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BUILDERS ASSOCIATION OF INDIA V. CEMENT MANUFACTURERS

Mahima Gautam

Competition Commission of India (Case No. 29 of 2010).

Facts of the Case

- S.19(1)(a) of the Competition Act 2002 was invoked by the Builders Association of India (Informant) to register information against Association Cement Manufacturers (the opposing party). Eleven cement manufacturing companies were alleged to have violated Sections 3 and 4 of the Act. The CCI determined that the opposing parties had violated Sections 3.3.1 (a), 3.3.3 (b), and 3.1.1 I-II thereof in an order dated 26.6.2012 and 27 of the Act.
- The source informed us that the leading cement manufacturers, distributors, and sellers in India were as follows: Gujarat Ambuja Cement Ltd., Associated Cement Co. Ltd. (ACC), Grasim Cement, UltraTech Cement Jaypee Cement, The India Cement Ltd., J.K. Cement Madras Cement, Century Cement, Binani Cement, and Lafarge India Pvt. Ltd.
- The informant asserts that the aforementioned cement manufacturers engaged in monopolistic and restrictive trade practices to control the price of cement by imposing limitations and restrictions on cement supply compared to production capacity.
- They have also engaged in "collusive price-fixing," which occurs when multiple companies negotiate a single price objective for a product or service to increase their market share or profit.
- By partitioning India's territory into five zones, they established a cartel in violation of Section 3 of the Act, allowing them to direct the cement supply and establish or fix its prices.¹

¹ <https://indiacorplaw.in/2012/06/summary-of-ccis-order-against-cemen.html>

- Combining their market shares in India, OP2 and OP9 control over 57.23% of the cement industry, thereby exerting control and arbitrarily increasing prices.
- With a combined market share of around 21% in India, OP2 and OP3 are prominent cement manufacturers. As is abundantly clear from the numerous committees operating under their holding company, Holcim, CMA engages in cartelization and maintains unduly high cement prices.
- Building materials giant Lafarge, of which Lafarge India is a subsidiary, was charged with committing irregularities in 1994, 2002, and 2008 in different jurisdictions. Furthermore, the company is a recurring violator of competition law in India, in violation of various provisions.
- Disregarding the accessibility of raw materials and coal power, the various cement companies, according to the source, are geographically dispersed and have established cement manufacturing facilities in various parts of India; as a result, their production and transportation expenses vary.²
- In a coordinated effort, members of the Cement Manufacturers Association have increased their prices uniformly and simultaneously.
- Cement prices went up in all five zones (North, East, West, and South of Central) where they operate, although there was no clear relationship or correlation between the price of cement and the rise in input costs in their respective zones. The informant filed a complaint with the CCL and provided a large number of reports and data as a consequence of the anti-competitive behavior of the CMA.³

Issues

- 1) Whether the CMA were indulged in cartelization or not?
- 2) Whether the opposite parties of CMA agreed on price-fixing & allocating territories amongst themselves or not?
- 3) Whether the CMA were indulged in Anti-competitive agreements or not?

² <https://corporate.cyrilamarchandblogs.com/2016/11/curious-case-cement-cartel/>

³ <https://www.mondaq.com/india/cartels-monopolies/530452/cement-cartel-cases-lessons-for-indias-competition-law-regime>

Decision

The commission initiated an investigation into the alleged cartelization of anti-competitive trade practices by the opposing parties, by Sections 3 and 4 of the Act, as requested by the Informant. A report was submitted to the commission by the Director General on May 31, 2011, following an investigation into the problem.

- Ambuja Cements Ltd, Ultra Tech Cement Ltd, and ACC Ltd, which collectively hold approximately 40% of the market, are two groups of three companies with a pan-India presence, according to the DG⁴. The anti-competitive practices of the twelve cement companies were discovered. Similar price movement patterns are observed among the opposing parties in a given geographic region as a result of the fixed and fluctuating agreements and prices within a bandwidth.
- The Horrible Competition Appellate Tribunal received an appeal; the parties argued that they were entitled to cross-examinations and challenged the tribunal's jurisdiction⁵.
- It was asserted that the DG had investigated numerous non-CMA members, including roadway investigators, cement dealers, and consumers. Furthermore, the CMA was granted the opportunity to engage in cross-examination. The assertion was made that the DG had violated the tenets of Natural Justice, thereby tarnishing the credibility of the report and its conclusions.
- The commission then examined the results of DG's analysis and determined, via price parallelism, that the prices of the majority of companies in a given state exhibited a strong positive correlation when correlated financially.
- The DG's analysis of production trend data revealed production parallelism, with all companies experiencing a significant decrease in output from October 2010 to November 2010. However, this trend did not persist for the corresponding months in 2009⁶.
- Parallelism in Dispatch Consistent shifts in cement shipments were observed among the leading corporations. Coordination of behavior was also identified as a factor in the spike in cement prices. Regarding the agreement, understanding, or concurrence

⁴ <https://www.cci.gov.in/antitrust/orders/details/738/0>

⁵ <https://www.sconline.com/blog/post/2016/09/01/cci-imposes-penalties-upon-cement-companies-for-cartelisation/>

⁶ <https://www.casemine.com/judgement/in/587f3b094a9326336e216f85>

concerning prices, production, and supply in the market, opposing parties were ordered and directed to cease engaging in any activity.

- The case was deemed suitable for penalty imposition by the Commission under Section 2*(b) of the Act. The commission may levy a penalty of up to three times the profit of each cartel participant for each year that the anticompetitive argument is maintained, or ten percent of the cartel participant's turnover for each year that the agreement is maintained, whichever is greater, in the event of cartelization.
- Cement is an indispensable input in the construction and infrastructure sector, which is vital for the nation's economic development; the CMA earned enormous profit margins; and it acted in concert and coordination with regards to prices, production, and supply⁷. As a result, the CMA was determined to have been detrimental to the entire economy.
- The commission has issued the following charges against the aforementioned opposing parties: 1790 crores for Binani Cement, 4213 crores for Century Textiles, 1605 crores for J.K Cements, 2573 crores for Madras Cements, 6693 crores for Ultra Tech Cement, 10107 crores for Jaiprakash Associated Ltd, 1064 crores for Ambuja Cement, and 244 crores for Binani Cement.

⁷ <https://www.anantlaw.com/cement-cartel-case-delhi-hc-allows-builders-association-of-india-to-approach-cci#:~:text=In%20its%20petition%20before%20the,of%20cartelisation%20amongst%20cement%20manufacturers.>