



COMPETITION ACT

Tender Disqualification Not Anti-Competitive: CCI Dismisses Allegations Against BSNL

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Background

The present information was filed by M/s C.C.L. Optoelectronics Private Ltd. (“the Informant”) under Section 19(1)(a) of the Competition Act, 2002 (“the Act”) alleging abuse of dominant position by M/s Bharat Sanchar Nigam Ltd. (“BSNL” or “the Opposite Party”), in contravention of Section 4 of the Act. The Informant is engaged in the manufacture of electronic products used in the telecommunications industry, whereas BSNL is a public sector undertaking providing telecommunication services across India.

Case Details

BSNL floated a tender for the procurement of 2,00,000 units of Splice Closures for Optical Fiber Cables. The eligibility criteria under the tender required bidders to have a minimum average annual turnover of ₹664 lakhs during the last three financial years. However, exemptions were available for Micro, Small and Medium Enterprises (MSMEs) and startups, provided that they met the requisite quality and technical specifications.

The Informant, being an MSME, claimed exemption from the turnover and experience criteria and submitted its Udyam Registration Certificate as proof of eligibility. However, BSNL disqualified the Informant on the ground that it did not meet the past performance criteria, as it failed to furnish documentary evidence of having supplied 30,000 units in the past. The Informant alleged that the tender conditions were contradictory, structured in a way that unfairly excluded it, and favoured certain preferred bidders.

Further, the Informant contended that BSNL’s actions amounted to exclusionary and discriminatory practices in violation of Section 4 of the Act. Accordingly, it sought interim relief restraining BSNL from proceeding with the procurement process and final relief including an inquiry into BSNL’s conduct, cancellation of the tender, imposition of penalties, and award of compensation.

Commission’s Analysis

Upon examination, the Commission delineated the relevant product market as the market for Telecommunication Services in India. Based on available data, BSNL’s market share was observed to be approximately 2.09%, whereas other major competitors such as Reliance Jio (40.07%), Bharti Airtel (32.01%), and Vodafone Idea (14.37%) had significantly larger market shares. Consequently, BSNL was not found to hold a dominant position in the relevant market.

The Commission further noted that the Informant’s disqualification was based on the past performance criterion and not on turnover or experience requirements. Therefore, such disqualification could not be construed as anti-competitive or discriminatory. Moreover, it was observed that the Informant had not availed the opportunity to seek clarification or representation regarding the tender terms through the prescribed procedure during the bidding process.

The Commission opined that the alleged contradictions in the tender conditions related primarily to matters of procurement policy, which do not fall within the ambit of competition law. No material evidence was presented to indicate that BSNL had abused any position of dominance or colluded with other bidders to exclude competition. Based on the above findings, the Commission concluded that no prima facie case of contravention of Section 4 of the Act was established against BSNL.

Order

Considering the analysis and observations, the Commission decided to close the matter under Section 26(2) of the Competition Act, 2002. Consequently, the application for interim relief filed under Section 33 of the Act was also dismissed.

Conclusion

The Commission held that BSNL’s actions did not constitute abuse of dominance or restrictive trade practices within the meaning of the Act. Accordingly, the case was closed, and no further investigation was deemed necessary.

Related Practice Areas
