

## **In re: India Glycols Ltd v. Indian Sugar Mills Association (Case No 21 of 2013)**

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**Decision Date:** 18.09.2018

**Keywords:** *Bid rigging; collusion; price fixation*

**Issue:** Whether there has been a contravention of the provisions of Section 3 of the Act?

**Rule:** Sec. 27 of the Competition Act, 2002

India Glycols Limited (Informant) submitted information before the Commission under *Section 19(1)(a)* of the Competition Act, 2002 impugning the joint tender floated by Public Sector Oil Marketing Companies (PSU OMCs/ OMCs for procurement of anhydrous alcohol ('ethanol') being in contravention of the provisions of *Section 3* of the Act. Besides, it was also alleged that suppliers of ethanol - which mainly comprise sugar mills - have contravened the provisions of *Section 3* of the Act by rigging bids submitted pursuant to the said tender, by quoting an exorbitant price for supply of ethanol to OMCs.

The Commission opined that *prima facie* there existed collective decision making to fix the price of ethanol for supply to OMCs by sugar mills and the said price fixation was *prima facie* found to have violated the provisions of *Section 3(3)(a)* read with *Section 3(1)* of the Act. It was also noted that since the sugar mills had been shown to have participated in the bidding while colluding with each other, as such, *Section 3(3)(d)* read with *Section 3(1)* of the Act also appeared to have been violated.

26 parties (20 sugar mills, 3 public sector OMCs and 3 trade associations of sugar mills/ factories/ ethanol manufacturers) constitute the array of Opposite Parties in the present batch of cases.

The following two issues require determination in the present cases:

1. Whether the joint tender floated by OMCs is in violation of provisions of *Section 3(1)* read with *Section 3(3)* of the Act?
2. Whether the tender floated on 02.01.2013 by PSU OMCs was rigged by sugar mills/ ISMA/ EMAI/ NFSCF in contravention of the provisions of *Section 3* of the Act?

### *Issue No. 1*

The Commission noted that if separate tenders were issued, it would undeniably amount to multiplying the very same tendering exercise leading to wastage of time, money and resources of the stakeholders.

This would have resulted in huge cost to the national exchequer. Issuance of independent tenders would have led to inefficiencies in the market.

The Commission also noted that since the terms of the tender are same for all the OMCs, floating a joint tender is not only a more efficient option, but is also more cost-effective, since it eliminates cost, time and effort in floating multiple tenders with the same terms and conditions.

In view of the above noted operational and commercial considerations, the Commission held that floating of joint tender by OMCs for procurement of ethanol *per se* could not be construed as anti-competitive particularly when such process had evident efficiency benefits.

Issue No. II

After consideration of all the relevant factual circumstances, the Commission was of the considered opinion that similarities upto decimal figures could not be an outcome of a price discovered through a competitive bidding process but has to be the result of collusive and concerted behavior of the parties.

The Commission held that the bidders who participated in respect of the depots located in UP/ Gujarat/ Andhra Pradesh in response to the tender floated by OMCs had colluded in submitting the bids by quoting collusive prices and sharing quantities using the platform of ISMA and signals provided by EMAI.

The Commission decided that the sugar mills who participated in the bidding process in respect of the depots located in UP/ Gujarat/ Andhra Pradesh in response to the joint tender floated by OMCs had colluded in submitting the bids by quoting collusive prices and sharing quantities and thereby contravened the provisions of *Section 3(3)(d)* read with *Section 3(1)* of the Act. Further, the impugned conduct of ISMA was found to have violated the provisions of *Section 3(3)(a)/(b)* read with *Section 3(1)* of the Act. Also, the conduct of EMAI was held to be in violation of the provisions of *Section 3(3)(a)* read with *Section 3(1)* of the Act by providing their platforms to sugar mills in facilitating rigging of impugned tender. Accordingly, the sugar mills and ISMA/ EMAI were directed to cease and desist from indulging in conduct that was found to be in contravention of the provisions of the Act.

Therefore, the Commission imposed monetary penalties upon the parties for contravention of the provisions of *Section 3(1)* read with *Section 3(3)* of the Act as under *Section 27* of the Competition Act, 2002.