

In Re: Cartelisation by broadcasting service providers by rigging the bids submitted in response to the tenders floated by Sports Broadcasters. (SuoMotu Case No. 02 of 2013)

Decision Date: 11.07.2018

Keywords: *Bid rigging in Public Procurement Process; collusion; lesser penalty regulations*

Issue: Whether CCI's Lesser Penalty Regulations would be applicable in case of cartelisation by broadcasting service providers?

Rule: Sec. 3 and Sec. 46 of the Competition Act, 2002

Through an order dated 11 July 2018, the Competition Commission of India (CCI) imposed a penalty of INR 22.36 Crore on EsselShyam Communication (EsselShyam) for bid-rigging in tenders floated by sports broadcasters, including for the Indian Premier League in 2012. However, the CCI utilized the Leniency provisions to substantially reduce the fine imposed on EsselShyam.

The investigation by the CCI was initiated on the basis of disclosures by Globecast India Private Limited and Globecast Asia Private Limited (collectively referred to as 'Globecast') under Section 46 of the Competition Act, 2002 (Ac) read with the Competition Commission of India (Lesser Penalty) Regulations, 2009 ('Lesser Penalty Regulations').

Globecast disclosed to the CCI that there was an exchange of confidential price sensitive information between ESCL and Globecast through Mr. Bharat K. Prem, an employee of Globecast India Pvt. Ltd, which resulted in bid rigging of tenders for procurement broadcasting services of various sporting events, especially during the year 2011-12. It was alleged that Mr. Bharat K. Prem had secretly entered into a Consultancy Agreement with ESCL, under which Bharat, used to draw salaries and benefits as a share of profits from rigging.

As per the DG's investigation, the CCI observed that the ESCL and Globecast operated a cartel amongst them in the various sporting events (numbering fourteen) held during the years 2011-12 including IPL-2012. While submitting bids for the tender floated by various broadcasters during the period July 2011- May 2012 for provision of end-to-end broadcasting services, they

exchanged information and quoted bid prices as per the arrangements arrived at amongst them. Accordingly, it was held that they had infringed the provisions of Section 3(3)(d) read with Section 3(1) of the Act during this period.

Considering violation of provisions of the Act by Globecast and ESCL, an amount of INR 31.94 Crores and INR 1.33 Crores was computed as leviable penalty on ESCL and Globecast, respectively, in terms of proviso to Section 27 (b) of the Act. While computing leviable penalty, CCI took into consideration all relevant factors including duration of cartel, mitigating factors, *etc.* and decided to levy penalty at the rate of 1.5 times of their profit for the period July 2011 – May 2012. Additionally, considering totality of facts and circumstances of the case, penalty leviable on individual officials of Globecast and ESCL was computed at the rate of 10 percent of the average of their income for preceding three years. This was done in keeping with the principle of lesser penalty disclosure by Globecast. This is the third case of leniency by the anti-trust regulator. This indicates an important development in regulatory behaviour and approach.

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