



COMPETITION COMMISSION OF INDIA

Suo Motu Case No. 02 of 2016

In Re: Cartelisation in respect of zinc carbon dry cell batteries market in India

Against

1. Eveready Industries India Ltd.
2. Indo National Ltd.
3. Panasonic Energy India Co. Ltd.
4. Association of Indian Dry Cell Manufacturers

CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Justice G. P. Mittal
Member

Appearances:

For Eveready Industries India Limited Shri Manas Kumar Chaudhuri, Advocate
(OP-1) Shri Sagardeep Rathi, Advocate
Shri Amritanshu Khaitan Ms. Arunima Chatterjee, Advocate
Shri Suvamoy Saha



Shri Partha Biswas

Shri Anil Bajaj

Shri Indranil Roy Chowdhury

Shri Kunal Gupta

For Indo National Limited (OP-2)

Shri P. Dwarakanth Reddy

Shri M. Shankara Reddy

Shri B. L. N. Prasad

Shri Hemant Gupta

Ms. Pallavi Shroff, Advocate

Ms. Manika Barar, Advocate

Shri Anandh Venkataramani, Advocate

Ms. Supritha Prodaturi, Advocate

Ms. Akkriti Bhatt, Advocate

Mr. M. Shankara Reddy, CFO (OP-2)

Mr. M. Subramanian, President (OP-2)

For Panasonic Energy India Company Limited (OP-3)

Shri Hideya Maekawa

Shri Parimal Vazir

Shri R. R. Desai

Shri Ketan Valand

Shri Karan Singh Chandhiok, Advocate

Shri Vikram Sobti, Advocate

Ms. Kalyani Singh, Advocate

Shri Sarthak Pande, Advocate

Shri Rumela Bannerjee, Advocate

Shri Ashish Mohan, Advocate

For the Association of Indian Dry Cell Manufacturers (hereinafter, 'AIDCM') (OP-4) and

Shri Ravindra Grover

Shri Karan Lahiri, Advocate

Shri Ravindra Grover, Secretary, AIDCM

For Shri S. K. Khurana, Former Chairman and Managing Director of OP-3 and Former Chairman of OP-4

Shri Ashish Mohan, Advocate



Order under Section 27 of the Competition Act, 2002

1. Introduction

- 1.1 The instant case was taken up by the Competition Commission of India (hereinafter, 'Commission') *suo motu*, pursuant to an application dated 25 May, 2016 filed by Panasonic Energy India Co. Ltd. (OP-3), a subsidiary of Panasonic Corporation Japan under Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 (hereinafter, 'Lesser Penalty Regulations') read with Section 46 of the Competition Act, 2002 (hereinafter, the 'Act').
- 1.2 OP-3 in its Lesser Penalty Application submitted that there existed a cartel amongst OP-1, OP-2, and OP-3, which were all engaged in the business of, *inter alia*, manufacture and supply of zinc-carbon dry cell batteries, to control the distribution and price of zinc-carbon dry cell batteries in India, in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act. (hereinafter, OP-1, OP-2 and OP-3 are collectively referred to as 'Manufacturers').
- 1.3 It was also disclosed that the Manufacturers were members of a trade association, *namely*, Association of Indian Dry Cell Manufacturers (hereinafter, 'AIDCM'/ 'OP-4') which facilitated transparency between the Manufacturers by collating and disseminating data pertaining to sales and production by each of the Manufacturers. (hereinafter, Manufacturers and OP-4 are collectively referred to as 'OPs').
- 1.4 As per the Lesser Penalty Application, the Manufacturers were under stress in 2013 due to rise in input costs and the depreciating rupee and resistance to previous attempts of the Manufacturers to raise prices of zinc-carbon dry cell batteries to off-set the rising input costs. Therefore, the senior management of the Manufacturers, which had known each other for several years, decided to raise the



maximum retail price (hereinafter, 'MRP') of their respective zinc-carbon dry cell batteries to improve their sale realisations.

1.5 Revealing the *modus operandi* of the Manufacturers, it was stated in the application that employees of OPs actively involved in the cartelisation, *inter alia*, used to meet and agree on the price increase, which was to be led by one manufacturer of zinc-carbon dry cell batteries and followed by others under the pretext of following the market leader. It was also stated that the Manufacturers agreed not to push sales through their channel/ distribution partners aggressively to avoid price war amongst themselves.

2. **Direction of the Commission to the Director General (hereinafter the 'DG') to conduct an investigation**

2.1 Based on the disclosure under Lesser Penalty Application of OP-3, the Commission noted that the alleged conduct of cartelisation essentially took place through, (a) coordinated price increase by the Manufacturers; (b) active measures by the Manufacturers to implement price control and reduce possibilities of price competition amongst them; and (c) reduction of price competition at the stockist/ retailer/ wholesaler level by controlling and agreeing on the level of incentives to be provided.

2.2 After examining the material on record, the Commission was of the *prima facie* view that the case involved contravention of the provisions of Section 3 of the Act. Accordingly, the Commission, *vide* its order dated 22 June 2016 passed under Section 26(1) of the Act, directed the Director General (hereinafter, the 'DG') to conduct an investigation into the matter and submit an investigation report. The DG was also directed to investigate the role of persons / officers of OPs who were in-charge of and responsible for the conduct of the businesses of such parties at the time of the alleged contravention. Further, the DG was directed to conduct a detailed investigation into the contraventions disclosed in the information up-to-



date without restricting or confining itself to the duration mentioned in the information.

- 2.3 During the course of investigation, the DG, pursuant to the issue of search warrant from the Chief Metropolitan Magistrate, Delhi, carried out search and seizure operations at the premises of OP-1, OP-2 and OP-3 simultaneously on 23 August, 2016, in terms of powers vested with the DG under Section 41(3) of the Act, and incriminating material and documents were seized therefrom.

3. **Lesser Penalty Application of OP-1 and OP-2**

- 3.1 Subsequently, on 26 August 2016, OP-1 filed an application under Regulation 5 of the Lesser Penalty Regulations read with Section 46 of the Act.
- 3.2 On 13 September 2016, OP-2 also filed an application under Regulation 5 of the Lesser Penalty Regulations read with Section 46 of the Act.

4. **Industry Overview**

- 4.1 The Commission first of all notes that though dry cell batteries are broadly of three types: (a) zinc-carbon; (b) alkaline; and (c) rechargeable, infringement in the instant case pertains to cartelisation in the zinc-carbon dry cell battery only, in India. In this regard, it is useful to have a glance at the product involved *i.e.* dry cell battery, in general, and zinc-carbon dry cell battery, in particular.
- 4.2 Battery is a device that converts chemical energy into electrical energy. It consists of one or more electrochemical cells with external connections to power electrical devices such as flashlights, remote controls of various electronic gadgets, smart phones *etc.*



- 4.3 Primary (single-use or “disposable”) batteries are used once and discarded. Secondary (rechargeable) batteries can be recharged multiple times using mains power from wall socket.
- 4.4 A dry cell is a disposable battery, which uses a paste electrolyte, with only enough moisture to allow current to flow. A common dry cell is the zinc-carbon battery, sometimes called the dry Leclanche cell, with a nominal voltage of 1.5 volts, the same as the alkaline battery (since both use the same zinc-manganese dioxide combination). A standard dry cell comprises of a zinc anode, usually in the form of a cylindrical pot, with a carbon cathode in the form of a central rod. The electrolyte is ammonium chloride in the form of a paste next to the zinc anode.

4.5 Dry Cell Battery market in India

- a) Highlights of the Indian market for dry cell batteries, as per one of the publicly available research report on dry cell market (by Emkay Global Financial Services Ltd., dated 5 September 2014¹) are, as follows:
- i. Dry cell batteries are generally of different sizes, namely, D size, C size, AA size and AAA size. Zinc-carbon dry cell battery segment contributes about 97% of the total dry cell market, while high priced alkaline batteries are just 3% of the market.
 - ii. Alkaline batteries though popular in western countries, have not yet emerged as a serious alternative to zinc-carbon batteries in the Indian market due to price sensitive nature of the Indian consumers.
 - iii. Consumers have shifted from the more expensive ‘D’ size batteries to AA’ sized ones. The shares of the principal battery categories (in percent) for a three year period are as tabulated below:

¹ http://www.moneycontrol.com/news_html_files/news_attachment/2014/DryBatterySector_Emkay_100914.pdf



Table 1: The market share of various sizes of principal dry cell batteries

Product Line (size of dry cell batteries)	FY 2013-14	FY 2012-13	FY 2011-12
D	14.5	15.4	17.5
C	0.3	0.3	0.4
AA	74.3	74.8	73.1
AAA	10.9	9.5	9.0
Total	100	100	100

- iv. A growing need for portable power and the advent of a number of battery operated gadgets like remote controls, toys, clocks and flashlights has catalysed the consumption of dry cell batteries. Since these gadgets are used regularly, the battery demand is not cyclical in nature.
- v. The latest trend indicates that the market will continue to grow @ 4-4.5% per annum. 'AA' size should grow lower than market growth; whereas D' size should decline. However, due to increase in digitisation, the 'AAA' size category will continue to show high double digit growth.

4.6 In this context, OP-1 has submitted the estimated annual market shares of itself (including Power cell), OP-2 and OP-3 based on the reported sales figures circulated by OP-4 from 1 April 2009 to 30 September 2016:

Table 2: Market share in percent for the period 1 April, 2009 to 30 September, 2016

Brand	Year-wise Share (in percent)						
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
OP-1	47.7	45.6	46.4	47.0	48.0	49.9	49.2
OP-2	31.0	31.0	29.5	29.2	29.1	27.5	28.0
OP-3	18.2	18.9	19.5	20.2	19.9	20.2	20.9



5. Profile of the parties

5.1 Eveready Industries India Ltd. (OP -1)

- a) The brand Eveready entered the Indian market in 1905. The company was incorporated in 1934 under the erstwhile Companies Act 1913. Previously the company was a subsidiary of Union Carbide Corporation, USA. Shri B. M. Khaitan and the Williamson Magor Group of Companies acquired OP-1 in 1993. OP-1 is headquartered in Kolkata and is currently involved in the marketing of various product categories such as batteries (including dry-cell batteries), flashlights, general electric products, packet tea and appliances.
- b) As per its annual report for the year 2015 – 2016, OP-1 was selling over 1.3 billion units of dry cell batteries annually. The sales of OP-1 from dry cell batteries was about Rs. 760.19 crores, which constituted 56.36% of its total turnover.

5.2 Indo National Ltd. (OP-2)

- a) OP-2, incorporated in 1972, has its registered office at Chennai. Upon grant of license by the Government of India for manufacture of zinc-carbon dry cell batteries on 28 August, 1972, it entered into a technical collaboration agreement with Matsushita Electrical Industrial Company Limited of Japan for manufacturing of dry cell batteries which are sold under brand name Nippo (Matsushita renamed subsequently as 'Panasonic Corporation').
- b) As per its annual report for the year 2015-16, out of OP-2's total turnover for the year *i.e.* Rs. 353 crores, sales from dry cell batteries constituted 88.57% of the total turnover for the year.

5.3 Panasonic Energy India Company Limited (OP-3)

- a) The company, established in 1972 as Lakhanpal National Limited, is a subsidiary of Panasonic Corporation, Japan. It is a public listed company,



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headquartered in Vadodara (Gujarat) and is primarily engaged in the manufacture and supply of dry cell batteries. Majority of OP-3's business comprises of zinc-carbon batteries. In addition to dry cell batteries, OP-3 also trades in torches but the same constitutes only a minimal portion of its business

- b) As per its annual report for the year 2015-16, out of OP-3's total turnover for the year *i.e.* Rs. 278 crores, sales from dry cell batteries constituted 93% of the total turnover for the year.

5.4 The Association of Indian Dry Cell Manufacturers (OP-4)

- a) AIDCM is an unregistered association of dry cell manufacturers primarily comprising of three members *i.e.* Eveready, Nippo and Panasonic. The DG has gathered that till 1987, there were 12 to 13 members of AIDCM who were all manufacturers. However, most of them have since closed down.
- b) AIDCM has described its main activities as, *inter alia*, to encourage good relations amongst the manufacturers and marketers of dry cells in general and members of the association in particular; to promote dry cell / battery industry in India, including manufacturers of raw materials and components used in batteries; and to be a central point of contact for queries on dry cells and torches for different ministries and departments of the government.

6. DG's Investigation

- 6.1 With respect to the alleged contravention of Section 3 of the Act by OPs, investigation by the DG has brought to the fore the details/ conducts of OPs, mentioned in the succeeding paragraphs.



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- 6.2 During investigation, the DG examined the emails, fax and other incriminating material and documents obtained from the search and seizure operations at the premises of the Manufacturers as well as the evidence furnished by them with their respective Lesser Penalty Applications and responses to the notices of the DG. Further, the DG also recorded the statements on oath of certain individuals of the Manufacturers.
- 6.3 From the evidence gathered in the case, the DG found that the Manufacturers had an arrangement whereby they exchanged commercially sensitive information amongst themselves for the purpose of price-coordination. Such arrangement was found to be in place since 2008 *i.e.* much prior to 20 May 2009, the date on which Section 3 of the Act became enforceable, and continued upto 23 August 2016 *i.e.* the date of search and seizure operations by the DG.
- 6.4 Examination of evidence collected by the DG revealed that top management of the Manufacturers maintained regular contacts by way of personal visits, meetings of association, exchange of fax messages, emails, *etc.*, and shared pricing and other vital, confidential commercial information. They used all this to mutually agree on the price increases (MRP). They also decided implementation modalities of price increase which included deciding the schedule of start of production, commencement of billing with new MRP and availability of products (with revised rates) in the market.
- 6.5 In order to give effect to the decided price increase in the market, the market leader *i.e.* OP-1 used to make announcement of increase in MRP through press releases. Such price increase by OP-1 was immediately followed by OP-2 and OP-3. In this manner, MRP was increased by OPs at least on six occasions by Rs 0.50 (fifty paise) each, resulting in about sixty percent increase in price of the concerned product since January, 2010.
- 6.6 Illustratively, one of the e-mails referred to by the DG to establish the coordination amongst the Manufacturers for the purposes of price increase in



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2010, is an email dated 19 January 2010 sent by Shri R. P. Khaitan (of OP-2) to Shri Suvamoy Saha (of OP-1). In this e-mail, the two OPs have shared their price and MRP with suggestions. The remarks column in the shared document contains comments like “*as agreed MRP to change Rs 15 and trade price w.e.f. April, 2010 in 2 phases*”. When this e-mail was shown to Shri Suvamoy Saha (of OP-1), he explained that the email contained the price and MRP structure details of OP-2 and OP-1 and that through this email, Shri R. P. Khaitan (of OP-2) had circulated a previously discussed price and MRP structure with his comments to OP-1. This was confirmed by OP-2, who also provided copy of the said email. Similarly, the DG found other evidence of contacts and communications amongst OPs through e-mails, fax and even meetings, which showed coordination amongst the Manufacturers to increase prices in not only in 2010 but in 2013, 2014 and 2015 as well.

- 6.7 Further, the investigation showed that coordination amongst OP-1, OP-2 and OP-3 not only pertained to the MRP of their products but also exchange of information about the components of pricing structure of their products including trade discount, wholesale price, dealers/ stockist landing cost, open market rates, retailers margin, sales promotion schemes *etc.* to monitor effective implementation of price increase and determine price for distributors/whole sellers/retailers and end consumers, for allocation of market amongst themselves on the basis of types/sizes of batteries and/or geographical areas, and to control output to establish higher prices and control supply (especially to the Institutional buyers like Geep, Godrej *etc.* and modern retail channels like Walmart, Metro C & C *etc.*).
- 6.8 With respect to AIDCM (OP-4), the DG found that it facilitated cartel activities amongst its members by providing a convenient platform for sharing /discussing prices and other commercially sensitive issues on the pretext of discussing the market conditions. Further, by collating and providing regular information on



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production/sales data of the member companies, it provided information that assisted the Manufacturers in monitoring the cartel implementation.

- 6.9 Based on foregoing analysis, the DG concluded that OPs had indulged in anti-competitive agreement/ conduct and concerted practices, in the domestic dry cell battery market of zinc carbon batteries, during the period 20 May 2009 to 23 August, 2016 and thereby contravened the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) read with Section 3(1) of the Act.
- 6.10 After finding contravention as above, the DG identified certain persons in terms of Section 48 of the Act who played active role in the contravention of the provisions of Section 3 of the Act and also those who were incharge of and responsible to the respective companies for the conduct of their businesses. In this regard, the DG found active involvement of the top management of OPs including their Managing Director, Joint Managing Director and Whole-time Director, Head of Marketing & Sales *etc.* as well as other officers/ office bearers.
- 6.11 The following individuals were identified by the DG to be liable under Section 48 of the Act:

OP-1:

- a) The DG found five officers of OP-1 to be liable in terms of Section 48 (2) of the Act for their specific role in cartelisation, *namely*, Shri Suvamoy Saha, Whole-time Director; Shri Partha Biswas, Vice President; Shri Anil Bajaj, Vice President – Flashlights and Batteries; Shri Kunal Gupta, Vice President – Powercell; and Shri Indranil Roy Chowdhury, Vice President – Finance.
- b) The DG also found two persons of OP-1 to be liable in terms of Section 48 (1) of the Act as persons incharge of running the affairs of the company



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during the cartel period, *namely*, Shri Deepak Khaitan, Former Managing Director and Shri Amritanshu Khaitan, Managing Director.

OP-2:

- a) The DG found seven officers of OP-2 to be liable in terms of Section 48 (2) of the Act for their specific role in cartelisation, *namely*, Shri R. P. Khaitan, Joint Managing Director; Shri M. Sankara Reddy, Chief Financial Officer; Shri B. L. N. Prasad, Head Marketing and Institutional Sales; Shri Latesh Madan, General Manager Sales; Shri Manas Mitra, Manager- Sales; Shri Santosh Tanmay, General Manager – Sales; and Shri Hemant Gupta, AGM Sales.
- b) The DG also found one person of OP-2 to be liable in terms of Section 48 (1) of the Act as person incharge of running the affairs of the company during the cartel period, *namely*, Shri P. Dwarakanth Reddy, Managing Director and CEO.

OP-3:

- a) The DG found five officers of OP-3 to be liable in terms of Section 48 (2) of the Act for their specific role in cartelisation, *namely*, Shri Hideya Maekawa, Former Vice President – Sales and Marketing; Shri A. K. Dhanda, General Manager – Sales; Shri R. R. Desai, Deputy General Manager – Sales; Shri Parimal Vazir, General Manager – Institutional Sales and Shri Ketan Valand, Officer Marketing.
- b) The DG also found one person of OP-3 to be liable in terms of Section 48 (1) of the Act as person incharge of running the affairs of the company during the cartel period, *namely*, Shri S. K. Khurana, former Chairman and Managing Director.



OP-4

- c) The DG found two office-bearers of OP-4 to be liable in terms of Section 48 (2) of the Act for their specific role in cartelisation, *namely*, Shri Subramania Kumaraswami, Secretary of AIDCM from 1 April, 2009 to 31 October, 2014 and Shri Ravindra Grover, Secretary of AIDCM from 1 November, 2014 onwards.
- d) The DG also found three persons of OP-4 to be liable in terms of Section 48 (1) of the Act as persons incharge of running the affairs of the association during the cartel period, *namely*, Shri Deepak Khaitan, President; Shri S. K. Khurana, Chairman and Shri R. P. Khaitan, President.

6.12 The DG, with the above findings, submitted its investigation report to the Commission on 20 February 2017.

7. Consideration of the investigation report of the DG

The Commission considered the investigation report of the DG and decided to forward an electronic copy of the same to OPs and the persons identified by the DG to be liable under Section 48 of the Act, for filing their suggestions/objections thereto. OPs were heard on 28 November 2017.

8. Submissions of OPs to the DG's Investigation Report

Submissions of OP-1 and its individuals

- 8.1 OP-1 submitted that it has made 'significant value addition' in the case by providing a full, true and vital disclosure about the said cartelisation in the zinc-carbon dry cell battery. In this regard, it has also disclosed that Geep Batteries (India) Private Limited (hereinafter, 'Geep') was a member of AIDCM along with other Manufacturers and was involved in the said cartel till 2012.



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Furthermore, it has named AIDCM (OP-4) as one of the participants of the said cartel, which strengthened the investigation conducted by the DG, though both OP-2 and OP-3 had denied the role of AIDCM in fixing the price. Furthermore, OP-1 submitted that it disclosed the name of an individual of OP-3, Shri Osamu Oyamada, who was involved in the said cartel.

- 8.2 OP-1 also submitted that it has provided evidence demonstrating that the cartel was in existence for several years including periods before 20 May 2009 and at least until 23 August 2016.
- 8.3 OP-1 further submitted that OP-1 and its individuals have fully cooperated in the investigation and accordingly, the Commission should grant them immunity from penalty.
- 8.4 OP-1 also requested the Commission to consider various mitigating factors while imposing penalty, if any, such as the fact that per capita consumption of batteries in India is one of the lowest in the world and hence, the market potential of demand in batteries is limited; and rise in the cost of raw materials for zinc-carbon dry cell batteries resulting in loss of battery business for OP-1 from the financial year 2011-12. Further, OP-1 submitted that the price increase affected by OP-1 was largely in the range of the price movement of the overall basket of consumer goods in the country.

Submissions of OP-2 and its individuals

- 8.5 OP-2 submitted that it does not have any objection to the findings in the DG report and it has made 'significant value addition' by providing a full, true and vital disclosure in relation to the said cartelisation of zinc-carbon dry cell batteries. Furthermore, OP-2 and its individuals have extended genuine, full, continuous and expeditious cooperation to the DG and the Commission throughout the investigation.



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- 8.6 OP-2 also requested the Commission to consider various mitigating factors while imposition of penalty, if any, such as stagnant demand of zinc-carbon dry cell batteries and increase in the cost of raw materials for zinc-carbon dry cell batteries; and that there has not been any profiteering by OP-2 because of the said cartelisation as zinc-carbon dry cell batteries are a low value product.
- 8.7 Further, OP-2 submitted that it understands the seriousness of the violation and therefore, is in a process of putting in place an effective Competition Law Compliance Program, which will assist in ensuring that it adopts policies and practices that are in conformity with the requirements of the Act.
- 8.8 OP-2 has requested the Commission to provide the maximum penalty waiver available to OP-2 and its individuals indicted in the said cartelisation.

Submissions of OP-3 and its individuals

- 8.9 OP-3 submitted that because of the Competition Compliance Program in its organisation, it became aware of the existing cartel of Manufacturers and accordingly approached the Commission under the Lesser Penalty Regulations.
- 8.10 OP-3 further submitted that it was the first to disclose the details of the cartel and provided full and complete disclosure, including all relevant information/ documents/ submissions, which helped establish the existence and methodology of the cartel in operation. Further, it cooperated throughout the proceedings with the Commission and the DG.
- 8.11 OP-3 also submitted that its Lesser Penalty Application not only enabled the Commission to order investigation, but also was sufficient to establish contravention of the Act. Accordingly, OP-3 and its individuals ought to be granted hundred percent reduction in the penalty.



Submissions of OP-4 (AIDCM) and its individuals

8.12 AIDCM submitted that it had no role to play in the pricing decisions of the dry cell batteries of the Manufacturers, which stands substantiated by OP-2 and OP-3, respectively. As regards its individuals, OP-4 has stated that Secretary of the association is the only an employee of OP-4 who functions only in an administrative capacity and cannot be considered liable under Section 48 of the Act.

8.13 In this regard, present Secretary of AIDCM, Shri Ravindra Grover in his submissions has raised the contention that proceedings against an officer of the 'company' under Section 48 of the Act can only be initiated once finding of contravention against the 'company' is established under Section 27 of the Act.

8.14 Further, it has been contended that Section 48 of the Act relates to contravention by companies. So, it does not apply to an unregistered association of companies. As Shri Ravindra Grover is not Secretary of any company, no proceedings against him can be initiated under Section 48(2) of the Act. Furthermore, it has been argued that the Commission has not informed Shri Ravindra Grover whether Section 48(1) or Section 48(2) of the Act is being invoked against him in the instant case thereby preventing him from discerning the exact nature of the case being made out against him and accordingly filing a proper response.

9. Analysis of the Commission

9.1 The Commission has considered the Lesser Penalty Applications filed by the Manufacturers, the investigation report of the DG and the submissions of OPs and their individuals. It is noted that all the Manufacturers have admitted the fact that they were involved in the cartelisation of zinc-carbon dry cell batteries.



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- 9.2 From the information and evidence furnished by OPs and the investigation by the DG, it is observed that the Manufacturers indulged in anticompetitive conduct of price coordination, limiting production/ supply as well as market allocation. The price coordination amongst the Manufacturers encompassed not only increase in the MRP of the zinc carbon dry cell batteries but also exclusion of 'price competition' at all levels in the distribution chain of zinc-carbon dry cell batteries to ensure implementation of the agreement to increase price. In addition, the Manufacturers also agreed to control supply in the market to establish higher prices and indulged in market allocation by requesting each other to withdraw their products from the market. For these purposes, the Manufacturers exchanged amongst themselves confidential and commercially sensitive information about pricing as well as other information such as production and sales data.
- 9.3 In order to increase price of the zinc carbon dry cell batteries, the Manufacturers mutually agreed on the implementation modalities of MRP. They not only decided the schedule of start of production of units with new MRP but also the start of billing as well as availability of products, with revised rates in the market.
- 9.4 The evidence gathered during investigation and submission of OPs shows that the individuals of the Manufacturers regularly discussed and agreed when to give effect to the price increase during the personal /AIDCM meetings. OP-1 being the market leader would take lead by issuing press release to announce increase in price of its zinc-carbon dry cell batteries. Thereafter, OP-2 and OP-3 would respond to it immediately with corresponding increase in price of their batteries on the pretext of following the market leader.
- 9.5 For example, in 2013, senior employees of the Manufacturers held a meeting on 10 April 2013, and, *inter alia*, agreed to increase the MRP of 'Economy' category of batteries. On 12 April 2013, OP-1 issued a press release



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announcing the increase in MRP of its 'Economy' range of dry cell batteries effective from May, 2013. OP-2 and OP-3 simultaneously increased MRP of their 'Economy' segment batteries from May, 2013.

- 9.6 The next press release by OP-1 was on 20 September 2013 announcing price increase of its 'Economy' dry cell batteries from October 2013. This was after the AIDCM meeting on 12 September 2013. OP-2 and OP-3 also increased MRP of their products from October 2013.
- 9.7 Subsequent meeting of AIDCM was held on 25 February 2014. OP-1 made a press release dated 20 March 2014 announcing price increase in all types of dry cell batteries from April 2014. This was followed by OP-2 and OP-3 increasing MRP of their 'Economy' and 'Premium' category of batteries from April 2014. The same *modus operandi* was followed in 2015 as well.
- 9.8 The evidence on record shows that price increases made by OP-2 and OP-3 immediately following announcement of price increase by OP-1 were with prior information of imminent price increase by OP-1. Due to this, OP-2 and OP-3 were able to increase prices of their respective products on most of the occasions with little or no time lag though ordinarily such actions of changing the price label of the product, packaging with new price tag *etc.* would take considerable time.
- 9.9 Further, evidence collected during investigation shows that price coordination agreement amongst the Manufacturers was not limited to deciding and implementing increase in MRP of zinc-carbon dry cell batteries alone but extended to include monitoring and controlling of prices at all levels so as to exclude 'price competition' in the entire distribution chain of zinc-carbon dry cell batteries.



- 9.10 Notably, in the distribution chain, the Manufacturers sold the batteries to the distributors/ wholesalers and through them to the retailers on ‘principal to principal’ basis. Once the batteries were sold to wholesalers/ retailers they pushed sales of the batteries by offering attractive margins/ incentives. At the same time, sales staff of the companies tried to promote sales performance of their products by resorting to promotional schemes - like scratch coupons, gifts, combo offers, festival offerings *etc.* All this resulted in ‘price competition’ at various levels. For instance, if wholesalers / retailers of OP-1 tried to boost sale of OP-1’s products, by offering incentives to the consumers, it would result in lower sales for OP-2 and OP-3.
- 9.11 Since the ‘price competition’ in the distribution chain, as stated above, could have rendered the agreement/ understanding reached among the Manufacturers ineffective, they entered into agreement/ understanding/ coordination amongst themselves to cover all other elements of the price structure besides MRP, comprising trade discount, wholesale price, dealer/ stockist landing cost, open market rates, retailers’ margin, sales promotion schemes *etc.*
- 9.12 The evidence on record shows that despite the above agreement/ understanding/ coordination, the Manufacturers faced problem in actual implementation of increased MRP in the market. Since deviation from the agreed stand by any of the Manufacturers could result in drop of sales volume of others, they would bring to one another’s notice concerns about slow implementation of the mutually agreed decisions and would seek corrective action if deviations from the agreement were observed in the market. Besides, they would regularly share amongst them information regarding operating margin rates, wholesale offer price *etc.* prevailing in various states/ cities/ towns collected by the sales staff and would even control supply in the market to establish higher prices of batteries.



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- 9.13 The e-mails exchanged amongst the Manufacturers show that there was also an understanding amongst them to allocate market based on geographical area and types of batteries. They would often request each other to withdraw their products from a particular geographical area such as a state or town or city.
- 9.14 Apart from all this, Manufacturers in their meetings held under the aegis of AIDCM, would share common concerns about low rates of batteries offered by other maverick players, mostly importers/ traders, as this occasionally caused constraints in raising/ maintaining the higher market price of their battery products. The evidence gathered by the DG shows that on one occasion in AIDCM meeting on 10 February 2012, the Manufacturers deliberated the impact of alkaline and rechargeable batteries on the market of the zinc-carbon dry cell batteries and contemplated reduction in MRP of AA and AAA size batteries by reducing trade margins. Also, the Manufacturers discussed the low rates at which their batteries were being sold by the modern retail channels like 'Walmart' and 'Metro Cash & Carry' etc. and agreed on the strategy to counter such issues. The Commission observes that while it may be legitimate for enterprises engaged in the same line of business to share common concerns, the Manufacturers in the instant case used the platform of AIDCM to coordinate their actions, *inter alia*, on pricing.
- 9.15 The top management of the Manufacturers played an active role in this collusion. It is observed that the coordination amongst the Manufacturers took place at the highest level in these companies. The top managerial personnel discussed various aspects of coordination in the meetings of AIDCM (reflected in the minutes of such meetings), on the sidelines of meetings of AIDCM (reflected in the hand-written notes and agenda points prepared by the individual members for the meeting) and in private meetings. Moreover, there were frequent direct email/ fax communications amongst the individuals of OPs, which show their close personal and friendly relations and the underlying deep commitment to adhere to '*gentlemen's agreement*'.



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9.16 This conduct of the Manufacturers is summarised very well in the submission of Shri S. K. Khurana during his deposition before the DG wherein he stated as follows:

“....PECIN had an understanding with other competitors namely Eveready and NIPPO not to enter into price war, i.e. not to resort to severe undercutting and such understanding existed for a long time even way before 2009.”

9.17 Thus, based on the evidence furnished by OPs as well as that collected by the DG during investigation, Commission is of the opinion that the Manufacturers indulged in anti-competitive conduct in the domestic dry cell battery market of zinc carbon batteries.

9.18 In respect of OP-4, which has stated that it had no role to play in pricing decisions of the dry cell batteries of the Manufacturers, the Commission observes that the DG has given a finding that platform of AIDCM had been used for the purpose of cartelisation. Investigation by the DG has revealed that the data on volume of production and sales of member companies in respect of, *inter alia*, dry cell batteries (both zinc-carbon and alkaline) and flashlight / torches was formally shared on a monthly basis by AIDCM in a prescribed format. This has been admitted by OPs in their written replies as well as in the statements of their individuals. Besides, data on total import of zinc-carbon battery was also shared.

9.19 An illustration of such information sharing is contained in the email dated 15 January 2016 which was sent by Shri Ravindra Grover, Secretary of AIDCM, to each of the Manufacturers. This e-mail reveals that micro details of production and sales data of the Manufacturers were available to the Manufacturers by the first fortnight of the ensuing month. The information on production and sales of zinc-carbon batteries of the Manufacturers, being



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compiled by AIDCM comprised company-wise detailed information for different battery sizes with further breakup on the basis of premium / popular types as well as the aggregate data of the industry.

9.20 When Shri Ravindra Grover was confronted with the aforesaid e-mail during his deposition before the DG on 5 January 2017, he stated that

“This practice has been going on since prior to my joining the association. One of the reasons for collection of this data was to calculate the membership subscription payable by the companies. This was also done to basically understand the market conditions. Sometimes, we also used to get request from the Government seeking such data....”

9.21 Contrary to this, when similar question was posed to Shri S. Kumaraswami, former Secretary of AIDCM during his deposition before the DG on 10 January 2017, he responded as under:

“The main objective of the association is collection and collation of production and sales figures of its member companies on monthly basis. It is done to calculate their market shares. This information was shared with the members themselves.”

9.22 From the above statements, it is evident that reasoning given by Shri Ravindra Grover that data collated by AIDCM was being used for calculation of membership fee is not plausible. For the purpose of such a calculation, other publicly available information like aggregate turnover of the members given in their annual financial statements, could have been used. While the explanation by OPs that the Government agencies often require industry information is understandable, this cannot be a cogent reason to circulate such a granular and detailed information relating to production and sales among the competitors on a regular basis. In fact, the segregated data was seldom shared with any other agency/ organisation except the Manufacturers.



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- 9.23 There is further evidence to show that by collating and disseminating crucial business data of the competitors, AIDCM facilitated better coordination amongst the Manufacturers. The monthly data on production and sales of the Manufacturers collected by AIDCM was used to compare/ assess the impact of the overall arrangement on pricing and other business strategies, on their market shares over a period. For instance, in one of the fax messages dated 13 February 2015 from Shri Suvamoy Saha of OP-1 to Shri R. P. Khaitan of OP-2, Shri Saha is stating that he has compared the sales data of OP-2 with that of OP-1 and OP-3 for the years 2013-14 and 2014 -15 (till January 2015) and he tries to explain that negative growth of OP-2 could not be attributed to pricing *i.e.* price increase. Shri Suvamoy Saha has also proposed in that message to Shri R. P. Khaitan to have an open discussion in the forthcoming meeting in Delhi.
- 9.24 The Commission finds that practice by AIDCM of compiling and disseminating commercially sensitive data was greatly helpful to the Manufacturers to monitor the outcome of overall ‘agreement/ understanding’ reached at amongst them with regard to pricing, output, sale/ supply, allocation of market, *etc.* In fact, comparison of the market shares of OPs for the past six years *i.e.* from 2010-11 to 2015-16 based on their sales of zinc carbon dry cell batteries shows that market share of each of the OPs remained stable over these years. This is a clear indicator of the effectiveness of the cartel arrangement.
- 9.25 The evidence on record also shows that OP-4 through Shri S. Kumaraswami, former Secretary AIDCM, had been privy to the intended price increase by the members of AIDCM. Some of email communications of Shri S. Kumaraswami in 2012 indicate that when the Manufacturers were contemplating measures to increase prices, they roped in AIDCM for giving the press release. The emails exchanged show that, in 2012, Shri Suvamoy



Saha after consulting Shri R. P. Khaitan of OP-2 had forwarded a draft on price increase measures of the members *i.e.* the Manufacturers *vide* email dated 23 March 2012 to Shri Kumaraswami and requested him to seek concurrence of Shri S. K. Khurana of OP-3 for the same. Shri Kumaraswami in turn contacted Shri S. K. Khurana and wrote back to Shri Suvamoy Saha conveying that Shri Khurana required details of the modalities of newspaper advertising *etc.* Subsequently, Shri Kumaraswami after an informal discussion with Shri Gupta of TPM consultants, wrote an e-mail dated 24 March 2012 to Shri Suvamoy Saha of OP-1 raising an apprehension that such press release by the association, *i.e.* AIDCM may attract attention of the Competition Commission of India. This e-mail is reproduced below:

“Dear Suvamoy,

This is further to my mail giving my suggestions on the draft. I had a meeting with Mr. Gupta this afternoon to discuss various issues post initiation of investigation – now expected by 28th or 29th. I was casually talking to him that the industry will be passing on duty increases with immediate effect and that the Association may be issuing a press release in this connection. According to him such a release by the association may, repeat may, attract the attention of Competition Commission – very active these days – and should be avoided. He has not- neither have I- come across any press release by any association on such matters. I have seen news items planted by individual companies mostly carmakers. Pl discuss internally and with other members and advice.

Regards

Kumar”

- 9.26 In view of the apprehension raised by Shri Kumaraswami in his e-mail, Shri Suvamoy Saha asked OP-4 not to issue any press release. When Shri Kumaraswami during his deposition on 10 January 2017 was asked to offer his comments on the above e-mail. He stated as follows:



“Mr. Suvamoy Saha of Eveready had suggested the issue of press release regarding price hike to be released by the Association, but I refused to let the Association be drawn into such thing.”

- 9.27 The Commission is of the view that contention of Shri Kumaraswami that he refused to be drawn into such things *i.e.* price announcement, cannot be accepted considering that he played an active role in seeking concurrence of Shri Khurana, provided feedback to Shri Saha and later, after an informal discussion with Shri Gupta rendered considered advice to Shri Saha. There is also evidence on record to show that subsequently Shri Kumaraswami, *vide* email dated 20 March 2014, passed on the information of press release on price increase by OP-1 to the other two members, namely, OP-2 and OP-3. This shows that the individuals of OPs including OP-4 were fully aware that their conduct was in contravention of the Act.
- 9.28 In view of the foregoing, the Commission finds that OP-4 through its practices, decisions and conduct of the office bearers *i.e.* individuals of OP-4, facilitated anti-competitive agreement/ understanding and concerted action amongst its members in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act.
- 9.29 Further, the Commission finds that contention of Shri Ravindra Grover, Secretary of OP-4, that Section 48 of the Act does not apply to an unregistered association of companies and no proceedings against him can be initiated under Section 48(2) of the Act as he was not the Secretary of a ‘company’ but an association, is misconceived. In this regard, it is pointed out that Explanation (a) to Section 48 of the Act clearly provides that the term ‘company’ means a body corporate and includes a firm or other association of individuals. Thus, AIDCM being an association of individuals/ companies is squarely covered under Section 48 of the Act and individuals of OP-4 can be



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held liable under Section 48 of the Act once it is established that contravention has been made by the association.

- 9.30 In view of the foregoing, the Commission is of the opinion that OP-1, OP-2 and OP-3 have been involved in cartelisation of zinc-carbon dry cell batteries in India which has been facilitated by OP-4, in contravention of the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) read with Section 3(1) of the Act. Further, the individuals of OPs have also been actively involved in the said cartelisation in the domestic market.

10. Evaluation of Applications for Lesser Penalty

- 10.1 As mentioned earlier, the Commission received Lesser Penalty Applications from OP-1, OP-2 and OP-3 in the present matter. Keeping in view the sequence in which they approached the Commission under Regulation 5 of Lesser Penalty Regulations read with Section 46 of the Act, it granted First Priority Status to OP-3, Second Priority Status to OP-1 and Third Priority Status to OP-2.
- 10.2 The Commission observes that the information and evidence provided by OP-3, first applicant to file Lesser Penalty Application, was crucial in assessing the domestic market structure of the zinc-carbon dry cell batteries, nature and extent of information exchanges amongst OPs with regard to the cartel and identifying the names, locations and email accounts of key persons of OPs actively involved in the cartel activities. The information and cooperation received from OP-3 enabled the DG to conduct search and seizure operations at the premises of the Manufacturers and seize quality evidence in the form of emails, handwritten notes and various other documents. Thus, full and true disclosure of information and evidence and continuous cooperation provided by OP-3, not only enabled the Commission to order investigation



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into the matter, but it also helped in establishing the contravention of Section 3 of the Act by.

10.3 With respect to the Lesser Penalty Applications of OP-1 and OP-2, the Commission notes that incriminating documents (both hard and soft copies) recovered and seized from the premises of the Manufacturers during the search and seizure operations on 23 August 2016 were independently sufficient to establish the contravention of Section 3 of the Act by OPs. Therefore, information/ evidence on cartel including the period of cartel, submitted by OP-1 and OP-2 did not result in 'significant value addition' as is claimed by them in their submissions. But, the Commission also notes that both OP-1 and OP-2 have provided genuine, full, continuous and expeditious cooperation during the course of investigation in the present case.

10.4 On the basis of the foregoing, the Commission decides, as follows:

- (a) The Commission grants reduction of 100 (hundred) percent of the penalty leviable under the Act, to OP-3.
- (b) The Commission observes that OP-1, who is second in making a disclosure in this case, approached the Commission not at the beginning but at a later stage of the investigation, *i.e.* three days after the search and seizure operations had been carried out by the DG. OP-1 has claimed that the disclosures made in its Lesser Penalty Application regarding product involved, commencement/ duration of cartel, membership of Geep in AIDCM, *modus operandi* of cartel, evidence of role of AIDCM and involvement of certain individuals such as Shri Osamu Oyamada *etc.* demonstrated that it had met the requirements of 'significant value addition'. On careful examination of the material submitted by OP-1, the Commission finds that almost all disclosures made by OP-1 were available with the Commission/ DG



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either as disclosures by OP-3 or material obtained by DG during search and seizure operation. However, OP-1 through several oral statements supported by contemporaneous documents, corroborated information already in possession of the DG and helped connect the evidence gathered during the search and seizure operations. Taking into account these factors, priority status as well as continuous and expeditious co-operation extended by OP-1 including admission of cartelisation, the Commission decides to grant 30 (Thirty) percent reduction in the penalty to OP-1 than what would otherwise have been imposed on it had it not cooperated with the Commission and admitted to the cartelisation.

- (c) The Commission notes that OP-2, who is third in making a disclosure in this case, has also through several oral statements supported by contemporaneous documents, corroborated certain information already in possession of the DG and explained the evidence gathered during the search and seizure operations. However, the Applicant approached the Commission not at the beginning but after nearly three weeks of the search and seizure operations of the DG. Taking into account these factors, the priority status granted and continuous and expeditious co-operation extended by OP-2 including admission of cartelisation, the Commission decides to grant 20 (Twenty) percent reduction in the penalty to OP-2 than what would otherwise have been imposed on it had it not cooperated with the Commission and admitted to the cartelisation.

ORDER

11. In view of the above findings of contravention against OP-1, OP-2, OP-3 and OP-4 and their aforementioned individuals, the Commission directs them to cease and desist from indulging in such anti-competitive conduct in future.



12. As regards the penalty to be imposed under Section 27 of the Act, the Commission observes that the Manufacturers have accepted that they had an understanding / arrangement with each other to cartelise in the zinc-carbon dry cell battery in the domestic market. Moreover, conduct of OP-4 as a facilitator, stands conclusively established by the DG.
13. Further, it is noted that in the instant case the cartel continued for a period of more than six years. The Manufacturers had a clear agreement/ understanding to increase price of zinc-carbon dry cell battery in the market. To this end, they exchanged information on prices, monitored each other's prices and took steps to curb price competition amongst them. They also allocated market amongst them based on geographical area and types of batteries. The Manufacturers admitted to these anti-competitive activities unequivocally in their Lesser Penalty Applications; however, they also pointed out certain mitigating factors peculiar to the zinc-carbon dry cell battery industry such as less per capita demand, rising input costs, low value of the product, little margin/ profit in sale of the product, competition from cheap imports *etc.* in their response to the investigation report of the DG.
14. Considering the totality of facts and circumstances of the present case, the Commission decides to impose penalty on OP-1, OP-2 and OP-3 in terms of the proviso to Section 27 (b) of the Act which provides as follows:
- “Provided that in case any agreement referred to in Section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of upto three times of its profit for each year of the continuance of such agreement or ten percent of its turnover for each year of the continuance of such agreement, whichever is higher.”*
15. On careful consideration of the aggravating and mitigating factors in the case and keeping in view the above provision of the Act, the Commission decides to levy



penalty at the rate of 1.25 times of the profits of the Manufacturers for each year for the duration of the cartel. In case of AIDCM (OP-4), the Commission notes that the receipts of OP-4 are not significant and for achieving deterrent effect it would be appropriate to levy the penalty at the rate of 10 (ten) percent of the average of its gross receipts for the last preceding three financial years. Accordingly, the leviable penalty is tabulated below:

EVEREADY INDUSTRIES INDIA LTD. (OP-1)

(Rupees in crores)

Years	Profit After Tax	Penalty at 1.25 times of relevant profit
2009-10	31.57	34.06*
2010-11	24.03	30.04
2011-12	-11.66 [#]	0
2012-13	5.12	6.40
2013-14	7.94	9.93
2014-15	43.95	54.94
2015-16	53.91	67.39
2016-17	85.23	42.32*
Total Penalty		245.07

INDO NATIONAL LTD. (OP-2)

(Rupees in crores)

Years	Profit After Tax	Penalty at 1.25 times of relevant profit
2009-10	8.19	8.83*
2010-11	6.50	8.12
2011-12	-1.67 [#]	0
2012-13	-11.62 [#]	0
2013-14	3.03	3.79
2014-15	12.62	15.77
2015-16	7.38	9.22
2016-17	14.28	7.09*
Total Penalty		52.82

PANASONIC ENERGY INDIA CO. LTD. (OP-3)

(Rupees in crores)

Years	Profit After Tax	Penalty at 1.25 times of relevant profit
2009-10	8.39	9.05*
2010-11	5.79	7.23



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2011-12	0.30	0.37
2012-13	-0.08 [#]	0
2013-14	7.77	9.72
2014-15	19.95	24.93
2015-16	18.29	22.87
2016-17	1.01	0.50*
Total Penalty		74.68

* On a pro-rata basis for the duration of the cartel for the said financial year. For FY 2009-10, relevant profit considered from 20.05.2009 to 31.03.2010 i.e. 315 days out of 365 days. For FY 2016-17 relevant profit considered from 01.04.2016 to 23.08.2016 i.e. 145 days out of 365 days

[#] Negative profit for the concerned financial years (excluded).

ASSOCIATION OF INDIAN DRY CELL MANUFACTURERS (OP-4)

Financial Years	Amount in INR (Total Receipts)
2014-15	6,36,980
2015-16	15,27,719
2016-17	33,98,810
Average turnover for preceding 3 years	18,54,503
Total Penalty (10 percent of average turnover for preceding 3 years)	1,85,450

16. Considering that the Commission has decided to grant 30 (Thirty) percent reduction in penalty to OP-1 under Section 46 of the Act, as recorded hereinabove, total amount of penalty to be paid by OP-1 is INR 171.55 crores (Rupees One Hundred Seventy-One crores and Fifty-Five lakhs).
17. Considering further that the Commission has decided to grant 20 (Twenty) percent reduction in penalty to OP-2 under Section 46 of the Act, as recorded hereinabove, total amount of penalty to be paid by OP-2 is INR 42.26 crores (Rupees Forty-Two crores and Twenty Six lakhs).
18. Lastly, considering that the Commission has decided to grant 100 (One Hundred) percent reduction in penalty to OP-3 under Section 46 of the Act, as recorded hereinabove, total amount of penalty to be paid by OP-3 is NIL.



19. Total amount of penalty to be paid by OP-4 is INR 1,85,450 (Rupees One Lakh Eighty Five Thousand Four Hundred and Fifty).
20. The Commission directs OPs to deposit the penalty amount within 60 days of receipt of this order.
21. So far as the liability of the individuals of OPs in terms of the provisions of Section 48 of the Act is concerned, the DG after finding OPs *i.e.*, OP-1, OP-2, OP-3 and OP-4 to be in contravention of the provisions of the Act, has investigated and highlighted the individual roles of their personnel for the purposes of Section 48 as below:

Individuals of OPs found to be guilty of contravention of the Act and liable for penalty under Section 48 of the Act:

22. The Commission has already held that the impugned acts / conduct of OP-1, OP-2, OP-3 and OP-4 are in contravention of the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) read with Section 3(1) of the Act. The liability of the individuals of OP-1, OP-2, OP-3 and OP-4 under the provisions of Section 48 of the Act flows vicariously. In the instant case, the Commission observes that individuals of the respective OPs, as mentioned in Para 6.11, have been identified to be liable under Section 48 of the Act by the DG
23. No individual of OPs has shown that contravention of the Act was committed without his knowledge or that he had exercised due diligence to prevent the commission of contravention. But for two individuals of OP-2, namely, Shri P. Dwaraknath Reddy and Shri Hemant Gupta, who have questioned the finding of the DG, none of the other individuals of the Manufacturers mentioned by the DG, have disputed the finding in respect of those held liable under Section 48 of the Act. Therefore, each one of them is deemed to be guilty of the contravention of the Act and is liable for penalty under Section 48 of the Act.



24. In respect of Shri Reddy and Shri Gupta, who have disputed the finding of their involvement in the cartelisation of zinc-carbon dry cell battery, the Commission observes as under:

- a) In respect of involvement of Shri P. Dwaraknath Reddy, the Commission has considered the submission that no incriminating evidence has been found against him by the DG and accordingly, he may be exonerated. The Commission observes that Shri P. Dwaraknath Reddy has been the Managing Director and CEO of OP-2 since October 2009. The collusion for such a long period of time could not have been possible without his knowledge and implicit approval. Moreover, in the Lesser Penalty Application of OP-2, Shri P. Dwaraknath Reddy has been named as a person associated with the cartel. During investigation also, it was identified that Shri P. Dwaraknath Reddy is overall in-charge of running the affairs of OP-2. More importantly, Shri P. Dwaraknath Reddy has neither been able to demonstrate that contravention of the Act was committed without his knowledge nor anything to show that he had exercised due diligence to prevent the commission of contravention. Therefore, Shri P. Dwaraknath Reddy is deemed to be guilty of the contravention and is liable for penalty under Section 48(1) of the Act.
- b) In respect of Shri Hemant Gupta's involvement in the cartel, the Commission has considered the submission that he was only executive assistant of the Joint Managing Director of OP-2 and accordingly, he has not been involved in the cartel. The Commission, however, observes that in the Lesser Penalty Application of OP-2, Shri Hemant Gupta has been named as a person associated with the cartel. Further, the investigation has revealed that, Shri Hemant Gupta, AGM-Executive Assistant to Joint Managing Director of OP-2, had assisted Shri R. P. Khaitan, Joint Managing Director of OP-2, in the cartel arrangement by providing regular feedback points/ agenda for discussion with the individuals of OP-1 and OP-3. Not only that, Shri Hemant Gupta directly exchanged commercially sensitive information with senior personnel and his



counterparts in OP-1 and OP-3. Thus, there is enough evidence to show that Shri Hemant Gupta was actively involved alongwith his superiors and he executed the anti-competitive directions of his seniors on his own volition. Therefore, the Commission holds Shri Hemant Gupta liable under Section 48(2) of the Act.

25. *Role of the individuals of OP-4:* The Commission holds two individuals of AIDCM, namely, Shri Ravindra Grover and Shri S. Kumaraswami, who were functioning as Secretary of AIDCM liable for violation of Section 48 of the Act as they played an active role in aiding cartelisation in the domestic dry cell battery market. The Commission also holds Shri S. K. Khurana, who was the Chairman of OP-4 from February 2012 to September 2015, and Shri R. P. Khaitan, who was President of OP-4 from September 2015 to August 2016, liable in their capacity as the office-bearers of OP-4. Although Shri Deepak Khaitan of OP-1, the former President of AIDCM was also found liable by the DG, the Commission has allowed the request for deletion of his name as he passed away on 9 March 2015.

26. Thus, considering the totality of facts and circumstances of the present case, the Commission decides to impose penalty in terms of Section 27(b) of the Act calculated at the rate of 10 percent of the average of their income for the last three preceding financial years on the following individuals of OP-1, OP-2, OP-3 and OP-4:

INDIVIDUALS OF OP-1

(Amount in rupees)

S. No.	Name	Income in FY 2014-15	Income in FY 2015-16	Income in FY 2016-17	Average Income for three years	Penalty Imposed
(i)	Shri Suvamoy Saha	2,20,06,658	2,39,27,708	2,66,39,966	2,41,91,444	24,19,144
(ii)	Shri Partha Biswas	83,88,108	93,17,406	1,00,25,057	92,43,524	9,24,352
(iii)	Shri Anil Bajaj	55,93,721	53,31,617	55,83,200	55,02,846	5,50,285
(iv)	Shri Kunal Gupta	48,64,011	50,47,482	60,71,233	53,27,575	5,32,758
(v)	Shri Indranil Roy Chowdhury	40,72,723	51,13,169	62,38,902	51,41,598	5,14,160



(vi)	Shri Amritanshu Khaitan	1,99,41,302	2,87,64,271	3,19,93,973	2,68,99,849	26,89,985
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INDIVIDUALS OF OP-2

(Amount in rupees)

S. No.	Name	Income in FY 2014-15	Income in FY 2015-16	Income in FY 2016-17	Average Income for three years	Penalty Imposed
(i)	Shri R.P. Khaitan	1,11,12,525	1,35,21,434	1,27,54,779	1,24,62,913	12,46,291
(ii)	Shri M. Sankara Reddy	55,15,144	61,62,402	67,85,157	61,54,234	6,15,423
(iii)	Shri B. L. N. Prasad	22,54,841	25,24,510	29,05,877	25,61,743	2,56,174
(iv)	Shri Hemant Gupta	18,62,140	19,84,315	20,76,347	19,74,267	1,97,427
(v)	Shri P. Dwaraknath Reddy	80,99,043	94,65,632	93,20,005	89,61,560	8,96,156
(vi)	Shri Santosh Tanmay [@]		16,57,863	24,53,281	20,55,572	2,05,557
S. No.	Name	Income in FY 2013-14	Income in FY 2014-15	Income in FY 2015-16	Average Income for three years	Penalty Imposed
(vii)	Shri Manas Mitra ^{@@}	8,38,963	8,70,849	8,69,252	8,59,688	85,969
S. No.	Name	Income in FY 2011-12	Income in FY 2012-13	Income in FY 2013-14	Average Income for three years	Penalty Imposed
(viii)	Shri Latesh Madan ^{@@@}	15,06,025	22,70,205	22,21,136	19,99,122	1,99,912

[@] Shri Santosh Tanmay / Santosh Kumar was employee of OP-2 from 1 April 2015 to 31 May 2017. Income details have been considered, accordingly

^{@@} Shri Manas Mitra was employee of OP-2 from 1 December, 1983 to 31 December, 2015. Income details have been considered, accordingly

^{@@@} Shri Latesh Madan was employee of OP-2 from 5 September, 2011 to 1 June, 2013. Income details have been considered, accordingly

**INDIVIDUALS OF OP-3***(Amount in rupees)*

S. No.	Name	Income in FY 2014-15	Income in FY 2015-16	Income in FY 2016-17	Average Income for three years	Penalty Imposed
(i)	Shri A.K. Dhanda	10,86,882	14,71,239	14,37,327	13,31,816	1,33,182
(ii)	Shri R. R. Desai	10,71,187	10,83,395	10,76,126	10,76,903	1,07,690
(iii)	Shri Parimal Vazir	14,11,753	16,63,516	14,96,228	15,23,832	1,52,383
(iv)	Shri Ketan Valand	3,63,891	4,11,434	4,00,441	3,91,922	39,192
(v)	Shri S.K. Khurana	90,36,610	1,25,85,124	1,62,61,701	1,26,27,812	12,62,781
S. No..	Name	Income in FY 2013-14	Income in FY 2014-15	Income in FY 2015-16	Average Income for three years	Penalty Imposed
(vi)	Shri Hideya Maekawa [@]	37,35,396	55,14,609	27,61,857	40,03,954	4,00,395

@ Shri Hideya Maekawa was employee of OP-3 from January 2012 to November 2015

INDIVIDUALS OF OP-4*(Amount in rupees)*

S. No.	Name	Income in FY 2011-12	Income in FY 2012-13	Income in FY 2013-14	Average Income for three years	Penalty Imposed
(i)	Shri Subramania Kumaraswami, Secretary	6,39,615	6,55,289	8,38,166	7,29,023	71,102
S. No.	Name	Income in FY 2014-15	Income in FY 2015-16	Income in FY 2016-17	Average Income for three years	Penalty Imposed
(ii)	Shri Ravindra Grover, Secretary	22,50,108	26,98,559	32,99,870	27,49,512.33	2,74,951
S. No.	Name	Income in FY 2014-15	Income in FY 2015-16	Income in FY 2016-17	Average Income for three years	Penalty Imposed
(iii)	Shri S. K. Khurana	90,36,610	1,25,85,124	1,40,34,071	1,26,27,812	12,62,781



S. No.	Name	Income in FY 2014-2015	Income in FY 2015-2016	Income in FY 2016-17	Average Income for three years	Penalty Imposed
(iv)	Shri R.P. Khaitan	-	-	-	-	-

27. The Commission has decided to levy penalty on individuals of OP-4 as shown in Para 26 above. With respect to Shri R. P. Khaitan, it is pointed out that he has already been penalised as individual of OP-2. Accordingly, no penalty is levied on him separately for his role in the cartelisation as office bearer of OP-4.

28. Considering that the Commission has decided to grant 30 (Thirty) percent reduction in penalty to OP-1 under Section 46 of the Act as recorded hereinabove, the Commission allows the reduction in penalty by the same quantum to Shri Amritanshu Khaitan, Shri Suvamoy Saha, Shri Partha Biswas, Shri Anil Bajaj, Shri Indranil Roy Chowdhury and Shri Kunal Gupta of OP-1 under Section 46 of the Act. Thus, the total amount of penalty to be paid by each of above individuals of OP-1 is as follows:

S.No.	Name	Penalty Payable after Reduction
(i)	Shri Suvamoy Saha	16,93,401
(ii)	Shri Partha Biswas	6,47,047
(iii)	Shri Anil Bajaj	3,85,199
(iv)	Shri Kunal Gupta	3,72,930
(v)	Shri Indranil Roy Chowdhury	3,59,912
(vi)	Shri Amritanshu Khaitan	18,82,989

29. Similarly, considering that the Commission has decided to grant 20 (Twenty) percent reduction in penalty to OP-2 under Section 46 of the Act, the Commission allows the same quantum of reduction in penalty to Shri R. P. Khaitan, Shri M. Shankara Reddy, Shri B. L. N. Prasad, Shri Hemant Gupta and Shri P. Dwarkanath Reddy under Section 46 of the Act. Thus, the amount of penalty to be paid by each of the above individuals of OP-2 is as follows:

S. No.	Name	Penalty Payable after Reduction
(i)	Shri R.P. Khaitan	9,97,033
(ii)	Shri M. Sankara Reddy	4,92,339



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(iii)	Shri B. L. N. Prasad	2,04,940
(iv)	Shri Hemant Gupta	1,57,941
(v)	Shri P. Dwarkanath Reddy	7,16,925
(vi)	Shri Santosh Tanmay	1,64,446
(vii)	Shri Manas Mitra	63,814
(viii)	Shri Latesh Madan	1,59,930

30. So also, considering that the Commission has decided to grant cent percent (Hundred percent) reduction in penalty to OP-3 under Section 46 of the Act as recorded hereinabove, the Commission allows the same reduction in penalty to Shri Hideya Maekawa, Shri A. K. Dhanda, Shri R. R. Desai, Shri Parimal Vazir, Shri Ketan Valand and Shri S. K. Khurana of OP-3 under Section 46 of the Act. Thus, no penalty is levied on any of these individuals of OP-3.

31. The Commission directs the parties to deposit the respective penalty amount within 60 days of receipt of this order.

32. The Secretary is directed to inform the parties accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

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

New Delhi
Dated: 19 April 2018