



**COMPETITION COMMISSION OF INDIA**

**Reference Case No. 05 of 2018**

**In Re:**

**Central Organisation for Railway Electrification  
Office of the Principal Chief Materials Manager  
1, Nawab Yusuf Road, Civil Lines  
Allahabad, Uttar Pradesh-211001**

**Informant**

**And**

**M/s PPS International  
Plot No. 32, Udyog Kendra  
Ecotech-III, Greater Noida  
UP-201308**

**Opposite Party**

**CORAM**

**Mr. Sudhir Mital  
Chairperson**

**Mr. U.C. Nahta  
Member**

**Mr. Justice G. P. Mittal  
Member**

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

1. The present reference has been filed by Central Organization for Railway Electrification (hereinafter '**CORE**') through the Office of the Principal Chief Materials Manager (hereinafter '**the Informant**') under Section 19(1)(b) of the Competition Act, 2002 (hereinafter '**the Act**') against M/s



PPS International, Delhi (hereinafter ‘**the Opposite Party**’/ **OP**) alleging contravention of the provisions of Sections 3 and 4 of the Act.

2. The Informant is an organization under the Ministry of Railways and is entrusted with the responsibility to carry out railway electrification over the entire network of the Indian Railways. It is stated that the Informant *inter alia* procures Short Neutral Section Assembly (hereinafter ‘**SNS Assembly**’), also called ‘phase break’, for various Railway Zones from the Research Design and Standards Organisation (hereinafter ‘**RDSO**’) approved sources. It is further stated that there is only one approved source for this item in RDSO approved list *i.e.* M/s Arthur Flury AG Switzerland, the original equipment manufacturer (hereinafter ‘**OEM**’) which sells this product through its authorised Indian distributor *i.e.* the OP in India.
3. It is stated that in terms of Railway Board letter bearing no. RE(S)14/11/82/0012Pt. dated 14.11.2017, SNS Assembly is a centralised procurement item of CORE, where demand of all Zonal Railways is consolidated and procured.
4. It has been alleged that the OP entered into an agreement with M/s Arthur Flury AG and thereby artificially jacked up the prices of SNS Assembly in violation of the provisions of Section 3(3)(a) of the Act. It has also been alleged that the OP has abused its dominant position to increase the prices of SNS Assembly artificially and the OP has also imposed unilateral conditions regarding commercial and technical compliances in violation of the provisions of Section 4(2)(a)(i) and 4(2)(a)(ii) of the Act. In support of such allegations, the Informant has provided the following information detailed in Table No. 1:



**Table No. 1: Purchase order and the rate per set**

Purchase Order	Rate per set	Name of the Firm /Agent/ Distributor
09.01.2006	FOB North European Seaport Price per set 6506 Swiss Franc (CHF) + Agency Commission 96.55 CHF per set	M/s Arthur Flury AG, Switzerland, through Indian Agent M/s Sherman International Pvt. Ltd., New Delhi
27.06.2008	FOB North European Seaport, Price per set 6832.80 CHF + Agency Commission 101.40 CHF per set. For '4' sets required for destructive test, the applicable price will be 6759 CHF per set on FCA Deitingen basis	M/s Arthur Flury AG, Switzerland through Indian Agent Sherman International Pvt. Ltd., New Delhi
03.07.2012	FOB Hamburg Port @ CHF 8,600 each, packing & forwarding charge-inclusive	M/s Arthur Flury AG, Switzerland
13.09.2013	Basic rate Rs. 7,25,000/- per set, packing charge-NIL, ED & Cess - Not applicable, CST-Extra @ 5% and Freight charges-Extra as per consignee details mentioned in PO itself	M/s PPS International, Patparganj, Delhi on behalf of OEM – M/s Arthur Flury AG, Switzerland
14.03.2016	FOB Hamburg Port @ CHF 8580 each set, packing & forwarding charge – inclusive	M/s Arthur Flury AG, Switzerland
27.02.2018	Basic rate Rs. 7,05,000/- per set, packing charge – NIL GST @ 18% extra and freight charges- inclusive as per consignee details mentioned in PO itself	M/s PPS International, Patparganj, Delhi on behalf of OEM – M/s Arthur Flury AG, Switzerland

5. It has been further stated that in the year 2013, the OP had supplied 282 sets of SNS Assembly @ Rs. 7,25,000/- based on Proforma Invoice rate of OEM @8600 CHF per set. However, the Office of the Principal Commissioner of Customs (Import) *vide* letter C. No. VIII/12/ACC-Import/Gr-VA/Misc./841/2013 dated 22.06.2015 showed that the OP had imported the items @ CHF 6400. Thus the OP jacked up the prices taking benefit of its monopoly.
6. The Informant has also provided one more instance of abuse of monopoly by the OP with respect to tender no. CORE/S/1271/5530/20473 dated 12.01.2018, wherein the OP had supplied 28 sets @ Rs. 698500/- per set based on Proforma Invoice rate of OEM @ 8580 CHF. It is stated that while processing the bills, it was revealed that the OP had imported the material from M/s Arthur Flury @ CHF 7200 as per its invoice and Bill of Entry.



7. Based on the above averments and allegations, the present reference has been filed by the Informant against the OP, alleging contravention of the provisions of Sections 3 and 4 of the Act.
8. The Commission has perused the reference and the documents filed therewith and also considered the material available in public domain.
9. At the outset, the Commission notes that though the Informant has alleged contravention of the provisions of both Sections 3 and 4 of the Act, yet looking at the nature of allegations and the relationship of the OP with the OEM, the provisions of Section 3(3)(a) of the Act are not applicable to the present case as the OP (distributor) and OEM (manufacturer) are operating at different levels of the production chain in different markets. Thus, *prima facie* the provisions of Section 3(3)(a) of the Act are not attracted.
10. Next, for the purpose of examining the allegations of the Informant under the provisions of Section 4 of the Act, it is necessary to determine the relevant market at the first instance. Thereafter it is necessary to assess whether the OP enjoys a position of strength required to operate independently of the market forces in the relevant market. Only when such a position is established, the Commission is required to examine whether the impugned conduct amounts to abuse of dominance or not.
11. The Commission observes that the product involved in the instant case is SNS Assembly, which is used mainly by the Railways to isolate different phases of power supply in adjoining Over Head Equipment (OHE) fed by adjacent substations, which are normally connected to different phases of supply. Thus, it is used in overhead contact lines of the Railways to act as an insulator between different power lines (phases). In this regard, the Commission observes that SNS Assembly is a light weight contact wire insulator of composite type (Resin bonded glass fibre core protected with wear resistance ceramic beads) with Poly Tetra Fluro Ethylene (PTFE).



Thus, its physical characteristics indicate that it is a specialised equipment having a specific function. Moreover, SNS Assembly is a distinct product in itself having no close substitute. Accordingly, the relevant product market in the instant case is '*market for supply of SNS Assembly*'.

12. In respect of the relevant geographical market, it may be noted that CORE is a centralised procurement agency for the SNS Assembly as it consolidates the demand of all Railway Zones and centrally procures them. This shows pan India nature of the demand by different Zones of Railways and its subsequent distribution. Thus, the relevant geographic market in this case would be '*India*'.
13. Thus, the relevant market in the present case is the '*market for supply of SNS Assembly in India*'
14. On the issue of dominance of the OP in the aforesaid relevant market, the Commission notes that the OP is the sole authorised distributor of M/s Arthur Flury AG, Switzerland in India. Further, it is also observed that there is only one single approved source in the RDSO approved list *i.e.* M/s Arthur Flury AG and its Indian distributor. The requirement of the RDSO approved sources has also resulted in a situation of high dependence of the Indian Railways for the SNS Assembly on the OP. Thus, the Commission observes that the OP can be said to be dominant in the above- defined relevant market.
15. In view of the above assessment, the Commission is of the view that the OP appears to be dominant in terms of the provisions of Section 4 of the Act.
16. To examine the alleged abuse of dominant position by the OP in the relevant market delineated *supra*, it is noted that the Informant has not



specified any specific condition which can be examined within the framework of Section 4(2)(a)(i) of the Act.

17. However, on a closer scrutiny of the information, it appears that the Informant is essentially aggrieved by the allegedly high prices charged by the OP for supply of SNS Assembly to CORE. The Informant has claimed that the OP has increased the prices in last 12 years without any significant inflation in Switzerland. Thus, the Informant has essentially raised the issue of excessive pricing. To support the allegations, it has been pointed out that in purchase order dated 13.09.2013, the OP had supplied 282 sets of SNS Assembly on behalf of M/s Arthur Flury AG on the basic price (excluding all taxes, duties, freight charges, insurance charges & other expanses) *i.e.* @8600 Swiss Franc (CHF) per set. But, later on, it was revealed to the Informant that the OP had imported the same goods on the basic price of 6400 Swiss Franc per set. Similarly, the Informant provided another evidence where the OP in response to the purchase order dated 12.01.2018 had supplied 28 SNS Assembly on the basic price of 8580 Swiss Franc but, later on, it was found through the invoice of M/s Arthur Flury AG & Bill of Entry that the OP had imported the same at 7200 Swiss Franc per set.
18. In order to appreciate the allegation of excessive pricing, the Commission deems it appropriate to examine the percentage increase in the prices of SNS Assembly over period of time *i.e.* from 2006 to 2018. The table beneath shows the percentage rise in prices of SNS Assembly between 2006-2018:



**Table No. 2: Percentage change in base price**

S. No.	Year	Base price (Quoted by OP in the Purchase Order)	Year on year percentage change in price
1.	2006	6602.55 Swiss Franc	-
2.	2008	6934.20 Swiss Franc	5.02%
3.	2012	8600 Swiss Franc	24%
4.	2013	8600 Swiss Franc	0%
5.	2016	8580 Swiss Franc	-0.23%
6.	2018	8580 Swiss Franc	0%

19. From the above table, it appears that there has not been a continuous trend of price increase over a period of time which could show excessive prices being charged by the OP. Also between 2013 and 2018, there was either no increase in the prices and rather in year 2016, prices even decreased. Thus, the price trend does not support the allegation of abuse of dominant position made by the Informant by artificially determining the sale price in terms of the provisions contained in Section 4(2)(a)(ii) of the Act.
20. In view of the above assessment, the Commission is of the view that the OP does not appear to have abused its dominant position in terms of the provisions of Section 4 of the Act.
21. Resultantly, the Commission is of the opinion that no case of contravention of the provisions of Section 4 of the Act is made out against the OP and the matter is ordered to be closed in terms of the provisions contained in Section 26(2) of the Act.



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

**Sd/-**  
**(Sudhir Mital)**  
**Chairperson**

**Sd/-**  
**(U.C. Nahta)**  
**Member**

**Sd/-**  
**(Justice G. P. Mittal)**  
**Member**

**New Delhi**  
**Date: 27/08/2018**