CASE STUDY 02 AUGUST 2013

Director General (Supplies & Disposals), Department of Commerce, Ministry of Commerce & Industry, Government of India, New Delhi v. M/s Puja Enterprises and Others*

Forum:

Competition Commission of India (CCI), New Delhi

Act/ Sections referred:

The Competition Act, 2002

Section 3 of the Competition Act, 2002 – Prohibition of anti-competitive agreements

Agreements / decisions [Horizontal agreements] including "Cartel" engaged in identical or similar trade of goods / services are presumed to have Appreciable adverse effect (AAE) on competition.

- 3(3) (b)- limits or controls production, supply, markets, technical development, investment or provision of services;
- 3(3)(c) 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;
- 3(3)(d) – Directly or indirectly results in bid rigging or collusive tendering

Parties to the Case

1. Informant- Director General (Supplies & Disposals), Department of Commerce, Ministry of Commerce & Industry, Government of India, New Delhi
2. Opposite Party (OP)- M/s Puja Enterprises and Others
3. Investigator- Director General (DG), Competition Commission of India (CCI)

Facts of the case:

This case was initiated on a reference made by Director General-Supplies & Disposal (DGS&D), Department of Commerce, Ministry of Commerce & industry, Govt. of India, New Delhi. In 2011, the Ministry of Commerce, which is responsible for state procurement, put out to tender a contract to supply ankle boot rubber soles to the military. The shoe-makers submitted bids for the contract worth Rs. 10.45 crores rupees (€1.3 million) but suspicions were raised because their offers were similar.

It was found that the difference in quoted prices of different bidders was in a very narrow range and all the tenderers barring one, had restricted the quantity to be supplied by it during the Rate Contract[1] period.

The Directorate General of Supplies and Disposals, directly responsible for procuring the contract, passed on its concerns to the CCI. The reference alleged pre-determined, collusive and restrictive bidding pattern or cartel formation by the bidders thereby violating the various provisions of the Act.

Issues Involved:

(i) Whether conditions prevailing specifically with respect to the industry, the product in question, its market *etc.* were conducive for collusive action by the parties?

(ii) Whether the identical/ near identical prices quoted by the parties against the Tender Enquiry of DGS&D dated 14.06.2011 were a result of collusion amongst them and whether there are any direct or indirect evidences in support of an agreement, formal or informal between them for bid rigging in violation of the provisions of section 3(1) read with section 3(3) of the Act as alleged?

(iii) Whether, the restriction of total quantity to be supplied during the RC period and

[1] Hereinafter referred to as RC.

* Ref. Case No. 01 of 2012. Date of order: 06.08.2013, available at http://www.cci.gov.in/May2011/OrderOfCommission/012012.pdf, as accessed on August 21, 2013.

the restriction of maximum quantity to be supplied per Direct Demanding Officer (DDO) was a result of collusion amongst the parties and whether there are any direct or indirect evidences of collusive agreement amongst the manufacturers in violation of the provisions of section 3(1) read with section 3(3) of the Act as alleged?

(iv) Whether there is any violation of the Act under section 3(4) as alleged by the informant.

CCI Decision

After a detailed investigation, Competition Commission of India held that the bidder-suppliers by quoting identical/ near identical rates had, indirectly determined prices/ rates in the Rate Contracts finalized by DG S&D and indulged in bid rigging/ collusive bidding in contravention of the provisions of section 3(1) read with section 3(3)(a) and 3(3)(d) of the Act.

Further, the Commission noted that the parties had also controlled/ limited the supply of the product in question and shared the market of the product amongst themselves under an agreement/ arrangement in contravention of the provisions of section 3(1) read with sections 3 (3) (b), 3 (3) (c) and 3 (3) (d) of the Act.

The Commission was of the view that the opposite party bidders by quoting identical / near identical rates had indirectly determined prices/rates in the rates contract finalised by the DG S&G and indulged in bid rigging/ collusive bidding in contravening provisions. Further, the opposite parties by imposing quantity restrictions for the RC period limited the supply of the product and the market share. They also shared the market of the product among themselves under an agreement/arrangement.

The Competition Commission of India penalised 11 shoe manufacturers for indulging in collusive and restrictive bidding. Imposing a penalty of Rs 6.18 crore on the 11 firms, CCI asked the companies to 'cease and desist' from anti-competitive practices in future.

The companies penalised include A R Polymers, Puja Enterprises, M B Rubber, Tirupati Footwear, H B Rubber, Rajkumar Dyeing and Printing Works, Preet Footwears, S S Rubbers, R S industries, Shiva Rubber Industries and Derpa Industrial Polymers.

Analysis of the Order

Typically there are four types of cartel conduct viz. price fixing, market sharing, output restricting and bid rigging. Bid rigging takes place when the bidders collude to keep the bid amount at a pre-determined level, which is by way of intentional manipulation by the members of the bidding group. Collusive bidding or bid rigging defeats the very purpose of inviting tenders and is anti-competitive in nature. The present order will definitely act as a deterrent to industries that usually engage in such practices when the bidding takes place in government tenders. The present case is an example of complementary bidding[2] wherein the competitors agree to submit bids that are either too high to be accepted or contains special terms that will not be acceptable to the buyer. In the instant case, the OP had started to restrict their total quantity for the RC period only since 2010-11 and no such restrictions were held during earlier years. Moreover their total installed capacity was 15, 72,000 pairs p.a whereas they restricted their quantity to 7,00,000 pairs against the tender in reference to which the OP had no valid justification to offer. If bid rigging takes place in government tenders, it is most likely to have adverse effects on its purchases and public spending, ultimately causing huge loss to the exchequer.

Prepared By: Arun Talwar, CIRC

[2] Complementary biddings are the most common forms of bidding by which the bidders defraud the purchases by creating the appearance of competition to conceal secretly inflated prices. The purpose behind such bids are not intended to secure buyers' acceptance but merely designed to give the appearance of genuine bidding.