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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# CARTEL AND BID-RIGGING: ORIGINS, ECONOMIC DYNAMICS AND PRACTICES

AUTHORED BY - PALAK KATTA

## **Abstract**

*This article explores the complex areas of bid-rigging and cartelization in the context of the Indian market. It lays the groundwork for comprehending these anti-competitive actions by first exploring Indian competition legislation. This article describes cartels in detail, covering everything from market allocation plans to price-fixing agreements, and shows just how detrimental they are to market competition. Furthermore, information about bid-rigging techniques exposes the dishonest strategies employed to rig auctions. The chapter looks at these behaviours' effects from an economic perspective, highlighting decreased consumer welfare, increased costs, and decreased efficiency. It also examines the difficulties in identifying and opposing bid-rigging and cartels, highlighting the necessity of strong enforcement measures. Overall, this article offers a thorough examination of the origins, implications for the economy, and operational dynamics of bid-rigging and cartelization, providing insightful information about the intricacies of these anti-competitive practices in the context of the Indian market.*

**Keywords-** *Cartelization, Bid-Rigging, Competition Law, Anti-Competitive Practices, Economic Impact*

## **Introduction**

Competition is critical in improving an economy's ability to compete on a global scale. It also contributes to the creation of a consumer-oriented environment in which consumers have more options, at lower prices, and of higher quality. Promoting competition is one of the most widely acknowledged and available strategies for improving consumer well-being.<sup>1</sup>

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<sup>1</sup>Themistoklis K. Giannakopoulos, *Safeguarding Companies' Rights in Competition and Antidumping/Anti-subsidies Proceedings* (Kluwer Law International, The Hague, 2004).



Corporate organisations may diverge under pressure in competitive environments with few paths to success.<sup>2</sup> Construction and other oligopolistic businesses have particular obstacles, including entrance hurdles and fierce competition.<sup>3</sup>

To overcome difficulties, firms exploit legal possibilities to increase profits while also collaborating and forming cartels to speed expansion and reduce competition.<sup>4</sup>

The motivation to generate profits is common in all forms of business enterprises, whether they be government corporations, corporate giants, cooperatives, or individual proprietorships.<sup>5</sup> Businesses often use collusion to protect themselves from market competition, such as fixing pricing, restricting production, dividing the market, and bid rigging.

## Competition Law in India

World Bank defines competition as “a situation in a market in which firms and sellers independently strive for buyer’s patronage in order to achieve a particular objective business, for example, profits, sales or market share”.<sup>6</sup> A similar definition has been given by the OECD.<sup>7</sup> It can be defined broadly as income rivalry by giving more than one's competitors give in proportion to what one asks in return, or by persuading the public to think so or to act as if they did, to the point of purchasing one's goods over those of one's rival.<sup>8</sup>

The concept of "competition" is still undefined in Indian competition law. However, in the corporate world, it is widely seen as a dynamic in which organisations compete to attract and retain a customer base for their products. This dynamic drives enterprises to outperform their competition. In essence,

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<sup>2</sup> Nikos Passas, ‘Anomie and corporate deviance’ (1990) *Contemporary Crises*, 14(2), 157–178.

<sup>3</sup> Marshall, Robert C., and Leslie M. Marx ‘*The Economics of Collusion: Cartels and Bidding Rings*’ (2012) The MIT Press, pp. 29–54. *JSTOR*

<sup>4</sup>Richard N. Clarke, ‘Collusion and the incentives for information sharing’ *The Bell Journal of Economics*, Vol. 14, No. 2 (Autumn, 1983), pp. 383-394

<sup>5</sup>Ernest, Gellhorn, William E, Kovacic, ‘*Antitrust Law and Economics in a nutshell*’ (1994) West Publishing Co., St. Paul.

<sup>6</sup>World Bank, OECD, ‘A Framework for the Design and Implementation of Competition Law and Policy’ (November 1998) <<https://documents1.worldbank.org/curated/en/977331468759588195/pdf/multi-page.pdf>> accessed 20 January 2024

<sup>7</sup>OECD, ‘Glossary of Industrial Organisation Economics and Competition Law’ (*OECD, Paris, 1993*) <<https://www.oecd.org/regreform/sectors/2376087.pdf>> accessed 20 January 2024

<sup>8</sup>Clark, J. M, ‘What Is Competition?’ (1925) *The University Journal of Business*, vol. 3, no. 3, 1925, pp. 217–40. *JSTOR*, <<http://www.jstor.org/stable/2354777>>accessed 3 March 2024



competition refers to an economic rivalry between businesses, with each attempting to gain a larger portion of the market. It refers to a market environment in which various entities can freely enter and exit without any restriction.

Competition law in India has grown significantly over time, from a narrow focus to a comprehensive framework aiming at fostering fair competition, preventing anti-competitive behaviours, and ensuring consumer welfare. The Monopolies and Restrictive Trade Practices Act (MRTP Act) of 1969 marks the beginning of India's competition law evolution. This legislation was primarily concerned with reducing monopolistic activities and the abuse of power in the Indian market. The Act got its inspiration through the mandate outlined in the Indian Constitution's Directive Principles of State Policy (DPSP). The MRTP Act can be traced back to Articles 38 and 39 of the Indian Constitution.

The DPSP laid down, inter alia, that *“the State shall strive to promote the welfare of the people by securing and protecting as effectively, as it may, a social order in which justice – social, economic and political – shall inform all the institutions of the national life<sup>9</sup> and the State shall, in particular, direct its policy towards securing –*

- 1. that the ownership and control of material resources of the community are so distributed as best to sub-serve the common good;<sup>10</sup>*
- 2. that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.”<sup>11</sup>*

The MRTP Act, adopted during an era when India was emphasising self-reliance and defending domestic businesses, was originally intended to regulate anti-competitive trade practices. It sought to prevent monopolies and the development of trade practices that might obstruct market competition. The Act empowered the Monopolies and Restrictive Trade Practices Commission (MRTPC) to investigate and prosecute such practices.

However, as India began its economic liberalisation in the early 1990s, it became clear that the MRTP Act was insufficient for coping with the difficulties of a globalised and free economy. The necessity

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<sup>9</sup> The Constitution of India, art. 38(1).

<sup>10</sup> The Constitution of India, art. 39(b).

<sup>11</sup> The Constitution of India, art. 39(c)

for a modern competition law that was consistent with worldwide standards became clear. The Raghavan Committee incorporated its suggestions in a report published in 2000 ("Raghavan Committee Report"), which stated that "the MRTP Act was insufficient for fostering market competition and curbing anticompetitive practices."<sup>12</sup>

The Raghavan Committee noted that "the MRTP Act lacked explicit definitions of anti-competitive practices such as cartels, collusion, boycotts, and bid rigging." The absence of such vital clear definitions has resulted in various court interpretations, which were often conflicting.<sup>13</sup>

Based on these recommendations, the Competition Act, 2002 was enacted in December 2002 and got presidential assent on 13 January 2003. The Act follows the ideology of current antitrust legislation widespread in the contemporary world and attempts to promote competition and protect trade and markets from anticompetitive practices by firms, as stated in its preamble –

*"An Act 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."*<sup>14</sup>

The Competition Act is divided into four sections: anticompetitive agreements, abuse of dominant position, regulation of combinations and competition advocacy. The Act represents a significant shift from the earlier statute.

The Act forbids any agreement that causes an adverse effect on competition in the Indian market.<sup>15</sup> Any anti-competitive agreement is void.<sup>16</sup>

The Act includes explicit provisions for the establishment of the Competition Commission of India (CCI). The Act is cutting-edge legislation, with measures comparable to those found in modern countries.

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<sup>12</sup>Raghavan Committee Report' (2000) <[https://theindiancompetitionlaw.files.wordpress.com/2013/02/report\\_of\\_high\\_level\\_committee\\_on\\_competition\\_policy\\_law\\_svs\\_raghavan\\_committee.pdf](https://theindiancompetitionlaw.files.wordpress.com/2013/02/report_of_high_level_committee_on_competition_policy_law_svs_raghavan_committee.pdf)> accessed 3 February 2024>

<sup>13</sup>Harinder Pal Singh, 'An Analytical Study of Competition Laws in Europe and India' (2011) (Unpublished Ph.D. Thesis, Panjab University) <<http://hdl.handle.net/10603/88613>> accessed 3 February 2024

<sup>14</sup> Competition Act 2002, Preamble.

<sup>15</sup> Competition Act, 2002, s. 3(1).

<sup>16</sup> Competition Act, 2002, s. 3(2).

## Understanding the Concept of Cartel and Bid-Rigging

Before starting a discussion on research, it is important to address the topic or subject matter of the study. According to this notion basic information regarding the subject matter of the proposed research is being discussed.

### Cartel

The term "dango" in Japanese refers to collusion, whereas "Karuteru" is the phonetic equivalent of "cartel."<sup>17</sup> Its origins lie in the Italian word "Cartello," the German word "Kartell," and the French word "Cartel." In the late 16th century, the term "cartel" was first used in English that referred to a formal arrangement between opposing armies for the trading prisoners.<sup>18</sup>

A cartel is an agreement or arrangement that allows competing firms or businesses in the same industry to coordinate their operations. A cartel's principal purpose is to reduce competition, control pricing, and to limit the supply of goods or services in a specific market. Cartels sometimes entail corporations agreeing to set prices at a specific level, assign market shares among themselves, and occasionally even agree on production quotas.

Section 2(c) of the Competition Act, 2002 defines '*a cartel as including an association of producers, sellers, distributors, traders or service providers who, by an agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of, or trade in, goods or provision of services.*'

Cartels are prohibited by Sections 3(1) and 3(3) of the Competition Act. Section 3 of the Act, "prohibits and invalidates agreements between enterprises, individuals, or associations regarding the production, supply, distribution, storage, acquisition, or control of goods or services that may have an appreciable adverse effect on competition ("AAEC")<sup>19</sup> in India." Cartels must be beneficial for members to participate, considering their unlawful nature and accompanying risks. Decisions to engage in an agreement are based on risks associated with the cartel and the chance of detection.

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<sup>17</sup> Etsuko Kameoka, *Competition Law and Policy in Japan and the EU* 53 (Edward Elgar, Glos, 2014).

<sup>18</sup>Oxford Advanced Learner's Dictionary, 'Definition of Cartel' <<https://www.oxfordlearnersdictionaries.com/definition/english/cartel>> accessed 5 February 2024



## Forms of Cartels

There are basically two kinds of cartels- domestic and international cartels.

### a) International Cartels

An international cartel is a collusive arrangement of enterprises or firms in various nations to coordinate their actions in a way that limits global competition. These cartels involve corporations from several countries working together to manipulate markets, fix prices, allocate market shares, or restrict global production or supply of goods and services. International cartels are differentiated through the fact that the cartel members comprise firms from more than one country.<sup>20</sup> They usually operate in industries where goods or services are traded across borders, such as commodities, electronics, automobiles, and pharmaceuticals. The agreement can be among Government or private entities.

### b) Domestic Cartels

Domestic cartels, also known as national or local cartels, are collusive arrangements between businesses or firms that operate within the boundaries of a single country. Domestic cartels, as opposed to international cartels, which involve corporations from multiple countries, are concerned with manipulating markets, controlling prices, limiting competition, and maximising profits within a single country.

Cartels can be further divided as:

- **Export Cartel**

Export cartels, or export associations, “are cartels formed solely for the purpose of engaging in export trade.”<sup>21</sup> Export cartels involve enterprises from the same country collaborating on certain products for export. Most competition laws exempt such cartels.

- **Import Cartel**

Import cartels are collusive arrangements between corporations or firms involved in importing commodities into a country. These cartels seek to control the importation process, influence prices, and reduce competition in the domestic market for imported goods. Cartel players utilise various

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<sup>20</sup>Margaret C. Levenstein and Valerie Y. Suslow, ‘International Cartels’, ISSUES IN COMPETITION LAW AND POLICY 1107 <<https://public.websites.umich.edu/~maggiel/files/aba.pdf>> accessed 10 February 2024

<sup>21</sup>A. Paul Victor, ‘Export Cartels: An Idea Whose Time Has Passed’ (1991) 60 Antitrust LJ 571

techniques, such as limiting product imports and establishing fixed pricing or terms of purchase.

- **Rebate Cartels**

Rebate cartels also referred to as discount cartels, are collusive arrangements between competitors in which they agree to offer clients rebates or discounts on a coordinated basis.

## Cartel Conduct

There are typically four types of cartel conduct:

- **Price-Fixing**

Instead of allowing market forces to establish prices, competitors join together to set prices for goods or services. It can be a 'direct' price fixing, in which parties agree to raise or maintain actual prices. Price fixing may occur in the form of 'indirect' price fixing, which occurs when competitors agree to provide the same discounts or terms for credit.

In the case of *FICCI Multiplex*,<sup>22</sup> the forum's members unanimously decided not to release films to multiplexes in order to pressure them into accepting revenue-sharing ratios.

An agreement amongst association members to fix prices for providing services of freight transport through trucks was deemed anti-competitive and in violation of the Act in the case of *M/s. Shivam Enterprises v. Kiratpur Sahib Truck Operators*.<sup>23</sup>

- **Bid-Rigging**

Parties involved in a bidding procedure coordinate their bids rather than submitting individual bid prices. Bid rigging occurs when competitors agree on who will win a tender. To assist the cartel member, other cartel members may withhold from bidding, withdraw their proposals, or submit bids with higher prices or unfavourable conditions. The cartelists may agree between themselves to take turns as the designated 'winner'.

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<sup>22</sup>FICCI–Multiplex Association of India v. United Producers/ Distributors Forum & Ors. [2011] Comp LR 79 (CCI).

<sup>23</sup>M/s. Shivam Enterprises v. Kiratpur Sahib Truck Operators, Co-operative Transport Society Limited and Anr. [2015] Comp LR 232 (CCI).

- **Market-Sharing**

In order to create local monopolies, producers limit the geographic areas, customer sizes, and customer kinds to which they will sell their goods and services. Since they would be unable to compare prices, customers are impacted. In the case of *Ghanshyam Dass Vij and Bajaj Corp. Ltd.*,<sup>24</sup> the association set distribution regions for members and penalised non-compliance.

In certain ways, market-sharing agreements might even affect competition more than price-fixing. The lone market occupier that remains after competitors are eliminated has a monopoly and is unaffected by competition in terms of prices, service, quality, innovation, pressures, etc., even though they are only operating in a small area.

- **Production Control**

A competitive agreement to restrict the amount of products or services on the market is known as production control. In order to maximise their profits, the cartel may indirectly raise prices by managing the production or supply of goods or services.

## **Bid- Rigging**

Bid rigging comes under the contour of the cartel. Bid rigging is defined as an action in which competitors who would normally bid independently and competitively in a tender agree not to compete against one another and control the bidding process to distribute the resulting gains. Bid rigging agreements can take the form of a predetermined and collusive bid price, an agreement where the members decide not to bid against another cartel member or even an entire withdrawal from the bidding. Members of a cartel do not bid independently, but rather with the common goal of the cartel in mind.<sup>25</sup>

The Advanced Law Lexicon has defined the term bid rigging as, “*bidding in response to a tender or an invitation to bid, by two or more suppliers who have joined to circumvent the intention of the buyer to secure competitive bids by submitting offers the terms and conditions of which are decided jointly*”

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<sup>24</sup>Ghanshyam Dass Vij and Bajaj Corp. Ltd., [2015] CCI 155

<sup>25</sup>Neelambara Sandeepan and Amruta Pradhan, ‘India: Bid-Rigging In Public Procurement: An Indian Perspective’ (*Mondaq*, 26 August 2022) <<https://www.mondaq.com/india/government-contracts-procurement--ppp/1213654/bid-rigging-in-public-procurement-an-indian-perspective>> accessed 10 February 2024



even when these are submitted separately”.<sup>26</sup>

In “*Re: Cartelization by public sector insurance companies in rigging the bids submitted in response to the tenders floated by the Government of Kerala for selecting insurance service providers for Rashtriya Swasthya Bima Yojna*,”<sup>27</sup> The Kerala State Government held a tender to choose insurance service providers for the Rashtriya Swasthya Bima Yojna for a three-year period. The CCI found four public sector insurance companies guilty of bid rigging and levied exemplary fines worth INR 671 crores.

Bid rigging is a type of collusion in which competing parties agree, either expressly or implicitly, to manipulate the bidding process in order to eliminate competition and make sure one party wins the bid. This illegal behaviour can take many forms, but it usually involves rivals agreeing on who will submit the winning bid, the pricing they will give, or the terms of the contract. This allows them to artificially inflate prices, limit buyer choices, and gain an unfair edge.

## Forms of Bid rigging

The Bid rigging can take many forms like-

### a) Collusive Pricing

Bids from businesses involved in collusion may be identical or have predetermined prices. Even while there may be legitimate reasons for many parties to quote rates that are the same or comparable, it will be deemed anti-competitive if premeditation or an unspoken agreement between the parties is proved. Therefore, it is the parties' obligation to provide evidence for their similar offers.<sup>28</sup>

### b) Cover Bidding

Cover bidding, also known as complementary bidding is a type of bid rigging in which rivals agree to submit bids that are purposefully higher than those of the selected winning bidder. This approach gives the impression of competition while assuring that a pre-selected bidder eventually wins the contract. In *National Insurance Company Ltd. & Ors. v. CCI*,<sup>29</sup> the Competition Commission of India

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<sup>26</sup>P. Ramanatha Aiyer, *Advanced Law Lexicon* (Vol 1) 525 (Wadhwa and Company, Nagpur, 2007).

<sup>27</sup>Suo Moto Case No. 02 of 2014

<sup>28</sup>Neelambara Sandeepan and Amruta Pradhan, ‘India: Bid-Rigging In Public Procurement: An Indian Perspective’ (*Mondaq*, 26 August 2022) <<https://www.mondaq.com/india/government-contracts-procurement-ppp/1213654/bid-rigging-in-public-procurement-an-indian-perspective>> accessed 10 February 2024

<sup>29</sup>*National Insurance Company Ltd. & Ors. v. CCI* [2016] MANU/TA/0060/2016

(CCI) and the Competition Appellate Tribunal, New Delhi (COMPAT) determined that “the appellants were engaging in cover bidding because the appellants had previously held meetings in which three of the four bidders had agreed to submit increased bids in order for the other to win.” A penalty of a total of 1% of their annual turnover was levied on them.

**c) Bid Rotation**

Bid rotation is a situation in which bidders take turns bidding the lowest. They settle on the rotation's terms and conditions in advance. These terms may differ depending on the contract size, bidder size, etc. If a rotating pattern is seen in the biddings, it indicates that collusion is occurring.

**d) Bid Suppression**

Bid suppression occurs when bidders and colluders agree to refrain from bidding or withdraw previously submitted bids. This is intended to remove competitive bids, ensuring that the chosen winner wins the contract.

**e) Subcontracting**

Bid rigging generally involves subcontracting arrangements. Subcontracts or supply contracts from the winning bidder are frequently awarded to rivals who consent to not compete or submit a losing bid. Sometimes the lowest bidder consents to withdraw their offer in favour of the next lower bidder in exchange for a profitable subcontract that divides the higher price that was obtained unlawfully between the two of them.<sup>30</sup>

Bid rigging cartels benefit only bidders and no one else. With a gain in price, share, or output, such enterprises' profits rise. Bid rigging causes the procurer or auctioneer to lose money because the product's true worth is not achieved.

Public procurement, the purchase of products and services by the public sector, is a significant government economic activity, accounting for around 15% of global GDP. In India, government procurement accounts for approximately 30% of the GDP.<sup>31</sup>

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<sup>30</sup>Competition Commission of India, ‘Provisions relating to Bid Rigging’ (2020) <[http://164.100.58.95/sites/default/files/advocacy\\_booklet\\_document/Bid%20Rigging.pdf](http://164.100.58.95/sites/default/files/advocacy_booklet_document/Bid%20Rigging.pdf)> accessed 15 February 2024

<sup>31</sup>Competition Commission of India, ‘Provisions relating to Public Procurement’ 9 (CCI, New Delhi). <[http://164.100.58.95/sites/default/files/advocacy\\_booklet\\_document/pp.pdf](http://164.100.58.95/sites/default/files/advocacy_booklet_document/pp.pdf)> accessed 15 February 2024

Previous audits by the Comptroller and Auditor General of India (CAG) have revealed widespread bid-rigging in government procurements. Bid rigging reduces competition, causing taxpayers and consumers to pay higher prices than necessary.

## **Working of Cartel**

A cartel is formed when a group of independent corporations within an industry agree to coordinate their operations in order to manipulate the market to their advantage. A cartel may operate by simple cooperation or through complex phenomena. The world-renowned *Lysine cartel*<sup>32</sup> is one of the most intricate cartels in the history of antitrust, and the division of antitrust of the USA had to enlist the Federal Bureau of Investigation services to break it.

Cartel operations often require secret or covert meetings among member companies to discuss and agree on the conditions of their collusion. These agreements can involve establishing a certain pricing for their products or services, agreeing to limit output or production levels in order to create artificial scarcity, or dividing territory or client segments among themselves to prevent competition.

To maintain the cartel agreement and avoid cheating, members frequently use monitoring and enforcement techniques. This may include exchanging sales data, performing audits, or imposing penalties on members who do not follow the agreed terms.

## **Economic Impact on the Indian Market**

Cartels and bid rigging have a large and negative economic influence on the Indian market, reducing competition, customer welfare, and overall market efficiency. These anti-competitive tactics raise prices, result in degrading the quality of products and services, and impede the creation of equal opportunities for enterprises.

Post-COVID, a danger can be seen in forming cartels in many sectors. Bigger businesses may start charging higher prices which ultimately creates entry barriers for smaller ones. According to a research, the top 20 Indian companies now account for 70% of earnings and earn 60% of corporate

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<sup>32</sup>John M. Connor, 'Lysine: A Case Study in International Price-Fixing' (1998) Vol. 13, No. 3, Choices <<https://www.jstor.org/stable/43663287>> accessed 12 February 2024



India's cash flow, compared with 14% just thirty years ago.<sup>33</sup> In the case of cartels, when corporations combine to regulate prices or allocate markets, Indian consumers pay unfairly high costs for goods and services. This diminishes their purchasing power and limits their access to a wide range of market options. The negative consequences are perceived most acutely by vulnerable people who may already be experiencing financial difficulties.

Furthermore, cartels may restrict innovation and hinder the admission of new competitors to the market. Because of the number of manufacturers, cartels have the greatest impact on oligopolistic economies, whereas cartels have the least impact on monopolistic economies.

In contrast, bid rigging has an impact on the Indian government's procurement process and public projects. When contractors participate in bid rigging, the government ends up paying more than necessary for goods and services, resulting in a waste of taxpayer money. This not only influences the government's capacity to spend taxpayer money efficiently, but it also limits the scope for public investment in key infrastructure and services.

Overall, the economic impact of cartels and bid rigging in the Indian market is unfavourable for both consumers and enterprises. It results in increased pricing, lower quality, hindered innovation, and inefficient resource allocation. To offset these consequences, Indian authorities must enforce strict antitrust rules, promote openness in procurement processes, and impose severe penalties on individuals who engage in anticompetitive behaviour.

## **Detection of Cartel and Bid-Rigging**

- **Detection of Cartel**

Detecting cartels, which operate concealed and frequently violate antitrust rules, is a complex and difficult assignment for India's competition regulators. However, authorities utilise a variety of tools and indications to identify and investigate potential cartel conduct. Cartels can be recognised using two of the most often used and discussed tools: structural and behavioural methods. Structural Methods identify markets with collusive behaviour, as opposed to more competitive market

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<sup>33</sup>Nilanjan Banik, 'Post-COVID, There's a Danger of Cartels Forming in Many Sectors' (*The Wire*, 23 June 2023) <<https://thewire.in/economy/post-covid-cartels-inflation-wage-price>> accessed 15 February 2024

structures. Behavioural techniques focus on identifying company behaviours that may imply collaboration.<sup>34</sup>

Authorities also use economic research and market surveillance to discover odd pricing behaviour or market patterns that could suggest cartel activity. Abnormalities such as simultaneous price hikes across competitors, steady prices in the face of changing market conditions, or bidding patterns indicating collusion can alert investigators.

Furthermore, competition authorities in India receive numerous complaints from consumers, enterprises, and other market participants who suspect anti-competitive behaviour. These complaints can provide crucial information for inquiries into possible cartels.

In addition to these measures, officials may perform surprise inspections, known as "dawn raids," at the properties of suspected cartel members. During these raids, investigators collect papers, emails, and technological devices that could be evidence of conspiracy. To make a dawn raid effective, the fact that a competition authority is conducting an investigation must be kept confidential, even inside the authority. The longer and more sophisticated the process, the more players are involved, and the likelihood of information leakage increases.<sup>35</sup>

- **Detection of Bid- Rigging**

Detecting bid rigging necessitates the use of investigation techniques, market analysis, and cooperation among Indian authorities. Various methods are used to detect speculative bidding practices and collect evidence for enforcement actions against bid riggers. Data analysis is one of the key methods utilised by competition authorities. Authorities can detect abnormalities in bidding data from public tenders and contracts, such as excessively high pricing, recurrent bidding patterns, or a lack of genuine competition among bidders. These abnormalities can serve as red flags for bid rigging methods. A comprehensive checklist for detecting bid rigging in

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<sup>34</sup>Shaurya Aron and Shweta Maruka, 'Role of Economic Analysis in Cartel Detection' <<http://www.iclr.in/assets/pdf/ROLE%20OF%20ECONOMIC%20ANALYSIS%20IN%20CARTEL%20DETECTION.pdf>> accessed 17 February 2024

<sup>35</sup>Harsh Vardhan Dhanik and Arup Singh, 'Cartels in Indian Market: Measures and Standard for its Enforcement by CCI and its effect on Economy and Consumers' IJLSS <<https://ijlss.wordpress.com/2016/12/21/cartels-in-indian-market-measures-and-standard-for-its-enforcement-by-cci-and-its-effect-on-economy-and-consumers-by-harsh-varadhan-dhanik/>> accessed 17 February 2024

public procurement is included in the OECD Guidelines. This checklist helps procurement officials spot anti-competitive behaviour during bidding processes.<sup>36</sup>

Market research and industry knowledge are crucial instruments for detecting bid manipulation. To stay up to date on bidding processes and market dynamics, authorities research industry trends, attend industry conferences, and communicate with stakeholders. Unusual bidding behaviour, rapid changes in competitor market share, or a lack of new market entrants might all be indicators of potential bid rigging.

## Conclusion

Cartels and bid rigging, which exist across industries and eras, are fundamentally economic. These practices, which range from agriculture to technology, sports to medicine, persist as a result of market and industry frameworks. Effective competition is a challenge to their establishment and sustainability.

The key feature of these methods is secrecy, which makes identification by competition authorities and customers difficult. Cartels and bid rigging undermine the principles of free markets, resulting in economic losses and reduced consumer advantages. They seek to impede competition, serve no social purpose, and are generally difficult to detect, posing a substantial threat to economic progress.

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<sup>36</sup>OECD, 'Detecting Bid Rigging in Public Procurement' <<https://www.oecd.org/competition/cartels/42594486.pdf>> accessed 20 February 2024



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