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## A Study on Cartelisation with Reference to the Case - ‘All India Tyre Dealer's Federation v Tyre Manufacturers’

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*Cartel agreements are globally recognised as a heinous and harmful form of anti-competitive behaviour as they are a perfect violation of the principle of competition. The prominent economist Adam Smith, termed them as ‘conspiracies against the public’ in his famous work, The Wealth of Nations. Hence, this market menace that acts as a hindrance to the free and fair market is penalised duly throughout the world. This article attempts to analyse the position of cartels under the competition laws of India, through relevant statutory provisions and with reference to the recent case All India Tyre Dealer's Federation v Tyre Manufacturers<sup>1</sup>. It tries to understand the scope of Indian anti-trust provisions on this issue. Moreover, this paper also studies the naïve but recommendable effort of the Competition Commission of India in dealing with cartel abuses through the recent judgement and reviews the evolving nature of evidence required to prove a cartel.*

**Keywords:** *cartelisation, antitrust law, price parallelism, market sharing, bid rigging.*

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### INTRODUCTION

The constant striving of market players to entice the consumers is called competition. It nurtures efficiency and promotes innovation unfathomably. Nonetheless, it is a well-

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<sup>1</sup> All India Tyre Dealer's Federation v Tyre Manufacturers (2013) W.A. No. 529/2018

established fact that the competition in a market would be disturbed by market players through anticompetitive practices that are mentioned in section 3 of the Competition Act, 2002<sup>2</sup>. The formation of cartels is such an anticompetitive practice it is extremely consequential. When the competitors come hand in hand with the decision to waive off competition for collusion, as part of a cartel, it would in fact cause tremendous loss to the customers as they won't get the fruits of competition in the market. Hence, My aim through this article is to provide a reader with the concept and regulatory framework (provisions and procedure) of cartels in India with reference to the very recent case '*All India Tyre Dealer's Federation v/s Tyre Manufacturers*'.

## **AN OVERVIEW OF COMPETITION ACT 2002**

The Monopolies and Restrictive Trade Practices Act (MRTP Act) of 1969<sup>3</sup> was the earlier form of competition act that mainly focused on the restriction of monopolies, later, it was replaced by the Competition Act, which was enacted in 2002 and came into force on 13th January 2003. The transition from the MRTP act changed the focus from repressing monopolies to encouraging competition. The preamble to the competition act enshrines it as "an act set out to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having an adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto."

## **CARTELIZATION**

Section 3 of the Competition Act enshrines that "the agreements which adversely affect the Competition in the market are void". Hence, rooting out cartels along with deterring all such anti-competitive practices are the primary purpose or aim of the competition commission of India. A cartel is defined in section 2(c)<sup>4</sup> of the act. That is "cartel includes an association of

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<sup>2</sup> Competition Act, 2002, s 3

<sup>3</sup> Monopolies And Restrictive Trade Practices Act, 1969

<sup>4</sup> Competition Act, 2002, s 2(c)

producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services” Cartelization badly affects the spirit of the market. Thus, forming cartels would pave the way to the detriment of customers and would in fact lessen the competitive nature of the market. Apart from that, it also affects the competitors outside the cartel. It is undoubtedly a grave antitrust violation. It is handled with extreme care globally as it is recognised as a serious problem that would disrupt the economy of the countries. However, detecting and proving the existence of a cartel is often a herculean task. Moreover, the severity of the effects of the formation of cartels is mentioned in Section 27<sup>5</sup> of the Act. This section imposes large penalties on the members of cartels.

Also, section 3(5)<sup>6</sup> of the act enumerates certain instances which do not amount to cartels.

### THREE COMPONENTS OF CARTEL

- There should be an agreement
- The agreement should be between competitors
- The agreement must be to impose limits on competition

### TYPES OF CARTELS

Four types of agreements are considered cartels according to section 3(3)<sup>7</sup> of the Competition Act.

- **Price fixing:** agreements that either directly or indirectly determine the ‘prices’. Here the term ‘price’ is covered in a wider sense.
- **Bid rigging:** the agreement between market players who are involved in similar kinds of supply, production, or provision of services, which directly or indirectly reduces the competition for bids

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<sup>5</sup> Competition Act, 2002, s 27

<sup>6</sup> Competition Act, 2002, s 3(5)

<sup>7</sup> Competition Act, 2002, s 3(3)

- **Market sharing:** an agreement where the production, supply, or provision of services are decided priorly based on the geographical area so as to get rid of competition, thereby creating a monopoly
- **Production control:** agreements that control markets, trading of goods, technical development, production of materials, or provision of services

## CASE LAW

### *All India Tyre Dealers Federation v Tyre Manufacturers*

The honourable Supreme Court of India dismissed a Special Leave Petition filed by the major Tyre Manufacturers of the country with its order dated January 28. The petition was filed in response to the investigation order issued by the Competition Commission of India (CCI) into their alleged anti-competitive practice which is cartelisation. The writ appeal filed in the High Court of Madras was already dismissed by the bench consisting of DY Chandrachud, affirming the report of CCI to be true. Hence, an aggregate of Rs.1788 crore was imposed on the leading five tyre manufacturers (namely, CEAT, Birla tyres, JK tyres, MRF Ltd, and Apollo tyres) and on their association 'Automotive Tyre Manufacturers Association'(ATMA) as a penalty.

### *Timeline of events leading up to the dismissal of Special Leave Petition by the Supreme Court*

MRTP Case.  RTPE No. 20 of 2008	'All India Tyre Dealers' Federation' (AITDF) filed a complaint to the ministry of corporate affairs alleging cartelization by five major tyre manufacturers, which was later forwarded by the ministry to the MRTP Commission, which was passed over to the competition commission of India, under sec 66(6) <sup>8</sup> .
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<sup>8</sup> Competition Act, 2002, s 66(6)

22 June 2010	under sec 26(1) <sup>9</sup> of the act, CCI passed an order asking the director-general to investigate and submit a report on the allegation raised by AITDF.
30 October 2012	Decision passed. The Commission failed to prove the existence of a cartel due to insufficient evidence. Hence, the enterprises can't be held for violations of section 3(3) (a) and 3(3)(b) r/w section 3(1) <sup>10</sup> of the Act
24 June 2014	Challenged the order directing to investigate the issue by an additional director-general, under sec 26(1)
8 March 2018	The court directed the CCI to keep the investigative report sealed by passing an interim order under sec 26(1).
31 August 2018	The Competition Commission of India (CCI) had passed a final order against five Tyre companies and their association <i>i.e.</i> (ATMA)
08 October 2021	The aforesaid order was challenged by the aggrieved parties in the high court of madras against the CCI filing a Writ appeal.

<sup>9</sup> Competition Act, 2002, s 26(1)

<sup>10</sup> Harsh Gupta, 'An analysis of Section 3(3) of the Competition Act, 2002' (*Ipleaders*, 4 October 2021) <<https://blog.ipleaders.in/an-analysis-of-section-33-of-the-competition-act-2002/>> accessed 16 June 2022

06 January 2022	The Hon'ble Madras High Court put forward an order which dismissed the aforesaid writ appeal
28.01.2022	The special leave petition was dismissed by the Supreme court of India. <sup>11</sup>
02 February 2022	SC announced the imposition of a monetary penalty on five major tyre enterprises and their association(ATMA) for "indulging in cartelisation"

## ANALYSIS

'All India Tyre Dealers Federation' alleged anti-competitive behaviour on five major domestic tyre manufacturers like CEAT, Birla tyres, JK tyres, MRF Ltd, and Apollo tyres. They passed the information to the Ministry of Corporate Affairs (MCA) who in turn initiated this case by referring it to the Competition Commission of India under Sec 19(1)(b)<sup>12</sup> of the Act which empowers the Commission to *"inquire into any alleged contravention either on its own motion or on a reference made to it by the Central Government or a State Government or a statutory authority."* AITDF alleged the manufacturers of price parallelism and cartelization since they refuse to decrease the cost of their products even when the cost of natural rubber decreases. It was undeniable that there was a sudden hike in the price of natural rubber and accordingly the price of the tyres also got increased in a concerted manner. But after the prices of rubber became normal, these domestic tyre manufacturers refused to lower their rates, thereby indulging in cartelisation and price parallelism.

<sup>11</sup> Shrimp Choudhary, 'Madras HC allows CCI to pass final order in tyre cos' pricing case' (*The Economic Times*, 07 Jan 2022) <<https://economictimes.indiatimes.com/industry/auto/tyres/madras-hc-allows-cci-to-pass-final-order-in-tyre-cos-pricing-case/articleshow/88760542.cms?from=mdr>> accessed 10 June 2022

<sup>12</sup> Competition Act, 2002, s 19(1) (b)

*So the basic issue was whether these enterprises have contravened the provisions of section 3 of the Act?*

The Competition Commission of India asked DG to investigate and submit a report, under sec 26(1) of the act, on 22<sup>nd</sup> June 2010. Accordingly, DG exposed the existence of a cartel comprising major tyre manufacturers and their association, ATMA, acting collectively to distort the market making it competition-free which is wholly against the principles of the competition act. Hence, DG established that the aforesaid cartel acted in contravention of Section 3(3) (a) and 3(3) (b)<sup>13</sup> of the Act. It was also noted that all the five domestic companies facing the allegation represent over 90% of the tyres produced in the country and they are the members of an association, named Automotive Tyre Manufacturers' Association (ATMA), headquartered in Delhi, formed to be the true voice of Indian tyre industries. The evidence gathered by the executives makes it clear that these companies frequently meet at their platform, which is ATMA, to share sensitive data. Though the companies filed a special leave petition challenging the High court order, the Supreme Court of India dismissed the petition affirming the decision of the High Court on 28 January 2022, thereby imposing a heavy penalty on the parties. Sec 27<sup>14</sup> of the competition act, 2002 empowers the CCI to pass an order against any enterprise, if their action is violative of section 3 or section 4<sup>15</sup> of the act. According to Section 27, if an agreement is made violative of section 3, the "Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten percent. of its turnover for each year of the continuance of such agreement, whichever is higher". Hence, along with a cease-and-desist order, the CCI imposed penalties on each of the five manufacturers. They go like, Rs. 252.16 crores on CEAT Ltd., Rs. 425.53 crores on Apollo Tyres, Rs. 309.95 crores on JK Tyre, Rs. 622.09 crores on MRF Ltd., and Rs. 178.33 crores on Birla Tyres. In addition, a penalty of Rs. 0.084 crores was imposed on ATMA. Collecting wholesale and retail prices by ATMA through its members was also banned by the CCI.

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<sup>13</sup> Competition Act, 2002, ss 3(3) (a) and 3(3) (b)

<sup>14</sup> Competition Act, 2002, s 27

<sup>15</sup> Competition Act, 2002, ss 3 and 4

Further, a number of individuals related to the aforesaid tyre companies and ATMA were also held liable under sec 48, for the anti-competitive conduct of their respective companies. Sec 48(1)<sup>16</sup> of the act enshrines "Where a person committing contravention of any of the provisions of this Act or any rule, regulation, an order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly"

## CONCLUSION

Cartels have deleterious effects on the competition law and are undoubtedly a harmful form of antitrust violation universally. Hence, the formation of cartels is denounced and is dealt with severity by the authorities. The law relating to cartels is still under construction in India. Moreover, establishing the existence of a cartel is a hectic task and the respective authorities struggle to prove it. Even then, in the present case, *AITDF v Tyre Manufacturers*<sup>17</sup>, the CCI was successful in establishing price parallelism and cartelisation over the major tyre manufacturers in the country. According to the CCI's reasoning in this case no explicit agreement is required in order to prove cartelisation, it may be proved even through the intention or conduct of parties. The court held that the standard of proof can further be defined and made more uniform by including definite criteria in the Act itself. It was marked by CCI that the companies switched price-sensitive business information through their association, which is ATMA, and had worked and shared information in a concerted manner, thereby affecting the competition in the market badly. The commission also found that ATMA collected compiled company-wise monthly and cumulative data on production, domestic sales, and export of tyres on a real-time basis. Thus, dealing with businesses in a concerted manner and sharing the data made their work easier which indeed amounts to a serious violation of the antitrust law of the country. Hence, the Commission held five of the tyre companies and their association, ATMA, guilty of breach of section 3 of the act and hence

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<sup>16</sup> Competition Act, 2002, s 48(1)

<sup>17</sup> All India Tyre Dealer's Federation (n 1)

made them liable to pay a total of Rs.1788 crore as a penalty. Besides, it also held some key persons responsible for the irregularities under sec 48.