of prices of healthcare insurances above the competitive level, harming the market and the final consumers.

The Administrative Proceeding also ascertained that Unidas negotiated uniformly the acquisition of medical and hospital services on behalf of several competing healthcare insurances linked to it, leaving no room for negotiations among the healthcare insurances and services providers.

For the Superintendence, the practice, along with the relevant participation in the insurances' market of the insurance companies represented by Unidas in the Federal District (approximately 40% of the total beneficiaries in the region) endowed the self-management insurances, in a coordinated way, higher purchasing power in the negotiation of prices for the services providers.

4. CADE condemns bid rigging cartel in the market of metal detector security doors

In December 2014, the Administrative Council for Economic Defense (CADE) condemned the companies Beringhs Industry and Commerce Ltd., IECO Development and Machinery and Apparatus Ltd., Mineoro Electronics Industry Ltd. MPCI and Metal Protector Ltda for cartel formation in procurement processes for the supply of metal detector security doors. The Tribunal also condemned two directors and eight sales representatives of these companies for participating in the anticompetitive conducts. The administrative proceeding was filed in regards to other three companies due to the lack of evidence. The applied fines totalize BRL 12.7 million.

The investigation began after an anonymous complaint sent to CADE by e-mail. In December 2013, the General Superintendence issued an opinion suggesting the condemnation of the four companies and the ten employees. According to the Reporting Commissioner, Gilvandro Araújo, the companies and individuals involved in the collusion divided market and clients, fixed prices, and presented coverage proposals in public and private bids. Thus, it was possible for them to rotate as winners of the bidding processes and it showed an apparent competition among them. These strategies were executed, at least, since 2002 in procurements held in many states of the country.

E-mail transcriptions and electronic conversations, and other documents obtained through judicially authorized dawn raids at the headquarters of the investigated companies are part of the body of evidence. The dialogues clearly show that the cartel members committed themselves to present higher proposals to guarantee other participant to win the bid. Furthermore, by analysing the minutes of the bidding processes, it was verified that the employees, in fact, had the exact behaviour, previously agreed among them, throughout the whole process.

Minutes of a bidding process of Banco do Brazil, for example, showed that the dialogue of two employees took place during the auction for the acquisition of security doors, and that the bids were made at the same time they were agreed in the electronic conversation. It was also verified that the companies had a rotation system, combining among themselves which would be the winner for each procurement. The strategy included score tables, which organized the cartel participants' ranking, in order to determine the order that each company would win future bids. The market division was also implemented by tables that registered how many products would be commercialized by each member of the collusion.

For the anticompetitive practices, the companies were condemned to the payment of fines of BRL 11.7 million in total. The individuals involved in the case must pay fines that totalize BRL 1 million. CADE's Tribunal also decided to prohibit the four condemned companies to take part in public procurements held by the federal, state, municipal administration and by the Federal District for a five-year period. Any other company in which one of the condemned individuals own equity interest is also prohibited to participate in the public bidding processes.

The Reporting Commissioner determined yet that the vote must be sent to the Office of Comptroller General to inform about the prohibition, and to Banco do Brazil to adopt the measures it deems necessary.

Federal Antimonopoly Service of the Russian Federation

Russia

1. Pollock Cartel

In August 2014, Appeal Court upheld the decision of FAS in the case of Pollock cartel. The Federal Arbitration Court of Moscow upheld the decision of the Moscow Arbitration Court and the ruling of the Ninth Arbitration Court of Appeal on the recognition of the legitimate and reasonable decision of the FAS Russia imposed for violation of antimonopoly legislation in the market of mining and wholesale distribution of Pollock and its products. In December 2012, FAS Russia found 26 fishing companies operating in the Far East guilty for the cartel collusion to maintain prices and limit mining of Pollock during the spawning period, and non-commercial organization "Pollock Association" – in prohibited coordination of economic activities. All participants of the cartel at that time were members of this association.

The decision of the Antimonopoly Service against one of the largest Russian cartels was supported by three courts. FAS Russia managed to stop the activities of the cartel that existed in the domestic market for over 4 years and create conditions for increasing the volume of supplies of Pollock in the Russian Federation.

According to the results of the proceedings, the legal persons were fined over 120 million Rubles. The case was transferred to the law enforcement agencies to initiate a criminal case against the guilty officials.

2. Pangasius cartel

In May 2013, the Federal Antimonopoly Service (FAS Russia) recognized non-profit organization "Association of industrial and commercial enterprises of Fish Market" and the Management Committee on pangasius export to the Russian market (Vietnam) guilty in violation of the antimonopoly legislation. The infringement expressed in signing and participation in the anticompetitive agreement, which led or could lead to a competition restriction by creating access barriers to other economic entities at the market of frozen fillets of pangasius (paragraph 3 of Part 4 of Article 11 of the Law on Protection of Competition).

In 2014, this case was allocated to a separate proceeding, when the FAS Russia issued a Decision on cartel case in the market of frozen pangasius fillets supplied from Vietnam. The FAS Russia on consideration of the case found that frozen pangasius fillets were supplied to the Russian Federation by the companies-participants of the Association.

The FAS Russia imposed administrative fines (over 30 million RUB in total) upon several cartel participants on the market of supplying pangasius fillet produced in Vietnam to Russia.

The materials of the antimonopoly case are forwarded to the Ministry of Interior to open a criminal case against company's officials.

3. "Rosta" CJSC and "Pharmstandart" OJSC penalised for drug cartel

In March 2014, the 9th Arbitration Appeal Court pronounced legitimacy of holding "Pharmstandart" OJSC administratively liable and fining the company over 201 million RUB. In 2009, the Ministry of Health Care and Social Development organized a tender for centralized procurement of "Pulmozyme" for the state needs. The medicine is used for treatment of some chronic pulmonary diseases (congenital lung defects, chronic pneumonias, immunodeficiency with lung damage, etc.)

In 2012, the FAS Commission established that "Rosta" CJSC and "Pharmstandart" OJSC had concluded and implemented an agreement that resulted in maintaining prices of the tender at the maximum possible level. It was found that the companies had violated Clause 2 Part 1 Article 11 of the Federal Law "On Protection of Competition". Courts supported this decision. The total fines imposed by the Federal Antimonopoly Service upon "Rosta" CJSC and "Pharmstandart" OJSC for participating in the cartel reached 402 million RUB. Earlier the 9th Arbitration Appeal Court also pronounced legitimacy of the fine imposed upon another cartel participant – "Rosta" CJSC.

4. "Rosgosstrakh" Ltd. penalised for unfair business conduct

In April 2014, the Commission of the Office of the Federal Antimonopoly Service in the Republic of Tatarstan (Tatarstan OFAS Russia) found that "Rosgosstrakh" Ltd. in the person of its branch in the Republic of Tatarstan violated Clause 3 Part 1 Article 10 of the Federal Law "On Protection of Competition".

Since the end of 2013, Tatarstan OFAS Russia started receiving complaints from physical persons that when they wished to buy a mandatory third party liability insurance agreement (OSAGO) from "Rosgosstrakh" Ltd., they were forced to purchase individual accident insurance policy ("Fortuna-Avto"). If a customer did not wish to purchase an additional policy, this customer was unable to conclude an OSAGO agreement.

To resolve the situation promptly, Tatarstan OFAS Russia issued a warning to "Rosgosstrakh" Ltd. to stop imposing voluntary accident and illness insurance policies (including, "Fortuna-Avto" insurance policies) when customers buy a mandatory third party liability insurance; to stop refusing concluding voluntary accident and illness insurance agreements if a consumer disagrees to buy voluntary accident and illness insurance policies (including "Fortuna-Avto"); and to provide possibility for the clients of "Rosgosstrakh" Ltd. to purchase mandatory third party liability insurance policies without imposing other agreements irrelevant to the subject matter of an agreement or disadvantageous for the clients.

Nevertheless, Tatarstan OFAS Russia continued receiving complaints from citizens that they were forced to buy "Fortuna-Avto" policy to enter into an OSAGO agreement. It constituted the grounds for initiating a case against the insurance company upon signs of violating the antimonopoly law. At the time of making a decision on the case by the Commission of Tatarstan OFAS Russia, there were more than a hundred complaints.

Having investigated the case, the Commission of Tatarstan OFAS Russia issued a determination to "Rosgosstrakh" Ltd. Members of staff or agents of "Rosgosstrakh" Ltd. must not force physical persons – vehicle owners to buy additional insurance services, in which those physical persons are not interested, and cannot refuse to conclude OSAGO agreements if the insured do not simultaneously buy policies for other insurance services.

The Commission of Tatarstan OFAS Russia issued a determination to transfer the income, obtained as a result of violating the antimonopoly law by "Rosgosstrakh" Ltd., branch in the Republic of Tatarstan to the federal budget.

5. "Omskoblgaz" OJSC penalised

In April 2014, the Federal Arbitration Court of West-Siberian District upheld the determination of the Office of the Federal Antimonopoly Service in the Omsk region (Omsk OFAS Russia) to fine "Omskoblgaz" OJSC over 1.9 million RUB. The fine was imposed when in February 2013 the Antimonopoly Service found that "Omskoblgaz" OJSC abused market dominance by violating Part 1 Article 10 of the Federal Law "On Protection of Competition", since the company unreasonably charged a fee for providing technical possibility of connecting to the gas-supply system with the owners of residential houses, residing in Rakitinka village, the Omsk district, the Omsk region. "Omskoblgaz" OJSC disagreed with the acts passed by the antimonopoly body and filed a lawsuit. The Courts of three instances upheld the determination of Omsk OFAS Russia and dismissed the claim.

6. "Ashan" Ltd. penalised for unfair conduct

In May 2014, Moscow Arbitration Court confirmed legitimacy of the decision and determination of the Federal Antimonopoly Service (FAS Russia) with regard to "Ashan" Ltd. In 2013, the Antimonopoly Service found that "Ashan" Ltd. violated the Law "On Trade". The company created discriminatory conditions for suppliers of milk and milk products (a violation of Clause 1 Part 1 Article 13 of the Federal Law "On the Fundamental Principles of State Regulation of Trading Activities in the Russian Federation").

The FAS Commission established that "Ashan" Ltd. charged suppliers of milk and milk products differently for the same volume of services for promoting and increasing sales (advertising goods by demonstrating goods supplies in "Ashan" stores). The Antimonopoly Service issued a determination to the company to eliminate violations of the antimonopoly law. Based on its decision, FAS initiated cases against "Ashan" Ltd. on administrative violations. The company disagreed with the decision and determination of the Antimonopoly Service and filed a lawsuit; however, Moscow Arbitration Court dismissed the claim.

7. FAS fined crab cartel participants 213 million RUB

In December 2014, the Federal Antimonopoly Service (FAS Russia) held crab cartel participants administratively liable. FAS imposed a turnover fine upon "Aqua resource-DV" Ltd. - 106.6 million RUB and "Taifun" Ltd. – 106.6 million RUB.

In February 2014, FAS found that these companies violated Clauses 2 and 3 Part 1 Article 11, Clause 3 Part 4 Article 11 and Article 16 of the Federal Law "On Competition Protection" by entering into agreements at tenders for the right to conclude contracts for the quotas on catching (harvesting) aquatic biological resources – horsehair crab, blue crab, king crab in the Primorie sub-zone (to the south of the Golden cape).

"Antimonopoly control on allocating quotas in this field becomes especially significant since catching aquatic biological resources is of strategic importance for Russia. In the near future FAS will complete the procedure of holding all participants of the anti-competitive agreement administratively liable", pointed out the Head of FAS Anti-Cartel Department, Andrey Tenischev.

8. FAS imposed a turnover fine upon “Novo Nordisk” for refusal to supply Insulin

In December 2014, the Federal Antimonopoly Service (FAS Russia) found that “Novo Nordisk” Ltd., a major international pharmaceutical company, committed an administrative offence and imposed a fine for over 30 million RUB. FAS Russia held that Novo Nordisk Ltd. violated the law by refusing to conclude a contract without economic or technological justification with “Severo-Zapad” (Trading and Production Enterprise) for supplying insulin - “NovRapidPenfill”, “NovMix 30 Penfill”, “LevemirFlexPen” and terminating supplies of those medicines, which led to competition restriction. The antimonopoly case was initiated due to a refusal of “Novo Nordisk” Ltd. to execute the FAS warning, legitimacy of which had been pronounced by Arbitration Court.

“Novo Nordisk” could change its market conduct and prevent an antimonopoly violation. Instead, the company incurred material and reputational costs associated with the antimonopoly case, judicial proceedings and, as a result, it will be forced to pay the fine for violating the antimonopoly law”, pointed out Deputy Head of FAS, Andrey Kashevarov. It is not the first time when “Novo Nordisk” Ltd. has violated the antimonopoly law. For instance, in 2010 “Novo Nordisk” Ltd. was fined 53.5 million RUB for economically and technologically unjustified avoidance of contracts for supplying medicines and creating discriminatory conditions for potential counteragents.

Fair Competition For Greater Good

India

1. CCI fined Ferozepur Drug Association for Cartelisation

In February, 2014, CCI slapped a penalty of INR 5.542 million on Ferozepur Chemists and Druggists Association in Case No. 60/2012- M/s Arora Medical Hall, Ferozepur v. Chemists & Druggists Association, Ferozepur (CDAF). The information filed with CCI informed that the CDAF made a mandatory rule in 2010 that any chemist/ druggist who wished to take distributorship for medicines of a company in Ferozepur city to get a No Objection Certificate (NOC) and Letter of Credit (LOC) from CDAF by making a payment of INR 2100/- per company. It was alleged that when informant objected to the said rule, it was expelled from the primary membership of CDAF and passed a resolution to boycott the informant directing its members to stop purchasing goods from the informant and directed all the wholesalers to stop dealings with the retailers who continued to purchase goods from the informant and thereby, alleged to have violated the provisions of sections 3 and 4 of the Competition Act.

CCI investigated the matter and found that the above conduct limited/controlled the supply/provision of goods/services in contravention of Section 3(3)(b) read with section 3(1) of the Competition Act, 2002.

Considering the totality of facts and circumstances of the case including the nature of contravention, the Commission imposed a penalty on the opposite parties at the rate of 10 per cent of their respective average turnover. The CCI also directed CDAF to cease and desist from indulging in such practices that restrict supplies of medicines in the market.

2. CCI penalised Dr. L. H. Hiranandani Hospital, Mumbai for anti-competitive conduct

In February 2014, CCI found Dr. L.H. Hiranandani Hospital, Mumbai in contravention of section 3 of the Competition Act, 2002 in case no. 39 of 2012. The informant had approached CCI alleging anti-competitive conduct by the opposite party Dr. L.H. Hiranandani Hospital is not allowing any other stem cell bank to enter its premises to collect the stem cell of a new born except M/s Cryobank with whom it had an exclusive agreement.

The Commission concluded that the exclusive agreement between the opposite party and M/s Cryobank did not accrue any benefit to the consumer; rather it limited consumer choice. Since the stem cell banking service is at a nascent stage in India with very few players, the Commission took the view that this kind of exclusive contract between a hospital and a stem cell bank had the tendency of distorting market mechanism as each player, instead of competing with other players for efficiency and competitive price, would endeavour to pay commission to different hospital and mop up clients. The Commission further held that because of the total dependence of the expecting mothers on the maternity service providers to get access to stem cell/cord blood from newly born in the hospital, the adverse effect on competition is much more telling in this particular market. The Commission also noted that the consumer may suffer in the long run when the stem cell banker tied up with a hospital and provided downgraded services due to inefficiency or otherwise vis-à-vis other competitors.

Based on the above, the exclusive agreement between Dr. L.H. Hiranandani Hospital and M/s Cryobank was held to be anticompetitive and in contravention of the provisions of section 3(1) of the Act as it caused appreciable adverse effect on competition in the market of stem cell banking. Accordingly, CCI passed order under section 27 of the Act declaring the agreement of OP hospital with Cryobank for the years 2011-12 and 2012-13 as null and void. The OP hospital has been directed not to enter into a similar agreement with any stem cell bank in future. CCI also imposed a penalty of approx Rs. 38 million calculated at the rate of 4 per cent of the average turnover of OP hospital.

3. CCI imposed INR 623 Million on cartel in Indian Railways tender

CCI investigated on suo moto basis an alleged cartelisation in the matter of supply of spares to Diesel Loco Modernization Works, Indian Railways, Patiala, Punjab. Based on the information given by Diesel Loco Modernisation Works, a unit of Indian Railways at Patiala (Punjab), CCI found three engineering companies, Stone India, Faiveley Transport Rail Technologies and Escorts guilty of cartelisation.

In its investigation, CCI found that the companies acted in concert in rigging the bid by quoting identical bids on the same date. Further, the collusive action was also found to be strengthened from the past conduct of the parties where they were found to have quoted more or less similar price for the tenders of different zonal Railways. The period for which the companies were investigated was between September 2009 and September 2011. Consequently, CCI imposed a penalty of INR 623 million on the three engineering companies in February 2014. Penalty of INR 19.1 million was imposed on Stone India, INR 57 million on Faiveley Transport Rail Technologies India and INR 547 million on Escorts Ltd. The penalty has been worked out on the basis of 2 per cent of average turnover of these companies for the three financial years from 2009-10 to 2011-12. The companies have also been directed to “cease and desist” from indulging in such anti-competitive conduct in future.

4. Coal India found guilty for anticompetitive conduct

In April 2014, in Case Nos. 05, 07, 37 & 44 of 2013 - M/s Madhya Pradesh Power Generating Company Limited v. M/s South Eastern Coalfields Ltd. (SECL) and M/s Coal India Ltd. (CIL), CCI found similar issues and passed a common order disposing the cases. In these cases, the informant alleged that M/s South Eastern Coalfields Ltd. (SECL) and M/s Coal India Ltd. (CIL) are involved in contravention of the provisions of sections 4 of the Act, which relates to the abuse of dominant position.

After investigation, the Commission found that CIL through its subsidiaries operates independently of market forces and enjoys undisputed dominance in the relevant markets of supply of non-coking coal to the thermal power producers and sponge iron manufacturers in India. The Commission also held the opposite parties to be in contravention of the provisions of section 4(2)(a)(i) of the Act for imposing unfair/ discriminatory conditions and indulging in unfair/ discriminatory conduct in the matter of supply of non-coking coal.

In its order, CCI directed opposite parties to cease and desist from indulging in the conduct which has been found to be in contravention of the provisions of the Act, and directed modifications in the fuel supply agreements within a period of 60 days from the date of receipt of this order. However, the Commission did not impose any penalty upon the opposite parties as a penalty of approx INR. 17.7 billion was already imposed upon them in the previous batch of information with respect to the substantially similar conduct.

5. CCI imposed Penalty of Rs 25.446 Billion on 14 Car Companies

In August 2014, in Case No. 03 of 2011 - Shamsher Kataria v. Honda Siel & Others, the Commission found 14 Car Companies in contravention of the provisions of the Competition Act, 2002 and imposed penalty @ 2% of the average turnover of the car companies amounting to INR 25.446 Billion in aggregate.

Ensuing detailed investigation by the Director General (DG), the Commission found that the conduct of the 14 car companies was in violation of the provisions of section 3(4) of the Act with respect to their agreements with local Original Equipment Suppliers (OESs) and agreements with authorized dealers whereby such companies imposed absolute restrictive covenants and completely foreclosed the aftermarket for supply of spare parts and other diagnostic tools. Further, the car companies, who were found to be dominant in the after markets for their respective brands, abused their dominant position under section 4 of the Act and affected around 2 crore car consumers. Also, the car companies were found to be indulging in practices resulting in denial of market access to independent repairers as the latter were not provided access to branded spare parts and diagnostic tools which hampered their ability to provide services in the aftermarket for repair and maintenance of cars. Having a monopolistic control over the spare parts and diagnostic tools of their respective brands, the car companies charged arbitrary and high prices for their spare parts. The car companies were also found to be using their dominant position in the market for spare parts and diagnostic tools to protect their market for repair services, thereby distorting fair competition.

Besides imposing aggregate penalty of approx Rs. 25000 million, the Commission directed the car companies to cease and desist from indulging in conduct which has been found to be in contravention of the provisions of the Act. The car companies were also directed to adopt appropriate policies which shall allow them to put in place an effective system to make the spare parts and diagnostic tools easily available in the open market to customers and independent repairers. They are also directed not to put any restrictions or impediments on the operation of independent repairers/garages.

China

1. NDRC penalised spectacle makers

In May 2014, NDRC fined five spectacle makers over RMB 19 million for monopolizing the retail prices. The investigated companies included the Shanghai branch of French company Essilor, the Beijing branch of Japan's Nikon Corp and the Guangzhou branch of German optical company Zeiss. The Beijing branch of US-based contact lenses producers Bausch & Lomb and the Shanghai branch of Johnson & Johnson.

Essilor, Hoya, Bausch & Lomb, Nikon and Zeiss have already cut the prices of some of their products by 10 percent to 30 percent after the NDRC probe. A fine of 2 percent of previous year‘s turnover was levied on Essilor and Nikon reaching respectively RMB 8.8 million and RMB 1.68 million. The fine was reduced to 1 percent of previous year‘s turnover for Zeiss, Bausch & Lomb, and Johnson & Johnson, based on their active cooperation and proactive corrective measures. Hoya Corp. and Shanghai Weicon Optics Co. were exempt from punishment because they had voluntarily reported monopolistic practices and rectified the issue.

2. NDRC penalised automotive component suppliers’ cartels

In August, 2014, the NDRC announced that it had imposed fines of RMB1.24 billion on ten Japanese automotive components suppliers for price fixing in contravention of the AML, while two other companies received immunity.

The NDRC’s decisions concern two cartels, each spanning over a decade. In the first cartel, eight suppliers (Hitachi Automotive Systems, Denso, Yazaki, Furukawa Electric, Sumitomo Electric, Aisan, Mitsubishi Electric and Mitsuba) were found to have fixed prices of up to 13 types of components supplied to car manufacturers including Honda, Toyota, Nissan, Suzuki and Ford. The components include starters, alternators and wire harnesses. In the second cartel, four suppliers (Nachi-Fujikoshi, NSK, NTN and JTEKT) were found to have jointly raised prices on car bearings.

Considering that both cartels lasted for more than 10 years and the participants were engaged in various pricing agreements, the NDRC imposed the maximum base amount of fine under the AML, 10 per cent of the turnover derived from sales of the relevant products in China in the year 2013. On the other hand, under its leniency program, the NDRC granted immunity to the first voluntary reporter and various degrees of fine reduction to the remaining cartel participants. In the first cartel, Hitachi received immunity as the first voluntary reporter of “the relevant facts about the conclusion of the price-fixing agreements” and the first company to provide “important evidence”. Denso, as the second such company, received a fine reduction of 60 per cent, resulting in a fine of 4 per cent of the turnover generated from the sales of the relevant products in China in 2013. Three companies received reductions of 40 per cent each, and the other three companies each received reductions of 20 per cent, because they voluntarily reported the conclusion of the agreements and provided important evidence. Overall, the fines amounted to RMB832 million ($135 million).

In the second cartel, Nachi-Fujikoshi received immunity as the first voluntary reporter and the first company to provide important evidence. NSK, as the second such company, received a fine reduction of 60 per cent, resulting in a fine of 4 per cent of the 2013 turnover generated from the sales of the relevant products in China. NTN and JTEKT benefited from fine reductions (40 and 20 per cent, respectively). In addition to voluntarily reporting the conclusion of the agreements and providing important evidence, the NDRC noted that NTN withdrew from the cartel at an early stage. Overall, the fines imposed on these cartel participants amounted to RMB403 million ($65 million).

3. NDRC penalised Insurance cartel

In September, 2014, the NDRC announced that it had fined 23 insurance companies in the Province of Zhejiang for participation in a cartel. The cartel was organised by the insurers’ local association, which agreed on discount and commission levels in relation to car insurance policies. Nine companies (including American and Japanese companies) that did not participate in the cartel were accordingly not sanctioned.

In its decision, the NDRC found that the insurers had violated the AML and imposed fines of close to RMB110 million ($17 million), representing one per cent of the insurers’ annual sales of the relevant products. The association, acting as the ringleader, was fined RMB500,000 ($80,000), which was the maximum amount allowed under the AML.

The insurance companies’ anticompetitive practices started in 2009, with different commission levels being agreed depending on each company’s market share. Regarding the calculation of fines, the NDRC referred to the total sales of the relevant products (i.e., commercial car insurance policies) sold by each company’s local branch in Zhejiang during 2012, the financial year preceding the adoption of the decision.

The fines imposed on the infringing insurance companies were set at the minimum amount prescribed by Article 46 of the AML, i.e., one per cent of the relevant turnover in 2012.

The NDRC granted immunity to the first company that acknowledged its involvement after the NDRC began its investigation (the People’s Insurance Company of China). The NDRC’s decision specified that the People’s Insurance Company of China took the initiative to admit the price-fixing activities and was the first company to provide important evidence, even though it did so after the NDRC had already initiated its investigation. Fine reductions of 90 and 45 per cent were granted to the second and third voluntary reporters (China Life and Ping An), respectively. None of the remaining insurers received fine reductions, apparently because they did not voluntarily report the conclusion of the illegal agreements or did not provide evidence the NDRC regarded as important.

South Africa

1. Cement cartel impact assessment shows savings for consumers

In a bid to understand the effect of its work, the Commission undertook a study of the impact of uncovering a long running cartel of South Africa’s cement producers. Using estimates of overcharging by the cartel, the study found that following its break-up, consumers saved between R4.5 billion and R5.8 billion for the period 2010 to 2013. There has also been new dynamism in the market, with firms entering territories they did not trade in previously.

In June 2008, the Commission initiated an investigation into the cement industry after conducting a scoping study in the market for construction and infrastructure inputs.

Subsequently, Pretoria Portland Cement Company Limited ("PPC"), the largest cement producer in South Africa, applied for leniency around August 2009 and agreed to fully cooperate with the Commission by providing information on the cement cartel. Importantly, PPC also agreed to stop sharing detailed sales information through the industry association (Cement and Concrete Institute or C&CI), an important instrument that had been used by the cartel to sustain its operations.

The cartel involved price fixing and market allocation through the allocation of market shares and territories by the main cement producers (PPC, Lafarge, AfriSam and NPC-Cimpor). The cartel members had devised ways of continuing to coordinate their behaviour after the government disbanded an officially sanctioned cartel in 1996. Before 1996, the cartel had been exempt from competition legislation.

In anticipation of the disbandment of the cartel in 1996, cement producers agreed in 1995 that each producer would continue to hold a market share enjoyed by them during the official cartel period. However, immediately after the cartel was disbanded, a price war ensued, prompting the producers to meet in 1998 and devise ways to bring the market back to "stability". This meeting culminated in agreements on market shares, the pricing parameters for different types of cement, the scaling back of marketing and distribution activities with agreed closure of certain depots in certain regions and banning of discounts on higher quality cement.

In order to police the agreement and deal with the cartel problem of cheating, the cement producers devised an elaborate scheme of sharing detailed sales information through the C&CI. The information sharing saw individual firms submitting their monthly sales figures to the association's auditors according to the geographic region, packaging and transport type, customer type, product characteristics and imports. The data was then aggregated by the auditors, before being disseminated to the cement producers by the C&CI. Given the high concentration level of the cement industry, firms could use the aggregated data received from the association to monitor their own market share. If there were any deviations from an agreed target, a firm could discern from the data exactly where the deviations came from.

Therefore targeted punishment or volume shedding could be undertaken without causing a price war or in any way destabilising the market. The Commission concluded settlement agreements with AfriSam in November 2011 and Lafarge in March 2012. The two firms also confirmed the existence of the cartel and its modus operandi. The two firms paid settlement fines of approximately R125 million and R149 million, respectively.

Using the estimates of overcharges, the consumer savings as a result of the Commission's intervention is approximately in the range of R4.5 to R5.8 billion for the period 2010 to 2013.

2. Excessive Pricing Case against Sasol

In June 2014, the Competition Tribunal fined Sasol Chemical Industries Limited (Sasol) R534 million for excessively pricing purified propylene and polypropylene to domestic customers. Purified propylene, produced from feedstock propylene, is a monomer that is a by-product of fuel and is used as a key input in the production of polypropylene. Polypropylene is a polymer which is a key input for converters who manufacture household products like plastic chairs and industrial plastic products like motor car parts. Sasol supplies polypropylene to domestic customers at import parity prices and also sells large quantities to export customers.

The Commission received a request from the Department of Trade and Industry (DTI) in August 2007 to investigate the pricing practices in the South African chemicals sector, particularly the polymers sector. The Commission then initiated a complaint against Sasol and at the conclusion of its investigations referred the case of excessive pricing (section 8(a)) against Sasol for propylene, and polypropylene in the period 2004-2007. The Commission also referred a case for collusion (section 4(1)(b)) in relation to polypropylene against Sasol and Safripol. Both Sasol and Safripol settled with the Commission. The agreement between the Commission and Safripol was confirmed in August 2010. Safripol agreed to pay an administrative penalty of R16 474 573 representing 1.5% of its turnover derived from sales of polypropylene.

The agreement between the Commission and Sasol was confirmed by the Tribunal in February 2011. Sasol agreed to pay an administrative penalty of R111 690 000, which represents 3% of Sasol Polymer's turnover derived from sales of polypropylene products.

The legal framework for dealing with excessive pricing Section 8(a) of the Competition Act states that a dominant firm in a relevant market is prohibited to charge an excessive price to the detriment of consumers. The Competition Appeal Court (CAC) in its decision on Mittal Steel, South Africa Limited and Others v Harmony Gold Mining Company Limited and another laid a framework to be followed in assessing excessive pricing cases in the context of section 8(a). The CAC stated that the analysis of an excessive pricing case under section 8(a) involves the following: i) determining the actual price of the good or service in question; ii) the economic value of that goods or service; iii) whether the difference between the actual price and the economic value is unreasonable; and iv) whether the charging of the excessive price is to the detriment of consumers. In applying the guidance in the Mittal case, the Commission used various tests namely: price cost tests, a comparison of domestic prices with prices in other geographic markets, and a comparison of Sasol's export prices with domestic prices for each product.

Regarding propylene, the Tribunal relied on the price cost tests done by the Commission and Sasol. The Tribunal came to the conclusion that Sasol's markup of purified propylene prices over actual costs for the period 2004-2007 was on average 31.5-33% for both Tier 1 and Tier 2 sales. The Tribunal did not attach weight to the imputed export price for purified propylene and the prices charged by other firms in other geographic markets as advocated by the Commission.

Regarding polypropylene, the Tribunal used the price cost test, export price comparison and took into account the polypropylene prices of other firms in other domestic markets. Firstly, on the price cost test, the Tribunal found that on a conservative basis, Sasol's markup of its polypropylene prices over actual costs in the period 2004-2007 was 17.6%-25.4%. On a more realistic basis, the Tribunal concluded that the markup was in the range of 26.9-36.5%. Secondly, the Tribunal found Sasol's markup margins to be on average 23% higher than average deep sea exports. Thirdly, the Tribunal found that Sasol's markup was 41% and 47% higher for homopolymer and raffia grade polypropylene respectively for the period 2004-2007 compared to the discounted prices in Western Europe computed on the basis of feedstock costs comparable to Sasol.

The Tribunal rejected the attempt by Sasol to determine economic value directly, i.e., by postulating a hypothetical market with notional competitors and their prices and costs in that market. In concluding that Sasol's pricing does not bear any reasonable relation to costs, the Tribunal looked at the objectives of the Competition Act in the context of the South African economy, the importance of the intermediate inputs in industrial development, market characteristics and circumstances, and the history of Sasol and how it acquired its dominant position in the market. In considering the history of state support that Sasol has enjoyed. Sasol was supported, owned, and controlled by the state from its establishment to its privatization. Through legislation and regulation, the State ensured that Sasol was sustainable, profitable, and would not fail. The Tribunal also took into account Sasol's low cost feedstock advantage. Feedstock propylene is produced in abundance in South Africa by Sasol Synfuels. The Tribunal took into account Sasol's feedstock advantage and that it was a result of a history of state support and the abundance of natural resources. The Tribunal highlighted that this feedstock advantage was not a result of risk taking and innovation on the part of Sasol.

The Commission asked penalty @ 10% of Sasol's turnover. The Tribunal imposed a reduced administrative penalty of R534 million, together with the imposition of a "forward- looking" behavioural remedy in relation to propylene and polypropylene. The Tribunal argued that approach would provide relief and certainty to Sasol and its customers. The remedies have to be viewed in the light of the harm caused by Sasol's excessive prices in that Safripol was hindered from growing in the market and manufacturers were negatively affected by the excessive prices and they, in turn, passed the effects of the high prices to the end consumer.

3. Dismantling construction cartels

Rooting out bid rigging cartels has been the key focus of the Commission over the past few years. During 2013 the Commission completed settlements under the Construction Settlement Project (CSP), a special dispensation which uncovered more than 300 private and public sector rigged projects including major infrastructure development in South Africa, such as the 2010 FIFA Soccer World Cup stadia, dams, residential and business buildings, the Gauteng Freeway Improvement Project and other national roads. Public clients, such as the SA National Roads Agency Limited (Sanral) and local municipalities, are among the biggest casualties of this anticompetitive conduct.

In July 2013, the Commission settled with 15 out of 18 construction firms that participated in the CSP, including the six largest construction firms in South Africa. The Competition Tribunal imposed a total combined administrative penalty for the 15 firms of R1.46 billion, the largest ever imposed in a single process in South Africa.

The Commission launched the CSP in February 2011, after uncovering widespread collusion in the industry. The fast track process incentivised firms to make a full and truthful disclosure of bid rigging in return for penalties that were lower than what the Commission would seek if it prosecuted these cases. Twenty one firms responded to the Commission's offer of a fast track settlement. While over 300 instances of bid-rigging were revealed through this initiative, the settlements were reached only with respect to projects that were concluded after September 2006. Any transgressions that occurred before then are beyond the prosecutorial reach of the Act.

The various methods used by firms to determine, maintain and monitor collusive agreements were revealed as a result of responses to the CSP offer. These included meetings to divide markets and agree on margins. Different combinations of firms co-ordinated tenders relating to different projects. Firms colluded to create the illusion of competition by submitting sham tenders ("cover pricing") to enable a fellow conspirator to win a tender. In other instances, firms agreed that whoever won a tender would pay the losing bidders a "loser's fee" to cover their costs of bidding. Sub-contracting was also used to compensate losing bidders.

During 2014, the Commission commenced with phase two of the investigations, which entails prosecuting firms that did not settle as part of the CSP. It referred 17 cases to the Tribunal for prosecution, settled five and another five are pending the conclusion of settlement agreements. The 17 cases that were referred to the Tribunal include the 2010 FIFA World Cup stadia tenders which were subjected to collusive conduct by major construction companies such as Group Five, WBHO, Stefanutti, Murray & Roberts, Grinaker LTA and Basil Read. These firms agreed, among other things, on the profit margins to be charged for these tenders. The firms also agreed on which firms should win which stadia and which firm should submit cover quotes for which stadia. If the Commission is successful in its prosecution, it will request the Tribunal to impose the maximum penalty of 10% of the firms' annual turnover.

The dismantling of the cartel in the construction sector has set the industry in a new competitive trajectory. Purchasers of construction services, mainly government, will as a result of the Commission's intervention in the sector, be able to get fair and competitive prices. This will in turn reduce the costs of government of enrolling its multi-billion infrastructure development projects. The dismantling of the cartel will also enable victims of this collusive conduct to claim damages from the firms that are found guilty of collusion.

4. Competition Commission probes collusive conduct in automotive industry

In October 2014, the Competition Commission launched investigations into price fixing, market division and collusive tendering in the market for the manufacture and supply of automotive components supplied to original equipment manufacturers (OEMs) such as Toyota Motor Corporation, Daihatsu Motor Company, Nissan Motor Company, Isuzu Motor Limited, Fuji Heavy Industries, Honda Motor Corporation, Suzuki Motor Corporation, General Motors Corporation, Hyundai Motor Company, Yamaha Motor Corporation, Volvo Car Corporation, Mazda Motor Corporation, Mitsubishi Motor Corporations and Ford Motor Corporation. The investigation arose from information received by the Commission that automotive component manufacturers colluded when bidding for tenders to supply automotive components to the OEMs.

The investigation was launched against automotive components manufacturers such as Denso Corporation, Maruyasu Industrial Company Limited, Hitachi Company Limited, Mitsubishi Electric Corporation, Tokai Rika Company Limited, NGK Spark Plug Company Limited, Mikuni Corporation, Aisin Industries Company Limited, Panasonic Corporation, Futuba Corporation and Fijistu-Ten Limited.

The information in the possession of the Commission suggests that from 2000 to date, 82 automotive component manufacturers have colluded in respect of 121 automotive components. The 121 automotive components affected by the collusion include, but are not limited to, inverters, electric power steering ECUs, glow plugs, electric power steering systems, rear sunshades, pressure regulators, pulsation dampers, purge control valves, accelerator pedal modules, power management controllers, evaporative fuel canister systems, knock sensors, spark plugs and clearance sonar systems.

Brazil

1. CADE approved with restriction license agreement between Monsanto and Bayer

In January, 2014, the CADE approved license agreement between Monsanto do Brazil Ltda and Bayer S/A with conditions under which Monsanto granted a license Bayer regarding development, production and commercialization of soybean seeds with the technology Intacta RR2 PRO™. This technology endows plants with resistance to insects and tolerance to herbicide glyphosate, used to control weeds.

The merger approval was conditional on the modification of some provisions of the license agreement, which could grant Monsanto the capacity of having unduly control and influence over Bayer's activities on the soy market. "A mechanism of creation, maintenance and expansion of control of the licensor over the licensed party is embedded in the contract. This conditions the licensed company's activities in the soy market as a whole and extrapolates, or even denatures, the characteristic of a technology license", said Reporting Commissioner, Alessandro Octaviani. In his opinion, some clauses "harm the possible or incoming competitors, reducing the options to agriculturists and the whole chain".

The royalties billing mechanism structured by Monsanto, for example, grants to the company access to Bayer's sensitive commercial information. Since all agents that act or may act in the productive chain of Intacta soybean are registered, Monsanto could map the commercial relationship between them and have access to information that does not have direct relation with Intacta soybean's production and commercialization.

As per CADE's analysis, this would increase the company's control over the licensed party, and raise unduly the market power already enjoyed by Monsanto in the transgenic soy. The Council determined the modification of other provisions that could ease Monsanto's interference in Bayer's possible business with competitor licensees. Among the imposed restrictions is the withdrawal of a provision on Monsanto's preference rights in case of a possible acquisition, by Bayer, of related companies in the soybean market.

2. CADE imposes remedies on the Kroton and Anhanguera merger-

In May 2014, the CADE approved with restrictions the merger of all shares of the social capital of Anhanguera Educational Participações S/A by Kroton Educational S/A. The approval is conditioned to the fulfilment of a series of measures foreseen in a Merger Agreement (ACC for its acronym in Portuguese) signed between CADE and the parties.

The first commitment is the divestment of Uniasselvi, owned by Kroton, to a third party. The deadline for the divestment is confidential. Reporting Commissioner Ana Frazão explained that this measure enables a rival to have sufficient conditions to compete with the merged company in the national distance learning market. During the case development, CADE's General Superintendence pointed competition problems in 171 courses in 55 cities due to the absence or insufficiency of competitors, since other educational institutions would not be capable of effectively competing with the new merged company. Kroton and Anhanguera had important advantages regarding student's enrolment, scale, course catalogue, institutions and education centres capillarity, prices, marketing and other variables.

According to the Reporting Commissioner, the divestment of Uniasselvi solves most of the concerns detected in 12 of the 55 cities. To address the remaining issues in the other 43 cities, the ACC imposed behavioural measure that the company with major market share – Kroton or Anhanguera – in the courses where competition problems were detected will be prevented from offering places. The one with less market share also cannot increase students' enrolment. The main objective is to limit the expansion of the merged parties and to enable the competitors to thrive.

The third applied remedy was regarding places, where Kroton and Anhanguera are not simultaneously present, but a future overlapping is a concern due to previous requests to the Ministry of Education that were not authorized yet. To solve the potential problem, only one of the parties can offer the courses that raised more competition concerns in the areas.

Furthermore, the ACC foresaw objective quality goals with regards to the offer of distance learning courses by Kroton and by Anhanguera such as, for example, the increase of the current proportion of teachers with Masters Degrees and PhDs to 80% and the increase of the available tools and teaching material. This measure aims at ensuring significant quality goals and it will reflect directly in terms of benefit to the main consumer: the student.

Finally, to solve problems detected in formal education, there will be divestments in the cities of Rondonópolis and Cuiabá, both in the state of Matos Grosso.

The Reporting Commissioner highlighted that the adoption of the structural and behavioural measures was only possible due to the agreement signed with the parties. "The consensual solution was the key element to enable an alternative to the difficult options of structural remedies possible to implement in the educational market".

3. CADE approves merger of Holcim and Lafarge cement with restrictions

In December 2014, the Tribunal of the Administrative Council for Economic Defense (CADE) approved the merger between Holcim Ltd. and Lafarge. The approval was conditioned to the signature of a Merger Control Agreement (ACC for its acronym in Portuguese).

The Reporting Commissioner, Gilvandro Araújo, followed the General Superintendence's opinion that the transaction would result in concentration in the cement and concrete markets in some Brazilian locations. To solve the competition concerns, the companies, at the moment of the notification, proposed to sign an agreement. The agreement proposed that the companies will divest the plants in the cities of Arcos, Matozinhos and Santa Luzia, in the state of Minas Gerais, and in Cantagalo, in the state of Rio de Janeiro. CADE also determined that the buyer of the units must be approved by the antitrust agency and the merger between the two cement plants can only be completed after the sale of the assets.

"The proposal presented by the companies addresses the concerns pointed by the Council in the cement, concrete, gravel and aggregates. The decision does not conflict with what already decided by CADE in these markets", stated Gilvandro Araújo, the Reporting Commissioner.

Federal Antimonopoly Service of the Russian Federation

Russia

1. FAS disapproved JSC "Gazprombank" acquisition

In January 2014, the Supreme Commercial Court of the Russian Federation denied JSC "Gazprombank" application in submitting case materials to the Presidium of the Supreme Commercial Court and supported appellate court decisions on that case. It also confirmed legitimacy of the FAS Russia's Decision in denying approval of JSC "Gazprombank" application on acquiring 50.9% voting shares of OJSC "Moscow Integrated Electric Grid Company" in trust management.

In 2011, the FAS Russia refused to grant approval to the OJSC "Gazprombank" on acquisition of 50.9% voting shares of "Moscow Integrated Electric Grid Company" OJSC in trust management. This deal may have caused restriction of competition in electric power market due to overlapping of natural (exercising services on transferring of electric power) and competition (production of electric power) types of activity. The OJSC "Gazprombank" filed an action in courts but in January, 2014, the Supreme Commercial Court of the Russian Federation supported the FAS Russia decision.

2. Russia's antimonopoly service allows TMH to buy Wartsila out of JV

The Russian Federal Antimonopoly Service (FAS) met the request of CJSC TransMashHolding (MOEX: TRMH) (TMH) about buying Finland's Wartsila's stake in the joint venture between the companies, the service said in a statement.

TransMashHolding(TMH) is Russia's largest producer of rail and subway rolling stock with plants in St. Petersburg, Bryansk, Penza, Moscow, Rostov and Tver regions. Wartsila produces ship engines, propellers, navigation equipment and provides technical servicing for sea vessels. TMH and Wartsila had signed the agreement on the creation on an equal footing of a JV for the production of diesel engines in 2012.

"The Federal Antimonopoly Service reviewed the request of CJSC TransMashHolding about obtaining the rights, which would allow them to determine the conditions of the implementation of the business activities of LLC Wartsila TMH Diesel Engine B.V. and has determined the following: that the transaction, which is the subject of the aforementioned petition, will not lead to limiting competition," said the FAS, adding that the service made the decision to grant this request.

3. TEVA Case

In September 23, 2014, the Ninth Arbitration Court of Appeal revoked the lower court decision, pointing out that the antitrust prohibitions on abuse of dominance are fully applied to the actions of business entities, regardless of the patent protection of their goods. In December 2013 the FAS Russia found the company TEVA PHARMACEUTICAL INDUSTRIES LIMITED guilty in violation of Clause 5 Part 1 Article 10 of the Law "On Protection of Competition" as a result of an economically and technologically unjustified refusal to conclude with JSC "MFPDK" Biotec "contract on delivery of the medicine of "Copaxone." The company also failed to comply with the warning isuued by the FAS Russia. Antimonopoly Service has issued an order to TEVA to provide competition conditions, in particular by providing contractors non-discriminatory access to it products. TEVA was fined for committing a violation of antitrust laws. But the company did not agree with the FAS Russia's decision as well as with the order and appealed to court. The Moscow Arbitration Court supported the requirements of the company, adopting the arguments TEVA to full withdrawal of the goods that have patent protection from the scope of application of Article 10 of the Law on Protection of Competition. However, the Ninth Arbitration Appeals Court revoked the decision of a lower court, supporting the FAS Russia's position that the actions of economic entities holding dominant position should not violate the antimonopoly legislation regardless whether the patent rights applied in the production and sales of goods.

Fair Competition For Greater Good

India

1. CCI approves acquisition of formulations business of Elder by Torrent

Elder Pharmaceuticals Limited (Elder) and Torrent Pharmaceuticals Limited (Torrent) had filed a notice pursuant to the execution of a Business Transfer Agreement (BTA) and a Manufacturing and Supply Agreement (MSA), between the parties. Both Torrent and Elder are engaged in the business of manufacturing and marketing of branded generic medicines in different therapeutic segments.

CCI limited the competition assessment of the proposed combination to acquisition of these brands in India. For the purpose of the competition analysis of the proposed combination, various products of Elder and Torrent were classified on the basis of their therapeutic category i.e. the intended use of the drugs/formulations. On the basis of this classification, it was observed that there is a horizontal overlap in sixteen therapeutic categories, between the existing products of Torrent and the products being acquired from Elder. It was further observed that in most of these therapeutic categories, the combined market share of the Parties is not significant enough to raise any competition concern. Even in those therapeutic categories where the combined market share is high, this is almost entirely on account of the market share of one of the parties with the other party having a miniscule share.

The horizontal overlap between the existing products of Torrent and the products being acquired from Elder was also assessed at the therapeutic sub-group or molecule level. In this regard, it was observed that there is a horizontal overlap between the existing products of Torrent and the products being acquired from Elder in eleven molecules/therapeutic subgroups, out of which, the post combination market share of Torrent will be 10 per cent or more only in respect to three categories. However, in all three therapeutic subgroups, the combined market share of the parties is primarily on account of Elder as Torrent has very limited presence in these sub-groups.

It was also observed that Torrent, Elder and certain persons/entities related to Elder have agreed for certain non-compete covenants through different agreements. As per these covenants, Elder, certain promoters of Elder and their affiliates shall not engage in (a) specified business activities in relation to products categorised under certain therapeutic area subgroups for a period of three years; (b) specified business activities in relation to products categorised under therapeutic area subgroups for Chymoral and Shelcal for a period of five years; and (c) the products containing any of the anti-oxidants, vitamins, minerals, proteins, hematinics, bone supplements, omega fatty acids or nutrition products that form part of the composition of the acquired products and the vitamins, minerals and nutrition market for a period of 3 years.

During the assessment of the proposed combination, the parties were required to provide clarification and justification on certain aspects of non-compete obligations. In their response, the parties while providing clarification for the duration as well as the scope of the business activities restricted under the non-compete covenants, proposed certain modifications to the non-compete obligations, in terms of sub-regulation (2) of Regulation 19 of the Combination Regulations.

The Commission accepted the modifications offered by the parties and approved the proposed combination under sub-section (1) of section 31 of the Act vide its Order dated 26.03.2014. The Commission also directed the parties to make necessary amendment(s) in the agreements so as to incorporate the said modifications and submit a copy of such amended agreements along with the relevant documents to the Commission by 5.06.2014.

2. CCI approved acquisition of stake in Trent Hypermarket Limited

Tesco Overseas Investments Limited (TOIL), a wholly owned subsidiary of Tesco Plc, UK, had filed a notice for the acquisition of 50 percent of the issued and paid-up equity share capital of Trent Hypermarket Limited (THL) pursuant to the execution of a Joint Venture Agreement and a Share Purchase Agreement between TOIL, THL and Trent Limited (Trent).

TOIL is the holding company for several of the Tesco Group’s overseas retail businesses in various countries, primarily engaged in the retail trading of grocery and general merchandise through various formats including hypermarkets, supermarkets, convenience stores and franchised stores. Trent is engaged in the business of retail of ready-made garments and accessories, footwear, cosmetics, accessories, gift items and household items, in India. THL, a wholly owned subsidiary of Trent, is engaged in the business of multi-format retail trading in India including hypermarkets, supermarkets and smaller convenience stores. The Commission observed that while THL is engaged in the business of multi-format retail trading in India including hypermarkets, supermarkets and smaller convenience stores, TOIL is not present in the retail market in India and therefore, there is no horizontal overlap between the business activities of THL and TOIL in the retail market in India.

The Commission also observed that the retail market in India comprises both organised and unorganised retailing. The organized retailing includes the hypermarkets, supermarkets, departmental stores etc. The retail market in India is dominated by a large number of unorganized retailers consisting of the local kirana shops; owner manned or self-owned general stores and shops, hawkers, pavement vendors etc. Further, due to increased internet penetration and changing lifestyles, the Indian retail market has also witnessed a surge in online retailers which has widened the choice for the consumers. Further, the total revenue of THL was considered insignificant as compared to the size of the overall retail market as well as the organised retail market in India.

The Commission approved the combination under sub-section (1) of section 31 of the Act. However, the Commission imposed a penalty of INR thirty million on TOIL as the notice of the combination was not given by TOIL within the time prescribed under sub-section (2) of section 6 of the Act.

3. CCI approved the Combination between Bombay Stock Exchange and United Stock Exchange of India

Bombay Stock Exchange Limited (BSE) and United Stock Exchange of India Limited (USE) had filed a notice for the merger of USE with BSE pursuant to scheme of amalgamation under Sections 391 to 394 of the Companies Act, 1956 and the provisions of the Competition Act, 2013 respectively.

BSE is engaged in the business of providing stock exchange services in product segments of equities, debt instruments, equity derivatives, currency derivatives (CD), etc. and also provides service like clearing, settlement, market data services, index services and depository services etc. through its subsidiaries, associates and joint venture companies. USE is engaged in the business of providing stock exchange services in the CD segment.

The Commission observed that the dynamics of competition in the stock exchanges relate to wider participation, liquidity diversified revenue streams, volumes, technology and innovation; which are considered to be critical for the health of an exchange. Stock exchanges in general may also be seen to have the characteristics of a networking industry with focus on innovation and technology. Moreover, as the transaction volumes increase, per unit cost of transaction gets substantially lowered. Accordingly, the strategic choices of stock exchanges include attainment of critical mass of market participants. Given these characteristics, stock markets across the globe have, therefore, witnessed a large number of combinations.

The Commission further examined the structure of stock markets in India and noted that there are four stock exchanges with nationwide terminals in India in CD segment viz, National Exchange of India Limited ("NSE"), BSE, MCX Stock Exchange Limited ("MCX-SX") and USE. NSE and BSE are multi-product exchanges operating in different product segments including equity, derivatives, debt instruments etc. USE is the only exchange which operates in a single product segment of CD. Further, the stock exchanges in India are mostly vertically integrated except USE which has outsourced its operation and maintenance services and clearing and settlement functions to BSE and its subsidiaries. The Commission also considered market shares of the competitors in CD segment and noted that the merged entity would be constrained by NSE and MCX-SX.

Considering the facts on record and the details provided in the notice, the Commission approved the combination under sub-section (1) of Section 31 of the Act in July, 2014.

4. Competition Commission of India approved merger of Sun Pharma and Ranbaxy Subject to modification

In December 2014, the Competition Commission of India approved merger of Sun Pharma and Ranbaxy subject to modifications through a Phase 2 merger review undertaken for the first time. Sun Pharma is an integrated specialty pharmaceutical company. It manufacturers and markets a large basket of pharmaceutical formulations as branded generics in India, USA and several other markets across the world. Ranbaxy is a vertically integrated company that *inter alia* develops manufacturers and markets generic, branded generic, over-the-counter (OTC) products, Active Pharmaceutical Ingredients (APIs) and intermediates.

The Commission observed that both the Parties are engaged in the manufacture, sale and marketing of various pharmaceutical products including formulations/medicines and APIs. Both the Parties are primarily generics manufacturers (i.e., producers of generic copies of originator drugs) with a small number of licensed molecules. The Commission noted that various generic brands of a given molecule are chemical equivalents and are considered to be substitutable. Therefore, the molecule level would be most appropriate for defining relevant markets on the basis of substitutability.

On the basis of its assessment, the Commission decided that the proposed combination is likely to result in appreciable adverse effect on the competition in India in relevant markets for seven formulations. However, such adverse effect can be eliminated by suitable modification under the provisions of the Competition Act, 2002. Therefore, the Commission proposed certain modifications to the proposed

Combination to the Parties. The Parties proposed amendments to the modifications suggested by the Commission. The Commission considered the amendments proposed by the Parties and accepted one of the amendments. The Commission finally approved the proposed merger between Sun Pharma and Ranbaxy subject to the Parties inter alia carrying out the divestiture of their products relating to seven relevant markets for formulations. Further, the Commission also directed that the proposed merger shall not take effect before the Parties have carried out the divestiture of the products as specified in the order of the Commission.

China

1. Acquisition of Life Technologies Corporation by Thermo Fisher Scientific Inc

In January 2014, MOFCOM conditionally approved the US$13.6 billion acquisition of Life Technologies Corporation by Thermo Fisher Scientific Inc. In one of the complicated transactions reviewed by MOFCOM to date, the regulator's published decision reveals a highly structured and sophisticated competitive analysis bringing greater transparency to its processes and methods. Notably, the decision provides important insight into MOFCOM's use of certain economic tools and in that respect the case represents a significant development in the regulator's decisional practice.

In this case, MOFCOM's decision was very much in sync with the clearance decisions issued by other global regulators to whom the transaction had been notified. It is worth noting that both the US Federal Trade Commission and the European Commission's press releases announcing their respective clearance decisions mention collaboration with antitrust agencies in a number of jurisdictions including China.

MOFCOM initially identified no fewer than 59 relevant product markets in which the merging parties' operations overlapped. These product markets largely related to the molecular biology, protein biology and cell culture technology segments within the life science sector. With respect to these 59 product markets, MOFCOM identified global markets for only two products. For the remaining 57, MOFCOM considered that the relevant geographic market was China-wide, noting that distribution practices and pricing in China differed from other countries.

A notable feature of *Thermo Fisher/Life* merger review is the extent to which MOFCOM made use of and relied upon economic analysis in reaching its various conclusions, As a first step, MOFCOM undertook a Herfindahl-Hirschman Index (HHI) analysis with a view to identifying product markets potentially susceptible to competition concerns. This 'screening' process narrowed the candidate markets for analysis to 13 product markets where HHI levels post-transaction were above 1,500 while the HHI 'delta' (an indicator or proxy for the change in concentration levels brought about by the merger) was in excess of 100. In choosing these particular reference points, MOFCOM appears to have had regard to the US regulators' Horizontal Merger Guidelines, which provide that mergers resulting in moderately concentrated markets where the HHI is between 1,500 and 2,500, that involve an increase in the HHI of more than 100 points, 'potentially raise significant competitive concerns and often warrant scrutiny'.

Having used the HHI methodology to identify markets of possible concern, MOFCOM then analysed the potential for post-merger price increases in each of the 13 markets at issue using a margin-HHI regression methodology and the so-called 'Indicative Price Rise' test. *Thermo Fisher/Life* is the first case where MOFCOM has made a public reference to using such tests as measures of unilateral effects. MOFCOM's use of these tools allowed it to 'predict' that the merger would result in a price rise of 5 per cent or more in 12 markets and the regulator therefore conducted further in-depth analysis on these particular segments. At this stage, MOFCOM clarified that it made further market inquiries looking at, for example, concentration levels, the availability of substitute products, barriers to entry and expansion. Interestingly, MOFCOM appeared to rely on brand loyalty and reputational effects in its theory of harm for certain markets. Such 'strategic' barriers to entry have been recognised as among the more controversial of market entry barriers, as they are often difficult to quantify. MOFCOM concluded that the proposed transaction may have the effect of eliminating or restricting competition in 4 markets (cell culture product, including media and sera; SSP kits; SDS-PAGE protein standards; and siRNA reagents). Therefore, MOFCOM while approving the acquisition, the MOFCOM imposed following conditions:

- Themo Fisher shall divest its global cell culture business, including tangible and intangible assets required to maintain the viability, marketability and competitiveness of the business.
- Themo Fisher shall sell its 51% interest in Lanzhou Minhai Bioengineering Co., Ltd. in China.
- Themo Fisher shall divest its global gene modulation business, including tangible and intangible assets required to maintain the viability, marketability and competitiveness of the business.
- Themo fisher shall reduce the catalogue prices for SSP kits and SDS-PAGE protein standards sold in China by 1% every year for the next 10 years without lowering the discounts offered to Chinese distributors.
- Themo fisher shall supply SSP kits and SDS-PAGE protein standards to third parties on an OEM basis or based on a perpetual and non-exclusive license for the next 10 years.

Thermo Fisher/Life is seen as a welcome development as it signalled MOFCOM's trend toward a more thorough and transparent analysis and its increased willingness to coordinate with overseas regulators.

2. Conditional approval of Microsoft's acquisition of Nokia's entire handset business

In April 2014, MOFCOM approved Microsoft's acquisition of Nokia's handset business subject to certain conditions.

Although Nokia retains all of its communications and smartphone patents under the proposed transaction, central to MOFCOM's review (as was the case in other jurisdictions) was the likely impact of the transaction on the parties' respective patent licensing practices. Departing from the approach taken by regulators in Europe and the US, MOFCOM, accepted the concerns posed by smartphone makers and mobile operating system (OS) providers that the parties would charge higher patent licensing royalties post transaction. MOFCOM concluded that the deal would likely change the way Nokia and Microsoft license their standard essential patents (SEPs) and non-SEPs patents after the acquisition, potentially harming competition in the relevant smartphone market.

In reviewing the impact of the transaction on competition, MOFCOM looked at the Chinese markets for patent licensing in relation to mobile smart terminals, in particular the licensing of SEPs (of which Nokia holds thousands in the communications technology field) and Microsoft's 'bundle' of Android licences (Android Licensing Program), as well as the markets for smartphones and mobile smart terminal OS. While MOFCOM acknowledged the global nature of competition in these three markets, its competition analysis focused on the domestic market given that most of the smartphones sold in China are manufactured domestically, and mobile OS are largely in Chinese and developed for users in China.

MOFCOM's analysis considered a number of possible theories of competitive harm in the relevant markets:

- the likelihood of foreclosure arising from the vertical integration of Microsoft and Nokia's handset business; and

- the likelihood of abuse of patent rights by Nokia.

As a result of the acquisition, MOFCOM considered that Microsoft would have both the ability and incentive to foreclose competition in the Chinese smartphone market by virtue of its Android Licensing Programme (a package of Microsoft's SEPs and non-SEPs used by Android phones). MOFCOM noted that Microsoft's patents are considered a 'must have' technical component in the manufacture of Android smartphones (which account for an 80 per cent market share in China), MOFCOM also noted that Microsoft's entry into the downstream smartphone market would also give it the incentive to utilise its patents to eliminate or restrict competition in that market by increasing royalties payable by its smartphone competitors or limiting access to the patents themselves. MOFCOM found that any such foreclosure of competition by Microsoft would likely harm competition in the relevant market, given the importance of its patents for the production of

Android phones (which account for 80 per cent of the Chinese smartphone market). Further, MOFCOM noted that an abuse of patent rights by holders in the relevant market would substantially raise barriers to entry, which may already be high, given the economies of scale required to be successful in the smartphone industry. MOFCOM also concluded that Microsoft's smartphone rivals were unlikely to have any countervailing power as over 90 per cent of smartphone makers in China do not possess the necessary patents for cross licensing with Microsoft.

With regard to the vertical integration of Microsoft's Windows mobile OS and Nokia's smartphones, MOFCOM did not consider it likely to foreclose competition in the relevant markets, given the relatively small market shares of Windows mobile OS on smartphone devices and of Nokia's smartphones (4.85 per cent worldwide and 3.7 per cent in China) and the comparatively lower quality of and customer loyalty for applications designed for Microsoft's smart mobile terminal OS.

MOFCOM also reacted to the view that the transaction may change Nokia's current pricing incentives for its retained SEPs, thereby likely eliminating or restricting competition on the smartphone market in China. MOFCOM noted that Nokia's mobile communications SEPs are considered by market participants to be necessary in the production of all smartphones, notwithstanding Nokia's market position in relation to its SEPs. Therefore, the smartphone market will not change as a result of the transaction. MOFCOM was concerned that post-transaction Nokia will no longer be incentivised to keep royalties relatively low. Nokia's incentives to charge 'unreasonably' higher royalties for its communication patents would increase because it would no longer require cross licensing for its mobile phone business, which may negate any countervailing power currently held by potential licensees. This would result in competitive harm in the Chinese smartphone market, given the importance of Nokia's technical patents to the Chinese smartphone market.

A range of behavioural conditions, set out below, were imposed on Microsoft and Nokia respectively, and both were ordered to report to MOFCOM annually for five years regarding their compliance with these conditions.

Conditions imposed on Microsoft

- With respect to its SEPs used in smartphones, Microsoft will, subject to reciprocity, make them available on FRAND terms. This condition will be effective as long as it is not amended or terminated by MOFCOM.

- With regard to its non-SEPs in Android Licensing Program, Microsoft will continue to make them available and license them at royalty rates no greater than the rates pre-transaction. This condition will be effective for eight years from the date of MOFCOM's decision until 8 April 2022.

Conditions imposed on Nokia

- Nokia will continue to honour its undertakings to the standard-setting organisations (SSOs) to license its SEPs on FRAND terms pursuant to IPR policies of such SSOs.

- Following the closing of this transaction and subject to reciprocity, Nokia will not depart from its current FRAND per unit running royalty rates for its cellular communication SEPs, unless there are changes in the particular factors on which its current rates are based.

3. MOFCOM Approved joint venture between Corun and Toyota

Hunan Corun (Corun), Toyota Motor (Toyota) and three other parties – including Primearth EV Energy '(Primearth), a joint venture between Toyota and Panasonic – proposed to establish a joint venture, Ke Li Mei Car Battery, to produce automotive NiMH batteries for use in the manufacture of hybrid cars. MOFCOM found the relevant markets to be a global market for automotive NiMH batteries and a China market for hybrid electric vehicles.

Upon review, MOFCOM raised competition concerns in both relevant markets. MOFCOM found that the market for automotive NiMH batteries was highly concentrated with a CR4 (four-firm concentration ratio, including Primearth EV Energy, Panasonic, Corun and Johnson Controls) of 97 per cent. MOFCOM hypothesised that the transaction would link up the interests of Primearth, Toyota and Corun, three of the four largest suppliers in the China market, resulting in a reduction in incentive to compete. MOFCOM also expressed concerns that the transaction would lead to a reduction in competition in the market for hybrid electric vehicles. Pointing to Toyota's 80.3 per cent market share, MOFCOM took the view that if Toyota were to acquire a 66.4 per cent share of the global market for automotive NiMH batteries through Ke Li Mei Car Battery, it could control the supply of NiMH batteries in a manner that would leverage its market power in the market for automotive NiMH batteries into the market for hybrid electric vehicles.

To alleviate its concerns about the potential vertical effects arising from the joint venture, MOFCOM required the joint venture to sell its products widely to third parties on a fair, reasonable and non-discriminatory basis within three years after it enters into operation. The transaction was conditionally approved in July 2014.

4. MOFCOM fined state-owned Tsinghua Unigroup Ltd

In December 2014, the Chinese Ministry of Commerce Administrative Bureau ("MOFCOM") fined the state owned Tsinghua Unigroup ("Tsinghua") a total of 300,000 RMB (approximately USD 48,000) for failing to notify its tie-up with rival RDA Microelectronics.

MOFCOM found that the acquisition had triggered the notification requirements under the Anti-Monopoly Law (AML), but Tsinghua Unigroup completed the acquisition without going through the merger control review process. In its decision, MOFCOM indicated that it had assessed the effects on competition resulting from the acquisition, but had concluded there would not be any anti-competitive impact.

China's AML requires transactions that meet certain financial thresholds to receive clearance from MOFCOM. Failure to notify a transaction can be subject to a fine of up to RMB 500,000 (USD 80,000). Tsinghua's failure to submit an application for merger clearance to MOFCOM was a direct breach of Article 21 of the AML.

competitioncommission south africa

South Africa

1. Merger of Life Healthcare and Lowveld Hospital and Interstate Cleaning Blocked

The Commission prohibited the proposed merger whereby Life Healthcare Group Proprietary Limited (LHG) intended to acquire Lowveld Hospital Proprietary Limited (Lowveld) and Interstate Clearing (126) Proprietary Limited (Interstate). LHG is a private hospital group whose primary business is the provision of acute private hospital care services to the medically insured market. Lowveld is a small independent surgical hospital mostly owned by individual doctors that offers a wide range of hospital and ancillary services.

The Commission viewed Lowveld as an important factor to constrain prices and therefore promote competition in the relevant market. There is a great possibility that after the acquisition, both the entities will maintain higher prices that will be mutually beneficial for them. The proposed merger is therefore likely to result in substantial competition concerns in the market for the provision of hospital services.

The Commission concluded that as a result of the proposed merger, the average hospital bill for patients at Lowveld will increase immediately and significantly since the fee structure will be changed from the current National Hospital Network (NHN) based structure, which is used at Lowveld, to the fee models used by LHG. Therefore, the Commission took the view that the proposed merger will potentially lessen competition in the relevant geographic market.

LHG presented potential efficiency benefits to address the Commission's competition concerns. The Commission is however, of the view these "efficiencies" do not arise because of the merger and neither are they measurable, verifiable or compelling. The proposed merger undermines a source of independent competition to the incumbent large hospital group(s) and will result in higher prices for patients after the merger. The Commission therefore prohibited the merger.

2. Merger involving Clover and Nkunzi Milkyway

The Commission prohibited an intermediate merger whereby milk processor Clover intended to acquire the fresh dairy business of Nkunzi Milkyway. Post-merger, Clover would have sole control over Nkunzi. Clover is a branded consumer goods company in the food and beverage industry in South Africa and certain other African countries. Nkunzi primarily manufactures fresh dairy products.

The Commission found that the merger would have a negative impact on SMME's in that small farmers may not be in a position to negotiate better terms with Clover as they would with Nkunzi. The merger did not have any benefits that could outweigh the potential negative effects likely to accrue to the farmers or likely retrenchments that may occur. The Commission found that Nkunzi should continue to exist as an independent dairy processor or sell to a buyer that would ensure that competition remained in the market, particularly to Clover.

This merger was also taken on review to the Tribunal by the merging parties. The Tribunal settled the matter in April 2015. The merger was subsequently approved with conditions aimed at addressing all of the negative public interest effects identified by the Commission.

3. Commission disapproved acquisition of Arkema Resins by Ferro Industrial Products

The Competition Commission referred a recommendation to the Competition Tribunal to prohibit the proposed acquisition of Arkema Resins by Ferro Industrial Products. The Commission found that the proposed merger is likely to result in a substantial prevention and lessening of competition, as both the merging parties are active in the market for the manufacture and supply of unsaturated polyester resin (UPR) or composite resin. A resin is a solid or liquid synthetic organic polymer used as the basis for plastics, adhesives, varnishes, or other products. Arkema is also active in the manufacture and supply of coating resin.

In assessing the proposed transaction, the Commission distinguished between UPR used in the mining segment (to make grout, capsules and sausages for roof support in underground mines) and UPR used in other segments (such as construction, transport, chemicals and other miscellaneous applications). In the mining segment, the merging parties are currently the only suppliers of UPR. The Commission found that the merger would result in the removal of an effective competitor, leaving Ferro to enjoy a monopoly position post-merger.

The Commission also found that in other segments, the proposed merger would result in the merged entity gaining a significant share of the market of approximately 64 per cent, with the closest competitor having approximately 16 per cent. The rest of the market is accounted for by a small local supplier and some imports.

The Commission found that there are high barriers to entry in the UPR market due to the high capital outlay required for entry, economies of scale and the existence of excess capacity. In the mining segment, there are additional barriers to entry in the form of reputation, technology, technical expertise and technical specifications required. The excess capacity may also be used as a strategic deterrent for entry and expansion. The Commission's investigation included interviews with customers and competitors of the merging parties who also raised concerns regarding the proposed transaction.

The Commission considered possible remedies such as divesture of Arkema's composite business, but this was not deemed to be viable as the firm's coatings business is also located in the same plant, making it impractical to separate them. The merging parties also proposed a pricing formula applicable for two years. The Commission is of the view that the pricing formula will not address the anticompetitive effects arising from the structural changes in the market brought about by the proposed transaction.

Competition advocacy by a competition authority includes all the measures undertaken by it for the promotion of competition culture in the economy by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition. It has several objectives. The first objective is to strengthen competition awareness amongst market players, thereby encouraging self-compliance and reducing the need for direct action against erring enterprises. The second objective relates to addressing perverse effect of various government policies on market structure, business conduct and economic performance. A third objective of competition advocacy relates to helping in building a Competition Culture – an understanding by the public of the benefits of competition, which is the cornerstone of a successful market economy. All parts of a society – consumers, businesspeople, trade unions, educators, the legal community, government and regulatory officials and judges need to be addressed in this effort. Success in building a competition culture has obvious benefits for enforcement: businesses will more readily comply voluntarily with the competition law; businesses and the public will more willingly co-operate with enforcement actions, by providing evidence and the like; and policy makers will more enthusiastically support the mission.

As competition advocacy has emerged as one of the main pillars of modern competition law, the BRICS competition authorities also have vouched their heightened persuasive approach towards competition advocacy, whether it is legally mandated or not. Advocacy activities of BRICS competition authorities are briefly presented below:

Brazil

Competition advocacy is one of the three limbs of the Brazilian Competition Policy System (BCPS), other two being merger control, and behaviour control. CADE is engaged in a number of initiatives with the purpose of disseminating the value of competition within the government and throughout the Brazilian civil society. In the past, competition advocacy role of CADE encompassed a variety of activities that included media campaigns, publications by competition officials, participation in courses and seminars, working group discussions with different governmental bodies and the promotion of competition impact assessments of sectoral regulations and also running an internship program.

The new Brazilian Antitrust Competition Law (Law no. 12.529/2011) defines in article 19, VII, the authority of CADE to emit an opinion, by will or when consulted, regarding the impact of competition measures in discussions within fora related to the activities of tariffs changes, market access and trade defence, safeguarding the competencies of the institutions involved in the process.

The Secretariat for Economic Monitoring (SEAE), Ministry of Finance has become primarily responsible for competition advocacy in Brazil. In the last couple of years, it has carried on a number of advocacy measures including helping to assure coherency between trade policy instruments and competition policy principles through its participation in: (i) MERCOSUL's fora of analysis on tariff changes; and (ii) technical fora of discussions which gives support to the Chamber for Foreign Trade (CAMEX).

SEAE analysed the drafts of the public tender and of the contract for the services provided by semi-urban interstate buses. SEAE's opinion presented suggestions concerning the requirements for participation in the bid and proposed an inversion of the phases in the public tender process, aiming at enlarging competition in the market. Aspects concerning the studies on feasibility of investments in the railroad sector, the public tender drafts, and the contract for railways which are covered by the Brazilian Government's Investment Program in Logistics (PIL) were reviewed by SEAE. SEAE also reviewed the draft resolution on the regulation of the Independent Railroad Operator (OFI), in the scope of subsidy reception and public hearings carried out by the ANTT.

Advocacy with Judiciary has been a hallmark for the CADE. CADE has organised seminars in which Ministers, judges, prosecutors, academics and specialists participate in debates on the main challenges faced by judges regarding competition enforcement.

CADE has an exchange program on non-remunerated internship called PINCADE. It is meant for higher education students – undergraduate students from their 6th semester on and graduate students – who have been chosen among those indicated by upper education institutions. The program content includes lecture, exercises based on the analysis of cases already judged, and practical work with cases that are in procedure by CADE's Commissioners as well as within the Office of the Attorney General of CADE and other administrative sectors such as the Presidency Office.

Federal Antimonopoly Service of the Russian Federation

Russia

Federal Antimonopoly Service (FAS) Russia gives high priority to competition advocacy. In line with the main FAS principle, it believes that "it is easier to prevent a disease than treat it". Therefore, stablishing competition culture is one of FAS's high priorities. Cooperation with other state agencies, business, mass media and citizens enables FAS to form among them an understanding of free competition as an integral condition of efficient market performance for increasing their well-being and competitive ability of Russian economy in general.

FAS has varied instruments to achieve this goal: the official FAS web-site, the special "Anti-Cartel" web-site (in Russian and English), active work with mass media and in social networks through informal cooperation with business and citizens, placing social advertisements on FAS channel in YouTube and TV-channels and radio, publishing leaflets for citizens and business with explanations of the antimonopoly law and answers to frequently asked questions, organizing round tables, workshops and conferences, robust efforts of dozens of Expert Councils with business participation and creating primary FAS departments in nearly all universities in Russia to sensitise young people about anti-monopoly law.

For the purposes of public discussion of the issues of antimonopoly regulation in various fields and objectivity and transparency of decision-making, FAS has an active system of Public Advisories. Such Public Advisories at the FAS Russia comprise over 730 representatives of the Public Chamber of the Russian Federation, regional public chambers, "OPORA Russia", "Business Russia", the Chamber of Commerce and Industry of the Russian Federation, the Russian Union of Industrialists and Entrepreneurs, other organizations and associations. The innovation conception/model has been developed with determinate principles, forms and mechanisms of national public associations' cooperation with the FAS Russia. The implementation of this idea helps to improve the FAS Russia cooperation with civil institutions, to ensure effective feedback, to build uniform notification practice and restraint of antimonopoly violations, to improve the FAS Russia approach to consider appeals, petitions and proposals from the Russian non-government organizations.

In order to give fillip to advocacy, the FAS organises competition day every year, which has become a leading informational platform to share the outcome of its annual work and prospective areas of competition policy. The purpose of Competition Day is to advocate competition both at the national level in Russia and in the provinces, attracting attention to the issues of competition development, devising approaches to resolving them in view of the best world practices and intensifying integration of the Russian Federation in the global economic space. In 2015, the Competition Day in Russia will be devoted to 25 year anniversary of foundation of the Russian Competition Authority.

FAS has put forward an initiative for drafting books that would reflect the best practices of the authorities of the constituent territories of the Russian Federation and local self-government bodies (the "White book"), facilitating development of competition, as well as the worst regional practices of anti-competitive nature (the "Black book"). In 2014, the Books of pro-and anti-competitive practices have been published at FAS official web-site.

The FAS also publishes the Russian Competition Law and Economics Electronic Research-to-Practice Journal (http://fas.gov.ru/eljournal/). The main objective of the electronic publication is to facilitate development of competition in Russia as well as across the entire space of the Customs Union of Russia, Belarus and Kazakhstan. From the journal, the readers learn first-hand news about the antimonopoly law and enforcement practice as well as the most complex and interesting cases heard at Courts. The target audience of the journal includes officers of the antimonopoly bodies, representatives of the business-community, experts, consultants and members of the general public.

As a result of recognition of the FAS Russia's activities in 2015, the story "Development of Recommendations for creating non-discriminatory access conditions in the purchase of potassium chloride" submitted by the FAS Russia to this year's ICN-WBG Competition Advocacy contest has been awarded with an Honorable Mention under category I: Promoting pro-competitive reforms that foster growth and reduce inequality.

In the process of Development of Recommendations for creating non-discriminatory access conditions in the purchase of potassium chloride the FAS Russia engaged with several public bodies to ensure nondiscriminatory access conditions for the purchase of potassium chloride, a key input for fertilizers. This initiative fits within Russia's commitment for accession to the WTO.

Fair Competition For Greater Good

India

In some countries, advocacy function is backed by suitable provisions in the competition law, which gives an added fillip to advocacy efforts. In India also, Section 49 of the Competition Act, 2002 mandates the CCI to undertake advocacy for promoting competition in the economy. In pursuance of the mandate, Commission has a dedicated division to carry out the mandate.

In the last six years, the Commission has organised numerous workshops, conferences, and seminars with various stakeholders. CCI regularly engages with business community as well as trade associations to sensitise them about the need for competition compliance and not using trade associations as platform for cartelisation. CCI also proactively engages with key stakeholders such as consumer organizations, professional bodies, media, academia, government training academies and judiciary as key stakeholders.

As government policies may be important source of market distortions, CCI has identified several Ministries/Departments of federal government for undertaking advocacy at top level to sensitise about need for competition friendly laws, policies and regulations. As most of economic activities are carried out at provincial level, CCI carries out targeted advocacy with provincial governments also. CCI organises interactive sessions with financial investigative agencies also to identify the areas of mutual cooperation.

CCI has commissioned several market studies to understand competition concerns in key sectors of economy. Commission also undertakes media campaigns both in print and electronic media from time to time such as on bid-rigging, cartels and leniency provisions. CCI has a student internship programme for students from Economics, Law, Management, and Finance discipline to create awareness of competition law.

CCI has also formed a core advisory group called Eminent Persons Advisory Group (EPAG) comprising of corporate, academics, regulators and civil society to guide CCI in undertaking efforts to make market competition compliant. In order to create wider awareness amongst various stakeholders in the economy, CCI has been commemorating May 20th as its Annual Day by bringing together various stakeholders and creating a call for competition compliance in the economy. CCI also publishes a quarterly newsletter "Fair Play", which brings out important orders of CCI and other key developments as well as tries to educate stakeholders about competition law in simple language.

China

Article 51 of the Anti-Monopoly Law (AML) provides for a kind of ex-post advocacy where by the Chinese competition authorities propose corrective actions to ‘relevant superior authorities’. Although, there is no legislature regarding advocacy in AML, in practice Chinese Competition authorities engage in advocacy work. They carry out training for CEOs and in-house councils from major SOEs to sensitise them about need for competition compliance. They also organise lectures for students to sensitise them about importance of competition. They also have research projects related to legislation and enforcement.

South Africa

The Advocacy and Stakeholder Relations Division of South African Competition Commission promotes voluntary compliance with the Competition Act, forges relationships with key stakeholders in the public and private spheres, and communicates the decisions and activities to increase public awareness of the benefits of competition. This is done through education, training and awareness programmes, targeted advocacy programmes, media liaison and publications.

Over the years, the Commission has implemented an array of outreach measures towards consumers. Consumers have been engaged through the media and also through presentations and workshops. Non-governmental organizations, acting in the interests of consumers, have also been brought into the competition discourse and have participated in the proceedings of competition authorities. During 2014, the Commission engaged with at least 28 stakeholders around a range of issues, and signed two MoUs with other regulators.

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COMPETITION COMMISSION OF INDIA

Fair Competition
For Greater Good

Website of BRICS Competition Authorities

Brazil	**Administrative Council for Economic Defence (CADE)**	www.cade.gov.br/
Russia	**Federal Antimonopoly Service of the Russian Federation (FAS)**	en.fas.gov.ru/
India	**Competition Commission of India (CCI)**	www.cci.gov.in
China	**Ministry of Commerce of the People's Republic of China (MOFCOM)**	english.mofcom.gov.cn/
	State Administration for Industry and Commerce (SAIC)	www.saic.gov.cn/english/
	National Development and Reform Commission (NDRC)	en.ndrc.gov.cn/
South Africa	**Competition Commission South Africa**	www.compcom.co.za/

South Africa is hosting the 4th BRICS International Competition Conference on 12 and 13 November 2015 in Durban. The Competition Commission of South Africa (CCSA) extends a warm welcome not only to the BRICS conference, but also to two other events taking place beforehand:

- 10 November 2015: A workshop on competition and economics jointly hosted by the CCSA, CRESSE and the University of KwaZulu Natal
- 11 November 2015: CCSA's 9th Annual Competition Conference, with the theme "Competition policy and enforcement in BRICS countries"
- 12 – 13 November 2015: 4th BRICS International Competition Conference on "Competition and Inclusive Growth"

To register for the BRICS conference, visit **http://brics2015.co.za/registration**. On this website you can also register for the joint workshop on 10 November and the CCSA annual competition conference on 11 November and view the draft programmes.

For more about the BRICS conference at **http://brics2015.co.za/**.

About BRICS

BRICS is the acronym for the association of five major emerging national economies: **Brazil, Russia, India, China** and **South Africa**.