



COMPETITION LAW NEWSLETTER

March 2022

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After a hectic January, February saw several routine merger approvals, and a few enforcement orders. In this edition of the L&L Competition Law Newsletter, we cover four significant enforcement orders passed / published by the Competition Commission of India (CCI) in the month of February.

CCI finds manufacturers of signages and others to be cartelizing in a hub and spoke cartel

The CCI *vide* [order dated 03.02.2022](#) found (i) five manufacturers of signages (**converters**); (ii) a manufacturer of flex & vinyl graphics material (required for manufacturing signages); and (iii) a distributor of flex & vinyl to the converters, to be in contravention of the prohibition on cartelization and bid-rigging, as under Section 3(3) of the Competition Act, 2002 (**Act**). In addition to the converters, the manufacturer of flex & vinyl (**OP-4**) had also acted as a bidder for supplying signages wherein it intended to sub-contract the work awarded to it.

An investigation was initiated pursuant to a complaint *prima facie* demonstrating that the Opposite Parties (**OPs**) had colluded their bid quotes while bidding for tenders floated by SBI Infra Management Solutions Private Limited for the supply and installation of new signages/ replacement of existing signages for branches/ offices/ ATMs of State Bank of India.

The CCI noted the existence of several pieces of evidence such as emails discussing (i) the bid prices to be quoted; (ii) the geographic areas to be bid for by each of the OPs; and (iii) the sequence of successful L1, L2 and L3 bidders for each of the circles of the tender pursuant to the collusive arrangement. One of the parties also filed a leniency application post initiation of the investigation. Further, it was also noted that such communications indicated that the distributor of graphic materials (**OP-7**) would confirm the prices to be quoted and the sequence of bidders who shall be successful bidders for each of the circles. It was noted that the role of OP-7 was providing costing details of the flex & vinyl in order to enable the bidders to decide the prices to be quoted.

Further, the CCI undertook an analysis of the bid quotes devised in the emails *vis-à-vis* the bids placed in the tender for each geographic circle. It was

observed that the bid prices devised in the email and actual bids placed matched, further evidencing the collusive bidding undertaken by the OPs. Additionally, the CCI took note of meetings undertaken by the OPs where the tenders were discussed, as was admitted to by persons who deposed before the DG. Lastly, the CCI also requisitioned call data records of the officials of the OPs and noted that such officials were in communication with each other during the time of submission of bids in the e-reverse auction process. Persons deposed by the DG further confirmed that the subject of these discussions was the bids being placed.

Accordingly, the CCI held that the parties had contravened the prohibition on cartelization and bid-rigging, as contained in Sections 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act. While imposing penalties, the CCI took note of the fact that the OPs are Medium, Small and Micro Enterprises adversely affected by the pandemic, and thus imposed a penalty at the rate of 1% of the relevant turnover. The leniency applicant was granted a reduction of 90% on the penalty.

CCI dismisses allegations of abuse of dominance against Information Systems Audit and Control Association, Inc

Vide [order dated 17.02.2022](#), the CCI dismissed allegations of abuse of dominance against the Information Systems Audit and Control Association, Inc (**ISACA**) by way of inter alia: (i) classification of ISACA Licensing Partners into different tiers and providing different service level to partners in different tiers; (ii) creation of artificial scarcity by ISACA by restricting the number of audits which can be undertaken by one Lead Appraisers in a year at 16; (iii) restriction of the technical and scientific development of the Capability Maturity Model Integration (**CMMI**) Model Document; (iv) denial of market access to all other organizations because of ISACA's ownership of the CMMI Mode; (v) using of its dominant position to undertake one-sided contracts with the licensing partners; complete dominance of the market due to no competition.

While evaluating the allegations raised by the Informant, although the CCI agreed that ISACA was a dominant enterprise in the ‘*market for providing solutions for process improvement and certification for benchmarking performance*’, it did not find any *prima facie* evidence to suggest that ISACA was abusing its dominant position in contravention of Section 4 of the Act.

On the issue of differentiation of the partners into tiers, the CCI, upon analysing the screenshots submitted by the Informant, observed that the services being provided by ISACA for its partners was classified into three levels i.e., standard, premium and elite. The CCI noted that that providing different services with different cost structures may not be termed as discriminatory. On the issue of restricting the number of audits, thereby creating artificial scarcity, the CCI held that the justification of ensuring quality by limiting the number of appraisals to 16 per year, was reasonable and not abusive. On denial of market access, the CCI noted that ISACA has a different structure and operational system as compared to the International Standards Organization and these bodies work differently, the Informant has not been able to establish as to how the ISACA’s functioning and CMMI maturity model certification is leading to any anti-competitive outcome.

Considering the fact that no direct evidence could be found against ISACA that could substantiate the allegations raised against it, the CCI disposed of the matter with no further investigation required.

CCI finds Dumper Truck Union guilty of cartelization

Vide order dated [07.02.2022](#), the CCI held the Dumper Truck Union (**Truck Union**) guilty of limiting/controlling the provision of transportation services in the Sanu Mines area of Jaisalmer, Rajasthan.

In 2018, CJ Darcel Logistics Ltd. (**CJD**) was awarded a tender floated by JSW Energy (**JSW**) for the transportation of limestone from Sanu Mines, Jaisalmer, to the plant site of JSW at Bhadresh. However, the Truck Union and its members based around the Sanu Mines area did not allow any other transporter or logistics company to ply their vehicles in the area. This was achieved via threats of physical violence and coercion against the personnel of CJD.

Aggrieved by the said conduct, CJD approached various local authorities, but to little avail. Ultimately, in order to fulfil its contract with JSW, CJD was forced to use the services of Truck Union members at a predetermined rate. The said rate was higher than CJD’s bid rate in the tender, thereby resulted in the company facing losses. Later, on the request of CJD, JSW short closed the contract between the two.

CJD filed an information before the CCI, which formed a *prima facie* opinion that there was a violation of Section 3 and 4 and directed the DG to investigate.

The DG in its report noted that the Truck Union comprised of members who were drivers or truck owners, and were engaged in providing transportation services. Further, the rate agreed between CJD and members was determined by the Union. Therefore, doing so, it had directly or indirectly determined the purchase price for providing their services. Further, by not allowing CJD to carry the transportation of limestone through its company vehicles, it had limited or controlled the provision of services.

In its analysis, the CCI agreed with the findings of the DG and noted that the Truck Union and its constituent members restrained CJD from executing the contract with JSW and interfered directly with its business activity and caused loss to the company. Further, the CCI observed that the Union and its members directly determined the sale price of transportation services for carrying limestone from Sanu mines to Bhadresh power plant of JSW through an interim arrangement dated 24.04.2019, between CJD and Truck Union, through its office bearers.

Accordingly, the CCI held that Truck Union violated Section 3(3)(a) and 3(3)(b) by limiting/controlling the provision of transportation services and to fix the transportation rate at a rate higher than that determined through open tendering process. On penalty, the CCI noted that as the OPs had not submitted their balance sheets and income tax returns, a separate order of monetary penalty may be issued after the receipt of financial details.

CCI finds various tyre manufacturers and their association guilty of cartelisation

In February 2022, the CCI was finally able to publish the final [order of 31.08.2018](#) passed over three years ago, but kept under wraps due to litigation pending in the Madras High Court, in which it found five tyre manufacturers and their association - the Automotive Tyre Manufacturers' Association (**ATMA**) guilty of cartelization.

As covered in our [February 2022 newsletter](#), the CCI was given the liberty to release its final order after an appeal filed against its 26(1) order on account of procedural lapses was [dismissed](#) by the Madras High Court. Various SLPs filed against the said order were also dismissed by the Supreme Court.

In its analysis, the CCI first observed that as evidence of anti-competitive conduct is often sparse, the existence of any such practice must be inferred from a number of co-incidences and indicia which, taken together, may, in the absence of any other plausible explanation, constitute evidence of the existence of an anti-competitive agreement.

The CCI then analysed price movement in the market and noted that the prices charged by the OPs were moving in tandem and clearly exhibited price parallelism. Moreover, the CCI noted that while raw material prices were decreasing, the price of tyres did not show a corresponding decrease.

Further, emails unearthed proved the sharing of price sensitive data between the OPs through ATMA. The

CCI also took note of various sub-groups constituted by ATMA which met at regular intervals. No minutes of these meetings were maintained. The CCI held that the lack of documentation relating to the agenda of these meetings clearly demonstrated the malicious intention of hiding the illegal activities of the OPs.

Based on the evidence, the CCI concluded that OPs under the aegis of ATMA had been meeting every quarter to discuss key issues and challenges faced by the tyre industry, giving them a convenient platform to come together and share their individual price sensitive data and take collective decisions on the prices of tyres. Further, ATMA used to collect and compile information relating to company wise and segment wise data (both monthly and cumulative) on production, domestic sales and export of tyres on a real time basis. Such compiled data was circulated amongst its members as well. The sharing of such sensitive information made the co-ordination easier amongst the OPs

Accordingly, the CCI held that the OPs acting in concert, increased the prices of cross ply/ bias tyres variants sold in the replacement market belonging to the truck/ bus segment and also limited and controlled the production and supply in the said market, thereby contravening Section 3(3)(a) and 3(3)(b) of the Act. Further, the CCI imposed a penalty of 5% of the average turnover and fined the OPs nearly INR 1,800 crores on delinquent companies, their Association and individuals responsible for violation.

This newsletter is only for general informational purposes, and nothing in this newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to contact the Competition Law Team at competitionlaw@luthra.com or any of the contacts listed below. © L&L Partners 2022. All rights reserved.

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