

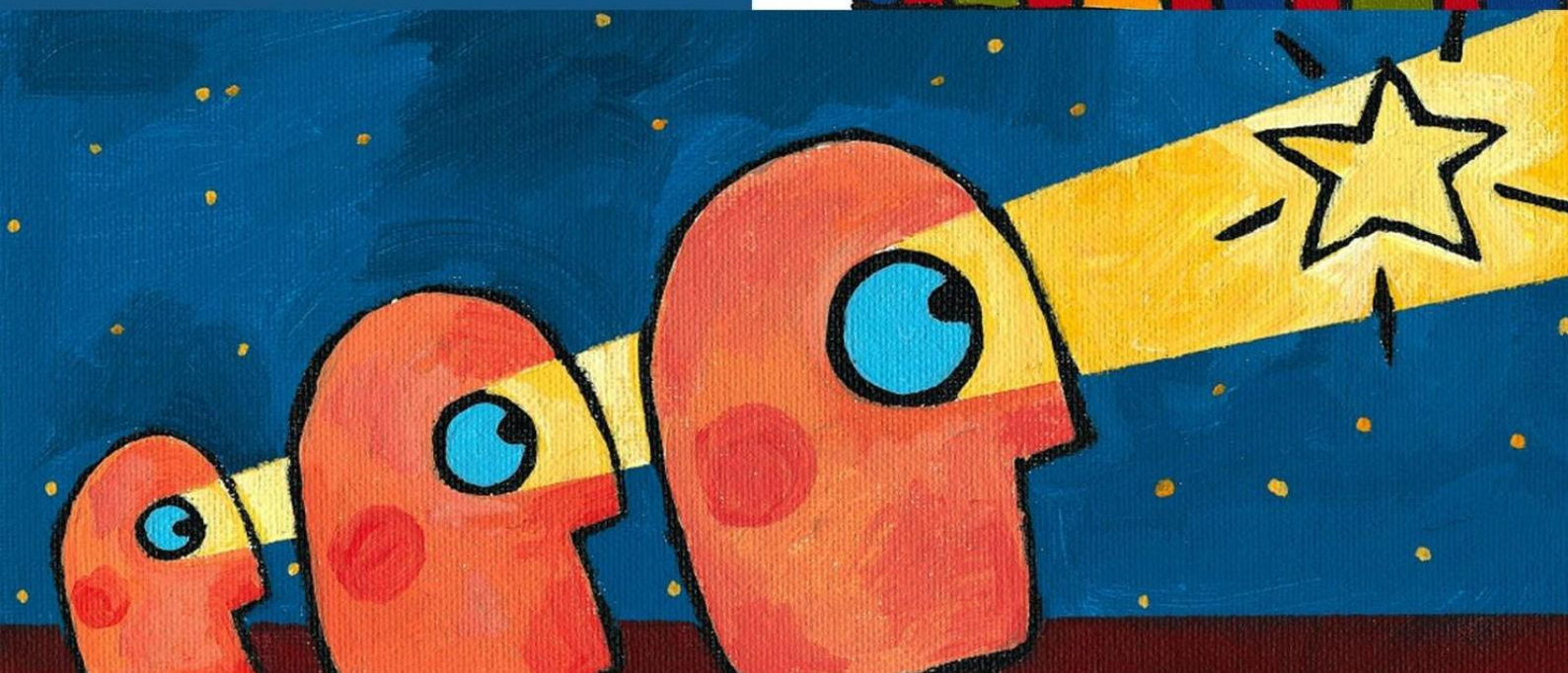


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Monthly Newsletter

# State of Antitrust

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### **CCI Dismisses Allegations of Bid Rigging against HP India Sales Private Limited**

The Competition Commission of India (**'Commission'**/ **'CCI'**) closed an information, filed under section 19(1)(a) of the Competition Act (**'Act'**), against HP India Sales Private Ltd. (**'OP-1'**), Wideprint Systems and Solutions (**'OP-2'**), Digital Global (**'OP-3'**), Capricot Technologies Private Limited (**'OP-4'**), Samman Consultants (**'OP-5'**), Sigma eSolutions Private Limited (**'OP-6'**), Transcon Electronics Pvt. Ltd. (**'OP-7'**), and KR Enterprises (**'OP-8'**) alleging contravention of provisions of section 3 of the Act. The Informant sought confidentially over its identity including the name and contact details.

The Informant alleged that OP-1 and its resellers arrayed as OP-2 to OP-8 were engaged in bid rigging in two tenders floated at Government e-Marketplace (**'GeM'**) viz. GeM Bid No. GEM/2024/B/4889227, dated 25.05.2024, floated by Gurugram Metropolitan Development Authority, Gurugram, Haryana (**'GMDA Tender'**) and GeM Bid No. GEM/2024/b/5094056, dated 26.06.2024, floated by Faridabad Metropolitan Development Authority, Faridabad, Haryana (**'FMDA Tender'**). The tenders were for the procurement of inkjet/LED A0-A4 size plotter/printer with 5 years' extended warranty covering print head, maintenance box and 2 set ink cartridges. The information further stated that the tender specifications, stipulated in GMDA and FMDA tenders, excluded participation by other multinationals such as Canon India Pvt Ltd., Gurgaon and Epson India Pvt Ltd., Bangalore as both do not have a product meeting those specifications.

It was alleged that the amount charged by OP-2 in GMDA and FMDA tenders for the individual components of the tender item was much higher than the actual price of the components and that in GMDA tender, five bidders viz. OP-2, OP-3, OP-4, OP-5 and OP-8 quoted for 5 years' warranty instead of three years, which was the minimum warranty specified in the tender. The information also stated that in the FMDA tender, four bidders participated viz. OP-2, OP-3, OP-6 and OP-7, of which OP-3 quoted ROWE brand, for which the deemed OEM was OP-2. As per the Informant, this implied that OP-2 authorised a bidder to quote against itself.

The Informant further alleged that both the above tenders, along with another tender bearing GeM Bid No. GEM/2024/B/4713266 dated 11.03.2024 was floated by BHEL Noida for procurement of Mono Plotter printer (**'BHEL Tender'**) of exactly the same specifications with the difference that requirement was for Mono Inkjet/LED plotter printer instead of colour printer, were won by M/s Wideprint Systems and Solutions (OP-2).

The Commission with respect to the BHEL Tender noted that the BHEL Tender was not similar with the GMDA and FMDA tenders as the BHEL tender was for leasing two mono LED/inkjet plotter/printers for five years. On the other hand, the GMDA and FMDA tenders were for purchasing single multifunction colour inkjet plotter printer.

The Commission, however, found GMDA and FMDA tenders to be similar in specification including quantity, features, product type etc. except that GMDA tender included buyback of a non-functional printer as a pre-condition. The Commission noted that in GMDA tender five bidders participated and all of them quoted HP product. OP-2 and OP-4 offered HP XL 3800 including set of 2 cartridges, print heads, maintenance box and five-year warranty and OP-3, OP-5 and OP-8 offered HP XL 4200, all quoted with five-year warranty. In this, OP-2 emerged as L-1 bidder out of the five bidders.

The Commission, disregarding the assertions of the Informant that the bidders colluded as the tender specifications of the GMDA tender required minimum three years' warranty whereas all the bidders quoted for five years, noted that the Informant failed to notice the additional buyer condition stipulated in the GMDA tender, which stated 'Onsite OEM Warranty - 5years'. The Commission stated that this prompted the bidders to quote for five-year warranty and dismissed the allegations of cartelisation on the part of the bidders.

With regard to FMDA tender, the Commission observed that four bidders participated. Out of these four bidders, OP-2, OP-6 and OP-7 quoted for HP XL 3800 including set of 2 cartridges, print heads, maintenance box and five-year warranty, whereas OP-3 quoted ROWE brand for which OP-2 is stated to be the OEM. The Commission dismissed the allegations of the Informant that OP-2, as OEM, authorised a bidder, OP-3, to quote against itself. The Commission observed that OP-2 not quoting the same brand as that of OP-3 cannot be said to bid against it as both the bidders are quoting different brands of different OEMs as per their individual choice.

The Commission further dismissed the Informant's allegations that the product specification in GMDA and FMDA tenders are restrictive in nature, as it prevent participation of LED printers. Elaborating on the choice of the procurers, the CCI observed that it is the procurer's discretion to purchase products and services in accordance with its needs and requirements. The consumer or procurer is free to define the type of product or service, warranty, cartridges, etc., and may not be forced to do so. The Commission further observed that the procurer exercises this freedom by defining the kind, manner, and mode, among other things, in accordance with its needs, financial limitations, and other business factors in order to accomplish its goals or functions.

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## Heard at the BAR

*Legal news from  
India and the world*

With regards to the allegation that the cumulative prices for individual components are substantially more than the composite bid prices quoted by the bidders on GeM portals, the Commission observed that the price of maintenance box, print heads, cartridges etc. were neither provided by the Informant nor appeared to be available in public domain to substantiate this assertion. The Commission was of the view that like the product specifications, it is the prerogative of the procurer either to procure individual items from GeM portal or to procure a bundle of products and/or services based on its specific requirements to meet its objective.

The Commission, based on the abovementioned observations, found no prima facie contravention of the provisions of section 3 of the Act against the OPs and accordingly, closed the information under section 26(2) of the Act.

[\(Order dated 04.02.2025\)](#)

### **FTC brought into effect '2023 Merger Guidelines'**

The Federal Trade Commission ('FTC') chairman has announced that the joint, FTC and Department of Justice's ('DOJ') (collectively 'Agencies'), 2023 Merger Guidelines ('Guidelines'/ 'Merger Guidelines') have come into effect. Merger Guidelines identify the procedures and enforcement practices the Agencies most often use to investigate whether mergers violate the antitrust laws.

The Merger Guidelines establishes a number of analytical frameworks to assist the Agencies regulate mergers that poses antitrust concerns, through enforcement action. In order to determine if the proposed merger may hurt competition, these frameworks take into consideration the market realities unique to each industry and employ a range of methods and indicators from market structure to direct evidence of the impact on competition.

The document includes 11 guidelines, viz.

*Mergers Raise a Presumption of Illegality When They Significantly Increase Concentration in a Highly Concentrated Market; Mergers Can Violate the Law When They Eliminate Substantial Competition between Firms; Mergers Can Violate the Law When They Increase the Risk of Coordination; Mergers Can Violate the Law When They Eliminate a Potential Entrant in a Concentrated Market; Mergers Can Violate the Law When They Create a Firm That May Limit Access to Products or Services That Its Rivals Use to Compete; Mergers Can Violate the Law When They Entrench or Extend a Dominant Position; When an Industry Undergoes a Trend Toward Consolidation, the Agencies Consider Whether It Increases the Risk a Merger May Substantially Lessen Competition or Tend to Create a Monopoly; When a Merger is Part of a Series of Multiple Acquisitions, the Agencies May Examine the Whole Series; When a Merger Involves a Multi-Sided Platform, the Agencies Examine Competition Between Platforms, on a Platform, or to Displace a Platform; When a Merger Involves Competing Buyers, the Agencies Examine Whether It May Substantially Lessen Competition for Workers, Creators, Suppliers, or Other Providers; and When an Acquisition Involves Partial Ownership or Minority Interests, the Agencies Examine Its Impact on Competition.*

As single transaction can have multiple effects or raise antitrust concerns in multiple ways, these Guidelines are not made mutually exclusive. To promote efficient review it kept open the choice of the Agencies, who may limit their analysis, while scrutinizing a merger, to any one guideline or subset of guidelines that best demonstrates the risks to competition from the transaction. The Merger Guidelines consolidates, revises, and replaces the various earlier versions of Merger Guidelines previously issued by the Agencies.

[\(Memorandum dated 18.02.2025\)](#)

### **Competition Commission of India Approves the Amalgamation of CIFCPL and SHPL**

The Competition Commission of India has approved the amalgamations of Chaitanya India Fin Credit Private Limited ('CIFCPL') and Svantra Holdings Private Limited ('SHPL') into Svantra Microfin Private Limited ('SMPL').

SHPL is an unregistered Core Investment Company in terms of Core Investment Companies (Reserve Bank) Directions, 2016, engaged in the business of investing in equity shares, preference shares and other securities.

CIFCPL is a middle layer non-deposit taking NBFC-MFI registered with the RBI in 2009, engaged in the business of providing micro finance loans and personal loans to low-income individuals and households in rural/ semi-urban areas.

SMPL is a middle layer non-deposit taking Non-Banking Financial Company-Micro Finance Institution (NBFC-MFI) registered with the RBI, engaged in the business of providing micro finance loans and personal loans to low-income individuals and households in rural/semi-urban areas.

Svantra Micro Housing Finance Corporation Limited (SMHFCL) will become a wholly owned subsidiary of SMPL subsequent to the amalgamation.

[\(Press release dated 18.02.2025\)](#)

### **CCI Holds Commonality of Ownership Not Enough to Prove Offence under Section 3(3)(d)**

The Competition Commission of India closed a matter, under section 26(2) of the Competition Act ('Act'), received as a Reference from Army Purchase Organisation ('APO'/ 'Informant') alleging contravention of the provisions of section 3 of the Act by M/s Gokul Agro Resources Ltd. ('Opposite Party No. 1'/ 'OP-1') and M/s Gokul Agri International Ltd ('Opposite Party No. 2'/ 'OP-2') (collectively referred to as 'OPs'). The Armed Forces' procurement of food supplies, such as canned, packaged, dry, and animal rations, falls within the purview of APO.

According to the Informant, an indent for the purchase of 31,000 MT of refined mustard oil for the fiscal year 2024–2025 was received from DGST. In accordance with the indent, a bid document containing the Acceptance of Terms and Conditions ('ATC') was posted on the Government e-Marketplace ('GeM') Portal. Fourteen firms participated in the tender, out of which 11 were found fit to be participating in subsequent tendering process. According to the Informant, during the Commercial Negotiation Committee's ('CNC') meeting, the Principal Integrated Financial Advisor ('PIFA') Army (Q&M) had noted that OPs appear to be sister concerns and dominant therefore, the competition may be restricted.

As per the Reference, a retendering of procurement of refined mustard oil was recommended by the Procurement Committee ('PC') on the advice of PIFA Army (Q&M). It was also stated that OPs have been participating with brand names 'VITALIFE' and 'VIVAAN' respectively in the tenders for procurement of Edible Oil and that OPs were engaged in Reverse Auction ('RA'), competing with each other on the GeM Portal.

The Informant alleged that both OP-1 and OP-2 are sister concerns and have engaged in bid rigging and collusive bidding practices by forming a cartel during the tender for procurement of refined mustard oil. Accordingly, the Informant prayed for examining the shareholding structures of OPs, details of promoters and their stakes in respect of OPs and verify if OPs are sister concerns, the possibility of cartel formation and bid rigging.

The CCI observed that both OPs come under the definition enterprises under the Act and are engaged in identical trade of goods. After scrutinizing the table of bids relating to tenders, mentioned in the Reference, the Commission observed that OP-1 and OP-2 emerged as L-1 bidder on 4 occasions each, out of a total of 15 occasions, with percentage difference between their bids ranging between 0.42% and 10.46%. Further, from the data provided for the 15 occasions it was noted that on 7 occasions the winner was some other enterprise than OPs.


The Commission, with regards to investigating the possibility of cartel formation and commonality of management between the OPs, referred to its decision in **XYZ Vs. Continental Milkose India Limited [Case No. 25 of 2021]** and in **Re: Alleged cartelization in road construction work in the State of Uttar Pradesh [Suo Motu Case No. 03 of 2018]** and held that mere commonality of ownership does not by itself establish that the entities are engaged in bid rigging and contravened section 3(3)(d) of the Act. Furthermore, the Commission, perusing the order of the Hon'ble High Court of Gujarat in Company Petition Nos. 36, 37 & 38 of 2015, wherein the then scheme of de-merger of Gokul Refoils & Solvent Limited, OP-1 and OP-2 was approved, observed that OPs are independent entities.

In view of the above and not finding any evidence of collusion or bid rigging in the impugned tendering process, the Commission closed the matter under section 26(2) of the Act.

*(Order dated 04.02.2025)*

### **KK Sharma Law Offices**

**An initiative of Kaushal Kumar Sharma, ex-IRS, former Director General & Head of Merger Control and Anti-Trust Divisions, Competition Commission of India, former Commissioner of Income Tax**



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