



REVIEW OF COMPETITION LAW CASES FROM OTHER JURISDICTIONS FOR JUNE 2022

A. Specific cases

The following cases are highlighted for further review on potential lessons on competition enforcement by the Authority.

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
RTPs				
Germany (Bundeskartellamt)	Metal industry	Five aluminum forging companies	<p>The Bundeskartellamt has imposed fines totalling approximately 175 million euros (Kshs 21.7 billion) on five aluminium forging companies and ten employees responsible for engaging in illegal anticompetitive agreements and concerted practices.</p> <p>In the period between April 2006 and April 2018, representatives of the companies attended a total of 23 meetings of what they referred to as the “Aluminium Forging Group”.</p> <p>Not all the companies fined participated in the meetings throughout this whole period. Leiber Group GmbH & Co. KG had participated in such meetings since 2007, Otto Fuchs Beteiligungen KG since 2010 and</p>	Under Part III of the Act. Section 21 addresses issues of Restrictive Trade Practices (RTPs) including but not limited to price fixing, abuse of dominance, among others.

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
			<p>Strojmetal Aluminium Forging GmbH since 2011. In 2017 Hirschvogel Aluminium GmbH and Bharat Forge Aluminiumtechnik GmbH terminated their further participation in the meetings.</p> <p>Bundeskartellamt's investigations were triggered by a leniency application filed by the aluminium forging company Hirschvogel Aluminium GmbH based in Gerstungen. In accordance with the Authority's leniency programme, no fine was imposed on this company.</p> <p>The companies were in general agreement to pass on their respective procurement costs and cost increases to their customers in an effort to avoid any disadvantages caused by increased costs. At the Aluminium Forging Group meetings senior staff members of the companies therefore exchanged information on essential factors determining costs and thus prices. They encouraged one another to pass on possible increases to their customers.</p>	

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
Japan - (Japan Fair Trade Commission)	Sale of Aviation Fuel	JFTC, Mainami Aviation Services Co., Ltd (Hereinafter "Mainami Aviation Services and SGC Saga Aviation Co., Ltd (hereinafter "SGC Saga Aviation")	<p>In June 2022, Japan Fair Trade Commission (JFTC) issued a cease and desist order against Mainami Aviation Services Co., Ltd (Hereinafter "Mainami Aviation Services").</p> <p>In the case, Mainami Aviation Services has been committing a violation of the Article 3 of the Antimonopoly Act (Private Monopolization) as follows:</p> <p>Regarding the sale of the aviation fuel by "into-plane fueling" (hereinafter "this service") at Yao Airport, Mainami Aviation Services has been having its users not be refueled from SGC Saga Aviation Co., Ltd (hereinafter "SGC Saga Aviation") as follows:</p> <ol style="list-style-type: none"> i. Mainami Aviation Services, alleging that Mainami Aviation Services would not bear responsibility for aircraft-related accidents caused by mixing the aviation fuel of Mainami Aviation Services with that of SGC Saga 	Cease and Desist orders under private monopolization in Kenya would be ideal to deal with RTPs

<i>Country</i>	<i>Sector/ Market</i>	<i>Parties</i>	<i>Case Summary</i>	<i>Lesson Learnt</i>
			<p>Aviation, has notified its users that it would not continue to fuel their aircrafts if the users are refueled from SGC Saga Aviation.</p> <p>ii. Mainami Aviation Services, as a condition to accept requests related to fueling from its users who are fueled by the service of SGC Saga Aviation, has requested its users to sign a document describing that they shall not seek Mainami Aviation Services' liability for aircraft-related accidents caused by mixing the aviation fuel of Mainami Aviation Services with that of SGC Saga Aviation, or to remove the fuel from the users' aircrafts.</p> <p>The Mainami Aviation Services' conduct above has been excluding business activities of SGC Saga Aviation, and thereby causing, contrary to the public interest, a substantial restraint of competition in the field of</p>	

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
			<p>trade of sale of the aviation fuel by this service at Yao Airport.</p> <p>As to the aircraft fuels, although the international standard specifications exist, the Civil Aeronautics Act (Act No.231 of July 15, 1952) and other related ordinances, etc. do not prohibit nor restrict the mixture of the same type and grade of aviation fuel. Although the same type and grade of aviation fuel provided by different fueling companies are normally mixed in fuel tanks of aircrafts, no aircraft accidents caused by the mixture have been reported in the aircraft accident investigation reports (from 1974 to January 31, 2020) published by the Japan Transport Safety Board</p> <p>Mainami Aviation Services supplies aviation fuel at airports located in Japan. At Yao Airport in Osaka Prefecture, the company was the sole supplier until a new company entered</p>	

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
			<p>the market in 2016.</p> <p>After the new supplier started offering fuel at Yao Airport, Mainami Aviation Services notified its customers that it would not provide fuel to those who purchased from the new supplier, and required them to sign a disclaimer absolving Mainami Aviation Services from any responsibility for accidents caused by mixing its fuel with the new entrant's fuel.</p> <p>JFTC's decision was as follows:</p> <p>Private Monopolization: Private monopolization is one of the four main regulation areas under the AMA, and can be divided into: exclusionary type; and a control type.</p> <p>There are not many precedents that the JFTC have found to be in violation of the regulation of private monopolization.</p>	

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
			<p>The JFTC issued a cease-and-desist order on 7 July 2020 and a surcharge payment order (KSh6 million) on 19 February 2021 against Mainami Aviation Services Co Ltd on its anticompetitive conduct, which was deemed an exclusionary type of private monopolization.</p> <p>The last cease-and-desist order for an exclusionary type of private monopolization was issued in 2009, and this is also the first case where the JFTC imposed surcharges for private monopolization.</p> <p>Since Mainami Aviation Services continued the alleged conduct when the JFTC issued the cease-and-desist order in 2020 and the JFTC could not determine the amount of surcharge, the JFTC was unable to issue a surcharge payment order at that time.</p> <p>The company filed a lawsuit in court to</p>	

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
			cancel the cease-and-desist order and the surcharge payment order, arguing that the alleged conduct was a result of safety and quality control and that it did not intend to exclude its competitors. The court is expected to deliver a verdict in 2022.	
Italy (Italian Competition Authority)	Pharmaceutical industry	Leadiant (a pharmaceutical company)	On 31 st May 2022, the Italian Competition Authority (ICA) in its publication fined Leadiant EUR 3.5 million (around Kshs 435.6 million) for charging excessive prices for the sale of an orphan drug (Orphan drugs are medications or other medicinal products used to treat rare diseases or disorders. They are called “orphan drugs” due to their limited market, few pharmaceutical companies pursue research into such products). The ICA found that Leadiant abused its dominant position in the market for drugs containing chenodeoxycholic acid (CDCA). CDCA is the active ingredient in drugs used for treating the rare metabolic disorder cerebrotendinous xanthomatosis	Under Part III of the Act, Section 21 addresses issues of RTPs. Abuse of dominant position is prohibited.

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
			<p>(CTX). In qualifying the infringement as very serious, the ICA took account of the life-saving nature of the drug and its cost to the Italian National Health Service (INHS), which it noted had limited resources.</p> <p>According to the ICA's decision, Leadiant charged the INHS excessive prices for the sale of its CDCA-containing orphan drug since June 2017. The initial price was around EUR 15,500 per package (Kshs 1,900,000). Although this was reduced to EUR 7,000 (Kshs 871,000) in December 2019 following the opening of the ICA's investigation, the ICA found that the new price remained excessive.</p>	
<p>India (Competition Commission of India)</p>	<p>Online platforms</p>	<p>Competition Commission of India (CCI) and Google</p>	<p>The Competition Commission of India (CCI) investigated charges levelled at Google's contentious payment billing system for Play Store developers.</p> <p>The investigation had found Google to be engaging in discriminatory practices</p>	<p>Payment Billing Policies can also be exploited by online platforms to dampen competition in digital markets. There is need to heighten surveillance mechanisms with regard to issues of</p>

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
			<p>for its Play Store billing policy.</p> <p>As a part of the investigation, CCI clubbed three different orders and complaints together, filed with the commission between 2020 and 2021, which allege Google to be favouring Google Pay over other competing apps, through its control over the Play Store and the Android Operating System (OS).</p> <p>CCI noted that Google is following 'discriminatory practices' by not using its Google Billing Payment System (GBPS) for some of its own apps, which it has made mandatory for other app developers. This makes the Play Store payment policy 'unfair' and discriminatory' in nature.</p> <p>CCI's level of clarity on the matter was extremely high, it had taken inputs from all developers and the larger ecosystem and was convinced that the Play Store Billing policy will definitely</p>	<p>RTPs as provided for in section 21 of the Act.</p>

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
			harm developers if implemented.	
CONSUMER PROTECTION				
Canada - (Competition Bureau Canada)	Travel	FlightHub – an Online travel agency	<p>The Bureau penalized FlightHub Group Inc \$5 million (Kshs 584, 750,005) for misleading representations for flight-related services, such as seat selection and flight cancellation, which resulted in hidden fees. In addition, two company directors agreed to penalties of \$400,000 (Kshs 46,780,000 each after the Competition Bureau concluded that the online travel agency charged customers hidden fees, authored positive customer reviews to promote its services, and made numerous false or misleading claims about its prices and other flight-booking services.</p> <p>The penalties are part of a settlement, which prohibited FlightHub and directors Matthew Keezer and Nicholas Hart from making any further false or misleading claims. These include claims about the price of flights, as well as the cost and terms associated with cancellations, rebooking and seat selection. FlightHub was also required</p>	<ul style="list-style-type: none"> • The Authority should enhance surveillance with regard to section 55 of the Act on false or misleading representations in the online ticketing by travel agents.

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
			<p>to remove any online reviews of its services that were posted by or on behalf of the company but appeared to be from genuine customers.</p> <p>Particulars of the Case</p> <p>As part of its investigation of FlightHub’s marketing practices, the Bureau reviewed thousands of consumer complaints, seized documents at the company’s Montreal headquarters, and obtained a Temporary Consent Agreement to protect the public while the investigation was ongoing.</p> <p>Case Findings</p> <p>The Bureau concluded that FlightHub made millions in revenue from charging hidden fees, and misled consumers on FlightHub.com and JustFly.com about the costs and terms associated with a range of services, including:</p> <p>Seat selection terms and fees</p> <ul style="list-style-type: none"> • FlightHub actively concealed fees 	

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
			<p>that it charged consumers for seat selection.</p> <ul style="list-style-type: none"> FlightHub gave the impression that consumers could reserve their seats by selecting specific seats on a seat map, but FlightHub did not secure the selected seats for many consumers. <p>The price of flights</p> <ul style="list-style-type: none"> FlightHub promoted false or misleading pricing information on the websites and in emails, and at times increased prices after consumers selected a flight. <p>Flight cancellation and rebooking terms and fees</p> <ul style="list-style-type: none"> FlightHub gave the impression that consumers could obtain cancellation and rebooking rights at no cost, when in fact consumers were charged additional fees. FlightHub gave the impression that consumers had more extensive cancellation and rebooking rights 	

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
			<p>than was actually the case.</p> <p>Obtaining and using “travel credits” for future flights</p> <ul style="list-style-type: none"> • FlightHub gave the impression that consumers could cancel a flight in return for credit on any future flight, when in fact the “travel credit” could be subject to important restrictions and additional costs. • In some cases, after a consumer agreed to cancel a flight in return for a travel credit of a specific value, the value later decreased. 	
Italy - (Italian Competition Authority)	Telecommunications	Iliad Italia S.r.l.	The Italian Competition Authority has imposed a fine of 1,200,000 euros (Kshs 150,126,927) on Iliad Italia S.r.l. after it conducted an investigation into the company and found guilty of misleading presentation of essential information on mobile phone offers including services with 5G technology, and for the misleading formulation of a promotional message relating to one of these offers.	The Authority should enhance surveillance with regard to section 55 of the Act on false or misleading representations. There is need to keep an extra eye on the businesses who advertise their products with puffery intentions and institute <i>suo moto</i>

Country	Sector/ Market	Parties	Case Summary	Lesson Learnt
			<p>The Authority found that Iliad advertised certain mobile phone offers, emphasizing their compatibility with the latest 5G technology, but totally omitting or providing unclear information on the conditions required to be able to use that technology, such as the verification of the coverage of Iliad's 5G network and with the specific 5G technology supported by the operator's network.</p> <p>In addition, ICA argued that Iliad used the claim "100 gigs, unlimited minutes and sms in Italy and Europe" in a text message sent to its former customers to promote the "Flash 100 5G" offer. ICA considered this message to mislead the consumer, since the consumers could believe the 100 GB included in the offer were all usable for traffic in Europe, while in reality, in case of connection from other European countries, the traffic included in the offer was only 6 GB.</p>	<p>against those misleading or giving false information to consumers.</p>