

## CLC-CCI Moot Court on Competition Law, 2019

### MOOT PROPOSITION

---

PG Pacedena Private Limited (“**PG**”),

Qui Pacedena Private Limited (“**Qui**”) and

Tam Pacedena Private Limited (“**Tam**”)

Trade Association

...APPELLANTS

VERSUS

Competition Commission of Pacadena (“**CCP**”) and

Pacedena National Railways (“**PNR**”)

...RESPONDENTS

---

1. The Republic of Pacedena is a developing country having its capital at Melhi. The laws of Pacedena are *pari materia* with the laws of India. As such, the date when the provisions of the Competition Act were notified in India, the very same day, those *pari materia* provisions were also notified in Pacedena.
2. PNR is Pacadena’s national railway system operated by the Ministry of Railways, Pacadena. PNR is fourth-largest railway network in the world by size; revenue of close to USD 26 billion (PR i.e. Pacadenian Rupee 1.84 trillion). It is the single largest buyer of goods and services in Pacadena (for running operations of PNR); attracting established-foreign-companies to participate in tenders floated by PNR.
3. PNR issues specifications for each good and service that it procures by means of issuing tenders, including recycled-wood tables. PNR procures only one kind of

recycled-wood tables for all its railway coaches in Pacadena. Goods and services are sourced from the specific and approved suppliers only.

4. There are three leading recycled-wood table companies in Pacedena: (i) PG Pacedena Private Limited (“**PG**”), (ii) Qui Pacedena Private Limited (“**Qui**”) and (iii) Tam Pacedena Private Limited (“**Tam**”). The market share of each of them in the recycled-wood table market (pertaining to PNR) are 25%, 45% and 30% respectively. PG and Qui are multi-product companies and substantial part of their turnover is from export sales.
5. PG and Qui have their holding companies in UTA and became an approved supplier of recycled-wood tables to PNR in 2000 and 2003 respectively. Tam is a Pacadena based company and became approved supplier of recycled-wood tables to PNR in 2006.
6. The companies (PG, Qui and Tam) have been participating in tenders floated by PNR by way of a bidding system for procuring recycled-wood tables. The sealed-bids are submitted individually by PG, Qui and Tam. The key elements of the procurement process followed by PNR are as follows:
  - a. These are tenders for annual procurement by PNR. The total quantity tendered annually is a sum of (1) recycled-wood tables in railway coaches as per annual production capability of railway coaches AND (2) undertaking replacement in existing railway coaches of PNR.
  - b. PNR floats tenders and invites sealed bids/quotations from their approved suppliers of that specific good and service, to be submitted by a fixed date.
  - c. Once all parties/ approved suppliers submit their sealed bids, PNR opens the sealed-bids (of all parties/ approved suppliers who participate in the subject tender).

- d. The winning bidder is chosen as a result of competitive bidding and price is discovered after opening of the bids submitted by all parties/ approved suppliers. However, in certain circumstances winning bidder is also chosen after commercial negotiations between PNR and bidding company(ies).
7. There was a newspaper report in 2016 which was circulated widely in UTA that five (5) manufacturers and suppliers of recycled-wood tables (details below) may have engaged in cartel and big-rigging since 2000 in UTA.
8. Based on the newspaper report, PNR conducted an internal investigation and found that two of the companies named in the UTA newspaper report participate in tenders floated by PNR for recycled-wood tables. Based on the same; PNR decided to conduct a study of price-bids quoted by PG, Qui and Tam since 2003 and reached a conclusion that aside from similar (sometimes same) prices there was substantial increase in bid-prices of recycled-wood tables submitted by PG, Qui and Tam. PNR filed a Reference against the suppliers of recycled-wood tables to PNR in Pacedena under Section 19 of the Competition Act.
9. The Competition Commission of Pacadena (“CCP”) took cognizance of the Reference, passed an order under Section 26(1) of the Competition Act and directed the Director General (“DG”) to initiate investigation into the matter in 2017.
10. On investigation of suppliers of recycled-wood tables in 2018 and rigorous analysis for more than 9 months (which included depositions of senior management personnel of the recycled-wood table companies); the DG prepared a report and found that the suppliers of recycled-wood tables have engaged in bid-rigging in tenders for procurement of recycled-wood tables by PNR between 2000 to 2018. The key findings of the report are as under:
- a. The two recycled-wood table companies from UTA were found in violation of competition laws in UTA and penalties were imposed in 2018;

- b. The tenders were floated on an annual basis. While the prices were decided every year, the supply of the recycled-wood tables used to be once in every three months.
- c. The price-bids submitted by all the three companies is as follows:

Year	PG (Bid Quoted Price in PR/ table)	Qui (Bid Quoted Price in PR/ table)	Tam (Bid-quoted price in PR/table)	Tender Awarded Price in PR/ table
2000	99	-	-	88
2001	99	-	-	88
2002	120	-	-	88
2003	100	88	-	88 (Qui)
2004	88	88	-	85 (Qui)
2005	100	100	-	Tender Cancelled
2006	100	100	90	90 (Tam)
2007	100	-	100	100 (PG and TAM – equal quantity)
2008	100	75	100	75 (Qui)
2009	120	-	119	119 (TAM)
2010	119	119	119	119 (all three equal quantity)
2011	128	128	-	119 (PG)
2012	-	128	128	119 (QUI and TAM equal quantity)
2013	137	-	-	Tender cancelled
2013	137	137	137	135 (PG)

(Retender)				
2014	-	135	-	135 (QUI)
2015	-	137	137	137 (QUI and TAM – equal quantity)
2016	-	-	137	137 (TAM)
2017	137	137	137	Tender cancelled
2018	136	136	136	Tender cancelled
2018 (Retender)	135	135	-	134 (PG)

- d. Cost of recycled-wood tables for each of the companies was marginally different based on place of factory for each.
- e. The average annual procurement of recycled-wood tables by PNR is around PR 78 crores.
- f. Ledger accounts of these three suppliers of recycled-wood tables evidenced commercial dealings with each other.
- g. There was also a trade association which existed since 2005 wherein all the recycled-wood table manufacturers (including the three suppliers to PNR) were members. PG, Qui and Tam used to meet at the trade association meetings. The said trade association is still operational.
- h. The prices of certain kind of recycled-wood tables by other companies of Pacadena (i.e. ANA and KDS – not eligible for PNR tenders) were also collected and their prices were in the range of PR 120/ table (from the years 2013-2016).
- i. The prices of certain kind of recycled-wood tables PG, Qui and Tam to enterprises other than PNR was also in the range of PR 112/ table to PR 130/ table (from the year 2009 to 2017 respectively).

- j. Based on the above, the DG concluded that there was an agreement between the recycled-wood table manufacturers (i.e. PG, Qui and Tam); and they have engaged in big rigging which is in violation of Section 3(3)(d) of the Competition Act.
11. Post the DG report, an opportunity was given to all parties (including trade association) to provide their oral and written objections on the DG report. Post the objections, CCP, principally upon close examination of DG Report (under all grounds from Paras 10 (a) to 10 (j)) held that the case is made out under Section 3(1) read with sections 3(3)(a), 3(3)(c) and 3(3)(d) against the recycled-wood table manufacturers and the trade association.
12. CCP notes that the infringing anti-competitive conduct of the parties pertain to cartel and bid rigging in respect of the tenders floated by PNR and as such, for the purposes of determining the relevant turnover for this infringement, revenue from tables has to be taken into account. It may be noted that the twin objectives behind imposition of penalties are: (a) to reflect the seriousness of the infringement; and (b) to ensure that the threat of penalties will deter the infringing undertakings. Therefore, the quantum of penalties imposed must correspond with the gravity of the offence and the same must be determined after having due regard to the mitigating and aggravating circumstances of the case.
13. CCP decided to impose penalty on Qui, PG and Tam at the rate of 10% of their average relevant turnover of the preceding three financial years arising out of sale of tables. The total amount of penalty is worked out as follows:

S. No.	Party	Turnover from Table 2015-2016 (in PR crores)	Turnover 2016-2017 from Table (in PR crores)	Turnover 2017-2018 from Table (in PR crores)	Average from Table (in PR crores)	Penalty from Table (in PR crores)
1	PG	150	160	170	160	16
2	QUI	120	100	90	103.3	10.3

3	TAM	65	75	80	73.3	7.3
---	-----	----	----	----	------	-----

14. CCP also decided to impose penalty on trade association at the rate of 10% of their average income based (on their Income and Expenditure account) for the three preceding financial years as filed by them. The total amount of penalty is worked out as follows:

S. No.	Party	Turnover from Table 2015-2016 (in PR crores)	Turnover 2016-2017 from Table (in PR crores)	Turnover 2017-2018 from Table (in PR crores)	Average from Table (in PR crores)	Penalty from Table (in PR crores)
1.	Trade Association	.5	.5	.5	.5	0.05

15. Aggrieved by the said order of the CCP, PG, Qui, Tam and trade association filed appeals before the National Company Law Appellate Tribunal in Melhi.

Note: The Parties are free to make their issue based on the cause title, fact sheet and evidence given in this proposition. The Parties are encouraged to add more issues than the ones mentioned herein based on facts mentioned above. The memorial must contain a specific portion on questions of law being argued.