

CCI PENALISES BEER MANUFACTURERS FOR CARTELISATION

1. BACKGROUND

- 1.1. Pursuant to the leniency application filed by Crown Beers India Private Limited and SABMiller India Limited (“**SABMiller**”),¹ the Competition Commission of India (“**CCI**”) initiated an investigation and on September 24, 2021, penalised United Breweries Limited (“**UBL**”), SABMiller and Carlsberg India Private Limited (“**Carlsberg**”) (UBL, SABMiller and Carlsberg collectively referred to as the ‘**Beer Manufacturers**’) for indulging in cartelisation between 2009 to 2018,² under the aegis of the All India Brewers' Association (“**AIBA**”)³ in relation to the sale and supply of beer in various States and Union Territories in India.⁴
- 1.2. During the course of the investigation, the Director General (“**DG**”) also conducted search and seizure operations (popularly known as ‘dawn raids’) on the premises of the Beer Manufacturers. Thereafter, leniency applications were filed by UBL and its officials⁵ as well as Carlsberg.
- 1.3. After a detailed investigation, the DG concluded that the Beer Manufacturers formed a cartel to fix prices, limit supply and allocate the market for beer, as the Beer Manufacturers: (i) exchanged⁶ commercially sensitive information⁷ (“**CSI**”) in regard to price revisions to be sought from the respective State Governments; (ii) had a monitoring mechanism to ensure implementation of the cartel agreement;⁸ and (iii) collectively stopped production and supplies of beer as a strategy to oppose certain State Government policies.⁹ Interestingly, the DG observed that the Beer Manufacturers and AIBA continued to discuss pricing strategies for submission to various State Governments even after being aware that such discussions and joint representations violate the provisions of the competition law.¹⁰

¹ Crown Beers India Private Limited and SABMiller ultimately held by Anheuser Busch InBev SA/NV, filed the leniency application in 2017.

² UBL and SABMiller participated in the cartel from 2009 to October 2018, whereas Carlsberg participated in the cartel from 2012 to October 2018.

³ The CCI held that AIBA also participated in the cartel, given that it proposed the rates/quantum of price revisions to be applied for before the State Governments.

⁴ CCI order, available at: <https://www.cci.gov.in/sites/default/files/06-of-2017.pdf>.

⁵ Chief financial officer, executive director and chief supply officer.

⁶ By way of internal and external e-mails as well as WhatsApp and text messages, conference calls, etc. between the top managerial personnel of the Beer Manufacturers.

⁷ Such as, price and cost data.

⁸ By exchanging periodical sales data to check that each adhered to the ‘understanding/agreement’ reached amongst them by monitoring their market share.

⁹ In State of Odisha, Maharashtra and West Bengal, the Beer Manufacturers collectively decided to stop production and supplies of beer, whenever State Governments hiked the excise duty or reduced the maximum retail price of beer.

¹⁰ The top managerial personnel of the Beer Manufacturers had warned each other from holding such discussions on AIBA’s platform.

2. CCI's FINDINGS

- 2.1. The CCI concurred with the findings of the DG and held that the Beer Manufacturers were guilty of cartelisation as: (i) they fixed prices of beer;¹¹ (ii) limited the supply of beer;¹² and (iii) shared/allocated the market for beer.¹³
- 2.2. In relation to the cartel allegations, the Beer Manufacturers *inter alia* contended that: (i) the discussions on price increase were legitimately required to recoup the increased transportation and incidental costs. Additionally, the price increase sought was never implemented, thus there was no appreciable adverse effect on competition in the market;¹⁴ and (ii) the exchange of CSI between the Beer Manufacturers was at the behest of the State Government who required such information to be submitted jointly in a prescribed format on a regular basis.¹⁵ The CCI rejected such contentions and observed that: (i) mere exchange of CSI amongst the Beer Manufacturers compromised the integrity of independent bidding process of the respective State excise authorities/ corporations; and (ii) the State Government mandated collection of only supply and dispatch information. As such, the Beer Manufacturers provided no explanation for sharing historic and prospective revenue and target details with each other. The CCI reasoned that the only explanation for such sharing was to keep track of each other's market share and distribution.
- 2.3. In relation to UBL and SABMiller, the CCI concurred with the DG's findings that they indulged in cartelisation for purchase of second-hand beer bottles for reuse in their breweries as they discussed the quantity and price of their off take as well as monitored each other's conduct.
- 2.4. In relation to AIBA, the CCI observed that being an association of beer manufacturers, it should have limited its role to raising common issues affecting the industry and its members before the State Governments. However, the AIBA went beyond and indulged in collection and dissemination of CSI, like cost cards of its members.
- 2.5. In view of the above, the CCI imposed penalty: (i) on Carlsberg and SABMiller at the rate of 2% of their relevant turnover; (ii) on UBL at the rate of 0.5 times of its relevant profit; and (iii) on AIBA at the rate of 3% of its relevant turnover i.e., INR 6.25 lakhs (approximately USD 0.008 million).
- 2.6. Given that SABMiller was the first to approach the CCI as a leniency applicant and provided true, full and vital disclosure, the CCI granted it and its office bearers a 100% reduction in penalty. While UBL and Carlsberg filed for leniency post the search and seizure operations conducted on their premises, the CCI granted: (i) UBL along with its office bearers a 40% reduction in penalty; and (ii) Carlsberg and

¹¹ In the State of Karnataka, Maharashtra, Odisha and Rajasthan and the Union territory of Delhi and Puducherry. Further, UBL and SABMiller fixed prices in the State of Andhra Pradesh, whereas UBL and Carlsberg fixed prices in the State of West Bengal.

¹² In the State of Odisha. Further, UBL and Carlsberg restricted the supply of beer in the State of Maharashtra and West Bengal.

¹³ In the State of Maharashtra. UBL and SABMiller also restricted the supply of beer to premium institutions/bulk buyers in Bengaluru, Karnataka. However, the CCI could not establish a contravention of a cartel amongst the Beer Manufacturers in other States, namely, Bihar, Madhya Pradesh and Telangana, owing to lack of evidence.

¹⁴ Regarding the cartel agreement in Delhi.

¹⁵ Regarding the cartel agreement in Maharashtra.

its office bearers a 20% reduction in penalty, for providing significant value addition in the case. Accordingly, the penalty payable by UBL and Carlsberg amounted to INR 751.83 crores (approximately USD 102.06 million) and INR 111.38 crores¹⁶ (approximately USD 14.97 million), respectively.

- 2.7. The CCI also penalised 15 officer bearers of the Beer Manufacturers who were in-charge of, and responsible for the said conduct at the rate of 3% of the average of their incomes.

3. **INDUSLAW VIEW**

- 3.1. The leniency regime was introduced in India in 2009, in line with international best practices. This helps the CCI in detection of cartels as well as ensure quick and decisive action against them. While the businesses initially viewed the regime with curious skepticism, the fact that 11 cartels have been unearthed and penalized (and many more are currently being investigated) bears a testimony to its growing popularity. The leniency regime provides that even if a leniency application has been filed, the subsequent applicants can claim reduction in penalty for providing evidence which 'adds value' to the DG's investigation. In the instant case, the CCI acknowledged that post the search and seizure operation, the DG had collected most of the evidence required to establish the cartel. However, the CCI still granted the subsequent leniency applicants (namely, UBL and Carlsberg) a reduction in penalty of 40% and 20%, respectively as they provided evidence which added value to the DG's investigation. Thus, the CCI seems to be rewarding subsequent leniency applicants even if their value addition to the DG's investigation/cartel prosecution is minimal.

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¹⁶ While Carlsberg participated in the cartel from 2012 to October 2018, the CCI erroneously calculated the penalty payable by Carlsberg based on the turnover generated by it from 2009 to October 2018. By way of a rectification order dated October 04, 2021, the CCI corrected its error and calculated the penalty payable by Carlsberg based on the turnover generated by it from January 2012 to October 2018. The order is available at: <https://www.cci.gov.in/sites/default/files/06-of-2017-section-38.pdf>.