



COMPETITION COMMISSION OF INDIA

Suo Motu Case No. 05 of 2016

In Re: Anti-competitive conduct in the paper manufacturing industry

Against:

Banwari Paper Mills Limited	Opposite Party No. 1
Bindals Papers Mills Limited	Opposite Party No. 2
Fibremax Papers Private Limited	Opposite Party No. 3
Indian Agro & Recycled Paper Mills Association	Opposite Party No. 4
K.R. Pulp & Papers Limited	Opposite Party No. 5
Khanna Paper Mills Limited	Opposite Party No. 6
Katyayini Paper Mills Private Limited	Opposite Party No. 7
Kuantum Papers Limited	Opposite Party No. 8
Madhya Bharat Papers Limited	Opposite Party No. 9
Naini Paper Limited	Opposite Party No. 10
Rama Paper Mills Limited	Opposite Party No. 11
Ruchira Papers Limited	Opposite Party No. 12
Sangal Papers Limited	Opposite Party No. 13
Satia Industries Limited	Opposite Party No. 14
Shree Bhawani Paper Mills Limited	Opposite Party No. 15
Shree Shyam Pulp & Board Mills Limited	Opposite Party No. 16
Shreyans Industries Limited	Opposite Party No. 17
Supreme Paper Mills Limited	Opposite Party No. 18
The Sirpur Paper Mills Limited	Opposite Party No. 19
Tirupathi Balaji Fibres Limited	Opposite Party No. 20
Trident Limited	Opposite Party No. 21



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CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

Present:

For OP-1 and its individuals	Mr. KKR Das, Advocate
For OP-2 and its individuals	Mr. Nakul Mohta and Ms. Vatsala Pandey, Advocates
For OP-3 and its individuals	Mr. KKR Das, Advocate
For OP-4 and its individuals	Mr. Manav Vohra, Advocate
For OP-5 and its individuals	Mr. Pawan Upadhyay, Ms. Tanzeela Mubashsharah, Advocates alongwith Mr. Jitendra Prakash Gupta, Vice President (Commercial)
For OP-6 and its individuals	Mr. Ramji Srinivasan, Senior Advocate with Mr. Shivkrit Rai, Mr. Atul Dua and Ms. Gayatri Verma, Advocates
For OP-7 and its individuals	Mr. Abir Roy and Mr. Vivek Pandey, Advocates
For OP-8 and its individuals	Mr. Gaurav Mitra and Mr. Salil Seth, Advocates alongwith Mr. Sanjay Khosla, VP (Marketing)



For OP-9 and its individuals	Mr. Shwetank Ginodia and Mr. Satyaki Mukherjee, Advocates
For OP-10 and its individuals	Mr. Ranjan Sardana, Advocate alongwith Mr. Pawan Agarwal, Managing Director
For OP-12 and its individuals	Ms. Sadapurna Mukherjee, Advocate alongwith Mr. Umesh Chander Garg, Managing Director and Mr. Vipin Gupta, Executive Director
For OP-14 and its individuals	Mr. Samar Bansal, Ms. Harsheen Madan, Mr. Vaibhav Choukse and Ms. Nripi Jolly, Advocates alongwith Mr. Manav Sarin, VP (Sales)
For OP-17 and its individuals	Mr. Rajshekhar Rao, Sr. Advocate with Ms. Sonal Sarda, Ms. Ela Bali and Ms. Aditi Khanna, Advocates alongwith Mr. Anil Kumar, CEO
For OP-18 and its individuals	Mr. Puneet Kumar Verma, Advocate
For OP-20 and its individuals	Mr. KK Sharma, Advocate alongwith Mr. Naveen Agarwal, Director
For OP-21 and its individuals	Mr. Karan Singh Chandhiok, Mr. Vikram Sobti and Ms Lagna Panda, Advocates alongwith Mr. Deepak Nanda, Managing Director



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Order Under Section 27 of the Competition Act, 2002

1. The present case was initiated *suo motu* by the Commission, pursuant to a Note dated 28.04.2016 received from the Office of the Director General (DG), wherein it was stated that, during the ongoing investigations in Case No. 30 of 2014 and Case No. 85 of 2015, certain material was gathered by way of e-mail dumps which indicated that paper manufacturers might have indulged in price manipulation through concerted action. Taking cognizance of the aforesaid Note, the Commission, *vide* its order dated 31.05.2016 decided to register the instant case as *Suo Motu* Case No. 05 of 2016 against twenty (20) paper manufacturers and an association which provided its platform for such activities, as identified by the DG.
2. Having perused the material furnished by the DG, the Commission noted that the twenty (20) paper manufacturers used the platform of the association (Indian Agro & Recycled Paper Mills Association/OP-4 Association/IARPMA, which claims to be the apex representative body of non-wood based paper segment, having 114 paper mills as its members) to discuss and agree upon increase in prices of non-wood based paper. The platform of the association was further used to monitor implementation of price increase by attendees/participants. Accordingly, the Commission *prima facie* opined that there appeared to be a case of contravention of the provisions of Section 3(1) of the Competition Act, 2002 ('the Act') read with Section 3(3)(a) thereof, and *vide* an order dated 06.12.2016, directed the DG to cause an investigation to be made into the matter and submit a report. These 20 paper manufacturers and the association were accordingly arrayed as Opposite Parties, as reflected in the cause title of the matter.
3. Pursuant to the directions issued by the Commission, the DG conducted an investigation and submitted the investigation report to the Commission. During the pendency of investigation before the DG, OP-21 approached the



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Commission by filing an application under the provisions of Section 46 of the Act read with the Competition Commission of India (Lesser Penalty) Regulations, 2009 ('LPR').

4. The Commission considered the investigation report in its ordinary meeting held on 04.03.2020, and *vide* an order of even date, directed to forward electronic copies of the non-confidential version of the investigation report to the Opposite Parties (along with their identified individuals), who were found to have contravened the provisions of the Act by the DG for filing their respective objections/suggestions thereto, if any.
5. After receipt of objections/suggestions to the DG report, along with financial details from the aforementioned OPs, the Commission fixed the matter for final hearing during 10th–12th August 2021. After conclusion of arguments, the Commission decided to pass an appropriate order in due course.

Investigation by the DG:

6. The DG investigated 21 original OPs, out of which, the DG recorded findings of contravention of the provisions of Section 3(1) of the Act read with Section 3(3)(a) thereof against ten (10) OPs, viz. OP-2, OP-5, OP-6, OP-7, OP-8, OP-9, OP-10, OP-12, OP-17 and OP-21. As regards other OPs, the DG did not record any specific finding of contravention of the provisions of the Act. The DG, however, found that the platform of OP-4 Association was used by paper manufacturers to discuss and decide on prices to be increased in a concerted manner. The evidence collected by the DG shall be analysed in the succeeding paras of this order and it is unnecessary to reproduce the same at this stage. The period of cartel was noted by the DG to be from September 2012 till March 2013.

Objections/suggestions of the OPs



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7. In their written objections/suggestions to the DG report and oral submissions, the OPs, along with their respective individuals, made detailed submissions, and the same are noted in the succeeding paras. It may be pointed out here that, as the DG has recorded finding of contravention against ten (10) OPs besides highlighting the role of OP-4 Association in providing its platform to paper manufacturers for discussing and deciding price increase in concerted manner, as detailed in the preceding para, the conduct of these eleven (11) OPs alone would be considered, and accordingly, objections/suggestions of these OPs alone are noted and considered in this order.

Bindal Papers Mills Limited (OP-2) and its individuals

8. OP-2, in its submissions, stated that the DG has delineated the relevant product market as writing and printing paper made out of agricultural waste and recycled waste paper, and relevant geographic market as Northern India, even though delineation of relevant market is not mandatory. Further, OP-2 objected to the relevant product market and relevant geographic market delineated by the DG as such delineation was stated to be not in line with market reality in the paper industry. It submitted that the DG did not analyse the facts of the case and evidence in the correct perspective. The writing or printing paper manufactured by employing agro residue or waste paper as raw material is substitutable with paper manufactured using wood as a raw material.
9. It was further averred that the OPs are manufacturing different varieties and grades of papers, and the DG did not examine the consumer preferences of whether their end use is interchangeable. In this regard, the fact that there are various grades of paper within the category of non-wood based papers shows that it is not a homogenous/common product manufactured by all the OPs, and hence, the market is not prone to cartelisation.



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10. In addition, OP-2 submitted that the DG has only arrived at the conclusion of substitutability on the basis of the statements of few dealers, which have not even been permitted to be cross-examined.
11. Most of the OPs are situated in the northern region of India. However, non-wood based paper producers are spread across India. It would be incorrect to suggest that only parties situated in northern India hold considerable influence over the supply of agro-based paper products in northern India. There is no regulatory trade barrier, local specification requirement, consumer preference, transportation cost, etc., and 800 agro-based and recycled fibre-based paper mills can potentially sell and compete in northern India.
12. According to OP-2, the DG concluded that only 10 mills have indulged in cartelisation, including OP-2, without appreciating the fact that a cartel cannot sustain if majority players are not a part of it, since, in that case, the majority players would undercut the others' prices.
13. The DG relied on internal emails exchanged between the officers of the Seshasayee Paper and Boards Limited (SPBL) in relation to OPs. However, this cannot be regarded as reliable evidence against the OPs as SPBL was a direct competitor of OP-2 and could have ulterior motives behind writing the emails that hold no evidentiary value in the current legal structure. The emails can also not be relied upon on the grounds that it has no evidentiary value for want of a certificate under Section 65B of the Evidence Act from the competent person.
14. OP-2 has stated that the DG erred in observing that all the competing agro/recycled fibre-based paper manufactures implemented an increase in prices; on a careful perusal of said emails, it is evident that not all OPs increased the prices, and a large chunk of the stock of the OPs was sold to the government at tender rate or to dealers at older rates.



15. Due to a sudden slump during the last quarter of 2012 to the first quarter of 2013, OP-2 was constrained to increase the prices of paper due to market forces in order to maintain cash flow and profitability. Even if it is considered that OPs had discussed prices in the aforementioned meetings, in practice, the prices of paper were fixed by OPs independently as per market forces.
16. OP-2 contended that the DG did not grant the opportunity of cross-examination to OP-2 and other parties to examine the testimony of those who have deposed before the DG in relation to the said emails. The said persons are interested parties, and therefore, their statements could not be relied upon in the absence of cross-examination.
17. In addition to its contentions, OP-2 has submitted that the DG denied cross-examination by, *inter alia*, stating that it relied on documentary evidence and not oral testimonies of witnesses to conclude against it.
18. OP-2 further stated that the price increase was not in accordance with the alleged discussions in the meetings, yet, the DG arrived at a conclusion that the price trend followed by OP-2 is as per deliberations in the meeting. It has also been stated that the price increase was only made for Ace Maplitho and Copier Paper only, which was attributed to the increasing cost of raw material.
19. There was no price parallelism. Even the dealers examined by the DG have denied any knowledge of cartel in the paper industry and admitted that the prices of paper are seasonal.
20. Further, as per OP-2, the DG failed to demonstrate any evidence of the existence of agreement to price fixing/parallelism, and instead, has built the case on purely circumstantial evidence and suppositions. Further, whilst the Appreciable Adverse Effect on Competition (AAEC) caused by a horizontal agreement to fix



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prices, etc., may be presumed by the Commission, there must exist proof of an agreement in order for this presumption to arise.

21. OP-2 further submitted that the OPs (including OP-2) did not follow a uniform price trend after the meeting. Though the price circular/price list is published by OP-2, the actual sale with dealers is at a negotiated price. Moreover, as a matter of practice, OP-2 offers trade discounts and cash to dealers. Therefore, the actual sale price is much lower than the published price. In the present matter, although the price increase took place through various circulars, discounts were simultaneously offered, such as Trade Discount, Additional Discount and Cash Discount.
22. In addition, OP-2 has submitted that the DG failed to appreciate that the effect of increase in price is not directly passed to the final consumer.
23. The price trend of OP-2 and the other OPs was not in accordance with alleged deliberation in the alleged meetings. However, as per the DG, in the meetings, a consensus was reached between OPs to increase prices by 6000 PMT during the period September 2012 to March 2013.
24. OP-2 further stated that the paper industry is seasonal, and typically, prices increase from September to March due to high demand and because of increase in the costs of raw material. Further, during September 2012 to February 2013, the paper industry witnessed issues such as escalation in the price of diesel, increase in the cost of raw material, banning of import of second hand machinery, etc., owing to which, the paper mills were forced to increase their selling price to maintain profitability.
25. It was submitted by OP-2 that the alleged cartel was for a short duration – from September 2012 to March 2013.



26. With respect to the role of its office bearers found to have contravened provisions of Sections 48 (1) and 48(2) of the Act by the DG, it has been stated that all decisions in official capacity in respect of increase and decrease in price were taken by keeping in mind, various factors affecting the market.
27. On the basis of above, OP-2 has prayed the Commission to not impose penalty on OP-2 as its business has been badly affected and its paper mill was temporarily closed down because of the lockdown. Further, any penalty is likely to drive OP-2 out of business as it operates on a very thin margin and it is not a habitual offender. In case the Commission decides to levy a penalty, only the relevant turnover generated by the sale of the products to dealers should be considered, as the contravention has no connection with the sales made by OP-2 to institution/exports.

Indian Agro & Recycled Paper Mills Association (OP-4) and its individuals

28. OP-4 submitted that it only organised meetings, i.e., arranging venue, seating arrangements, sending out meeting details and venue details, etc. Such meetings were called to discuss the issues being faced by agro-based paper mills, such as pollution, government policies, etc., and the price of the paper was never on the agenda. It, however, admitted that discussion in respect of price was raised in one of the meetings, but such an attempt was vehemently detested. There was no active discussion of price during the meeting hours and the answering Association cannot be held responsible for what the other members do before or after a meeting. It was also pointed out that the answering Association does not have any authority over manufacturers, buyers and distributors of paper. The determination of MRP is vested with the manufacturing company and not with the Association.
29. In addition, OP-4 has contended that OP-4 and its Secretary General do not fall under the definition of 'enterprise' as defined under Section 2(h) of the Act. The DG failed to provide any evidence to suggest that OP-4 benefitted from such



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activities, which is *sine qua non* to the allegations made. The DG report does not establish anywhere that there was a meeting of minds between OP-4 Association and other OPs or that the OPs were acting in concert.

K.R. Pulp & Papers Limited (OP-5) and its individuals

30. OP-5 submitted that it is mainly present in North India. The paper market throughout India is free, and everyone can purchase from the place/person of their choice. Further, the dealers are not exclusively bound to sell the product of OP-5 and are free to sell the product of any mill at any rate.
31. Further, it was submitted that OP-5 is dealing in agro-based writing and printing paper and its market share in the year 2011–12 and 2012–13 was 0.71%. The cumulative share of all OPs would hardly be 2 – 3% of the market share, which has ~ 800 paper manufactures.
32. OP-5 further submitted that the import of paper plays a pivotal role in determining the possible impact of alleged price manipulation. The DG, while projecting the growth, had taken the figures of 2014–15 instead of comparing it with the relevant period.
33. It was also contended that the DG did not take into account that there is no geographical market for a paper industry, particularly when all the varieties of papers are available across India and in the circumstances when a large part of paper is being imported. The DG report also does not mention the impact and role of other paper manufactures who have been selling paper in North India region.
34. OP-5 further does not agree with the findings of the DG that the three varieties of paper are substitutable. The DG also did not examine the consumer preference of whether the end use is interchangeable; since cream wove is not



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substitutable with maplitho as it is inferior in quality, consumers may not adjust to such a change in quality.

35. Further, as per OP-5, the price increase of paper manufactures who had attended meetings was not in conformity with the prices decided in these meetings. The price increase of OP-5 was never in tandem with the alleged emails; on the contrary, there was a decrease of Rs. 3000/-.
36. Even though OP-5 was an attendee at the meetings of the OP-4 Association, it was not a participant in the alleged cartel and/or a party to the alleged agreement to increase prices, if any.
37. In his deposition, Shri Vijay Kumar Aggarwal, Ex-Vice President Marketing of OP-5, who had attended a few meetings of OP-4 Association on behalf of OP-5, also stated that the agenda of the meeting was never to discuss prices. He stated that some manufacturers chose this platform to discuss prices; however, at no point has it been admitted or accepted that OP-5 was involved in such discussions or that OP-5 participated in any agreement on price increase.
38. As per OP-5, the factum of attending meetings of an association such as OP-4 Association by itself cannot lead to the conclusion of collusion or participation in a cartel. It must be shown that there was a meeting of minds by entering into an agreement with respect to determining sale prices in a manner that is likely to have appreciable adverse effect on competition.
39. It was further submitted that the paper industry is fragmented, market shares are unstable and there is ease of entry. Thus, the pulp and paper industry have all the characteristics of a pure/perfect competitive market. It was also contended that the DG report states that only 10 manufacturers have indulged in cartelisation, which includes OP-5, without appreciating that a cartel cannot sustain if majority players are not part of it, since in that case, the majority players would



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undercut others' prices. Further, the contents of the emails relied upon by the DG could not be proved as the person could not remember exactly the discussion that took place at the meeting. Moreover, it was not proved whether the decision allegedly taken in the meeting was complied with or not.

40. As per OP-5, the DG also did not take into account that the hikes in price of paper were due to unfavourable market conditions, which is evident from the email dated 20.09.2012. Further, from the email dated 19.11.2012, it is evident that OP-5 did not increase the price as per the decision in the meeting. Further, no discussion with respect to OP-5 took place in the meeting as per email dated 19.12.2012. OP-5 did not participate in the meeting held on 19.01.2013. However, the DG has concluded that OP-5 raised prices after the 19.01.2013 meeting with competitors.
41. The DG did not carry out any study on the type of market, number of paper manufactures present in North India, the quantum of import of paper, supply of paper by other manufactures in India to consumers in North India, the price differences between the opposite parties and other manufactures in North India and import price and price of manufactures situated elsewhere but supplying paper in North India.
42. No proof of price parallelism in the present proceedings was identified by the DG in its report before declaring that OP-5 participated in cartel for manipulating prices. The DG report did not consider how the meeting and the alleged decision taken at the meeting had impacted competition in the market. The prices of all the paper manufacturers remained the same or similar, which was due to an increase in the Wholesale Price Index (WPI). The emails relied upon by the DG are not admissible until a certificate under Section 65(B) of Indian Evidence Act, 1872 has been provided therewith. There was no appreciable adverse effect on competition in the market, which is an essential condition enshrined in Section 3 of the Act.



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43. The DG in its report also ignored a vital question with regard to the profits earned by OP-5 after the alleged cartelisation and increase in sale price. OP-5, at different intervals during the relevant period was also out of operation, and no manufacturing took place during such periods. Further, prices of the manufactures differ from each other, ranging from Rs. 43 per kg to Rs. 46 per kg. Increase in price by OP-5 had no nexus with the alleged price determination in the so-called meetings held on 19.09.2012, 19.11.2012, 19.12.2012 and 19.01.2013, as these price increases happened on account of the demand and supply ratio.
44. Lastly, it was pointed out that OP-5 has also disassociated itself from any such meetings since January 2013, adhering to the very purpose of the enactment. The answering paper mill has been adversely affected due to COVID-19 since March 2020, and OP-5 has not been able to normalise it until now. Therefore, OP-5 does not have any substantial source of revenue at present and would be severely prejudiced by the imposition of any monetary penalty.

Khanna Paper Mills (OP-6) and its individuals

45. As per OP-6, none of the OPs was the recipient of the four emails written by Shri S. Ramesh of SPBL to his senior, i.e., Shri P. K. Vasist, nor have they admitted the said e-mails or their contents. The said e-mails are nothing more than mere hearsay and hold no credible value in the eyes of the law.
46. The DG has misquoted the internal email between Shri Dhimant Singh and his superior, wherein they discussed market operating prices (MOP) and the price information available in the public domain. The DG has misportrayed and misquoted the statement to conclude that the same indicated that Shri Dhimant Singh will write and ask other competing paper mills to look at the price revisions in the last three months. Further, the price discussions in these emails



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shows that the discussion was regarding historical prices and had nothing to do with fixing future prices.

47. The said emails are also inadmissible on account of being non-compliant with the Indian Evidence Act, 1872, as no certificate in terms of the provisions of Section 65(B) thereof has been submitted.
48. Further, OP-6 was also denied the right of cross examination of Shri S. Ramesh or Shri Vasist by the DG. The reason for this is that representative(s) of OPs duly accepted the documentary evidence with which they were confronted in their statement recorded under oath.
49. It is settled law that price discussion per se does not result in AAEC unless the same is implemented. The DG report fails to show such implementation. The DG has given a broad finding that writing and printing paper of all categories is substitutable despite their differing end use, characteristics, absolute prices and market of these categories. The DG has not considered the manufacturing process, costing, raw material used, thickness, brightness, absolute prices, surface smoothness and different quality of product produced by each OP and end usage/consumer of each such product.
50. Comparing entities that either only manufacture writing and printing paper or manufacture the same in majority to OP-6, despite the fact that the broad category of relevant product, i.e., writing and printing papers, constitutes the lowest portion of OP-6's product offering, is unfair, wrong and in no manner reveals any anti-competitive behaviour on the part of OP-6.
51. The premise of substitutability being the dealer's statements and the cross-examination of such statements being denied despite a request for the same is violative of the principle of natural justice. The DG has not even delineated the geographic boundary of North India and has not taken into account the fact that



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OP-6 (among other OPs) supplies writing and printing papers to other parts of India as well, including, but not limited to, Gujarat, Delhi, Meerut, Agra, Indore, Ludhiana, Mumbai, Surat, Kanpur and Kolkata.

52. Price increase, even if discussed or decided, was never implemented by OP-6.
53. Given the negligible market share of OPs, there can be no presumption of AAEC in view of the negligible market shares.
54. OP-6 relies highly on the import of raw material, since as much as 60% of the requirement of raw material of OP-6 is met by imported raw material; thus, fluctuation of currency exchange rate has the greatest effect on the prices of OP-6's products.
55. Instead of any profits, OP-6 suffered a loss in the year 2012–13 whereas, in the previous financial year, there was a profit.
56. The oral statement of Mr. P. G. Mukundan, Secretary General of OP-4 Association, the person who convened the alleged meetings, has not been taken into account in the impugned report. Mr. Mukundan has stated that the meetings were convened for the discussion of technical and immediate issues.
57. From the investigation report, it is evident that no contravention has been committed by OP-6, and the DG has not pointed out even a single instance of consent or connivance or involvement of Shri Dhimant Singh, Shri Rahul Khanna or any other personnel of OP-6.
58. Price increase by OP-6 was attributable to increase in cost and demand surge, and the same was based on MOP.



59. The DG has failed in discharging the burden of proof on it to show/allege any contravention of the provisions of Section 48(1) of the Act by Shri Rahul Khanna. Further, no contravention has been committed by OP-6, and Shri Rahul Khanna was not even aware of the alleged meetings and there was no occasion for Shri Rahul Khanna to exercise due diligence to prevent the commission of such contravention.
60. Shri Rahul Khanna never attended the meetings mentioned in the emails of Shri S. Ramesh of SPBL nor was he apprised of what transpired in the said meetings.
61. Not a single email has been referred to or relied upon in the DG report which would show the involvement of Shri Dhimant Singh or Shri Rahul Khanna in the meetings of OP-4 Association.
62. It was also pointed out that Shri Dhimant Singh was not served any notice notifying that action was being contemplated against him under Section 48(2) of the Act and was denied the opportunity to adduce evidence to the contrary.
63. Lastly, it was prayed that penalty, if levied, may be limited to the sale of the purported relevant product (copier paper) in the relevant geographic area (North India) for the alleged cartel period (September 2012 to March 2013). It was submitted that penal provisions be strictly construed, and reiterated that penalty be restricted to the profit and/or turnover accruing from the offending act, lest the same become inequitable for multi-product companies such as OP-6. The doctrine of proportionality states that punishment, if any, must be proportionate to the offence ought to be applied. It was also prayed to consider mitigation of penalty in view of the prevailing circumstances and the loss of business of the non-wood based paper mills, and OP-6 in particular.

Katyayini Paper Mills Private Limited (OP-7) and its individuals



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64. In its response, the answering Opposite Party averred that in the meeting convened by OP-4 Association on 19.12.2012, which was attended by Shri Sanjay Khemka of Katyayini, no discussion of the alleged price rise of Rs. 3000–5000 MT took place between the attending parties. Based on the email evidence on record, the discussion of this alleged price rise only took place in the September 2012 meeting, which was not attended by OP-7, and OP-7's price rise cannot be arbitrarily attributed to the cartel.
65. The price discussions in the meeting dated 19.12.2012 attended by OP-7 did not pertain to the grade of paper manufactured by OP-7, and only the prices of B-grade paper were discussed in the aforesaid meetings.
66. The observations of the DG that all grades of writing and printing paper are the same are erroneous.
67. No anti-competitive agreement can be inferred since the DG is only basing his findings on mere coincidence with respect to the month in which OP-7 attended a meeting convened by OP-4 Association, and the corresponding price rise.
68. Further, it was pointed out that the DG had noted that Shri T. S. Goraya of Banwari Paper Mills Ltd. had attended two meetings of OP-4 Association during the relevant period. However, the price rise effected by them was not found to be “entirely supportive” of the assertion that they were an active member of the cartel, and hence, they were merely held responsible for not informing the Commission of the cartel.
69. The DG did not consider that the alleged price rise by OP-7 may have been a direct fallout of the high cost of production or the surge in demand for writing and printing papers instead of the decisions of the cartel, and did not even depose Shri Gautam or Shri Rajesh Agarwal of the answering Opposite Party in order to find out the reasoning for such increased prices.



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70. The DG, while delineating the relevant product market, has grouped writing and printing paper made of recycled waste paper or agricultural waste together, irrespective of the quality and grade of paper. However, different grades of paper are not direct substitutes of each other vis-à-vis end use, price and quality.
71. Further, the factors enumerated under Section 19(3) of the Act have not been met in order to establish an AAEC in the relevant market, and the presumption against the answering Opposite Party is wholly rebuttable.
72. Given its position as a minor player in the relevant market and the fact that OP-7 participated in one meeting where the relevant price rise was not even discussed, it is clear that OP-7's alleged conduct has not, in any way, contributed to an AAEC in the relevant market.
73. The DG has arrived at conclusions regarding Katyayini's involvement in the cartel with respect to a grade of paper that Katyayini manufactured and sold in negligible quantities. Without prejudice, Katyayini's alleged involvement could not possibly have caused an appreciable adverse effect on competition.
74. With respect to OP-7, the DG has only deposed Shri Amit Dewan, the erstwhile General Manager (Exports) of OP-7, instead of deposing the Managing Director Shri Agarwal or the Accounts Manager, Shri Kapil Gautam, who were aware of OP-7's local pricing. It was highlighted that Mr. Dewan was a new joinee at OP-7 and who was associated with a division of OP-7 entirely unrelated to the domestic market and which falls outside the purview of the relevant market in the present case. Thus, the provision of Section 48 which lifts the corporate veil and fastens vicarious liability to senior officials of violating companies, cannot be invoked vis-à-vis Shri Dewan. Shri Dewan is neither a director nor a secretary of OP-7. Further, he is not a "manager" within the meaning of the word ascribed to it under Section 48(2) of the Act.



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75. It was alleged that, by denying Shri Agarwal, Shri Gautam, and Shri Khemka the right to be heard and duly deposed, the DG has violated the principles of natural justice and violated the rights of OP-7 and its officials.
76. It is submitted that unless a contravention of the provisions of the Act is found against the company, its officials cannot be held liable in terms of Section 48 of the Act.
77. Since there is no anti-competitive agreement between OP-7 and the other OPs, the office-bearers of OP-7 cannot be held liable either under Sections 48(1) of the Act or Section 48(2) thereof.
78. In relation to Mr. Amit Dewan, it has been submitted that after receiving the DG Report in the subject matter, OP-7 tried to contact Shri Dewan for the proceedings before the Commission but he was not contactable. OP-7 has no further association with Shri Amit Dewan or any further information about him.
79. The emails dated 20.09.2012 and 19.12.2012, which have been relied upon by the DG, appear to have been placed on record without an accompanying certificate under Section 65B of the Indian Evidence Act, 1872, and as such, are inadmissible.
80. Lastly, without prejudice to the above submissions, the answering Opposite Party submitted that assuming but not conceding that OP-7 and its officials are guilty of contravening the Act, no monetary penalty should be imposed upon them. OP-7 is a very small player in the relevant market, and its alleged participation in a cartel which spanned several months was very short-lived. OP-7 allegedly only increased its price on one occasion in December 2012 and did not increase it in any other month.

Kvantum Papers Limited (OP-8) and its individuals



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81. At the outset, OP-8 contended that the DG built up its entire report on four emails which were allegedly addressed by an employee of SPBL to his superior giving his version of the alleged discussions that took place in the meetings between the members of OP-4 Association, without there being any actual minutes of the meetings. When the answering Opposite Party was not present in the meeting held on 19.09.2012, it is not understood as to how it could have increased the prices as per the discussion that took place on 19.09.2012. Even though the employee of OP-8 was present in the other three meetings, there is nothing in the other three emails to show that OP-8 consented to any change in price. Rather, it is recorded in the other three emails that the mills have not uniformly increased their prices. Further, Shri S. Ramesh belongs to SPBL and is not even a competitor of OP-8, as they deal in wood-based paper, unlike OP-8.
82. The price increase was done by OP-8 after considering multiple commercial and economic factors, irrespective of the occurrence of the meetings. It is incomprehensible as to how mere 20 paper mills can sustain a cartel, especially when there are admittedly more than 750 paper mills in the market.
83. It was pointed out that the increase in prices of various products of different manufacturers during October 2012 to March 2013 has been compared and compiled by the DG. As such, such exercise is inherently defective since it does not account for the fact that the quality of product of each manufacturer is not necessarily comparable. It is an admitted position that there always existed variations in price charged by OP-8 in comparison to the price being charged by the other OPs.
84. The DG has failed to take into account different kinds of paper manufactured by the OP-8, the input cost/cost of manufacturing the particular kind of paper, prices of the product compared and the prices of product after an increase in prices.



85. There exists no reason whatsoever for OP-8 to enter into some arrangement with its competitors to increase the prices, as the profit of OP-8 fell in the year in which the allegation of formation of cartel has been levelled.
86. It is a matter of record that OP-8 and some of the opposite parties increased their prices independent of the alleged discussion at the relevant meetings, as their increase in prices is either below Rs. 3000–4000 PMT or above Rs. 5000 PMT, which does not fall in line with the range of Rs. 3000–4000 as per the alleged discussion in one of the meetings.
87. The DG has failed to consider that there is no evidence of exchange of price/confidential information between OP-8 and other OPs. There is no direct or indirect evidence that OP-8 has indulged in such exchange of confidential information.
88. The absence of entry barriers and the presence of a large number of players in the market preclude the possibility of a small group of manufacturers forming a cartel.
89. The decision to increase the price is based on various factors, including but not limited to, increase in the input cost, market condition, stock position and various other factors. OP-8 increases its prices in the normal course of its business between November to April every year, i.e., even in the years prior to the period of investigation and post the period of investigation, since it is a peak season for the paper industry.
90. The price movement does not show any synchronisation between the OPs, thus demolishing the allegations of cartelisation and violation of the provisions of Section 3 of the Act in the present case.



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91. For a cartel to sustain, majority players need to have cartelised to ensure that no one undercuts others' prices; however, since a substantial number of remaining players in the market were not found to be part of the alleged cartel by the DG, price increases by a few paper mills would be inconsequential, as the remaining players would reduce their prices, which would result in a shift of demand to these players, thereby defeating the purpose of a cartel.
92. For a cartel to survive, there must be mechanisms in place for: (a) arriving at a mutually agreeable strategy to ensure successful functioning of the cartel and (b) monitoring behaviour to identify the deviation. However, the same do not exist in the present case.
93. The main reason behind the formation of any cartel is to attain supra-normal profits by each cartel member, and the same can only be achieved if all cartel participants increase their prices in tandem to make the end price similar/same so that a customer will not switch to a cheaper product after the price increase.
94. Lastly, it was submitted that the demand for paper has decreased and continues to remain subdued due the outbreak of COVID-19 (as court proceedings and classes in schools and colleges, amongst various other things, are being held virtually, which has drastically impacted the demand for paper). The entire paper industry, including OP-8, is continuously struggling for survival; therefore, any penalty will further add to the misery of OP-8.

Madhya Bharat Papers Limited (OP-9) and its individuals

95. At the outset, OP-9 submitted that it was denied an opportunity to test the credibility and reliability of the testimony given by Shri S. Ramesh of SPBL. The evidence gleaned from a cross-examination of Shri S. Ramesh may well provide further material that would need to be considered by the Commission, and in fairness, an opportunity should be provided to OPs to cross-examine Shri S. Ramesh.



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96. There are a substantial number of players in the market, each competing for a larger share of the overall market. The market is also characterised by low entry barriers. In addition, the industry faces competition from exports. Customers in this market have considerable negotiating power, since they include government authorities, large publishing houses, etc., who buy paper in large quantities and can, therefore, obtain substantial discounts from manufacturers. Therefore, due to the market structure, the non-wood paper market is not susceptible to cartelisation.
97. The DG report clearly overlooks the basic premise of a cartel, which is that a cartel requires the participation of a majority of players so that others are not able to undercut the cartel. The alleged price increase by just the 10 players identified by the DG could not have influenced the market price.
98. The market share of MBPL by capacity is only around 0.001% of the paper market and, as such, is negligible. The annual turnover of the answering Opposite Party is less than one-fifth of the average turnover of the parties that have been alleged to be members of the cartel. As such, OP-9 has little or no market power, and its ability to influence the price in the market is negligible.
99. OP-9 did not increase its prices in the months of September, October, November 2012 and in the month of January 2013 despite the alleged cartel purportedly having agreed to do so. These facts show that although OP-9 was an attendee at the meetings mentioned above, it was not a participant in the alleged cartel and/or the alleged agreement to increase prices, if any.
100. The DG report identifies two price increases implemented by OP-9 during the relevant period, viz., an increase of Rs. 1000 PMT in the month of December 2012 and an increase of Rs. 3000 PMT in the month of February 2013. In this regard, it was submitted that neither of these price increases were made in



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tandem with any other participant in the meetings or in accordance with the increases mooted in the said meetings.

101. Reading the emails dated 20.09.2012, 19.11.2012, 19.12.2012, and 19.01.2013 as a whole, it is evident that there is no meeting of minds vis-à-vis OP-9 and the other participants. OP-9 was a silent spectator at the meetings, and no role can be attributed to it in the alleged cartel.
102. In the months leading up to February 2013, there had been a steep rise in input costs, and this issue had also been discussed at the OP-4 Association meeting held on 19.09.2012. OP-9 had only increased its prices once in the past 11 months, by Rs. 1000 PMT on 15.12.2012. Therefore, an increase in prices was a prudent business decision dictated by economic realities.
103. The graphs set out in the DG report indicate there is a substantial difference between the average price increase and the highest and lowest price increase. Accordingly, if there had been an agreement among parties as alleged, all firms would have increased their prices at a proportionally similar rate and there would not have been such a high divergence between the average price increase and the highest price increase.
104. A comparison with the same months of the previous year or the same months of the following year may not necessarily indicate the proper scenario since it is not a certainty that prices will always be increased in the same months of every year.
105. A number of other OPs have stated that it were the big paper manufacturing companies that actively participated in discussions and decided on implementing the prices. Again, this would naturally exclude any participation by OP-9 given its negligible market share.



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106. Mere mirroring prices of competitors or mere identical pricing/price parallelism cannot lead to the conclusion of cartelisation. It was therefore submitted that price parallelism does not by itself indicate that OP-9 may be acting in concert or that such parallelism is the result of an agreement between it and other players.
107. The pricing analysis in the DG report does not take into account various factors such as: (a) quality and grade of paper; (b) base or starting price of the parties prior to the relevant period; (c) factors unique to the parties, which may affect pricing (for example, local strikes or other issues); and (d) the different cost of production of the parties.
108. The law does not impose a positive obligation on OP-9 to inform the Commission if it comes to know of a potential cartel.
109. The DG report has exonerated certain OPs whose facts resemble those of the answering Opposite Party and who are similarly placed. Despite the striking similarities in the facts and circumstances of these OPs and OP-9, while these other OPs have been rightly exonerated, OP-9 has been held to be in contravention.
110. The liability of Shri Jaydeep Chitlangia can only arise if OP-9 is held liable. In this regard, it was submitted that each of the arguments made on behalf of OP-9 are being adopted and reiterated on behalf of Shri Jaydeep Chitlangia as well.
111. Regarding penalty, if any, to be imposed on OP-9, it was submitted that OP-9 is by far the smallest manufacturer found to have participated in the cartel, and its turnover is less than one-fifth of the average turnover of the other parties who have been found liable.



112. The non-wood paper industry is going through a very difficult phase at the moment as business has been severely affected due to the prevailing pandemic. Therefore, the imposition of any penalty would severely affect the financial position of OP-9. OP-9's mill has been shut since July 2019 and it has not been able to open the same till now. Therefore, OP-9 does not have any substantial source of revenue at present and would be severely prejudiced by the imposition of any penalty.
113. The market share of OP-9 is negligible (about 0.001% only), and its actions would have little or no impact on the market. OP-9 also urged the Commission to consider the limited duration of participation in the cartel, if any, and the period being minimal, is unlikely to have an AAEC.
114. Lastly, OP-9 submitted that it has made full disclosure and also fully cooperated with the investigation. It has never been in violation of the Act in the past.

Naini Paper Limited (OP-10) and its individuals

115. OP-10 in its response submitted that products of OP-10 and the wood pulp-based manufacturers are substitutable as the prices of their products impact the demand for each other's product. Thus, they all form part of the same relevant product market. Further, the relevant geographic market should be "Territory of India".
116. The market leaders and big paper manufacturers facing cartel investigation in the existing cases are imposing/enforcing the cartel and ensuring its compliance by OPs. That bigger players of market created such compelling circumstances so that small players were left with no other option but to abide by their dictates to act as a cartel.
117. The DG report does not prove that Shri Pawan Agarwal of OP-10 attended the meeting dated 19.09.2012. The DG has relied on the email of a third person



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which was not sent to Shri Pawan Agarwal or any other person/officer of OP-10. It is the AAEC which can be presumed and not the existence of the agreement. The onus of proving the existence of anti-competitive agreement is on the DG, and once proved, AAEC can be presumed.

118. The increase in price is in tune with the increase in cost of production. The prices of OP-10's products were increased because of increase in price by other manufacturers. This decision was based on market intelligence/trend.
119. The DG has ignored factors like cost of production, market trend, price parallelism, etc., while arriving at its conclusions. The DG has erred in relying on the price list of OP-10's product, completely ignoring the discounts being offered by it to its dealers, as it is not the actual price at which the product is sold.
120. OP-10 is a very small player in the industry, having a miniscule turnover during 2012–13 compared to the big players of the relevant market and overall market. Its market share is only 1.65% when seen in the non-wood paper manufacturers market and 0.65% when taken in the overall market of paper manufacturers.
121. It was further pointed out that Shri Pawan Agarwal did not attend any meetings of OP-4 Association and he had no role whatsoever in the alleged cartel.
122. Due to poor demand of paper, the scale of operations is badly dented, and OP-10 is able to run its plant at 40–50% of its installed capacity, and therefore, unable to recover even fixed costs. OP-10 has not passed on the full burden of increased cost to its consumers by way of discounts provided. It has absorbed a portion of the increased cost.
123. Lastly, it was prayed that if any penalty were to be imposed by the Commission, the same may be imposed only on the relevant turnover for the relevant period,



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i.e., September 2012 to January 2013. It was also submitted that the answering Opposite Party has fully cooperated with the DG during the investigation and with the Commission during inquiry. Imposing any monetary penalty would put a question mark on the very survival and going concern status of OP-10.

Ruchira Papers Limited (OP-12) and its individuals

124. As per OP-12, the DG itself noted that no one represented it in the meetings held on 19.09.2012, 19.11.2012 and 19.01.2013. However, the DG unilaterally assumed that Shri R. K. Maheshwari, who attended the meeting held on 19.12.2012, was an authorised representative (who was not authorised) of OP-12, despite not having any evidence on record to establish the same.
125. The increase in cost of raw material in 2013 was the reason for increase in price of writing and printing paper. In 2014–15, since raw material prices had stabilised, there was no need to increase prices in 2014–15.
126. From data pertaining to the production of OP-12 achieved during 2010–11 to 2013–14, it can be observed that, during this period, the production levels remained at par or at increasing trend, which is evidence that OP-12 never controlled production at any level during these years.
127. The similarity in the dates of price announcements may be regarded as a direct result of the high degree of market transparency, which does not have to be described as artificial.
128. Further, Shri Umesh Chandra Garg of OP-12, in his statement, submitted that he did not authorise anyone and did not attend any meeting, which has not been challenged or even commented upon by the DG.
129. The DG ought to have factored in that certain industries provide a structural basis that is conducive for cartelisation and that the paper industry in India,



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being highly oligopolistic and concentrated in nature, having entry barriers and a homogenous product, is conducive for cartelisation, but there are other factors that dilute the above structure and create conditions which do not sustain the maintenance of a cartel.

130. The DG has failed to carry out a detailed analysis of various economic factors like pricing, capacity utilisation, cost of sales, sales margin, cost of production and market share during the relevant period.

Shreyans Industries Limited (OP-17) and its individuals

131. OP-17 in its response to the DG report has submitted that it always acted independently and on market intelligence and trends in determining its commercial affairs and does not engage with its competitors in violation of the provisions of the Act.
132. By not affording the right to cross-examine, the DG proceedings are in gross violation of the principles of natural justice.
133. The credibility of Shri S. Ramesh is also doubtful as he admitted in his deposition that paper manufacturers are unorganised and make changes in their prices as per their market suitability regardless of the behaviour of the competitors.
134. The DG denied the opportunity of cross-examination to OP-17 notwithstanding that the credibility of Shri S Ramesh is doubtful.
135. The DG has also failed to consider that there is no direct evidence of exchange of price/confidential information between the product manufacturers. The DG has ignored this aspect in its entirety while arriving at the conclusion of alleged cartelisation.



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136. In relation to price parallelism analysis, the DG report fails to set out the parameters and justifications for comparing the products manufactured by various OPs. Further, the analysis done by the DG does not explain whether the compared products belonged to the same price bracket. The DG has erred in arriving at the conclusion of price parallelism without justifying the: (a) variety of the paper, (b) base grammage of the paper, (c) initial prices of the products compared and (d) the prices of the product after increase in prices.
137. The DG report further suffers from grave infirmities as it fails to specify what grade and quality of paper it used as a basis for conducting its analysis for price parallelism.
138. It was further submitted that the DG has failed to explain whether the prices of paper of OPs were similar to begin with. If the prices of the products manufactured by various OPs were dissimilar, then the conclusion of parallel increase by a certain amount is inaccurate. It was submitted that if the sale prices of OPs did not match at the outset, then the prices subsequent to a simultaneous similar increase would not match either. With different OPs selling the product at different prices, the purpose of a cartel would be defeated.
139. The DG cherry-picked only 21 product manufacturers/OPs from almost 800 players that operate in the non-wood based paper market to conclude that they indulged in alleged cartelisation. Additionally, out of the 21 OPs, the DG has concluded that only 10 have actively indulged in alleged cartelisation. In doing so, the DG failed to note that, for a cartel to sustain, majority players need to have cartelised to ensure that no one undercuts others' prices. Such an arbitrary exclusion has no tenable basis in law.
140. OP-17 submits that the non-wood based paper market is not prone to cartelisation as the market is not oligopolistic as there are nearly 800 non-wood



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based paper mills in India, with approximately 40 players that sell in North India.

141. It is commonly understood that for a cartel or concerted practice to survive, there must be mechanisms in place for: (a) coordinating the cartel agreement and ensure successful functioning of the cartel, (b) monitoring the behaviour and conduct of the members of the cartel and (c) punishing members of the cartel who do not fall in line with the decisions of the cartel. The DG has failed to produce any evidence that even remotely suggests that any of the above-mentioned elements is present in the Indian non-wood based paper market, which comprises nearly 800 non-wood based paper mills.
142. The DG also failed to note that the November e-mail clearly records that none of the OPs (except Khanna and Trident) implemented the price increase pursuant to the 19.09.2012 meeting. This categorically establishes that even though OPs attended the relevant meetings, the decisions to increase prices were independent thereof.
143. It was further submitted that the answering OP attended three of the relevant meetings, as these meetings are usually conducted to discuss industry issues such as increase in cost of the raw materials, change in government policy, etc.
144. OP-17 has increased its prices between September to March every year between 2009–10 to 2017–18. Thus, it is a price trend that OP-17 follows every year. Between October and February 2012–13, OP-17 increased its prices because of increase in costs of manufacturing the product from the previous year.
145. SIL Office Bearers can only be found guilty under Section 48 of the Competition Act if SIL is held guilty of violating Section 3(3) of the Competition Act. As explained herein above, SIL has not contravened any provision of the Competition Act, therefore it is humbly submitted that the SIL Office Bearers cannot be held liable under Section 48 of the Competition Act.



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146. On penalty, OP-17 submitted that due to COVID-19, OP-17's business has been adversely affected; it is a relatively small company with only 2% market share; this is the very first competition law violation on the part of OP-17; and it has made full disclosures and cooperated in entirety with the investigations of the DG. Further, given that office bearers of OP-17 did not send/receive any of the relevant emails or exchange any information and there being no evidence to show that they violated the Act, the office bearers cannot be held liable for the same.

Trident Ltd. (OP-21) and its individuals

147. OP-21 agreed with the conclusion of the DG report that certain paper manufacturers engaged in anti-competitive conduct by participating in meetings where commercially sensitive information was discussed. It was pointed out that different types of paper within the writing and printing paper segment are viewed as substitutable by customers. Non-wood based paper manufacturers have to price writing and printing paper significantly lower to ensure that customers do not switch to better quality A-grade paper.
148. As pointed out previously, OP-21 has filed a leniency application and has cooperated during investigation.

Analysis

149. The Commission has perused the material available on record, including the investigation report and evidences in support thereof as submitted by the DG, the submissions made by the Opposite Parties and has also heard in detail the arguments put forth by the parties during oral hearings.
150. The question which falls for consideration in the present matter is whether the paper mills (including their association) engaged in the manufacture of non-



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wood based writing and printing paper have cartelised and thereby, contravened the provisions of Section 3(1) of the Act read with Section 3(3)(a) thereof.

151. Before examining the aforesaid issue, it would be appropriate to note that OP-21 has filed their Leniency Petition and has admitted to its conduct and has supported the findings made by the DG in the investigation report. During the investigation, OP-21 cooperated fully with the DG and made vital disclosures.
152. In the aforesaid backdrop, the Commission proceeds to examine whether there was an “agreement” between the OPs to cartelise, as found by the DG.
153. Before examining this issue, it is apposite to note that the definition of ‘agreement’ as given in Section 2(b) of the Act requires, *inter alia*, any arrangement or understanding or action in concert, whether or not formal or in writing or intended to be enforceable by legal proceedings. The definition, being inclusive and not exhaustive, is a wide one. An understanding may be tacit, and the definition under Section 2(b) of the Act covers even those situations where parties act on the basis of a nod or a wink. The Commission notes that the Act envisages civil liability. Thus, the standard of proof required to prove an understanding or an agreement would be on the basis of ‘preponderance of probabilities’ and not ‘beyond reasonable doubt’. There is rarely any direct evidence of action in concert, and in such situations, the Commission has to determine whether those involved in such dealings had some form of understanding and were acting in cooperation with each other. In light of the definition of the term ‘agreement’, the Commission has to assess the evidence on the basis of benchmark of preponderance of probabilities.
154. Further, in terms of the provisions contained in Section 3(1) of the Act, no enterprise or association of enterprises or person or association of persons can enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely



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to cause an appreciable adverse effect on competition within India. Section 3(2) of the Act declares that any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void. Further, by virtue of the presumption contained in sub-section (3), any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which (a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; or (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

155. In case of agreements as listed in Section 3(3)(a) to (d) of the Act, once it is established that such an agreement exists, it will be presumed that the agreement has an appreciable adverse effect on competition; the onus to rebut the presumption would lie upon the parties.
156. In this statutory framework, the Commission proceeds to examine the evidence collected by the DG to assess whether there was an 'agreement' between the OPs of the nature which is prohibited in terms of the provisions contained in Section 3(1) of the Act read with Section 3(3) thereof.
157. In this regard, it would be useful to refer the evidences collected by the DG during investigation. For felicity of reference, the analysis, in respect of each of the OPs that have been found to have contravened the provisions of the Act by the DG, shall be done separately and in *seriatim*, after outlining the background and the broader nature of evidence including the genesis of civil conspiracy.



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158. In this regard, the Commission proceeds to analyse the electronic evidence and statements of the representatives and key persons of OPs to ascertain whether there was any 'agreement' between them of the nature prohibited by the Act.
159. The DG, during the course of investigation of two other cases, came across four e-mails dated 19.09.2012, 19.11.2012, 19.12.2012 and 19.01.2013 originating from the e-mail box of Shri P. K. Vasist, Vice President (Marketing) of SPBL, containing details of meetings that took place amongst 20 paper mills of North India under the aegis of OP-4 Association, engaged in the manufacture of paper by using agricultural waste or waste paper as their raw material. At this stage, it would be apposite to reproduce the said e-mails for ready reference:

From: [spbdel](#)
Sent: Thursday, September 20, 2012 1:35 PM
To: [P K Vasist](#)
Subject: IARPMA meeting details
Abstract of IARPMA meeting held in Hotel Jeypee Sidharth on 19/9/2012

Participants

1. Srikanth	Abhishek Industries
2. PawanAgarwal	Naini Paper
3. Rathore	Shreyans
4. Dimansingh	Khanna
5. Manav	Setia paper
6. Neerajgoel	Bindal Agro
7. Promodjain	Rama paper
8. Vijay Agarwal	KR pulp
9. Naveen Agarwal	Tirupathibalaji
10 JaydeepChitlangia	Madhya Bharat paper (MD)
11. ManojRanjan	Madhya Bharat.
12. Mukundan	IARPMA.

The meeting was called towards the back drop of steep increase of diesel price and other input materials cost hike, and to explore the possibility of increasing the price of all agro based mill.

1. In the initial start up discussion members expressed their unpleasant price situation prevailing in the market. According to them none could able to raise their prices fearing their competitors may take away their business. Citing severe increase of input costs, running the paper business has become a difficult phenomenon Speakers from various companies pleaded other members to co-operate in regard to immediate price increase, and a road map must drawn on this meeting to achieve Rs. 5/- per kg increase within 15th of January 2013. Many members expressed Rs. 5/- per Kg may sound very steep increase but if we work on the said target, we can achieve Rs. 3 to Rs 4/- kg. To start with all agreed to increase their price by Rs. 1.00 per kg immediately and increase must be spontaneous.
2. Later during the discussion prices of various qualities manufactured by Agro based mill cropped up. All members agreed 85% brightness Surfaced sized, 60 gsm and above are sold @of Rs. 38.00/- Per Kg to Rs. 40.00/ per Kg. ex mill + transportation. Presently the said products are sold in market in the range of Rs. 44.00/- per Kg to Rs. 46.00 per Kg. All condemned unilaterally about the un-ethical pricing policy of Century paper & pulp who quotes abnormally low rate. Citing the recent example for 1800 MT order from Star Educational books, Delhi the said firm has quoted Rs. 39.80/- per kg which is inclusive of all tax, transportation component, F.O.R.Delhi. Such moves give negative



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- feedback in the market, and traders demand such deals from Agro based mill that are already in loss.
3. Understand around one lac MT of various State government tenders are in process and all will be decided within end of October 2012. This will give fresh lease of life to all agro based mill. The members also condemned that our enemy is within, and some agro based mill on unsuccessful bidding during the tender process, is filling RTI application against successful bidder and creating obstacles. 58 RTI application were got filled by such Mills against other successful bidders and looking at the opposition, NCERT diverted its entire order to HPC fearing future enquiry from investigation authorities. By such move none got benefited instead severe loss has occurred for Agro based Mills.
 4. Then the matter turned towards Government recent policy which they are mulling to impose. Government is thinking to ban all import of second hand machinery (Paper machine & equipments) All suggested IARPMA as well IPMA must take up the matter very strongly with the government on this subject. As paper Industry is suffering from multiple problems such a move will severely affect the day to day operation of the mill. All voiced their opinion that government must allow to import paper machine and its accessories which are 15 to 20 years old.
 5. In meanwhile Managing Director of Madhya Bharat, Mr. Jaydeep Chitlangia made a power point presentation about increase of Raw materials costs. According to his presentation based on 2009 base price, Coal= 60%. Waste Paper 25%, Dyes & Chem+ 121%, Rosin= 61%, Straw 30%. and pleaded all members, to cooperate for stage by stage increase of paper price upto Rs. 5.00 per Kg by 15th of Jan 2103.
 6. Regarding stocks at various mills found from their discussions, none holding much of stocks, and sale is comparatively comfortable. Generally in August September stocks pileup, but none complained on this matter. During the interaction found all holding order for 3000 to 4000 MT in hand and also found they are comfortable with order situation, which is encouraging trend. Mr. Pawan Agarwal from Naini paper forecasted that market may go up from end of October 2012.

While concluding all agreed to increase the price by Rs. 1.00 /per kg immediately, and reason being recent Diesel price increase.

Thanks and regards

S. Ramesh

160. On perusal of the aforesaid e-mail, it appears that representative(s) of various paper mills were discussing price increase. They also seem to draw a roadmap to achieve Rs. 5/- per kg increase by 15.01.2013. Further, it seems that members expressed that Rs. 5/- per kg may sound like a very steep increase, but if they work on the said target, they can achieve Rs. 3/- to Rs. 4/- kg. To start with, all agreed to increase their price by Rs. 1/- per kg immediately, and the increase must be spontaneous.



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From: [spbde1](#)

Sent: Monday, November 19, 2012 4:48 PM

To: [P.K.Vasist](#)

Subject: IARPMA Meeting at Delhi

Abstract from IARPMA meeting held on 19/11/2012, JaypeeSidharth, Delhi

Member attended were as follows.

1. Srikath	Abhishek Industries
2. Rathore	Shreyans
3. Diman Singh	Khanna
4. Manoj sarin	Satia Paper
5. Vijay Agarwal	K.R.Pulp
6. Manoj Ranjan	Madhya Bharat
7. Vijay goel	Bindal Agro
8. T.S. Goraya	Banwari Paper
9. Kuldeep Pandey	Shree Shayam
10. Mukundan	IARPMA
11. Krishna Kant	ABC (Kuantum Paper)

Following are the opinion expressed by the members while attending the meeting.

1. The foremost discussion commenced with earlier proposed upper price revision @ of Rs. 1.00/- per Kg on which resolution was adopted on 17/10/12, stating all orders for November should be serviced in increased price. Understand from the discussion none has implemented the price revision citing dull sales due to Deepavali festival. Found Khanna, Abhishek has implemented the increase of Rs. 1.00/- per kg and others are still not yet implemented.
2. Members during the discussion accused many not even announced respective dealers about increase in rate from November wherein they are still booking orders on old October rate. Looking at Market trend many, whom already announced an increase in rate from November has to backtrack, as they receive cold response from Market. Also a general belief being since 1st fortnight of the December month encountered with many major festivals, the drops in sales is also inevitable and expect to pick up from 1st week of December.
3. Many mills like Shreyand, Ruchira, Abhishek, Satia are having good Government tender orders which are yet to be serviced, and their machines are comfortably booked. They fear the response from the trade presently very slow and if this scenario continues then they may face problem from January onwards.
4. Then discussion centred on pollution control board recent circular in regard to Pollution norms issued by Ganga Action Plan. All members decided that a joint delegation will soon visit Government agencies in this regard and appraise the situation.
5. In the meeting it was decided Rs. 1/- per Kg increase should be done by all member mills effective from 1st of December. It was also decided that to closely watch recently proposed IPMA meeting outcome about their price strategy.

Following discussion held in regard to present Market scenario by individual Mill representatives.

- a) ABC (Kuantum Paper) Selling their 60 gsm NSS varieties @ of Rs. 44300/- ex-delhi +VAT of 5%.



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- b) Bindal increased their price by 1st of November by Rs. 1/- perKg. And their product 57 gsm (SS) with 88% brightness is selling Rs. 46.50/- per Kg + VAT. Their November increase of Rs. 1/- Per Kg has not brought much resistance in UP wherein they faced opposition in Delhi due to which Order booking at Delhi is very low
- c) K.R. Pulp is comfortable with order in hand and on 15th October Rs. 1/- per Kg was their last hike. They have already announced Rs. 1/- increase from November but order booking is very low in enhanced price. Presently they have bulk Government tenders in their hand, which is making their machines occupied. 57 gsm (SS) price is Rs. 44.50/- ex-Delhi + VAT.
- d) Khanna: they have increased price in September by Rs. 1/- per Kg, and 1st of November by another Rs. 1/- per kg. Also expressed their willingness to increase their price by 1st of December by Rs. 1.00/- Per Kg, provided all members follows. Their Graphica 60gsm premium variety with 88% brightness is selling @ Rs 43000/- ex-delhi
- e) Shreyans: After their announcement about increase @Rs. 1/- per kg from 1st week of November no orders were received from the market and they are surviving by servicing Government tenders. They fear if this trend continues then they have to backtrack from their upward revision.
- f) Abhishek: they have increased copier rate @ 0.50/- and Rs. 1.00/- for writing and printing segment. Their order position is comfortable. Their 58 gsm (SS) ex Delhi price is Rs. 46.00/- per Kg.
- g) Other Recycled paper Mill members present in the meeting expressed their problem pertains to Waste paper cost and its procurement.

In overall found November increase Rs. 1.00/- per Kg which was proposed on previous meeting still not effectively implemented by all members except fewer members. All view other to lead the price hike and then they will follow, if market accepts.

Thanks and regards

S.Ramesh

161. From the above, it appears that in the meeting held on 19.11.2012 whose discussions have been abstracted in the aforesaid e-mail, it was, *inter alia*, resolved to increase price by Rs. 1/- per kg. w.e.f. 01.12.2012. The email also appears to suggest monitoring of the decisions in terms of implementation taken in the previous meeting.

From: spbdel
Sent: Wednesday, December 19, 2012 6:41 PM
To: P K Vasist
Subject: IARPMA Meeting 19/12/2012

Abstract from IARPMA meeting held in Delhi on 19/12/12



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Members participated

1. Ashok Vyas	Bindal Agro
2. SomeshJawa	ABC paper
3. Sanjay Khemka	Khatiani Paper
4. Amar Singh	Trident
5. R.K. Maheswari	Ruchira paper
6. Parneet Kaur	Khanna Paper
7. J.S.Goraya	Fibermax
8. Manoj Ranjan	Madhya Bharat
9. Ajay Kr. Gupta	Shree Bhawani
10. Alok Jain	TNPL
11. Agarwal	K.R. Paper

The meeting commenced with discussion on general Market scenario prevailing on present juncture. According to members the paper dealers at large are not accepting price increase announced immediately on announcement, but later succumb after all Mills raise their respective prices.

The Prime Dealers, whom once use to hold huge stocks already liquidating their stocks and want to run the show with minimum inventory. Concept of investment in form of stocks which was once considered as lucrative is disappearing fast. The dealers argue as Paper becomes a commodity to sell in low margin, holding the stocks with huge investment is not worthwhile. Instead, they prefer to order towards the Mills which can service their requirements in minimum time, so that they can service their client faster.

1. Bindal Agro: As per their earlier commitment they have increased their price by Rs. 1/- per Kg from December 12. and overbooked by 15 days, as they have some pending Government orders yet to be serviced
2. ABC also increased their prices in November by Rs. 1/- but their December increase of Rs. 1/- per Kg will be effective from 20/12/12. However they admit they have no Market orders for their new enhanced price which will be effective from 20th December, wherein they have government tenders in hand yet to be serviced.
3. Shreyans: Completely running Government Tenders orders and already announced their increase of Rs. 1/-to Market. They have sizeble Qty. materials yet to be serviced for committed Government tenders.
4. Shreyans: Busy in Government Tender orders and already announced their increase of Rs. 1/- Kg effective to market from 15th of December. In fact due to time bar commitment to government tenders, they are unable to fulfil general market requirement.
5. Naini Tissues: Their increase of Rs. 1/- per Kg from 1st December 2012 landed with protest from their dealers. Subsequently looking at the opposition they postponed the increase to 20th of December 2012 and still servicing on November price. They assured their price will be increased as per their earlier commitment.
6. Ruchira: They have 15 days overbooking. They have already increased their prices by Rs. 1/- Per kg from 1st of December but very few order received from Market.
7. Shree Bhawani: Increased their price by Rs. 1/- per Kg from 15th of December.
8. TNPL : Holding stock of 25000MT, and announced that they have increased their prices as per IPMA guidelines of Rs. 1300/- PMT from December and another proposed increase of Rs. 750/- from 1st of Jan 2013

General Observation

- a. This meeting ended with positive note that further price increase of Rs. 1/- can be worked out from January 2013
- b. Still all mills do not uniformly increase their price as per committed dates wherein after receipt of their competitors strategy they announce their increase.
- c. Most of Agro based are comfortably booked with Government tenders and can only offer 50 to 60% of their materials to Market. On such scenario all want to sell their balance available materials to Market in increased price.
- d. Some foresee, the paper may be short of supply during Notebook/Text season which commences from Mid January.

Thanks and regards
S.Ramesh

162. The aforesaid e-mail, *inter alia*, indicates that, as per paper mills, dealers at large do not accept price increases announced immediately, but later, succumb



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after all mills raise their respective prices; the meeting held on 19.12.2012 ended on a positive note that a further price increase of Rs. 1/- can be worked out from January 2013.

163. On examination of another email dated 19.01.2013, extracted below, it is noted that the meeting commenced with the expression of satisfaction as the price was increased by Rs. 4/- per kg. from October 2012 and was absorbed in the market. The participants in the meeting held on 19.12.2012 expressed their satisfaction over the improved market conditions.

Dear Sir,
Submitted for perusal and information.
With warm regards,
P K VASIST
From: [sophdel](#)
Sent: Saturday, January 19, 2013 4:12 PM
To: [P K Vasist](#)
Subject: IARPMA meeting abstract
Meeting abstract of IARPMA meet at Delhi on 19/1/2013
Member participated
Anil Kumar Shreyans
Kuldeep Shree Shayam
Rajiv Jasuja Shree Shayam
Jagdish Nair Khanna Paper
Shreekanth Trident
SomeshJawa Quantam Paper (ABC)
Vijender TNPL
AmitSangal Sangal Paper
Ashok Vyas Bindal Agro
Goraya Banwari Paper
Manoj Ranjan Madhya Bharat
Todi Supreme Paper Mills

The meeting commenced with positive note. During inaugural address, by Mr. Anil Kumar of Shreyans, expressed satisfaction over the general overall market scenario. According to him till now Rs. 4.00/- PMT price got increased from October 2012, and it got absorbed by the market. All mills having sufficient orders in their hand and a time has come to increase the prices further. After the address members were asked to share their opinion in the forum

1. Shreyans : They have an order for 15 days in hand. Deferring to book further orders as they find paper is on upward trend and by booking more orders they do not want to make any long commitment in price front. Their 65% orders is earmarked for government supplies and they are supplying only 35% to Market. Their non SS varieties were sold @ of Rs. 46/- + VAT ex- Delhi.(58gsm)
2. Shree Shayam. They have an overbooking of orders for 20 days, and informed they still receive order/enquiries which they decline. Their 60 gsm non SS categories are sold @ of Rs. 46.00 /- + VAT at Delhi. As they are already overbooked, welcomed any decision pertains to price increase.
3. Khanna: They have 15 days orders in hand. They too deferring to booking further orders as they find paper prices were in upward trend. They supply 70% of their materials to direct consumers, and they part with 30% of their materials to Market. Their optima 60gsm sold @ of Rs. 46/- ex-Delhi. They declined to comment at what rate they supply to printers who place big orders\



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4. Quantum Paper: They have 15 days overbooking. Further booking of orders were put on hold as they find they are overbooked. Welcomed the move of increasing the price further.
5. TNPL: Informed in the meeting that the proposal to increase the price by Rs. 2.00 /- per Kg from February, and by Rs. 1.00/- per Kg from March as per IPMA directive. Understand they have a stock of 15000 MT and 12 days overbooking.
6. Bindal: They have one month order in their hand. Their system is price ruling based upon the despatch date. However looking at the demand they have temporarily discontinued order booking. Welcomed any move on which price can be increased
7. Madhya Bharat: Holding sufficient orders in hand.

All members expressed satisfaction over the improved market condition

Members also expressed their thanks to IPMA members whom have taken bold decision of increasing the price by Rs. 3/- per Kg within March 13. According to them by such decision they get inspiration and can follow to increase their prices too.

Newsprint manufacturers whom participated in the meeting expressed their concern due to cheap imports.

Ultimately it has been decided an increase of Rs1.00/ per Kg with immediate effect (By next week 21/1/13 to 26/1/2013)

And further increase of Rs. 1.00 per Kg within 20th of February 2013.

Thanks and regards

S.Ramesh

164. From the gist of the aforesaid four e-mails, as extracted and adumbrated *supra*, it appears that the paper manufacturers met on four occasions in Delhi. Further, from the e-mails, it is seen that the chief purpose of the said meetings was to discuss prices and draw a roadmap for future increase, besides monitoring the level of implementation of the decisions taken in the previous meetings. From the decisions taken in the meetings as abstracted in the said e-mails, it appears that OP-4 Association/IARPMA provided its platform to the participants of the meetings to facilitate price related discussions.

165. In view of the aforesaid backdrop, the Commission proceeds to examine the statements of the representative(s) of OPs recorded by the DG in respect of whom specific findings of contravention was returned, after confronting them with the aforesaid e-mails.

Bindal Paper Mills Ltd. (OP-2)

166. The DG recorded the statements of Shri Ashok Vyas, Vice President (Marketing) and Shri Neeraj Goel, ex-Director, of OP-2, on 30.10.2018, after confronting them with the aforesaid e-mails. In this context, the relevant extracts of the statement of Shri Ashok Vyas are excerpted below:



“Yes, I have attended a few such meetings”.

“Yes, I was authorised to attend meetings on behalf of the company. As regards pricing decisions I used to be a part of the discussion but the final call with regard to price changes is taken by the Directors namely Mr. Neeraj Goyal and Mr. Ankur Bindal.”

“Though, the agenda of the meetings was not price discussion however, informally prices used to be discussed in many such meetings.”

“The call on whether to increase prices as discussed in these meetings rested with the aforesaid two Directors.”

“On-going through the email dated 19.12.12 of Shri S. Ramesh of SPBL shown to me I recollect that the details given in the email may be true”.

“As regard implementation of the price decision taken in this meeting the price circular issued by us correlates with what transpired in the meeting”.

167. Further, it would be appropriate to reproduce the relevant extracts from the deposition of Shri Neeraj Goel, and the same is accordingly noted below:

“I also admit that because of such a grave scenario the representatives of competing firms also used to discuss prices and on many occasions try to arrive at a price which is mutually agreeable to each other keeping in mind the high cost of production that was threatening the very survival of the industry”.



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“Apart from other discussions on a few occasions the members also discussed prices and decided mutually to implement these decisions so that the losses on account of high cost of production can be reduced”.

“Sir, I have seen the email and I confirm that I attended this meeting on 19.09.2012. Ongoing through the email I am able to recollect that the details given in the aforesaid email are factual”.

“Some of the persons that I remember who used to attend these meetings were Shri Rathore and Shri Anil Kumar from M/s Shreyans Industries Ltd. and Shri Pramod Agarwal of M / s Rama Papers, Bijnore, Shri Gopal / Shri Vijay Agarwal of M / s K.R. Pulp, Shri Pawan Agarwal of M/s Naini Paper, Shri Rahul Khanna and Shri Dhimant Singh of M / s Khanna Papers are a few names who attended these meetings where prices were discussed and decided among other pressing issues facing the paper industry.”

168. On careful examination of the statements of the representatives of OP-2, it is evident that both the representatives admitted to have attended the meetings organised by OP-4 Association, wherein the prices were discussed by paper manufacturers. They have also corroborated the contents of the e-mail as to what transpired in the meetings convened by OP-4 Association.

Indian Agro & Recycled Paper Mills Association (OP-4/ IARPMA)

169. The DG recorded the statement of Shri P. G. Mukundan, Secretary General of OP-4, on 25.10.2018. Relevant extracts of the same are reproduced below:

“Yes, among other issues prices also used to be discussed by the representatives of paper mills and I am not aware of whether these discussions on prices were implemented by the paper mills”.



“Sir, I am aware that discussing prices is in violation of the provisions of the Competition Act, 2002 but my role was limited to accede to the requests of the members of our association and it was their choice whether to discuss prices or not...”

“As I have mentioned in response to my earlier question that though prices were discussed in this meeting, the meeting was convened by me to discuss some of the burning issues before the Executive Committee connected with the pollution control in the paper mills. I can say that this meeting was primarily organised by IARPMA to discuss raw material issues with the Executive Committee members. However, the members after the discussion also chose to discuss prices of paper.”

“As such many associate members who used to attend these meetings were actively involved but to name a few Shri Ashok Vyas and Shri Neeraj Goyal of M/s Bindal Papers, Shri Dhimant Singh of M/s Khanna Papers, Shri Anil Kumar and Shri Rathore of M/s Sheyans Papers and Shri Srikant of M/s Trident Ltd. and Shri S. Ramesh of SPBL, Shri Rahul Khanna of M/s Khanna Papers, Shri Maheshwari of M/s Ruchira Papers, Shri Vijay Agarwal of M/s K.R. Pulp and Papers are some of the names that I remember who were instrumental and active in requesting for such meetings where the attendees (competing paper manufacturers) used to discuss price of paper.”

170. From the aforesaid deposition of Shri P G Mukundan of OP-4, it is evident that the same further corroborates the contents of e-mail, noted *supra*, that paper manufacturers used to meet and discuss prices using the platform of IARPMA (OP-4 Association).



K.R Pulp & Papers Ltd. (OP-5)

171. The statement of Shri Vijay Kumar Agarwal, ex-Vice President (Marketing) of OP-5, was recorded by the DG on 03.12.2018. The relevant excerpts of his statement are noted below:

“Yes, I had attended a few meetings of IARPMA as a representative of my company.”

“Though, price discussion was not the main agenda but discussions on prices used to take place as many paper manufacturers chose this platform to also discuss prices informally”.

“Sir, I confirm that I had attended this meeting though I do not remember exactly the discussions that took place in this meeting. We were too small a player to give any suggestion with regard to price and it is the bigger paper manufacturers like Naini Paper, Trident Ltd., Shreyans Paper, Bindal, Sheshasayee (SPBL) who used to be involved in price discussions”.

“As I said though I had attended this meeting our participation was only to listen to what the bigger paper manufacturers used to say and report it to our management. It was the management's call to take the decision whether or not to implement the decision collectively taken on increasing the price by paper manufacturers participating in this meeting. This is the reason that you would see that we had increase the price of paper by Rs.2000/- PMT instead of Rs.1000/PMT as decided in the said meeting”.

172. The above-mentioned deposition of Shri Vijay Agarwal corroborates the contents of e-mails which have been quoted previously considering his admission of being part of the meetings where prices of non-wood based writing



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and printing paper used to be discussed by paper manufacturers using the platform of OP-4 Association.

Khanna Paper Mills Ltd. (OP-6)

173. The DG recorded the statement of Mr. Dhimant Singh, Marketing Head of OP-6, on 28.11.2018 during the investigation. The relevant section of the statement is excerpted below:

“Yes, the email is indicative of discussions of MOPs (Market Operating Prices) having taken place in particular IARPMA meet.”

174. Additionally, the DG recorded the statement of Shri Rahul Khanna, Managing Director of OP-6, on 29.11.2018. The relevant extract of the statement of Shri Rahul Khanna is reproduced below:

“Yes, I am aware that the aforesaid two employees of my company used to attend these meetings. This was necessitated as Secretary General, Shri P.G. Mukundan used to repeatedly call me or any member of my marketing team to attend these meetings and just to have a representation our employees used to attend these meetings”.

“All I can say is that though the price increase seems to be matching as per the email shown to me but the same was due to cost pressure and demand surge. Further, since our market is based on market operating price the price undergoes some changes like even decrease in price from time to time. Thus, the actual price increase may not be the same as is reflected in the price increase circular issued by us”.

175. From the above, it is evident that not only representative(s) of OP-6 attended the meetings which took place using the platform of OP-4 Association, but even the representatives accepted the suggestion that price increases effected by OP-6 were in accord with the contents of e-mails, even though a feeble attempt was made to ratiocinate the same citing “cost pressure” and “demand surge”.



Further, it is observed that there are multiple references to OP-6 in the relevant email(s).

Katyayani Paper Mills Pvt. Ltd. (OP-7)

176. The DG recorded the statement of Shri Amit Dewan, General Manager (Exports) of OP-7, on 16.01.2019 for the purposes of investigation. The relevant extract of statement of Shri Amit Dewan of M/s Katyayani Paper Mills Pvt. Ltd. is quoted below:

“I have attended one or two meetings five-six years back at Hotel Jaypee Sidharth, New Delhi.”

“Though there were other discussions but prices of paper were also being discussed informally by the paper manufacturers during this meeting”

“I do not remember the names of the persons who had represented their paper mills but representatives of M/s Trident Ltd., M/s Khanna Paper Mills, M/s Shreyans Industries Ltd. M/s Bindal Paper Mills Ltd. etc. were present in the meeting.”

177. The statement of Shri Amit Dewan confirms the attendance of the representative of OP-7 in the meetings where prices were also discussed.
178. The submission of OP-7 that the alleged discussion of the price rise of Rs. 3000–5000 per MT only took place in a meeting dated 19.09.2012 in which OP-7 was not present cannot be accepted in light of discussions regarding price increase implementation according to targets fixed in earlier meetings having taken place in subsequent meetings attended by representatives of OP-7.



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Kvantum Papers Ltd. (OP-8)

179. The relevant extract of the statement of Shri Somesh Jawa, ex-President (Marketing) of OP-8, dated 14.06.2018 is as under:

“Yes, I attended this meeting.”

“I have seen the email and the details given in the aforesaid email. I confirm that I had attended this meeting but at this point I am not able to recollect what exactly transpired in that meeting.”

“Sh. P. G. Mukandan, Secretary General of IARPMA telephonically used to organise and inform about these meetings.”

180. The relevant extract of the statement of Shri Pavan Khaitan, Managing Director of OP-8, dated 30.11.2018 is also relevant in the context, and the same is extracted below:

“Yes, I might have attended one or two such meetings but my marketing executives like Shri Somesh Jawa and Shri Krishan Kant used to attend such meetings.”

“However, the prices of paper also used to be discussed on the sidelines during such meetings. This fact was apprised to me by my marketing personnel who attended these meetings.”

“The prices appear to have been increased as per the details given in the email but we increase our prices taking into consideration various factors like stock position, order book and the market trend. The increase could be of a similar quantum as the period of September to March is a high demand period for the writing and printing industry.”



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“The price increase could have been due to various factors effecting the market and any similarity in price increase could be coincidental as the market during that period is generally buoyant.”

181. The contention of the answering OP that there are no actual minutes of meetings is inconsequential in view of its own representatives confirming their attendance in the meetings and accepting the fact of price discussions during such meetings. Further, the submission of the answering OP that the price increase was done after considering multiple commercial and economic factors irrespective of the occurrence of the meeting, is also misconceived. It is axiomatic to assume that meeting with competitors and discussing prices influences and takes away the independent decision making of the market participants involved in such meetings.

Madhya Bharat Papers Ltd. (OP-9)

182. The relevant extract of the statement of Shri Jaydeep Chitlangia, Managing Director of OP-9, dated 21.12.2018 is noted below:

“I have seen the email and I recollect that I had attended this meeting.”

“I have attended many meetings but the agenda of the meetings was never to discuss prices but other issues like pollution, taxation, import policies, etc. were the main agenda for convening such meetings. However, some paper manufacturers also on their own used this platform to discuss prices of paper as well.”

“I have seen the emails and agree that Shri Manoj Ranjan represented our company in these meetings. However, price increases though were discussed in these meetings but the final call to whether or not to increase the prices depended on many other factors like stock position, order book position, etc.”



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“There have been four meetings during this period and in every meeting there was a discussion to increase price by Rs.1000/- PMT immediately. We did not increase the price in any of these months i.e. October, November, 2012 and January and March, 2013”

183. From the above, it can be seen that representatives of OP-9 have attended the meetings held between September 2012 to January 2013 under the aegis of OP-4 Association, where prices were discussed.

Naini Paper Ltd. (OP-10)

184. The statement of Shri Pawan Agarwal, Managing Director of OP-10, dated 07.06.2018 and 28.02.2019 is as under:

“Yes, I have received informal invites from the Secretary General, IARPMA, Shri Mukundan over phone asking me to attend lunch on meetings at Delhi.”

“I have seen the email as well as the price details submitted by us. We have increased the price by Rs.2000/- per MT on 22.01.2013 and by Rs.1000/- on 15.02.2013 but this increase also is on account of the market trend prevalent in the writing and paper industry. Though the increase appears strikingly similar to the decision taken in the meeting dated 19.01.2013 by competing paper manufacturers but as I mentioned earlier that by increasing the price simultaneously these paper manufacturers have forced us to increase our price also as the demand for paper remained robust during this period.”

“I was in touch with Mr. Ankur Bindal and Shri Neeraj Goyal of M/s Bindal Papers, Mr. Anil Kumar of M/s Shreyans Industries Ltd., Mr. Rahul Khanna of M/s Khanna Papers and Mr. Shreegopal Agarwal of M/s K.R. Pulp & Papers Ltd. Other than these people I have not been in touch with any other representative of competing paper



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manufacturers. These talks over telephone was with regard to technical matters relating to manufacturing of paper or availability of raw materials”.

185. When confronted with the e-mails, the representative of OP-10 not only admitted to have been in touch with other paper mills but also admitted that the price increase of OP-10 was in line with the decisions taken at the meetings and recorded in the e-mail. However, the representative tried to explain the increase citing “market trend” in the industry.

Ruchira Papers Ltd. (OP-12)

186. The DG recorded the statement of Shri Umesh Garg, Managing Director of OP-12, dated 12.12.2018, and noted that the name of one Shri R. K. Maheshwari, who attended on behalf of OP-12 in the meetings convened by OP-4 Association, appeared in the email of Shri S. Ramesh of SPBL. However, Shri Umesh Garg denied having any employee by the said name and stated that he had not authorised any person by this name to attend meetings on behalf of the company.
187. In this regard, firstly, it is seen that OP-12 increased the prices on two occasions during the cartel period. Further, the Commission notes that the contention of OP-12 taken in its submission to the effect that the price increase was on account of increase in price of raw materials also does not appear to be borne out from the details of cost and prices submitted by OP-12 itself, as detailed *infra*. It is noted that the cost of production of writing and printing paper fell in the year 2012–13 to Rs. 37,979.37 (MT) from Rs. 40,738.06 (MT) in 2010–11. In relation to the price, it is better to present the same in a tabular format for the different comparable grades of paper manufactured by OP-12 from year 2010 to 2013:



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Effective from 12th February 2013:

Grade	GSM (grams per square meter)	Basic Price (in INR) per kg in sheets
Ruchira Classic	54–57	51.5
Ruchira Classic	58–63	50.0
Ruchira Classic	64–69	49.5
Ruchira Classic	70 & above	49.0
Ruchira Super White	54–57	53.0
Ruchira Super White	58–63	51.5
Ruchira Super White	64–69	51.0
Ruchira Super White	70 & above	50.5

Effective from 1st January 2013:

Grade	GSM	Basic Price (in INR) per kg in sheets
Ruchira Classic	54–57	48.5
Ruchira Classic	58–63	47.0
Ruchira Classic	64–69	46.5
Ruchira Classic	70 & above	46.0
Ruchira Super White	54–57	50.0
Ruchira Super White	58–63	48.5
Ruchira Super White	64–69	48.0
Ruchira Super White	70 & above	47.5

Effective from 30th March 2012:

Grade	GSM	Basic Price (in INR) per kg in sheets
Ruchira Classic	54–57	45.5



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Ruchira Classic	58–64	44.0
Ruchira Classic	65 & above	43.5
Ruchira Super White	54–57	47.0
Ruchira Super White	58–64	45.5
Ruchira Super White	65 & above	45.0

Effective from 05th March 2011:

Grade	GSM	Basic Price (in INR) per kg in sheets
Ruchira Classic	54 & 57	43.75
Ruchira Classic	58–64	43.0
Ruchira Classic	65 & above	42.5
Ruchira Super White	54 & 57	45.75
Ruchira Super White	58–64	45.0
Ruchira Super White	65 & above	44.50

Effective from 04th March 2010:

Grade	GSM	Basic Price (in INR) per kg in sheets
Ruchira Classic	54 & 57	39.75
Ruchira Classic	58–68	39.0
Ruchira Classic	70 & above	38.5

188. It is observed from the prices of two grades of paper (Ruchira Classic and Ruchira Super White) that, from the price circular dated 04.03.2010 till price circular dated 12.02.2013, in Ruchira Classic, there had been an increase of 28–30 per cent and in Ruchira Super White, there had been increase of 14–16 per cent.

189. The parallel behaviour of OP-12 by making an overall increase of Rs. 6000/- PMT between September 2012 to March 2013, coupled with an increase in



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prices despite fall in cost of production is strongly indicative of OP-12 being part of concerted conduct resorted to by non-wood based paper manufacturers, who increased prices after discussions in a coordinated manner.

Shreyans Industries Ltd. (OP-17)

190. The relevant extract of statement of Shri J. S. Rathour, Vice President (Marketing) of OP-17, dated 26.11.2018 is as under:

“As we are members of IARPMA I have attended a few meetings where competing paper manufacturers participated.”

“The meetings were convened by Shri Mukundan, Secretary General of IARPMA who used to inform about the date of venue of the meeting to me or to my Executive Director over telephone.”

“Though the price of paper was never the main agenda of such meetings but the same used to be discussed among competing manufacturers during the course of such meetings informally.”

“Yes, I attended this meeting.”

“Though the price increase announced by us matches with the minutes of the meeting given by Shri S. Ramesh of SPBL but the same could be co-incidental.”

“I used to take the decisions to increase the price and I kept my senior officers Shri Anil Kumar and Shri Rajnish Oswal informed about the price increase affected by me.”

“Though the price increase announced by us matches with the minutes of the meeting given by Shri S. Ramesh of SPBL but the same could be coincidental.”



191. The relevant extract of statement of Shri Anil Kumar, Executive Director & CEO of M/s Shreyans Industries Ltd., dated 27.11.2018 is as under:

“As far as I remember I did attend this meeting.”

192. The Commission has perused the statements of Shri J. S. Rathour and Shri Anil Kumar. It is clear from their admission that not only did they attend the meetings as detailed in the email of Shri S. Ramesh of SPBL but also that the prices were discussed in these meetings. Further, regarding the price increase during the period September 2012, to March 2013, which matched the decisions taken in the meetings with regard to price, the answering OP could not offer any cogent reasons for the same, except stating that it was coincidental.

Trident Ltd.(OP-21)

193. The relevant extract of the statement of Shri M.P. Srikanth President (Sales) of OP-21, dated 03.10.2018 and 04.10.2018 is as under:

“Yes, I have attended a few such meetings”

“There was no specific agenda for the meetings but yes, prices were discussed in these meetings with an intent to offset the overall losses being incurred.”

“Yes, competing mills used to meet, discuss and decide on prices to be increased simultaneously.”

“I have gone through the email shown to me and I am clearly able to recollect that this is the same meeting that I had attended at Hotel Jaypee Sidhartha on 19.09.2012. As mentioned by me in my reply even in this email there is mention of increasing the prices by Rs.5000/- PMT by January, 2013. On reading the contents I confirm that most of Shri S. Ramesh’s account of what transpired in the meeting appears factual and correct.”



“I have gone through the email shown to me and I am clearly able to recollect that this is the same meeting that I had attended on 19.11.2012. As mentioned in my reply to question No.9 of statement dated 03.10.2018 the prices increase decided of Rs.1000/- PMT also finds a mention in the email shown to me. On reading the contents I confirm that most of Shri S. Ramesh’s account of what transpired in the meeting appears factual and correct.”

194. The relevant extract of the statement of Shri Anil Singh, Manager of OP-21, dated 05.10.2018 is noted below:

“Yes, I have attended four such meetings as representative of Trident Ltd. These meetings were under the aegis of IARPMA or IPMA and many of our competitors i.e. manufacturers of writing and printing paper attended these meetings.”

“I have gone through the email shown to me and I am able to recollect that this was the meeting that I had attended Shri Naveet Jindal my Marketing Head. This meeting was held at hotel Jaypee Sidhartha, New Delhi and after going through the email I can say that most of the details given by Shri S. Ramesh of what transpired in that meeting are factually correct.”

195. The relevant extract of statement of Shri Naveet Jindal, Marketing Head (Paper Division) of OP-21, dated 04.10.2018 is as under:

“Yes, I have attended a few such meetings.”

“There was no specific agenda for the meetings but yes, prices were discussed in these meeting”



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“Yes, it is true that competing paper mills used to meet, discuss and arrive at a consensus on prices of paper to be increased and the quantum of discount to be offered.”

“Yes, Shri P.G. Mukundan was aware of what transpired in these meetings as he was one of the participants in many of these meetings that I had attended in which prices were discussed.”

“Yes, on a few occasions we did implement the price increase decided in such meetings unaware of the consequences of this Act.”

“Being a Marketing Head of the Paper Division the final call on any price increase for paper products manufactured by Trident Ltd., was taken by me.”

“I have gone through the emails shown to me and I am clearly able to recollect a few of the observations made in the email and confirm that this was the meeting that I had attended along with my junior colleague Shri Anil Singh on 19.12.2012.”

196. The statements of Shri M. P. Srikanth, Shri Anil Singh and Shri Naveet Jindal indicate OP-21 as one of the members of the cartel of paper manufacturers who met and discussed prices in the meetings convened on the platform of OP-4 Association. The statements of the above two persons, i.e., Shri M. P. Srikanth and Shri Naveet Jindal, elaborately detail cartelisation of paper manufacturers producing writing and printing paper either by using agricultural waste or used waste paper as raw material.

197. Having perused the DG report and the submissions made by OPs, in particular the e-mails of S. Ramesh of SPBL, and the statements given by the representatives of OPs as detailed hereinabove, the Commission concludes that various meetings were organised and attended by the representatives of OPs



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under the aegis of the platform of OP-4 Association, where prices were discussed. From the e-mails, it is evident that the meetings were convened to discuss prices and draw a roadmap for future increase by paper manufacturers on the platform provided by OP-4 Association, besides monitoring the level of implementation of the decisions taken in the previous meetings.

198. The Commission notes that mere attendance in meetings where commercially sensitive information like prices, is discussed, influences and takes away the independent decision making ability of participant competitors and resultantly, they can no longer independently decide the price related policies in the market. Accordingly, it is unnecessary and inconsequential to deal with the submissions relating to the price parallelism when direct evidences are present in the form of corroborative statements of representatives of paper mills regarding attendance in the meeting(s) and discussion on prices.
199. At this stage, the Commission deems it appropriate to deal with some ancillary pleas advanced by OPs in their submissions. It was argued by some of the OPs that the DG has delineated the relevant product market as writing and printing paper made out of agricultural waste and recycled waste paper and relevant geographic market as northern India, even though delineation of relevant market is not mandatory. Further, OPs objected to the relevant product market and relevant geographic market delineated by the DG, as such delineation was stated to be not in line with market reality in the paper industry. It was further submitted that the writing or printing paper manufactured by employing agro residue or waste paper as raw material is substitutable with paper manufactured using wood as a raw material.
200. Having examined the plea, the Commission is of the opinion that the contention is thoroughly misplaced. While examining anti-competitive conducts under Section 3 of the Act, the question of delineation of product and demarcation of the market is beyond the statutory scheme. It is unnecessary to point out that concept of 'relevant market' has no manner of application in the proceedings



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relatable to Section 3 of the Act, which prohibits anti-competitive agreements. The said concept in express term is applicable in respect of abusive conduct by dominant undertakings and also during assessment of merger filings. In the present case, it is on record that OPs are engaged in similar trade of manufacturing paper and, as such, any agreement entered into by such market participants who are operating at the same level in the market, in determining prices, is squarely covered under the presumptive rule of Section 3(3)(a) of the Act and unless rebutted, falls foul of the statutory prohibition as engrafted in Section 3(1) of the Act.

201. Similarly, the plea of some of the OPs that there was no AAEC on account of the impugned conduct is also misdirected. In this regard, suffice it to observe that from a bare reading of the provisions of Section 3(1) of the Act, it is evident that these provisions not only proscribe the agreements which cause AAEC but the same also forbid the agreements which are *likely* to cause AAEC. Hence, the plea that there is no contravention of the provisions of the Act in the present matter, because allegedly no AAEC has been caused as a result of the alleged cartel between the parties, is misdirected and untenable in the face of clear legislative intent, whereby even the conduct which can potentially cause AAEC is prohibited. Furthermore, once an agreement of the types specified under Section 3(3) of the Act is established, the same is presumed to have an AAEC within India. Therefore, it follows that once an ‘agreement’ of the types as specified in Section 3(3) of the Act is shown to be established, the same falls within the presumptive rule of AAEC as provided thereunder. The parties, however, can rebut such statutory presumption in light of the factors provided under Section 19(3) of the Act.
202. In the present case, the OPs have failed to show how their impugned conduct resulted in any accrual of benefits to consumers; improvements in production or distribution of goods or provision of services; or promotion of technical, scientific and economic development by means of production or distribution of



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goods or provision of services in terms of Section 19(3) of the Act. On a holistic evaluation of the replies filed by the parties in light of the factors enumerated in Section 19(3) of the Act, the Commission is satisfied that the parties have not been able to dislodge the statutory presumption by adducing cogent evidence, as required.

203. In view of the above, taking into account all the aforesaid evidences collected by the DG, the Commission concludes that OPs had indulged in cartelisation in fixing prices of writing and printing paper as detailed in this order, by participating in the meetings convened under the umbrella of the platform provided by their trade association and discussing prices and the roadmap for coordinated increase, besides monitoring the decisions taken in such meetings. Such conduct of competitors is sufficient to persuade the Commission to hold that OPs have contravened the provisions of Section 3(1) of the Act read with Section 3(3)(a) of the Act. The Commission, therefore, finds these OPs to be in contravention of the provisions of Section 3(1) of the Act read with Section 3(3)(a) of the Act, accordingly.
204. At this stage, it is apposite to consider the contention raised by some of the parties that the decisions taken in the meetings convened by their trade associations were not implemented uniformly by all the participants. For the foregoing reasons given in the context of dealing with the plea of AAEC, it is sufficient to note that the legislature has proscribed anti-competitive agreements which not only cause but which are also *likely* to cause appreciable adverse effect on competition. When competitors are meeting and discussing prices, it is beyond any doubt that such conduct, at the minimum, is *likely* to cause appreciable adverse effect on competition. In this statutory backdrop, where even conduct which is *likely* to cause appreciable adverse effect on competition is proscribed, it would require a very high degree of rebuttal by the parties to dislodge the statutory presumption. Save and except taking the plea, the OPs have completely failed to discharge this burden.



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205. An argument was also taken by some of the parties that there are number of players in the market and the DG or the Commission could not have cherry-picked only some of the parties for the purposes of the investigation or inquiry, respectively. In this regard, the Commission is of the opinion that in a statutory framework raising presumption of appreciable adverse effect on competition in respect of specified conduct, even a few players who are found to have indulged in the proscribed conduct can be captured, and it is not the requirement of law that, for a cartel to be established, it is necessary to implicate and implead each and every player operating in the industry. It is another matter that the parties may rebut the statutory presumption by adducing cogent evidence.
206. Some grievance was also made by a few OPs that the opportunity of cross-examination was not accorded. In this regard, it is sufficient to point out that the case essentially rests on e-mails and the contents thereof, which were duly confronted to the representatives of the OPs themselves, who not only broadly corroborated the same but even acknowledged the meetings convened on the platform readily made available by the trade association. The representatives also deposed as to the nature of discussions having taken place in such meetings. In view of this, the plea seeking cross-examination is misconceived and infructuous as the Commission has only relied upon the depositions of the representatives of the parties themselves while examining their conduct.
207. Even otherwise, under Regulation 41 of the General Regulations, the Commission or the DG has the discretion to take evidence either by way of affidavit or by directing the parties to lead oral evidence in the matter. However, if the Commission or the DG, as the case may be, directs evidence by a party to be led by way of oral submissions, the Commission or the DG, as the case may be, if considered *necessary* or *expedient*, may grant an opportunity to the other party or parties, as the case may be, to cross-examine the person giving the evidence. Hence, even when the evidence is led by oral submissions, the Commission or the DG retains the discretion to consider the request for the grant



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of opportunity to the other party or parties to cross-examine the person giving the evidence, if the same is considered *necessary* or *expedient*.

208. Be that as it may, for the reasons already mentioned, nothing survives in such requests as the Commission has not used the oral testimony of any person other than those of representative(s) / former representative(s) of the concerned companies.
209. Lastly, some of the parties also raised the plea of lack of certificates in terms of Section 65(B) of the Indian Evidence Act, 1872 to support the electronic evidence. In this regard, it is appropriate to point out that, in the absence of denial of meetings by OPs when confronted with those e-mails and the nature of discussions therein as reflected in the e-mails, the plea is sans merit and is accordingly rejected. In any event, the present order is based on the testimonies and depositions of the OPs themselves who have corroborated the contents of e-mails, as discussed in this order.
210. Once contravention by OPs is established, the Commission proceeds to analyse the conduct of the Opposite Parties' directors, officers and employees who would be liable for such anti-competitive acts of the Opposite Parties, in terms of Section 48 of the Act.
211. In view of the instances cited by the DG in the investigation report regarding the identified individuals and evidences against them, the Commission agrees with the DG in terms of liability to be fixed under Section 48. Accordingly, the Commission holds the individuals of OPs, as identified and against whom findings of contravention was recorded by the DG, liable in terms of the provisions of Section 48(1) and 48(2) of the Act. None of the identified individuals have been able to prove that the contravention committed by their respective companies was without their knowledge or that they had exercised all due diligence to prevent the commission of such contravention. The individuals



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have not been able to rebut or deny before the Commission the roles played by them in cartelisation for which the DG has gathered cogent and sufficient evidences, which are primarily based on the testimonies of representatives of the concerned parties. Therefore, the Commission also finds the identified individuals of OPs liable in terms of the provisions of Section 48(1) as well as Section 48(2) of the Act.

212. Before parting with this order, the Commission notes that, though the DG did not record any specific finding of contravention against OP-1, OP-3, OP-14, OP-18 and OP-20, being cognizant of meetings and discussions, they should have reported the matter to the Commission. In this regard, the Commission warns these OPs to be careful in attending meetings of trade associations where activities prohibited under the Act take place. If they find themselves in such meetings, it would be obligatory for them to recuse themselves from such meetings and, as responsible corporate citizens, immediately bring such meetings and discussions to the attention of the Commission without any delay.

ORDER

213. In view of the above, the Commission holds OPs (OP-2, OP-5, OP-6, OP-7, OP-8, OP-9, OP-10, OP-12, OP-17 and OP-21) to have contravened the provisions of Section 3(1) read with 3(3)(a) of the Act, as detailed in this order.
214. The Commission, in terms of Section 27(a) of the Act, directs above OPs and their respective officials who have been held liable in terms of the provisions of Section 48 of the Act to cease and desist in the future from indulging in practices which have been found in the present order to be in contravention of the provisions of Section 3 of the Act, as detailed in the earlier part of the present order.



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215. On the issue of imposing monetary penalties upon the OPs and their respective officials, the Commission is of the view that, for the reasons recorded below, the ends of justice would be met if a symbolic penalty as against the maximum penalty permissible under the statute, is imposed upon the OPs only.
216. In this regard, the Commission is conscious of the fact that during pandemic, as contended by OPs, most of the businesses moved to the virtual mode, reducing the need for paper and thereby affecting the paper business significantly. In such a situation, any significant penalty on these firms may render them economically unviable. Thus, considering the matter holistically, the Commission decides to impose a monetary penalty of only Rs. 5 Lakh upon each of the OPs (OP-2, OP-5, OP-6, OP-7, OP-8, OP-9, OP-10, OP-12, OP-17 and OP-21) who have been found to have contravened the provisions of the Act, as detailed in this order.
217. As regards OP-21, it is observed that it has filed lesser penalty application and has also fully cooperated during investigation before the DG. The Commission decides to grant 100% reduction in the penalty amount imposed upon OP-21.
218. A penalty of Rs. 2.50 Lakh is imposed upon OP-4 Association for actively providing its platform for anti-competitive activities of the players, besides convening, coordinating and organizing the meetings. Further, the Commission is of the considered opinion that the objectives of the Act would be met if the parties including their respective individuals in the present matter are ordered to cease such cartel behaviour and are further directed to desist from indulging in similar behaviour in the future, as directed earlier. The OPs and their respective individuals are, however, cautioned to ensure that their future conduct is strictly in accord with the provisions of the Act, failing which, any such future behaviour would be viewed seriously as constituting recidivism, with attendant consequences.
219. It is made clear that nothing contained in this order shall be deemed confidential, as the same have been used in the terms of provisions of Section 57 of the Act.



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220. The Commission directs each of the OPs (OP-2, OP-5, OP-6, OP-7, OP-8, OP-9, OP-10, OP-12, and OP-17) and OP-4 Association to deposit the penalty amount within 60 days of receipt of this order.
221. The Secretary is directed to communicate with the concerned parties accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 17/11/2021

Place: New Delhi