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A NEW "HIGH": CCI IMPOSES RECORD PENALTIES ON BEER CARTEL LENIENCY APPLICANTS

5 October 2021

The Competition Commission of India (Commission) through an [order](#) dated 24 September 2021 imposed a combined penalty of about INR 870 crore (-USD 116.75 million) on United Breweries Limited (UBL) and Carlsberg India Private Limited (CIPL) for cartelisation (including price fixing) between UBL, CIPL and Anheuser Busch InBev SA/NV (ABI) (collectively OPs) in market for "production, marketing, distribution and sale of beer in India". The Commission also found the All India Brewers Association (AIBA) liable for acting as a conduit for anti-competitive activities between the beer manufacturers.

ABI and its employees were not penalised because they were the first to disclose the cartel, and provided clinching evidence leading to a dawn raid in the premises of the OPs and AIBA.

Background

ABI's leniency application alleged that the OPs colluded using the platform of AIBA to (i) align beer prices; and (ii) make representations to various Indian State government organised corporations - entrusted with controlling the supply of liquor in a given State - for price adjustments in various states. Thereafter, the Commission passed a prima facie order dated 31 October 2017 directing the Director General (DG) to investigate the matter.

The evidence collected by the DG's office comprised email exchanges in relation to (i) sensitive price information (Andhra Pradesh, National Capital Territory (NCT) of Delhi, Karnataka, Odisha, Maharashtra, Rajasthan, West Bengal and Puducherry); (ii) revenue, stock and sales data (Maharashtra); and (iii) limiting the supply of beer in the market (Odisha, West Bengal, and Maharashtra).

Even though UBL and CIPL also subsequently filed leniency applications under affidavits, they *inter alia* very strongly argued that the cartel did not cause any appreciable adverse effect on competition within the States of India.

The Commission's Order

The Commission concluded that the OPs and AIBA violated Section 3(3) of the Competition Act, 2002 (Competition Act) in the States of Andhra Pradesh, Karnataka, Maharashtra, Odisha, Puducherry, Rajasthan, West Bengal, and the NCT of Delhi.

Penalty

The Commission recognised ABI's role in providing vital information that allowed it to cause dawn raids. ABI benefitted with a 100% reduction in penalty as the Commission fully recognised ABI's genuine, full, continuous, and expeditious co-operation that enabled not only an investigation but also helped the Commission establish contravention of the Competition Act. The second applicant, UBL, was awarded a 40% reduction in penalty with a net fine of INR 751 crore (~USD 100.78 million). CIPL being the third and the last leniency applicant, was imposed with a penalty of INR 121 crore (~USD 16.23 million), after a 20% reduction.

ABI was represented before the Commission by Khaitan & Co. led by partners Mr. Manas Kumar Chaudhari, Mr. Sagardeep Rathi and Mr. Pranjal Prateek.

- *Manas Kumar Chaudhuri (Partner), Sagardeep Rathi (Partner), Pranjal Prateek (Partner), and Nilav Banerjee (Associate)*

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