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COMPETITION COMMISSION OF INDIA

Case No. 51 of 2017

In Re:

Informant (Confidential)

Informant No. 1

And

Grasim Industries Limited (GIL)

P. O. Birlagram, Nagda – 456 331

Madhya Pradesh.

Opposite Party

Case No. 54 of 2017

In Re:

Informant (Confidential)

Informant No 2

And

Grasim Industries Limited (GIL)

P. O. Birlagram, Nagda – 456 331

Madhya Pradesh.

Opposite Party

Case No. 56 of 2017

In Re:

Informant (Confidential)

Informant No. 3

And

Grasim Industries Limited (GIL)

P. O. Birlagram, Nagda – 456 331

Madhya Pradesh.

Opposite Party

CORAM

Mr. Ashok Kumar Gupta

Chairperson

Ms. Sangeeta Verma

Member

Mr. Bhagwant Singh Bishnoi

Member



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Appearances:

- For Informant in Case No. 51 of 2017** : Mr. Akash Gajanand Agarwal, Chartered Accountant of the Informant.
- For Informant in Case No. 54 of 2017** : Mr. M. M. Sharma, Ms. Pratiksha Sharma and Ms. Honey Satpal, Advocates.
- For Informant in Case No. 56 of 2017** : Informant-in-Person and Mr. Charuhas B. Dharmadhikari, Advocate.
- For Grasim Industries Limited (GIL)** : Mr. Somsekhar Sundaresan, Ms. Nisha Kaur Uberoi, Ms. Shravani Shekhar, Mr. Mathew George and Mr. Sarthak Pande Advocates alongwith Mr. Paresh Khatau Thacker, Chief Legal Officer and Mr. Dhruvajyoti Basu, Dy. General Manager (Legal) of Grasim Industries Limited.

Order under Section 27 of the Competition Act, 2002

1. All three Informations in the instant matters were filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter 'the Act') against Grasim Industries Limited (the 'OP') alleging, *inter alia*, contravention of the provisions of Sections 3(4) and 4 of the Act.

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2. As per the Information, Informant No. 1 is a firm registered under the Maharashtra Shops and Establishments Act, 1948 and engaged in the marketing of various types of fibres. It is stated that Informant No. 1 had approached the OP expressing its willingness to start



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trading in Viscose Staple Fibre (VSF) in Indian and International markets. In this regard, Informant No. 1 had requested the OP on several occasions to provide the terms and conditions of doing business, including the discount structure, payment terms, *etc.* It is averred that the OP declined to provide any such information to Informant No. 1. Informant No. 1 had subsequently approached different officials of the OP but its offer was rejected citing reasons such as brand value, integrity and upholding the high-quality standards established by the OP

3. However, after multiple reminders, the OP contacted Informant No. 1 over the telephone as well as through an e-mail and asked it to provide a list containing the details of suppliers, buyers, number of employees in its firm, its turnover, balance sheet and list of spinners who wanted to source VSF through Informant No. 1. Informant No. 1 declined to provide the same, citing that disclosing said information could be detrimental to its business.
4. Informant No. 1 has alleged that the OP does not disclose its discount policies and provides differential treatment to different customers with respect to the discounts offered to them. OP compels its customers to disclose information regarding their production capacities, suppliers, buyers, turnover and balance sheet as a pre-condition for the supply of VSF. This information is to be provided by the customers in the format specified by the OP. Further, it is alleged that access to this confidential data permits the OP to monitor the downstream market of viscose yarn, thereby enabling it to regulate and influence the price of VSF.

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5. Informant No. 2 is a public limited company engaged in the manufacturing and export of synthetic and cotton yarns, and has four manufacturing plants in India. It is stated that Informant No. 2 was purchasing VSF from the OP for the past several years with an explicit understanding of receiving the benefits of discount policies offered by OP that were declared from time to time. It was averred that the OP informs Informant No. 2 about these policies verbally and not in writing. Further, it was averred that the OP frequently changes these policies at its sole discretion. Consequently, the OP binds the purchasers to pay as per the bill amount, which always remains more than the agreed



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upon price. Informant No. 2 has alleged that it had raised certain claims against the OP on several occasions in the past, but the OP unjustifiably failed to pass on the assured benefits in a fair and transparent manner to the Informant.

6. Informant No. 2 has further alleged that the OP had arbitrarily withdrawn all sales terms (credits and discounts) agreed between the two parties, and thus, ultimately refused to supply VSF to the Informant. Informant No. 2 has submitted that the OP had supplied only 13.63% of its requirement of VSF for the period of February–August 2017. Therefore, production of yarn by Informant No. 2 was reduced substantially and it could not supply VSF/blended yarn to its customers. Informant No. 2 has further submitted that, due to non-supply of yarn, its customers switched over to others, and thus, its business was wiped out because of the abusive conduct of the OP.

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7. Informant No. 3 also alleged that the OP continues to abuse its dominance by refusing to supply VSF to a spinning company. It was alleged that the OP had stopped the supply of VSF to a company, despite the company being a major customer of OP enjoying a credit limit of over than one crore rupees. It was also alleged that the OP has been harassing the company by delaying/denying discounts owing to its monopoly in the sale of viscose in the market.

Directions to the DG

8. The Commission, after considering the material on record, noted that the subject matter of all the Informations is substantially the same, and accordingly, the Commission, in exercise of its power conferred under proviso to Section 26(1) of the Act, directed clubbing of all the cases. *Vide* order dated 16.05.2018 passed under Section 26(1) of the Act opining a *prima facie* case of the contravention of the provisions of Section 4 of the Act, the Commission directed the Director General (DG) to conduct an investigation into the matter and submit a report. The DG, after receiving directions from the Commission, investigated the matter and submitted the investigation report to the Commission on 27.03.2020 ('Investigation Report').



Investigation by DG

9. To investigate the allegations, the DG delineated the relevant market by first providing a brief outline of the various industrial fibres and highlighting that man-made fibres (MMF) can be generated from distinct sources/origins, such as natural and synthetic. Focusing on the differences between man-made and natural fibres in terms of their length, the DG highlighted the fact that MMF are called ‘staple fibres’ because they can be manufactured to a specific length and the natural fibre like cotton, wool, silk, jute *etc.* are of various length. Thereafter, providing a brief summary of MMF – viscose, polyester, acrylic, nylon — the DG highlighted that they all are distinct fibres. Dwelling on their utility, the DG noted that they all are used for spinning, and it is common to blend/mix two or more fibres to produce yarn. The DG further noted that there was no material to indicate a change in the market dynamics between the time period investigated in the instant cases and in *XYZ v. Association of Man-Made Fibre Industry of India & Ors.*, Case No. 62 of 2016. Taking into account these aforesaid aspects, along with fact that the relevant market has already been defined in Case No. 62 of 2016, the DG defined the relevant market as ‘*the market for supply of VSF to spinners in India*’.
10. On the issue of dominance, the DG observed that OP is the sole producer of VSF in the country. The only other source of VSF to spinners in the country is through import. Imports from China and Indonesia are subject to anti-dumping duty. After accounting for import, the market share of OP in the domestic supply of VSF was found to be above 85%. Other factors such as size, economic power of the enterprise and dependence of consumers further reinforced OP’s dominance in the relevant market.
11. Adverting to the issue of abuse of dominance, the DG, based on documentary evidence and deposition of spinners, found that OP requires VSF buyers to submit documentary proof of VSF production by their units. Relying on the Commission’s order in Case No. 62 of 2016, the said practice was found to be in abuse of dominance in the form of imposing supplementary obligations on the spinners, violating provisions of Section 4(2)(d) read with Section 4(1) of the Act. It was further observed by the DG that with respect to the sale of VSF to Informant No. 2, OP had stopped supplying VSF to Informant No. 2 since 17.01.2017. OP, enjoying a monopoly in the Indian market, has a special responsibility to ensure fairness in trade. Refusal to supply in such a case clearly



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amounts to abuse of the dominant position and a violation of the provisions of Section 4(2)(c) read with Section 4(1) of the Act. The DG also found that the OP has been charging unfair and discriminatory prices for VSF from the spinners and observed that the same was found to be in contravention of the Act by the Commission in Case No. 62 of 2016. Accordingly, the DG found that OP has contravened the provisions of Section 4(2)(a)(ii) read with Section 4(1) of the Act.

Consideration of the DG Report by the Commission

12. The Commission considered the Investigation Report submitted by the DG in its ordinary meeting held on 26.08.2020 and decided to forward copies thereof to the parties to file their respective objections/suggestions thereto. The parties were heard on the Investigation Report of DG on 03.02.2021, 09.02.2021 and 18.02.2021, whereupon the Commission decided to pass an appropriate order in due course.

Replies/ Objections/ Submissions of the Parties

13. The parties filed their respective replies/objections/submissions to the Investigation Report of the DG besides making oral submissions.

Replies/Objections/Submissions of the Informants:

14. Informant No. 1, Informant No. 2 and Informant No. 3 filed their respective objections/suggestions and broadly supported the findings of the DG. Only Informant No. 2 filed a rejoinder after the hearing.

Replies/Objections/Submissions of OP:

15. OP filed its objections/suggestions on 15.01.2021 to the investigation report of DG and also filed written submissions on 04.03.2021 to further its oral arguments.

Analysis

16. On perusal of the Informations, the Investigation Report of the DG, the replies/objections filed by the Parties thereto, the submissions made by the Parties and other materials



available on record, the following points arise for consideration and determination of the matter:

- a) What is the relevant market in the present case?
- b) Is OP dominant in the relevant market?
- c) If Issue No. (b) is in the affirmative, has OP abused its dominant position in the relevant market?

Relevant Market:

17. The DG, while delineating the relevant product market, highlighted the differences/distinct characteristics between VSF and other fibres (synthetic and natural). Thereafter, the DG noted that there was no material to indicate a change in market dynamics between the time points investigated in the instant cases (*i.e.*, 2017–2018) and the time points investigated in the earlier case (*i.e.*, 2012–2017) — *XYZ v. Association of Man-Made Fibre Industry of India & Ors.*, Case No. 62 of 2016. Taking into account all these aforesaid aspects, the DG retained the relevant market in the instant matters as ‘*the market for supply of VSF to spinners in India*’ in line with the order passed by the Commission in Case No. 62 of 2016.
18. In response to the aforesaid delineation of the relevant market by the DG, the OP submitted the following: the DG has failed to analyse any evidence and did not investigate any alternative market definitions, including PSF and cotton, and has limited the investigation to the observations made by the Commission in Case No. 62 of 2016. OP submitted that the DG ignored that the period of investigation is completely different from that of Case No. 62 of 2016. The allegations in the present Information(s) relate solely to the time period 2017–2018, whereas the allegations in Case No. 62 of 2016, relied on by the DG is related to 2012–2017. OP submitted that various fibres (*i.e.*, other MMF and cotton) compete with VSF for customers and profit in the market. Accordingly, the correctly delineated relevant market should include all such fibres that compete against each other in the market. Further, the OP stated that the DG ignored that VSF along with PSF and cotton have the same end-use in textiles and apparels; that the market comprises primarily blends and there is ease of switching between certain fibres; and that the market is, in fact, a ‘market of blend’ of fibre, with limited uses and demand for pure



unblended fibres. Additionally, it was stated that the DG has failed to recognise that fashion is a fast-changing consumption category, wherein consumer preference tends to change quickly, which is reflected across all categories of apparel and impacts the end-fibre/blended yarns consumed in a particular category. Based on the aforesaid, OP submitted that '*MMFs and cotton used in spinning for the production of blended yarns, textiles and apparel in India*' is the relevant market.

19. In response to OP's submission regarding the relevant market, Informant No. 2 in its rejoinder submitted that there are two broad categories of fibres — Natural Fibres (NF) and Man-Made Fibres (MMF). MMF are of two types — crude oil-based and wood pulp-based. Crude oil-based fibres are synthetic fibres — polyester, nylon, acrylic and polypropylene — whereas wood pulp-based fibre regenerated from cellulose (plant-based), is only Viscose Staple Fibre (VSF). All varieties of NF and MMF have different physical and chemical characteristics and prices, although their end-use is the same, *i.e.*, to make yarn. However, each variety of both categories can be blended easily to give different textures and colour to garments, which make them *complimentary* to each other (since the end-use is the same) but *not substitutable*, on account of their characteristics and prices.
20. In the textile supply chain, fibre manufacturers manufacture *fibre*, spinners use fibres to manufacture *yarn*, fabric manufacturers use different types of yarns to manufacture *fabric*, and garment manufacturers use *fabric* to manufacture *garments*. Substitutability has to be seen from the perspective of the direct customer or buyer who is the *spinner*, and not the fabric manufacturer or the garment manufacturer. At each level of the supply chain, the input gets converted into a different product altogether. In Competition Law terms or even real market terms, *fibre* is not substitutable with *yarn* (and *vice versa*), *yarn* is not substitutable with *fabric* and *fabric* is not substitutable with *garment*. Therefore, the question as to whether the fabric manufacturer buys yarn in a blended form or whether the end-consumers determine the demand for VSF is immaterial for the purposes of the Competition Law, because the fabric manufacturer buy the yarn and the end-consumers buy the garment. In the present case, the spinner is bound by the order placed on it by the fabric manufacturers. If a fabric manufacturer demands a yarn with 40% VSF and 60%



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cotton, for a 5–10% increase in price of VSF, the spinner cannot substitute the VSF with any other fibre, even if other fibre is cheaper than VSF.

21. The Commission has carefully examined the submissions made by the parties and it is observed that the DG in the Investigation Report has noted that industrial fibres may be broadly classified as natural and manmade. Natural fibres are those that are directly available from the natural sources, viz., plants, animals, minerals, etc. Natural fibres can be of animal origin, vegetable origin or mineral origin. Manmade fibres may be regenerated from natural or synthetic sources. Highlighting the distinction in terms of physical characteristics between natural fibres and man-made fibres, the DG noted that, while natural fibres can be various lengths, man-made fibres can be produced to be a specific length. Distinguishing between different man-made fibres in terms of the raw material from which they are manufactured, the DG noted that VSF is produced from wood pulp, PSF is made from Purified Terephthalic Acid (PTA) and Mono Ethylene Glycol (MEG), Acrylic Staple Fibre (ASF) from polyacrylonitrile and nylon is made from polyamides. Comparing the market structure in terms of the main producers for each fibre, the DG pointed out that each fibre is distinct and has a number of local producers, except VSF, which has only one Indian producer. Taking into consideration the aforesaid differences between the fibres, absence of change in the market dynamics in VSF between the time point investigated in the present matters 2017–18 and earlier matter Case No. 62 of 2016, 2012–17 and the fact that the relevant market has already been delineated in the earlier matter, the DG retained the relevant market in the instant matters as *'the market for supply of VSF to spinners in India'*.
22. Further, it is observed that, in the relevant market, the OP has reiterated its objections made in the earlier matter, i.e., Case No. 62 of 2016. The same has been dealt with the Commission in detail in Case No. 62 of 2016 and, as such, the same is not repeated herein. OP has also not placed on record any grounds to dispute the findings of the DG and there is no material to indicate that there has been any change in the market dynamics during 2017–18 from the earlier investigated period 2012–17 in Case No. 62 of 2016. In other words, there is nothing on record to show that the market dynamics/structure/competition/entry in VSF has changed during the period 2017–18 vis-a-vis the earlier period 2012–2017 examined in Case No. 62 of 2016. Based on the



aforesaid discussion, the Commission considers the relevant market in the instant matter as *'the market for supply of VSF to spinners in India'*.

Dominance:

23. Having delineated the relevant market, the Commission now proceeds to assess the dominance of OP in the said relevant market. In this regard, the DG found that OP is the sole producer of VSF in the country. The market share of OP in the domestic supply of VSF as extracted from the investigation report is tabulated below:

Table

Year	Domestic Consumption (Metric Tonne)	VSF Imports (Metric Tonne)	% share of OP in Domestic Supply
2015–16	311000	43000	86
2016–17	275000	44000	84
2017–18	291000	41000	86

Source: CARE Industry Research: MMF Update November 2018

Investigation Report of DG, Page No. 26.

Note: OP's domestic supply of VSF = domestic consumption – VSF Imports; (OP is the sole producer of VSF in domestic market).

The market share of OP in the domestic supply, was 84% in 2016–17 and it was 86% in 2017–18. The only other source of VSF to spinners in the country was through import. Imports from China and Indonesia are subject to anti-dumping duty, rendering the landed price of VSF from these countries as uncompetitive. Due to anti-dumping duty imposed on import of VSF, the countervailing power of Indian spinners are limited. Furthermore, there are also high entry barriers for a new VSF producer to start manufacturing in India. As such, there is practically no competition to the OP in the supply of VSF in India.

24. In response to the DG's findings regarding dominance in the relevant market, OP has submitted the following: the DG has incorrectly delineated the relevant market as the 'market for supply of VSF to spinners in India', and such incorrect delineation of the relevant market, has led to an erroneous determination of OP holding a dominant position in this incorrectly delineated relevant market. The DG should have considered all the relevant factors given in Section 19(4) and 19(5) of the Act for assessment and determination of the alleged dominant position of an enterprise and included it in the report, which the DG has failed to do. The DG has incorrectly noted that the market share of OP is consistently above 80% in the relevant market, the remaining being of imports.



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Furthermore, it was stated that OP's market share in India in the correctly defined relevant market for 'MMFs and cotton used in spinning for the production of blended yarns, textiles and apparel in India' was very low, and as on 2018, it was 4.5%, whereas the market share of polyester and cotton was 39% and 49%, respectively. Such a low market share is demonstrative of OP not having market power, let alone any dominance. The market share of VSF in the MMF market has declined from 6% in 1990 to 4.5% in 2017–18. However, the market share of polyester has been constantly increasing from 14% to 39% during the same period. OP has many competitors in the correctly defined relevant market, such as Reliance Industries, Bombay Dyeing, Lenzing, *etc.*, which are active and leading players in the supply of MMFs. These players are of greater size and resources compared to OP and have a superior position of strength. Thus, OP is far from being the "sole manufacturer" of MMFs to spinners. The absence of new players in the production of VSF in India should not be read as prejudice against OP. Imports exercise significant competitive constraints over OP in the domestic market for VSF.

25. OP has contended that, contrary to Informant No. 2's submission it faces significant competition from import of VSF *yarn* on which there is no anti-dumping duty. OP has argued that VSF imports constitute a significant portion of the VSF market and it actively pose competitive restraints upon OP. Further, OP has submitted that VSF has been constantly imported into India and it has been increasing thereby exerting competitive constraints on OP.
26. Having considered the issue and contention of OP thereon, it is noted from the above table, that the quantum of VSF imports into India were 43,000 MT, 44,000 MT and 41,000 MT during the period of 2015–16, 2016–17 and 2017–18 respectively. It is observed that the quantum of VSF imports has been very small as a percentage of domestic consumption of VSF for each year considered ranging between 14% to 16% and the market share of OP has been ranging between 84% to 86% in the relevant market during the period of investigation. The consistent market share of OP during the period of investigation indicate that imports do not act as a significant, economically viable alternative source of VSF supply for the spinners, much less acting as any countervailing force. Furthermore, it is noted that VSF manufacturing is capital intensive and involves complex technology, and subject to strict environmental restrictions. OP is having an



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excess production capacity of around 25%, thus, it is difficult for a new entrant to offer any sort of price competition to OP in the relevant market. Taking into account the aforesaid discussion, it is clear that OP enjoys a position of dominance in the relevant market of supply of VSF to spinners in India.

Abuse of Dominant Position:

27. Adverting to abuse, OP argued that its discounting and pricing policies are not unfair or discriminatory. The erstwhile COMPAT has clearly stated that, in order to hold a contravention by a dominant enterprise indulging in price discrimination under the Act, it is imperative to demonstrate that different treatment is being given to equivalent transactions, coupled with fulfilment of the condition that competition is either being harmed or is likely to be harmed. The DG in the DG Report, while holding OP to be in violation of Section 4(2)(a)(ii) of the Act, has incorrectly considered the transactions between OP and its customers, *i.e.*, spinners, on the basis of an incorrect understanding of the pricing and discount policy of OP.
28. It was submitted that the discounting structure and policy designed by OP is based on commercial factors and unique market and quality requirements in the market of MMFs, such as (i) type of VSF (grey/ dyed); (ii) location of plant; (iii) denier; (iv) grade; and (v) dyeing charges for dyed VSF. OP contended that it applies consistent criteria when determining base rates or discounts for customers falling in the same segment in terms of quantity purchased, denier, plant, grade of VSF, technology usage, *etc.*, and any difference in prices is on account of the specifications required by a customer. It was pointed out that OP offers a range of discounts and incentives. The customers eligible for such discounts are apprised of the same in the invoice, and the balance, if any, is credited through periodic credit notes. However, the quantum of discounts and incentives may differ from spinner to spinner based on the discount scheme availed by such spinner. Every spinner is entitled to the same discount rate under a particular scheme if it fulfils the applicable terms and conditions specified therein. It was argued that the disbursement of discounts are determined based on a uniform principle or methodology and are not unfair or discriminatory.



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29. OP argued that the DG has erroneously concluded that OP imposes supplemental obligations on its customers for the sale of VSF, *i.e.*, OP asks its customers to provide sales invoices, customer details, *etc.*, in order to control its position of dominance, which is in contravention of Section 4(2)(d) of the Act. It was contended that the practice of (i) seeking production data to evaluate the Segmental Scheme discounts and (ii) seeking proof of export in order to evaluate the export incentive, could not be considered arbitrary and unfair supplemental obligations under the Act as it was done in the usual course of business and was part of the commercial transaction/contract between the OP and the spinner. The DG has failed to undertake an assessment/effect-based analysis of the OP, requesting certain documents from the spinners.
30. Regarding refusal to supply to Informant No. 2, the OP contended that the DG did not recognise the evidence of a commercial dispute despite considerable evidence presented and available in the public domain.
31. In this regard, the Commission observes that the arguments made by the OP regarding the alleged conducts rely primarily upon Schott Glass Case. OP has submitted that it is imperative to demonstrate that: a) different treatment is being given to equivalent transactions; and b) competition is either being harmed or is likely to be harmed. The Commission is conscious of the fact that it is, *inter alia*, dealing with a price discrimination case, and it is essential to examine whether buyers within a specific category have been discriminated against, and if so, whether such discrimination has an effect on the market. In the said case, OP is a manufacturer of VSF, and customers/buyers of OP are spinners who buy VSF/input from OP and convert it into 100% VSF yarn or blended yarn and sell it. The Commission is also aware that OP sells VSF to different categories of customers and the Commission is only concerned about the domestic category of customer *i.e.*, domestic spinners. The arguments of the OP, that the disbursement of discounts are determined on the basis of uniform principle or methodology and the discounting structure and policy designed by the OP, is based on commercial factors and unique market and quality requirements in the market of MMFs, such as (i) type of VSF (grey/dyed); (ii) location of plant; (iii) denier; (iv) grade; and (v) dyeing charges for dyed VSF have also been taken into account while assessing the unfairness and discrimination. Earlier, the Commission, relying on data submitted by the



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OP in Case No. 62 of 2016 *XYZ v. Association of Man-Made Fiber Industry of India*, had clearly demonstrated that the practices followed by OP were discriminatory and had dealt the impact of differential discounts offered by OP on competition in the downstream yarn market/ domestic spinners.

32. Undertakings in competitive markets are generally entitled to determine whom to deal or supply and decide independently not to deal or supply to certain companies in the said market. Whereas, in case of dominant entity the situation is different as it is entrusted with a special responsibility with respect to the supply in the market. The case at hand however, points to a situation in which a dominant entity by offering VSF at prices that are not economically viable for the buyer/spinner to continue with its activity of spinning VSF yarn has denied a buyer/spinner access to an indispensable input in order to exclude that buyer/spinner from participating in VSF spinning thereby amounting to a refusal to supply. A refusal to supply may be classified as an exclusionary abuse. By way of its conduct the dominant entity prevents the requesting or terminated party from gaining access to an input. As a result, this undertaking/spinner is either driven out of the market, marginalized, denied access to market or prevented from entering the market.
33. VSF manufactured by OP is an indispensable input for producing both 100% VSF yarn or blended yarn. Without this input spinners cannot manufacture VSF yarn. The Commission has already shown that VSF imports are not an economically viable alternative for domestic spinners. Furthermore, the Commission in earlier cases has demonstrated that the OP has been discriminating against domestic category spinners by way of discounts resulting in a distortion of competition in the downstream market for 100% VSF yarn and blended yarn. In the instant matter, OP withdrew all discounts/credit notes to Informant No. 2, making the supply of VSF costly to Informant No. 2 and resulting in the VSF yarn manufactured by it to become uncompetitive. The difference between the present matter and earlier ones is that in the earlier matter, the issue was discrimination between domestic spinners regarding discounts offered by OP, whereas this is another case of discrimination but in a different form, *i.e.*, withdrawing/providing no discounts/credit notes to a VSF spinner and at the same time selling VSF at discounted prices/adjusting through credit notes to other domestic spinners who are all competitors in the downstream domestic VSF yarn market. Owing to the said conduct, Informant No.



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2 had to cease production of VSF yarn/blended VSF yarn. OP, being a dominant entity, manufacturing and supplying an indispensable input/raw material to downstream domestic spinners, is entrusted with a special responsibility not to discriminate amongst its buyers. Taking into account the aforesaid analysis, the Commission is of the view that the argument of OP, that refusal to supply VSF to Informant No. 2 is owing to a commercial dispute and the same is not a competition law matter, is devoid of merit and is misconceived. The Commission considers such conduct unfair and discriminatory in violation of Section 4(2)(a)(ii) read with Section 4(1) of the Act. The said conduct is also in violation of Section 4(2)(c) read with Section 4(1) of the Act.

34. Coming to the next limb of contravention recorded by the DG against OP, it is noted that the DG found OP to have sought details of production and exports from Indian spinners for sale of VSF. Such requisitions were found to be in the nature of supplementary obligations imposed upon the Indian spinners having no connection with the primary sale.
35. As regards the arguments of OP that seeking production data to evaluate the Segmental Scheme discounts could not be considered arbitrary and unfair as the DG has failed to undertake an assessment of OP requesting certain documents from the spinners, the Commission is of the view that the conduct of OP in seeking details of VSF consumed from the domestic spinners to provide discount is nothing but an attempt by a dominant undertaking to control the entire market in its favour by putting conditions which not only put supplementary obligations upon small players *i.e.*, the spinners but also interfere with their freedom of trade. The Commission is satisfied that by requiring the spinners to submit production details, OP has asserted its market power upon the small players and has acted in an abusive manner. Accordingly, the Commission holds the OP to be in violation of Section 4(2)(d) read with Section 4(1) of the Act as well.

ORDER

36. In view of the above, the Commission is of the opinion that the OP has abused its dominant position in the relevant market of '*the market for supply of VSF to spinners in India*' by charging discriminatory prices to its customers, denying market access and imposing supplementary obligations upon its customers in violation of the provisions of



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Sections 4(2)(a)(ii), 4(2)(c) and 4(2)(d) read with 4(1) of the Act, as detailed in this order. The Commission directs the OP to cease and desist from indulging in such practices, which have been found to be in contravention of the provisions of the Act.

37. Considering the fact that penalty of Rs. 301.61 crore has already been imposed on the OP *vide* a separate order dated 16.03.2020 of the Commission passed in Case No. 62 of 2016 with respect to substantially similar conduct, and further taking into account the period of contravention in the instant case (2017–18) which was in continuation of the period of contravention in the previous case (2012–2017) and thus, overlapped partly, the Commission deems it appropriate not to impose any further monetary penalty upon the OP.
38. The Secretary is directed to communicate to the parties, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 06/08/2021

Place: New Delhi