



COMPETITION COMMISSION OF INDIA

Reference Case No. 07 of 2013

In Re:

Chief Materials Manager-I,
Office of the Controller of Stores, North
Western Railway, Jaipur.

Informant

And

**M/s Rajasthan Transformers and
Switchgears**
C-174, Road No.9-J, VKI Area,
Jaipur-302013

Opposite Party No.1

M/s Paramount Wires and Cables Ltd.
C-125, Naraina Industrial Area,
Phase-I, New Delhi- 110028, Part-I

Opposite Party No.2

M/s Paramount Communications Ltd.
C-125, Naraina Industrial Area, Phase-I, New
Delhi-110028, Part-I

Opposite Party No.3

M/s SPM Power and Telecom Pvt. Ltd.
A-28/1/12, IDA Nacharam,
Hyderabad- 500051

Opposite Party No.4

M/s Elkay Telelinks Ltd.
Plot No.141, Sector-24,
Faridabad-121005, Haryana

Opposite Party No.5

M/s Atlanta Tele Cables
Plot No.987/2, Salempur, Industrial
Area Rajputana Paragana, Bhagwanpur, Roorkee

Opposite Party No.6

M/s CMI Ltd.
C-483, Yojna Vihar,
Delhi- 110092

Opposite Party No.7

**M/s Scot Innovations Wires and Cables Pvt.
Ltd.**
BB-8, Dilkhus Industrial Area,

Opposite Party No.8



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387, 388, G.T. Karnal Road,
New Delhi-110033

M/s Myco Electricals (P) Ltd.

A-25, Nizamuddin West,
New Delhi-110013

Opposite Party No.9

M/s B. N. Sons

509, 5th Floor, Tulip Enclave
Central Spine, Vidhyadhar Nagar,
Jaipur- 302023

Opposite Party No.10

M/s Gee Cab Ind. Ltd.

A-17, Ground Floor, Naraina Vihar,
Delhi-110028

Opposite Party No.11

M/s Tirupati Plastomatics Pvt. Ltd.

B-141(A), Road No.9-D,
Vishwakarma Industrial Area,
Jaipur-302013

Opposite Party No.12

M/s S. Pal Enterprises Pvt. Ltd.

E- 521 & 522, RIICO Industrial Area, Chopanki,
Bhiwade,
Distt.-Alwar (Rajasthan)- 301707

Opposite Party No.13

M/s Indo Alusys Industries Ltd.

606, Tolstoy Bhawan, 15, Tolstoy Marg,
New Delhi-110001

Opposite Party No.14

M/s Continental Telepower Industries Ltd.

A-25, H. Nizamiddin West,
New Delhi-110013

Opposite Party No.15

M/s Delhi Telecom Pvt. Ltd.

B-21, Okhla Industrial, Phase-I,
New Delhi- 110020

Opposite Party No.16

M/s Evershine Electricals Works (I)

Haripur Hinduan, Barwala Raod,
Derabasti, Disstt. S.A.S. Nagar (Mahali),
Punjab-140507

Opposite Party No.17

M/s Incom Cables Pvt. Ltd.

A-90, Naraina Industrial Area, Phase-I, Delhi

Opposite Party No.18



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M/s Incom Wires and Cables Ltd.

C-46, Mayapuri Industrial Area, Phase-II,
Delhi- 110064

Opposite Party No.19

M/s J. K. Cables Ltd.

C-25, Sector-57, Noida

Opposite Party No.20

M/s Kanhha Cables Pvt. Ltd.

A-336 & A-336(A), Road No.17,
Vishwakarma Industrial Area,
Jaipur-302013

Opposite Party No.21

M/s KEI Industries Ltd.

D-90, Okhla Industries Ltd., Phase-I
New Delhi- 110020

Opposite Party No.22

M/s Laser Cables Pvt. Ltd.

307, Swaika Center, 3rd Floor,
4A, Pollack Street,
Kolkata-700001

Opposite Party No.23

M/s M. P. Telelinks Ltd.

Airport Road, Gola Ka Mandir,
Gwalior- 474005

Opposite Party No.24

M/s Manoj Cables Pvt. Ltd.

90/3, Industrial Complex,
Haiderpur, Delhi- 110088

Opposite Party No.25

M/s Vindhya Telelinks Ltd.

Plot No.1-C & 1-D, P.O. Chorhatta,
Udyog Vihar, Rewa (MP)- 486006

Opposite Party No.26

M/s N. C. Cables Ltd.

K-51, Chowdhury Building,
Connaught Circus, New Delhi-110001

Opposite Party No.27

**M/s R. K. Electrical Industries (India) Pvt.
Ltd.**

C-3/12, Mayapuri Industrial Area,
Phase-I, New Delhi-110026

Opposite Party No.28

M/s Relemac Technologies Pvt. Ltd.

1449/27, 30 Feet Road, Durgapuri,
Delhi- 110093

Opposite Party No.29



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M/s Satellite Cables Pvt. Ltd.
A-36, Rajaouri Garden, Ring Road,
New Delhi-110027

M/s Teracom Ltd.
B-84, Sector-60, Noida- 201301 (U.P.)

**M/s Birla Cable Limited(formerly known as
Birla Ericsson Optical Limited)**
Udyog Vihar, P.O. Chorhatta,
Rewa (MP)- 486006

M/s Delton Cables Ltd.
Delton House, 4801, Bharat Ram Road,
24,Daryaganj,New Delhi- 110002

M/s Furcon Engineers Corporation
F-383, Road No.9F, V.I.K. Area,
Jaipur- 302013

M/s Golkonda Engineering Enterprises Ltd.
5th Floor, Surya Towers, S.P. Road,
Secundrabad-500003

M/s Polycab Wires (P) Limited
771,HICO House, Pandit Satwalekar Marg,
Mahim (w), Mumbai- 400016

M/s Siechem Technologies Pvt. Ltd.
26/27 Errabalu Chetty Street,
Chennai- 600001

(Hereinafter, Opposite Parties/OPs)

CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member



Opposite Party No.30

Opposite Party No.31

Opposite Party No.32

Opposite Party No.33

Opposite Party No.34

Opposite Party No.35

Opposite Party No.36

Opposite Party No.37



Mr. U. C. Nahta
Member

Appearances during final hearing held on 6th February, 2018 and 7th February, 2018:

<i>For the Informant</i>	None
<i>For Opposite Party No. 1</i>	Shri Ajay Pareek, Asstt. Sales Manager
<i>For Opposite Party No. 2 and Shri Dhruv Aggarwal, MD</i>	Shri M.M. Sharma, Advocate Ms. Deepika Rajpal, Advocate Shri Anand Sree, Advocate Ms. Yamini Budhiraja, CS
<i>For Opposite Party No. 3, Shri Sandeep Aggarwal, MD and Shri Sanjay Aggarwal, CEO</i>	Shri M.M. Sharma, Advocate Ms. Deepika Rajpal, Advocate, Shri Anand Sree Advocate, Shri Anil Shahi, Advisor
<i>For Opposite Party No. 4</i>	Shri Shyam Gilda, Chief Accounts Manager
<i>For Opposite Party No. 5</i>	None
<i>For Opposite Party No. 6</i>	None
<i>For Opposite Party No. 7</i>	None
<i>For Opposite Party No. 8</i>	None
<i>For Opposite Party No. 9 and Shri Sameer Iqbal, MD</i>	Shri Kotla Harshavardhan, Advocate Ms. Mansi Sood, Advocate
<i>For Opposite Party No. 10</i>	None
<i>For Opposite Party No. 11</i>	Shri Abir Roy, Advocate
<i>For Opposite Party No. 12 and Shri Ravi Gemini, Director</i>	Shri Rajshekhar Rao, Advocate Shri Arjun Nihal Singh, Advocate Shri Chandramauli, Advocate Shri Karthik Sundar, Advocate



For Opposite Party No. 13

Shri Ghanshyam Bhagat, Assistant
Manager

For Opposite Party No. 14

Shri R. C. Sharma, General Manager
Marketing

*For Opposite Party No. 15
and
Shri Mohtashim Aquil, MD*

Ms. Mansi Sharma, Advocate

*For Opposite Party No. 16,
Shri Mohd. Aquil Akhtar
and
Shri Sanjeev Kumar, Director*

Shri Gaurav Duggal, Advocate

For Opposite Party No. 17

Shri Abir Roy, Advocate

*For Opposite Party No. 18
and
Shri Raghav Sharma, Advocate*

Shri Sumeet Kaul, Advocate
Ms. Pooja Chander, Advocate
Shri Sangram Patnaik, Advocate
Shri Sangam Singh, Advocate
Shri Manraj Singh, Advocate

*For Opposite Party No. 19
and
Shri Pranav Sharma, MD*

Shri Sumeet Kaul, Advocate
Ms. Pooja Chandra, Advocate
Ms. Sabhyata Sharam, Advocate
Shri Sangram Patnaik, Advocate
Shri Sangam Singh, Advocate
Shri Manraj Singh, Advocate
Shri Prabhansu Gupta, Advocate

For Opposite Party No. 20

None

*For Opposite Party No. 21
and
Shri Kapil Gemini, Director*

Ms. Kanika Chaudhary Nayar, Advocate
Shri Divye Shama, Advocate
Shri Samartha Shergill, Advocate

For Opposite Party No. 22

Shri M.M. Sharma, Advocate
Ms. Deepika Rajpal, Advocate
Shri Anand Sree, Advocate

For Opposite Party No. 23

None

For Opposite Party No. 24

None



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<i>For Opposite Party No. 25</i>	Shri Abir Roy, Advocate
<i>For Opposite Party No. 26, Shri Y. S. Lodha, MD and Shri Rakesh Kumar Shahi, AVP</i>	Shri S. Ganesh, Sr. Advocate Shri Narendera M. Sharma, Advocate Ms. Prachi Gupta, Advocate Shri Romila Mandai, Advocate Shri Ankur Sood, Advocate
<i>For Opposite Party No. 27</i>	None
<i>For Opposite Party No. 28</i>	None
<i>For Opposite Party No. 29</i>	None
<i>For Opposite Party No. 30</i>	None
<i>For Opposite Party No. 31</i>	None
<i>For Opposite Party No. 32, Shri R. Shridharan, CEO and Shri U.R.S. Bhagel, GM Sales & Logistics.</i>	Shri S. Ganesh, Sr. Advocate Shri Narendera M. Sharma, Advocate Ms. Prachi Gupta, Advocate Shri Romila Mandai, Advocate Shri Ankur Sood, Advocate
<i>For Opposite Party No. 33</i>	None
<i>For Opposite Party No. 34</i>	None
<i>For Opposite Party No. 35</i>	Dr. Ajay Tiwari, Vice President (Marketing)
<i>For Opposite Party No. 36</i>	Ms. Krushika Nayan Chaudhary, Advocate
<i>For Opposite Party No. 37</i>	Ms. Binila Shahi, Advocate

Order

A. Background

1. The present reference has been filed by the Chief Materials Manager-I, North Western Railway (“NWR”), Jaipur, (“**Informant**”) under Section 19(1)(b) of the Competition Act,



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2002 (“Act”) against Opposite Parties (OP-1 to OP-37),alleging contravention of Section 3 of the Act.

2. Facts and allegations, in brief, are as under:

2.1 The Informant is a procurer of Railway Signalling Cables. Railway Signalling Cables are safety items which are essential for completing various works of gauge conversion, doubling of line, laying of new line, *etc.* As per the policy of railways, these cables are required to be procured from Research Designs and Standard Organisation (“RDSO”) approved suppliers only.

2.2 RDSO has classified these suppliers in two categories. Part I suppliers are eligible for bulk order where an order can be placed on them for 100 percent of the procurable quantity. Part II suppliers are eligible for developmental orders where order could be placed up to 25 percent of the procurable quantity only provided they have quoted lower rates than the Part I suppliers.

2.3 The Opposite Parties are in different category (Part I and Part II) of RDSO suppliers of Railway Signalling Cables.

2.4 The tenders floated by the Informant were for the procurement of following four types of cables:

2.4.1 Polyvinyl Chloride insulated aluminium conductor armoured, unscreened underground power cable size 2core × 25 sq. mm conforming to RDSO spec. no. IRS-S-63-2007 with amendment No.3 and IS-1554 Part-1 (“Item 1”).

2.4.2 Polyvinyl Chloride insulated underground railway signalling unscreened copper conductor size 6 core × 1.5 sq. mm conforming to RDSO Spec. IRS-S-63-2007 with amendment No.3 and IS-1554 Part-1 (“Item-2”).



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- 2.4.3 Polyvinyl Chloride insulated cable PVC heathed annealed, armoured, unscreened underground Railway signalling cable copper conductor size 12 core \times 1.5 sq. mm as per RDSO spec. no. IRS-S-63-2007 with amendment No.3. (“**Item 3**”).
- 2.4.4 6 Quad \times 0.9 mm dia. underground jelly filled cable for signalling and telecom installation as per RDSO spec. No.IRS-TC-30-2005 (ver.1) with amendment 4 (“**Item 4**”).
- 2.5 It has been submitted in the information that ‘Price Variation Clause’ (“**PVC**”) was applicable for procurement of different types of Railway Signalling Cables. PVC was based on price variation formulae adopted by Indian Electrical and Electronics Manufacturers Association (“**IEEMA**”) to take care of price fluctuation in raw materials to a large extent.
- 2.6 It has been alleged that the Opposite Parties quoted higher rates for Railway Signalling Cables in comparison to the prevailing market rate, recent accepted rates of other railway zones and updated rates for each tender based on PVC in response to various tenders of Informant. Allegedly, this act of the Opposite Parties was due to meeting of minds among them. Further, quotation of higher prices simultaneously in response to different tender notifications of NWR by different Opposite Parties, was alleged to be an indication of collusion between them. The Informant provided details of eight tenders floated by NWR in the years 2012 and 2013 wherein the Opposite Parties allegedly acted in concert by quoting higher prices, in contravention of Section 3 of the Act (“**Impugned Tenders**”).
- 2.7 Details of bidders and bids received in Impugned Tenders floated by NWR are as under:
- 2.7.1 **Tender No.50-12-5203 opened on 22nd August, 2013** (Re-tendered case No. 50-12-8054 opened on 07th December, 2012) for procurement of Item



3(“**Tender No.1**”): In this tender, fourteen Opposite Parties (Part I and Part II suppliers) submitted their bids. All of them allegedly quoted higher prices as compared to the recent accepted rate of East Coast Railway (“**ECR**”) as on May, 2013 (INR 1, 28,500) and South Central Railways (“**SCR**”) as on April, 2013 (INR 128,175). The basic rate was updated in July, 2013 (PVC date of this tender) at INR 1,32,902.97 per km (SCR) and INR 132376.33 per km (ECR) whereas the participating Opposite Parties quoted price (basic rate) in the range of INR 143500.00 to INR 165000.00. As the rates quoted were found to be high, the lowest Part I bidder namely, OP-2 was called for negotiations. During negotiations, OP-2 reduced its basic rate and freight charges and the Informant accepted the offer. In re-tendering for additional quantity for 661.50 km, the Opposite Parties again quoted higher rates but in the negotiations held with them, the Opposite Parties brought down the rates to the level of previously accepted rates and the tender was settled. This conduct allegedly was a result of understanding among the Opposite Parties to obtain higher rates from NWR. The details of Tender No. 1 are as under:

Tender No. 1						
Tender No. 50-12-5203 Opened On 22.08.2013 For Product 12 Core x 1.5 sqmm signal cable						
S. No.	Firm's Name	Basic Rate (Rs. Per Km.)	ED	CST/ VAT	Freight/P&F Charges (Rs. Per Km)	All inclusive price up to destination (Rs. Per Km.)
1.	M/s Rajasthan Transformers and Switchgears, Jaipur. Part-II OP-1	143500.00	@ 12.36 %	@5%	6500.00 for all consignees	175798.43 for all consignees
2.	M/s Paramount Wires and Cables Ltd., New Delhi Part-I OP-2	143800.00	@ 12.36 %	@5%	7000.00 fr all consignees	176652.36 for all consignees
3.	M/s Paramount Communications Ltd., New Delhi Part-I OP-3	144300.00	@ 12.36 %	@5%	7000.00 for all consignees	171242.25 for all consignees



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4.	M/s SPM Power and Telecom Pvt. Ltd. Hyderabad Part-I OP-4	144500.00	@ 12.36 %	@5%	7200.00 for all consignees	177678.21 for all consignees
5.	M/s Elkay Telelinks Ltd., Faridabad OP-5 Not RDSO approved	148700.00	@ 12.36 %	@5.25%	5000.00 for SSE/Sig/Aii SSE/Sig/BKI SSE/Sig/C/Aii SSE/Sig/C/JP SSE/Sig/JP SSE/Sig/MTD SSE/Sig/FL AMM/GS/Aii	180850.98 for SSE/Sig/Aii SSE/Sig/BKI SSE/Sig/C/Aii SSE/Sig/C/JP SSE/Sig/JP SSE/Sig/MTD SSE/Sig/FL AMM/GS/Aii
					6000.00 for SSE/Sig/1 st /B KN	181850.98 for SSE/Sig/1 st /B KN
					7000.00 for AMM/JU	182850.98 for AMM/JU
6.	M/s Atlana Tele Cables, Roorkee. Part-II OP-6	165999.00	NA	@5%	8000.00 for all consignees	182298.95 for all consignees
7.	M/s CMI Ltd., Delhi Part-I OP-7	151000.00	@ 12.36 %	@5.25%	6500.00 for all consignees	185070.94 for all consignees
8.	M/s Scot Innovations Wires and Cables Pvt. Ltd., Ghaziabad. Part-II OP-8	170000.00	Nil	@5%	8200.00 for all consignees	186700.00 for all consignees
9.	M/s Myco Electricals (P) Ltd., New Delhi. Part-I OP-9	151500.00	@ 12.36 %	@5%	10000.00 for SSE/sig/1 st /B KN SSE/Sig/Aii SSE/Sig/BKI SSE/Sig/C/Aii SSE/Sig/C/JP SSE/Sig/JP SSE/Sig/MTD SSE/Sig/FL	188736.67 for SSE/sig/1 st /B KN SSE/Sig/Aii SSE/Sig/BKI SSE/Sig/C/Aii SSE/Sig/C/JP SSE/Sig/JP SSE/Sig/MTD SSE/Sig/FL
10.	M/s B.N. Sons, Jaipur Part-II OP-10	157000.00	@ 12.36 %	@5%	7500.00 for all consignees	192725.46 for all consignees
11.	M/s Gee Cab Ind. Ltd., Distt. Alwar. Part-I OP-11	154000.00	@ 12.36 %	@5%	12000.00 for SSE/sig/1 st /B KN SSE/Sig/Aii SSE/Sig/BKI	193686.12 for SSE/sig/1 st /B KN SSE/Sig/Aii SSE/Sig/BKI



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					SSE/Sig/C/Aii SSE/Sig/C/JP SSE/Sig/JP SSE/Sig/MTD SSE/Sig/FL	SSE/Sig/C/Aii SSE/Sig/C/JP SSE/Sig/JP SSE/Sig/MTD SSE/Sig/FL
12.	M/s TirupatiPlastomat icsPvt. Ltd., Jaipur Part-I OP-12	159000.00	@ 12.36 %	@5%	9000.00 for all consignees	196585.02 for all consignees
13.	M/S S. Pal Enterprises Pvt. Ltd., Delhi. Part- I OP-13	158900.00	@ 12.36 %	@5%	10000.00 for all consignees	197467.04 for all consignees
14.	M/s Indo Alusys Ind. Ltd., New Delhi Part-II OP-14	165000.00	@ 12.36 %	@5%	7500.00 for all consignees	202163.70 for all consignees

2.7.2 **Tender No.50-12-8054 opened on 07th December, 2012** (Re-tendered case No. 50-12-8032 opened on 28th June, 2012 with additional quantity) for procurement of Item 3(“**Tender No.2**”)- In this tender, fifteen Opposite Parties (Part I and Part II suppliers) submitted their bids. All of them quoted higher prices as compared to recent accepted rates of Western Railway (“**WR**”) and North Central Railway (“**NCR**”). The basic updated rate, as per recent PVC, in November, 2012 was INR 1,26,893.49 per km(NCR) and INR 1,27,705.23 per km (WR). One part order was released on a Part II firm whose initial offer was found acceptable. In re-tender, allegedly the Opposite Parties again quoted higher rates and two rounds of negotiations were held. However, the negotiations failed to bring down the rate at acceptable level resulting in tender discharge. The details of Tender No.2 are as under:



Tender No. 2						
Tender No. 50-12-8054 Opened On 07.12.2012 For Product 12 Core x 1.5 sqmm signal cable						
S. No.	Firm's Name	Basic Rate (Rs. Per Km.)	ED	CST/ VAT	Freight/P&F Charges (Rs. Per Km)	All inclusive price up to destination (Rs. Per Km.)
1.	M/s Satellite Cables NDLS RDSO Part-II OP-30	1,38,900.00	@ 12.3 6%	@5%	6600/- for all consignees	1,70,471.44 for all consignees
2.	M/s Incom Cables, NDLS RDSO Part-I OP-18	1,40,250.00	@ 12.3 6%	@5%	6600/- for all consignees	1,72,064.15 for all consignees
3.	M/s Incom Wires and Cables, NDLS RDSO Part-I OP-19	1,40,250.00	@ 12.3 6%	@5%	6700/- for all consignees	1,72,164.15 for all consignees
4.	M/s Gee Cab Ind. Ltd., Alwar. RDSO Part-I OP-11	1,39,950.00	@ 12.3 6%	@5%	6300.00 for JP and 8000.00 for all other consignees	1,71,410.21 for JP and 1,73,110.21 for all other consignees
5.	M/s KEI Ind. RDSO Part-II OP-22	1,44,000.00	@ 12.3 6%	@5%	6,000.00 for all consignees	1,75,888.32 for all consignees
6.	M/s Myco NDLS RDSO Part-I OP-9	1,45,000.00	@ 12.3 6%	@5%	6,950.00 for all consignees	1,78,018.10 for all consignees
7.	M/s Delhi Telecom OP-16	1,45,315.93	@ 12.3 6%	@5%	7,000.00 for BKN, Aii, JP, and MTD	1,78,440.19 for BKN, Aii, JP, and MTD
8.	M/s Rajasthan Transformers, JP. RDSOPart-II OP-1	1,48,000.00	@ 12.3 6%	@5%	5,000.00 of all consignees	1,79,607.44 for all consignees
9.	M/s N.C. Cables, NDLS RDSO Part-I OP-27	1,47,000.00	@ 12.3 6%	@5%	6,800 for all consignees	1,80,227.66 for all consignees
10.	M/s S. Pal, Delhi RDSO Part-I OP-13	1,48,500.00	@ 12.3 6%	@5%	6,400.00 for all consignees	1,81,597.33 for all consignees
11.	M/s B.N. Sons, JP, RDSO Part-II OP-10	1,49,500.00	@ 12.3 6%	@5%	5,800.00 for all consignees	1,82,177.11 for all consignees
12.	M/s CMI Ltd., Delhi RDSO Part-I OP-7	1,48,000.00	@ 12.3 6%	@5.2 5%	7900.00 for all consignees	1,82,923.17 for all consignees
13.	M/s Manoj Cables, NDLS	1,50,000.00	@ 12.3 6%	@5%	6,000.00 for all consignees	1,82,967.00 for all consignees



	RDSO Part-I OP-25					
14	M/s J K Cables, Noida RDSO Part-I OP-20	1,52,000. 00	@12.3 6%	@5%	6,000.00 for JP consignee only	1,85,326.56 for JP consignee only
15	M/s Tirupati Plastomatics RDSO Part-I OP-12	1,55,000. 00	@12.3 6%	@5%	2,500.00 for all consignees	1,85,365.90 for all consignees

2.7.3 **Tender No.50-12-8032 opened on 28th June, 2012 for procurement of Item 3 (“Tender No.3”):** In this tender, fifteen Opposite Parties (Part I and Part II suppliers) submitted their bids. Allegedly, all of them quoted higher prices as compared to prevailing accepted rates at that time in different Railways. The accepted basic rate of NWR as on 25th November, 2011 was INR 1,11,000.00. Basic rates as updated in May, 2012 as per recent PVC was INR 1,25,028.29 per km. As the quoted rates were found to be high, the lowest Part I suppliers, OP-18 and OP-11 were called for negotiations twice. However, the negotiations failed. One order was released on a Part II supplier, i.e. M/s Golconda Engineering Enterprises Limited, whose initial offer was found acceptable. The details of Tender No.3 are as under:

Tender No. 3						
Tender No. 50-12-8032 Opened On 28.06.12 For Product 12 Core x 1.5 sqmm signal cable						
S. No.	Firm’s Name	Basic Rate (Rs. Per Km.)	ED	CST/ VAT	Freight/P&F Charges (Rs. Per Km)	All inclusive price up to destination (Rs. Per Km.)
1.	M/s GolkandaEngg. Enterprises, Ltd., Secunderabad RDSO Part-II OP-35	1,17,250. 00	@12.36 %	@5%	4,500.00 for SSE/sig/1 st /BKN SSE/Sig/C/JP SSE/Sig/JP SSE/Sig/MTD SSE/Sig/Samdari	1,42,829.21 for SSE/sig/1 st /B KN SSE/Sig/C/JP SSE/Sig/JP SSE/Sig/MTD SSE/Sig/Samd ari
					5,500.00 for SSE/Sig/BKI SSE/Sig/FL	1,43,,829.21 for SSE/Sig/BKI



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						SSE/Sig/FL
					5,000.00 for SSE/Sig/C/Aii	1,43,,829.21 for SSE/Sig/C/Aii
2.	M/s Scot Innovations Wires and Cables Pvt. Ltd., Ghaziabad. RDSO Part-II OP-8	1,36,000.00	Nil	@5%	3,000.00 for SSE/sig/1 st /BKN SSE/Sig/BKI SSE/Sig/C/Aii SSE/Sig/MTD SSE/Sig/Samdari SSE/Sig/FL	1,45,800.00 for SSE/sig/1 st /BKN SSE/Sig/BKI SSE/Sig/C/Aii SSE/Sig/MTD SSE/Sig/Samdari SSE/Sig/FL
					2,500.00 for SSE/Sig/C/JP SSE/Sig/JP	1,45,,300.00 for SSE/Sig/C/JP SSE/Sig/JP
3.	M/s Atlana Tele Cables, Roorkee. Part-II OP-6	1,41,999.00	NA	@5%	7,000.00 for SSE/sig/1 st /BKN	1,56,098.95 for SSE/sig/1 st /BKN
					9,000.00 for SSE/Sig/BKI SSE/Sig/Samdari SSE/Sig/FL	1,58,098.95 for SSE/Sig/BKI SSE/Sig/Samdari SSE/Sig/FL
					4,200.00 for SSE/Sig/C/Aii	1,53,298.95 for SSE/Sig/C/Aii
					Nil for SSE/Sig/C/JP SSE/Sig/JP	1,49,098.95 for SSE/Sig/C/JP SSE/Sig/JP
					5,000.00 for SSE/Sig/MTD	1,54,,829.21 for SSE/Sig/MTD
4.	M/s Rajasthan Transformers, JP. RDSOPart-II OP-1	1,33,850.00	@12.36 %	@5%	1,150.00 of all consignees	1,59,063.55 for all consignees
5.	M/s Gee Cab Ind. Ltd., Alwar. RDSO Part-I OP-11	1,40,000.00	@12.36 %	@5%	6300.00 for SSE/Sig/C/JP only	1,71,169.20 for SSE/Sig/C/JP only



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6.	M/s Incom Cables, Pvt. Ltd. NDLS RDSO Part-I OP-18	1,40,500.00	@ 12.36 %	@5%	6500/- for all consignees	1,72,259.09 for all consignees
7.	M/s Incom Wires and Cables Ltd., New Delhi RDSO Part-I OP-19	1,45,100.00	@ 12.36 %	@5%	6,600 for all consignees	1,72,359.09 for all consignees
8.	M/s S. Pal Enterprises Pvt. Ltd., Delhi. RDSO Part-I OP-13	1,45,100.00	@ 12.36 %	@5%	7,000.00 for all consignees	1,78,186.08 for all consignees
9.	M/s CMI Ltd., Delhi RDSO Part-I OP-7	1,47,100.00	@ 12.36 %	@5.25%	7,850.00 for all consignees	1,81,808.84 for all consignees
10.	M/s Myco Electricals (P) Ltd., New Delhi RDSO Part-I OP-9	1,47,900.00	@ 12.36 %	@5%	8,100.00 for all consignees	1,82,589.46 for all consignees
11.	M/s Manoj Cables, Delhi. RDSO Part-I OP-25	1,49,400.00	@ 12.36 %	@5%	7,900.00 for all consignees	1,84,159.13 for all consignees
12.	M/s Siechem Technologies Ltd, Chennai, RDSO Part-II. OP-37	1,56,648.00	@ 12.36 %	@5%	Nil For all consignees	1,84,810.18 for all consignees
13.	M/s R. K. Electricals Ind.(India) Pvt. Ltd., New Delhi RDSO Part-II OP-28	1,49,109.00	@ 12.36 %	@5.25%	9000.00 for SSE/sig/1 st /BKN	1,85,334.66 for SSE/sig/1 st /BKN
14.	M/s J K Cables Ltd., Noida RDSO Part-I OP-20	1,52,250.00	@ 12.36 %	@5%	7,650.00 for all consignees	1,87,271.51 for all consignees
15.	M/s Kanhha Cables Pvt. Ltd. Jaipur RDSO Part-I OP-21	1,54,500.00	@ 12.36 %	@5%	6,500.00 for all consignees	1,88,776.01 for all consignees



2.7.4 **Tender No.50-12-8035A opened on 18th September, 2012 for procurement of Item 4 (“Tender No.4”)-**In this tender, thirteen Opposite Parties (Part I and Part II suppliers) submitted their bids. Part I and Part II suppliers quoted higher prices as compared to the accepted rates prevailing at that time in different Railways. NWR’s accepted basic rate as on 16th April, 2012 was INR 1,82,000.00 and SWR’s accepted basic rate as on 19th November, 2012 was INR 1,94,500.00. As the rates quoted were found to be high, the lowest Part I and Part II suppliers, namely, OP-18 and OP-19 were called for negotiations twice. Finally counter offer made by the informant to these suppliers was accepted by them. Details of Tender No.4 are as under:

Tender No. 4						
Tender No.50-12-8035-A Opened on 18.09.12 For Product 6 Quad x 0.9 mm underground Jelly filled cable for signalling and telecom installation.						
S. No.	Firm’s Name	Basic Rate (Rs. Per Km.)	ED	CST/V AT	Freight/P& F Charges (Rs. Per Km)	All inclusive price up to destination (Rs. Per Km.)
1.	M/s Incom Wires and Cables Ltd., New Delhi RDSO Part-I OP-19	2,19,100.00	@ 12.36 %	@5%	5,700 for SSE/Tele/C/JP	2,64,071.82 for SSE/Tele/C/JP
					SSE/Tele/M/JP	SSE/Tele/M/JP
					6,300.00 for SSE/Tele/Aii	2,64,671.82 for SSE/Tele/Aii
					AMM/GS/Aii	AMM/GS/Aii
					8,300.00 for SSE/Tele/BKN	2,64,671.82 for SSE/Tele/BKN
8,500.00 for SSE/Sig/MTD	2,66,871.82 for SSE/Sig/MTD					
10,000.00 for SSE/Sig/SMR	2,68,371.82 for SSE/Sig/SMR					
2.	M/s Incom Cables, Pvt. Ltd. New Delhi,	2,20,000.00	@ 12.36 %	@5%	6,000.00 for SSE/Tele/C/JP	2,65,551.60 for SSE/Tele/C/JP



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	Part-I (L2 for JP, Aii, BKN & MTD) OP-18				SSE/Tele/M/ JP	SSE/Tele/M/J P
					7,000.00 for SSE/Tele/Ai i AMM/GS/A ii	2,66,551.60 for SSE/Tele/Aii AMM/GS/Aii
					9,000.00 for SSE/Tele/B KN SSE/Sig/MT D	2,68,551.60 for SSE/Tele/BK N SSE/Sig/MTD
					10,000.00 for SSE/Sig/SM R	2,65,551.60 for SSE/Sig/SMR
3.	M/s Gee Cab Ind. Ltd., Alwar. Part-II OP-11	2,23,600.0 0	@ 12.36 %	@5%	5,400 for SSE/Tele/C/ JP SSE/Tele/M/ JP	2,69,198.81 for SSE/Tele/C/JP SSE/Tele/M/J P
					6,300.00 for SSE/Tele/Ai i	2,70,098.81 for SSE/Tele/Aii
					7,500.00 for SSE/Sig/MT D SSE/Tele/B KN	2,71,298.81 for SSE/Sig/MTD SSE/Tele/BK N
					10,000.00 for SSE/Sig/SM R	2,73,798.81 for SSE/Sig/SMR
					Not quoted for AMM/GS/A ii	Not quoted for AMM/GS/Aii
4.	M/s Polycab Wires (P) Limited Mumbai, Part-I OP-36	2,25,000	@ 12.36 %	@5%	8,500.00 for SSE/Sig/MT D	2,71,422.40 for SSE/Sig/MTD
					10,000.00 for SSE/Tele/Ai i AMM/GS/A ii	2,72,922.40 SSE/Tele/Aii AMM/GS/Aii
					11,500.00 for SSE/Tele/C/ JP SSE/Tele/M/ JP	2,74,422.40 for SSE/Tele/C/JP SSE/Tele/M/J P



					12,000.00 for SSE/Tele/BKN	2,74,922.40 for SSE/Tele/BKN
					12,500.00 for SSE/Sig/SMR	2,75,422.40 for SSE/Sig/SMR
5.	M/s Indo Alusys Ind. Ltd., New Delhi Part-II OP-14	2,23,650.00	@ 12.36 %	@ 5%	4,500.00 for SSE/Sig/SMR	2,68,357.80 for SSE/Sig/SMR
					5,400.00 for SSE/Tele/C/JP	2,69,257.80 for SSE/Tele/C/JP
					SSE/Tele/M/JP	SSE/Tele/M/JP
					6,500.00 for SSE/Tele/Aii	2,70,357.80 for SSE/Tele/Aii
					AMM/GS/Aii	AMM/GS/Aii
					7,500.00 for SSE/Tele/BKN	2,71,357.80 for SSE/Tele/BKN
					8,000.00 for SSE/Sig/MTD	2,71,857.80 for SSE/Sig/MTD
6.	M/s CMI Ltd. Delhi Part-I OP-7	2,23,100.00	@ 12.36 %	@ 5.25 %	6,000.00 for SSE/Tele/C/JP	2,69,835.61 for SSE/Tele/C/JP
					SSE/Tele/M/JP	SSE/Tele/M/JP
					7,500.00 for SSE/Tele/Aii	2,71,335.61 for SSE/Tele/Aii
					AMM/GS/Aii	AMM/GS/Aii
					8,600.00 for SSE/Tele/BKN	2,72,435.61 for SSE/Tele/BKN
					8,800.00 for SSE/Sig/MTD	2,72,635.61 for SSE/Sig/MTD
					12,000.00 for SSE/Sig/SMR	2,75,835.61 for SSE/Sig/SMR
7.	M/s S. Pal Enterprises Pvt. Ltd., Delhi Part-I	2,24,450.00	@ 12.36 %	@ 5%	5,500.00 for SSE/Tele/C/JP	2,70,301.62 for SSE/Tele/C/JP



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	OP-13				SSE/Tele/M/JP	SSE/Tele/M/JP
					6,700.00 for SSE/Tele/Aii AMM/GS/Aii	2,71,501.62 for SSE/Tele/Aii AMM/GS/Aii
					8,000.00 for SSE/Tele/BKN SSE/Sig/MTD	2,72,801.62 for SSE/Tele/BKN SSE/Sig/MTD
					9,500.00 for SSE/Sig/SMR	2,74,301.62 for SSE/Sig/SMR
8.	M/s Myco Electricals (P) Ltd., New Delhi Part-I OP-9	2,26,800.00	@ 12.36 %	@ 5%	7,000.00 for SSE/Tele/C/JP SSE/Tele/M/JP	2,72,214.54 for SSE/Tele/C/JP SSE/Tele/M/JP
					8,000.00 for SSE/Tele/Aii	2,73,214.54 for SSE/Tele/Aii
					9,000.00 for SSE/Sig/MTD	2,74,214.54 for SSE/Sig/MTD
					9,000.00 for SSE/Tele/BKN	2,74,214.654 for SSE/Tele/BKN
					Not quoted for SSE/Sig/SMR AMM/GS/Aii	Not quoted for SSE/Sig/SMR AMM/GS/Aii
9.	M/s Manoj Cables Ltd., Delhi Part-II OP-25	2,26,150.00	@ 12.36 %	@ 5%	6,500.00 for SSE/Tele/C/JP SSE/Tele/M/JP	2,73,305.25 for SSE/Tele/C/JP SSE/Tele/M/JP
					8,200.00 for SSE/Tele/Aii AMM/GS/Aii	2,75,007.25 for SSE/Tele/Aii AMM/GS/Aii
					8,500.00 for SSE/Sig/MTD SSE/Tele/BKN	2,75,307.25 for SSE/Sig/MTD SSE/Tele/BKN



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					12,000.00 for SSE/Sig/SMR	2,78,807.25 for SSE/Sig/SMR
10.	M/s Tirupati Plastomatics Pvt. Ltd., Jaipur Part-I OP-12	2,28,750.00	@ 12.36 %	@ 5%	2,500.00 for SSE/Tele/C/JP	2,72,374.68 for SSE/Tele/C/JP
					SSE/Tele/M/JP	SSE/Tele/M/JP
					3,500.00 for SSE/Tele/Aii	2,73,374.68 for SSE/Tele/Aii
					AMM/GS/Aii	AMM/GS/Aii
5,500.00 for SSE/Sig/MTD	2,75,374.68 for SSE/Tele/BKN					
7,500.00 for SSE/Sig/SMR	2,77,374.68 for SSE/Sig/SMR					
					SSE/Tele/BKN	SSE/Tele/BKN
11.	M/s Delton Cables Ltd., Daryaganj Part-I OP-33	2,27,000.00	@ 12.36 %	@ 5.25 %	5,700.00 for SSE/Tele/C/JP	2,74,147.70 for SSE/Tele/C/JP
					SSE/Tele/M/JP	SSE/Tele/M/JP
					6,500.00 for SSE/Tele/Aii	2,74,947.70 for SSE/Tele/Aii
					AMM/GS/Aii	AMM/GS/Aii
8,500.00 for SSE/Sig/MTD	2,76,947.70 for SSE/Sig/MTD					
SSE/Tele/BKN	SSE/Tele/BKN					
9,000.00 for SSE/Sig/SMR	2,77,447.70 for SSE/Sig/SMR					
12.	M/s Birla Ericsson Optical Ltd., Rewa Part-II OP-32	2,26,100.00	@ 12.36 %	@ 5%	12,500.00 for SSE/Sig/MTD	2,79,248.26 for SSE/Sig/MTD
SSE/Tele/Aii	SSE/Tele/BKN					
SSE/Tele/BKN	SSE/Tele/C/JP					
SSE/Tele/C/JP	SSE/Tele/M/JP					
SSE/Tele/M/JP	AMM/GS/Aii					



					AMM/GS/A ii	
					15,000.00 for SSE/Sig/SM R	2,81,748.26 for SSE/Sig/SMR
13.	M/s Vindhya Telelinks Ltd., Rewa Part-I OP-26	2,27,100.0 0	@ 12.36 %	@ 5%	12,500.00 for SSE/Sig/MT D SSE/Tele/Ai i SSE/Tele/B KN SSE/Tele/C/ JP SSE/Tele/M/ JP AMM/GS/A ii	2,80,428.04 for
					15,000.00 for SSE/Sig/SM R	2,82,928.04

2.7.5 **Tender No. 50-12-8030 opened on 25th July, 2012 for procurement of Item 1 (“Tender No.5”)** – In this tender, twelve Opposite Parties (Part I and Part II suppliers) submitted their bids. Part I suppliers quoted higher prices as compared to the accepted rates prevailing at that time in different Railways. WR’s accepted basic rate as on 26th July, 2012 was INR 75,750.00. Basic rate updated in June, 2012 was INR 78,872.12 per km. [Details of Tender No.5 are as under:

Tender No. 5						
Tender No.50-12-8030 Opened on 25.07.12 for product 2 Core x 25 sqmm power cable						
S. No.	Firm’s Name	Basic Rate (Rs. Per Km.)	ED	CST/ VAT	Freight/P &F Charges	All inclusive price per metre (Rs.)



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					(Rs. Per Km)	
1.	M/s Laser Cables Pvt. Ltd., Kolkata Part-II OP-23	62,730.00	@ 12.36 %	@4%	3,000.00	76,302.42
2.	M/s Indo Alusys Ind. Ltd., New Delhi Part-II OP-14	63,000.00	@ 12.36 %	@5%	3,000.00	77,326.14
3.	M/s B. N. Sons, Jaipur Part-II OP-10	64,249.27	@ 12.36 %	@5%	2,500.00	78,300.00
4.	M/s Atlana Tele Cables, Roorkee. Part-II OP-6	75,999.00	@ 12.36 %	@5%	Nil	79,798.95
5.	M/s Rajasthan Transformers &Switgears, Jaipur Part-II OP-1	70,150.00	@ 12.36 %	@5%	1,500.00	84,261.57
6.	M/s Relemac Technologies Pvt. Ltd., Delhi Unregistered OP-29	76,000.00	@ 12.36 %	@5.25%	Nil	89,876.76
7.	M/s Paramount Communications Ltd., New Delhi Part-I OP-3	91,800.00	@ 12.36 %	@5%	6,500.00	1,14,803.80
8.	M/s Gee Cab Ind. Ltd., Alwar. Part-I OP-11	92,300.00	@ 12.36 %	@5%	7,000.00	1,15,893.69
9.	M/s S. Pal Enterprises Pvt. Ltd., Delhi. Part-I OP-13	94,600.00	@ 12.36 %	@5%	7,000.00	1,18,607.19
10.	M/s J K Cables Ltd., Noida Part-I OP-20	95,000.00	@ 12.36 %	@5%	8,000.00	1,20,079.10
11.	M/s Incom Cables Pv. Ltd., New Delhi Part-I OP-18	96,850.00	@ 12.36 %	@5%	8,000.00	1,22,261.69
12.	M/s Kanhha Cables Pvt. Ltd. Jaipur Part-I OP-21	1,02,000.00	@ 12.36 %	@5%	2,500.00	1,22,837.56



The lowest Part I bidder, *i.e.* Paramount Communications Ltd. was called for negotiations by NWR, which eventually failed. Thus, Tender No. 5 was re-tendered.]

2.7.6 **Tender No. 50-12-8030A opened on 05th March, 2013** (Re-tendered case No. 50-12-8030 opened on 25th July, 2012) for procurement of Item 1) (“**Tender No.6**”) – In this tender, thirteen Opposite Parties (Part I and Part II suppliers) submitted their bids. It is alleged that all of them quoted higher prices as compared to the prevailing accepted rates at that time in different Railways. The accepted basic rate of NWR on 01st April, 2013 was INR 80,884.61 whereas the Western Railway accepted basic rate was INR 79,408.00. Basic rate was updated to INR 80,873.24 per km for NWR and INR 80,884.50 per km for WR on February, 2013 in accordance with the PVC prevailing at that time. OP-3 was called by the Informant for negotiations, which eventually failed. Thus, this tender was re-tendered on 05th March, 2013. In re-tender, Part I and Part II suppliers quoted higher rates and negotiations were held with lowest bidders, *i.e.* Continental Telepower Ind. Limited (Part I) and M/s Rajasthan Transformers and Switchgears (Part-II). During negotiations, Continental Telepower Ind. Limited and M/s Rajasthan Transformers and Switchgears reduced their rates to acceptable level and tender could be settled. Details of Tender No.6 are as under:

Tender No. 6						
Tender No.50-12-8030-A Opened on 05.03.13 for product 2 Core x 25 sqmm power cable						
S. No.	Firm's Name	Basic Rate (Rs. Per Km.)	ED	CST/ VAT	Freight/P &F Charges (Rs. Per Km)	All inclusive price up to destination (Rs. Per Km.)
1.	M/s Rajasthan Transformers and Switchgears, Jaipur Part-II OP-1	89,000.00	@ 12.36 %	@ 5%	4,500.00	1,09,500.42
2.	M/s Evershine Electrical Works (I), New Delhi	91,300.00 (PVC	@ 12.36 %	@ 6.05 %	3,500.00	1,12,291.05



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	Part-II OP-17	base Jan' 13)				
3.	M/s Continental Telepower Ind. Ltd., New Delhi Part-I OP-15	1,02,810. 00	Nil	@5%	6,500.00	1,14,450.50
4.	M/s Myco Electricals (P) Ltd., New Delhi Part-I OP-9	91,600.0 0	@12.36 %	@5%	6,500.00	1,14,567.85
5.	M/s Incom Cables, Pvt. Ltd. New Delhi Part-I OP-18	92,100.0 0	@12.36 %	@5%	7,000.00	1,15,657.74
6.	M/s Gee Cab Ind. Ltd., Alwar. Part-I OP-11	92,600.0 0	@12.36 %	@5%	7,200.00	1,16,647.63
7.	M/s S. Pal Enterprises Pvt. Ltd., Delhi. Part-I OP-13	93,250.0 0	@12.36 %	@5%	7,300.00	1,17,314.49
8.	M/s N. C. Cables Ltd., Noida Part-I OP-27	93,000.0 0	@12.36 %	@5%	7,700.00	1,17,419.54
9.	M/s J K Cables Ltd., Noida Part-I OP-20	95,000.0 0	@12.36 %	@5%	7,500.00	1,19,579.10
10.	M/s Kanhha Cables Pvt. Ltd. Jaipur Part-I OP-21	95,500.0 0	@12.36 %	@5%	7,500.00	1,20,168.99
11.	M/s Indo Alusys Ind. Ltd., New Delhi Part-II OP-14	94,000.0 0	@12.36 %	@5%	10,000.00	1,20,899.32
12.	M/s CMI Ltd., Delhi Part-I OP-7	97,900.0 0 (PVC base Jan' 13)	@12.36 %	@5.25 %	8,000.00	1,23,775.46
13.	M/s Atlana Tele Cables, Roorkee. Part-II OP-6	1,49,999. 00	NA	@5%	Nil	1,57,498.95

2.7.7 **Tender No. 50-11-1107A opened on 17th April, 2012 for procurement of Item 2 (“Tender No.7”) – In this tender, thirteen Opposite Parties (Part I**



and Part II suppliers) submitted their bids. It is alleged that, all of them quoted higher prices as compared to the accepted rates prevailing at that time in different Railways. Basic rate was updated to INR 76,011.52 per km for CR in March, 2012 as per PVC prevailing at that time. The accepted basic rate of Central Railway's ("CR") on 16th August, 2012 was INR 72,750.00. The Informant called the parties for negotiations, which eventually failed. The counter offer given to the lowest Part I supplier, i.e. Incom Cables Private Limited (OP-18) was not accepted. Thereafter, the quoted rate of the lowest Part II supplier, OP-6 was considered reasonable and part order was placed on it. For the balance quantity, the case was retendered on 12th of October, 2012. Details of Tender No.7 are as under:

Tender No. 7						
Tender No. 50-11-1107-A Opened on 17.04.2012 for product 6 Core x 1.5 sqmm signal cable						
S. No.	Firm's Name	Basic Rate (Rs. Per Km.)	ED	CST/ VAT	Freight/P &F Charges (Rs. Per Km)	All inclusive price up to destination (Rs. Per Km.)
1.	M/s Atlana Tele Cables, Roorkee. Part-II OP-6	82,999.00	NA	@4.5 %	Nil	86,733.96
2.	M/s Scot Innovations Wires and Cables Pvt. Ltd., Ghaziabad Part-II OP-8	86,000.00	Nil	@5%	1,500.00	91,800.00
3.	M/s Indo Aluys, Delhi, Part-II OP-14	77,430.00	@12.36 %	@5%	1,935.00	93,285.37
4.	M/s B. N. Sons, Jaipur Part-II OP-10	93,000.00	Incl.	Incl. @5%	2,000.00	95,000.00
5.	M/s M.P. Telelinks Ltd. Gwalior Part-II OP-24	79,360.00	@12.36 %	@5%	3,950.00	97,577.34
6.	M/s Incom Cables Pv. Ltd., New Delhi Part-I OP-18	90,900.00	@12.36 %	@5%	3,000.00	1,1,242.00
7.	M/s S. Pal Enterprises Pvt. Ltd., Delhi. Part-I OP-13	94,000.00	@12.36 %	@5%	3,800.00	1,14,699.32
8.	M/s Myco Electricals (P) Ltd., New Delhi, Part-I	94,800.00	@12.36 %	@5%	3,500.00	1,15,343.14



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	OP-9					
9.	M/s Manoj Cables Co. Pvt. Ltd., Delhi, Part-I OP-25	95,000.00	@12.36 %	@5%	4,000.00	1,16,079.10
10.	M/s CMI Ltd., Delhi Part-I OP-7	96,100.00	@12.36 %	@5.25%	3,600.00	1,17,246.80
11.	M/s Gee Cab Ind. Ltd., Alwar. Part-I OP-11	96,800.00	@12.36 %	@5%	3,400.00	1,17,602.70
12.	M/s J.K. Cables Ltd., Noida, Part-I OP-20	97,200.00	@12.36 %	@5%	3,000.00	1,17,674.62
13.	M/s SPM Power and Telecom Pvt. Ltd., Hyderabad, Part-II OP-4	96,750.00	@12.36 %	@5%	5,500.00	1,19,643.72

2.7.8 **Tender No. 50-11-1107B opened on 12th October, 2012** (Re-tendered case No. 50-11-1107A opened on 17th April, 2012) **for procurement of Item 2 (“Tender No.8”)-** In this tender, fourteen Opposite Parties (Part I and Part II suppliers) submitted their bids. It is alleged that, all of them quoted higher prices as compared to the accepted rates prevailing at that time in different Railways. CR’s accepted basic rate on 16th August, 2012 was INR 72,750.00. Basic rate updated in September, 2012 was INR 79,847.74 per km for CR. The Informant called the parties for negotiations, which eventually failed. In retendering, both Part I and Part II suppliers quoted higher rates and negotiations were held with lowest Part I and Part II suppliers. The negotiated rate of Part I supplier, *i.e.* Incom Cables Private Limited was accepted. However, as the negotiated rate of Part II supplier, *i.e.* M/s KEI Industries was higher than the Part I supplier, no order was placed on it. Details of Tender No. 8 are as under:

Tender No. 8						
Tender No.50-11-1107-B Opened on 12.10.12 for product 6 Core x 1.5 sqmm signal cable						
S. No.	Firm’s Name	Basic Rate	ED	CST/ VAT	Freight/P &F	All inclusive price up to



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		(Rs. Per Km.)			Charges (Rs. Per Km)	destination (Rs. Per Km.)
1.	M/s KEI Ind., Delhi, Part-II OP-22	91,900.00	@ 12.36 %	@ 5%	4,500.00	1,12,921.78
2.	M/s Furcon, Jaipur, Non-RDSO OP-34	1,08,000.00	Nil	@ 5%	1,500.00	1,13,400.00
3.	M/s Incom Cables Pv. Ltd., New Delhi Part-I OP-18	92,400.00	@ 12.36 %	@ 5%	4,500.00	1,13,511.67
4.	M/s Incom Wires & Cables, New Delhi, Part-II OP-19	92,400.00	@ 12.36 %	@ 5%	4,600.00	1,13,611.67
5.	M/s CMI Ltd., Delhi Part-I OP-7	95,000.00	@ 12.36 %	@ 5.25%	5,000.00	1,17,345.96
6.	M/s R.K. Electrical New Delhi, Part-II OP-28	95,000.00	@ 12.36 %	@ 5.25%	6,000.00	1,18,345.96
7.	M/s Rajasthan Transformers & Switchgears, Jaipur Part-II OP-1	98,000.00	@ 12.36 %	@ 5%	3,000.00	1,18,618.44
8.	M/s Teracom Ltd. Noida, Part-II OP-31	1,00,000.00	@ 12.36 %	@ 5%	1,000.00	1,18,978.00
9.	M/s S. Pal Enterprises Pvt. Ltd., Delhi. Part-I OP-13	98,000.00	@ 12.36 %	@ 5%	3,500.00	1,19,118.44
10.	M/s Atlana Tele Cables, Roorkee. Part-II OP-6	1,08,000.00	Nil	@ 5.25%	6,000	1,19,400.00
11.	M/s Indo Aluys, Delhi, Part-II	96,800.00	@ 12.36 %	@ 5%	5,000.00	1,19,438.66
12.	M/s Myco Delhi, Part-I OP-9	96,000.00	@ 12.36 %	@ 5%	4,600.00	1,17,858.88
13.	M/s Gee Cab Ind. Ltd., Alwar. Part-I OP-11	97,500.00	@ 12.36 %	@ 5%	5,500.00	1,20,528.55
14.	M/s TirupatiPlastomatics, Jaipur Part-I OP-12	96,000.00	@ 12.36 %	@ 5%	4,800.00	1,18,058.88



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2.8 Thus, based on above stated facts, the Informant alleged that the Opposite Parties had formed a cartel for supply of the Railway Signalling Cables to NWR and the high rates quoted by them to NWR in the tenders was a result of an understanding amongst them, in contravention of the provisions of Section 3 of the Act. Hence, the Informant prayed for initiating investigation in the matter.

B. Directions to the Director General

3. Upon considering the materials placed on record by the Informant as well as after hearing the Informant, the Commission was convinced that a *prima-facie* case of contravention of the provisions of Section 3(3) read with Section 3(1) of the Act was made out. Accordingly, the Commission passed an order, dated 28th February, 2014, under Section 26(1) of the Act, directing the Director General (“**DG**”) to cause an investigation into the matter. The DG was also directed to investigate the role of the officers/ persons who, at the time of contravention, if any, by the Opposite Parties, were in-charge of and responsible for the conduct of business of the Opposite Parties.

C. Investigation by the DG

4. The DG submitted its Investigation Report on 23rd December, 2016 after conducting a detailed investigation into the allegations made by the Informant. The DG also considered details of tenders floated by all railway zones in respect of the relevant items for the period of January, 2009 to March, 2014 (“**Relevant Period**”).
5. From the material and evidence collected during the investigation, DG found eleven Opposite Parties(in five sub-sets) in Impugned Tenders to be in contravention of Section 3(3)(d) read with Section 3(1) of the Act on the basis of pattern of bidding, relationship of key persons, cross-shareholdings, representation in association meetings, frequent interaction between key persons, email exchanges, use of common IP address, inter-se job work, and comparison of rates quoted by Opposite Parties in tenders of other railway zones, *etc.*



6. The said five sub-sets are (i) OP-2 and OP-3; (ii) OP-12 and OP-21; (iii) OP-26 and OP-32; (iv) OP-9, OP-15 and OP-16; and (v) OP-18 and OP-19. Further, DG identified fifteen individuals, who were officers of the eleven Opposite Parties and responsible, under Section 48 of the Act, for the conduct of business of these Opposite Parties. The findings of the DG, with respect to each sub-sets, would be referred to and dealt appropriately while analysing the instant case on merits.
7. The Investigation Report also revealed that OP-5, OP-29 and OP-34 were not registered with RDSO and participated in the tenders floated by the Informant as '*Unregistered Vendor*'. As per the policy/rules of the Railways, award of a tender with regard to the cables covered under Impugned Tenders cannot be made in favor of such unregistered vendors. Since the aforesaid Opposite Parties were not eligible for award of tenders, the DG did not find contravention of provisions of the Act against them. With regard to remaining Opposite Parties, DG could not find any evidence which indicated contravention of the provisions of the Act. As regards the role of Railway Cables Development Association ('**Association**'), there was no evidence to suggest that Association was used as a platform to facilitate collusive conduct among its members in railway tenders.

D. Consideration of the Investigation Report

8. The Commission, in its meeting held on 18th October, 2017, considered the Investigation Report filed by the DG and decided to forward copies of the same to Opposite Parties and the persons identified by the DG under Section 48 of the Act for filing their written objections/ suggestions thereto. Further, the Opposite Parties were directed to appear for oral hearing before the Commission on 14th December, 2017. Meanwhile, some Opposite Parties filed applications seeking additional time to file their objections/suggestions to the Investigation Report. On 14th December, 2017, the Commission considered the aforesaid applications seeking additional time and directed the Opposite Parties and concerned office bearers to file their suggestions/ objections to the Investigation Report latest by 19th January, 2018 and appear for an oral hearing on 6th and 7th February, 2018.



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9. Accordingly, on 6th and 7th February, 2018, the Commission heard eleven Opposite Parties (OP-2, OP-3, OP-9, OP-12, OP-15, OP-16, OP-18, OP-19, OP-21, OP-26 and OP-32) who were found liable by the DG in the investigation report under the provisions of the Act. Upon completion of hearing on 7th February, 2018, the aforesaid eleven Opposite Parties were directed to file written submissions on certain queries raised by the Commission during the hearing.
10. The Opposite Parties filed their submissions in due course, besides making oral submissions which would be referred to and dealt appropriately while analyzing the matter on merits.

E. Analysis and findings of the Commission

11. The Commission has perused the Investigation Report, suggestions/objections filed by the Opposite Parties, material available on record and submissions made by the learned counsels for Opposite Parties during the oral hearing.
12. Upon consideration of the aforesaid, the issue which arise for determination is as under:

Whether all the Opposite Parties, together or in sub-sets, entered into an agreement to fix prices in the tenders floated by the Informant for supply of Railway Signalling Cables, resulting in bid-rigging in any or all the Impugned Tenders, in contravention of Section 3(3)(d) read with Section 3(1) of the Act.

13. As discussed above, DG examined the rates quoted by the Opposite Parties in the Impugned Tenders as well as in tenders floated in other railway zones in the Relevant Period for procurement of railway signalling cables by the Informant. DG found contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act by eleven Opposite Parties in five sub-sets. This was based on consideration of pattern of bidding including instances of identical/similar pricing and abstinence from participation in



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tenders along with factors such as relationship of key persons, cross-shareholdings, common representation in association meetings, frequent interaction between key persons especially during the opening of the Impugned Tenders, e-mail exchanges, use of common IP address for uploading the bids,*etc.*

14. The Commission notes that the concerned Opposite Parties have argued that mere quoting of identical/similar prices is not sufficient to establish that the parties have formed a cartel. It has been further submitted that quotation of identical rates is no doubt suggestive and indicative of formation of cartel but the same itself is not conclusive and determinative of the issue. It has been contended that the suppliers are aware of the costs involved in the manufacturing of Railway Signalling Cables, which are similar for all the players in the market due to similar conditions prevailing under IEEMA circular containing raw material prices. Further, small difference in the margin of price quoted on account of market conditions and price of constituent raw materials required are dictated by outside agencies. According to Opposite Parties, there is always a high probability that the prices quoted by the suppliers/vendors in a tender may be in similar band/range as all the suppliers face similar market conditions.
15. Before analysing the facts of the present case, the Commission finds it appropriate to mention that price-parallelism *per-se* is not sufficient to establish collusion. However, peculiar market conditions such as few enterprises, stringently standardised product, predictable demand, *etc.*, make the market conducive to cartelisation. Thus, price-parallelism coupled with plus factors may indicate that the conduct of Opposite Parties, in quoting identical/similar price bids, was collusive. It is, therefore, imperative to understand the behaviour of market participants in context of the market and its conditions before arriving at any finding.
16. Against the aforesaid background, the Commission notes that Railways procure Railway Signalling Cables only from RDSO approved vendors. The market is highly concentrated with the presence of a limited suppliers. Further, as the products to be procured have to be RDSO approved, it means that the products are homogeneous. In this context, the



possibility that sellers collectively agree to sell the product or services at a pre-decided rate rather than competing with each other, becomes high. Whether the conduct of Opposite Parties, in quoting identical prices or similar rates, in tenders floated by Informant can be considered as an outcome of collusion is a question of fact which needs to be examined in the present case.

17. In the instant case, on examination of the Impugned Tenders, DG observed trends of identical or similar pricing by eleven Opposite Parties in five sub-sets. Identical pricing by OP-18 and OP-19 has been found in three Impugned Tenders, namely, Tender Nos. 2, 3 and 8. Similarly, DG also found several instances of similar pricing in close range amongst OP-2 and OP-3 in Tender No.1; OP-9, OP-15 in Tender No. 6; and OP-26 & OP-32 in Tender No. 4.
18. In this context it is relevant to mention that Explanation to Section 3(3) of the Act provides that bid-rigging includes an agreement which has the effect of reducing competition of bids or adversely affecting or manipulating the process of bidding. Therefore, the Commission observes that even if a sub-set of bidders collude amongst themselves, it would be a violation of Section 3(3)(d) of the Act. Thus, it needs to be examined whether bidders in five sub-sets colluded to reduce competition or manipulate the process of bidding in tenders floated by Indian Railways.
19. At the outset, the Commission deems it appropriate to address the issue raised by two sub-sets, *i.e.* OP-2 and OP-3 & OP-26 and OP-32 of them being a 'single economic entity'. It has been contended that aim and intent of the Act is not to apply Section 3 to horizontal agreements between group companies but for independent entities and concerns. It has been submitted that the said Opposite Parties are group companies as they have common promoters and common management and thus given singularity of their economic interest, they cannot be expected to compete with each other. To buttress their argument on the aspect of single economic entity, reliance was placed upon a number of cases including, *Copperweld Corp Vs. Independent Tube Corporation* [467 US 752 (1984)], *American Needle, Inc Vs. National Football League*, [560 US 183(2010)], *Mausegatt Vs. Haute*



Autorite, [C-13/60], *Viho Europe BV Vs. Commission* [1996] ECR I-5457, *Akzo Nobel NV Vs. Commission of the European Communities* [Case C-97/08], *Imperial Chemical Industries Limited Vs. Commission of European Communities* [Case No. 48/69], *Exclusive Motors Pvt. Ltd. Vs. Automobili Lamborghini S.P.A*, (2014) 121 CLA 230 (CAT), *Kansan News Pvt. Ltd Vs. Fastway Transmission Pvt. Ltd*, Case No. 36/2011. Reliance was also placed on Article 101 of the Treaty on the Functioning of the European Union to highlight that companies that form part of the same ‘undertaking’ within the meaning of Article 101(1) are not to be considered as competitors for applicability of Article 101.

20. The Commission had the occasion to deal with this issue in its order in Ref. Case Nos. 03 & 04 of 2013 (*Delhi Jal Board Vs. Grasim Industries Ltd. & Ors.*) wherein it has held that in public procurement, where two or more entities of the same group decide to separately submit bids in the same tender, they have consciously decided to represent themselves to the procurer that they are independent decision making centres and exercise independent options for procurement. Further, the concept of “group” as provided in clause (b) of the Explanation to Section 5 of the Act has not been extended to the proceedings under Section 3. The Commission, in its order, distinguished the above cases relied upon by the Opposite Parties by stating that these cases do not pertain to a scenario where two entities, which were part of a single economic entity, colluded to defeat a scheme of public procurement. In the instant case, the Commission notes that OP-2, OP-3, OP-26 and OP-32 participated in the tenders by submitting separate bids, rather than submitting a single bid. It is clear that at every stage of the bidding process, suppliers including OP-2, OP-3, OP-26 and OP-32 portrayed themselves as competitors and were treated as competitors by the Railways as these bids were assessed individually and not collectively. The Commission thus does not find their plea acceptable. Throughout the procurement process, these Opposite Parties presented themselves as competitors and participated in these tenders individually. Thus, they are estopped from raising the plea of single economic entity. The same is accordingly rejected, being devoid of merit.



21. Having dealt with the issue of single economic entity raised by OP-2 and OP-3 and OP-26 and OP-32, the Commission now proceeds to deal with the alleged conduct of each of five sub-sets identified by the DG.

Paramount Wires and Cables Ltd. (OP-2) and Paramount Communications Ltd. (OP-3)

22. The DG examined the pattern of bidding in Impugned Tenders. It was found that in Tender No.1, OP-2 and OP-3 submitted bids in a close range, wherein OP-2 was an L-1 bidder and OP-3 was an L-2 bidder. OP-2 and OP-3 did not participate in the other tenders issued by Informant apart from Tender No. 1 and Tender No. 5. In Tender No.5, only OP-3 participated. Table indicating the bidding pattern of OP-2 and OP-3, is as under:

Tender No.	Product	Details of Tender	Opening date	OP-2 (Part I)	OP-3 (Part I)	Remarks
1.	Item 3	50-12-5203	22.08.2013	(L1) 143800.00	(L2) 144300.00	OP-2 supplied at 132903
2.	Item 3	50-12-8054	07.12.2012	Abstained	Abstained	
3.	Item 3	50-12-8032	28.06.2012	Abstained	Abstained	
4.	Item 4	50-12-8035A	18.09.2012	Abstained	Abstained	
5.	Item 1	50-12-8030	25.07.2012	Does not produce	(L7) 91800.00	
6.	Item 1	50-12-8030A	05.03.2013	Does not produce	Abstained	
Other	Item 2	50-11-1107	15.12.2011	Abstained	Abstained	
7.	Item 2	50-11-1107A	17.04.2012	Abstained	Abstained	
8.	Item 2	50-11-1107B	12.10.2012	Abstained	Abstained	

(In Rs. Per Km)

23. The DG noted that OP-3 has shareholding of 44.49 percent in OP-2. Further, both the companies were managed by Shri Sanjay Aggarwal and Shri Sandeep Aggarwal in FY



2011-14. Later, Shri Dhruv Aggarwal (S/o of Shri Sandeep Aggarwal) was appointed as MD of OP-2 in July, 2013. Further, Shri Rajeev Gupta, GM (Marketing) of OP-3 used to guide Shri Dhruv Aggarwal, MD, OP-2 in his business. It was found that certain information like monthly sales data was reported to the officials of OP-2 and OP-3. Further, there were certain job-work transactions between OP-2 and OP-3 for FYs 2011-14. Shri Sandeep Aggarwal and Shri Rajeev Gupta represented both the companies at meetings of the Association. The call records of Shri Sandeep Aggarwal and Shri Sanjay Aggarwal/ Shri Dhruv Aggarwal showed communication among them during the relevant period and particularly around the time of opening of Railway tenders.

24. The DG also examined the trend of bidding by OP-3 and OP-2 in other tenders of various railway zones during the Relevant Period for Item 2, Item 3 and Item 4. OP-2 was not registered with RDSO for Item 1. For Item 2, it was observed that OP-2 and OP-3 have only quoted once simultaneously and in that tender the difference in their quotes was INR 100 only. In the remaining five tenders, OP-2 abstained when OP-3 quoted. Similar pattern were observed in Tenders floated for Item 3 and Item 4.
25. Based on the above, it was found by the DG that OP-2 and OP-3 acted in concert while bidding in six Impugned Tenders.
26. OP-2 and OP-3 objected to findings of investigation. It has been contended that the DG has concluded violation of Section 3(3)(d) of the Act solely on the basis of structural links that it shares with its sister concern. The fact that OP-2 and OP-3 are sister concerns was disclosed to RDSO. An agreement between enterprises constituting a 'single economic entity' cannot be construed as an agreement for the purpose of competition law analysis. It was argued that OP-2 participated only in one tender and OP-3 participated in two tenders, out of the eight Impugned Tenders, Further, there was no evidence found by DG to the effect that OP-2 and OP-3 abstained from participating in other tenders pursuant to an anti-competitive agreement between them. It was asserted that Railways float more than three hundred tenders in a particular year for procurement of products in question. Therefore, it is not feasible for a company to participate in all the tenders.



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27. The concerned OPs have further argued that Managing Directors of OP-2 and OP-3 are close family members and, therefore, incidence of phone calls between them cannot be construed as evidence of bid rigging. Common representation of OP-2 and OP-3 in the meetings of Association was not indicative of collusion in the eight tenders. It was contended that OP-2 and OP-3 are sister concerns and it is natural that they have common representative in the meeting. It has also been submitted that raw material cost, which alone is subject to price variation clause constitutes around 60-70 percent of the total price quoted. As per cost break up, there has been a constant increase of expenses to sales ratio of OP-3 and particularly the finance cost.
28. The Commission notes that the DG found contravention by OP-2 and OP-3 in six Impugned Tenders during the relevant period. In Tender No. 1, both the parties quoted rates in close range, wherein OP-2 was L1. In remaining five tenders, both did not participate. The Commission, however, notes that there were other bidders in Tender No. 1 who had quoted prices close to these Opposite Parties. For example, OP-4 submitted a bid of INR 144500, which was only INR 200 more than that of OP-3. Similarly, OP-1 submitted a bid of INR 143500, which was only INR 300 less than OP-2. Thus, mere quotation of close prices by two OPs in a tender cannot be held to conclude collusion.
29. In addition to instances of identical/similar pricing, the DG has regarded abstinence from participation by these Opposite Parties in tenders as evidence of collusion, without getting into reasons for the same. In its written submissions, OP-2 has submitted that it does not have the financial capacity to execute large orders frequently in railways and therefore was constrained to participate. The Commission finds this reason plausible for not participating in the tender.
30. The Commission observes that the DG has mainly relied on the structural linkages to arrive at a finding of collusion. It is not the case that these Opposite Parties have camouflaged their relationship before the Railways. Considering that there is no ban by railways on related parties to bid, this alone does not support collusion. There is only one



instance of similar price quoted by OP-2 and OP-3 in Impugned Tenders which needs to be appreciated considering similar raw material costing coupled with bidders' knowledge of prices quoted in previous tenders. The Commission also notes that even in other tenders of various Railway zones investigated by the DG instances of quoting of identical/similar prices are sporadic. Thus, in absence of discernable bidding patterns, existence of structural linkages between related entities alone cannot be used as a basis to conclude collusion. Further, given the fact that even the entities not related to OP-2 & OP-3 were quoting prices in a close range rather gives an indication of common raw material costing/pre-knowledge of rates in earlier tenders, as explained by the Informant. Considering the totality of facts, Commission is unable to conclude that OP-2 and OP-3 have quoted in collusion with each other in contravention of the provisions of the Act.

Kanha Cables Pvt. Ltd. (OP-21) and Tirupati Plastomatics Pvt. Ltd. (OP-12)

31. On examination of bidding pattern in Impugned Tenders, the DG found that in Tender No. 50-11-1107, both the companies abstained. OP-21 and OP-12 followed the same behavior in re-tender of Tender No.7. In Tender No.8, only OP-21 submitted the bid. Also, in other tenders either of the two has submitted the bid and the other abstained. Table indicating the bidding pattern of OP-21 and OP-12, is as under:

Tender No.	Product	Details of Tenders	Opening date	OP_21 Part I	OP-12 Part I
1.	Item 3	50-12-5203	22.08.2013	Abstained	(L7) 159000.00
2.	Item 3	50-12-8054	07.12.2012	Abstained	(L9)155000.00
3.	Item 3	50-12-8032	28.06.2012	(L9) 154500.00	Abstained
4.	Item 4	50-12-8035A	18.09.2012	Does not produce	(L7) 228750.00
5.	Item 1	50-12-8030	25.07.2012	(L6)102000.00	Abstained
6.	Item 1	50-12-8030A	05.03.2013	(L8) 95500.00	Abstained
Other	Item 2	50-11-1107	15.12.2011	Abstained	Abstained
7.	Item 2	50-11-1107A	17.04.2012	Abstained	Abstained
8.	Item 2	50-11-1107B	12.10.2012	(L6)96000.00	Abstained

(In Rs. Per Km)

32. The investigation revealed that both the entities were run by brothers who also live together in one house. The call records reflected communication between two entities.



The DG noted that the two entities were in practice of sharing business information with each other. From the ledger accounts, it was found that OP-21 did job work manufacturing for OP-12 during FYs 2011-14. The DG also analyzed tenders in other railway zones and found certain instances of identical and similar pricing by the concerned Opposite Parties. Based on above, the DG found that OP-21 and OP-12 colluded while bidding in seven of the Impugned Tenders.

33. OP-12 and OP-21 have objected to the findings of investigation. It has been contended that while OP-21 bid for only three tenders, OP-12 did not participate in tenders where OP-21 placed its bid. As per the concerned Opposite Parties, this fact substantiates that there was no collusion between OP-21 and OP-12. Further, it has been contended that OP-21 was not awarded L-1 bidder status for any of the tenders it had participated. While analyzing the tenders in other railway zones, the DG took into account base prices quoted by them and not the net delivered price on the basis of which L1 status is granted by Zonal Railway. With respect to similarity in base prices, it has been submitted that price of raw materials that are used in manufacturing of Railway Signalling Cables are regulated by IEEMA. Therefore, any inflation in the components is governed by PVC, thereby regulating the price of Railway Signalling Cables. It was argued that communication between them is only on account of their relationship. Further, OP-21 was not a part of any trade association and had no common meeting point to discuss commercial issues regarding the tender with other bidders, including OP-12. The prices quoted by OP-12 and OP-21 were not similar to the prices quoted by other bidders and also there is no similarity in the prices of OP-21 and OP-12. Moreover, neither OP-12 was awarded L1 status for any of the bid submitted by it nor won any award.
34. The Commission has perused the pattern of bidding by OP-12 and OP-21 and observes that prices quoted by both OP-12 and OP-21 were neither identical nor similar in any of the Impugned Tenders. On the other hand, OP-12 did not participate in the tenders where OP-21 had participated. Further, neither OP-21 nor OP-12 was L1 in any of the Impugned tenders. The Commission observes that that there may be communication between OP-12 and OP-21, given the fact that the said companies are run by brothers. However, there is



no evidence that such communication were related to the bidding in the Impugned Tenders and have led to identical pricing or collusive behaviour. Thus, in the light of facts and circumstances of this case, the Commission concludes that OP-12 and OP-21 were not in collusion with each other in contravention of the provisions of the Act.

Birla Cable Limited (OP-32) and Vindhya Telelinks Ltd. (OP-26)

35. On perusal of the bidding pattern in Impugned Tenders, the DG found that OP-32 and OP-26 submitted bids in Tender No. 4, with a small difference of INR 1000, as OP-32 manufactures only Item 4. Table indicating the bidding pattern of OP-32 and OP-26, is as under:

Tender No.	Product	Details of Tenders	Open date	OP-26 Part I	OP-32 Part II
4.	Item 4	50-12-8035A	18.09.2012	(L9) 226100	(L4) 227100

(In Rs. Per Km)

36. It was found by the DG that both the companies have common promoters, chairperson and some common directors, with their registered office located adjacent to each other in Rewa, Madhya Pradesh. The staff of both the companies share office space as well. Shri Rakesh Shahi, Assistant Vice President, OP-26 represented OP-32 in negotiations with Railways. Also Shri Shahi represented both the enterprises at the meetings of the Association. The investigation also revealed inter-se job work transactions, telephonic conversations and email exchanges between the concerned Opposite Parties. DG also analysed tenders in other railway zones and found certain instances of quotation of similar/identical pricing by the concerned Opposite Parties. Based on above, it was concluded by the DG that OP-32 and OP-26 were engaged in collusive behaviour in Impugned Tenders.
37. In response to the findings of investigation, it has been stated that whereas OP-26 is engaged in manufacturing and supply of various cables, power cables, quad cables, etc. OP-32 is engaged in manufacture of only Item 4 and does not manufacture Railway



Signalling Cables. Both OP-32 and OP-26 bid in Tender No. 4. They had participated in different categories and the bid had a price difference of INR 1000/-. It has been submitted that OP-32 is a joint venture of OP-26 with Ericsson Cables AB, Sweden and the concerned Opposite Parties form part of the same group. MP Birla Group holds 43.52% of OP-26 and 68% of OP-32. It has been contended that Section 3 applies to horizontal agreements between independent entities and not group concerns or entities and as such it does not apply to OP-32 and OP-26 as they are not separate entities. It has been further submitted that the interaction between officials of the concerned Opposite Parties does not bring out that officials discussed prices to be submitted for tender and it was usual for officials of two group companies to interact with each other. The commonality of IP addresses arose on account of certain infrastructural issues.

38. The Commission has examined the pattern of bidding of OP-26 (Part I Category) and OP-32 (Part II Category) in Impugned Tenders. The Commission notes that the rates quoted by them in the Impugned Tender were not identical. Further, the OPs were L4 & L9 bidders in that tender.
39. The Commission notes that sharing of common premises and facilities and interaction also would be quite usual for officials of two group companies. Further, interaction through e-mails and telephones is not limited to the period of Impugned Tenders but also on other occasions. It has been submitted that the raw material cost for both OP-26 and OP-32 is common as they were procuring from the same source to avail better prices. The Commission finds merit in the submissions of concerned Opposite Parties. Being group companies, it is not unnatural for them to procure raw materials from the same supplier on account of economies of scale. The plants of OP-26 and OP-32 are located nearby and consequently the cost of inputs, transport and labour would also be similar. Thus, in light of all these factors, closeness in prices quoted by OP-26 & 32 by itself cannot be attributed to collusion. The Commission notes that there are sufficient factors explaining the similarity between price quotations by them. Hence, based on the above, the Commission does not agree with the finding of the DG about contravention by OP-26 and OP-32, especially in the absence of any concrete evidence to the contrary.



Myco Electricals Pvt. Ltd. (OP-9), Continental Telepower Industries Ltd. (OP-15) and Delhi Telecom Pvt. Ltd. (OP-16)

40. The DG examined the pattern of bidding in Impugned Tenders by OP-9, OP-15 and OP-16. It was found that OP-9 was most active in bidding and participated in seven Impugned Tenders. In Tender No. 5, all three companies did not participate. OP-15 and OP-16, together did not participate in six Impugned Tenders. In five out of eight Impugned Tenders, OP-9 submitted bids, while the other two did not participate. In Tender No. 2, OP-16 and OP-9 quoted rates in close range and OP-15 abstained. In Tender No. 6, OP-15 and OP-9 quoted bids in a close range. Accordingly, it was noted that such trend of bidding by these three companies showed some sort of understanding amongst them in the Impugned Tenders. Table indicating the bidding pattern of OP-9, OP-15 and OP-16, is as under:

Tender No.	Product	Details of Tenders	Open date	Delhi Telecom Pvt. Ltd.	Continental Telepower Industries Ltd.	Myco Electricals (P) Ltd.	Remarks
1.	Item 3	50-12-5203	22.08.2013	Abstained Part II	Abstained Part I	(L3) 151500 Part I	Not supplied
2.	Item 3	50-12-8054	07.12.2012	(L4) 145315.39 Part II	Abstained Part I	(L3) 145000 Part I	Tender cancelled
3.	Item 3	50-12-8032	28.06.2012	Abstained Part I	Abstained Part II	(L5) 147900 Part I	Tender cancelled
4.	Item 4	50-12-8035A	18.09.2012	Abstained Part II	Abstained Part II	(L4) 224800 Part I	Not supplied
5.	Item 1	50-12-8030	25.07.2012	Abstained Part II	Abstained Part I	Abstained Part I	All abstained
6.	Item 1	50-12-8030A	05.03.2013	Abstained Part I	114450.50 (All inclusive Part I)	114567.80 (All inclusive Part I)	Continental supplied at 92000 (basic rate)



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							with nil ED)
Other	Item 2	50-11-1107	15.12.2011	(L3) 86800 Part I	Abstained Part I	Abstained Part II	Tender cancelled
7.	Item 2	50-11-1107A	17.04.2012	Abstained Part I	Abstained Part I	(L3) 94800 Part I	Not supplied
8.	Item 2	50-11-1107B	12.10.2012	Abstained Part II	Abstained Part I	(L3) 96000 Part I	Not supplied

(In Rs. Per Km)

41. The investigation found that Mr. Mohd. Aquil Akhtar is the Managing Director of OP-16, and his two sons are Managing Directors of OP-15 and OP-9, respectively. These three family members have shareholding in all the companies. DG further relied upon structural linkages, financial interdependence, exchange of company related information among them inter-se to conclude collusion. The DG also analyzed tenders in other railway zones and found certain instances of quotation of identical and similar pricing by the concerned Opposite Parties. Based on the above, the DG concluded that OP-9, OP-15 and OP-16 acted in concert while bidding in Impugned Tenders.
42. OP-9, OP-15 and OP-16, in their responses have submitted that they are small scale industrial units engaged in the business of supplying different kind of cables to the Indian Railways. They stated that the fact that they are sister concerns was known to the Informant as well as DG and publically available in the vendor list on the RDSO website. The concerned Opposite Parties were approved by RDSO as vendors for various types of cables, and all bidders including OP-9, OP-15 and OP-16 were permitted to procure raw material only from the vendors approved by RDSO. It has been submitted that OP-9 submitted bids in all Impugned Tenders. However, OP-9 was not L-1 bidder in any tender. The prices of constituents of raw material required for manufacturing of Railways Signaling Cables are dictated by IEEMA and vendors approved by RDSO. The small difference in margin of price quoted was on account of market conditions. With regard to abstinence, OP-9 submitted that there were working capital and capacity constraints due to which they could not participate. On abstinence from participation in various tenders, OP-15 submitted that during the period 2009-14, it was overbooked with various other orders. OP-16 submitted that it was not able to participate due to its grave financial



position, on-going labour troubles and paucity of working capital funds which severely affected its production. However, OP-16 bid for a few tenders for different railway zones only to keep itself abreast of the marketing trends in an attempt to revive the company.

43. The Commission has considered the pattern of bidding by OP-9, OP-15 and OP-16 in Impugned Tenders. The Commission notes that OP-9 quoted in most of the tenders. However, it was not L1 in any of the tenders. Further, in Tender No.2, OP-9 and OP-16 quoted in close range, while OP-15 abstained. In Tender No.6, OP-9 and OP-15 quoted prices in close range and OP-16 abstained. DG, found no plausible reasons for such behaviour and attributed the same to collusion. DG found that the three Opposite Parties were run by family members who had common shareholding in these companies and thus were under common management. OP-9, OP-15 and OP-16 contended that the small difference in the quotation of prices is on account of market conditions.
44. The Commission finds merit in the submission of the concerned Opposite Parties that similar pricing in the present case may be due to market conditions. It appears that input costs are common in the market and hence quotation of similar prices in the instant case may not itself alone be regarded as an indicator of 'collusive bidding'. Further, the prices of constituent raw materials are governed by vendors which are approved by RDSO. Besides, there is no evidence to suggest that OP-9, 15 and 16 have shared any price sensitive information with respect to Impugned Tenders. The Commission also finds merit in the arguments of concerned Opposite Parties that they abstained from participation in Impugned Tenders due to working capital constraints, ongoing labour troubles, *etc.* and may not be due to collusion. There is nothing on record to suggest that these Opposite Parties co-ordinated their decisions due to the factors such as inter-se job work, common management, structural linkages, *etc.* Thus, the Commission is unable to agree with the DG that the concerned Opposite Parties are in contravention of the provisions of the Act.

Incom Cables (P) Ltd. (OP-18) & Incom Wires & Cables Ltd. (OP-19)



45. The DG, on examining the pattern of bidding in Impugned tenders found that OP-18 and OP-19 had quoted identical rates in three Impugned Tenders viz Tender Nos.2, 3 and 8, while they abstained from participation in Tender No. 1. With regard to Tender No. 4, bids quoted by OP-18 and OP-19 were almost similar and after negotiations both agreed to accept a lower rate offered by the Informant. In Tender No.8, both parties quoted the same rate and subsequently only one agreed to the offer of the Informant. In view of the above, it was inferred that OP-18 and OP-19 quoted rates in such a manner that either both of them or at least one of them could get the order. Table indicating bidding pattern of OP-18 and OP-19 in Impugned Tenders, is as under:

Tender No.	Products	Details of Tenders	Opening date	OP-18 (Part –I supplier)	OP-19 (Part- II supplier)	Remarks
1.	Item 3	50-12-5203	22.08.2013	Abstained	Abstained	Both abstained
2.	Item 3	50-12-8054	07.12.2012	(L2) 140250	(L2) 140250	Tender cancelled
3.	Item 3	50-12-8032	28.06.2012	(L2) 140500	(L4) 140500	Tender cancelled
4.	Item 4	50-12-8035A	18.09.2012	(L1) 220000	(L1) 219000	Both supplied at 200000
5.	Item 1	50-12-8030	25.07.2012	(L5) 96850	Does not produce	Not supplied
6.	Item 1	50-12-8030A	05.03.2013	(L3) 92100	Does not produce	Not supplied
Other	Item 2	50-11-1107	15.12.2011	(L4) 87000	(L3) 87100	Tender cancelled
7.	Item 2	50-11-1107A	17.04.2012	(L1) 90900	Abstained	Not supplied
8.	Item 2	50-11-1107B	12.10.2012	(L1) 92400	(L2) 92400	Income Cables supplied at 87531

(In Rs. Per Km)

46. The investigation revealed that Managing Directors of OP-18 and OP-19 are brothers. Mr. Raghav Sharma, Managing Director, OP-18 represented both the companies at the meetings of the Association. DG also found evidence of telephonic exchange, email exchanges and inter-se job work between the concerned Opposite Parties. It was brought out during investigation that the concerned Opposite Parties uploaded their bids for various tenders using the same IP Address. Based on the above, DG found that these companies quoted in collusion in six Impugned Tenders i.e. Tender Nos. 1,2, 3, 4, 7 & 8.



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47. OP-18 and OP-19 vehemently objected to the findings of investigation. During the final hearing, it was argued that mere quoting of identical or similar prices by two opposite parties by itself does not manifest concerted action. It has been contended that quotation of higher price in tenders was attributable to inflation. Further, PVC only covers price fluctuation of raw materials e.g. copper, steel, poly vinyl chloride in the market. However, there are other materials such as zinc in steel tapes, diesel, electricity, labour, which are not covered in PVC. OP-18 and OP-19 have same suppliers for the raw material. Thus, base price for products/items manufactured by OP-18 and OP-19 was similar. It was urged that financial strength of OP-18 and OP-19 is completely different from each other. OP-19 was not interested in railway tenders and did not execute more than two to four orders in entire year. In fact, OP-19 shut down its manufacturing since 2014-15. OP-19 used to get this work done from OP-18 as OP-18 has a large facility for copper drawing and annealing. Further, e-mails relied upon by DG to infer exchange of commercial sensitive information do not pertain to time period of Impugned Tenders. MDs of concerned Opposite Parties operated their business from common premises and common IP address was due to common internet router.
48. The Commission has examined the pattern after perusing the pattern of bidding of the concerned Opposite Parties. As submitted by the concerned Opposite Parties, the Commission notes that OP-19 usually does not participate in railway tenders as it does not have the requisite financial strength to participate in tenders floated by the railways. It is pertinent to note that OP-18 and OP-19 were procuring their raw materials from same suppliers resulting in similar cost of raw materials. Even otherwise it cannot be ignored that OPs were required to procure their respective raw materials from a pre-RDSO approved list of suppliers. Thus, Commission finds merit in the arguments of the concerned Opposite Parties that identical prices were not necessarily an outcome of collusion.
49. The Commission also notes that DG's reliance on call records is also unsubstantiated. Managing Directors of OP-18 and OP-19 are brothers and telephonic conversation between them may not be regarded as an evidence of collusion, in itself particularly, when



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the conversation was not only confined to the period of Impugned Tenders. The justification offered by the OPs that the copy of e-mails were sent by OP-18 to OP-19 to plan dispatching of PVC seems plausible. All the more, the said e-mails do not relate to the period of Impugned Tenders. Thus, in absence of sufficient evidence to indicate otherwise, the Commission is unable to conclude that OP-18 and OP-19 have contravened the provisions of Section 3(3)(a) and 3(3)(d) read with Section 3(1) of the Act.

50. The Commission notes that Opposite Parties with an aim to achieve an overall increase in rates tend to quote identical or similar prices. However, investigation does not bring out that quotation of identical/similar rates by the Opposite Parties was with a view to achieve overall increase in rates. Further, the evidence in the present case is not sufficient to establish collusion amongst Opposite Parties to attain this objective. It is also noted that the pattern in increase in rates is not just exhibited by the five sub-sets of Opposite Parties but by all Opposite Parties.
51. The Commission also notes that similarity in rates exists among other pairs of Opposite Parties in Impugned Tenders. For example, in Tender No.1, there was similarity of rates between OP-3 and OP-4, OP-2 and OP-1, OP-12 and OP-13. Further, in Tender No. 2, OP-18 and OP-11 and OP-13 and OP-7 quoted prices in close range. In Tender No. 3, OP-19 and OP-11, OP-18 and OP-11 quoted with a small difference. In Tender No. 5, bids of OP-3 and OP-11 show small difference in the rates quoted by them. In Tender No. 6, bids of OP-9 and OP-18, OP-18 and OP-11, OP-20 and OP-21, OP-13 and OP-27, show small difference in the rates quoted. Further, in Tender No. 7 bids of OP-9 and OP-13, OP-9 and OP-25, OP-11 and OP-20, OP-11 and OP-4, OP-7 and OP-11 show small difference in the rates quoted. All these are the instances against which the DG found no contravention, despite quotation of prices in close range due to lack of evidence. Hence, the examination of Impugned Tenders does not reveal any discernable pattern which points towards existence of an agreement or meeting of minds amongst the Opposite Parties to collude in Impugned Tenders.



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52. The Commission observes that identical and similar pricing by bidders in tenders coupled with other factors such as common management, sharing of premises, common IP addresses, and frequent phone calls, common representative in the meetings of Association, *etc.* do raise suspicion of collusive behaviour between the bidders. However, facts of the present case do not suggest that such collusion has arisen between the five set of bidders.

53. In the present case, neither there is any evidence of anti-competitive agreement or arrangement amongst five sub-sets of bidders nor any circumstantial evidence to establish tacit collusion. Even though DG found certain instances of identical/similar pricing, the investigation does not bring out that the same was an outcome of collusion. Though owing to structural links, family relationship, *etc.* five-sub sets of bidders had the opportunity to exchange information and coordinate their behaviour, however, in absence of sufficient and cogent evidence to show collusion, the Commission concludes that it cannot be conclusively established that OP-2 and OP-3; OP-12 and OP-21; OP-26 and OP-32; OP-9, OP-15 and OP-16; and OP-18 and OP-19 have acted in contravention of the provisions of Section 3(3)(a) and 3(3)(d) read with Section 3(1) of the Act. The Commission is thus of the view that no case of contravention of Sections 3(3)(a) and 3(3)(d) read with Section 3(1) of the Act is made out in the present case. Accordingly, the matter is ordered to be closed.

54. Against the aforesaid backdrop, however, the Commission, hereby, for the benefit of Railways and public at large, advise the Railways to modify its procurement policies in harmony with the competition law principles which may be achieved by reassessing the rules with respect to participation of sister concerns in the tenders floated by Railways for procurement of products from various RDSO approved suppliers. The scale of operations of Indian Railways requires an efficient and economical procurement policy which is in tandem with competition laws and which has promotion of competition through open tenders as one of the cardinal objectives. The rules governing procurement policy of products by Railways should be reassessed to ensure efficiency, transparency and accountability of participants in tenders.



55. The Secretary is directed to inform the parties accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi

Dated: 12/07/2018