



## ERGO

*Analysing developments impacting business*

### CCI DISMISSES ALLEGATION OF BID-RIGGING AGAINST ROMSONS AND ESSITY

20 January 2020

The Competition Commission of India (CCI) took *suo moto* cognisance of alleged cartelisation between Romsons Scientific & Surgical Industrial Private Limited (Romsons / OP-1) and BSN Medical Private Limited (now known as Essity India Private Limited) (BSN / Essity / OP-2; along with Romsons, referred to as the OPs) in an open tender for surgical tapes invited by All India Institute of Medical Sciences (AIIMS).

The CCI observed that the OPs had quoted identical rates of up to the last two decimal places for four out of eight items in the tender. It further noted that quoting identical rates was highly improbable for two companies that operated in different regions with variable labour costs, raw materials, transportation, etc. Given the identical rates along with facilitating factors conducive for cartelisation, like limited number of players, homogeneous products, the CCI *prima facie* found a case of bid-rigging and directed the Director General (DG) to investigate the matter.

The DG noted that the quoted rates of the OPs were not concordant with the rates of other years. It also pointed out that while Romsons was a manufacturer of the tendered items, BSN imported them. It further noted the distinct locations of the OPs and concluded that their cost and input factors were so variant that identical prices could only be a result of collusion and not coincidence.

The non-participation of the OPs in the fresh tender by AIIMS was also viewed negatively by the DG. The DG observed that the officials of the OPs gave evasive justifications for how they arrived at the quoted rates. With these considerations and placing reliance on *Excel Crop Care Ltd. v CCI* [AIR 2017 SC 2734] (Excel Crop), the DG concluded that the OPs had colluded and contravened Sections 3(3)(a) and 3(3)(d) read with Section 3(1) of the Competition Act, 2002 (Act). It also recommended proceedings against the officials of the OPs under Section 48 of the Act for imposing penalties.

After the DG submitted its report, the CCI heard the OPs and observed that besides the one-off instance of identical pricing, there was no evidence to indicate collusion. Crucially, it noted that there was no evidence of any communications or meetings between the OPs or any other "plus factors" that could indicate tacit collusion to fix bid prices. It further observed that the market of surgical tapes was not conducive to cartelisation since the product was not homogenous and there were no entry barriers in the market. The CCI noted the cost of production of the OPs were in a similar range and the prices charged by them were uniform across India. It rejected the DG's findings

that the OPs should have quoted different tender rates merely because they operated from disparate geographical locations.

The CCI also found merit in the contention of the OPs that the four tendered items could be considered one product in different sizes. In view of that, it stated that similarity in price bids concerning one product could be an outcome of coincidence rather than concert. The CCI distinguished *Excel Crop*, holding that the factual scenario of that case is not similar with those of the present case, especially since *Excel Crop* involved identical pricing for several years by several bidders. The CCI, thus, held that no case of contravention of the Act was made out and closed the matter vide order dated 14 January 2021.

**Comment:** *The case reaffirms the past decisional practice that mere price parallelism / identical pricing without any “plus factors” is not sufficient to sustain allegations of bid-rigging. Plus factors comprise circumstantial / corroborative evidence, like consistent matching of prices, absence of economic rational, possibility of information exchange, identical typographical errors in bids, past bidding patterns, prior business relations. Remarkably, the CCI agreed with the OPs that identical pricing could also be a result of coincidence rather than concert, particularly in the unique circumstances of the case. Khaitan Competition/Antitrust Team represented Essity / OP-2.*

The CCI Order can be accessed [here](#).

Manas Kumar Chaudhuri (Partner), Sagardeep Rathi (Partner), Swati Bala (Senior Associate) and Aman Singh Baroka (Senior Associate)

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).

**For private circulation only**

The contents of this email are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2021 Khaitan & Co. All rights reserved.

**Mumbai**

One Indiabulls Centre, 13<sup>th</sup> Floor  
Tower 1 841, Senapati Bapat Marg  
Mumbai 400 013, India

T: +91 22 6636 5000  
E: [mumbai@khaitanco.com](mailto:mumbai@khaitanco.com)

**New Delhi**

Ashoka Estate, 12th Floor  
24 Barakhamba Road  
New Delhi 110 001, India

T: +91 11 4151 5454  
E: [delhi@khaitanco.com](mailto:delhi@khaitanco.com)

**Bengaluru**

Simal, 2nd Floor  
7/1, Ulsoor Road  
Bengaluru 560 042, India

T: +91 80 4339 7000  
E: [bengaluru@khaitanco.com](mailto:bengaluru@khaitanco.com)

**Kolkata**

Emerald House  
1 B Old Post Office Street  
Kolkata 700 001, India

T: +91 33 2248 7000  
E: [kolkata@khaitanco.com](mailto:kolkata@khaitanco.com)