

LEGAL UPDATES

CCI: SPARES 'MSME' LDPE-SUPPLIERS PENALTY FOR CARTELIZATION IN FCI-TENDERS, DIRECTS 'CEASE AND DESIST'

In a bid-rigging case filed on behalf of the Food Corporation of India (FCI) in the Competition Commission of India (CCI), the issue was against the OPs for infringement of Sec. 3(3)(d) of the Competition Act, 2002. OPs were involved in the determination of prices, bidding process manipulation, allocation of markets, and co-ordinating in bid response, for the delivery of Low-Density Poly Ethylene (LDPE) to FCI. The case came before the Coram consisting of Chairperson Mr. Ashok Kumar Gupta and Members Mr. Bhagwant Singh Bishnoi and Ms. Sangeeta Verma. FCI contended that the OPs were manufacturers and suppliers of LDPE. In 2005 the parties agreed to split the amounts of LDPE across various tenders. The OPs formed the WhatsApp group "Super Six" with the intention of carrying out the cartel agreement. The Director General of CCI during the investigation found this WhatsApp group was actively involved in bid rigging of the tenders floated by the FCI as well as other government agencies, LDPE price fixing, controlling the supply of LDPE by restraining and limiting, tender quantity sharing, etc. After considering the retrieved WhatsApp and email chats, the OPs' directors, employees, and officers confessed to bid rigging and their involvement in other anti-competitive activities. On the basis of their confession CCI opined that the OPs have breached the provisions of Sec. 3(3)(d) of the Competition Act, 2002 as the exchange of communication between them is direct evidence in support of this. CCI also observed that the identified individuals failed to prove that the contravention occurred without their knowledge of the anti-competitive acts happening, making them liable under Sec. 48 of the Competition Act, 2002. CCI further observed that in India, the MSME sector is already under pressure due to the COVID-19 pandemic which impacted the economic situation for small/ medium enterprises like OPs. Keeping this in mind, the CCI avoided imposing any monetary penalty on the OPs but cautioned OPs not to be too involved in any anti-competitive activities in the future. The CCI stressed that their conduct should strictly remain within the provisions of the Competition Act. The Competition Commission of India issued cease and desist order against OPs.

