

**IN RE: RAVI PAL (INFORMANT) AND ALL INDIA SUGAR TRADE ASSOCIATION (OPPOSITE PARTY I) AND MR. PRAFUL JAGJIVANDAS VITHALANI, CHAIRMAN, AISTA (OPPOSITE PARTY II)**

**Decision date:** 22/03/2019

**Keywords:** Cartelization, bid-rigging, price sensitive information, pre-determined prices

**Rule:** Sec. 3(1) and 3(3) of the Competition Act, 2002.

The Informant had alleged that OP-2 was actively running various discussion forums and chat groups with the leading sugar traders/millers/refiners and other unknown persons on WhatsApp, which was being used by the OPs for circulating price sensitive information like sugar prices, and forthcoming policy changes by Government in relation to sugar industry, which, as per the Informant, would have direct impact on the domestic sugar market. The Informant had stated that OP-1 was collecting, analyzing and disseminating ex-mill prices of sugar and other sensitive information from various sugar traders/millers (also members of OP-1). According to the Informant, the details in relation to the sugar prices were collated and uploaded on the website of OP-1. This information provides the members with speculative as well as determinative sugar prices in the market prevailing during a particular period of time. It was alleged that the OPs entered into an arrangement, forming a cartel whereby they have indulged in bid rigging by way of pre-determining prices for bids through information exchange.

The Informant had further alleged that access to lowest sugar prices enables all the members of this WhatsApp group to collectively fix the lowest price for their bids for the next sugar procurement tender and that, thereby, all these members controlled and fixed price at which sugar was to be bought from the millers. This process, indirectly, restricted the market for a trader who submitted its bid on the basis of a price determined by market forces and not on the basis of the lowest price that was speculated and collusively fixed by the OPs. It had also been alleged that most of the members of OP-1 were leading traders from Maharashtra and were acting in collusion by illegally exchanging information about lowest sugar prices amongst themselves.

Through these acts, they allegedly indulged in bid rigging, primarily, to influence the bidding process in order to procure sugar at lower prices on a daily basis and eliminate free play of market forces in the sugar industry. Thus, the sugar millers were forced to sell sugar at lower

price to traders. The Informant had, therefore, alleged that the OPs indulged in anti-competitive practices and thereby, contravened the provisions of Section 3(3) read with Section 3(1) of the Act.

### **Analysis of the Commission**

The primary allegation was that OP-2 purportedly shared *price sensitive information* pertaining to sugar prices over the WhatsApp group which in turn were allegedly used to quote lower prices in the tenders floated by the sugar millers for sale of sugar, in the state of Maharashtra. During the preliminary conference, the Informant attempted to establish the link between sugar prices (of S-30/M-30) circulated to the WhatsApp group and the average ex-factory net prices at Agricultural Produce Market Committee.

Based on the alleged link, it was contended by the Informant that the average ex-factory price of sugar was lower than the *price sensitive information* circulated on the WhatsApp group and thereby, indicated that there was collusion amongst traders in the procurement of sugar in subsequent bids. The Commission, on the basis of examination of the documents submitted by the Informant, did not agree with the contention of the Informant. As such a pattern cannot be said to be emerging so as to warrant an investigation in the matter.

Moreover, when the Commission inquired from the counsel of the Informant about the basis for alleging the price sensitivity of data by the Informant, the same could not be addressed by the Informant. It was stated by the Informant that the average prices at APMC were lower than the prices on WhatsApp messages and hence, the same could only be as a result of collusion. The Commission did not find any merit in this argument, as the Informant himself had explained, in the information filed by him, the process followed in the daily tenders and had stated that the sugar prices circulated were on the basis of last successful bids. This means that such information was already available in public domain post the award of the tender by the sugar mills and the circulation of the same, per se, did not imply that it would become sensitive information. Further, with regard to the information purportedly exchanged on WhatsApp group, the Commission observes that it was not clear from the records as to how such alleged acts can be said to have affected free play of the market forces with respect to prices of sugar. After appreciation of the allegations of the Informant and documents submitted including the oral submissions made by the Informant, the Commission was of the view that no evidence was provided by the Informant to show that there was any meeting of minds between the OPs to establish correlation between bids submitted in any specific tender with the alleged sugar prices circulated over the WhatsApp group. Presumptive inference and analysis provided by

the Informant cannot be the basis for forming a *prima facie* opinion as to order investigation in the matter. Therefore, the Commission observes that, based on the facts stated in the information and the evidence adduced by the Informant, a *prima facie* case under Section 26(1) of the Act was not made out against the OPs.

**Conclusion**

In view of the foregoing, the Commission finds no case of contravention of the provisions of Section 3(3) read with Section 3(1) of the Act against the OPs. The matter was, therefore, ordered to be closed in terms of the provisions of Section 26(2) of the Act.

