

Cartelisation by Cement Manufacturers

– CCI vindicates BAI's stand

Builders' Association of India had filed a complaint with the Competition Commission of India (CCI) against the Cement Manufacturers Association & various cement companies, about the unfair trade practices / indulging in cartelisation thus pushing up the price of cement, vide Case No.29/2010.

The Commission issued Notice vide File No. 1 (29)/2010-Sectt. dated 23.12.2011 – Case No.29/2010, forwarding therewith a copy of the investigation report (non-confidential version) submitted by the Director General for filing the response, if any, within two weeks of the receipt of the letter. The Commission also directed the parties of both sides to appear before the Commission for hearing, if they so desire, either personally or through their authorized representatives on 17.01.2012 & 18.01.2012 at 10.30 A.M. Complete case papers received in the office BAI were forwarded to BAI Advocates M/s. Seth Dua & Associates for making the replies. As per the information gathered, replies, on behalf of BAI were submitted.

Accordingly, case came up for hearing before the Commission on 17th January 2012, before six commission members i.e. full bench. Apart from Advocates and representatives of BAI, there were 75-80 advocates, representing the CMA and other cement companies to whom the notices were issued by the CCI. After hearing all concerned the Commission gave orders, to file the objections, in soft copy, before the Commission by 14th Feb. 2012.

The Commission held its final meeting on 21st, 22nd & 23rd February 2012, which was attended by the representatives and Advocates of BAI representatives and Advocates of the cement companies.

On 20th June, 2012 Full Bench of CCI delivered a unanimous order running into 258 pages, upholding BAI's contention. Relevant extracts of the order are printed herein below.

**Before The
Competition Commission of India
Case No.29/2010**

Date of Order 20.06.2012

Builders Association of India through Shri. O.P. Dua & Shri. Rahul Goel – informant

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| 1) Cement Manufactures Association | - through Shri. Ashok Desai & Others |
| 2) Associated Cement Co. Ltd. | - through Shri. K Venugal and Ms. Pallavi Shroff |
| 3) Gujarat Ambuja Cement Ltd. | - through Shri. Ramji Srinivas & Ms. Anu Tiwari |
| 4) Grasim Cement | - through Shri. Aski chinoy & Shri. Pravin Parekh |
| 5) Ultratech Cement Ltd. | - through Shri. Aski chinoy & Shri. Pravin Parekh |
| 6) Jaypee Cement | - through Shri. Parag Tripathi & Shri. G.R. Bhatia |

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| 7) The India Cements Ltd. | - through Shri. Harishankar |
| 8) J.K. Cements (JK Group) | - through Shri. P.K. Bhatia |
| 9) Century Textiles & Industries Ltd.
(Century Cement) | - Shri. Pramod Agarwala & Others |
| 10) Madras Cement Ltd. | - through Shri. T. Srinivas Murthy |
| 11) Binani Cement Ltd. | - through Shri. Aditya Narain &
Shri. R. Sudhinder |
| 12) Lafarge India Pvt. Ltd. | - through Shri. A. Haskar & Shri.
Samir Gandhi |
| | - Opposite Parties |

Order under Section 27 of the Competition Act, 2002

The present matter relates to an information filed under section 19 of the Competition Act, 2002 (herein after referred to as the Act) on 26.07.2010 by Builders' Association of India (herein after referred to as the informant) against the Cement Manufacturers' Association (herein after referred to as the Opposite Party – 1 or OP – 1) and 11 other cement manufacturing companies (OP 2 to 12) for alleged violation of the provisions of Section 3 and 4 of the Act

5.2.2. According to OP-2, it is commonly understood that, for a cartel to survive there must be mechanisms in place for (a) coordinating the cartel agreement and to ensure its functioning (b) monitoring the behaviour and conduct of the members of the cartel and (c) punishing members of the cartel who do not fall in line with the decision of the cartel. The DG has failed to produce any evidence which suggests that any of the above mentioned elements are presents in the Indian cement industry.

5.2.3. The OP-2 has further submitted that as admitted by the DG, price volatility is a permanent characteristic of the cement industry. Considering this volatility, no monitoring or punishment mechanism can effectively control market competitors, which is precisely the reason that no such mechanism exists. The DG has merely relied on the parallel nature of price movements, production and dispatches to suggest that there exists a cartel in the Indian cement industry, which is a baseless conclusion, in gross ignorance of the market conditions.

5.2.11 It has further been submitted that between 2008 and 2010, 85 million tonnes of new capacity was added which, means that capacity additions equal to approximately 40% of the capacity in 2008 have been bunched up in a period of two years. Further, since all the capacity additions came online on or about the same time, this had a significant downward impact on the capacity utilization numbers. As a result of significant capacity addition and gestation period of approximately 3-4 years, the actual available capacity in 2009 and 2010 was significantly lower than the announced nameplate capacity. Contrary to the reports of DG that the capacity utilization for the Indian cement industry as a whole has dropped from 83% in 2009-2010, to 73% in 2010-2011, capacity utilization across the cement industry in 2010 was at 81%, based on available capacity (taking into consideration ramp up adjustments) instead of nameplate capacity.

5.2.12 ACC has also contended that over a twenty year period (i.e. from 1990-2010), the capacity utilization levels in the Indian cement industry have ranged between 75-85%. Out of these twenty years, it is only on four occasions that the capacity utilization has exceeded 85% which clearly indicates that the benchmark level for capacity utilization in the Indian cement industry is between 75-85%. Therefore, capacity utilization in India is in line with historic performance of the industry.

5.2.13 As per OP-2, cement is a commodity product and there is very little difference in the product across producers. Given the similarity of the product across various producers, all of the producers' prices are subject to the same demand and supply factors. The cost of producing and distributing the product and the production capacity will therefore determine the quantity that can be supplied by each producer to the market at various price levels. DG has adopted a generalized cost benchmark without appreciating that different manufacturing have different cost structures depending on factors such as plant vintage, location, distance to source of raw materials, distance from and access to market etc. Cement industry has faced steeply rising input costs and over time, these cost increase have been absorbed by it because of the inability to pass on costs through price increase due to intense competition at the market place.

5.2.14 The OP-2 has submitted that DG's report states that 90% of the market is controlled by 21 producers and there are large number of local and small producers which would consequently account for the remaining 10% of the total cement market in India. These numbers clearly indicate that the Indian cement industry is fragmented and also is highly competitive. Further, even if the Indian market is considered to be an oligopoly, the market conditions lead to a highly competitive outcome.

5.2.15 Although the DG has claimed that its actions amount to breach of sections 3(1) read with section 3(3) (a) and 3 (3) (b) of the, he has failed to establish the required elements to make out a sustainable case. For a finding of an infringement of section 3 (1) read with 3(3) of the Competition Act to be reached, there must be evidence of an agreement being reached between competitors, which is clearly missing in this case. There must be direct evidence to prove that an agreement existed. However, the DG has failed to demonstrate that any direct evidence exists in this case, and instead, has built its case on pure speculations.

5.2.16 While the AAEC caused by a horizontal agreement to fix prices may be presumed by the Commission, there must be proof of the agreement itself, in order for this presumption to come into play. In the instant case, the agreement has been presumed from the behaviour of prices, which is not sufficient proof of an agreement.

5.2.17 Citing the cases decided by this commission, MRTPC, EU and U5, OP-2 has submitted that mere parallel behavior is not enough. Further, where parallel behavior is prevalent as a result of the structure of the market, then such behaviour cannot be considered to be in violation of competition law provisions.

5.2.18 It has been submitted by OP-2 that in absence of direct evidence available with him to prove infringement of the provisions of the Act, DG has relied solely on economic evidence of market behaviour to try and prove that there is some kind of meeting of minds. However, as noted by DG also existence of a large number of small producers in the market can easily disrupt any alleged cartel arrangement between the other producers by pricing their cement below the price set by the alleged cartel.

5.2.26 As regards product and dispatch parallelism, OP=2 has submitted that the fact that there exists parallelism in the industry is not because of any collusive arrangement, but because of the inherent market characteristics i.e. commoditized nature of cement, cyclical nature of cement industry and ability of the competitors to intelligently respond to the actions of their competitors etc. which make such conduct inevitable.

5.2.27 It has further been submitted that current production in India has been consistent with expected demand. The year on year growth of demand for cement in India was roughly

between 9.27% and 11.45% from 2005 to 2010. Demand is forecasted to grow at a yearly rate of about 10% in the period from 2011 to 2015. In keeping with this demand growth, production during the 2005 to 2009 period grew at an average of 9.3% per annum.

5.2.28 As regards demand assessment, it has submitted that it has a well established process of estimating the long term assessment a medium term assessment and short term assessment of demand which is done regularly in the quarterly and monthly review meetings which was explained to the DG, which has been conveniently ignored.

5.2.32 It has been submitted that an analysis of prices at each of the four centre's (i.e. Delhi, Maharashtra, Tamil Nadu and West Bengal) identified by the DG in its report to allege correlation between price rises after the CMA meeting on 24 February 2011, reveals that prices were already on the rise even before the CMA meeting on 24 February 2011 on account of rising cement demand and prevailing market conditions. This proves that there was no correlation between the CMA meetings and the subsequent price rise, and it is a merely a coincidence that the CMA meetings took place during a phase of rising demand and consequently rising prices.

5.2.33 Further, Coal India Limited had increased prices for certain high grade coals between 100% and 130% and overall by over 30% on 27 February 2011, which had a significant impact on the cost of cement. The Union Budget also introduced changes in the excise duty structure on 28 February 2011. As a result of the changes in the excise duty and increase in the price of coal, the price of cement increased in March 2011 to account for these significant cost increases. The CMA meeting of 4 March 2011 also happened to coincide with a period of increasing prices due to the above factors and had no correlation with the price increase which took place after 4 March 2011.

5.2.34 ACC has argued that the DG has conveniently picked up a few select meeting to draw a link between price rises and the CMA meetings. There are several examples of meetings in 2009 where the price have remained stable or have even decreased. Hence, the DG's conclusion in this regard is illogical. In fact, the number of weeks in which the prices of cement decreased after the CMA meeting was higher than the number of weeks when the prices of cement increased. Out of 9 meetings of CMA in 2009, 7 times the prices remained same and it is only once that the prices of cement went up which clearly reveals that there exists no link between CMA meetings and price increase.

5.2.35 Arguing that prices of cement are not above competitive levels, with specific reference to the observation by the Tariff Commission, cited by the DG in his Report, OP-2 has submitted it is incorrect that the retail price of cement is second highest next to Japan. In fact, Jeffries' research indicates that price of cement in India is one of the lowest across a significant number of jurisdictions across the globe.

5.2.36 According to OP-2, it is also incorrect that the prices of cement have registered abnormal increase, since price have increased only by 5.1% and 5.5% CAGR since 2004 which is less than overall increase in the wholesale price index which increased by 6.2% CAGR. The CAGR of the input costs has increased more than the cement price. Further, the price of cement has registered an increase of approx. 5.9% as against other commodities such as Copper (which increased by 19.4%) and coal (which increased by 15.2%)

5.2.39 As regards charge of collusive price leadership, OP-2 has contended that the DG has not presented any evidence to suggest that it is a price leader in any of the above mentioned regions. Further, the mere fact that there are at least 3-4 producers in each of the above mentioned regions which compete head-to-head with each other, the questions of leadership

does not even arise. The DG has not adduced even a single piece of empirical evidence to prove that price leadership/signaling exists in this market.

5.2.40 As per OP-2, there is not territorial allocation of the market and there is not specific allegation against it with reference to territorial allocation. DG has made bare assertions that there is territorial allocation without establishing it.

5.2.41 The OP-2 has summed up its arguments by saying that there is neither a direct allegation nor even a single piece of evidence which even remotely suggests that it violated any provision of the Act. The plus factors that have been looked by the DG in the form of capacity utilization, profit margins of the cement manufacturers do not, in any way, suggest that the cement manufactures have colluded. The DG has erroneously noted that an oligopoly is very close to cartel like situation. The DG has simply chosen to ignore the fact that there are a large number of oligopolies around the world which are not cartels.

Reply of Ambuja Cement Ltd. (OP-3)

5.3.8 According to OP-3, the Indian cement industry has added capacity in double digits during the last three years, which is unprecedented in the last 20 years. High capacity additions in a few years leads to lower capacity utilization for a few years, till demand catches up with capacity, leading to a rise in capacity utilization levels. However, even with higher capacity additions, the industry maintained a capacity utilization of above 81% over the last few years. Cement Industry has been acting rationally by basing its capacity additions on forecasted demand and in a manner that is quite contrary to the behaviour of cartelists who would suppress capacity and production in order to maintain prices at an elevated level.

5.3.9 According to OP-3, as opposed to a lower industry wide capacity utilization of approximately 81%, for the same period, its capacity utilization was xxx% (without ramp-up), which is much higher. Therefore, its capacity utilization is much higher than the industry average, which clearly indicates that it is not part of any arrangement with any cement producer to artificially limit its capacity utilization.

Reply of Jaiprakash Associates Ltd. (OP-6)

5.5.32 The OP has also argued that DG in his report has relied upon statements of various third parties alleging the coordinated behavior of the cement manufacturers regarding the price and sale of cement to the different segments of the consumers without even analyzing them, without any evidence to show the alleged coordinated behavior amongst the cement manufactures.

5.6 Reply by India Cements (OP-7)

5.6.1 India Cements (OP-7) in its replies has submitted that the Report of DG being premises on the retrospectivity of section 3 of the Act, which is not authorized by any provisions of the Act, is illegal and ultra vires. The report of DG is accordingly liable to be rejected.

5.6.2 According to OP-7, the report of DG is not valid as the report has evidently considered extraneous matters such as acts prior to May, 2009. Further, the materials relied upon in DG report are not provided to the parties. This act is in violation of principles of natural justice.

5.6.3 The Opposite Party has further submitted that even the facts mentioned in the report of DG taken as a whole, fail to establish the existence of an agreement or understanding between the Opposite Parties in contraventions of section 3 of the Act as alleged. It is settled

law that in the absence of an agreement being conclusively established on the facts of the case, the question of inferring an anticompetitive practice within the meaning of section 3 of the Act does not arise. In the present case, there is absolutely no shred of evidence to indicate such an agreement between enterprises or association or persons in the cement industry.

6.2 After hearing parties Commission notes that the following substantive issues arise for determination in the case.

Issue 1: Whether the Opposite Parties have violated the provisions of section 4 of the Competition Act, 2002 as has been alleged by the informant?

Issue 2: Whether the acts and conduct of the Opposite Parties are subject matter of examination under section 3 of the Act?

Issue 3: Whether there exist an agreement or arrangement among the cement companies named as the Opposite Parties under which they share details of cement prices, production and capacities among each other using the platform of CMA? If yes;

Issue 4: Whether they have indulged in directly or indirectly determining the prices of cement?

Issue 5: Whether they have indulged in limiting and controlling the production and supply of cement in the market?

Issue 6: Whether there is a case of production and dispatch parallelism among the Opposite Parties?

Issue 7: Whether the aforesaid acts of the Opposite Parties have caused increase in the prices of cement?

Issue 8: If so, whether the Opposite Parties have contravened the provisions of section 3(3) of the Competition Act, 2002?

Finding of C.C.I. on issue No.1

6.3.9 The Commission accordingly holds that no contravention of the provisions of section 4 of the Act by any single cement firm or a group is made out in the present matter.

Finding of C.C.I. on issue No.2

6.4.3 The Commission accordingly holds that the allegations pertaining to the acts and conduct of the Opposite Parties in the instant case are subject matter of inquiry under section 3(3) of the Act.

Finding of C.C.I. on issue No.3 to 6

Order vide para 6.5.2 states that the relevant provision defined in section 2(b) is as follows:

“(b) “agreement” includes any arrangement or understanding or action in concert, -

(i) whether or not, such arrangement, understanding or action is formal or in writing; or

(ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;”

6.5.3 As is seen from the construct of the aforesaid provisions, the definition of the term ‘agreement’ is an inclusive definition in the Act. It inter-alia includes any arrangement, understanding or action in concert irrespective of whether it is written/formal or otherwise or intended to be legally enforceable.

6.5.4 The commission observes that existence of a written agreement is not necessary to establish common understanding, common design, common motive, common intent or commonality of approach among the parties to an anti-competitive agreement.

6.5.7 The Commission in light of the provisions of section 2 (b) of the Act and discussion as above, accordingly, holds that in absence of any documentary evidence of existence of an agreement, it is appropriate, correct and logical to inquire into cases of anti-competitive agreements on the basis of existence of evidences which establish that particular set of act and conduct of the market participants cannot be explained but for some sort of anticompetitive agreement and action in concert among them.

6.5.9 According, looking at the position in other jurisdictions, it is found that circumstantial evidences have been used in the News Paper Cartel Case (1999) of Brazil. Similarly in case of High Fructose Corn Syrup Antitrust Litigation of US Atlantic Sugar Case of Canada Att. Sugar Refineries Co. V. A.G.Can. (1980), 2 S.C.R.644, circumstantial evidences were relied upon. In Latvia-Hen’s eggs case also infringement has been found based upon circumstantial evidence. It is noteworthy that OECD in its paper ‘Prosecuting Cartels without Direct Evidence of Agreement’ (February 2006) has held as under;

“Circumstantial evidence is of no less value than direct evidence for it is the general rule that the law makes no distinction between direct and circumstantial evidence In order to prove the conspiracy, it is necessary for the government to present proof of verbal or written agreement”.

6.8.8 The Commission observes that from the analysis of data on production, dispatch and supplies in the market it becomes clear that the cement companies coordinate their actions as is apparent from the data of dispatch in November 2010 which shows identical and similar behavioural pattern in any cartelized behavior, the parties to the arrangement may not always coordinate their actions; periodically their conduct may also reflect a competitive market structure. However, there will be periods when coordination rather than competition will be found more gainful. This is reflective in the similar pattern of dispatch observed among the cement companies during November 2010. The coordination among them gets facilitated since CMA circulates the production and dispatch details of all the member cement companies on regular basis. Further, the companies are also exchanging information through CMA as regards retail and wholesale prices.

Finding of C.C.I. on issue No.7

6.5.23 The Commission observes that in on-going cartel activity where prices are being kept high over a long period of time, it is not necessary that prices would increase after every meeting, and that prices had increased after the two meetings as brought out by DG in his investigation raising suspicion of coordinated action and discussion among the Opposite parties as regards prices.

6.9.28 The Commission from the details of cost and sales realizations as above observes that margins earned by the Opposite Parties named in the information have been quite impressive. The Opposite Parties have been able to maintain a good profit margin in spite of capacity

additions over the year which repudiates their stand that they have been earning even below re-investment levels and that they are incurring losses.

Finding of C.C.I. on issue No.8

6.5.28 The Commission observes that on the basis of clear admission of ACC and ACL to have attended the two meetings of High Power Committee of CMA and denial of this by CMA and Jaiprakash Associates, another Opposite Party in the case reveal that the Opposite Parties are not quite forthright in their submission. The inconsistencies in the statements of different Opposite Parties establish that they were keen on hiding material information to the effect that the competing cement companies are interacting among each other using the platform of CMA and discussing the prices, production, supplies of each other. On the basis of clear admission of representatives of ACC and ACL, it is clear that in spite of having resigned from the membership of CMA, they are attending the meetings of CMA. The fact that prices had increased after the High Power Committee meetings held in January and February 2011 establishes that they coordinate their decisions and fix prices after due consultations. Such an act and behaviour of Opposite Parties using the platform of CMA would be questionable under the provisions of section 3(3) of the Act which prohibit any act which results directly or indirectly in fixation of the prices.

Minutes of the 92nd Meeting of the Managing Committee of the Cement Manufacturers' Association held on 26th March 2009 in New Delhi

“7 (o) Supply of Cement in the State of Uttar Pradesh

Secretary General, CMA mentioned that Secretary (DIPP) had called a Meeting of Chief Executives of Cement Companies supplying cement in the State of UP and also CMA on 16.03.2009, to discuss the complaint by the UP Govt. Departments, wherein Secretary (DIPP) insisted that the prices be brought down to reasonable levels within 4 weeks' time, failing which he would be obliged to resort to recommending withdrawal of CVD and SAD on Cement imports and also reintroduction of Bon on Cement Export.

Shri Rahul Kumar, COO (Cement), Jaiprakash Associates Ltd. informed Secretary (DIPP) that while the growth of cement supplies during the period April-Oct'08 was only 2.6% over the corresponding period of the previous year, the sudden spurt in demand during Nov.08 to Jan.09 was 24%.

Shri Rahul Kumar, further apprised CMA after attending the Meeting taken by Chief Secretary, Govt. of UP in Lucknow on 17.03.2009, where all the cement manufacturers supplying cement to UP were also present and on behalf of Jaypee Cement that it was agreed by Jaypee to supply cement to the Govt. departments during the month of March 2009 at the rate of Rs.245/- per bag.

The UP Govt. was satisfied and orders were being placed for supply of cement. **The other suppliers also responded by offering similar special rates for Govt. supplies and assuring to meet the requirements”.**

6.5.41 The Commission on the basis of aforesaid holds that there are evidences which are indicative of existence of agreement, arrangement and understanding among the Opposite Parties using the platform of CMA for sharing of information, communication as regards pricing and production among the competing cement companies. These evidences provide strong evidence of coordinated behaviour and existence of anti-competitive agreement among the Opposite Parties.

6.10.12 The Commission also observes that as per the provisions of section 2(c) of the Act, cartels have been defined as under;

(c) “cartel” includes an association of 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;

6.10.13 The act and conduct of the cement companies establish that they are a cartel. The Commission holds that the cement companies acting together have limited, controlled and also attempted to control the production and price of cement in the market in India and the allegations of the informant on these issues are substantiated. The Commission while holding so also notes as has been brought out by the informant that cement companies have been penalized in other jurisdictions also for their anti-competitive acts and CMA and some of Opposite Parties in coordination have also been found to be engaged in restrictive trade practices in the past by the erstwhile MRTP Commission in case No. RTPE 21 of 2001 and RTPE No.99 of 1990. Holcim which has a majority stake in ACC and ACL and Lafarge have been penalized in European Union.

Parties to agreement

6.11 The Commission notes that the Opposite Parties have in their arguments along with other points also contended that the report of DG does not specify the names of the contravening parties and also the period of alleged cartel. In this regard, the Commission observes that the Opposite Parties mentioned in the case are the prominent players in the market in respective regions and are the key players in the whole arrangement. The other cement companies have followed them. Moreover, the present inquiry is limited to the Opposite Parties named in the information.

6.12 The act of the Opposite Parties in limiting and controlling supplies in the market and determining prices through an anti-competitive agreement is not only detrimental to the cause of the consumers but also to the whole economy since cement is a crucial input in construction and infrastructure industry vital for economic development of the country. Therefore, in the instant matter the Opposite Parties named in the information together with CMA who has been found providing platform for exchange of sensitive information on production and price of the competing parties are held guilty of contraventions of the provisions of section 3(3)(a) and 3(3)(b) read with section 3(1) of the Act.

Period of Contravention

6.13 As regards period of contravention, for the purposes of this order, the Commission finds that the Opposite Parties have institutionalized the system of sharing the prices, capacities and production among each other using the platform of CMA in order to limit and control the production and supplies and determine the prices of cement in the market. Since the DG has examined the conduct of the parties involved in the cartel only upto March 2011, this order captures the period from the date of enforcement of the relevant provisions of the Act i.e. 20.05.2009 to 31.03.2011.

6.14 The Commission, however, observe that decision as regards the involvement of the parties in anti-competitive agreement and the period of contravention in the instant case is limited to this case only and is independent of any other information which may be filed subsequently and also independent of decision in case No.52 of 2006 pending before the Commission.

7. Order under Section 27 of the Act

7.1 The Commission has found the Opposite Parties in contravention of section 3(3) (a) and 3(3)(b) read with section 3(1) of the Act.

Determination of Penalty

7.2 The Commission observes that since the cement companies in the present case have been found to be in cartel, determination of amount of penalty is to be done in terms of proviso to section 27(b) of the Act, which reads as under;

27. Where after inquiry the Commission finds that any agreement referred to in section 3 a action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely :-

(a)

(b) Impose such penalty, as it may deem fit which shall be not more than ten per cent of the overage of the turnover for the lost three preceding financial years, upon each of such person an enterprises which are parties to such agreements or abuse :

Provided that in case any agreement referred to in section 3 has been entered into by a cartel, 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 per cent of its turnover for each year of the continuance of such agreement, whichever is higher.”

7.3 The calculation of penalty limit based on turnover in terms of section 27(b) is as under:-

Name	Gross turnover for 2009-10 (In Rs. crore) taking into account period of contravention post Notification i.e. 20.05.2009 on pro-rata basis (In Rs. Crore)	10% of Turnover as calculated in column 2 (in Rs. Crore)	Gross Turnover for 2010-11 (in Rs. Crore)	10% of Turnover calculated in column 4 (in Rs. Crore)	Total (In Rs. Crore)
A C C Ltd.	7416.17	741.61	10478.39	1047.83	1789.44
Ambuja Cements Ltd.	7150.58	715.05	9588.33	958.33	1573.38
Binani Cement Ltd.	1798.10	179.01	1978.93	197.89	376.90
Century Textiles Limited	4213.46	421.34	5158.80	515.88	937.22
India Cements Ltd.	3551.28	355.12	3888.07	388.80	743.92
J.K. Cement Ltd.	1605.44	160.54	2138.21	213.02	373.56
Lafarge India Pvt. Ltd.	2945.36	294.53	2978.87	297.88	591.53
Madras Cement Ltd.	2573.59	257.35	2835.17	283.51	540.86
Ultratech Cement Ltd.	6693.42	669.34	14858.6	1485.86	2155.20
Jaiprakash Associates Limited	10107.76	1010.77	13831.87	1383.18	2393.95

7.4 The calculation of penalty limit based on net profit in terms of section 27(b) is as under :-

Name	Net Profit 2009-10 taking into account period of contravention post Notification i.e. 20.05.2009 on pro-rata basis (In Rs. Crore)	3 times of Net Profit as calculated in column 2 (in Rs. Crore)	Net profit 2010- 11 (in Rs. Crore)	3 times of Net Profit as calculated in column 4 (in Rs. Crore)	Total (In Rs. Crore)
A C C Ltd.	969.92	2909.76	1,326.26	3975.78	6885.54
Ambuja Cements Ltd.	1064.19	3192.67	1,263.61	3790.83	6983.40
Binani Cement Ltd.	244.13	732.39	90.50	271.50	1003.89
Century Textiles Limited	308.43	925.29	239.60	718.80	1644.09
India Cements Ltd.	306.85	920.55	68.10	204.30	1124.05
J.K. Cement Ltd.	194.46	583.38	62.62	187.86	771.24
Lafarge India Pvt. Ltd.	566.62	1699.83	413.10	1240.20	2940.08
Madras Cement Ltd.	306.27	918.81	210.97	632.91	1551.72
Ultratech Cement Ltd.	946.74	2840.22	1404.23	4212.69	7052.91
Jaiprakash Associates Limited	1479.43	4438.29	1167.78	3503.34	7941.63

7.5 It would be seen from the above that the amount of three times of net profit calculated as above is higher than 10% of the turnover. Since as per the provisions of Proviso to Section 27(b) the penalty has to be determined on the basis of net profit or turnover whichever is higher, in this case the net profit has been taken into account by the Commission. Therefore, considering the totality of the facts and circumstances of the instant case, the Commission decides to impose a penalty of 0.5 times of net profit for 2009-10 (from 20.05.2009) and 2010-11 in case of each cement manufacturer named as Opposite Parties in this case. Accordingly, the penalty amount is determined as under :-

Name	Net Profit 2009-10 taking into account period of contravention post Notification i.e. 20.05.2009 on pro-rata basis (In Rs. Crore)	0.5 times of Net Profit as calculated in column 2 (in Rs. Crore)	Net profit 2010- 11 (in Rs. Crore)	0.5 times of Net Profit as calculated in column 4 (in Rs. Crore)	Total (In Rs. Crore)
A C C Ltd.	969.92	484.96	1,326.26	662.63	1147.59
Ambuja Cements Ltd.	1064.19	532.14	1,263.61	631.81	1163.91
Binani Cement Ltd.	244.13	122.07	90.50	45.25	167.32
Century Textiles Limited	308.43	154.22	239.60	119.80	274.02
India Cements Ltd.	306.85	153.43	68.10	34.05	187.48
J.K. Cement Ltd.	194.46	97.23	62.62	31.31	128.54
Lafarge India Pvt. Ltd.	566.61	283.31	413.10	206.70	480.01
Madras Cement Ltd.	306.27	153.14	210.97	105.49	258.63
Ultratech Cement Ltd.	946.74	473.37	1404.23	702.12	1175.49
Jaiprakash Associates Limited	1479.43	739.71	1167.78	583.89	1323.60

7.6 As regards CMA since it has provided platform to the cement companies and facilitated cartelization, for the purpose of this case, the Commission decides to impose a penalty of 10% of its total receipts for two years in terms of section 27(b) as under :-

Name	Gross turnover for 2008-09 (In Rs. crore)	Gross turnover for 2009-10 (In Rs. crore)	Gross turnover for 2010-11 (In Rs. crore)	Average turnover for three years	Penalty at rate of 10% on average turnover in Rs. Crore
Cement Manufactures Association	9.27	6.65	5.99	7.30	0.73

7.7 While imposing penalty, since Grasim is now merged with Ultratech, profit of only Ultratech Cements has been considered. In case of Century and Jaiprakash Associates Limited, their total profit has been considered in accordance with the provisions of the section 27 of the Act.

7.8 Since the enforcement provisions of the Act have come into effect from 20.05.2009, for the calculation of penalty on cement companies in the present case, the period from 1.4.2009 to 19.05.2009 has not been considered and amount of penalty has been calculated accordingly for the period 2009-10.

7.9 The Commission also decides to issue following directions :-

- i) The Opposite Parties should 'cease and desist' from indulging in any activity relating to agreement, understanding or arrangement on prices, production and supply of cement in the market.
- ii) CMA should disengage and disassociate itself from collecting wholesale and retail prices through the member cement companies and also from circulating the details on production and dispatches of cement companies to its members.

8. The Commission decides accordingly. The directions in para 7.9 above must be complied within 90 days of receipt of this order. The amount of penalty determined in case of different entities must also be deposited within a period of 90 days from the date of receipt of this order.

9. Secretary is directed to communicate this order as per regulations to all the parties.

Sd/-
H.C. Gupta
(Member)

Sd/-
Geeta Gouri
(Member)

Sd/-
R. Prasad
(Member)

Sd/-
Anurag Goel
(Member)

Sd/-
M.L. Tayal
(Member)

Sd/-
(Justice (Retd.) S.N. Dhingra
(Member)

Sd/-
Ashok Chawla
(Chairperson)

For those who came in late . . .

For BAI and the construction industry, cartelisation by cement manufacturers has been a old thing, since the cement manufacturers have been indulging in cartelization since many years. BAI has been always raising its voice about the same at various forums. But, there are many in the construction industry who must have been experiencing the concept of cartelization for the first time and may have been wondering about the CCI order. Below article appearing in Business Standard issue dated 26-6-2012 can be apt information.

– Editor, ‘Indian Construction’

Busted : CCI brings ‘cartelising’ cement companies to heel

The Competition Commission of India says that cement firms met regularly to fix prices, control market share and hold back supply. Cement firms deny this and have filed an appeal.

That cup of coffee you are drinking could be 30% more expensive thanks to alleged price fixing by the cement industry. Ditto with the jeans you’re wearing, the facial you just had and the house you just built.

The above number is theoretical — it could even be higher — but the accusations from the Competition Commission of India (CCI) are not. The Commission claims that cement companies in India had been organising themselves in a cartel for a while now, colluding, during industry body meetings, to fix production levels as well as the price of a bag of cement — in this case doubling it between 2004 and 2011 — so they could make windfall, illegal profits. Also decided during these meetings, says the Commission, was market share.

If the allegations turn out to be true, everything that involves construction and infrastructure, from the taxes you pay for your roads, to the rentals you pay for your stores — and by extension the products you buy from those stores — are much more expensive, thanks to this illegal activity. Consequently, the CCI has slapped a fine totalling Rs 6,307.32 crore on the top-10 cement companies here and the industry body Cement Manufacturers’ Association (CMA). The companies accused in CCI’s report have denied all allegations of cartelisation and are determined to appeal the judgement.

The trigger

It all started when the Builders Association of India (BAI) lodged a complaint with CCI in July 2010, alleging restrictive trade practices and collusive price fixing in the cement industry. The BAI’s charges were mainly against Cement Manufacturers’ Association and 10 major cement manufacturers.

BAI in its complaint alleged that despite having large capacities, these companies formed a cartel and used the platform of CMA to synchronise the reduction of utilisation levels, thereby limiting supplies to the market, and hiking the prices in tandem. While all the cement companies have their manufacturing units located in various parts of the country with different input and transportation costs, the cement companies decided to hike prices of the commodity uniformly and simultaneously, BAI alleged.

BAI also said that though the companies expanded their installed capacities, the utilisation did not reflect a relative rise. “The informant (BAI) has averred that in the normal course, in an unregulated market, if the demand is constant and the production of the goods increases, the price of the products should reduce particularly when cost of production also reduces,” the order noted.

Under the scanner

Following complaints from BAI, the CCI directed its director general (DG) of investigation in September 2010 to probe the matter and submit a report.

According to a CCI official, the investigations were carried out based on various inquiries, analyses of communications between the cement companies and dealers, and data from various sources. In the absence of no direct evidence, the DG also analysed circumstantial

evidence, including behavioural indicators to find out whether there was any agreement and concerted action by manufacturers to raise prices in tandem.

The DG, in its report submitted on 31 May 2011, concluded that, yes, cement companies in fact entered into anti-competitive agreements in order to control the supply of cement. It also said the companies used the platform of CMA and indulged in collusive price-fixing.

From its analysis of the price data for cement, the DG observed that the price of cement in the country rose faster than its input cost, as there had been a continuous positive growth in the cement prices over the last five to six years. There has also been a continuous divergence between the cement price index and the index price of various inputs like coal, electricity and crude petroleum, and the gap has widened since 2000-01, it said.

The DG's report highlighted a curious fact — that the price of cement rose from Rs 150 per bag in 2004-05 to Rs 300 a bag by March 2011 despite the fact that the cost of sales has increased by merely 30%.

Also, the production capacity of these companies ramped up considerably — increasing from 157 mmt in 2005-06 to 287 mmt by the end of March 2011. However, the capacity utilisation has been on a continuous downward trend from 2008-09, coming down to 73% by 2010-11.

What's more, the investigator gathered that the cost of production does not play an important role in determining cement prices, except when there are substantial changes in taxes. "The DG has found in course of investigation that the change in price is mainly effected by external factors and not by internal ones like cost, production, etc." the CCI order said.

From an analysis of the cost audit reports of these cement companies, the DG observed that the cement industry was able to put up a consistently good performance, realising 26% operating margins — versus 16% for the rest of the industry — during the last three to four years.

How the cartel worked

According to BAI's submissions to the CCI, major cement producers along with CMA divided the whole market into five zones, which enabled them to control the supply and fix prices by forming a cartel.

According to DG's investigation report, CMA formed a high power committee and the prices of cement were discussed in its meetings. Even companies like ACC and Ambuja Cements, which had resigned from CMA, continued to participate in such meetings. The CMA apparently nominated different companies in 34 different centres to collect and disseminate the retail as well as the wholesale price. This information is either collected on phone or through e-mails.

Though CMA argued that it did so for the Department of Industrial Policy and Promotion, the DG maintains the common platform of CMA was used for entering into anti-competitive agreements by companies.

The final word

Based on the finding of the DG's probe and after listening to companies, the competition watchdog imposed a heavy penalty of Rs 6,307.32 crore on the 10-top cement companies, including ACC, Ambuja Cements, Ultratech and Jaypee Cements as well as CMA, accusing them of creating a cartel.

The CCI has found these cement manufacturers in violation of the provisions of the Competition Act, 2002 which deals with anti-competitive agreements, including cartels.

Grasim Cements (now merged with Ultratech Cements), Lafarge India, JK Cement, India Cements, Madras Cements, Century Cements and Binani Cements are among others found guilty and penalised.

"...The Commission finds that opposite parties have institutionalised the system of sharing the prices, capacities and production among each other, using the platform of CMA to limit production and supplies and determine the prices of cement in the market," the CCI order said.

The CCI ruled that each of the 10 firms will have to pay a fine of 50% of their profit during 2009-10 and 2010-11 within 90 days. The penalty will go to a government consolidated fund.

In its order, CCI has also directed companies to ‘cease and desist’ from indulging in any activity relating to agreement, understanding or arrangement on prices, production and supply of cement in the market.

Fitch ratings, which has maintained a negative outlook on the industry over the last two years, because of excess capacity and muted demand, says the impact on credit profiles of most of these entities is likely to be minimal, given their relatively low financial leverage (net debt/EBITA). According to the agency, the top-five players — Ultratech Cement Limited, ACL, ACC, ICL and Madras Cements — accounting for 50% of the industry capacity “enjoy a better cost structure, driven by higher level of vertical integration and locational advantage with respect to sourcing of raw materials and market access.” Others have a weaker cost structure and moderately high debt levels. “Globally, most markets have significant consolidation and this move by the CCI may indirectly help the Indian cement industry in correcting this structural imbalance,” it adds

THE ART OF COLLUSION

What is a cartel?

Cartels are agreements between enterprises to attempt to control the production, distribution, sale and price of goods and services. This could involve, say, allocating market share or sales quotas, or engaging in collusive bidding or bid-rigging in one or more markets

End result

For consumers, cartelisation results in higher prices, poor quality and less or no choice of goods and services

Global instances of cartels

- In 2000, the European Commission fined five companies euro 110 million for global price-fixing cartel for lysine. Lysine is the most important amino acid used in animal foodstuffs for nutritional purposes
- EU imposed a fine of euro 992m on four lift and escalator manufacturers for partaking in market-rigging and price-fixing
- The EU imposed a fine of euro 855.2m on various pharmaceutical companies for colluding to fix the price of vitamins

Current cartel probes by CCI

- The top-five Indian tyre manufacturers, who control 95% of the market, along with the Automotive Tyre Manufacturers’ Association, allegedly colluded to fix prices
- Cartelisation by domestic jute industry
- It is alleged that 8-10 big polyester manufacturers such as Grasim, Modi Polymer and Bombay Dyeing, collude together to dictate pricing and sale terms in the market

CCI order in the news . . .

Competition panel slaps Rs 6,300-cr fine on 11 cement makers

Companies to contest order on cartelisation

THE PENALTY	
Holcim group	2,312
UltraTech Cement	1,175
Lafarge India	480
JP Associates	1,324
Century Textiles	274
Madras Cements	259
Binani Cement	167
India Cements	187
JK Cement	129

(Rs cr)

The Competition Commission of India (CCI) has levied a penalty of over Rs 6,300 crore on 11 cement companies for price cartelisation.

These companies have to pay 50% of their profit for the fiscal years ended 2010 and 2011 within 90 days. However, almost all the companies plan to contest the order. The industry body Cement Manufacturers Association has also been fined Rs 73 lakh for providing the platform for cartelisation.

Mr O. P. Puranmalka, Whole-Time Director, UltraTech Cement, said the company has not indulged in cartelisation and will move the Competition Appellate Authority against the order.

Mr Vinod Juneja, Managing Director, Binani Cement, said the company will explore all the legal options available to contest the ruling.

It is a major setback for the industry when it is fighting to overcome slowing demand and excess production capacity build-up, he said.

IMPACT

Holcim Group's ACC and Ambuja Cement together have to pay Rs 2,312 crore while UltraTech Cement and Lafarge India may shell out Rs 1,175 crore and Rs 480 crore.

JP Associate and Century Textile and Industry may have to pay Rs 1,324 crore and Rs 274 crore as CCI has considered their entire profit earned from other business interest also. Madras Cements may have to pay Rs 259 crore, Binani Cements Rs 167 crore, India Cements Rs 187 crore and JK Cement Rs 129 crore.

Mr Lalit Kumar Jain, President, Confederation of Real Estate Developers' Associations of India, said: "We have said that the steel and cement companies are forming cartels and artificially hiking the prices. The CCI judgement will now discourage cement makers from forming a cartel".

Ms Sonam Mathur of Dhall Law Chambers said the cement industry has been the target of competition authorities worldwide. In India, there is little guidance on how the quantum of penalties should be determined in cartelisation cases, she said.

CCI OBSERVATIONS

The CCI passed the order following a probe by the Director General of Investigation on a complaint filed by Builders Association of India. Cement companies have been under scrutiny since past one year.

CCI felt the cement firms' act of controlling supplies and determining prices was not only detrimental to consumers but also to the economy since cement is a crucial input in construction. India is the second biggest producer of cement after China with a capacity of 310 million tonnes.

Source : The Hindu – Business Line, 22.6.2012

Cement companies disappointed with Competition Commission order

India Cements and Madras Cements have expressed indignation and disappointment over the Competition Commission of India's order penalising them for manipulating the cement market.

Both companies have said they will file an appeal against the order.

They are among the 11 companies penalised by the Commission on charges of cartelisation. The Commission has also held the industry body, the Cement Manufacturers Association responsible. According to spokespersons in the companies, India Cements faces a penalty of Rs 187 crore and Madras Cements, Rs 254 crore. Mr A.V. Dharmakrishnan, Chief Executive Officer, Madras Cements, said the company will appeal against the order. "We are confident we can get justice from the appellate authority. We have done no wrong," he said.

The Commission has given 90 days time to file an appeal. The company will have to study in detail the 258-page order before it can react specifically, he said.

India Cements said in a statement, "there was no basis to arrive at conclusions that our company has indulged in cartelisation and anti-competitive practices."

While expressing disappointment with the order, the company said it is "retrograde" to direct corporate bodies to desist from pursuing lawful objectives.

Following a petition by the Builders Association of India, the Commission, held 11 major cement companies responsible for cartelisation. It has levied a penalty of 50% of net profit for 2009-10 and 2010-11.

Source : The Hindu – Business Line, 22.6.2012

Competition Commission of India imposes Rs 6,307 crore penalty on 11 cement companies

Paying a Heavy Price

COMPANY	PENALTY
Jaiprakash Asso	1323.60
UltraTech Cement	1175.49
Ambuja Cements	1163.91
ACC	1147.59
Lafarge India	480.01
Century Textiles	274.02
Madras Cements	258.63
India Cements	187.48
Binani Cement	167.32
JK Cement	128.54
CMA	0.73
TOTAL	6307.32

(₹ Cr)



The competition regulator has imposed an unprecedented penalty of Rs 6,307 crore on 11 cement makers, including the Indian arms of global leaders Holcim and Lafarge, holding them guilty of manipulating supplies and prices to post huge profits at the cost of consumers and the economy.

The Competition Commission of India (CCI) has asked the cement companies to pay up the fine in 90 days, and told the Cement Manufacturers Association to stop collecting pricing data and circulating output and dispatch details to its members.

The order, first reported by ET NOW, is expected to hurt the profitability of cement makers, particularly smaller companies that may become takeover targets for bigger players, analysts said. Even if companies litigate, the order has hurt their ability to raise prices in the near future, they said.

Cement Makers to Challenge CCI Order

The affected firms are Jaiprakash Associates, UltraTech, Ambuja, ACC, Lafarge India, Century Textiles, Madras Cements, Grasim Cements (now merged with UltraTech), India Cements, Binani Cement, JK Cement, and the Cement Manufacturers Association.

"The commission has also observed that the act of these cement companies in limiting and controlling supplies in the market and determining prices through an anticompetitive agreement is not only detrimental to the cause of the consumers, but also to the whole economy since cement is a crucial input in construction and infrastructure industry vital for economic development of the country," the order said.

Cement makers categorically denied this and said they would challenge the order.

"We have not indulged in any cartelisation. We will approach the Competition Appellate Tribunal and challenge the order," said OP Puranmalka, whole-time director of UltraTech and head of Aditya Birla Group's cement business.

Lafarge India Senior Vice-President for corporate affairs, Camille M Gonsalves, said the company had taken note of the CCI decision. "We are reviewing the detailed reports to take the suitable actions. Lafarge has a strict policy in place to fully comply with competition laws. All units operate under the group's code of business conduct," Gonsalves said.

Competition law experts said this was a first instance of the CCI imposing a fine based on the provision that allows a penalty of a maximum of three times the net profit of a firm. It imposed a fine of 0.5% of the net profit in 2009-10 and 2010-11.

The order follows a wave of penalties imposed across the world in recent years against cement makers such as Holcim, Lafarge and a manufacturers' body in Korea, which have been held guilty of cartelisation. Korea, Pakistan, Europe, Romania, Taiwan and Argentina have penalised manufacturers.

"The cement industry has been a common target of competition authorities worldwide. Needless to say, this is a significant order imposing stringent fines, but as yet there is little guidance on how the quantum of penalties is to be determined in such cases... This trend of increasing cartel fines shows that the CCI views such practices as extreme violations of competition law which is consistent with the global approach," says Sonam Mathur of Dhall Law Chambers, a competition law specialist firm.

The CCI's order said companies raised prices after meetings of the Cement Manufacturers' Association, maintained low capacity utilisation, reduced production, which was not linked to market forces, and earned massive profits. Industry officials and lawyers say it would be very difficult to convincingly prove all this.

"I suppose most parties would argue against the magnitude of the fine first and then, if at all, whether there was in fact sufficient evidence to find these companies guilty and so penalise them," said Avaantika Kakkar, counsel with Khaitan & Co and a specialist in competition law.

Analysts said such a large penalty had not been levied on any industry. Rakesh Arora, head of research at Macquarie Securities, said the order would hurt the industry although it was denying that it acted in concert. "This decision has cast doubts on the profitability of the sector. This would mean a de-rating of the cement industry and we expect the sector to underperform in the near term. Large companies will be impacted more," he said. "The fallout of this order would be that smaller companies may find it difficult to operate and they will slip into the red, giving the larger companies an opportunity to acquire them," Arora added.

While cement manufacturers are expected to litigate against the competition watchdog's order, it may still have a negative impact on them, said Sadanand Shetty, vice-president and senior fund manager, Taurus Mutual Fund. "The cement companies will most certainly contest the CCI order, but the competition watchdog's action would curtail their ability to raise prices in a hurry in the future. While the order will impact share prices of these companies in the short term, long-term impact can't be ruled out completely," Shetty said.

According to estimates of Macquarie, cement supply would exceed demand by about 40 million tonnes for three years starting 2011-12. The demand was almost equal to net supply in the previous seven years.

Source : The Economic Times, 22.6.2012

Competition watchdog bites Rs 6,300 cr off cement firms

*10 companies and industry body penalised for cartelisation,
likely to take legal recourse*

In a first-of-its kind order, the competition watchdog on Thursday imposed a penalty of Rs 6,307.32 crore on 10 top cement companies, accusing them of creating a cartel. Those penalised include ACC, Ambuja Cements, UltraTech and industry body Cement Manufacturers Association (CMA).

“The Competition Commission of India (CCI) has found cement manufacturers in violation of the provisions of the Competition Act, 2002, which deals with anti-competitive agreements, including cartels,” the Ministry of Corporate Affairs said in a statement. Grasim Cements (now merged with UltraTech Cements), Lafarge India, JK Cement, India Cements, Madras Cements, Century Cements and Binani Cement are among the others found guilty and penalised. According to the statement, each of the 10 firms will have to pay a fine amounting to 50% of their profit during 2009-10 and 2010-11, within 90 days.

PRICES CEMENTED TOGETHER?

- Cartelisation probe begins in 2010
- SFIO investigates first
- SFIO points towards cartelisation
- Corporate affairs ministry asks CCI to probe further
- 10 firms get fines at 50% of their profit during FY10 & FY11
- Penalty notices due in 60 days, fines must be paid within 90 days

The penalty would go to a consolidated government fund, CCI member R Prasad said. The commission found the companies had not used the available capacity to keep supplies artificially low and raised prices when demand was higher.

“... the Commission finds that the opposite parties have institutionalised the system of sharing the prices, capacities and production among each other using the platform of the CMA to limit the production and supplies and determine the prices of cement in the market,” the order says.

The order notes a written agreement is not necessary to substantiate such cartelisation. The CCI has directed companies to ‘cease and desist’ from any activity related to an agreement, understanding or arrangement on prices, production and supply.

However, the order does not talk about any mechanism to avoid such cartelisation in future.

“If these companies are found creating cartels in future, the cases can be investigated again and a heavier penalty levied,” Prasad said. The cement industry, which has always denied such charges, is expected to take legal recourse.

The order is based on an investigation carried out on 39 companies by the Director General of Investigation, following a complaint from realtors’ body Builders Association of India (BAI). The BAI had alleged cement manufacturers formed a cartel to fix retail prices and reduced production to inflate prices.

HOW MUCH THE PENALTY WOULD EAT INTO PROFITS

Entity	Net profit (Rs cr)			Stock price (Rs)		Penalty (Rs cr)
	FY11	FY12	% chg	21-Jun	% chg*	
JP Associates	1,792.82	632.92	-64.70	14-Mar	4.48	1,323.60
UltraTech Cem.	1,367.35	2,403.26	75.76	1,463.55	2.31	1,175.49
Ambuja Cem.	1,262.97	1,227.74	-2.79	171.60	-2.19	1,163.91
ACC	1,077.53	1,300.80	20.72	1,256.00	-1.19	1,147.59
Lafarge India	-	-	-	-	-	480.01
Century Textiles	237.49	22.13	-90.68	296.85	2.86	274.02
Madras Cements	210.98	385.11	82.53	156.05	2.13	258.63
India Cements	65.30	271.46	315.71	84.4	-1.11	187.48

Binani Cement	90.51	48.40	-46.53	-	-	167.32
JK Cement	62.62	174.57	178.78	146.5	1.52	128.54
#CMA	-	-	-	-	-	0.73

* Over the previous close; #Cement Manufacturers Association; Data for CMA and Lafarge India not available

Compiled by BS Research Bureau

Source: Capitaline

The case had also been investigated by the Serious Fraud Investigation Office (SFIO). The SFIO's report pointed towards cartelisation among big players in the cement industry.

Cement Firms on CCI order

“We are reviewing the detailed reports to take suitable action. Lafarge has a strict policy in place to fully comply with competition laws. All units operate under the Group's Code of Business Conduct”

Lafarge India

“There was no basis to arrive at conclusions that our company had indulged in cartelization and anti-competitive practices. Unfortunately, without any proof we have been found guilty”

India Cements

“We are yet to go through the order. We will take all necessary legal course of actions once we go through it. Since we did not commit anything wrong, we are confident we can defend our self” Madras Cement

Source : Business Standard, 22.6-.012

Top 11 cement makers face Rs 6,300 crore CCI penalty

All the 11 firms were fined 50% of their average profit for fiscal years 2010 and 2011, the period for which they were investigated

The Competition Commission of India (CCI) has severely censured cartelization in the cement industry by imposing a penalty of at least Rs 6,300 crore on the top 11 makers of the material.

Among these, the worst-hit are ACC Ltd, Ambuja Cements Ltd, UltraTech Cement Ltd and Jaiprakash Associates Ltd, which have been fined in excess of Rs 1,000 crore each.

All the 11 firms were fined 50% of their average profit for fiscal years 2010 and 2011, the period for which they were investigated.

The antitrust watchdog, in its unanimous decision by all six members and chairman Ashok Chawla in a 258-page order, also fined lobby group Cement Manufacturers' Association (CMA) a token amount.

The commission investigated 39 cement companies on a complaint filed by the Builders Association of India (BAI), a lobby group of engineering and construction contractors.

According to the order posted on the competition regulator's website on Thursday, the builder group had argued that the cement companies had been indulging in “collusive price fixing” in 2009-10 and 2010-11.

The order said the watchdog had “considered the parallel and coordinated behaviour of cement companies on price, dispatch and supplies in the market”. After its investigation, CCI had also found that the cement companies had underutilized available production capacity “to reduce supplies and raise prices in times of higher demand”.

CCI has asked the cement companies to “cease and desist” from indulging in any activity relating to agreement, understanding or arrangement on prices, production and supply of cement in the market.

The 11 companies penalized also include Grasim Cements Ltd (now merged with UltraTech), JK Cement Ltd, India Cements Ltd, Madras Cements Ltd, Century Cement, Binani Cement Ltd and Lafarge India.

The order added that CMA had been asked to “disengage and disassociate itself from collecting wholesale and retail prices through the member cement companies and also from circulating the details on production and dispatches of cement companies to its members”.

The amount of Rs 6,300 crore is the highest total penalty CCI has imposed since it started functioning in 2009. In August 2011, CCI had held real estate firm DLF Ltd guilty of “abusing its dominant position” in the real estate market, and had imposed a Rs 630 crore fine on the company.

Advocate O.P. Dua, who argued on behalf of the builders’ association, said that following the order, each BAI member will have the right to claim individual compensation from the Competition Appellate Tribunal (Compat). “CCI cannot grant compensation to complainants. For that, they would have to approach Compat,” Dua said.

Anand Gupta, secretary general, BAI, said the penalty is “absolutely insufficient and no deterrent at all”.

UltraTech denied it had been involved in any wrongdoing.

“We have not indulged in any cartelization. We will approach the Competition Appellate Tribunal and challenge the order,” said O.P. Puranmalka, whole-time director, UltraTech, and head of the cement business, said in a company release.

“Lafarge takes note of the decision of CCI. We are reviewing the detailed reports to take the suitable actions. Lafarge has a strict policy in place to fully comply with competition laws. All units operate under the group’s code of business conduct,” said Camille M. Gonsalves, senior vice-president, corporate affairs and corporate social responsibility, Lafarge India, in an emailed response to a query seeking comment.

Switzerland-based Holcim Ltd, which owns ACC and Ambuja, said the units will contest the allegations against them. “The companies will pursue all available legal steps to defend their respective position,” Holcim said in an emailed statement.

CMA and Jaiprakash Associates declined to comment on the development. Spokespersons at Madras Cements, Century Cement, India Cements and JK Cement could not be immediately reached for comment.

Emails sent to a spokesperson at Binani remained unanswered.

A 20 June “private client report” by Kotak Securities had said that if CCI goes against cement companies, it “would result in de-rating of the sector” and cement prices “would likely come under pressure”.

Rajesh Kumar Ravi, an analyst at Karvy Stock Broking, said, “The actual penalty amount is 30-40% higher than what we were expecting. Till yesterday, the markets were expecting CCI to impose a penalty of 8-9% of average turnover (sales) for the past three years.”

“While the cement companies are expected to challenge the order, the immediate cash outgo can have huge financial implications for the companies,” he said. “If the cement companies have to deposit the penalty amount, there will be a huge cash outgo. For some companies, the penalty amount is as high as 60% of last year’s profits. If the cash outflow is not there, there wouldn’t have been any immediate impact.”

Despite speculation about the impending CCI order, stocks of ACC, Ambuja Cements, UltraTech and Jaiprakash Associates on an average gained 1-7%. The order was posted on the website Thursday after markets closed.

Source : MINT, 22.06.2012

How an Old Man was More Than a Match for the Might of 11 Cement Cos

Relentless efforts of Dhruvkumar Lallubhai Desai dealt a Rs. 6,300-cr blow to industry

KAUSIK DATTA MUMBAI



The complaint that threatens to blow a Rs 6,300-crore hole in the books of 11 cement producers may have the name of a grouping of 13,000 construction contractors and realty firms. But it is the work of a 74-year-old, who has been waging a crusade against cement makers. Single-handedly. For six years, and counting.

It was Dhruvkumar Lallubhai Desai, a trustee of the Builders' Association of India, who compiled and submitted a 3,500-page application to the country's competition regulator in July 2010 that alleged

cement producers were colluding to fix prices. On June 20, the Competition Commission of India held 11 cement companies guilty of operating like a cartel, and the industry's apex association of abetting them.

For Desai, it was a victory against many odds. The complaint to the CCI was made despite a previous complaint to another government regulator pending for four years and despite the very people he represented having ceased to believe. "They (BAI members) thought I am mad," quips the Gujarati, popularly known as Shankarbhair to most BAI members, about that time.

A CCI ruling favourable to the BAI has infused new energy in the fight of the 81-year-old association-whose members include L&T, HCC, Simplex Infra, DLF and Hiranandani Group-against cement producers. "Shankarbhair is passionate about his fight against cement companies. He can speak for hours on the issue," says Niranjani Hiranandani, co-founder and MD of the Hiranandani Group, a real estate developer and a BAI member.

Battle won, but war is still on

For the past six years, Desai has spent much of his working hours on this case, compiling documents, crunching numbers, tracing patterns and studying regulation. Heaps of paper and files on cement prices, dispatches and production, among other things, crowd his desk in the small BAI office on the seventh floor of a highrise in Tardeo, south Mumbai.

"We have won the battle," says the diminutive, soft-spoken septuagenarian. "But the war is still on." The next 'battle' in that 'war' is likely to be fought in the CCI appeals forum. Even as he prepares for that, Desai is working to open up two new fronts.

The BAI wants the CCI to increase the penalty on the cement companies charged. Under CCI rules, the fine for a cartel violation is three times a company's net profit or 10% of its turnover, whichever is higher. In this case, the CCI has fined the cement companies 50% of their net profit of 2009-10 and 2010-11. The BAI plans to ask the CCI to increase this to three times their net profit.

It also plans to ask the CCI to amend its rules to allow for criminal prosecution of a company and its officials, if they are found guilty. "Otherwise, the cartel will go on, and when proven guilty, a company will fork out a paltry penalty," says Desai, a retired contractor.

Desai joined his father's contractor company in 1968 and subsequently took over. There was a small firm that mostly did work for the Bombay Municipal Corporation, two jobs being the construction of Sion Hospital and Sion College. After his son chose to open a sanitaryware dealership, rather than join the family contractor business, Desai shut the firm in 2000.

That same year, retired and well-off, he became a BAI trustee. "Shankarbhai's honesty and dedication is striking," says Dattatraya Mhaiskar, a director of IRB Infrastructure Developers, a BAI member, who has known Desai since 1960. "He volunteered his services to BAI for free. That does not mean he works half-heartedly. Once he takes up a responsibility, he ensures he sees it to the end."

Taking on the cement industry is the biggest responsibility Desai has taken on at the BAI. Desai says he first suspected a cement cartel while in business. "The cement industry has grown faster than the construction industry. How is that possible if the construction industry is the sole consumer of cement?" he asks. "And how can you explain such frequent rises in cement prices? Sometimes, several times a month."

In 2006, on behalf of the BAI, he filed its first application against cement producers in the Monopolies and Restrictive Trade Practices Commission, which adjudicated on cartels back then. That application never came up for hearing, and BAI members all but gave up hope. Desai feels, at that time, the BAI let him pursue the case in deference to his age and because his services came for free.

Desai persisted. He spoke to whoever would listen. Around 2007, he started engaging with the Competition Commission of India, which had been formed, but was yet to be equipped with powers to probe cartels. When it received those powers, in May 2009, Desai saw an opening.

In July 2010, the BAI filed a seven-volume, 3,500-page application with the CCI that drew from, among other things, government statistics, company annual reports and newspaper clippings. It alleged that cartel-like behaviour started at the plant level and ended in the marketplace: cement companies produced below capacity so that supply always trailed demand; then, they acted in concert to control dispatches and raise cement prices.

Acting on the complaint, the CCI's investigative arm confirmed such an operating pattern in its report in May 2011. Subsequently, the CCI board of members heard the BAI and cement companies, and gave its verdict last month. Both, during the CCI investigation and the board hearing, Desai made himself available several times to the commission's officials.

The head of one of the 11 accused cement companies, speaking on the condition of anonymity, says they will appeal to the CCI appeals tribunal within two months. And if they lose there, he adds, they will approach the country's highest court.

Desai says he will continue to work on the case and make himself available wherever required. And this time around, he says, support from BAI members will be greater. Members have been calling him to pledge their support and make a promise to fund expenses. Desai wants to spend two more years as a BAI trustee. Along with pursuing this case, he wants to publish the second part of a book titled *Legends of Indian Construction*; he oversaw the publication of the first part in 2007. Desai also edits BAI's monthly magazine, *Indian Construction*. He wants to see people from the construction industry receive the Padma awards, the highest government recognition for civilians. He will cherish that moment, he says, by watching the ceremony on TV, sipping single-malt scotch.

Source : The Economic Times, 2.7.2012

View Point

Concrete movement

CCI's fine on cement companies is welcome

The Competition Commission of India's order on Thursday that the 10 largest cement companies and industry body Cement Manufacturers' Association should pay a cumulative fine of Rs 6,307 crore, as a penalty for forming a cartel to control prices, is a welcome step forward for market regulation in India. It is the first order of such magnitude since the passage of the Competition Act, 2002, which was supposed to ensure free and fair competition, and has been viewed as an act of assertion by the Competition Commission of India (CCI). Each of the 11 entities will have to pay a penalty equal to 50% of its declared profit in 2009-10 and 2010-11, within 90 days of the order's passage. The order has several points of note. First, it specifies that written evidence of cartelisation is not necessary. Second, it says that proper cartelisation requires the "institutionalisation" of a system to "share prices, capacities and production" — which the cement industry was doing, it says, through the Cement Manufacturers' Association. They colluded, the CCI maintains, to ensure that they did not utilise their full capacity, keeping supply low so that prices would not ease. Earlier this year, the all-India average for the price of a 50-kg bag of cement hit a historic high, of over Rs 300. The cement companies are expected to appeal this order.

Puzzlingly, share prices of the companies so censured did not react immediately, in spite of the fact that their cash pile has been severely eroded, and their pricing power cut into. It is possible that the market had already priced in the possibility of the CCI verdict being negative. A less sanguine possibility is that market participants simply do not believe that this regulatory action will be allowed to stand, or suspect that it will be weakened significantly by the politically powerful cement lobby. The cement industry may have many arguments in its defence, but it is important to ensure that the CCI's landmark order is judged by the appellate authority on its merit alone. As markets grow in size and complexity, they will become more open to manipulation, and a robust, empowered regulator will be essential to protect market integrity and consumers' interests. It will, thus, be in nobody's interest for this, the first major such regulatory action, to be diluted or evaded. The chairman of the CCI, Ashok Chawla, has said that an investigation of practices in the tyre sector is at "an advanced stage" and that other probes are on in milk, pharmaceuticals and civil aviation. Anecdotally, several of these sectors have been seen to coordinate price increases and decreases, but a formal investigation of cartelisation, of course, requires more than that; as the order said, the institutionalisation of such coordination is what matters.

The government is in the process of examining whether the CCI's regulatory ambit should be expanded to include the scrutiny of mergers and acquisitions. That, taken together with the CCI's recent energy, is a good sign for robust, regulated capitalism in India. Some short-term pain for individual companies is a small price to pay for a more efficient, lower-cost economy in which capacity is properly utilised.

Source : Business Standard, 25.6.2012

Have cement cos lost pricing power forever?

Cement makers penalised by the Competition Commission of India (CCI) for cartelisation are busy chalking out strategy for seeking a legal remedy.

But even before the legal battle starts, analysts have given their verdict — that these companies will lose their pricing power.

Indeed, most expect a significant decline in cement prices to pinch the players, big or small.

"As a longer-term impact on pricing power — considering the quantum of penalty, we believe the top cement companies are likely to be cautious in following the extremely strong

production and pricing discipline exhibited by them in the last 15-18 months. Moreover, the threat of a penalty in future might also dissuade the smaller companies from sacrificing volumes for pricing growth,” IDFC analysts Salil Desai and Shirish Rane wrote in a note to clients on Friday.

Kotak analysts Murtuza Arsiwalla and Shubham Satyarth appeared to concur. “Our reading on similar action in Germany (January 2002) and Brazil (February 2007) points to a steep correction in cement prices even as players had to concede penalties over long drawn legal wrangles,” they wrote in a note released after the CCI order came in on Thursday.

The competition watchdog asked 11 companies — ACC, Ambuja Cements, Ultratech Cements, Grasim Cements (now merged with Ultratech Cements), JK Cement, India Cements, Madras Cements, Century Cement, Binani Cement, Lafarge India and Jaypee Cement — to pay penalty at the rate of 50% of the profits they had logged in 2009-10 and 2010-11. The total penalty demand works out to more than Rs6,300 crore, a huge blow coming at the start of the monsoon season when sales are typically weak.

Most of these players now plan to challenge the order at the Competition Appellate Tribunal. Analysts believe cement companies will be cautious in terms of pricing and production discipline, which would weaken their pricing power, and thereby impact earnings.

“With almost all players in the industry exhibiting cautious behavior, we expect the current pricing discipline to be significantly tested, increasing the risk of falling realizations and, hence, earnings,” the IDFC duo wrote.

The cement industry has been grappling with an oversupply situation for nearly two years, with the southern region the worsted-affected. Cement companies have consciously followed a production discipline and pricing discipline to ensure prices didn’t crash in spite of weak demand. This is now bound to change.

At a company level, the CCI order is seen as a bigger drag for certain players.

Jaspreet Singh Arora and Manish Valecha from Anand Rathi, for one, see Jaiprakash Associates and Century as the main losers, with a penalty demand of Rs1,324 crore and Rs274 crore, respectively.

What’s more, the order and corresponding penalties only capture anti-competitive conduct over 2009-11 and do not involve examination of the period beyond March 2011, leaving scope for further probes and penalties for anti-competitive agreement in FY2012, the Kotak duo noted.

However, a few, like Anand Agarwal and Rahul Kumar from international brokerage Jefferies, expect no major impact. “We do not expect any change in the behaviour of the cement companies till the final determination of the case; we therefore expect cement prices in the near-term to remain dependent on the demand-supply scenario,” the duo wrote in a note released Thursday.

Cement prices have shown a mixed trend so far --- an upward spurt in the eastern and northern markets and some correction in the western market.

“Cement prices have moved up by Rs8 per bag in Kolkata, Rs9 per bag in Lucknow and Rs20 per bag in Delhi due to strong demand in NCR. Prices fell by Rs8 per bag in Jaipur and Rs10 per bag in Ahmedabad. Prices have remained stable in the south,” Elara Capital analysts Ravindran Deshpande and Ravi Sodah wrote in a note released Thursday.

Source : Mint, 23.06.2012

Counter View Point

Cementing CCI’s role

CCI ruling sets norms for further collusion probes though the cement firms, and their association, accused of collusive behaviour by the Competition Commission of India (CCI),

are certain to contest the Rs 6,307 crore fine levied on them—this equals half their profits for FY10 and FY11—the order sets important precedents and indicates how the CCI plans to approach future investigations into collusive behaviour. With yesterday's ruling, CCI has passed four major orders, two on abuse of dominance and two on collusive behaviour—while DLF was fined R630 crore and NSE R55.5 crore for abuse of dominance, three suppliers of aluminium phosphide which is used for preserving foodgrain were fined R318 crore for collusive behaviour similar to the cement firms.

The difference between the aluminium phosphide case and the cement one, however, lies in the manner in which it has been investigated. In the first case, the CCI showed how the three companies were charging the Food Corporation of India the same price even though they had different cost structures and were located in different parts of the country, but in the cement case, there is no such clear-cut evidence. What the CCI's investigation wing did, in the absence of such data, was to examine the movement of prices of each cement firm—it found prices were moving in the same direction and were going up in a broadly similar range; indeed, the correlation between them was very high, leading the CCI to talk of 'price parallelism'. The fact that industry's capacity utilization was falling steadily, even in years of high demand, has also been cited as proof of collusion. Given there are other industries where tariffs of market leaders move in the same direction and are of roughly similar magnitudes, the ruling should set off alarmbells. Similarly, the CCI report talks of how, the prices of cement rose after various cement association meetings where top cement firms' representatives were present—given the plethora of industry associations where information on industry conditions are routinely discussed, this suggests CCI could find a lot of interesting material for future investigations.

Of course, all of this will have to be proved in the appellate tribunal, but with a series of large fines, the CCI has emerged as a force to reckon with, a body that industry needs to watch out for. The next step, perhaps, is CCI examining government decisions—is a bailout for Air India anti-competitive since Air India's owner, the government, has unlimited funds while its competitors like Jet don't? Similarly, in the case of the oil PSUs, is the fact that all charge similar prices, if not the exact same, a sign of collusion? India's competition landscape is getting more vibrant.

Source : The Financial Express, 22.6.2012

Point to Ponder

Law Against Cartels

Aditi Gopalakrishnan

- ✓ Because of the lack of fear of sanctions, there is a culture of cartelising in the country
- ✓ There must be strong deterrent fines as well as provisions for leniency
- ✓ The CCI does have tools at its disposal to break cooperation between competitors

After several unmemorable penalties for a while, the Competition Commission of India (CCI) has imposed a penalty of a whopping Rs. 6,300 crore last week on 11 big players of the cement industry for fixing prices through a cartel.

Fines for cartels under the Competition Act have to be determined on the basis of net profit or turnover, whichever is higher, and, in this case, the commission has imposed a penalty of 50% of the net profit of the firms for 2009-10 — although, under the law, it is allowed to fine up to 300% of the net profit. Still reeling from the shock of this fine, these companies have indicated they will appeal against this decision.

The Competition Act, 2002, is markedly different in its treatment of cartels from the previous law, Monopolies and Restrictive Trade Practices Act, which did not possess punitive powers and could only order the parties to stop cartelising through cease-and-desist orders, the enforcement of which was very difficult without specific provisions. Perhaps because of this lack of fear of sanction, there is a culture of cartelising in the country. One heard of someone indignantly telling a lawyer, “Are you really telling me I can’t call up my competitor and discuss the prices? But we’ve been doing it for years!” This process is made much simpler with trade and industry associations that provide a legitimate forum for competitors to meet and perhaps have a quiet dinner and discuss pricing strategies for the next quarter. In this case, cement companies met under the aegis of the Cement Manufacturers’ Association to fix prices in five zones of the country. In a culture of conversation with competitors, can a new law come and put a sudden stop to it? The short answer is yes. That is why decisions like this are especially important to deter competitors in other industries from talking to one another. One reason why industry might stay brazen despite deterrent fines is that cartels are very hard to detect and require a high standard of proof given that the possible punitive liability can be prohibitively high. Because it is clearly illegal — and, in some jurisdictions, a criminal act — it is also conducted in great secrecy. This is why all modern competition laws provide for leniency programmes that offer immunity to cartel members to come forward and confess the details of the cartel. The programmes that have been the most successful give complete amnesty to the first conspirator to come forward and reveal the inner workings of the cartel to competition law enforcers, and experience shows these programmes work. Under our Competition Act too, there is a leniency programme provision to encourage cooperation.

It should be noted that immunity is offered for ‘continuous’ cooperation with the competition authority. In *Deltafina v. Commission*, Deltafina blew the whistle on a cartel to the European Commission (EC) in Brussels, went back to Italy and to the next cartel meeting and disclosed to cartel members that it had reported the cartel. Because of this, it did not receive a reduction in fine from the EC.

Deterrent fines will also lead to a race to file for leniency. These are the tools the CCI has at its disposal to break the cooperation between competitors whose natural instinct should be to compete. As economist George Stigler famously argued, since cartels created an incentive to cheat, they were inherently unstable and the competition authority needs to capitalise on this incentive.

In the absence of direct evidence like emails, fixing prices or cooperation of cartel members, competition authorities rely on indirect evidence like whether the top executives of

competing companies were staying at the same hotel at the same time, the testimony of hotel staff who overheard their conversations, etc. In the lysine cartel case in the US, the FBI, posing as hotel staff, over three years recorded the conversations in hotel rooms where competitors had meetings. It was so dramatic that a major Hollywood film, *The Informant*, followed.

Economic evidence is also applied to look at movement in pricing to ascertain if they are fixed. Even in this case, the director general of CCI found indirect evidence like prices moving in parallel in the five zones in India without any correlation to input cost or increased demand for cement, and also found that there was underutilisation of capacity by all companies that kept prices up. Many companies in mature competition law jurisdictions have started competition-compliance programmes that operate as manuals to company representatives to undertake activities in compliance with competition law. It is expected the shock of such a large potential fine under the Competition Act would alert the legal departments of companies to undertake these and finally take competition law seriously in India.

(The author is a competition lawyer)

Source : The Economic Times, 2.7.2012

Something to think about . . .

Budget focus on infra, housing 'may sustain cement demand'



The industry has shown admirable supply discipline to pass on the cost increases. This was achieved despite the current oversupply situation. Cement prices have increased by 35% to cover costs. This has helped cement companies to maintain margins. — Ms Vinita Singhania, MD, JK Lakshmi Cement.

The cement industry is buoyed by the recent recovery in demand, which is expected to hold until the monsoon sets in. Despite demand perking up, cement producers' profit margins are under stress. Operational costs have been climbing. Power and freight costs too have risen substantially. A series of price hikes in the last four months provided marginal relief. Yet, with supply exceeding demand, the quantum of price hikes that could be implemented was also limited. Ms Vinita Singhania, Managing Director, JK Lakshmi Cement, one of the major players in the North, spoke to Business Line on the way ahead for the sector. Excerpts.

With fresh capacity going on stream, will demand recovery be sustained?

Cement demand has improved in the last few months on the back of growing demand from infrastructure companies. I hope it may sustain for a few quarters as the Budget has focused on developing infrastructure and boosting investment in affordable and rural housing. Cement sales grew 9.7% in February and 6.5% between April and February this fiscal. Improvement in sales has also pushed up the industry capacity utilisation to 81% in February.

Has the pressure on profit margins eased?

The industry has shown admirable supply discipline to pass on the cost increases. This was achieved despite the current oversupply situation. Cement prices have increased by 35% to cover costs. This has helped cement companies to maintain margins. We expect the surplus would be balanced out with the rise in demand as there is heightened activity in the construction sector. Cement makers expect nationwide cement demand to grow 7 to 8% in this fiscal. It may trend toward 10% levels in the longer run.

When will the demand-supply mismatch see some improvement?

Supply will exceed demand by 125.8 mtpa this fiscal, with the total capacity reaching 392.8 mtpa. The cement industry is in the midst of a cyclical downturn. While producers significantly expanded manufacturing capacities, demand growth slowed. Coinciding with the slowdown, cost of coal rose sharply. With operating rates dipping to less than 80%, cement producers are now passing on the cost to the consumers. New companies set up cement capacities, but in the current cycle, most capacities are likely to be added by existing players.

What will your strategy be to maintain market share?

We are expanding our production and venturing into new markets. Our grinding unit at Jharli in Haryana is operational from this month. We are setting up grinding units in Uttar Pradesh and West Bengal. Our greenfield plant at Durg in Chhattisgarh should be operational by 2013. With the commencement of the Durg plant, our brand will also be available in Central and Eastern India. We are in the process of adding 10 more ready mix concrete (RMC) plants

in the next 18 months. We have 14 RMC plants in operation and another six would come up in 15 months at an investment of Rs 140 crore.

Do you think, the railways has taken away the relief provided in the Budget?

The increase in the excise duty, which came after the recent hike in rail freight rates, has resulted in considerable increase in the cost of delivered cement. Prices have gone up by Rs 10-20 a bag in various markets. This has a cascading effect on the cost of construction and hence may have an adverse impact on infrastructure and housing growth.

Do you think the easing of trade ties with Pakistan will result in cheaper cement imports from that country?

This will provide an opportunity to both nations to improve and enhance bilateral trade. Both sides could benefit from the South Asia Free Trade Agreement.

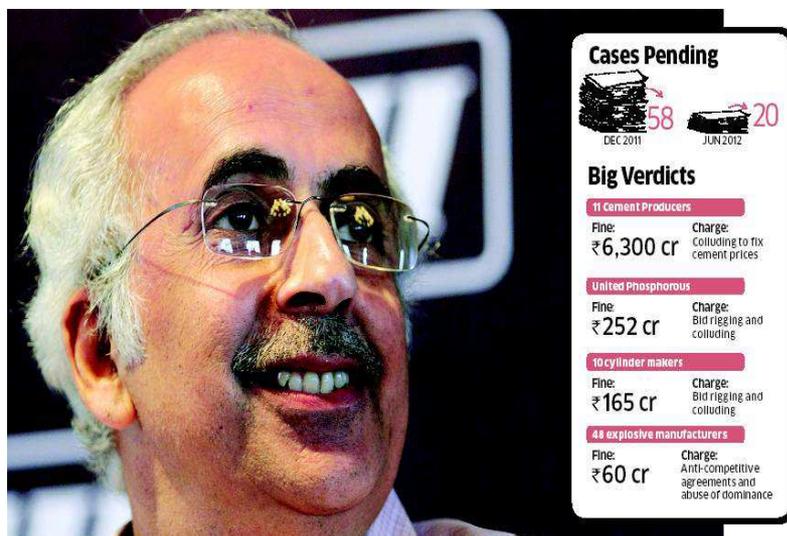
The scope for intra-SAARC (South Asian Association for Regional Cooperation) multilateral trade has also been widened. The two governments and the private sector are required to take initiatives to explore the potential of mutual economic engagement through joint ventures.

Source : The Hindu – Business Line, 17.4.2012

The organisation, the Man . . .

The Regulator Changes Gear...

When he took over the competition regulator, Ashok Chawla sent out a message within: focus on quick decision-making and big cases. In his eight-month tenure, both have happened.



It took India's competition regulator 23 months to decide on a complaint that cement companies were colluding to fix product prices. Of this, the Competition Commission of India's (CCI) investigation wing took about eight months to submit its report. The remaining 15 months were taken by the commission to analyse if there was a case, study the investigation report, hear arguments from all parties and reach a decision.

If the innate associations of the old CCI were acceptance and length, the new CCI is positioning itself to be about selectivity and speed, says Ashok Chawla, who took charge as CCI chairman eight months ago and has signed orders that make a statement. Last month, it gave its most important verdict yet: pronouncing 11 cement companies guilty of operating like a cartel and fining them about Rs 6,300 crore.

Chawla asserts CCI will not accept weak cases. And the cases it admits, it will pursue them with vigour. "We have made a conscious decision to take cases and start investigation only when there is a very high degree of prima facie evidence," he says. "No point in focusing on something in a casual manner. What needs to be closed should be closed, and what needs to be investigated should start immediately."

Closure has been a hallmark of Chawla's brief tenure, partly because of his own construct and partly because of the timing of his entry. According to the annual report of the ministry of corporate affairs (MCA), CCI had 58 cases pending in December 2011. This has dropped to around 20 today, says a senior CCI official, speaking on the condition of anonymity. At least five senior CCI officials we spoke to pointed to Chawla's appointment for the change in speed and approach. "The new chairman has made a difference. Efforts are being made to dispose off cases at the earliest," says SN Dhingra, member (legal) of CCI. Dhingra is a former Delhi High Court judge who was appointed along with Chawla in October 2011.

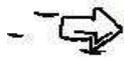
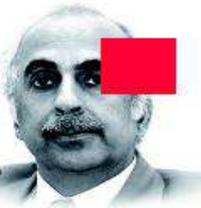
Riding Momentum

When a complaint is filed with CCI, its six members and chairman take a call if it is worth looking into. If they think so, the case is sent to CCI's investigation wing, which usually files its report within six months. Based on this report and representations from the parties to the case, the members and chairman take a decision. "Previously, CCI used to take a lot of time to decide once we submitted the (investigation) report, but now it's faster," says an investigation official, not wanting to be identified.

"That should be and has to be," says Chawla, when asked about the push to clear cases. "There is an urgent need to move towards clearing the backlog in a reasonable period of time and give a verdict, one way or the other. Otherwise, the relevance of the order, howsoever meritorious it maybe, will be lost in the socio-economic environment."



Chawla On...



Speed

There is an urgent need to give a verdict in a reasonable period. Otherwise, the purpose and relevance of the order, howsoever meritorious it may be, will be lost in the socio-economic environment



Case Selection

We have made a conscious decision to take cases and start investigations only when there is a very high degree of prima facie evidence



Initiating Cases on Its Own

The tendency earlier was to initiate a case against a sector without looking at all angles. But, judicially, the case would collapse. We will take up suo moto cases, but we won't stray into everything merely because of outside perception



Filling Talent

Filling up on deputation or on a full-time basis is a long-drawn process. Very often, we don't find the right talent



Search and Seizure Powers

We have proposed an amendment: subject to the chairperson's satisfaction, search and seizure should be allowed



M&A Cases

The ideal equilibrium is what exists today in term of architecture. Technical and economic issues should be with sectoral regulators, and the ex post facto analysis of market behaviour with us

Read the full interview on www.economicstimes.com

Fewer pending cases is not all Chawla's doing. The unidentified CCI official quoted earlier adds that Chawla inherited a robust pipeline of cases where the investigation and hearings were complete, and only needed a verdict from the seven-member CCI panel. "So, we were able to give the orders in the last eight months," he says. Dhanendra Kumar, the first CCI chairman, between February 2009 to June 2011, adds the initial years were spent building the institution's capabilities. "In its teething years, CCI had its role cut out," he says. "It is because of the efficient system it could put in place that we today see a faster rollout of cases."

Still, having Chawla at the helm has helped, say current CCI officials, who see his calm style of functioning as a positive influence. Four of the six members are career-bureaucrats, with two even being senior to Chawla in terms of joining civil services. There were reports of few members opposing Chawla's appointment as chairman, citing seniority.

A post-graduate in economics, Chawla has had two stints in the finance ministry and been the aviation secretary. The 1973-batch Gujarat cadre IAS officer also headed Sardar Sarovar Narmada Nigam and IPCL when it was divested to Reliance Industries.

"He (Chawla) can put across a completely different point of view in a pleasant manner without any signs of confrontation," says Shakikanta Das, additional secretary, finance

ministry. "At the same time, he takes a stand whenever required." Das worked under Chawla during the latter's stint as finance secretary between 2009 and 2011. Chawla's final stint in North Block came in the aftermath of the collapse of Lehman Brothers, which triggered the global financial crisis in September 2008. As finance secretary, Das adds, Chawla developed good coordination among the five departments within the finance ministry and focus on the macroeconomic picture.

Overcoming Limitations

At CCI, where he has a five-year term, Chawla wants to apply a tight filter on what kind of cases it takes up. And he wants to combine it with high-profile orders. A higher number of orders raises the profile of CCI, which is struggling to attract talent from outside the government.

Pradeep Mehta, secretary general of CUTS International, a consumer rights organisation, says more orders from CCI is good. "It helps build its image. This, in turn, will act as a disincentive to other businesses involved in anticompetitive practices," says Mehta, who is a member of the committee drafting the National Competition Policy. "Creating a competition culture, especially by curbing anti-competitive practices, is a marathon, not a sprint."

Samir Gandhi, partner at AZB & Partners, broadly agrees with that thought, even as he expresses reservations about the strength and legal validity of some of the CCI orders. "The greater the number of cases decided, the larger the number of precedents created," says Gandhi, who represented one of the cement companies before CCI in that particular case.

Quality of orders, though, remains a concern, and there's a feeling that some orders will be overturned in the appeals process (See story below). In that context, the question mark is over the pool of people the CCI has. Chawla—who does not have specialised training in competition matters, like heads of anti-trust bodies in Europe and the US do—faces significant challenges to build CCI.

The first is improving its investigating capabilities. More than half the positions in the CCI's investigating arm are vacant. Government officials from arms like the revenue services, who are trained to deal with business, are unwilling to join the CCI as the postings are not permanent and service conditions don't match existing standards.

“Every time there is a deputed officer, he/ she has to be trained,” says Mehta of CUTS. “At the end of the tenure of deputation, the officer is fully equipped with all the techniques and skills, but he/she cannot serve anymore. Due to this unskilled entry and skilled exit, the quality is bound to suffer. Alas, the government does not permit them to engage young professionals from the market.” According to Chawla, the CCI has asked the government to change the rules to allow for permanent staffing in the investigating arm. “I believe they have agreed to that,” he adds. These are still early days for the CCI, in what is only its third year with powers, and each decisive move—more orders, faster decisions, better people and smoother processes—goes a long way in building an institution.

...But Can it Make it Stick?

CCI still has to prove its orders can withstand the toughest legal scrutiny. The cement order will be another test of those abilities.

In its short history of three years, CCI has given two verdicts that have made an impression on India Inc: fining real estate major DLF Rs 630 crore for abusing its dominant position to impose onerous conditions on buyers of a high-end residential building in Gurgaon, and fining 11 cement companies Rs 6,300 crore for fixing cement prices. But whether they leave a lasting impact on the way India Inc does business will depend on what is the last word on them.

The last word will be said either in the CCI appeals forum or, if it goes further in appeal, in the country's highest court. The hearing in the DLF case is currently on in the Competition Appellate Tribunal (COMPAT). And, all indications are the 11 cement manufacturers charged will also land up there.

In both cases, the defence revolves around a central concept, and the verdict would set a precedent for similar cases. In the DLF case, the concept is that of a ‘relevant market’: how should a market be defined to see if a player abused its dominant position?

DLF argues CCI has defined the relevant market too narrowly. CCI defined it as the high-end residential segment in Gurgaon: if buyers did not opt for the DLF flat, they would have opted for similar flats in the same suburb. DLF argues they could have gone anywhere in the entire National Capital Region (NCR), and so that should be the relevant market.

Legal Test

In the more recent cement order, the issue is whether a written agreement is needed to establish the presence of a cartel. According to cement companies, CCI rules mandate the need for a written agreement. CCI doesn't think so and has based its order on circumstantial evidence: it alleges companies were synchronising production cuts and price hikes.

“The CCI order is based on very thin evidence to prove price parallelism and meeting of minds,” says Urmik Chhaya, a cement analyst with Mumbai-based brokerage Fortune Equity Shareholders. Adds Samir Gandhi, partner with AZB & Partner: “CCI appears to have accepted that it will not have direct proof of cartel behaviour and has taken to relying on purely circumstantial evidence to prosecute cases.” Gandhi represented one of the cement firms before the CCI, and his comments do not relate to the cement order.

Two Pending Cases, Two Issues

DLF Case



The Issue

Concept of a 'relevant market'

CCI

High-end residential segment in Gurgaon

DLF: CCI defined relevant market narrowly - it should be high-end houses in National Capital Region

Cement Cartel



The Issue

Presence of a written agreement

Cement Companies

There's no evidence of a written agreement, as required by the Act

CCI: A written document is not necessary and circumstantial evidence can also be used to establish an agreement

A senior official of CCI, who did not want to be identified, says there are different views on the issue. "Some countries say behavioural evidence is enough to prove cartel cases, but in others, physical evidence of an agreement is required," he says. "The COMPAT and higher courts have to take a call on this." CCI officials have increasingly relied on behavioural factors instead of hard evidence as they have limited powers of search and seizure, as well as to wiretap. At present, to search and seize, CCI officials should have specific information of evidence and the permission of the district metropolitan magistrate. "We are yet to use this provision," admits another senior official at CCI, not wanting to be named.

A proposal is currently with the government to vest approval powers for search and seizure with the CCI chairman. "This will be operationally easier to handle," says CCI chairman Ashok Chawla. "A full-fledged, autonomous regulator should have all the powers to investigate, enquire, probe, search, seize, survey," says Pradeep Mehta, secretary general of CUTS, a consumer rights body. "It is not correct that they are not given such powers in the first place."

The other key concept that is likely to be tested in the cement case is whether price and production parallelism—companies changing prices or output in tandem—can be taken as behavioural evidence in a market dominated by few market players. Thus, the judgments in the appeals process will have a huge bearing on how India Inc does business and whether the CCI can give orders that can withstand the toughest legal scrutiny.

Source : The Economic Times, 3.7.2012