



Competition Commission of India

TRILEGAL PRESENTS

**NALSAR-CCI ANTITRUST
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CASE PROBLEM



Case Problem

The year 2055 is a year of transition in technology – from Lithium-ion batteries, to batteries based on a newly discovered compound called Frinkonium. Frinkonium has been recently discovered and its mining and extraction is a completely government-controlled process. The Government of Baraq has exclusive rights to mine the ores and then the extracted ore directly are auctioned by the government to the bidders. Frinkonium needs to be processed quickly and cannot be stored in its extracted ore form for a long period of time, to preserve its qualities. Its price is dependent on more than a hundred variables including the quality of Frinkonium, its fitness for use in electric vehicle (“EV”) batteries, its weight, the purity of the ore etc.

Given that Lithium-ion has become an excessive burden on the environment, governments around the world, including Baraq have started imposing heavy taxes on its use. EV companies – that are some of the largest users of Lithium-ion batteries – are considering alternatives, and the discovery of Frinkonium is a beacon of hope for their survival. These EV manufacturers were set to become some of the largest bidders for Frinkonium, in the first tender issued by the Government of Baraq.

The bid process has to be expedited to ensure that Frinkonium does not remain in its ore form for a longer period of time, in order to prevent its degradation. The bidding process is tricky, and all the bidders are new to the process. There are more than a hundred variables that need to be calculated on a real-time basis, during the bidding process in order to arrive at an appropriate price for the ore.

In September 2055, the Government of Baraq announces that it is set to complete the extraction of its first lot of Frinkonium ore, which is estimated to weigh in at approximate 12,000 metric tonnes; they further state that a real-time virtual bid will be announced wherein all the parties will bid and acquire their desired quantities of Frinkonium. However, pricing will have to be decided on a real-time basis considering the various factors (as stated above), as these factors will only be discovered once the extraction is complete. All eligible bidders will have less than two (2) hours in hand, to decide the price and submit their bids for the ore.

Accordingly, all interested parties began exploring various options including mathematical models, softwares etc., that would aid the bidders in finalizing their bid price. Aperture, a software company, develops an offshoot of one of its bid-assist algorithms called “Bid.AI” three days prior to the first bid, based on its own proprietary technology. Licenses to Bid.AI are acquired at rapid pace, by various parties including eight (8) EV manufacturers who are interested in a particular grade of Frinkonium (called battery grade 0.40 Frinkonium, also known as BG-40). This includes the following EV manufacturers:

- i.FMI
- ii.Americar
- iii.Brookwood
- iv.Bolger
- v.Battenberger
- vi.Cromwell
- vii.Dillon
- viii.Maxwell

The news of Aperture's success hits all the major newspapers of Baraq. Various newspapers also carry the particular demand of Aperture's Bid.AI amongst the EV manufacturers, such that eight (8) of the EV manufacturers have acquired its license.

The night before the bid, its various eligible bidders (including the CEOs of the eight EV companies) meet at the Grand Palazzo Hotel in Baraq, at the Baraqi Government's convention to celebrate the success in extracting Frinkonium ore. Naturally, the CEOs strike up a conversation regarding their success in acquiring a license to Bid.AI which they think was going to provide them an edge at the bid on the next day. During the conversation, they also happen to casually discuss the amount of Frinkonium each one of them envisages to bid for in order to cater to their production requirement in the short term. In a fleet of mind games and with the intention to mislead each other – five of these CEOs (namely, those of Maxwell, Cromwell, Dillon, Brookwood and Americar) misrepresent and overstate the quantities that they intend to bid for. The other three, advised by their competition lawyers, refrain from making such a disclosure so they remain silent during the discussion.

Austin Powers, a science enthusiast and good Samaritan is also at the convention, purely out of his interest in Frinkonium's discovery and uses. He overhears this conversation, and presumably does not understand the misrepresentation. He decides to follow the next day's virtual auction, through an illegal live stream.

As the auction commences, various representatives submit their bids for their desired quantities of various grades of Frinkonium. Only those companies which took the license of Bid.AI are able to submit a bid within the two-hour timeline for their desired quantity of Frinkonium. Details of the bids submitted by the eight (8) EV companies are set out below:

S. No.	Name of Company	Bid Price (per tonne)	Bid Quantity (per tonne)	Bid Quantity Discussed (tonnes)
1.	FMI	\$ 130,000	200	Did not disclose
2.	Americar	\$ 110,000	450	600
3.	Brookwood	\$ 135,000	240	650
4.	Bolger	\$ 107,000	430	Did not disclose
5.	Battenberger	\$ 111,000	480	Did not disclose
6.	Cromwell	\$ 132,000	270	650
7.	Dillon	\$ 138,000	230	620
8.	Maxwell	\$ 131,000	250	630

The five (5) EV companies who bid with the highest prices (FMI, Brookwood, Cromwell, Dillon and Maxwell) succeed in their bid.

Austin Power, watching the auction, takes note of the fact that four out of the five players that disclosed quantities (i.e., Brookwood, Cromwell, Dillon and Maxwell) won the bid. He also notes the similarities between the prices submitted by the winning bidders. He thinks that the discussion between the CEOs and the fact that they used the same bid-assist algorithm, through Bid.AI has led to collusion between the parties.

He speaks with his friend Professor Mason, a law professor and competition law enthusiast who informs him that this is a case of bid rigging. Power and Mason decide to file an information with the Baraq Competition Authority (“BCA”), reporting that the EV companies had colluded among each other by:

- Discussing quantities; and
- Using the same bid-assist algorithm, which led to tacit collusion during the bidding process.

They implore the BCA to:

- Form a prima facie view that the five EV companies have cartelized during the first auction for Frinkonium in September 2055 and violated Section 3(3) of Baraq Competition Act 2002;
- Direct its director general to conduct an investigation into the five EV companies;
- Direct for the first auction for Frinkonium to be reconducted; and

- In the interim, direct each of the five EV companies to up front disclose their bidding metrics to a monitoring agency appointed by the BCA and receive the monitoring agency's approval – prior to submitting their bid, and extend this remedy for all future bids/auctions of Frinkonium for a period of 3 years (or till such time that 5 other bid-assist algorithms do not emerge in the market).

After receiving the information, the BCA decides to conduct a hearing and directs the parties to file written submissions in support of their cases, inter alia addressing the following issues:

- Whether discussion of quantities, even though different quantities were bid for, amounts to collusion?
- Whether using the same algorithm to determine prices based on common factors, amounts to tacit collusion?
- Whether the remedies sought by Power and Mason duly address the potential harm arising out of the alleged cartel, or whether such remedies exceed the scope of the Competition Act, 2002?

The laws of Baraq are pari materia with the laws of India.