



COMPETITION COMMISSION OF INDIA

Case No. 18 of 2020

In Re:

XYZ

Informant

And

1. Hindalco Industries Limited

Opposite Party No. 1

Ahura Centre, 1st Floor, B-Wing,
Mahakali Caves Road,
Andheri (East), Mumbai,
Maharashtra- 400093.

2. Vedanta Limited

Opposite Party No. 2

1st Floor, C Wing, Unit 103,
Corporate Avenue - Atul Projects,
Chakala, Andheri (East),
Mumbai, Maharashtra- 400 093.

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

Order under Section 26(2) of the Competition Act, 2002

1. The present Information has been filed by the Informant under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') against Hindalco Industries Limited (Opposite Party No. 1/ OP-1) and Vedanta Limited (Opposite Party No. 2/ OP-2) (collectively referred to as, 'OPs') alleging *inter alia* cartelisation in determining prices of certain copper products in India, sharing the market of certain copper products by way of allocation of customers and engaging in bid rigging/ collusive



bidding in violation of the provisions of Section 3(1) of the Act read with Sections 3(3)(a), 3(3)(c) and 3(3)(d) thereof.

2. The Informant is stated to be an advocate registered with Bar Council of India and has sought confidentiality on its identity by filing an application under Regulation 35 of the Competition Commission of India (General) Regulations, 2009. As per the averments in the application, the Informant came to know about cartelisation by the OPs in the copper market through 'informed' and 'credible' sources.
3. As per the averments made in the Information, OP-1 is the metals flagship company of Aditya Birla Group and is the leading supplier of copper rods and other copper products in India, meeting a large part of the domestic demand. OP-2 is a globally diversified and very large natural resources company, with interests in iron ore, steel, copper, aluminium, power, oil and gas and zinc-lead-silver. OP-2's business unit, Sterlite Copper is one of the largest custom copper smelters in India. OP-1, OP-2 and Hindustan Copper Limited (HCL) (which is a State-owned enterprise) are the only three domestic producers in India, engaged in the production of refined copper. That the OPs control around 85-90% of the domestic production and around 75-80% of the domestic supply, giving them a virtual stranglehold on supplies in the Indian market. As HCL is a very small player compared to the OPs, effectively, there are only two major players who produce continuous cast copper rods.
4. It is alleged that around 2011-12, the OPs realised competition between them was hurting their profits and they could instead easily cooperate with each other and increase their profits which resulted in the whole process of cartelisation between the OPs. Thereafter, the OPs are evidently engaged in cartelisation in production and supply of refined copper products and specifically, it is alleged that the OPs have cartelised with respect to additional charges that could be freely determined by the manufacturers and that till about 2018, the officials of both the OPs would frequently discuss and set the prices over meetings and phone calls.
5. The Informant has stated that the OPs typically issue their price circulars to buyers almost simultaneously within a short span of time and that these price circulars contain various components including additional charges as mentioned above. It



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is averred that the OPs give discounts to their customers on the premium that has been set out in their price circulars and that these discounts are also discussed and shared between the OPs in order to adjust volumes and maintain parity in the market. As per the Information, all these discussions/ agreements were ultimately captured on excel sheets maintained by both the OPs.

6. It is alleged that the premium charged as mentioned in the monthly price circulars issued by the OPs in respect of 8 mm continuous cast copper rod, which is the most popular product, and copper cathode have remained identical at USD 180 per metric ton and USD 60 per metric ton, respectively. It is next to impossible for two different manufacturing entities, to have identical processing costs (charged as premium) for converting copper concentrate into saleable product *i.e.*, copper rods and copper cathodes month after month, year after year despite having differences in terms of capacities, sources and cost of raw material (copper concentrate), other input/ factor costs like employees, electricity, interest, *etc.* This identity of prices can be said to have arisen from a cartel between the OPs.
7. It is further alleged that the additional charges mentioned in their price circulars remain almost identical for the OPs. That the changes to the multiplication factor/ import parity factor in the monthly price circular have been fairly identical. Further, it is alleged that the freight charges imposed by the OPs with respect to each geographical region (other than eastern India) are also identical. While supply of copper products in terms of freight charges for both the OPs to different regions should have had a different cost impact as their manufacturing plants are located at different locations and, accordingly, led to different prices, the freight charges have remained identical between the OPs.
8. It is alleged that in their cartel, the OPs have also carved out certain customers amongst themselves. With respect to such customers, each OP would refrain from going after the other party's customers which would not have been possible had they been competing with each other for such customer's share.
9. It is alleged that the OPs also had a verbal agreement around 2015/ 2016 that in the event one of the OPs ended up with selling larger volume of copper products, such OP would be required to make purchases of copper products from the other



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OP in order to maintain parity. It is alleged that in order to avoid scrutiny by regulators, such purchases would not carry the name of the purchasing OP, but were instead billed under fake identities. It is submitted that such balancing purchases would take place material-wise as well, with the market being shared between the OPs for continuous cast copper rods and copper cathodes.

10. It is also alleged that besides cartelising in fixing prices in the open market, the OPs have also cartelised in one of India's most critical areas *i.e.*, supplies to the defence industry. As and when tenders were issued by the Indian Ordnance Factories, the OPs would mutually decide the winning bidder and the prices to be submitted by each of them to the Indian Ordnance Factories (the winning bidder would submit slightly lower prices in response to the tender). Further, it is alleged that the prices quoted by the OPs to the Indian Ordnance Factories would almost invariably be higher than the prices charged by them to their domestic customers under their price circulars. That the website of the Indian Ordnance Factories also contains certain bid related data which shows acceptance of bids submitted by both the OPs, wherein such bids were either identical or had a miniscule difference. Thus, it is alleged that the OPs have cartelised in respect of supplies against tenders issued by the vital defence industry thereby causing immense harm to the public welfare as well as national interest.
11. Based on the above averments and allegations, it is stated that both the OPs have violated Section 3(1) read with Sections 3(3)(a), 3(3)(c) and 3(3)(d) of the Act by engaging in cartelisation and determining the prices of copper products in India, sharing the market of certain copper products by way of *inter alia* allocation of customers and engaging in bid rigging /collusive bidding. Accordingly, the Informant has prayed the Commission to direct the Director General (DG) for investigation against the OPs and to issue cease and desist order from engaging in their anti-competitive conduct, penalize the OPs and pass any other direction that the Commission may deem fit.
12. The Commission considered the matter in its ordinary meeting held on 28.07.2020 and observed that on bare perusal the Information reveals that save and except making the aforesaid averments and allegations, the Informant has not made



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available any details whatsoever of such documents or meetings to substantiate the same. In these circumstances, the Commission directed the Informant to make available the details/ documents along with an Affidavit within a period of 10 days.

13. Pursuant to the aforesaid directions, the Informant filed its response dated 21.08.2020 and reproduced/ reiterated the Information already filed before the Commission. In this regard, the Commission is dismayed to note that the Informant has neither filed any details/ documents to substantiate the aforesaid allegations nor has filed any Affidavit, as directed by the Commission *vide* its order dated 28.07.2020. In fact, the Informant has merely annexed a copy of the Affidavit which was previously filed at the time of filing of the original Information in the matter.
14. In the aforesaid backdrop, the Commission proceeds to examine the Information on merits in light of the material available on record. In this regard, it is observed that the gravamen of the Informant pertains to the OPs charging identical processing costs (premium) for conversion of copper concentrate into various saleable product such as copper cathodes and copper rods; month after month, year after year despite differences in terms of capacities, sources and cost of raw material (copper concentrate), other input/ factor costs like employees, electricity, interest, *etc.*
15. It is observed that the OPs are importers of copper ore and after smelting and refining the ore, they fabricate and supply various copper products in India. As per the Information, in the copper industry, it is a common practice to use the London Metal Exchange (LME) copper price to determine the base price of copper cathode; thereafter other charges such as premium – the amount charged by the manufacturers as a value addition for processing of copper concentrate into downstream copper products; a multiplication factor/ import parity factor – the factor charged by Indian manufacturers to counter import duty/ bring the prices of their products at parity with the prices of imported products; freight charges, which are charges for delivery of copper products to the plant or warehouse



locations are added by the manufacturers to such price. Charges other than the base price are to be determined by the manufacturers themselves.

16. To assess the allegations of price cartelization in terms of additional charges for copper products between the OPs, as averred in the Information, the Commission notes that mere price parallelism in itself is not sufficient to order probe in the absence of any other material on record wherefrom collusion or concert between the OPs can be inferred. In the instant case, as noted above, despite grant of opportunity, the Informant has not been able to substantiate the allegations made in the Information by providing the relevant details. There is nothing on record to infer that prices disclosed in the price circulars were a result of concerted action or as a result of meeting of minds by and between the parties.
17. Though the Informant has alleged that the Chief Marketing Officers of the OPs communicate with each other frequently to set the price and also to decide on the time to mutually revise the price by way of price circulars, and all of these discussions/ agreements were ultimately captured on 'excel sheets' maintained by both the OPs, the Informant has not been able to place or show on record any evidence in terms of communication or excel sheets to support such assertions even after having been an opportunity by the Commission. In fact, the Informant has not even revealed the names of the purported sources to the Commission. In such circumstances, the Commission is not inclined to order an investigation based on such wild allegations of the Informant which are stated to be based on 'credible' and 'informed' sources, the identities whereof have not been even disclosed in the Information or otherwise to the Commission.
18. In fact, with regard to the allegations pertaining to collusion in fixing of freight charges, it is observed from the Information itself that freight charges are another component of the cost and buyers of copper products can also use their own vehicles for transportation of copper products from the manufacturers' warehouse/ godowns/ depots thereby indicating that buyers have the option with respect to transportation of copper products.
19. Thus, no case of contravention of the provisions of Section 3(3)(a) of the Act read with Section 3(1) thereof is made out as the allegations suggesting collusion



between the OPs in determining prices of different copper products remain unsubstantiated.

20. With respect to allocation of customers by and between the OPs, it is observed that the Informant has not placed on record any document to support the allegation that the OPs have their own exclusive buyers. Neither the Informant has placed any document suggesting that the OPs do not supply or have refused to supply the products to each other's customers, who themselves are significant players in the downstream markets and nothing has been brought on record suggesting that such customers have any grievance in this regard either. Lastly, the Commission observes that there can be multiple business factors for a buyer to continue to purchase the product from a particular supplier and in the absence of any material indicating allocation, it is futile to dilate any further on this aspect. The Commission is satisfied that no case of violation of the provisions of Section 3(3)(c) of the Act read with Section 3(1) thereof is made out on this count as well.
21. Coming to the allegations of bid rigging by the OPs in respect of the various tenders floated by Indian Ordnance Factories, the Commission again notes that, in the absence of any material showing even *prima facie* concert or specific averment as to collusion, it is neither feasible nor desirable to embark upon any roving probe in respect of the tenders which are stated to have been concluded as early as July 2010 to August 2017. It cannot be gainsaid that the regulatory resources have to be optimally deployed so as to prioritise the enforcement task. Such open-ended bald allegations in an omnibus manner does not further the public cause. Resultantly, the Commission holds that there is nothing on record to indicate contravention of the provisions of Section 3(3)(d) of the Act read with Section 3(1) thereof on this ground as well.
22. In view of the foregoing, the Commission is of the considered opinion that the Informant has not been able to substantiate the allegations made in the Information and as such the Commission finds no case of contravention of the provisions of Section 3 of the Act against the OPs in the instant case. The matter is, thus, ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.



23. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 08/10/2020
New Delhi: