

## **Public Works Department v. Harman International (India) Pvt. Ltd. (Ref. Case No. 01 of 2017)**

---

**Decision Date:** 06.09.2017

**Keywords:** *Anti-Competitive agreement; undue advantage; bidding*

**Issue:** Whether the OP gave an undue advantage to one of the bidders, thus making the bidding process anti-competitive?

**Rule:** Sec. 3 of the Competition Act, 2002 concerning Anti-Competitive Agreements

The Public Works Department, Government of National Capital Territory, Delhi, (Informant) invited bids from the manufacturers/authorised distributors of M/s. Harman International (India) Pvt. Ltd. (OP) for the operation and maintenance of a highly sophisticated sound system manufactured by the OP was installed at Thyagraj Sports Complex, New Delhi by Hi-Tech Audio Systems Pvt. Ltd. (HASPL) at the cost of around Rs.1.90 crores. The allegations were against the OP for favouring one of the firms and thereby acting in contravention of the Section 3 of the Competition Act (The Act).

Five tenders were floated by the informant in total. The first tender floated saw bids from four firms, namely, M/s Pragati Engineers, Pan Intelcom Ltd., Hi-tech Audio Systems Pvt. Ltd. and M/s Ambica Electricals. The tender was cancelled on the ground that all the four bidders were not the Original Equipment Manufacturers (OEMs) or authorised distributors of the OP, and so weren't qualified to bid. The second tender saw bids only from two firms, namely, HASPL and M/s Pragati Engineers. Considering that HASPL was eligible to bid, the price bid of HASPL was opened. However, the Superintending Engineer cancelled this bid on the pretext that the rate quoted was too high.

The third tender saw participation from the same two firms, along with authorisation letters issued by the OP in favour of the bidding firms. M/s Pragati Engineers was found to be the lowest bidder. However, according to a letter from the OP addressed to the Superintending Engineer, HASPL was the only authorised agent of the OP. The Executive Engineer, on receiving the information from the Superintending Engineer, then asked the OP for clarification regarding its contradictory stance on issuing the authorisation letters and then saying that only

HASPL was authorised. The OP stated that the authorisation letters were issued in good faith provided that these firms adhered to certain conditions such as involvement in installation/commissioning of projects in Stadiums, Airports and large Public Facilities in India and having trained and certified personnel. It was further stated by the OP that only HASPL met the aforesaid conditions, and therefore the authorisation to M/s Pragati Engineers should be treated as null and void. As a result, the third tender too was cancelled.

Subsequently, the fourth tender was floated, which was cancelled by the Superintending Engineer

citing the reason that the rate quoted by Hi-tech Audio Systems Pvt. Ltd. was more than the rate quoted by M/s Pragati Engineers in response to the third tender. Resultantly, a fifth tender had to be floated. The Executive Engineer then asked the OP for a clarification regarding the withdrawal of authorisation letters. The OP stated that despite repeated calls and reminders, except Hi-tech Audio Systems Pvt. Ltd., they all failed to get their personnel/engineers certified from the OP.

Based on the submissions, the Informant has alleged that, by withdrawing the authorisation letters issued to other firms to participate in the tenders floated by the Informant and giving undue advantage to Hi-tech Audio Systems Pvt. Ltd., the OP has contravened the provisions of Section 3 of the Act.

The commission observed that the withdrawal of authorisation letters wasn't made in contravention of Section 3 of the Act. These withdrawals were rather made since only one firm i.e. HASPL sent its engineers and professionals for training and the other firms, despite repeated calls and reminders, failed to get their personnel certified from the OP. The commission observed that the withdrawals were made in the interest of public safety and to maintain the OP's goodwill. Thus, the Commission is of the view that the aforesaid conduct of the OP cannot be said to be anti-competitive in terms of any of the provisions of the Act.

Therefore, the Commission maintained that there is no prima facie case of contravention of the provisions of Section 3 of the Act. Accordingly, the matter was closed under the provisions of Section 26(2) of the Act.