



The Quarterly Newsletter of Competition Commission of India (CCI)

# Fair Play

VOLUME 12 : January-March 2015

## Public Procurement & Competition Law

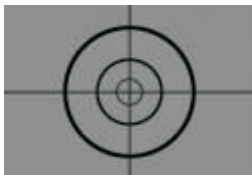


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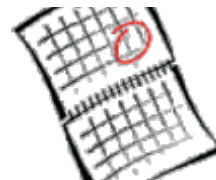
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## FROM THE DESK OF THE CHAIRPERSON

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'Value for money' is a mantra which is chanted the world over. While it is certainly important in the case of individuals and corporate decision-making, it is almost an article of faith in 'Public' procurement. The reasons are obvious : a large part of the Gross Domestic Product of a country goes into it; it involves the taxpayers' money; processes involved should not needlessly exclude businesses etc.

The State has the primary responsibility to design an organisational and legal framework for effective public procurement; it needs to focus on efficiency, transparency and integrity. Besides, the architecture should promote competition.

The Competition Commission, as a regulatory arm of the State, has been charged with the responsibility of preventing practices that have an adverse effect on competition. Section 3 of the Competition Act, 2002 specifically prohibits "big rigging" which inter alia, includes market allocation, bid rotation, cover bidding etc. Any one or more forms of manipulation in the process of procurement leads to drain of precious public resources or in the delivery of inferior goods and services.

In a number of references received, the Competition Commission has had the occasion to enquire and impose penalties. The areas of procurement range from medical equipment to LPG Cylinders to procurement of equipment used in Diesel Locomotives.

However, imposition of penalties for errant behaviour is not an end in itself. The ultimate objective is to improve behaviour and prevent manipulation of the bidding process ab initio. Advocacy and communication is, therefore, an important plank of the endeavours of the CCI. We engage in this with various stakeholders, either on our own or in collaboration with other agencies who focus on the integrity of the public procurement process.

This issue of "Fairplay" is part of the effort to communicate on the subject of Public Procurement and the role of the Competition Commission.

Ashok Chawla

# IN FOCUS

## Public Procurement: A Science or an Art

### Public Procurement

Public procurement is purchase of goods and services by the public sector entities in pursuance of achieving their respective mandates. It, being an essential means for meeting functional needs and achieving socio-economic objectives of the nation, is ought to be an efficient activity. In view of the large share of tax payer's money that government devotes to it, efforts need to be directed to ensure that they achieve good value for money. Procurement is an important activity, both for the public as well as for the private sector. It is important to bear in mind that public procurement substantially differs from private procurement as the Government and its agencies have often limited leverage due to various administrative, procedural and accountability mechanism as compared to private sector. A private procurer can choose his purchasing strategy flexibly, whereas public procurement is subject to transparency requirements and many regulations to follow. It involves public money spent by the agent/ trustee for procuring goods and services for the use of public, implying that the expenditure has to be prudent and quality of goods and services has to be ensured in a cost effective manner. Thus, efficiency and cost saving are necessary ingredients of the whole procurement process.



*Mr. Ashok Chawla, Chairperson, CCI delivering Keynote address at Workshop on "Public Procurement & Competition Law" organized jointly by CCI and the World Bank on 9th March, 2015 at New Delhi*

Public procurement constitutes a major component of Gross Domestic Product in many countries in the world more so in India being a developing country. An effective procurement practice aims to meet multiple regulatory, commercial and socio-economic objectives, viz. achieving value for money through transparent and fair procurement process, promoting innovation, ensuring equality of opportunity for all businesses, particularly small and medium enterprises of India, ensuring quality, effective service delivery and diversifying supplier base. While transparency in public procurement can increase society's capacity to hold governments accountable, on the other hand, it also provides data for everyone which could be used by the prospective bidders to monitor

each other's price strategy closely making it more prone to cartel and collusion. Hence, due care is to be taken in procurement that the transparency requirement may not encourage such collusion and cartel among the group of sellers selling the product or services to the public agencies. Introduction of competitive practices will not only prevent collusion but also help Government to fight corruption by ensuring integrity. International experience suggests that substantial savings can be achieved by infusing greater competition in public procurement and investment in social sector development of the country.

### Legal and Procedural Framework in India

In India, legal and organisational

framework for public procurement operates through Article 53 of the Constitution and The Government of India (Allocation of Business) Rules, 1962 and The Transaction of Business Rules, 1961. The financial powers of Government are vested in Ministry of Finance which are delegated to subordinate authorities under The General Financial Rules (GFRs) and Delegation of Financial Powers Rules (DFPR). To bring more efficiency and transparency in the Public Procurement, the Government of India has recently proposed a Public Procurement Bill, 2012 which is under the consideration of the Parliament. The object of the Bill is inter alia to: (a) ensure efficiency, economy and transparency; (b) provide fair and equitable treatment to bidders; (c) promote competitiveness; (d) ensure that quality is consistent with the price of the bid; and (e) prevent corruption.

Depending upon the value and nature of goods and services to be procured, an agency could adopt calling for quotations, sealed tenders, direct purchase, limited

tenders, open tenders or allocation on nomination etc. A system of checks and balances is built-in at each level to ensure transparency in the process. The Comptroller and Auditor General of India and Central Vigilance Commission watch from the sidelines of the procurement process to ensure the financial integrity of procurement process.

Competition concerns arising from public procurement can be seen from the perspective of a supplier and also from procurer's side. Procurer's side competition concerns include abuse of dominant position by the public procurement agencies and setting up of standards creating entry barriers to potential suppliers and allowing preferential treatment to public entities, whereas, supplier side competition concerns include bid rigging in various forms causing loss of tax payers money.



Mrs. Smita Jhingran, secretary, CCI delivering vote of thanks at Workshop on "Public Procurement & Competition Law" organized jointly by CCI and the World Bank on 9th March, 2015 at New Delhi

### Role of CCI

The Competition Commission of India (CCI) has the mandate of promoting and sustaining competition in the market and to protect interest of consumers and freedom of trade. The edifice of competition law revolves around anti-competitive agreements, abuse of dominance and combination. Any agreement at the level of suppliers to limit, control, supply or determine the price of goods and service collectively is called cartel. Cartel is the most pernicious form of anti-competitive conduct in as much as it is treated as a criminal offence in certain jurisdictions. The gravity of violation gets amplified when a cartel is formed in bidding process and the same is considered to be the most heinous in case of public procurement as it largely affects the public interests.

The Competition Act, 2002 (the Act) specifically prohibits bid rigging which includes cover bidding, bid separation, bid



Chairperson & Members, CCI at Workshop on "Public Procurement & Competition Law" organized jointly by CCI and the World Bank on 9th March, 2015 at New Delhi



Mr. Onno Ruhl, Country Director of the World Bank and Mr. Ashok Chawla, Chairperson, CCI at Workshop on "Public Procurement & Competition Law" organized jointly by CCI and the World Bank on 9th March, 2015 at New Delhi

rotation and market allocation, etc. Proper design of procurement by procurer could be pro competitive if procurer is conscious of competitive concerns. Bid rigging can be detected if the procurer is sensitive to the signals of bidding process. Some of the indications of bid rigging are: sudden and identical increase in price by bidders that cannot be explained rationally, large difference between the bid winner price and other bids, same supplier wins the bids every time, some suppliers withdraw the bid unexpectedly, repeated sub-contracting by the winners to unsuccessful bidders, etc.

Further, it may not be out of place to mention that, and the provisions of the Act are in addition to not in derogation with any other law in India. In case of any inconsistency found between the Act and any other law in relation to jurisdiction on competition issues then the provisions of the Act shall prevail over the other law in India. The competition concerns in public/private procurement can be addressed by proactive role of the

Commission as an Enforcer and as an Advocate.

### CCI as Enforcer

The Commission has the power to impose onerous penalties to deter enterprises in case of violation of the provisions of the Act. It has received references, information and has also acted suo-moto regarding violation of provision of Sections 3 and 4 of the Act, where fines and penalties have been imposed. Some of the important cases pertaining to public procurement are discussed here.

In the case of DGS&D and M/s. Pooja Enterprises and others, a reference was received from Department of Commerce regarding a contract to supply ankle rubber boot soles to the Military. DGS&D suspected the shoe makers' bids because their offers were similar. The price parallelism was observed in spite of the fact that the manufacturers who were located in different geographical regions, had difference in installed capacity, size of operation, source of material and product range. The

Commission held that the shoe manufacturers have indulged in collusive and restrictive bidding. The Commission ordered cease and desist from anti competitive actions in future and imposed a penalty of Rs.6.25 crores on 11 firms.

Similarly, in the case of Diesel Loco Modernisation work (DLMW) and Escorts Ltd. and others a tender was floated for procurement of feed valves used in diesel locomotives from Research Design and Standards Organisation (RDSO) approved vendors who quoted exactly identical rates in spite of operating in different geographical locations, establishing collusive bidding by sharing of price data.

In LPG cylinder manufacturers, Suo Moto Case, the Commission initiated suo moto proceedings against LPG cylinder manufacturers who were found to be involved in bid rigging in supplying LPG cylinders to M/s Indian Oil Corporation Limited pursuant to a tender floated by it. It was noted by the Commission that the identical price quotations submitted by the opposite parties therein pursuant to the impugned tender were actuated by mutual understanding/arrangements. The Commission apart from issuing a cease and desist order imposed a penalty upon each of the contravening party @ 7% of the average turnover of the company.

A Foundation for Common Cause & People Awareness vs PES Installations Pvt. Ltd. & Ors., the Commission examined inter alia allegations of bid rigging by the bidders in the tender floated by Hospitals Services Consultancy



Delegates at Workshop on "Public Procurement & Competition Law" organized jointly by CCI and the World Bank on 9th March, 2015 at New Delhi

Corporation for supply, installation, testing and commissioning of Modular Operation Theatre and Medical Gases Manifold System to Sports Injury Centre, Safdarjung Hospital, New Delhi. The Commission found commonality of mistakes in the tender forms by the bidders as indicative of collusion amongst them to manipulate the process of bidding. The Commission imposed a penalty upon each of the contravening party @5% of the average turnover of the Company.

### Competition Advocacy

Competition advocacy is a statutory mandate as per Section 49 of the Act and promotion of competition advocacy creating awareness and imparting training about competition issues is one of the key activities to make competition regime successful. It is a process of outreach to influence economic behaviour of the stakeholders and is considered as a vital tool to promote competition culture in the country. The two dimensional role of competition advocacy includes competition

friendly legislations and policies and as proponent for increased public understanding and acceptance of principles of competition.

### Advocacy Event

Recently CCI organised a full day workshop in collaboration with the World Bank for various stakeholders particularly those involved in decision making process in State Governments and Public Sector Undertakings on the theme of "Public Procurement & Competition Law" on 9th March, 2015 in New Delhi. The main thrust of the event was to deliberate on various means and tools to detect bid rigging and to sensitise the public procurement officials about design and development of competitively neutral bidding process. It was inaugurated by Mr. Onno Ruhl, Country Director of the World Bank who supported the efforts of Government of India in bringing better competition in public procurement and legislating public procurement law and an institutional structure to implement

it. In his keynote address Mr. Ashok Chawla, Chairperson CCI appreciated the partnership between the CCI and the World Bank and overwhelming presence of various stakeholders. He stated that the proposed procurement law will complement competition law by providing guidance to purchasers on procedures to be followed and penalties for non compliance. The workshop emphasised the need to address competition concerns in public procurement to get value for money.

Historical development, preamble and various provisions relating to anti competitive practices and abuse of dominant position were discussed in this workshop. The menace of bid rigging in procurement process and the mechanism provided under the Act to tackle the bid rigging was discussed in detail. The World Bank presented its initiative on prevention of fraud and corruption, facilitating competition in World Bank financed projects. The role of competition agencies for reducing the collusion in public procurement, strict enforcement of competition laws and education of public procurement agencies at all levels of Government to help them design efficient processes and detect collusion at the earliest was discussed. The enforcement action of the Commission was elucidated through various case laws on bid rigging decided by the Commission. Essentials of good competitive bidding and collusive biddings, stages of competition, risks in procurement and ways and means to inculcate the competition culture in public



*Delegates at Workshop on "Public Procurement & Competition Law" organized jointly by CCI and the World Bank on 9th March, 2015 at New Delhi*

procurement were presented. Impact of E-procurement in the states of Odisha, Jharkhand and Karnataka on competitiveness of public procurement was discussed as a part of designing of procurement process.

It was re-affirmed that the public procurement being a specialised domain requires specific skills for design and implementation of efficient and competitive procurement process, suitable sensitization and training of procuring authorities. Thus,

ensuring competition requires advocacy embedding competition principles among all stakeholders in the market and effective enforcement of competition law against cartel, bid rigging and other anti competitive activities.

### **Procurement is an Art or a Science?**

The fact of the matter is that successful procurement is a dream of every entity and every nation as large sums of money is spent on this endeavour. The risk of failure is

great and, therefore, reviewing specifications, preparing and analyzing bid packages, negotiating contracts, handling purchase orders etc. requires in-depth understanding and specialisation of the process. Thus it is often termed as "science". It also demands a broad skill set, innovative mind and vigilant attention in detail and in view that the procurement squarely falls in the category of "art" as this is acquired mostly through experience and hard work. It is the knowledge and observation of every step of the process to get the best value on the right equipment and avoid costly mistakes, making healthy relationships with suppliers. Therefore, procurement is a science as well as an art. It is a specialised activity involving large volume of documents, complicated tender specifications and technical skills. Several manuals and guidelines have evolved world over to ensure an integrated and efficient procurement.

### **Conclusion**

There is a serious need for designing and implementing public procurement and managing all its processes in such a manner that while it is transparent, fair and conforms to the competition law, the procurer must get value for money. On one hand the step wise

approach of procurement process makes it akin to science whereas becoming unpredictable in an open and participative environment is an art of the procurement agencies.

The approach of the Commission in relation to procurement is twofold. First one is to be an

advocate of competition in the public procurement and, second is to penalise the violators of law by civil sanctions as per the Act. Fair, transparent and competitive bidding process will certainly help the procurers to get the best value for money.



## SECTION 3 & 4 ORDERS

### The Commission Imposed Penalty on All India Motor Transport Congress for its Anti-competitive Activities

In Case No. 61 of 2012, the Competition Commission of India imposed a penalty of Rs. 14.24 Lakhs (@10% of the average of the turnover for the last 3 financial years) on All India Motor Transport Congress (AIMTC) for contravening the provisions of section 3 of the Competition Act, 2002. The final order was passed by CCI on 16.02.2015 on an information filed by Indian Foundation of Transport Research and Training (IFTRT) alleging that AIMTC uniformly increased the truck freight by 15% across the country on account of diesel price hike of Rs. 5/- per litre

w.e.f. 14.09.2012. The Commission found the impugned acts/conduct of AIMTC to be in contravention of the provisions of section 3(3) (a) read with section 3(1) of the Act. The Commission directed AIMTC to cease and desist from indulging in the act/ conduct which have been found to be in contravention of the provisions of the Act and directed it to refrain from issuing any announcements/ directions/ circulars etc. to its members which may contravene the provisions of the Act. The Commission found that AIMTC through its press releases/ media briefings/ telephone

calls was instrumental in persuading its member associations to fix freight rates. Such collusive and concerted practices distorted the market dynamics and led the truckers to increase the prices through the decisions of associations instead of pricing the services through the market forces of demand and supply. The Commission held that any unfair and anti-competitive increase in price of freight rates has a cascading and inflationary impact upon the goods and services consumed by common man.

### Himachal Pradesh Society of Chemists and Druggists Alliance & Others have been Penalised for their Anti-Competitive Conduct

In Case No. 78/2012, the Competition Commission of India has found Himachal Pradesh Society of Chemists and Druggists Alliance (HPSCDA) to be in contravention of the provisions of the Competition Act, 2002. M/s Rohit Medical Stores approached the Commission alleging that various pharmaceutical companies, under the aegis of HPSCDA, are engaged in anti-competitive practices of imposing the condition of obtaining 'No Objection Certificate' (NOC) prior to the appointment of stockists in the state of Himachal Pradesh. The Commission, prima facie, found merit in the allegations and directed the Director General (DG) to carry out investigation in the matter. Subsequent to detailed

investigation, the Commission found that HPSCDA was indulging in anti-competitive practice of mandatory requirement of NOC prior to the appointment of stockists. Further, the Product Information Services (PIS) charge, that required to be made to HPSCDA before every launch of a new product by the pharmaceutical companies under the garb of dissemination of product information, was also found by the Commission to be anti-competitive. The Commission thus held that HPSCDA contravened the provisions of section 3(3)(b) read with section 3(1) of the Act for limiting and controlling the supplies or provision of services. The Commission also held that Mr. Sanjeev Pandit, the President of HPSCDA, responsible

under section 48 of the Act. Accordingly, the Commission directed the HPSCDA to cease and desist from indulging in the practices which are found to be anti-competitive in terms of the provisions of section 3 of the Act. Keeping into consideration the facts of the case, the Commission imposed a penalty of Rs. 2, 65, 423/- (Rupees two lakh sixty five thousand four hundred and twenty three only) at the rate of 10% of the average receipts of HPSCDA for three financial years. Further, a penalty of Rs. 28,276/- (Rupees twenty eight thousand two hundred and seventy six only) at the rate of 8% of the average income of Mr. Sanjeev Pandit for three financial years was also imposed.

## SECTION 5 & 6 ORDERS

### Notice filed by FMC Corporation for Acquisition of Shares of Cheminova A/S from Auriga Industries A/S (C-2014/09/212)



1. On 30th September 2014, the Competition Commission of India (hereinafter referred to as the "Commission") received a notice filed under sub-section (2) of Section 6 of the Competition Act, 2002 ("Act") filed by FMC Corporation ("FMC" or Acquirer"). The said notice was given pursuant to Share Purchase Agreement executed between FMC and Auriga Industries A/S ("Auriga") on 8th September 2014 ("SPA"). Pursuant to the SPA, FMC will purchase, either directly or through a wholly-owned subsidiary, the entire issued and outstanding share capital of Cheminova A/S ("Cheminova") from Auriga. Cheminova is currently a wholly-owned subsidiary of Auriga and after the proposed

combination it will become a subsidiary of FMC. (Hereinafter FMC, Auriga and Cheminova will be collectively referred to as "Parties".)

2. Both FMC and Cheminova are present in India through their subsidiaries. It was observed that both the parties are engaged in manufacturing and selling of formulations in each of the broader segments of insecticides, herbicides, fungicides and PGRs in India. With regards to technical grade products, it was noted that only Cheminova is actively engaged in the manufacture and sale of technical grade products in India whereas FMC is involved only in selling technical grade products. As far as intermediates are concerned, it was observed that only

Cheminova is engaged in the business of intermediate products in India.

3. The proposed combination was related to the agrochemical products namely insecticides, herbicides, fungicides and PGRs. These products are used in agriculture to enhance crop yield and quality by protecting crops against certain forms of damage which might be caused to crops by pests, i.e., weeds, insects or fungi. The agrochemical products are normally further sub-divided based on the (i) end use due to the distinct types of target organisms/pests and application; (ii) separate classification by the industry; (iii) consumer preferences guided by specific demand for a particular type of agrochemicals product.

4. With regards to formulations of the parties within each of the broad segments of insecticides, herbicides, fungicides and PGRs, it was observed that they have applications based on type of crop and target pest i.e. insect, weed, fungi. The Commission considered the submissions of the parties relating to applications and usage of their formulations. The Commission from the submissions of the parties and information received from a certain government

organization, has observed that some of the formulations of the parties are identical in terms of chemical composition while some others may be considered as substitutes in terms of their applications and usage. Accordingly, the rest of the formulations of the parties may not be considered as substitutable either in terms of chemical composition or applications and usage.

5. Regarding the formulations of the Parties which may be considered as substitutable either from the point of view of chemical composition or in terms of their applications and usage, it was observed that either the incremental market share is insignificant or a

number of other substitutable formulations of competitors are available. In view of the aforesaid, the exact definition of the relevant market was left open. Further, it was also observed that a majority of the formulations of the parties are generic and other players in the market are free to manufacture and sell those formulations. In this regard, it was also observed that the overall market for agrochemicals in India is characterized by the presence of a number of large domestic and multinational players such as Bayer, Syngenta, BASF, Dow Agro Sciences, Monsanto, DuPont, Dhanuka Agritech, Rallis India, etc. Besides the aforesaid bigger players, there

are a number of smaller companies manufacturing agrochemical products.

6. Similarly, with regards to the technical grade products of the parties, it was observed that none of the products of the parties are substitutable in terms of chemical composition. Even in case of formulations which may be regarded as substitutable in terms of application and usage and are derived from technical grade product of the parties, it was observed that a number of other substitutable products of competitors are available.
7. The CCI approved the proposed combination vide its order dated 2nd February 2015 under section 31(1) of the Act.

## Commission Approves the Combination Between



**ZF Friedrichshafen AG**

and



**TRW Automotive Holdings Corp**

**(C-2014/10/215)**

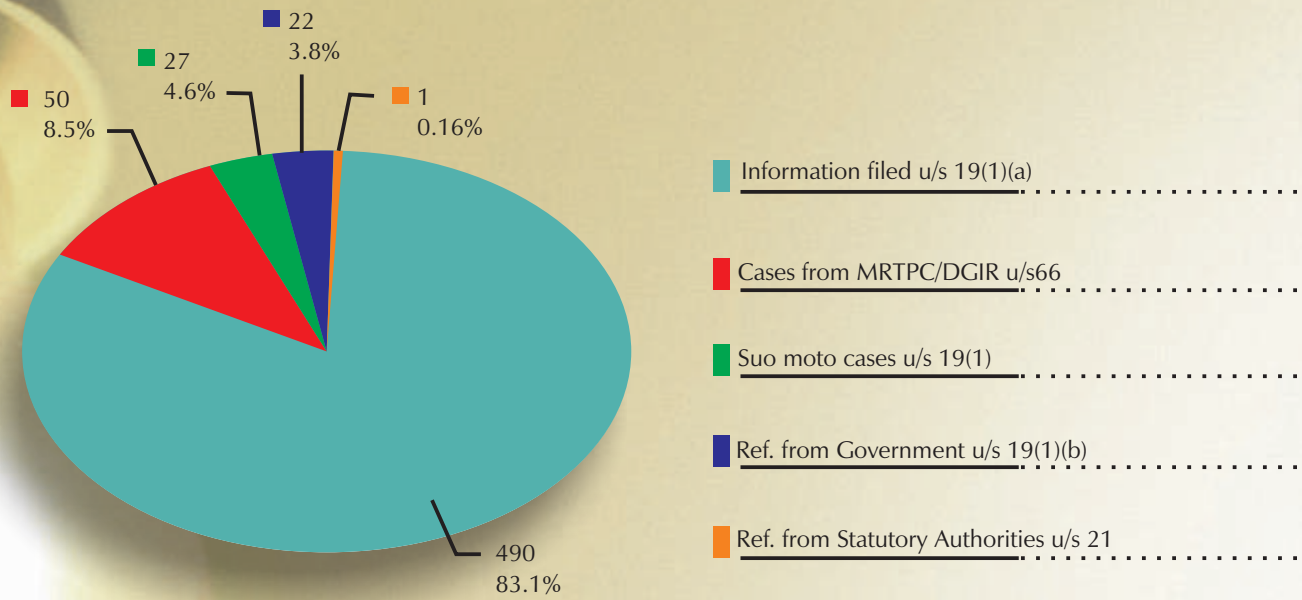
1. ZF Friedrichshafen AG ('ZF' or 'Acquirer') filed a notice for acquisition of TRW Automotive Holdings Corp. ('TRW' or 'Target Enterprise'). (ZF and TRW are collectively referred to as 'Parties').
2. ZF is based in Friedrichshafen, Germany. ZF primarily operates via its wholly owned subsidiaries and joint ventures across various markets and segments of automotive components business, namely, (a) powertrain technology; (b) chassis systems; (c) driveline; (d) electronic systems; (e) steering systems, for car and commercial vehicles.
3. TRW, headquartered in USA, is a manufacturer of automotive components focused mainly on automotive safety technologies. TRW is engaged in the following business segments namely, (a) chassis systems and components; (b) steering systems; (c) safety technologies including advanced driver assistance systems, airbags etc. TRW is present in India through its various subsidiaries and joint ventures.
4. The Commission observed that the automotive clients of the Parties are primarily major international original equipment manufacturers

- (‘OEMs’). Further, the Commission observed that the Parties have no overlap in the powertrain, driveline and safety technologies including electronics segments of automotive component business in India. However, the Parties have horizontally and vertically overlapping businesses in the steering system products, and horizontally overlapping business in the chassis system products, in India. It was also observed that the manufacturing process/plant for a particular segment of automotive components business can be generally used for production of automotive components of a specific vehicle type only. Therefore, the market for automotive components was also delineated on the basis of type of vehicles.
5. In the instant case, the relevant product market was broadly delineated as market for manufacturing of chassis and steering systems for certain types of vehicles, namely, heavy commercial vehicles, medium commercial vehicles, light commercial vehicle, compact & midsize cars and luxury cars, in India.
  6. The Commission observed that the Indian auto industry has, inter alia, generally evolved around three major regions namely, Mumbai – Pune – Nashik – Aurangabad; Chennai – Bangalore – Hosur; and Delhi – Gurgaon – Faridabad region, since the auto components industry in India is largely present in the form of clusters in these regions with OEMs as centres of growth. As both ZF and TRW have a broad presence in each of the aforesaid regions, the relevant geographic market for the purpose of the proposed combination was considered as the whole of India.
  7. In chassis technology segment, though the market share of ZF is between 30 to 35 percent in luxury cars segments, the market share of TRW, in India, is negligible in the said segment of the automotive component business. Also, other players are present in the segment of chassis technology in India.
  8. Further, the market share of ZF in the steering system segments in heavy and medium commercial vehicles and luxury passenger cars segments in India is between 45 to 50 percent, 35 to 40 percent and 5 to 10 percent respectively. The market share of TRW in the said segment of automotive components business is between 30 to 35 percent, 10 to 15 percent and 15 to 20 percent respectively. ZF’s presence in the steering business is primarily through ZF Lenksysteme GmbH (‘ZFLS’), a 50:50 joint venture between ZF and Robert Bosch GmbH (‘Bosch’). ZF also sources its steering system products from other suppliers for resale to the independent after market (‘IAM’) (‘IAM Business’). However, as per the information in the notice and other documents on record, the sales made by ZF under this segment of business are insignificant.
  9. Further, through a separate share purchase and transfer agreement executed, inter alia, between ZF and Bosch, ZF has divested its entire stake in ZFLS to Bosch (‘Bosch Transaction’). The Bosch Transaction received unconditional approval from all the competition authorities wherein the Bosch Transaction was notified and Bosch completed the acquisition of ZF’s 50 percent share in ZFLS on 30th January 2015. In this regard, the Acquirer had also given a commitment under the provisions of sub-regulation (2) of Regulation 19 of the Combination Regulations. With the divestment of ZF’s share in ZFLS, it brought down the horizontal overlap between ZF and TRW in the said segment of the automotive component business, in India.
  10. With respect to the vertical relationship between the Parties, it was observed that there is insignificant vertical relationship between the Parties in the steering system segment in India.
  11. The Commission had also sought certain information, inter alia, from the competitors and the customers of ZF and/or TRW in India under the provisions of sub-regulation (3) of Regulation 19 of the Combination Regulations.
  12. The Commission approved the combination under sub-section (1) of Section 31 of the Act.

# FIGURES SPEAK

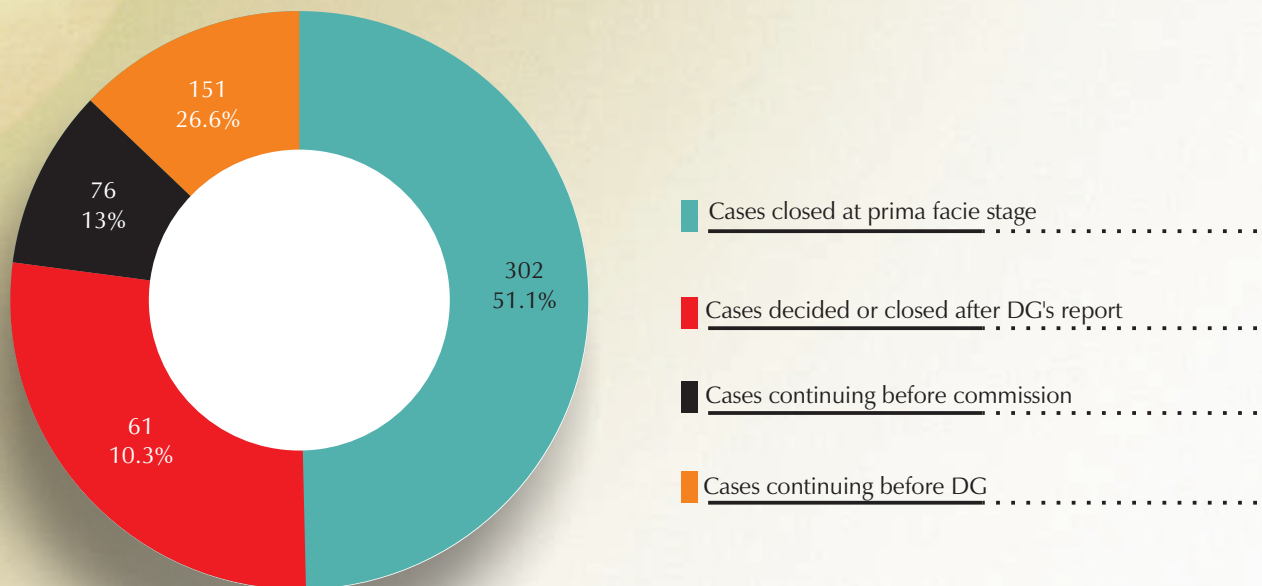
## Matters Undertaken by CCI

(Under section 3 & 4) (as on March 31, 2015) Total Cases: 590



## Case Status

(as on March 31, 2015) Total Cases: 590



# INVESTIGATION INITIATED

## Amit Mittal v. M/s DLF Limited and M/s DLF New Gurgaon Homes Developers Pvt. Ltd.(Case No.73/2014)

In this case the information was filed against M/s DLF Limited, Opposite Party-1 (OP1) and M/s DLF New Gurgaon Homes Developers Pvt. Ltd. Opposite Party-2 (OP2). The Commission ordered Director General, CCI, under Section 26(1) of the Act, to investigate the matter. The informant alleged that OPs, a real estate developer, abused its dominant position in respect of sale of a residential flat in OP2's residential township namely 'Regal Gardens at DLF Garden City', Gurgaon.

It was alleged by the informant that OP2's Apartment Buyer's Agreement was heavily biased in favour of OP2 and highly unfair and discriminatory towards the buyer. This allegedly tantamount to violation of provisions of section 4(2)(a)(i) of the Act.

Commission maintained that in view of similar allegations in various other previous cases against OP1 relating to residential apartment projects and that the market dynamics have not changed much and OP1 still holds a dominant position in the relevant geographic

market of Gurgaon. Moreover the Commission noted the fact that OP1 & OP2 have merged on 30.07.2013. As such, Commission prima-facie formed an opinion that conduct of OPs appears to be in contravention of the provisions section 4(2)(a)(i) of the Act. Accordingly the Commission directed the Director General to cause an investigation.

## Vijay Kapoor v. DLF Universal Limited

In this case, the informant, a flat buyer alleged that Opposite Party (OP) i.e. M/s DLF Universal Limited, real estate developer, arbitrarily forfeited Rs.15,97,219.73 abusing its dominant position in contravention of provisions of section 4 of the Act.

It has been alleged that informant was approached through an agent of OP for sale of residential apartments in the project of OP namely 'The Skycourt' at Sector 86

DLF Gardencity, Gurgaon. Accordingly, an agreement therefor was signed with OP. The clauses of said agreement alleged to be were unfair, discriminatory and one-sided in favour of OP.

The Commission, inter-alia, noted that it has already received many informations where OP has been prima-facie found to be dominant in relevant market for 'provision of services for development of residential apartments in the territory of Gurgaon'. The

Commission observed that market dynamics have not changed much ever since the previous information were received in the Commission. Commission also maintained that terms of the 'Agreement' signed between the OP and informant appear to be one sided and depicts how OP abused its dominant position to be in contravention of Section 4(2)(a)(i) of the Act.

## XYZ v. REC Power Distribution Company Limited

XYZ (informant) alleged that M/s REC Power Distribution Company Limited (Opposite Party or OP) has been resorting to abuse of dominant position by virtue of being a wholly owned subsidiary of Rural Electrification Corporation Ltd. (REC), a 'Navratna' CPSE.

OP, inter-alia, is engaged in distribution & maintenance of 66 KV and below voltage class systems and managing decentralized Distribution Generation and associated distribution system. REC, inter-alia, is the nodal agency for implementation of Rajeev Gandhi Grameen Vidyutikaran Yojna (RGGVY) scheme.

Informant alleged that (i) OP secure business orders from various

state distribution utilities on the verbal promise that it will be able to get the approval from REC as the head of RGGVY is its CEO; (ii) REC's regional offices are forced to act as marketing agents of OP and in some cases these offices prepare Detailed Project Reports for OP; (iii) Despite several CPSEs and private companies being operating in market to prepare DPRs, selection of OP only is nothing but elimination of fair competition in market; (iv) wherever tenders were floated OP failed to get the similar work, its rate being very high. However in states where work awarded on nomination basis, OP got the work in violation of CVC guidelines.

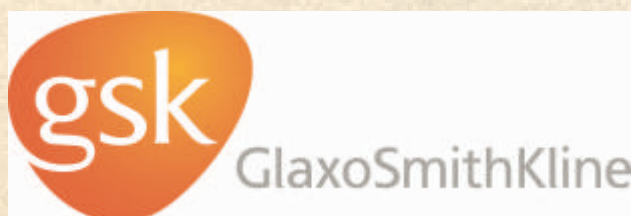
Commission in view of the facts of the case determined relevant market as (1) market for financing of rural electrification scheme in India' and (2) the 'market for providing consultancy services in power projects in India'.

Commission maintained that it has reasons to form prima-facie opinion that REC being the exclusive nodal agency for implementation of RGGVY, is dominant in the first relevant market and OP group has tried to use its position in the first relevant market to distort/manipulate competition in the second relevant market i.e. 'market for providing consultancy services in power projects'. It thus observed that this conduct of OP group appears to be violative of section 4(2) (e) of the Act as the same prima-facie amounts to leveraging the dominant position in one relevant market to protect another market.

On the basis of foregoing, the Commission formed a prima-facie opinion that conduct of REC and OP appears to be anti-competitive in terms of provisions of section 4(2) and section 4(2)(e) of the Act and thus ordered for investigation by the Director General under section 26(1) of the Act.

# DEVELOPMENTS IN OTHER JURISDICTIONS

## European Commission approves three-part merger deal between GSK and Novartis



EU allowed the acquisition of Novartis' vaccines business by GlaxoSmithKline's (GSK) (except the influenza vaccines) and a joint venture with effective control with GSK, between GSK and Novartis in relation to the consumer health activities. GSK is a British healthcare company, active in three main areas, namely pharmaceuticals, vaccines and consumer healthcare. It develops, distributes and markets medical products including respiratory, oncology, vaccines, HIV, and consumer health medicines globally. Novartis is a Swiss healthcare company, active worldwide in development, distribution and marketing of medical products. Its main areas of activity cover pharmaceuticals, eye care, generics, consumer's health products and vaccines.

Since GSK and Novartis were the only suppliers of vaccines for bacterial meningitis in the European Economic Area (EEA) the transaction was supposed to lead to a monopoly. The concerns of the Commission were that the transaction may eliminate an important competitor to GSK for supply of several vaccines and consumer health products, which

might lead to price increase for European consumers. Thus, decision is subject to conditions of divestiture of assets in the vaccines and consumer health business by GSK.

The Commission identified competition concerns for the supply of smoking cessation aids (such as patches), cold sore management products, cold and flu products as well as pain management products. The new entity was supposed to combine key branded products which might lead to price increase for consumers. The Commission concluded that the proposed transaction, as modified by the commitments, will not raise competition concerns. The decision was conditional upon full compliance with these commitments by the parties. The Commission maintained close cooperation with other competition authorities notably the US, Canada, Brazil and Australia while dealing with the matter.

It also approved the acquisition of GSK's oncology business (drugs dealing with cancer treatment) by Novartis. In separately notified transaction, the EU found that the proposed acquisition of the

oncology business of GSK by Novartis to be in line with the EU Merger Regulations need to divest two of Novartis' cancer treatments: LGX818, (a B-Raf inhibitor), and MEK162, (a MEK inhibitor). In order to prevent negative impact on competition and to protect innovation, Novartis committed to return its rights over MEK162 to its owner and licensor Array Bio-Pharma Inc. ("Array") and to divest LGX818 to Array. These post-closing commitments were conditional upon the Commission's approval of a binding partnership agreement between Array and a suitable healthcare company. The modification ensured the worldwide development of LGX818 and MEK162 as well as the commercialization of these inhibitors in the EEA.



## France fines yogurt cartels €192 million for price fixing



The French Competition Authority (the FCA) fined ten companies a total of €192.7 million for cartel behaviour in the sector for fresh dairy products sold under retailers' brands during the period 2006 to 2013. The FCA was informed of the cartel behaviour by Yoplait, in its leniency application. Yoplait received full immunity from fines. Senagral was the second leniency applicant and its penalty was reduced by 35%.

The companies, and in particular the four market leaders which "organized" the cartel, Yoplait, Novandie, Lactalis and Senagral, held meetings and had numerous telephone conversations aimed at

price-fixing and price-increasing, as well as at allocating volumes, notably in bidding processes run by major retailers.

When assessing the level of the fines, the FCA particularly took into consideration the following elements:

- The wide scope of the cartel: it concerned the whole of France and the companies involved represented 90% of the relevant market.
- The secret and sophisticated nature of the practices.
- The fact that fresh dairy products are considered as everyday consumer products.

Only one company, Laiterie de Saint-Malo, contested the objections notified by the FCA and it was only fined €300,000. Other factors were taken into account to either reduce or increase the fines on the companies, including the position of the relevant company on the market, whether it belongs to a larger group, whether it has any financial difficulties and whether it contested the facts.

Source:

<http://www.kwm.com/en/es/knowledge/insights/french-competition-authority-fines-fresh-dairy-products-manufacturers-for-cartel-behaviour-20150326>

# ADVOCACY INITIATIVES

## Advocacy Initiatives with PSUs

- + A full day workshop on 'Public Procurement & Competition Law' was organized on 09th March, 2015 with the support of the World Bank Group and was attended by senior officers of Central Government, State Governments & CPSUs.
- + Mr. Sukesh Mishra, Director(Law) conducted a workshop on competition law to vigilance executives and other functionaries of Power Grid Corporation of India Ltd. on 24th March, 2015 at Gurgaon.

## Advocacy Initiatives with Judicial Academies

- + Chairperson participated in the National Conference for Newly elevated High Court Justices organised by national Judicial Academy, Bhopal from 24th to 25th January, 2015.
- + Mr. Sukesh Mishra, Director(Law) gave a presentation on competition law to Judges in Andhra Pradesh Judicial Academy, Hyderabad on 11th March, 2015 and participated in the interactive discussion.
- + Dr. Satya Prakash, Adviser(Law) gave a presentation on competition law to Judges in Sikkim Judicial Academy, Hyderabad on 21st March, 2015 and participated in the interactive discussion.

## Advocacy Initiatives with Trade Associations

- + Chairperson delivered 95th ASSOCHAM Foundation Day Lecture on 'Economy, State and Society in a Changing India' on 19th January, 2015
- + Mr. Rakesh Kumar, Director(Eco) took a session on 'Competition Issues in Procurement- Suggestions for Bidders' to industry members in a workshop organized by Federation of Indian Export Organizations(FIEO) on 10th March, 2015 at New Delhi.
- + Dr. Bidhyadhar Majhi, Director(Eco) had conducted a session on competition law organised by Bombay Chamber of Commerce & Industry at Mumbai on 11th March, 2015.

## Advocacy Initiatives with State Government

- ★ Mr. S.L. Bunker, Member, CCI, Mr. R.N. Sahay, Adviser(Eco) and Mr. Sukesh Mishra, Director(Law) had an interactive meeting with senior officials of Government of Tamil Nadu on 12th January, 2015

## Advocacy Initiatives with Universities/Institutes

- ★ Chairperson addressed the students of IIM, Lucknow, NOIDA Campus and made a Presentation on Overview of Competition Law on 6th February, 2015
- ★ Chairperson addressed the Inaugural Session of Consumer Unity & Trust Society (CUTS) – ITEC Special Course on Competition Policy and Law at NLU, Dwaraka, Delhi, on 16th February, 2015
- ★ Mr. S. L. Bunker, Member and Mr. R.N. Sahay, Advisor (Eco) visited Indian Institute of Management, Indore on 27.2.15 for holding a lecture with Presentation on "Overview of Competition Law"
- ★ Mr. Sukesh Mishra, Director (Law) delivered a lecture on Competition Law at Hidayatullah National Law University, Raipur, on 13.2.15
- ★ Mr. Sukesh Mishra, Director (Law) visited Varanasi between 27th and 28th Feb, to conduct a workshop on Competition Law for the Faculty Members and students at the campus of Faculty of Law, Banaras Hindu University, in the Centenary year of the University
- ★ Mr. P. K. Singh, Adviser (Law) made a Presentation on Introduction of Competition Law with a focus on Anticompetitive Agreement in the event organised by Damodaram Sanjivayya National Law University, Visakhapatnam on 28.2.15
- ★ Dr. K. D. Singh, Dy. Director (Law) participated in the National Seminar at CUSAT, Cochin on 28th February, 2015 and delivered a Key Note Address on Protection of Consumer Welfare in India: The Role of Competition Law and Consumer Law
- ★ Mr. Sukesh Mishra, Director (Law) delivered a lecture on Competition Law at National Law University, Odisha, Cuttack on 24.1.15
- ★ Mr. P.K. Singh, Adviser(law) participated in an event organised by National University of Juridical Sciences, Kolkata on 31.1.15.

# ENGAGING WITH THE WORLD



*Meeting of CCI Officials with Officials of Competition Bureau, Canada from 28th March -1st April, 2015, New Delhi as a part of Capacity Building Measure*

1. A visit to CCI for experience sharing related to Anti Competitive Agreements and Abuse of Dominance as part short term training course on Competition Policy and Law for junior/middle level officers of Competition Authorities of African countries by CUTS Institute for Regulation & Competition (CIRC) was organized on 26th February 2015.
2. Mr. Ashok Chawla, Chairperson, CCI attended International Conference on Law and Economics by GNLU Gandhinagar Gujarat on 15th March 2015 in Gandhinagar, Gujarat.
3. Mr. U.C. Nahata, Member ,CCI participated as a judge for the final round of 6th Antitrust Law Moot Court Competition hosted by National Law University, Jodhpur on 22nd March 2015 in Jodhpur, Rajasthan.
4. Mr. Ashok Chawla, Chairperson, CCI participated in 17th International conference on competition during 25th -27th March 2015 in Berlin, Germany.
5. In pursuance of MoU signed between CCI & Competition Bureau, Canada, Canadian Officials visited CCI for developing roadmap for future cooperation in consultation with Capacity Building Division during 28th March – 1st April 2015. Workshop on merger issues was also organized during this period.

## CCI Officials Participated in various Workshops/Seminars/ Meetings, some of which are:

- a) 7th Meeting of the Regional Comprehensive Economic Partnership (RCEP) & Trade Negotiating Committee during 9th -13th February 2015 in Bangkok, Thailand.
- b) Roundtable -Pharmaceutical Market: Creation of Fair Play Rules on the Pharmaceutical Markets of the BRICS Countries by FAS during 12th -13th March 2015 in Moscow, Russia.
- c) International Conference on Intellectual Property and Competition in the Pharmaceutical Industry by WIPO and Italian Competition Authority during 19th -20th March 2015 in Rome, Italy.
- d) Workshop on Practical Aspects of Effective Merger Control during 24th -26th March 2015 in Jeju Island, Korea.

# EVENTS

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**Offsite workshop on Team Building & Leadership 2015 was organized for the professional officers of CCI during 20th -22nd February 2015.**

**Workshop on H.R Practices and Conduct Rules was organized on 2nd March 2015 for the officers of CCI.**



**Offsite workshop on Team Building & Leadership 2015 was organized for the non-professional officers of CCI during 13th- 15th March 2015**

# KNOW YOUR COMPETITION ACT

## How to File Information

### INFORMANT

Under the provisions of Competition Act, 2002 (the Act) an information can be filed by an informant who could be –

- ▶ Any person including an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person; or
- ▶ A Consumer or their Association; or
- ▶ Trade Association

Central Government or a State Government or a statutory authority can also make a reference to the Commission for making an inquiry.

### ISSUES FOR INFORMATION

The information can be filed on the issues like

- ▶ Anti-competitive agreements;
- ▶ Abuse of dominant position; or
- ▶ Combinations,

which may cause or likely to cause an adverse effect on competition in markets in India.

### Anti-competitive agreements:

(A) Any agreement in respect of production, supply distribution, storage, acquisition or control of goods or provision of services, entered into by enterprise or associations of enterprises or person or association of persons, which causes or is likely to cause an appreciable adverse effect on competition within India [Section 3(1) of the Act]. All such agreements shall be void [Section 3(2) of the Act]

(B) Any agreement entered into, between enterprises or associations

of enterprises or persons or associations of persons or between any person and enterprises or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which-

- ▶ directly or indirectly purchase or sale price;
- ▶ limits or controls production, supply, markets, technical development, investment or provision of services;
- ▶ shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
- ▶ directly or indirectly results in bid rigging or collusive bidding shall be presumed to have an appreciable adverse effect on competition. [Section 3(3) of the Act]

(C) Any agreement amongst enterprises persons at different stages or levels of the production chain in different markets in respect of production, supply, distribution, storage, sale or price or trade in goods or provision of services including-

- (a) tie-in arrangement,
  - (b) exclusive supply agreement,
  - (c) exclusive distribution agreement,
  - (d) refusal to deal,
  - (e) resale price maintenance,
- shall be an agreement in contravention of section 3(1) if

such agreement causes or is likely to cause an appreciable adverse effect on competition in India [Section 3(4) of the Act].

### Abuse of Dominant Position?

There shall be an abuse of dominant position, if any enterprise or a group:-

- ▶ directly or indirectly, impose unfair or discriminatory-
  - (i) condition in purchase or sale of goods or services; or
  - (ii) price in purchase or sale (including predatory price) of goods or service,
- ▶ limits or restricts –
  - (i) production of goods or provision of services or market there for; or
  - (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
- ▶ indulges in practice or practices resulting in denial of market access in any manner, or
- ▶ makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- ▶ uses its dominant position in one relevant market to enter into, or protect other relevant market. [Section 4(2) of the Act]

### WHO TO ADDRESS THE INFORMATION

The Information/reference/response should be addressed to the Secretary, CCI in person or by registered post or courier or

facsimile transmission addressed to the Secretary or to the authorized officer. The information should invariably indicate complete postal address with PIN code, telephone & FAX number(s), email, preferred mode by which informant would like to get response from CCI, legal names & addresses of enterprise(s) allegedly contravened the provisions of the Act and names of their counsel/authorizes representative(s), if any.

- ▶ However, any separate or additional document(s) the

informant want to rely upon in support of the information, or reference should be filed in the form of a "Paper Book", at least seven days prior to the date of the ordinary meeting, after serving the copies of the said document(s) on the other parties to the proceedings, with documentary proof of such service. Such documents need to be serially numbered, prefaced by an index and should be supported by a verification.

- ▶ All information(s) or reference or

references or responses or other documents which are required to be filed before the Commission should be typed in Arial 12 fonts on one side of A4 size (210 x 297mm or 8.27"x11.69") white bond paper in double space with 2" margin on the left and 1' margin on all other sides

- Only neat and legible photocopies or scanned documents duly certified as true copies may be file as exhibits or annexes.



### WHO CAN FILE INFORMATION?

#### Any peson, consumer or trade association

Person includes an individual, HUF, firm, company, local authority, cooperative or any artificial juridical person

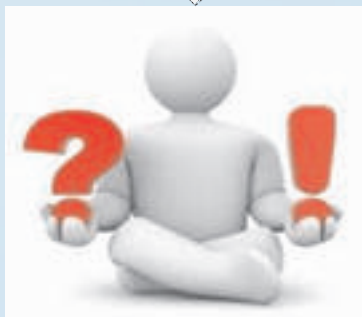
Central and State Government can send the reference to CCI as per the procedure given under CCI (General) Regulation



### ISSUES ON WHICH INFORMATION CAN BE FILED

Alleged violation of Section 3(3) or/and Section 3(4) of the Competition Act [Anti-Competitive Agreements]

Alleged violation of Section 4(2) of the Competition Act [Abuse of Dominance]



### HOW TO CONTACT AND FEES REQUIRED

Information/Reference/Responses to the Commission to be sent to the Secretary, CCI,

- In person or
- By Registered Post or
- Courier Service or
- through Facsimile transmission

- Rupees 5000/- (Five thousand only) in case of individual, or Hindu undivided family (HUF), or Non Government Organisation (NGO), or Consumer Association, or Co-operative Society, or Trust, duly registered under the respective Acts,
- Rupees 20,000/- (twenty thousand only) in case of firms, companies having turnover in the preceding year upto Rupees one crores, and
- Rupees 50,000/- (fifty thousand only) in case not covered under clause (a) or (b) above.





### WHAT SHOULD INFORMATION CONTAIN

- The information should be in the form of statement of facts detailing alleged contraventions of the Act.
- Complete list of documents, affidavits, evidence in support of information filed.
- A brief write-up to facilitate expeditious examination of case by the Commission.
- Relief or interm-relief intended to be sought.
- All appendices and attachments should be complete and duly verified by the informant.



Indicate your complete postal address with PIN code, telephone & fax number and email address. Mention legal name and address(es) of the enterprise(s) alleged to have contravened the provisions of the Act.



The information should be duly signed by the authorised person in the form of statement of facts and should contain details of the alleged contraventions of the Act. It should be accompanied by supporting documents, affidavits and evidence.



Any information or reference or responses to the Commission should be sent to the Secretary, in person or by registered post or courier service or facsimile transmission addressed to the Secretary or to the authorized officer.



The information you file with the Commission should be accompanied by proof of having paid the fee by tendering demand draft or pay order or banker's cheque, payable in favour of Competition Commission of India (Competition Fund), New Delhi or through Electronic Clearance Service (ECS) by direct remittance to the Competition Commission of India (Competition Fund), Account No. 1988002100187687 with "Punjab National Bank, Bhikaji Cama Place, New Delhi-110066.

### Competition Commission of India

The Hindustan Times House  
18-20, Kasturba Gandhi Marg  
New Delhi- 110001

Please visit [www.cci.gov.in](http://www.cci.gov.in) for more information about the Commission.

For any query/comment/suggestion, please write to [cci-sukesh@nic.in](mailto:cci-sukesh@nic.in) | [advocacy@cci.gov.in](mailto:advocacy@cci.gov.in)

**Disclaimer:** The contents of this publication do not necessarily reflect the official position of the Competition Commission of India. Contents of this newsletter are only informative in nature and not meant to substitute for professional advice. Information and views in the newsletter are fact based and incorporate necessary editing.