

All India Tyre Dealers' Federation v/s. Tyre Manufacturers ("Tyre Dealers Federation")¹**Facts:**

The information in this case was originally filed by the All India Tyre Dealers' Federation ("**AITDF**") against the tyre manufacturers before the Ministry of Corporate Affairs and the same was forwarded by the MRTPC. Consequent upon the repeal of the MRTP Act, the matter stood transferred to the CCI under section 66(6) of the Competition Act. In the said information dated December 28, 2007, AITDF alleged that the tyre manufacturers were indulging in anti-competitive activities.

It was alleged that the domestic tyre industry was the best example of indulgence in the anti-competitive activities and resorting to trade mal-practices. The tyre trade has been reeling under this exploitative behaviour of these handful of domestic tyre majors. The domestic tyre industry, operating at 95%-100% capacity, on the back of almost 25% annual growth in commercial vehicle population in last four-five years, has been working in unison and usurping the excise duty reduction contrary to the interest of tyre users.

The AITDF submitted that they have been continuously feeding the concerned Central Ministries about the anti-trade, anti-consumer and restrictive trade practices of domestic tyre majors. The AITDF also approached the CCI regarding the anti-competitive behaviour of domestic tyre majors vide letter dated 09.06.2007.

The Commission considered the matter in its meeting and on perusal of the material on record and after giving thoughtful consideration to all the facts and circumstances of the case, passed an order dated 22.06.2010 under section 26(1) of the Act directing the Director General ('DG') to conduct an investigation into the matter and submit a report. The order of the CCI specifically mentioned the five major domestic tyre manufacturing companies viz. Apollo Tyres Limited, MRF Ltd., CeatTyre Ltd., Birla Tyre Ltd. and JK Tyre Ltd.

Issues:

Following issues were framed by CCI

1. Whether the CCI has the jurisdiction to proceed with the matter under the provisions of the Act?
2. Whether the tyre manufacturers have contravened the provisions of section 3 of the Act?

Ratio:

The CCI observed that, *"existence of a written agreement is not necessary to establish common understanding, common design, common motive, common intent or commonality of approach among the parties to an anti-competitive agreement. These aspects may be established from the activities carried on by them, from the objects sought to be achieved and evidence gathered from the anterior and subsequent relevant circumstances. Circumstantial evidence concerning the market and the*

¹MRTP Case RTPE No. 20 of 2008 decided on October 30, 2012

conduct of market participants may also establish an anti-competitive agreement and suggest concerted action. Parallel behavior in price or sales is indicative of a coordinated behavior among participants in a market”.

The CCI observed that, *“parallel behavior in prices, dispatch, supply accompanied with some other factors indicating coordinated behaviour among the firms may become a basis for finding contravention or otherwise of the provisions relating to anti-competitive agreement of the Act”.*

The CCI after price analysis observed that, *“differences in range of prices of different manufacturers has been more than Rs.1000 for the period 2005-2009 and the range has come down to Rs.600 in2010. Considering that the product is homogeneous, the 6-12% range of difference in prices imply that the prices are dissimilar and there is no parallelism at least in absolute prices. As far as parallelism of price movement in percentage terms is concerned there are wide variations amongst various manufacturers. As far as directional changes are concerned, parallelism is observable”.*

CCI after considering the data on capacity utilization concluded that the, *“tyre companies were not in a position to profit from limiting the supply by willful underutilization of capacity”.*

The CCI found, *“no merit in evaluating whether the changes in Sales Realization are proportionate to cost of sales or not. It held that could not be concluded on the basis of the data available with CCI relating to cost of sales, sales realization and margins that there is any indication of concerted action”.*

Thus CCI took into consideration the act and conduct of the tyre companies/ Automotive Tyre Manufacturers’ Association (**“ATMA”**), and found that on a superficial basis the industry displays some characteristics of a cartel there has been no substantive evidence of the existence of a cartel. The CCI held that the available evidence did not give enough proof that Tyre companies and associations acting together had limited and controlled the production and price of tyres in the market in India. The CCI found that there was not sufficient evidence to hold a violation by the tyre companies of section 3(3) (a) and 3(3)(b) read with section 3(1) of the Competition Act.