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COMPETITION COMMISSION OF INDIA

Case No. 47 of 2019

In Re:

Brickwork Ratings India Pvt. Ltd.

29/ 3 and 32/ 2, 3rd Floor, Raj Alkaa
Park, Kalena Agrahara, Bannerghatta Road,
Bengaluru, Karnataka – 560 076

Informant

And

CRISIL Ltd.

CRISIL House, Central Avenue, Hiranandani Business
Park, Powai, Mumbai, Maharashtra – 400 076

Opposite Party No. 1

India Ratings and Research Pvt. Ltd.

Wockhardt Tower, Level 4, West Wing, Plot C-
2, G Block, Bandra Kurla Complex, Bandra
(East), Mumbai, Maharashtra – 400 051

Opposite Party No. 2

CARE Ratings Ltd.

Godrej Coliseum, 4th Floor, Somaiya Hospital
Road, Off Eastern Express Highway, Sion East,
Mumbai, Maharashtra – 400 022

Opposite Party No. 3

ICRA Ltd.

Flat No. 1105, Kailash Building, 11th Floor,
26 Kasturba Gandhi Marg, New Delhi – 110 001

Opposite Party No. 4

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member



ORDER UNDER SECTION 26 (2) OF THE COMPETITION ACT, 2002

- The present Information has been filed by Brickwork Ratings India Pvt. Ltd. (**‘Informant’**), a pan-India credit rating agency (**‘CRA’**) registered under the provisions of the erstwhile Companies Act, 1956 and with the Securities and Exchange Board of India (**‘SEBI’**), under Section 19 (1) (a) of the Competition Act, 2002 (the **‘Act’**), against four other CRAs viz. CRISIL Ltd. (**‘OP-1’**), India Ratings and Research Pvt. Ltd. (**‘OP-2’**), CARE Ratings Ltd. (**‘OP-3’**), and ICRA Ltd. (**‘OP-4’**) (together, the **‘Opposite Parties’**), *inter alia*, alleging contravention of the provisions of the Act.
- The Informant has alleged that in the 2019-20 tender invited by National Highways Authority of India (**‘NHAI’**) to rate its upcoming ₹ 75,000 crore bond issuances, the Opposite Parties cartelised and quoted identical/ similar rates. This was even noted in a news report dated 25.03.2019 published in the Economic Times titled *‘Credit rating cos willing to offer services at just Rs. 1,100’*, as per which, in response to the above-mentioned tender floated by NHAI, CRAs submitted their price quotes as follows:

	Initial Rating Fee (IRF)	Annual Surveillance Fee (ASF)
CRISIL Ltd.	₹ 1,100	-
India Ratings and Research Pvt. Ltd.	₹ 1,100	-
CARE Ratings Ltd.	₹ 1,100	-
ICRA Ltd.	₹ 1,500	-
Informant	₹ 9,99,000	₹ 7,50,000

As per the Informant, the aforesaid quotes clearly show price parallelism between the Opposite Parties.

- Further, it is stated in the Information that the Informant, through applications filed under the provisions of the Right to Information Act, 2005 (**‘RTI Act’**), also gathered information regarding tenders floated by various other Public Sector Undertakings (**‘PSUs’**) to CRAs, which information gathered, is as tabulated hereunder:

Food Corporation of India – January 2013 tender for ₹ 5000 crores bonds

	IRF	ASF
OP-1	₹ 14,80,000	₹ 7,40,000
OP-2	-	-
OP-3	Did not participate	
OP-4	₹ 15,00,000	₹ 7,50,000



Food Corporation of India – February 2014 tender for ₹ 8000 crores long-term bonds

	IRF	ASF
OP-1	₹ 16,28,000	₹ 8,14,000
OP-2	-	-
OP-3	₹ 16,00,000	₹ 8,00,000
OP-4	Did not participate	

Food Corporation of India – Financial Year ('FY') 2018-19 tender for ₹ 8000 crores proposed bonds

	IRF	ASF
OP-1	₹ 16,00,000	₹ 8,00,000
OP-2	-	-
OP-3	₹ 16,00,000	₹ 8,00,000
OP-4	Did not participate	

Air India – For non-convertible debentures/ bonds worth ₹ 7000 crores issued on 08.03.2019

	IRF	ASF
OP-1	₹ 6,93,000 (later replaced to ₹ 49,000)	₹ 6,93,000 (later replaced to ₹ 49,000 per year)
OP-2	₹ 1,89,000	₹ 98,000 per year for 10 years
OP-3	₹ 1,60,000	₹ 70,000 per year for 10 years
OP-4	₹ 5,00,000	₹ 1,25,000 per year for 10 years

As per the Informant, the aforesaid quotes also evidence bid-rigging amongst the Opposite Parties.

4. The Informant has also stated that when it moved an application under the RTI Act to NHAI seeking information relevant to the aforesaid media report, NHAI refused to share the information on the ground that CRAs were not agreeable to such disclosure on the grounds of loss of trade secret and loss of intellectual property rights.
5. As per the Informant, the tender floated by NHAI for rating its bond issuance of ₹ 75,000/- crores mentioned that “NHA I may appoint more than one agency for this rating exercise. The first agency will be selected on the basis of L1 rate. The second agency (L2) should agree to match the L1 rate. If L2 does not agree to match L1 rates, opportunity to match L1 rates will be given to L3 and so on”. Thus, in such a scenario, the Opposite Parties knowingly colluded and pre-determined the price in such a way



that OP-1, OP-2 and OP-3 quoted the same amount of ₹ 1,100/- so that all three of them are selected and awarded the contract, instead of only two bidders being selected as per the tender document while OP-4 perceptively quoted a slightly different amount, so that it does not appear that all the parties have colluded in deciding the bid prices for the NHAI contract.

6. Further, as per the Informant, though the Opposite Parties were quoting rates of the nature of IRF ranging from ₹ 14.80 lacs to ₹ 16 lacs for the FCI tenders where project size was only ₹ 5000-8000 crores, for NHAI tender of ₹ 75,000 crores, they have quoted IRF of only ₹ 1,100. This is evidently predatory pricing being indulged into by the Opposite Parties to drive the Informant out of the market.
7. The Informant has also mentioned that as per another newspaper article published in the Business Standard on 28.08.2019 titled '*CAG red-flags highway costs*', even the Comptroller and Auditor General of India ('CAG') has sought cost audit of NHAI projects as it felt that NHAI's expenses are rather high. The CAG has said that the government should curtail its debt-raising measures and has raised concerns over the burgeoning costs of the NHAI's projects. It has alerted the Ministry of Finance, saying the NHAI's borrowings are also the government borrowings and should be accounted for, accordingly.
8. As per the Informant, even the redacted documents received from Air India Limited by the Informant show deliberate changing of figures by the Opposite Parties. For the non-convertible debentures issued by Air India worth ₹ 7,000 crores on 08.03.2019, OP-1 had initially priced its IRF at ₹ 6.93 lacs and ASF also at ₹ 6.93 lacs. However, from the markings in the documents, it can be seen that the bid amount submitted by OP-1 of ₹ 6.93 lacs was later on changed by hand to ₹ 49,000 making OP-1 the L1 bidder and OP-3 the L2 bidder at the same IRF and ASF of ₹ 49,000.
9. The Informant has also stated that it has received the appointment letters issued by Air India Limited to OP-1 and OP-2 on 10.08.2012 appointing them to rate the issue of non-convertible debentures of ₹ 7,400 crores, rates as per which were as follows:

	IRF	ASF
OP-1	₹ 25,00,000	₹ 13,50,000
OP-2	₹ 25,00,000	₹ 13,50,000



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The Informant has stated that as can be seen, for the bond issuance by Air India Limited of ₹ 7,400 crores in 2012, CRAs were appointed for an IRF of ₹ 25,00,000 and ASF of ₹ 13,50,000. However, for a bond issuance of ₹ 7,000 crores later in 2019, CRAs submitted their bids for a meagre amount of ₹ 49,000/-. As per the Informant, the difference in the bids of the Opposite Parties in both circumstances proves collusion on their part in the 2019 tender.

10. Moreover, the Informant has also stated that through an application under the RTI Act filed with National Hydroelectric Power Corporation Ltd. ('NHPCL'), it has also found evidence of the fact that PSUs like NHPCL make payment of ASF to CRAs in advance at the beginning of the contract period. However, with regard to NHAI tender, as mentioned in the news report itself, CRAs are willing to receive their fee well after the process is complete, and not in advance which is the customary practice. This fact also raises suspicion and shows collusion on the part of the Opposite Parties.
11. The Informant has also highlighted other alleged illegal practices being adopted by the Opposite Parties. It has stated that the Employee Provident Fund Organization ('EPFO'), in its letter dated 09.06.2019 issued to certain portfolio managers *i.e.* ICICI Securities Primary Dealership Ltd., Reliance Capital Asset Management Ltd., HSBC Asset Management (India) Pvt. Ltd. and UTI Asset Management Company, specifically gave preference to the Opposite Parties at the instance of OP-1, and expressly stated that while considering ratings for investments in PSU bonds category, one of the two required ratings should necessarily be from one of the Opposite Parties. As per the Informant, the very recommendation given by OP-1 to EPFO in its role as consultant to appoint OP-1 as one of the selected CRAs, amounts to conflict of interest and is in clear violation of the Reserve Bank of India ('RBI') Circular. As per the Informant, in the past also, EPFO had introduced a similar criterion where only CRAs which had more than 10 years of operations were allowed to qualify for bids and contracts for rating bonds. This criterion was implemented by EPFO for selecting selected CRAs. However, due to inconsistencies in this criterion for selection and giving of preferential treatment, it had to be modified.
12. The Informant has also stated that even the Serious Fraud Investigation Office ('SFIO') and SEBI are investigating into the misconduct by the Opposite Parties in giving false ratings to bonds issued by IL&FS group companies.



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13. Based on the aforesaid allegations, the Informant has averred that the Opposite Parties are involved in anti-competitive practices in contravention of the provisions of Section 3 of the Act which is causing an appreciable adverse effect on the competition in India as well as on the Indian economy. The ratings given by the Opposite Parties are causing huge financial loss to the bond holders and they are disrupting the economy. As such, the Informant has prayed the Commission that (a) directions under Section 26 (1) of the Act be issued for investigation into formation of cartel and collusive bidding by the Opposite Parties in the tender processes of various PSUs for the period 2009 till date; (b) the Opposite Parties be directed to discontinue their collusive bidding for various PSU tenders; (c) penalty be imposed on the Opposite Parties as deemed fit; (d) the Opposite Parties be directed to bear costs of litigation incurred by the Informant; and (e) any other order as the Commission may deem fit may be passed.
14. Upon consideration of the above Information, the Commission invited comments from the relevant entities *i.e.* SEBI – the regulator of the CRAs operating in India, and NHAI – the PSU in whose tender cartelisation has been alleged.
15. SEBI, in its comments, explained the role of the CRAs and the role of SEBI in regulating them. SEBI stated that in view of the fact that the Code of Conduct prescribed under the SEBI (CRA) Regulations, 1999 imposes an unequivocal obligation on the CRAs to conduct their business with high standards of integrity, dignity and fairness and not to indulge in any unfair competition, the allegations levelled in the Information against the Opposite Parties, attract the provisions of the 1999 Regulations. SEBI stated that for any alleged violation of these Regulations, SEBI is the regulatory authority to examine the allegations and take appropriate action, if any, required. Therefore, as per SEBI, the present Information may not be entertained by the Commission.
16. However, since SEBI has not stated in its comments as to whether it has initiated or is initiating any inquiry against the Opposite Parties in light of the averments made in the Information for alleged violation of SEBI (CRA) Regulations, 1999, the Commission decided to proceed in the matter.
17. NHAI, in its comments, explained its tender allotment process for the 2019-20 tender to rate its upcoming ₹ 75,000 crore bond issuances by the CRAs and stated that it has



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allotted tenders to the Informant also in the past and it always follows due process and procedure in appointing CRAs.

18. Thereafter, upon consideration of the aforesaid comments received from SEBI and NHAI, the Commission, noting the stark co-incidence whereby OP-1, OP-2 and OP-3 quoted the exact identical price of ₹ 1,100 as IRF and ASF to NHAI in response to its letter no. NHAI/ 11033/ Borrowings/ Rating/ 2019-20 and noting that even the price quoted by OP-4 was also somewhat in the similar zone, asked the Opposite Parties to furnish the basis of their respective quotes to NHAI in the FY 2019-20 tender. They were also directed to provide the contemporaneous supporting internal calculation sheets in this regard alongwith the other relevant material.
19. The Opposite Parties in their separate responses to the information, *inter alia*, have essentially submitted as follows:
 - (a) Regulation of CRAs is strictly within the domain of SEBI. As such, the Commission has no jurisdiction to decide the allegations raised by the Informant in the present matter.
 - (b) No internal cost calculation sheets are prepared as the Opposite Parties are engaged in service sector and are not manufacturers of goods. As such, for services, there is no costing per mandate or engagement.
 - (c) While determining the fee to be charged by CRA, multiple factors are considered including, *inter alia*, value of debt to be rated, complexity of rating instrument, costs (based on man hours and resources required for a team of analysts to prepare the report *etc.*), prestige of providing rating services to the issuer, past relationship with issuer *etc.*
 - (d) It is a general practice in India that CRAs do not charge fees strictly in accordance with their pricing policies and in most instances, the fees are based on stature and associated prestige of an issuer, complexity of the assignment, length of relationship and recent pricing trends of issuer, *etc.*
 - (e) With the number of CRAs increasing over the past few years *i.e.* from initial 4 to present 7, increase in competition has been one of the factors responsible for overall drop in fee charged by CRAs from bond issuers.



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- (f) The bids quoted to NHAI were a result of historic pricing and independent economic and commercial considerations. Historic pricing trend shows that the rate of ₹ 1,100 was not established in FY 2019-20 as outcome of any alleged anti-competitive agreement between the Opposite Parties, rather was a result of the progressive price drop in L1 bids quoted to NHAI by CRAs in the preceding three years which the Opposite Parties were all aware of, as the bids quoted were open.
- (g) NHAI is associated with improving the infrastructure of the country and nation building and consequently, assigning ratings to instruments issued by NHAI is a matter of prestige. Since NHAI is a large debt issuer and does not work for profit, CRAs want to be associated with the NHAI. Revenue generation from such *quasi*-sovereign debt issuers is only incidental as the focus is on building the credibility of CRA, targeted at CRA's future growth. Even though debt issuance programmes of such large PSUs are not necessarily remunerative, CRAs participate and provide ratings for these issuances for various strategic reasons.
- (h) With respect to tenders of FCI and Air India Limited also, there was no collusion. There was neither price parallelism nor bid-rotation in FCI and Air India Limited tenders. In fact, in such tenders, participation by the Opposite Parties was on the basis of invitation issued by the issuers and not in all tenders, all Opposite Parties got invited.
- (i) The evidence given by the Informant in support of its Information is only the news report. The Informant has not furnished evidence of any 'plus factors' that indicate possible collusion between the Opposite Parties.
- (j) Also, extraneous factors are extremely significant in the choice that enterprises make with respect to who their CRA will be. Rating fee charged by a CRA is rarely a consideration while selecting CRA. The cost of appointing a CRA is often a miniscule percentage of the debt offering that the issuers plan, and the issuers will not let the price charged by a CRA compromise their chances of access to investors who base their decision to invest in the issuers' instrument on the prestige and reputation of the CRA who has rated the said instrument.
- (k) Charging of ASF does not create any entry barriers for the other CRAs. After CRAs have assigned a rating to an instrument, they are required to monitor the rating



throughout the life of the instrument. Therefore, as commercial practice, whenever a new instrument is issued, CRAs charge an IRF (for assigning rating to the said instrument) and then an ASF (to monitor the rating on the instrument until the instrument has matured or withdrawn, or the issuer asks the CRA to withdraw the rating assigned). This effectively means that every time a new instrument is issued by any issuer, it has to enter into a separate arrangement with a duly registered and accredited CRA (of its choice) and the IRF and ASF charged are specific to that instrument. Pre-existing ASF arrangements have no impact whatsoever on the issuer's decision of choosing a different CRA for rating new issuances.

- (l) Further, issuers have the option to withdraw a rating on an instrument before its maturity.
- (m) While it is industry practice to receive ASF in advance from an issuer, it is incorrect to state there have been no deviations from such practice by CRAs on certain occasions, as this is a subject matter of commercial negotiations between issuer and the CRA. CRAs usually like to receive ASF in advance, however, many PSUs typically have business practices or policies in accordance with which they make payments after delivery of the service. In such cases, it is an internal commercial decision of the CRA to accept ASF post completion of the contract on the basis of credibility of such issuer, length of CRA's relationship with it, track record of its past payments, *etc.*
- (n) There is no linkage between the fee charged by the CRA and the ratings assigned by it. In fact, separation of operations between business development team (involved in negotiation of fee arrangements) and analytical team (involved in the process of assigning ratings) in the form of a 'Chinese Wall', is required to be maintained by CRAs.
- (o) Regarding allegation of predatory pricing, the Act does not provide for the concept of collective dominance.
- (p) The Informant has not approached the Commission with clean hands and has misrepresented certain facts. OP-1 was never involved in IL&FS investigation and did not rate its instruments. Rather the Informant itself is being investigated by SFIO for assigning IL&FS group companies with the highest ratings possible (*i.e.*,



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AA+) on perpetual subordinated non-convertible debentures issued by them right before their default. The Informant has also been penalised by SEBI for indulging in unscrupulous practices which order has been upheld by the Securities Appellate Tribunal ('SAT'). The Informant also has a significantly high default rate, a key metric denoting the quality of ratings assigned by CRAs.

- (q) There has been no adverse effect on the business of the Informant in recent years because of any alleged collusion on part of the Opposite Parties. It has rather grown exponentially since its incorporation in 2008 in terms of market share, revenues, as well as clientele, and it is evident that the Informant is not being driven out of the market. With regard to NHAI, if the Informant was not invited by NHAI in FY 2019-20 to match the L1 rate, the same may have been because of certain black dots on the reputation of the Informant.

20. Upon such responses of the Opposite Parties, the Commission also invited the comments of the Informant, in which the Informant, apart from reiterating the allegations made in the Information, *inter alia*, stated as follows:

- (a) Evidently, the Opposite Parties submitted identical or closely similar bids to NHAI for tenders in each FY from 2016-2020, culminating in constant contract price for rating NHAI bonds (irrespective of variance in value and complexity of financial instruments) of ₹ 1,100. This confirms the concerns raised by the Informant in the Information, suggesting collusion on part of the Opposite Parties not only in 2019-20, but since a longer duration.
- (b) Elements of Section 3 (3) (a) and 3 (3) (3) (d) of the Act are unambiguously made out against the Opposite Parties, as their conduct has resulted in determining prices and they have engaged in collusive bidding.
- (c) The assertion of Opposite Parties that their low bids are justified by the prestige associated with rating NHAI bonds holds no merit. The Opposite Parties have not provided any evidence of additional work received by them due to the aforesaid association, nor has it been distinguished as to why NHAI is distinguished from other PSUs (like FCI) which are equally prestigious, large debt issuers, working for benefit of country and nation building, and backed by Government of India. For such other PSUs, the rates quoted by the Opposite Parties are quite high.



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- (d) Though price parallelism in itself may not be sufficient to establish a *prima facie* case, here price parallelism reflects bid quotations lower than cost to CRAs. Bid-rigging with such low quotes is anti-competitive in that it impacts the market structure and competitiveness by creating significant barriers to entry and is capable of driving out existing competitors.
- (e) OP-1 is found to enjoy a dominant position in the market of CRAs in India. It has the ability to dictate the market, its competitors, and ultimately customers as per its advantage. Artificially lowering price bid by it below cost amounts to predatory pricing.
- (f) There is no reason as to why only certain specific CRAs are invited by PSUs to provide bids while others are not, given that there are only 7 CRAs in the market. The fact that certain Opposite Parties are repeatedly and cyclically invited to provide quotes creates a strong presumption of bid rotation.
- (g) Contention that growth in business of the Informant evidences lack of adverse impact on its business is erroneous and liable to be rejected.
- (h) Practice of charging high IRF to include cost of ASF services and charging lower ASF thereafter also amounts to excluding entrants in the market and is anti-competitive.
21. The Commission considered the Information filed by the Informant, responses thereto furnished by the Opposite Parties and comments of the Informant on such responses in its ordinary meeting held on 09.12.2020, and decided to pass an appropriate order in the matter in due course.
22. At the outset, the Commission notes that in India, CRAs are regulated by SEBI in terms of the SEBI (CRA) Regulations, 1999. Under the same, a total number of 7 CRAs are registered with SEBI *viz.* i) Acuité Ratings and Research Ltd.; (ii) Brickwork Ratings India Pvt. Ltd. (Informant); (iii) Care Ratings Ltd. (OP-3); (iv) CRISIL Ltd. (OP-1); (v) ICRA Ltd. (OP-4); (vi) India Ratings and Research Ltd. (OP-2); and (vii) Infomerics Valuation and Rating Pvt. Ltd.
23. As per Regulation 2 (h) of the SEBI (CRA) Regulations, 1999, 'credit rating agency' means a body corporate which is engaged into, or proposes to be engaged into, the



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business of rating of securities offered by way of public or rights issue. In generic sense, CRA is a company that rates debtors and provides information on the creditworthiness of the debt issuers based on their ability to pay back their interests and loan amount in time and the probability of them defaulting. The assessed entities may be companies, state governments, local government bodies, non-profit organizations, *etc.*

24. The ratings assigned by CRAs, in general, represent their opinion about the credit risk associated with repayment of the credit facility based on individual proprietary rating framework/s of CRAs which take/s into account various drivers like business risk, industry risk, financial aspects, management capability *etc.* The credit rating of an entity is an important input considered by an investor to assess the risk of investing in that entity. Credit rating conveys an assessment of the probability of default on payment of interest and principal of a debt instrument.
25. For the credit rating services provided, CRAs are compensated as percentage of the total outstanding (proposed and/ or existing) debt. Usually, CRAs enter into fee cap arrangement with issuers who frequently access debt/ loan market for funding their needs. Under such arrangement, there are two components – IRF, a fixed lump sum amount to be paid annually to the CRA irrespective of the total amount of debt rated by it and ASF, a fixed amount decided at the start of the contract which the CRA has to be paid annually.
26. In this background, the allegations levelled in the present matter shall be examined by the Commission.
27. The Opposite Parties have first of all raised objection to the jurisdiction of the Commission to entertain the present Information by stating that regulation of CRAs falls within the jurisdiction of SEBI. In this regard, the Commission notes that though regulation of CRAs may be the subject-matter domain of SEBI, examining any anti-competitive conduct on part of CRAs falls within the jurisdiction of the Commission. Even the Hon'ble Supreme Court of India, in the matter of *Competition Commission of India v. Bharti Airtel Limited and Others*, (2019) 2 SCC 521, has opined that mere presence of a sectoral regulator does not oust the jurisdiction of the Commission. Further, in the present case, as noted above, SEBI in its comments dated 26.02.2020



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received by the Commission on 28.02.2020 has nowhere stated that it has, or it is, initiating any inquiry against the Opposite Parties in light of the averments made in the Information for alleged violation of SEBI (CRA) Regulations, 1999. The Commission thus, is of the opinion that it has the jurisdiction to proceed and decide the present allegations on merits.

28. Primarily, the Informant has levelled two major allegations against the Opposite Parties – (i) contravention of the provisions of Section 3 (3) of the Act by means of collusive bidding and bid-rigging; and (ii) contravention of the provisions of Section 4 of the Act by means of below cost predatory pricing.
29. With regard to the first allegation regarding collusive bidding, the Commission notes from the responses of the Opposite Parties that, for the NHAI tenders of the last few FYs, the quotations given by the parties were as follows:

S. No.	Tender	Name of bidder	Quoted IRF (In ₹)	Quoted ASF (In ₹)	L1 rate (In ₹)
1.	2013-14	OP-1	1,25,000	75,000	1,25,000 (IRF) 75,000 (ASF)
		OP-2	95,000	90,000	
		IP	90,000	90,000	
2.	2014-15	OP-1	85,000	85,000	49,000 (IRF) 49,000 (ASF)
		OP-2	49,000	49,000	
		OP-3	95,000	70,000	
		OP-4	70,000	70,000	
3.	2015-16	OP-1	3,75,000	1,87,500	29,000 (IRF) 27,000 (ASF)
		OP-2	29,000	27,000	
		OP-3	49,000	49,000	
		OP-4	45,000	45,000	
		IP	1,10,000	75,000	
4.	2015-16	OP-1	99,000	49,000	11,000 (IRF) 11,000 (ASF)
		OP-2	11,000	11,000	
		OP-3	21,000	18,500	
		OP-4	25,000	25,000	
		IP	1,90,000	90,000	
5.	2016-17	OP-1	1,100	1,100	1,100
		OP-2	N.A.	N.A.	
		OP-3	20,000	20,000	
		OP-4	25,000	25,000	
6.	2017-18	Tender scrapped and OPs asked to match L1 price of 2016-17			



S. No.	Tender	Name of bidder	Quoted IRF (In ₹)	Quoted ASF (In ₹)	L1 rate (In ₹)
7.	2018-19	OP-1	11,000	-	1,100
		OP-2	1,100	1,100	
		OP-3	1,100	1,100	
		OP-4	15,000	15,000	
8.	2019-20	OP-1	1,100	1,100	1,100
		OP-2	1,100	1,100	
		OP-3	1,100	1,100	
		OP-4	1,500	1,500	
		IP	9,99,000	7,50,000	
9.	2020-21	OP-1	1,100	N.A.	1,000
		OP-2	1,100	1,100	
		OP-3	1,100	1,100	
		OP-4	1,000	1,000	
		IP	10,50,000	N.A.	

30. From the above table, it can be seen that the rate of ₹ 1,100 was for the first time quoted in 2016-17 tender by OP-1 and this rate being the L1 rate, was offered by NHAI in 2016-17 to other CRAs also who were participants in the said tender. Thereafter, for the next FY *i.e.* 2017-18, the tender was scrapped and CRAs were asked to offer services at the L1 price of the previous year. Subsequently, in the tender for the next FY *i.e.* in 2018-19, though OP-1 raised its bid to ₹ 11,000, OP-2 and OP-3 quoted the rate at which the tender was awarded in the previous two consecutive years, *i.e.* ₹ 1,100. This turned out to be the L1 rate for the FY 2018-19 also. Further, in the next FY 2019-20, OP-1, OP-2 and OP-3 quoted the rate of ₹ 1,100 each, which was the rate at which the tenders were consecutively awarded for the last 3 FYs and this ended up being the L1 rate for FY 2019-20 also.

31. The quoting of identical price of ₹ 1,100 by OP-1, OP-2 and OP-3 in the NHAI tender of 2019-20 needs to be appreciated against the above backdrop. OP-1, OP-2 and OP-3 have stated that the L1 rate emerging out of the transparent historical pricing trend, tabulated above, formed the basis of their quotations in the 2019-20 NHAI tender. As such, given such basis, arriving at the rate of ₹ 1,100 by OP-1, OP-2 and OP-3 in NHAI tender for FY 2019-20, by itself, does not appear to be collusive in nature. Rather, it seems to borne out of the historical pricing trend *i.e.* the L1 rate for the previous years, known to the Opposite Parties.



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32. Moreover, the Commission notes that there is no material available on record which may show that there was any meeting of minds between the Opposite Parties. In other words, apart from the alleged price parallelism in the NHAI tender for the FY 2019-20 which has been explained through the transparent historical price trends, tabulated above, there is no other material available on record which may indicate collusion or any concerted action between the Opposite Parties in respect of NHAI tender for the FY 2019-20.
33. As far as the allegation of the Informant regarding predatory pricing by the Opposite Parties in contravention of the provisions of Section 4 of the Act is concerned, the Commission observes that the provisions of Section 4 of the Act do not provide for abuse of 'collective dominance' by multiple entities. Further, the Opposite Parties in their responses, have explained the rationale behind participating in NHAI tenders despite low historical quotations being tendered.
34. In the light of the above, no case of abuse of dominance by the Opposite Parties, in contravention of the provisions of Section 4 of the Act, is made out in the present matter.
35. In its comments on the responses filed by the Opposite Parties, the Informant has made a fresh allegation regarding OP-1 being dominant in the market and abusing its dominance by indulging in predatory pricing in NHAI tenders. In this regard, it is noticed that such allegation has not been made by the Informant in the Information filed by it under Section 19 (1) (a) of the Act at the first place. As such, while giving its response to the Information, OP-1 had no occasion to meet such allegation.
36. In such a scenario, the Commission is not inclined to examine the said fresh allegation of abuse of dominance made by the Informant against OP-1 in its rejoinder submissions. However, suffice to say, allegations pertaining to abuse of dominance by OP-1 for alleged predatory pricing in various government tenders have been earlier been looked into by the Commission earlier in *Case No. 95 of 2014* titled *Brickwork Ratings India Private Limited v. CRISIL Limited and Another* which the Commission had disposed of *vide* order dated 18.03.2015 passed under Section 26 (2) of the Act.
37. Apart from the above, the Informant has also alleged certain other *mala fide* and illegal conduct being indulged into by the Opposite Parties. In the opinion of the Commission,



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such allegations made by the Informant are too broad and general in nature and do not raise any competition concern.

38. In view of the foregoing, the Commission is of the opinion that from the facts and evidences given in the present Information, there exists no *prima facie* case of contravention of the provisions of Section 3 (3) read with Section 3 (1) of the Act or of Section 4 of the Act against the Opposite Parties. As such, the matter is ordered to be closed forthwith in terms of the provisions of Section 26 (2) of the Act.
39. It is made clear that the information used in the present order has been used for the purposes of the Act, and as such, in terms of Section 57 of the Act, no confidentiality shall enure upon such information. Rest of the confidentiality claims made by the parties, as sought, shall hold for a period of 3 years from the date of passing of the present order.
40. The Secretary is directed to communicate the order to the parties, accordingly.



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Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 29.12.2020

Sd/-
(Bhagwant Singh Bishnoi)
Member