BEFORE
THE COMPETITION COMMISSION OF INDIA
CASE NO.01/2010

INFORMANT
GKB HI TECH LENSES PRIVATE LIMITED

OPPOSITE PARTY
TRANSITIONS OPTICAL INDIA PRIVATE LIMITED

Date 16.5.2012

Order

1.1 This case was initiated on the basis of information filed by M/s GKB Hi Tech Pvt. Ltd. (hereinafter “GKB”) against M/s Transitions Optical India Pvt. Ltd. (hereinafter “Transitions”) to the Competition Commission of India (hereinafter “Commission”) under Section 19(1)(a) of The Competition Act, 2002 (hereinafter “Act”) on January 08, 2010. The Commission, upon examination of the facts of the information, passed an order under Section 26(1), on January 19, 2010 recording its opinion that there exists a prima facie case, and directed The Director General (hereinafter “DG”) to investigate into the matter.

1.2 The DG submitted the investigation report on August 23, 2010. The investigation report was sent to the parties seeking their response on the same and further process of inquiry was undertaken in accordance with the provisions of the Act and relevant regulations there under. Full opportunity was given to both GKB and Transitions for perusal of all relevant records and making their submissions, both in writing and orally before the Commission.

2. Factual Background

2.1 The Informant viz. GKB is engaged in the business of manufacturing glass and plastic ophthalmic lenses for both exports as well as domestic market and reselling of products of various lens manufacturers after value addition. The value...
addition is in the form of coating of lens i.e. hard coating or anti reflection coating. Carl Zeiss Vision International is a majority shareholder in GKB having a share of 50.15% as in 2007. Carl Zeiss is a German Company and one of the world’s leading companies dealing with ophthalmic products.

2.2 The Opposite Party, Transitions India, is an Indian joint venture between Transitions Optical Holdings B.V., The Netherlands and Transitions Optical Inc., USA. The core business model of Transition India is to purchase substrate (semi-finished lens) from its caster partners, process the substrate (i.e. apply the Photochromic coating), and to sell the finished goods back to the lens casters. Transitions India has stated that it is the marketing arm of Transition Optical Inc., USA and does not undertake Photochromic treatment or manufacture lenses in India. The lenses are photochromically treated in plants located outside India and finished products are imported by caster partners.

2.3 The Related Party (to Transitions), is Essilor India. Essilor India is 100% subsidiary of Essilor International which is a world leader in ophthalmic lenses and other allied products. It entered the Indian market through a Joint Venture (JV) with SRF Limited, New Delhi in 1998. SRF Limited exited in 2004 and since then Essilor India is 100% subsidiary of Essilor International. Essilor International is a holder of 49% stake in the Transitions Optical Holdings B.V., The Netherlands and Transitions Optical Inc., USA. The majority stake in Transitions International is held by PPG Industries Inc. Thus, the parent company of Essilor India is a 49% stakeholder in the parent companies of Transitions India. At the operational front, Essilor India is also a lens caster like GKB and in competition with GKB and other similar players.

2.4 The case of the informant is premised on the proposition that Transitions India is a dominant enterprise in the business of Plastic Photochromic Lenses (PPL) in India and that it is abusing its dominant position by indulging in a number of anti-competitive practices. As per the allegations, the Caster Partners are forced to suffer discriminatory and exclusionary conduct because of the dominance of Transitions India. Accordingly, the informant viz. GKB alleges the infringement of the provisions of Section 4 of the Act. The informant has also alleged that
Transitions India and Carl Zeiss Vision have entered into an agreement that violates Section 3 of the Act.

Allegations

2.5 Transitions India, imposed discriminatory and unfair conditions on GKB in violation of Section 4(1) read with Section 4(2)(a)(i) of the Act by: (i) supplying the products to Essilor India at prices lower than those being offered to GKB; (ii) allowing a credit period of 60 days as against the standard industry practice of 90 days; (iii) not allowing GKB to take advantage of investing in hard coating plant by reducing the price difference between uncoated and hard coated lenses as is applicable to the rest of the world to indirectly benefit Essilor India which does not have coating facilities and; (iv) requiring GKB to provide details of all customers which is a business sensitive information and if shared with Essilor India, it would raise competition concerns.

2.6 Furthermore, Transitions India imposed unfair conditions on GKB by not allowing them to export the product even after they have undertaken value addition on the product after purchasing from Transitions India unless GKB paid them the difference in prices in two countries. Also sale to customers in India who intended to export the products to other countries was not allowed. There were also allegations of arbitrary changes in supply chain, supply period being more than assured supply period, restricting the sale of older generation of products even when there was demand for the same, and no settlement of dues against amounts owed to GKB by the OP.

2.7 Transitions India also limited the market of GKB in violation of Section 4(1) read with Section 4(2)(b)(i) of the Act by forcing GKB to sell the product of Transitions India on an exclusive basis and stopping GKB from sale of "Acclimates" brand of Transitions.

2.8 Transitions India also implemented practices resulting in "Denial of Market Access" to GKB and thereby violating Section 4(2)(c) of the Act again referring to the previous allegations of restriction of sale of Acclimates, export restrictions and restrictions in dealings of older generation of products.
2.9 Transitions India is also alleged to have abused its dominance by leveraging its position in the upstream market of processing of PPL's to secure the market of Essilor India in downstream sale of PPL's by indulging in discriminatory and unfair practices as discussed.

2.10 GKB also alleged that Transitions India have stopped supplies to GKB and terminated the business relationship. This allegation has the impact of ‘Refusing to Deal’ under the Act.

2.11 Finally, GKB vide its letter dated May 22, 2010 has alleged that Transitions India and Carl Zeiss Vision have entered into an agreement called as ‘Strategic Partnership Agreement’ from January 2010 to December 2014 and this would have the effect of artificially increasing the prices of PPL in India.

Reliefs Sought

2.11 Issue an interim order directing Transitions India to restore supply of product to GKB on non-discriminatory basis.

2.12 Issue orders to Transitions India to immediately discontinue Abuse of Dominance and cease anti-competitive conduct.

2.13 Impose maximum penalties on Transitions India for their anti-competitive conduct in violation of the provisions of the Act.

3. Summary of submissions of Opposite Party

The Opposite Party viz. Transitions India submitted its replies to DG during the course of investigation and to the Commission. The summary of the response of the opposite party is as follows:

3.1 Transitions India stated that the relevant product market in this case is wider than the market for Plastic Photochromic lenses and is at least wide enough to include "all types of ophthalmic lenses (glass and plastic) that protect eyes from"
ultraviolet rays and reduce glare". In support of this, Transitions India stated that whilst, PPL may have some advantages over Glass Photochromic Lenses (GPL), but on the other hand GPL also has some advantages.

3.2 Transitions India stated that it is not dominant in any market relevant to the case. It has cited a SWV Report according to which its market share is insignificant. Further, it has been stated that even based on other factors under section 19(4) of the Act such as size and resources of Transitions India, degree of vertical integration, countervailing buyer power, dominance cannot be concluded.

3.3 Transitions India stated that it did not engage in any anti-competitive conduct such as price discrimination. It submitted that while prices in 2006 and 2007 were identical for Essilor India and GKB for "generics", the increase in prices in 2008 was also meant to be uniform for all caster partners for Semi Finished Single Vision (SFSV) lenses and Progressive Additional Lenses (PALs) for Essilor, GKB and Hoya. However, on account of negotiations, the intended increase in SFSV lenses of USD 1 was rolled back both for Essilor and GKB but for PALs the increase in prices by USD 0.25 was rolled back only for Essilor and not GKB. The reason cited for the same was that GKB's PAL purchases were solely lower tier speciality products, which had small margins, as compared to Essilor India and the fact GKB did not raise any serious objections to the "miniscule" price increase. Thus, the 2008 price for PALs was marginally higher for GKB but it enjoyed a favourable credit period, marketing support etc. The difference in 2009 prices was on account of foreign exchange mechanism agreed between the parties. On the issue of prices for Hoya Optical being higher the OP stated that the quantities purchased by Hoya were significantly less and Transitions India could not achieve the same economies of scale with them and consequently the prices were higher for Hoya India.

3.4 Transitions India stated that the price difference for coated and uncoated products exists not on account of favouring Essilor India against GKB. Transitions India confirmed that the price difference existed since the time it started business in India. The price difference between coated and uncoated lenses of Transitions India is INR 20 (USD 0.45) for India while the price difference for other regions is approximately in the range of USD 0.48 to USD 1. Thus the price difference...
between the coated and uncoated lenses in India is in line with the rest of the world and existed right from the time Transitions entered business in India.

3.5 As regards information on customer details the OP submitted that it has never obtained details of customers from its caster partners, including GKB. Copies of agreements between the casters and Transitions India were submitted to the DG, which demonstrate that it does not require its caster partners to provide any customer details but only sales data, by product category and country wise to access inventory requirements etc.

3.6 No ban or legal restrictions on exports have been placed by Transitions India. It merely required the price reconciliations to be settled in the event of exports by lens casters for the differences in prices of Transitions India for Indian market and relevant overseas market. Transitions India stated that it follows regional pricing policy based on exercise of its trademarks, patent and other intellectual property rights which actually benefits consumers and is value enhancing and this difference in prices between the Indian and overseas market require the framework of price reconciliations.

3.7 On the issue of obsolescence policy, Transitions India contended that it follows a generous obsolescence policy. It gave GKB, like any other customer over 18 months to phase out the obsolete products, during which period Transitions India continued to supply the old product. It also accepts the return of obsolete products during this time period and has compensated its customers, including GKB, for the returns. Transitions India submits that every manufacturer has an obsolescence policy as it is not commercially feasible to continue producing old versions/generation of products and if so directed, would hamper the ability of such an enterprise to develop new and better technologies for the benefit of the customers. Transitions India obsolescence policy is in line with its global policy practiced across all caster partners. On the arbitrary changes in supply chain, Transitions India contended that GKB’s allegation that one day notice was given before supply chain change is false.

3.8 Transitions India has never insisted on exclusivity with its caster partners. Most customers, (including GKB) sell lenses of other manufacturers who are
competitors of Transitions India. It is also stated that the agreement entered into by Transition Optical US and GKB for "Acclimates" provided that GKB and/or its affiliates may not continue sales of PPL of other manufacturers in India but the said clause was never enforced against GKB as is evident from the fact that GKB stocks and sells product of other manufacturers who are competitors of Transitions India.

3.9 The sale of Acclimates was restricted by Transitions India in order to prevent customers from being misled between the high end and low end products and to protect its brand and goodwill as GKB was selling a low end product projecting it as a high end product.

3.10 Transitions India submits that there is no unjustified delay in delivery by Transitions India to GKB, the delays if any were on account of inaccurate forecasts provided by GKB.

3.11 Regarding entry of competitors in Indian market, Transitions India stated that since 2009, various competing brands of Photochromic lenses have been launched in India like Q Shade Plus (distributor: Prime), Sun Sensor (distributor: Corning) and a few other brands. Moreover, GKB has also launched its own brand of Photochromic lenses under the brand name "SWISS". Carl Zeiss Vision International Gmbh has in October 2011 entered the Indian market and has launched their globally introduced brand "Photofusion". Other instances of brand introduction by Vision Rx and Essilor have been submitted.

3.12 Transitions India stated that it was never its intention to terminate the business with GKB. It was forced to stop supplies owing to continuous defaults in payment of outstanding dues amounting to USD 2.6 Million (plus interest) which was adversely affecting Transitions India’s business.

3.13 Lastly, Transition India contended that the market for Photochromic lenses is highly competitive with many brands available to the end consumers. Therefore, Transitions India is constrained by global players launching their products in India apart from facing competitive constraints from manufacturers in low-cost jurisdictions such as China.
4. DG'S Findings

4.1 The DG investigated the matter with respect to the following issues:
   i. What would be the Relevant Market in the said case?
   ii. Whether the OP has a dominant position in the relevant market as determined?
   iii. If so, whether the OP has abused its dominant position in the relevant market by adopting various exclusionary and exploitative practices in contravention of the provisions of Section 4 of the Act?
   iv. Whether the Strategic Partnership Agreement entered into by OP and Carl Zeiss Vision is violating the provisions of Section 3 of the Act?

Methodology

4.2 In order to examine the issues framed above, questionnaires were sent by DG to the various parties to the case and other parties supposedly dealing in ophthalmic lenses in India.

4.3 After examination of the replies/documents etc. received from the parties, the submissions of the Informant, DG analysed the various issues.

Relevant Product Market

4.4 The DG examined the Informant’s definition of the Relevant Product with reference to the definition of Relevant Product Market as provided under Section 2(t) read with the factors enumerated under Section 19(7) of the Act. Upon evaluation in terms of these factors, DG upheld the Informant’s definition of ‘Plastic Photochromic Lenses in India’.

4.5 On issue of substitutability of PPL’s with GPL’s and Clear Lenses, DG took into account the effectiveness of PPLs in terms of speed of activation and deactivation, lifespan, temperatures sensitivity etc. DG concluded that the advantages that PPLs have over GPLs such as more effective Photochromic qualities and darkening of lenses owing to uniform thickness, relatively lightweight and comfortable to wear, durability, and greater flexibility in terms of fitting in frames and various styles make PPL a relevant market in itself.
4.6 DG examined the business model of Transitions India and concluded that Transitions India has the main objectives to liaison with caster partners, procure orders, supply Photochromic lenses in India and promote the Transitions brand in India. The caster partners provide the substrates to Transitions India. Transitions India converts these substrates into final product i.e. PPL through its proprietary process. The Photochromic plants of Transitions India are located in USA, Ireland, Brazil, Thailand and Philippines and not in India. These PPLs after the Photochromic treatment are again bought by the caster partners for onward sales. Thus based on the end use of PPL the relevant geographic market is India.

Relevant Market

4.7 In view of the analysis with regard to the relevant product and geographic market, the DG concluded that the relevant market in the current case in terms of Section 2(r) of the Act is the market for ‘Plastic Photochromic Lenses’ in India.

DG's Assessment of Dominance

4.8 Having determined the relevant market, the DG assessed the dominance of the Opposite Party in accordance with the definition of dominant position provided in Explanation (a) to Section 4 and the factors prescribed under Section 19(4) of the Act.

4.9 DG identified the major companies which undertake or conduct Photochromic treatment or chemical coating of various monomers etc. on the basis of data obtained from various parties during the course of investigation as Transitions Optical Inc., Corning Inc., Hoya Corporation and Rodenstock GmbH. It was noticed that these companies have specialized Photochromic material or proprietary chemical coating technology which converts the clear lenses into Photochromic lenses.

4.10 Corning Inc. stated that defining the Corning’s share of Indian PPL market is not possible as historically it has sold only Photochromic monomers but to the best of their knowledge, the share would be approximately 10%.
4.11 It was noticed that Hoya India had not launched its product in India neither it had plans to import these lenses in India till its network was stronger and better set up. Hoya India is a processing and trading unit and purchases the PPL from Transitions India. It has been set up for sales in India and has no export activities from India.

4.12 Rodenstock Gmbh's market share was found to be negligible. Its brand Colormatic had sold only 217 thousand pieces in a span of 5 years from 2005 to 2009 in India.

4.13 After examining the market shares of the competitors of Transitions India in the upstream market, DG took into account the data on downstream market provided by the informant. According to data submitted by GKB, it had a market share of 50% in the downstream market of PPL while the shares of Essilor India was 30%, Hoya India was 5%, Techtran Polylenses was 5% and other wholesalers who import the generic product directly was 10%. It was established by DG that as GKB, Essilor and Hoya deal exclusively in the products of Transitions India, their 85% market position reflects the market position of Transitions India.

4.14 The Respondent also submitted the data on imports of Ophthalmic Lenses for the years 2008 and 2009 sourced from Cybex Exim Solutions Pvt. Ltd. DG calculated percentage of Transitions India PPLs imported to the imports of total PPLs in India. The figures were obtained as 78.9% for 2008 and 87% for 2009.

4.15 Based on the data provided by GKB for the downstream market, import data provided by Transitions India and replies of other entities engaged in the business of Photochromic lenses, DG concluded that Transitions India is a major player and enjoys dominant position in both the upstream and downstream market for PPLs in India.

4.16 DG also considered other factors specified under Section 19(4) of the Act for the assessment of dominance viz:

a. Considering the size and resources of the Transitions India, DG concluded that it enjoys dominant position not only in India but also in USA.
b. Considering the size and resources of competitors DG concluded that some of the competitors of Transitions have limited presence or no presence in India.

c. Considering economic power of the enterprise including commercial advantages, DG concluded that the same should be looked in the light of proprietary technology employed by Transitions India which is of superior quality and gives Transitions a commercial advantage over its competitors.

d. DG also concluded dependence of the consumers on Transitions given the superior features of the PPL of Transitions.

DG concluded that the process of converting a clear lens into the Photochromic lens requires application of a chemical process which requires heavy investment in research and development. Thus the technology employed for conversion of clear lens to PPL is an entry barrier coupled with high cost of Research and Development. DG further concluded that the Countervailing buying power of caster partners is negligible given the importance of Photochromic technology possessed by Transitions.

4.17 Based on assessment of the factors as above and market shares, DG concluded that Transitions India is a dominant enterprise and is in a position to unilaterally terminate its’ business operations with any of its caster partners.

Examination of alleged abuse of dominance

Price Discrimination

4.18 GKB alleged that Transitions India is supplying the product to Essilor India at prices lower than those being offered to GKB even though Essilor India and GKB are competitors in the same geographical and product market. On the issue of price discrimination, DG made the following observations:
a) In 2006 and 2007, the benefit of a favourable foreign exchange fluctuation of 14%, was extended in a consequent price decline to Essilor but not to GKB. In another instance, the unfavourable foreign exchange fluctuation of 7.6% was passed on to GKB and Hoya in a consequent price increase, while it was not passed on to Essilor India. The reasons cited by the OP was that the permissible foreign exchange hedge band agreed between Transitions and Essilor India in 2004 was +/-10%, whereas the hedge band agreement with GKB and Hoya was +/- 5%.

b) In 2008, Essilor India was favoured over other caster partners i.e. GKB and Hoya India with USD 0.25 price increase on progressive products.

4.19 DG rejected the submissions of Transitions India that the price anomaly was a result of the foreign exchange fluctuation mechanism agreed between Transitions India and Essilor India in 2004, when GKB and Hoya India were not in business. DG concluded that since the new mechanism of 5% fluctuation benchmark was agreed in 2006 itself, Transitions India was well aware about the difference that existed on this account.

4.20 DG also presented a comparative chart showing the price difference for 2009 between the competitors for different products. The chart as prepared by DG is as under:

<table>
<thead>
<tr>
<th>Year 2009</th>
<th>Product Group</th>
<th>Index</th>
<th>Essilor</th>
<th>GKB</th>
<th>Hoya India</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Jan-Feb</td>
<td>Mar</td>
<td>Apr-Jun</td>
<td>Jul-Dec</td>
</tr>
<tr>
<td>Generics</td>
<td>FSV UC</td>
<td>1.5</td>
<td>213</td>
<td>213</td>
<td>253</td>
</tr>
<tr>
<td></td>
<td>FSV HC</td>
<td>1.5</td>
<td>232</td>
<td>232</td>
<td>274</td>
</tr>
</tbody>
</table>

Table 1: Prices charged by Transitions to various casters
4.21 Based on the above analysis, DG found the allegation of price discrimination to be substantiated.

**Discrimination in credit period**

4.22 GKB alleged that it is allowed a credit period of 60 days as against the standard industry practice of 90 days. DG considered the details/documents with regard to the credit period availed or provided to Essilor India and Hoya India. On examination of the same it was noted that GKB was favoured with credit period of 90 days in comparison to 60 days offered to Essilor India and Hoya India. The credit period was reduced to 60 days in line with other caster partners on account of GKB irregularities in meeting the payment obligations. Thus, DG did not find the allegation to be substantiated.

**Reduction of difference between the prices of coated and uncoated lens**

4.23 GKB alleged that the difference between the prices of coated and uncoated lenses of Transitions India is less in India as compared to rest of the world. It had been alleged that this has the intent of rendering the investment made by GKB in Coating Plants as futile and favouring Essilor India which does not have coating facilities.

4.24 DG considered the submissions made by Transitions India stating that the price difference across rest of the world is USD 0.48 to USD 1 and in India it is around USD 0.45. The difference is same from the time Transitions India came into business. DG accepted the submissions and also considered other cost factors to conclude that the allegation was not substantiated.
Seeking Customer Details

4.25 GKB alleged that Transition India requires GKB to provide details of all the customers and particulars of quantity of the product that they purchase. GKB suspected that the information is not kept confidential and instead shared with Essilor entities given the relationship between Transitions India and Essilor India.

4.26 Transitions India stated that it requires sales data for evaluating the marketing campaigns, for allocation of marketing funds, understanding the product demand etc. and has never requested or sought details of the customers or the quantities from the caster partners.

4.27 DG made the following observations in this matter:

a) Hoya India submitted the sales information to Transitions by sales product only and has not given the customer information.

b) Essilor India stated Transitions India has sought the list of customers and details from it but it has not provided any such list to Transitions India as they treat the sales information with strict confidentiality.

c) GKB submitted an e-mail from Transitions India attaching the minutes of the Goa meeting held on August 26, 2009. The minutes contained prescribed format in which information was to be submitted including the names of the customers also.

4.28 Based on above findings, DG concluded that seeking of sales information is not discrimination per se but insisting on customer database from caster partners is unfair and discriminatory condition and thus concluded the allegation as substantiated.

Unfair Restriction on Exports

4.29 GKB alleged that it intends to export the product of Transitions India to countries where the prices are higher than that of India. However, it is not being allowed to do so, even after value addition by GKB unless it pays the difference in the price of the Transitions India’s product in two countries.
Similarly, Transitions India also restricts GKB from selling the product to customers who intend to export them to other countries.

4.30 Transitions India on this issue submitted that it does not have a uniform global price and instead follows regional pricing policy and all caster partners are free to either purchase products from one of Transitions regional facilities at appropriate regional price for sale in the region/country or alternatively reconcile prices with Transitions for the product purchased at location but flowing into multiple locations.

4.31 DG took note of the regional pricing policy and the scope of arbitrage for the caster partners because of price differences. DG also considered the aspect of value addition by the caster partners before exports and concluded that these restrictions imposed by Transitions prevent realization of investment undertaken by caster partners for value addition. The incentives arising out of value addition are reduced and hence the allegation on restriction of exports is found to be substantiated.

Changes in Supply Chain, Delivery period

4.32 GKB alleged that Transitions India arbitrarily changes the supply chain of products to GKB without any reasonable notice and the fact that it takes around 8 to 21 days to deliver the product against the assured supply period of 3 days without providing any justification or reason thereby affecting the sales of GKB.

4.33 On the issue of supply chain change at short notice, GKB submitted a copy of e-mail from Transitions dated March 31, 2009 specifying the change in supply chain from April 1, 2009 onwards. In its response, Transitions India pointed out that the discussions for changes in supply chain were held in November 2008 with CZV and submitted minutes of the review meeting held in November 2008, a copy of email dated March 3, 2009, minutes of the meeting held on March 10, 2009 and another email dated March 12, 2009 evidencing GKB was well aware of the changes in supply chain.
DG considered the documents/replies and concluded that the allegation of GKB for arbitrary change in supply chain is not found to be substantiated.

Delay in delivery of PPL beyond the assured supply period of 3 days

On the issue of delivery of PPL beyond the assured supply period of 3 days, GKB submitted a copy of email dated June 30, 2009 to substantiate the 85% accuracy forecast for the two quarters of 2009. Transitions India in their reply submitted copies of numerous e-mails to GKB during 2008-09 reminding and seeking the accurate forecast and actual order position. Transitions India also submitted that on numerous occasions, GKB ordered for products without providing the forecast.

DG considered the details/documents produced and concluded that the business here requires movement of raw material from different locations and supply of final product from different location, thus accuracy of forecast is important for smooth functioning of supply chain. The aforesaid allegation pertain more to the extent GKB and Transitions India meet each other’s contractual obligations. Thus, the allegation is not found to be substantiated by DG.

GKB subjected to arbitrary price increase without a reasonable notice

On this issue GKB submitted a copy of email dated December 18, 2008 specifying rise in price. DG asked Transitions to provide instances in last 2 years wherein they raised the prices without giving reasonable notice to the caster partners.

Transitions submitted that price was increased in the year 2008 owing to Indian Customs Tribunal decision in December 2007 wherein customs duties on semi-finished lenses were more than doubled to 34%. To implement the price rise, caster partners were given one and a half month notice.

In the year 2009, Transitions India increased the prices on account of forex fluctuations. It further stated that discussions for price rise were started in December 2008 but it was made effective from March 1, 2009.

DG took note of all the submissions and documents, letters, emails exchanged on account of discussion or intimation of change in pricing and observed that
caster partners were duly informed in all the cases. Thus, DG concluded that the
allegation of arbitrary increase in prices by Transitions India is not substantiated.

Restricting/Preventing the sale of older generation of products and related
issues

4.41 GKB alleged that Transitions India prevents GKB from selling the older
generation of products even when there is demand from the customers.

4.42 Transitions India confirmed that during the last 5 years only once in April 2008 it
launched the new generation product TVI which resulted in the phasing out of the
older generation product. It further stated that 6-9 months before the product
launch, caster partners were engaged in discussions. Also after the launch of the
product, it not only accepts the return of obsolete inventory but also provides one
year to enable caster partners in phasing out the inventory of older product. Even
after an year of launch, caster partners are not prohibited to sell old inventory but
Transitions India does not actively support the customers with spares of the
discontinued product.

4.43 DG considered the pros of advancement of products with changing technologies
and concluded the same is important for the benefit of the consumer and for a
firm to remain competitive. However, DG also considered that non provision of
support/spares limits the market of caster partners who wish to sell the
discontinued product on account of demand from consumers. DG also
considered that GKB being the major seller of Transitions India is more
dependent on spares and support compared to other caster partners. Hence, the
allegation of GKB being prevented from sale of older generation products stands
substantiated.

Reimbursement for obsolete products

4.44 GKB alleged that Transitions India does not settle the dues in respect of return of
obsolete products and stops supplies of the products to GKB for late payments.
GKB alleged that the practice is unfair.
4.45 Transitions India in their reply stated that the obsolescence amount due to GKB was adjusted by GKB in their outstanding bill of May 2008. For overseas exports, Transitions Optical (US), Transitions India, Transitions Optical (Ireland) entered into an agreement with GKB pursuant to which GKB agreed to deal directly with Transitions Optical (Ireland). Transitions Optical (Ireland) entered into an obsolescence agreement with CZV related to launch of TVI and discontinuance of TV generation lenses for the European region. The compensation on account of obsolescence was paid to CZV Europe considering that CZV would in turn compensate its subsidiary in India, i.e., GKB. Further Transitions India also provided copy of ledger account to show that reimbursement had been made.

4.46 DG considered the above replies and documents made available by the parties and concluded that the allegation related to non-reimbursement of obsolescence amount is not substantiated.

Reimbursement for marketing support

4.47 GKB alleged that Transitions India does not settle the dues in respect of marketing fund and stops supplies of the products to GKB for late payments. GKB alleged that the practice is unfair.

4.48 DG considered the issue and made the following observations:
  a. Marketing funds were linked to sales targets achieved by caster partners.
  
  b. Accordingly marketing fund support was being provided only to GKB and Essilor as Hoya had insignificant sales.
  
  c. Actual flows of marketing funds over a period of time to GKB and Essilor were considered to conclude GKB had received higher proportion of marketing fund compared to Essilor owing to higher share in sales volume.
  
  d. It was also noticed that marketing fund committed by Transitions India for FY 2007-08 and 2008-09 were duly released to GKB. However, for FY 2009-10, it was noticed that in some instances payments were being made directly to the agencies by Transitions India and committed funds were not remitted to GKB. This conduct coincided with the dispute between the two parties and consequent stoppage of supplies.
4.49 On the basis of aforesaid discussion, DG concluded that allegation made by GKB regarding stoppage of reimbursement of marketing support is not substantiated.

**Exclusivity requirements**

4.50 GKB alleged that it is being forced to sell the product of Transitions India on an exclusive basis and is not allowed to sell similar products of other manufacturers who are competing with Transitions India. Such practice is a restriction on the market and Abuse of Dominance by Transitions India.

4.51 Transitions India stated that it has not entered into any exclusive dealing agreements with the caster partners. It further stated that the Acclimates Lenses purchase and sale agreement dated July 01, 2008 signed between GKB and Transitions Optical US provides or does restrict GKB and other caster partners from selling the Photochromic lenses in India, but the said restriction clause was never enforced against GKB.

4.52 DG examined: a) the pricing letters issued by Transitions India to GKB from time to time; b) letter of agreement dated February 20, 2007 between Transitions Optical US, GKB and CZV, in relation to sale of Transitions V(TV) lenses; c) letter of agreement dated May 11, 2007 between Transitions Optical US, GKB and CZV in relation to the sale of Transitions New Generation (NG) lenses; and d) Acclimates Lenses Purchase and sale agreement dated July 1, 2008 between Transitions Optical (US) and GKB in relation to the sale of Acclimates lenses.

4.53 On examination of terms and conditions of the aforesaid documents, it was noted that the Acclimates Agreement contained Exclusivity Clause. The specific clause (IV) (C) provided:

"Supply and Distribution: Customer agrees, on behalf of itself and its affiliates, that it will discontinue sales in the Territory of Photochromic lenses of other manufacturers, if any".

4.54 DG also took note of email dated June 8, 2009 from Deven Patil (Transition India) to GKB. The contents of the mail were as under:
"Hi Neeraj
I just heard from the Mumbai retail that some retailers are not getting their Transitions supplies. The 2 outlets which indicated this are 1) Eye Care & 2) Sunayan both from Andheri (E). They were indicated that they can be given SunSensors instead. These are both ‘Transitions Pro Partner Program’ participants & are unable to comprehend this message.

Can I request you to intervene & ask your Mumbai team to refrain from this? Our issue will be resolved in a day or so but the market need not be given indications otherwise as recovering from that will take a much longer time. Plus you have all along mentioned that for Indian market you have supplies that will last for at least 3 weeks!!
Thanks for your understanding.
Regards
Deven"

4.55 DG also took note of the submissions of GKB, Essilor and Hoya that they were dealing exclusively in Transitions products. GKB submitted that it entered into business agreement with Transitions India from April 2007 and from then on it has not sold PPL in Indian market except that of Transitions India. Essilor had stated that it caters to premium segment products hence source PPL from Transitions India only. Hoya India which had its own brand ‘Suntech’ did not launch the same in India and was not dealing in other brands such as Sunsensors and Colormatic.

4.56 Based on the Clause (IV)(c) of the Acclimates Agreement, email from Transitions dated June 8, 2009 and the submissions and observations of all caster partners, DG concluded that Transitions India tried to prevent or restrict its caster partners from dealing in the PPL of other competitive companies and hence the exclusivity allegation stands substantiated.

Restriction on sale of Acclimates

4.57 GKB alleged that it intended to sell Acclimates in India after value addition by the use of freeform progressive technology over the “Acclimates Product” in order to be made available to the consumers in India a cheaper brand of the product and Transitions India immediately stopped GKB from doing so and thereby prevented sale of cheaper product in India causing restriction on the market.
4.58 On this issue Transitions India submitted that Acclimates was an entry level PPL brand offered in Finished Single Vision (FSV) form in India. It was not offered under PAL in India as a superior progressive PPL already existed under the Transitions Brand. It however, stated that GKB by using the freeform technology was converting this cheaper brand into higher end brand “Progressive”. The low end product was being projected as high end and sold at high end prices damaging the reputation and goodwill of Transitions India.

4.59 DG apart from aforementioned submissions of Transitions India also considered the Clause (IV)(b) of the Acclimates Agreement which provided

"Brand Strategy: The parties acknowledge that the goal of offering Acclimates Lenses is to capitalize on opportunities in India where Transitions Brand lenses have limited penetration. The long term goal is to develop sales of Transitions Brand Lenses in the territory and the purpose of this agreement is as an intermediary step to achieve the final goal of selling Transitions brand lenses. Customer agrees to adhere to this strategy and to not actively promote Acclimates lenses”

4.60 DG on the basis of Clauses (IV)(b) and (IV)(c) of the Acclimates agreement concluded that Transitions India was more interested in restricting the sale of Acclimates and these restrictions forced the caster partners to undertake restricted/limited promotion of Acclimates in order to develop the market for its premium high end products. DG also concluded that this kind of dual policy of launching a product on one hand and restricting its promotion on the other hand is anti-competitive in nature.

Strategic Partnership Agreement between the OP and Carl Zeiss Vision (CZV) in contravention of Section 3

4.61 GKB vide letter dated 22nd May 2010 alleged that Transition India and CZV are indulging in certain practices to artificially increase the prices of PPL in India. GKB stated that CZV and Transition Optical US have entered into a Strategic Partnership Agreement based on which Transition will sell its SFSV PPL, to subsidiaries of CZV, (including GKB) at a price much higher than the cost of SFSV Transition for consumers; and at the end of the period of agreement,
Transition will compensate CZV by refunding a part of this artificially increased price to CZV outside India.

DG examined the said agreement and noted that the main purpose of CZV and Transition Optical US was to undertake promotion of sales, marketing, co-branding, training of sales and service personnel etc. Also, the said compensation scheme was analysed and it was noticed that such payment obligations does not include purchases made by GKB. It was also noted that the said agreement was entered on account of discontinuance of business operations between Transition India and GKB.

On the basis of the study of agreement DG concluded that the allegation made by GKB with regard to section 3 does not stand substantiated.

5. Analysis and findings of the Commission

5.1 Having examined the DG's Report and responses the issues for determination in this case are:

i) Whether the agreement between CZV and Transitions India is in contravention of Section 3 of the Act? And;

ii) Whether Transitions India is in a dominant position in the relevant market, and has abused such dominance in contravention of Section 4 of the Act?

5.2 Violation of Section 3

5.2.1 The Commission took note of the strategic partnership agreement entered into between CZV and Transitions India, after the termination of business operations between Transitions India and GKB. The main purpose of agreement is promotion of sales, marketing, co-branding, training of sales and service personnel etc. The "Single Vision Strategy Compensation" scheme was examined. Under this scheme, Transitions Optical US agreed to make a one-time payment to CZV for net price differential associated with 2009 'single vision' price changes. This compensation was meant for the price differentials incurred by CZV during second, third and fourth quarter of 2009 and all of 2010. The calculation of compensation was not to consider purchases made by GKB, whilst it was a JV partner of CZV. The Commission agrees with findings of DG that this
is an independent agreement between CZV and Transitions Optical and allegation made under Section 3 is not substantiated.

5.3 Analysis and findings on abuse of dominance

An analysis of allegation of Abuse of Dominance (AoD) must start with defining at the outset the relevant market and determine whether the respondent is in a dominant position in order to assess AoD as alleged by the informant.

5.3.1 Determination of Relevant Market

The pivotal inquiry in a case of alleged abuse of dominance is whether the OP is in a dominant position in the relevant market. As per explanation to Section 4 of the Act, "dominant position means a position of strength, enjoyed by an enterprise in the relevant market." Therefore, assessment of dominance is to be preceded by delineation of the correct relevant market in which dominance of the enterprise under consideration is to be assessed.

Relevant market has been defined in sub section (r) of Section 2 of the Act, read with sub sections 2(s) and 2(t). Further, while examining the issue of relevant market with respect to a particular case, the Commission must give due regard to any or all factors mentioned in section 19(6) with respect to "relevant geographic market" and section 19(7) with respect to "relevant product market".

In the instant case, it is important to understand the market structure of Ophthalmic Lenses. The process of manufacturing an ophthalmic lens starts with the selection of refractive media i.e. the raw material for the substrate. The choices at this stage are: i) the organic material such as plastic, ii) mineral i.e. glass, or iii) other material such as polycarbonates or Trivex etc. Following the stage of selection of substrate material, the next stage is value addition in form of colouring aimed to reduce the amount of light going into the eyes, limiting the glare as also protection from UV rays. This objective can be achieved in the form of Polarized lenses, Solar lenses, Protective lenses and Photochromic lenses, albeit with different level of effectiveness. The final stage of value addition for clear and coloured lenses is coating. Again different coatings are available such as anti-reflective, hydrophobic and anti-resistant.
It is important to note that the ultimate product would have some qualities distinctive from others depending on the choice made at different stages of production outlined above. Thus the product characteristics would be different for all the variants obtained.

**Views of IP:** The IP i.e. GKB had submitted that the relevant product market is limited to ‘Plastic Photochromic Lenses’ and in support of its definition it had relied on the advantages of Plastic Photochromic Lenses over Glass Photochromic lenses in terms of thickness and the process of achieving the darkening effect. According to GKB, the ‘Dip Coating’ technique used for achieving the darkening effect is applicable to plastic lenses only. Post submission of DG Report, the IP also submitted the information regarding the price differences between Glass Photochromic lenses (GPL) and Plastic Photochromic lenses (PPL), wherein the prices in India of GPL of Corning, start from as low as Rs.68 while the prices of PPL of the Transitions India start from Rs.1090. Thus huge price difference implies to the IP that the two (GPL and PPL) are not substitutes and the same according to IP can be verified by application of SSNIP test also.

**Views of OP:** Transitions India submitted that the relevant product market should be defined to include “all types of ophthalmic lenses (glass and plastic) that protect eyes from ultraviolet rays and reduce glare, particularly all Photochromic lenses” and had made the following submissions in support of their definition.

Firstly, the OP contended lack of reasoning for conclusions of DG. The OP submitted that the DG has concluded the definition based on relative advantages of PPL over GPL. But DG has failed to consider that GPL also has some advantages over PPL.

Secondly, the OP referred to the provisions of the Act and international jurisprudence. The OP referred to European Commission’s Notice on Definition of Relevant Market for the purpose of Community Competition Law (OJ 1997 C 372/03) which identified three factors viz. demand substitutability, supply substitutability and potential competition for defining the relevant market. The OP contended that none of these factors have been considered by DG. The OP also
referred to OFT’s Guidance on Relevant Markets note (OFT 403a) which explains the concept of substitutes. It states "substitute products do not need to be identical to be included in the same market...similarly the products prices do not have to be identical...the question is whether the price of one sufficiently constrains the price of the other. Although one is of lower quality, customers might still switch to this product if the price of the more expensive product rose such that they no longer felt that the higher quality justified the price differential". The OP submitted that there is no evidence given by DG on these issues.

Lastly the OP presented their view on substitutability between GPL and PPL. It stated that from the end users perspective, both polarized tint and Photochromic lenses (both glass and plastic) achieve the same end result, end users who wish to protect their eyes from ultraviolet rays and glare are equally able to choose between polarized/fixed tint and Photochromic lenses. As such, they are interchangeable and therefore part of the same relevant market.

5.3.2 Findings of the Commission

The Act defines the relevant product market as "a market comprising all those products or services which are treated as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices or intended use." Further, Section 19(7) of the Act illustrates some factors that may be considered in determination of relevant market such as physical characteristics or end use of goods, price, consumer preferences, exclusion of in-house production, existence of specialised producers and classification of industrial products.

At the outset the Commission considered the characteristics of the product to identify the broad parameters of the relevant product market. The basic objective of an ‘Ophthalmic Lens’ is to provide a refractive media for correction of vision disorders such as myopia, hyperopia or astigmatism. Continued innovation in this area has led to adding the characteristics of ‘colouring’ on lenses in order to reduce the glare and provide protection from UV rays. Coating may add some more characteristics to the product. As stated earlier, different materials can be used as refractive media and different treatments can be resorted to apply the
'colouring'. The various classification of coloured lenses are polarized, protective, solar and photochromic lenses. Out of these types of coloured lenses, the photochromic lenses are unique in terms of automatic transition from light to dark and vice versa. Now what is to be considered in determination of relevant market is whether all the photochromic lenses form part of relevant market or the differences in material and consequent differences in characteristics and price lead to delineation of GPL and PPL as distinct markets. For this purpose, a detailed analysis follows.

Firstly, differences in characteristics of GPL and PPL are analysed. The major points of comparison and the relative advantages/disadvantages of GPL and PPL are as under:

a. Optics: GPL are supposed to offer the best optics
b. Scratch resistance: GPL are scratch resistant while PPL are not.
c. Weight: GPL are heavier as compared to PPL.
d. Shatter Impact: GPL is shatter prone while PPL is not.
e. Effectiveness of Photochromic treatment: The speed of transition from light to dark and vice versa is faster in case of PPL as compared to GPL.

DG has relied on the advantages of PPL over GPL to conclude that the relevant market is PPL. This conclusion arrived by DG is in line with the submissions of IP. The OP in its response has pointed out that the definition of DG does not consider the cross merits that GPL hold over PPL which makes GPL and PPL functionally interchangeable. The OP also made a point to include the GPL in the definition of relevant market along with PPL.

The Commission finds that each of the two products i.e. GPL and PPL, have certain advantages as well as disadvantages vis-a-vis the other and prima facie appear to be distinct products. However, since both the products are used for similar purposes, further analysis is necessary for a final determination as to whether they constitute different product markets. The Commission is of the view that given the facts of the case, the decision on delineation of relevant market would require assessment of consumer behaviour also, as the products have differing merits/demerits over each other, and nothing can be concluded based
on consideration of characteristics alone. In doing so, it would also be important to assess the weightage given by consumers to the different factors while making a choice. Ideally a market survey would be a useful instrument for this purpose, but in the absence of a formal survey, the Commission can only note, without making it a determining factor, that generally there appears to be a preference for lighter and unbreakable lenses. What is even more important is the fact that the speed of transitions from light to dark and vice versa is faster in case of PPL. Since the primary purpose of buying a Photochromic lens is protection from UV rays and reducing the glare, the higher effectiveness of PPL in this important characteristic would naturally contribute substantially to the consumer preference in favour of PPL.

Apart from technical characteristics price differences between the two products, as a factor in consumer choice, was examined. In this case price considerations have taken precedence in defining the relevant market, on the appreciation of the fact that Indian consumers are universally acknowledged as being generally very price sensitive. According to the submission of the IP, the price of GPL starts from as low as Rs.68 and PPL starts from around Rs.1100. However, some enquiries revealed that the starting price range of GPL is around Rs.300 and of PPL around Rs.1800. The wide differences between prices of the two products according to them tend to confirm the view that the two products belong to separate relevant markets. It further underlines the fact that a certain class of consumers is willing to pay a much higher price for PPL, because of its advantages in regard to some important characteristics, while another class is either not interested in the characteristics and prefer advantages of GPL or is unable to pay much higher prices of PPL. However, submissions by the informant and the OP that the Indian market for PPL is growing phenomenally fast, posed the question whether price differences were sufficiently strong to maintain separate markets or whether there is a blurring of markets where price is reflective of quality and desired characteristics. While no doubt the growing Indian middle class tends to suggest the possibility of a market continuum, but in highly differentiated product markets and consequent high differences in prices, the continuum exists on an intra-product basis and not inter-product basis and exclusivity prevails.
Behavioural economics also seem to suggest that these price differences do not act as a competitive constraint, as the perception of higher quality of PPL may not be in proportion to the differences in prices. So, it is possible that the consumers may not switch to GPL even if the prices of PPL increase further. Therefore, there appears to be insignificant or negligible demand substitutability between GPL and PPL. From the limited evidence available the Commission also notes that GPL is available in a wide range of quality and prices enabling intra-product rather than inter-product substitutability as already pointed out with reference to price quality continuum analysis. As such GPL and PPL may be considered to constitute different relevant product markets.

The marketing strategy of the OP also seems to support the above conclusion. It is noted that the OP had been following the regional pricing policy offering the PPL at lower prices as compared to the rest of the world especially USA and Europe. This strategy to an extent implies that the OP considered the fact that Indian consumers are price sensitive and therefore followed a strategy of lower prices of PPL. The subsequent introduction of “Acclimates” brand which is an entry level PPL, in conjunction with the brand strategy of Transitions forming part of the Acclimates agreement of non-active promotion, also implies that the OP considered PPL as a distinct and preferred product and was making an effort to persuade the consumers of GPL to move to the PPL market by making it available at more affordable prices.

In view of the foregoing analysis of characteristics of the products, factors relevant to demand decisions, importantly price and the lack of competitive constraints reflected by price differences between PPL and GPL, the Commission finds that the market for Plastic Photochromic Lenses in India is the relevant market in this case.

5.3.3 Determination in regard to alleged dominance in the relevant market

Having defined the relevant market as market for “Plastic Photochromic Lenses in India”, the next step is evaluation of dominance. The same can be evaluated based on the following points:
a. Market Shares: One of the foremost factors in analysis of dominance is the market share of the opposite party. In the instant case, different sets of data have been submitted by the IP and the OP in support of their assertions.

The IP has submitted the market share of lens casters in the downstream market according to which the share of the IP is 50%, Essilor India is 30%, Hoya India 5%, Techtranch Polylenses 5% and other wholesalers who import the generic product directly as 10%. The DG has considered these market shares and also stated that GKB, Essilor India and Hoya India were dealing exclusively in the PPL of Transitions and therefore the combined market share of these three lens casters in PPL market is the representative of markets share of Transitions India. While exclusivity has been stated as established by DG, still there are some factors that are relevant to this analysis. The data reliability is obviously a big factor. Unfortunately, the data submitted by IP could not be verified by the volumes of sales/purchases of lens casters and the sales of Transitions India. This cross verification might have provided better insight about the size of the market. Also Corning in their submission had stated that it has historically sold Photochromic monomers in India, which supports the possibility that there exists a domestic Photochromic industry for which data is not available on record. DG has stated that the 85% market share of Transition India is based on the total quantity of PPL bought by these three different caster partners from Transition India. However, out of the purchases made by these three lens casters, there would have been re-exports. The impact of re-exports on the market share in India also needed to be taken into account.

Transition India had also submitted the import data for 2008 and 2009 sourced from Cybex Exim Solutions Pvt. Ltd. The data is reproduced as under:
Table 2: Import of ophthalmic lenses in India 2008 and 2009

<table>
<thead>
<tr>
<th>Year 2008</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Type</td>
<td>Units</td>
</tr>
<tr>
<td>Glass</td>
<td>383231</td>
</tr>
<tr>
<td>Plastic Photochromic Lenses (Other than Transitions)</td>
<td>133246</td>
</tr>
<tr>
<td>Plastic Photochromic Lenses (Transitions)</td>
<td>499441</td>
</tr>
<tr>
<td>Clear Plastic Lenses</td>
<td>54712425</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>55728343</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year 2009</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Type</td>
<td>Units</td>
</tr>
<tr>
<td>Glass</td>
<td>380400</td>
</tr>
<tr>
<td>Plastic Photochromic Lenses (Other than Transitions)</td>
<td>174472</td>
</tr>
<tr>
<td>Plastic Photochromic Lenses (Transitions)</td>
<td>1211775</td>
</tr>
<tr>
<td>Clear Plastic Lenses</td>
<td>49295621</td>
</tr>
<tr>
<td>Glass Photochromic</td>
<td>22650</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>51084918</strong></td>
</tr>
</tbody>
</table>

The DG obtained the percentage of imports of Transitions PPL to total imports of PPL in India as 78.9% for 2008 and 87% for 2009. The data would have been substantiated had the IP provided the volume of purchase of Transition lenses in support of the stated market share of 85%. Also, the data contradicts another submission by the OP made from the SVW Report. The report places size of PPL lenses in India as 6 million. Transitions has stated that their sales for the year 2009 were 1.6 million lenses which imply 26.66% share of the market. Though, the basis of size of market opted by SVW remains unsubstantiated, it is noted that the sales of Transitions of 1.6 million lenses is higher than 1.2 million import units stated in data by Cybex. This contradiction between data testifies the Transitions stand that some importers may not be distinguishing between different types of ophthalmic lenses, as import duty on all types of lenses is same.
Transitions India had also submitted their estimates for post 2009 market. The post 2009 market size has been estimated to be 2.9 million and Transitions share of the same has been stated as 0.73 million which is around 25%.

While the import data puts PPL market size as around 1.4 million lenses, the SVW report puts the same as 6 million lenses. Transitions India puts the post 2009 estimates at 2.9 million. GKB has submitted the percentage markets share but not specified the numbers required for authentication and validation of data. The different estimates of markets share resulting from different sources of information, coupled with lack of data on domestic market for making PPL out of imported monomers and the figures relating to re-exports of the purchases made by lens casters from Transitions makes it difficult for the Commission to come to a definite conclusion about the OP being dominant or non-dominant based on market shares. A selective reliance on a particular data may be erroneous. Thus, the data is inconclusive and cannot be reconciled.

b. Size and resource of the enterprise: Transitions is apparently the most popular brand of Photochromic lenses which, in fact, has led some eye care practitioners and even consumers to call all Photochromic lenses as “Transitions” Lenses. Thus, the superior proprietary technology for Photochromic treatment is the most important resource which gives Transitions some market power.

c. Size and resources of competitors: The competitors of Transitions are global players such as CZV, Corning, Hoya and GKB have the resources to launch their own products. In fact, as submitted by the OP, since 2009, various competing brands of Photochromic lenses have been launched in India like, Q Shade Plus, Sun Sensor, Anylite etc. and the GKB’s own brand “SWISS”. It was also pointed out by DG that Hoya India does not plan to import its own PPL (SunTech) until its network is stronger and better set up. Thus the size and resources are not constraining the active entry of global players. CZV post dissolution of JV with the IP has also entered the Indian market directly.
d. **Economic Power of the enterprise including commercial advantages over competitors**: The fact that the technology of Photochromic treatment of Transitions is superior provides commercial advantage but that is stemming out purely from efficiency of the player and not anything else.

e. **Vertical Integration**: There is some degree of relation between Transitions and Essilor India which can be looked at while evaluating the Abuse of Dominance if any.

f. **Countervailing Buying Power**: The IP by its own submission has stated that in the narrower market of PPL, it has around 50% share in the downstream market. Also the same gets coupled with the fact that IP through its distribution network and retail shops has direct access to eyeglass wearers which gives it the ability to influence consumers' choice. Thus, considering these, it is concluded that there is substantial countervailing buying power in the downstream market.

### 5.3.4 Conclusion on dominance

Thus, considering the unsubstantiated, incomplete and inconsistent data on market shares, and at the same time giving regard to the facts of size of resources of the competitors, countervailing buying power of the lens casters, and putting these factors against the size of resources of Transitions, commercial advantage to Transitions given the superior proprietary technology, the Commission does not find adequate evidence to conclude that Transitions is a dominant enterprise in the relevant market in India.
In view of the above conclusion on the issue of OP’s dominance in the relevant market, the question of abuse of dominance does not arise.

Order

Based on the foregoing, the Commission finds that no case of contravention of any of the provisions of Section 3 and Section 4 is made out against the opposite party Transitions India. The proceedings in this case therefore deserve to be closed forthwith.

The Secretary is directed to convey the decision of the Commission to the parties accordingly.

H.C. Gupta
Member(G)

Geeta Gour
Member(GG)

Anurag Goel
Member(AG)