

## Competition & Antitrust - India

### Public sector insurers penalised for participating in cartel

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#### Introduction

By an order dated July 10 2015<sup>(1)</sup> the Competition Commission penalised four public sector insurers (ie, National Insurance Co Ltd, New India Assurance Co Ltd, Oriental Insurance Co Ltd and United India Insurance Co Ltd) for participating in a cartel and bid rigging tenders held by the Kerala government. They were fined Rs1.6 billion, Rs2.5 billion, Rs1 billion, and Rs1.6 billion respectively, representing 2% of their average turnover for the previous three financial years. This is the second time that the commission has penalised public sector undertakings.<sup>(2)</sup>

#### Facts

The commission initiated an investigation following an anonymous tip regarding the insurers' alleged contravention of Section 3 of the Competition Act. It was alleged that the insurers had rigged the tender held by the Kerala government on November 18 2009 to choose an insurance service provider for the implementation of the National Health Insurance Programme (Rashtriya Swasthya Bima Yojna) for 2010 to 2011. It was further alleged that the insurers had formed a cartel and quoted higher premium rates. A copy of the minutes from the Inter Company Coordination Committee's (ICCC) December 7 2009 meeting – which the insurers attended in Kochi – was also included in the information. The companies had allegedly agreed on a business-sharing model.

The commission formed a *prima facie* opinion and referred the matter to the director general of competition for further investigation and analysis.

#### Director general investigation

The director general noted that the insurers had colluded and manipulated the tender process for the implementation of the insurance programme. The ICCC meeting minutes showed that the insurers had met on December 7 2009 (ie, one day before they submitted their bids) and agreed on their respective positions in the tender. The director general thus concluded that there was a clear bidding pattern and that the insurers had colluded to increase insurance premiums steadily by quoting higher premiums. Further, the insurers had not only formed a cartel and quoted higher insurance premium bids in response to the tenders for 2010 to 2011, 2011 to 2012 and 2012 to 2013, but also forced the Kerala government to hold new tenders every year, despite the fact that the tenders were held for three-year periods. Thus, the director general held that the insurers' conduct contravened Section 3(3)(a) and Section 3(3)(d) of the Competition Act.

#### Commission order

While penalising the insurers, the commission observed that even though they were under the central government's supervision, they had each made separate bids for the tenders. Further, they admitted that all decisions in relation to their bids and business-sharing arrangements were made at the company level, without interference from the Ministry of Finance. As such, the Ministry of Finance exercised no *de facto* or *de jure* control over the insurers' decisions regarding the submission of bids. Thus, it was apparent that the insurers had participated in the impugned tenders independently of the Ministry of Finance. As such, they could not be said to constitute a single economic unit. Further, the ICCC meeting minutes, the financial bids submitted by the insurers before the tender was finalised and the business-sharing arrangement concluded after the tender was finalised clearly and unequivocally established that the insurers not only met one day before they submitted their bids, but also entered into anti-competitive agreements in order to manipulate the tender process. Thus, the commission observed that the insurers' conduct resulted in the manipulation of the bidding process in contravention of Section 3(1), read with Section 3(3)(d) of the Competition Act. In addition to the imposition of fines, the commission imposed cease and desist orders on the insurers.

## Comment

This is the second time that the commission has penalised public sector entities for bid rigging and cartelisation. The insurers were collectively fined Rs6.7 billion for their conduct. This severe fine was imposed in order to deter future infringements by public sector entities.

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## Endnotes

(1) *Suo moto* case, February 2014.

(2) Cases 3, 11 and 59 of 2012.

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