



## COMPETITION COMMISSION OF INDIA

Reference Case No. 08 of 2013

**In Re:**

**Ministry of Corporate Affairs**

5th Floor, A-Wing, Shastri Bhawan,  
Dr. Rajendra Prasad Road,  
New Delhi – 110 001.

**Informant**

**And**

**1. Apollo Tyres Ltd.**

Apollo House,  
7, Institutional Area, Sector – 32,  
Gurugram – 122001,  
Haryana.

**(Opposite Party No. 1)**

**2. MRF Ltd.**

114, Greams Road,  
Chennai – 600 006,  
Tamil Nadu.

**(Opposite Party No. 2)**

**3. CEAT Ltd.**

RPG House, 463,  
Dr. Annie Besant Road,  
Worli, Mumbai – 400 030,  
Maharashtra.

**(Opposite Party No. 3)**



**4. JK Tyre and Industries Ltd.**

Link House, 03, Bahadur Shah Zafar Marg,  
New Delhi – 110 002.

**(Opposite Party No. 4)**

**5. Birla Tyres Ltd.**

(M/s Kesoram Industries Ltd.)  
8th Floor, Birla Building,  
9/1, R. N. Mukherjee Road,  
Kolkata – 700 001,  
West Bengal.

**(Opposite Party No. 5)**

**6. Automotive Tyre Manufacturers Association**

PHD House (4<sup>th</sup> Floor), Opp. Asian Games Village,  
Siri Institutional Area,  
New Delhi – 110 016.

**(Opposite Party No. 6)**

**CORAM**

**Mr. Augustine Peter**

**Member**

**Mr. U. C. Nahta**

**Member**

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

**Member**



**Appearances:**

Shri Amit Sibal, Senior Advocate, Ms. Sonam Mathur, Ms. Kabyashree Chaharia, Shri Sanjeev Kumar, Advocates, Shri Deepak Gupta, Legal Head, Shri Sanjay Jain, Legal Consultant, Shri Anil Chopra, Head- Finance & Accounts of OP-1 and its concerned officials.

Shri A.N. Haskar, Senior Advocate, Shri Aditya Narain, Shri Arnav Narain, Advocates, Shri Santhosh C.B., General Manager (Legal), Shri Sam Navin, Senior Manager (Legal) of OP-2 and its concerned officials.

Shri Aditya Narain, Shri Arnav Narain, Advocates, Shri MVH Menon, General Manager (Legal), Shri HNS Rajput, VP-Legal of OP-3 and its concerned officials.

Shri Ramji Srinivasan, Senior Advocate, Smt. Ferida Satarawala Chopra, Shri Vivek Agarwal, Shri Karan Latayan, Shri Tushar Bhardwaj, Advocates, Shri Pawan Kumar Rustagi, VP-Legal of OP-4 and its concerned officials.

Shri Somashekhar Sundaresan, Ms. Nisha Kaur Uberoi, Shri Gaurav Bansal, Shri S. Sammith, Ms. Ankita Gulati, Advocates of OP-5 and its concerned officials.

Shri Balbir Singh, Senior Advocate, Shri Abhishek Baghel, Shri G.R. Bhatia, Shri Abdullah Hussain, Ms. Nidhi Singh, Ms. Perna Parashar, Advocates, Shri Joy Joseph, Senior-Executive Officer of OP-6 and its concerned officials.



सत्यमेव जयते



## **Order under Section 27 of the Competition Act, 2002**

1. The present matter has been initiated on the basis of a reference received from the Ministry of Corporate Affairs (MCA) under Section 19(1)(b) of the Competition Act, 2002 (the Act) wherein it was alleged that domestic tyre manufacturers such as Apollo Tyres Limited ('OP-1'), MRF Ltd. ('OP-2'), CEAT Ltd. ('OP-3'), JK Tyre and Industries Ltd. ('OP-4'), Birla Tyres Ltd. ('OP-5') and Automotive Tyre Manufacturers' Association ('ATMA'/'OP-6') have violated the provisions of Section 3 of the Act.
2. The said reference was based on a representation made by Shri S P Singh, convener of All India Tyre Dealers Federation (AITDF) to the MCA, wherein it was alleged that OP-1 to OP-5 who controlled over 90% of the tyre production in India were engaged in price parallelism under the aegis of ATMA. It was contended that the OPs raised the prices of tyres and tubes on the pretext of increase in prices of natural rubber and other inputs, but subsequent reduction in the prices of these raw materials was not followed by a corresponding decrease in the price of tyres, which should otherwise have occurred in a competitive market.
3. It was alleged that in 2005, when the natural rubber prices increased from Rs. 78/kg to Rs. 114/kg, the tyre prices were raised across the board by 12-15%. However, when the prices of rubber went down to Rs. 82/kg, the subsequent roll back in tyre prices was only to the tune of 3-4%. Again in 2008 when the natural rubber prices went up from Rs. 75/kg to Rs. 142/kg and crude oil prices also shot up from \$65/barrel to \$140/barrel, prices increased across all categories of tyres by 17-22%. However, when in December 2008/ January 2009, natural rubber prices dropped to Rs. 69/Kg, crude oil prices decreased



सत्यमेव जयते



and excise duty on tyres was also slashed, the tyre prices were not rolled back. Also in 2011-12, when the natural rubber prices shot up to Rs. 240/kg, tyre prices were hiked by 18-25%, but when the natural rubber prices dropped to Rs. 145/kg in 2013-14, there was no corresponding drop in the tyre prices.

4. Therefore, it was stated that the benefit from a steep decline in the natural rubber prices was not being transferred to the tyre consumers as the domestic tyre industry was maintaining a self-styled 'price control' on tyre pricing and their trade practice, by strangulating the free and fair play of market forces leading to a zoom in the 'declared' margins for the leading domestic tyre companies. It was further alleged that OP-1 to OP-5 were also imposing tariff and non-tariff barriers through their trade association OP-6 to strengthen their control on the domestic tyre market. Furthermore, closing down or acquisition of inefficient players had led to the concentration of the Indian tyre market in the hands of a few players.
5. Based upon such allegations, the Commission framed a *prima facie* opinion, and *vide* its order dated 24<sup>th</sup> June, 2014 passed under Section 26(1) of the Act, observed that the act of not passing on the benefit of reduction in prices of major raw materials/ inputs by the OPs to the tyre consumers indicated lack of competition amongst them and some sort of understanding between them especially in the replacement market. The Commission was therefore *prima facie* of the opinion that the case required investigation by the DG to find out the presence of any 'agreement' or 'understanding' within the meaning of Section 3 of the Act between the market players (OP-1 to OP-5) and the role of the association *i.e.* OP-6 in maintaining/ increasing the tyre prices. The Commission hence, directed the DG to cause an investigation into the matter and submit its report.



### **Investigation by the DG**

6. The DG, after investigating the matter, submitted its report on 8<sup>th</sup> December, 2015. It examined the structure of the domestic tyre market and found it to be highly concentrated with OP-1 to OP-5 having combined market share in terms of turnover of around 83% of the total industry turnover. Truck-bus bias (TBB) tyre segment constituted about 74% of the total domestic sales as compared to about 26% of Truck-Bus Radial (TBR) tyre segment. For its investigation, the DG found that cross ply or bias tyre constituted about 38% of the total revenue of the domestic tyre industry and thus, identified it as the representative tyre segment for further analysis. Further, the DG for the purpose of price comparison or analysis, observed that the prevailing price of tyres in the domestic market was primarily driven by the Net Dealer Price (NDP) applicable across the country as the same is not only inclusive of local freight charges, but also that it is upon the dealers to pass on the discounts or incentives to the end customers depending upon the market conditions. Therefore, the data of NDP/NBP of truck-bus tyre of the OPs was considered for the purpose of price comparison/ analysis.
  
7. The DG, on examining the price trend of natural rubber and other key raw materials including the derivatives of crude oil, observed that the prices of raw materials increased considerably in the years 2010-11 and 2011-12, which resulted in decline in the operating margins (EBITDA) for the OPs in the said period. However, on easing of input cost pressures in 2012-13 and 2013-14, the operating margins (EBITDA) of the OPs increased significantly. Further, despite considerable decline in key raw material prices in the year 2013-14, the OPs reduced the TBB tyre prices by a small range only. The evidences strongly indicated that the OPs had acted in a concerted manner to increase and maintain the tyre prices at higher levels despite significant decline in the prices of natural



rubber and other key raw materials. The price level of the OPs could not have been possible had there been any real competition between them in the replacement market.

8. The DG noted a comparative analysis of the impact of key raw material costs of the OPs as a percentage of their sales revenue indicates that after touching a peak height of nearly 70% in the year 2010-11, the same moderated gradually and came down to around 60%. For instance, in the case of OP-5, the raw material cost which went up as high as 79.45% in year 2011-12 declined by about 13% by 2013-14. The impact of fluctuations in raw material cost had a direct impact on the operating margin (EBITDA) of the OPs over these years and high and disproportionate growth in the operating margins of the OPs when compared with the turnover growth of the OPs indicates that the benefit of decline in input cost was not passed on to the consumers especially in the years 2012-13 and 2013-14.
9. The DG analysed the price movement of tyres of the OPs by comparing the top selling and most representative variant of the TBB tyre segment during the five year period (1<sup>st</sup> March, 2009 to 28<sup>th</sup> Feb, 2014) and found that the prices of the OPs moved in tandem and in similar direction during the said period. The DG concluded that in absolute terms of the prices of tyres, price revision by the OPs exhibited strong price parallelism in the domestic tyre industry. The DG found high degree of positive pairwise correlation between the absolute tyre prices charged by the OPs during the period of 2011-2014 thereby indicating movement of tyre prices in tandem. On analysing the yearly price increase by the OPs, it was observed by the DG that in the years 2011-12 and 2012-13, the percentage of price increase was nearly identical in spite of the fact that the OPs operated at different efficiency levels.



10. It was observed by the DG that mere parallel pricing in an oligopolistic market structure alone is not sufficient to infer about the existence of a cartel amongst the OPs. Therefore, certain 'Plus Factors', something beyond 'Conscious Parallelism', identified in the present case, was required to add credence to the conclusion of a cartel amongst the OPs. The DG found that the record of ATMA (OP-6) clearly reveals that the association, through various meetings of expert group level and sub-group level (comprising of only five member companies *i.e.* OP-1 to OP-5), of which no minutes were maintained and this provided the OPs ample opportunities to meet and discuss about the cost, price and profit margin, at regular intervals. OP-6 also provided them a platform to not only formulate a common pricing strategy but also to monitor the outcome. Further, email communications relating to commercially sensitive information/pricing strategy between the OPs were found which defy any business rationale except the intent for a coordinated action. Discussion on 'RM cost increase Vs price increase' in February 2011 based on raw material consumption for TBB, under the aegis of OP-6, strongly indicated coordinated price increase (of approximately same magnitude) by the OPs, particularly in the years 2011-12 and 2012-13. Email communications in the month of May 2011 between MRF (OP-2) and Apollo (OP-1) through the Director General, OP-6 with regard to pricing strategy for price increase despite softening of natural rubber prices to maintain a healthy EBITDA margins, suggested active collusion in the form of an 'agreement' in terms of Section 2(b) of the Act, to indirectly determine the tyre prices.
11. The DG further found that unusual stability in production and the *inter se* market share of the OPs, particularly in the replacement market, during the period 2011-12 to 2013-14 are significant plus factors in the case. The capacity utilisation figures of the OPs indicated excess capacity in the TBB tyre segment, but despite that the OPs chose not to compete in the market and settled





सत्यमेव जयते



for stable shares.

12. It was found that the decision of the OPs regarding price increase was invariant with the fluctuations in demand in the domestic market, which is very uncommon in a competitive market. The non-transparent process of decision making on price changes followed by the OPs and their failures to justify such decisions, also substantiates the inference about the existence of a cartel amongst them.
13. The DG also concluded that the analysis of financial performance of the OPs also strongly suggested about success of a cartel, as the OPs could achieve unusually high growth in operating margins (EBITDA) when compared with the growth in demand/turnover of TBB tyres during the three year period from 2011-12 to 2013-14.
14. The DG further unearthed a bunch of email correspondences regarding price rise exchanged between the OPs. One of such emails is sent by Mr. Rajiv Budhraj, DG ATMA/OP-6 (from *atma@vsnl.in*) to Mr. Neeraj Kanwar of OP-1 on 18<sup>th</sup> May, 2011 at 9.50 AM on his email address *neeraj.kanwar@apolloyres.com*. Further, the DG has also relied upon two other emails that were sent by Shri Budhraj on the same date to Shri Kanwar regarding his meeting with Shri Varghese.
15. Based on the above, the DG concluded that OP-1 – OP-5, under the aegis of the association OP-6, indulged in cartel activity by indirectly determining the sale prices of TBB tyres from 2011-12 to 2013-14 in the domestic tyre market in contravention of the provisions of Section 3(3) (a) read with Section 3(1) of the Act.



16. The DG also found the following key persons to be liable under the provisions of Section 48 of the Act:-

- i. Shri Neeraj Kanwar, Vice-Chairman and Managing Director (OP-1)
- ii. Shri Satish Sharma, President Asia Pacific, Middle East and Africa (OP-1)
- iii. Shri K.M. Mammen, Chairman and Managing Director (OP-2)
- iv. Shri Koshy K Varghese, Executive Vice- President (Marketing) (OP-2)
- v. Shri Anant Goenka, Managing Director (OP-3)
- vi. Shri Arnab Banerjee, Executive Director (Operations) (OP-3)
- vii. Shri Nitish Bajaj, Vice-President (Marketing) (OP-3)
- viii. Shri Raghupati Singhanian, Chairman and Managing Director (OP-4)
- ix. Shri Vikram Malhotra, Marketing Director (OP-4)
- x. Shri Arun Kumar Bajoria, President (OP-4)
- xi. Shri Basant Kumar Birla, Chairman (OP-5)
- xii. Shri Ashwani Maheshwari, President (OP-5)
- xiii. Shri Arvind Kumar Singh, President/ Chief Executive Officer (OP-5)
- xiv. Shri Rajiv Budhraj, Director General (OP-6)
- xv. Shri Neeraj Kanwar, Ex-Chairman, Managing Committee (OP-6)

### **Consideration of the DG Report by the Commission**

17. The Commission considered the investigation report submitted by the DG in its ordinary meeting held on 18<sup>th</sup> February, 2016 and *vide* its order of even date decided to forward copies thereof to the OPs and the aforesaid individuals for



filing their respective replies/ objections thereto, if any.

### **Replies/ Objections/ Submissions of the Parties**

18. The contentions raised by the various tyre manufacturers/ OPs in their written replies/ objections/ suggestions as well as before the Commission during the oral hearing are summarised below:

#### **Replies/ Objections/Submissions of OP-1/ Apollo Tyres Ltd. (Apollo)**

19. It was submitted by OP-1 that the DG's analysis of price movements is incorrect and misleading as there are serious calculation errors while comparing the rate of change in prices of tyres in the TBB segment. Consequently, the inference made by the DG that price changes were similar as well as simultaneous is grossly incorrect. Further, the degree of association between coefficient of correlation of price changes by the OPs is significantly lower than what has been concluded by the DG when analysed over the period of alleged cartelisation. The correlation analysis has been done by the DG for a longer period *i.e.* from 2009-2014, longer than the alleged cartel period (2011-14). It was pointed out that the consistency in the errors in various calculations done by the DG strongly indicates an intention to reach a finding of infringement by the OPs.
20. Objection was also raised regarding incomparable products being analysed by the DG during the investigation and it was submitted that the products compared are not actually competing and more specifically that the products of OP-3 and OP-4 are not competing products. There was no effort by the DG to investigate changes in prices of other comparable products and the DG ought to have analysed a larger product group that can be considered representative



of the segment.

21. The DG's reliance on email containing the discussion about the trends in raw material prices and pricing strategy between OP-1 and OP-2 through Mr. Rajiv Budhraj, has been controverted by submitting that the discussion involves data available in the public domain and it was for a prior time period. It was also averred that not only the context of exchange of email has been ignored by the DG but the DG has also not been able to show that OP-1 had altered its pricing strategy based on the same discussion. It was further stated that the primary purpose of OP-6 is to act as a channel of communication between the industry and the government departments and its role is limited to reporting trends in relation to raw materials. The evidence gathered by the DG shows that the DG has not been able to establish a collusive 'agreement' among the OPs and the case is built on pure speculation and conjectures.
22. It was submitted that comparing Net Dealer Price/ Net Billing Price of the OP's products is wholly misconstrued and not reflective of the actual market scenario as NDP/NBP does not include discounts, schemes, freight *etc.* that are included while determining the final price to be paid by the dealer.
23. OP-1 also controverted the DG's finding that the companies have a centralised process for making decisions in relation to pricing and the same is settled without any deliberations on various factors attributing to price increase or decrease and stated that it has submitted multiple internal emails involving price deliberations based on independent reasoning. It further stated that the DG has also failed to consider the capital investments made by OP-1 to set up its facility for radial tyres and other factors such as overhead costs, administrative expenses, interest on working capital, employee benefit cost, depreciation and finance costs *etc.* and to substantiate the same. Attention was



drawn to the statement made by Mr. Satish Sharma during examination by the DG, explaining various factors leading to price change.

24. It was submitted that based on stray instances of sub-group meetings of OP-6, the DG's conclusion that these meetings facilitated concerted action is misconstrued and the DG has failed to establish regularity in such meetings and their anti- competitive effect.
25. The findings by the DG with respect to plus factors have also been averred to be inaccurate. The analysis of combined Operating Margins to Turnover by the DG to show higher operating margins despite slack in demand was termed as misleading by OP-1 by submitting that profitability is linked to cost structure of an enterprise and not to its turnover and operating margins are not a good indicator of performance of a company.
26. The analysis by the DG with respect to annual sales of TBB tyre for each OP in the replacement market concluding that their market shares over the years remained stable due to understanding amongst them, was objected to by relying on monthly sales figures of the OPs and inferring existence of appreciable shifts in the market share of each OP on account of increase in the share of radial tyres in TBB segment.
27. With respect to the DG's finding regarding relationship between demand and price of TBB tyres, that their price changes were not driven by competitive pressures of the market, OP-1 responded by stating that the DG has failed to account for the increase in share of radial tyres in the truck bus segment and demand fluctuations which are due to increase in popularity of TBR tyres which are substitutable with TBB tyres.



28. The DG's finding that despite having excess capacity, the OPs colluded not to compete in the market and settle for stable shares, was attributed to weaker demands as well as gradual shift from bias tyres to radial tyres and rapid increase in the capacity of the TBR segment.
29. It was stated that the DG failed to consider the effect of imports of TBR tyres on TBB tyre segment which constitutes a significant part of the domestic tyre industry and is inter-changeable with the TBB tyres. It was submitted that the percentage of total imports to total tyre production had been substantial during the alleged cartel period and ranged from 7.22% to 13.59 %. Thus, any increase in the domestic prices of tyres was immediately countered by an increase in imports which provided a significant competitive constraint on the domestic tyre industry.
30. It was further submitted that wide varieties of tyres are offered by the OPs depending upon end-use, load, overload and mileage which cannot be considered homogeneous and sufficient to reach a finding of violation on that basis alone. The retreading tyre market also provides a viable alternate market acting as a competitive constraint on the tyre manufacturers. The fluctuations in demand in the replacement market depending upon overloading norms, retreading intensity, miles driven *etc.* being less cyclical prevents collusion amongst the OPs.
31. It was stated that the DG has failed to observe the principles of natural justice during the course of investigation as before drawing an adverse inference from the information / data submitted by OP-1, no opportunity to be heard was granted by the DG to it, despite repeated written requests in each of its replies / submissions. It was further submitted that the reference filed by MCA is not in conformity with Section 19(1) (b) of the Act read with Regulations 2(j), 10



and 11 of the Competition Commission of India (General) Regulations, 2009 (General Regulations). It was averred that the MCA forwarded the representation sent by AITDF which did not contain any specific allegations against any OP and thus, the Commission ought not to have directed the DG to commence an investigation.

32. It was further stated that the DG has demanded irrelevant information / documents to be produced by the OPs during the course of the investigation and by compelling OP-1 to produce the entire email dump of K.M. Mammen, the DG has exceeded its jurisdiction as envisaged under the Act and the General Regulations. It was also submitted that the information sought by the DG is beyond the mandate of the *prima facie* order wherein the Hon'ble Commission had found a violation of the provisions of the Act by the OPs for the period subsequent to 2011-12. However, the DG, in the notice issued on 11<sup>th</sup> March, 2015, had sought information from OP-1 for the period from 2009 to 2014.
33. It was also stated that the DG had not permitted the legal representatives of OP-1 to be present during the recording of statements of its persons and in the absence of any specific prohibition under the Act, the presence of legal representatives cannot be restricted.
34. The DG, after analysing certain structural characteristics of the Indian tyre industry, has concluded that it is conducive to the formation and maintenance of a cartel. The characteristics relied upon by DG for arriving at the above conclusion as stated in the reply of OP-1 are:
- a) Heavy concentration and entry barriers

The DG has stated that there is heavy concentration in the domestic tyre industry where the OPs have a combined market share of 83% and in



the TBB segment, the same is stated to be about 94%. However, bias and radial tyres are substitutable. Further, import of radial tyres from China which are considerably cheaper (almost 30% cheaper than domestic bias tyres) provide very stiff competition to the domestic tyre manufacturers in the truck bus segment.

b) Homogenous product

The DG has stated that due to the homogenous nature of the product, the tyre industry is conducive for cartelisation. However, there is a wide range of products that are offered and at the broadest level, tyres vary depending on the vehicle into which they are to be fitted such as commercial vehicles (buses and trucks), passenger cars, off road and tractors. Even within each of these categories, there exist sub-categories based on size, quality and end-usage of tyres.

c) Consumer dependence

The DG has stated that consumers in the TBB segment are highly dependent on the domestic tyre manufactures. However, it is stated that the DG has ignored the fact that there is a persistent threat to demand from retreaded tyres which are viewed as an important substitute to new tyres.

d) Predictable demand

The DG has stated that due to the predictability of demand in both Original Equipment Manufacturer (OEM) and replacement markets, the tyre industry is conducive to cartel. However, the demand from the OEM segment is highly cyclical as it is closely related to the demand





for automobiles. Similarly, the demand in the replacement segment is highly non-cyclical and it depends on the on-road vehicle population, road conditions, vehicle scrapping, overloading norms, re-treading intensity, and miles driven *etc.*

e) Active trade association

The DG has stated that an active trade association provides a platform for anti-competitive activities. It was submitted that OP-6 acts as a representative of ten tyre manufacturers but only five parties have been considered in the investigation which is arbitrary. There are 28 other manufacturers in the market which reduces the stability of cartel amongst the OPs. A reference was also made to an observation in *RTPE Case No. 20 of 2008* titled *In re: All India Tyres Dealers' Federation against Tyre Manufacturers* regarding OP-6 that OP-6 conducts legitimate activities for the tyre industry. OP-6 is a highly compliant industry association and now all OP-6 meetings are conducted under the supervision of a competition law expert. Besides, the legal counsel of OP-6 regularly educates its members regarding competition law provisions and any developments thereto.

35. On the issue of penalty, it was submitted that should penalty be imposed on OP-1, the penalty be computed based upon turnover arising from the product in case only in which the infringement is established and in the present case, it be restricted to the turnover of sales of Apollo 10.00-20 16 PR XT 7 (“XT 7”), *i.e.* a tyre variant sold in the TBB segment in the replacement market as all the allegations in the DG report pertain only to the said segment. It was submitted that the principle of proportionality must also be followed while imposing any penalty.



Replies/ Objections/Submissions of OP-2/ MRF Tyres Ltd. (MRF)

36. OP-2 has submitted that the DG has failed to show the existence of an 'agreement' amongst the OPs to prove a cartel under Section 3(3) (a) and 3(3) (b) of the Act which is a condition precedent to establish an allegation of cartel. The report also fails to show Appreciable Adverse Effect on Competition (AAEC) as per Section 19 (3) of the Act. Further, the DG has wrongly relied on theoretical approach of economic principles of price parallelism. The DG has ignored facts and data given by OP-2 and the entire investigation is a fishing and roving enquiry with presupposed mind without any cogent data.
37. It was further submitted that the investigation report has a fatal flaw as the findings of price parallelism are based on incomparable tyres. The tyre sizes chosen by the DG for OP-1, OP-2, and OP-3 relate to overloading application whereas the tyre sizes chosen for OP-4 and OP-5 are mileage tyres and thus, the two cannot be compared. Next, the report for different OPs compares net dealer prices which does not indicate whether the sales invoice reflect discounts like turnover discounts given *vide* credit notes, volume discounts, schemes *etc.* and thus, in the absence of any clarification in this regard and not comparing the actual price paid to the OPs, the exercise by the DG is not according to the definition of price under the Act.
38. The computational errors with respect to the annual price increase in percentage terms in the DG report has led to wrong conclusions of price parallelism. The correct data, when analysed, shows that by no stretch of imagination, increase in prices by the various OPs can be considered as parallel pricing. The inter relationship between the prices of the OPs' was much weaker during the alleged cartel period than before the cartel period. It was further argued that it is incorrect to base a finding of cartel on strong correlation coefficient since the market participants in any trade or industry act



सत्यमेव जयते



independently and merely because the correlation coefficient is high, it does not imply that there is a logical nexus between price rise of one OP with the other, or that one is the cause of the other.

39. The DG has stated that the combined market share of the OPs is about 83% of the total industry turnover. OP-2 has questioned this as to why has the DG considered only 83% out of the total, when in his report he has noted that there are 39 tyre companies in India out of which 10 companies together have 95% share in the market. The basis for excluding 5 tyre companies which include multinational giants namely Michelin, Goodyear, Bridgestone and Continental, from the ambit of investigation, has not been stated by the DG.
40. It was further stated by OP-2 that as TBR tyres are substitutable products for TBB tyres, the Truck and Bus segment needs to be seen as a whole. It is significant to note that the use of radial tyres in passenger cars is almost 100%. At present, share of radial tyres in truck bus segment is 33% and therefore, the said segment cannot be excluded in the investigation. Global multinational tyre manufacturers sell TBB tyres in multiple countries and given their global presence and reach across most countries, global turnover and R&D expenditure, the competition faced by OP-2 from global multinational tyre manufacturers cannot be excluded from consideration in the investigation.
41. It was stated by the DG that the quantum of price increase by OP-1 to OP-4 despite decline in the prices of key raw materials in 2012-13 strongly indicates that there was coordination causing price increase. However, as per OP-2, it is wrongly assumed that decline in prices of key raw materials will result in decrease in tyre prices. The prices of natural rubber are extremely volatile so much so that the Tariff Commission has recommended that this aspect of the selling price trends in natural rubber and its corresponding relation with the



सत्यमेव जयते



cost of production needs to be studied. In these circumstances, the question of OP-2 reducing tyre prices arises only if there were a foreseeable stability in the natural rubber prices along with other market factors and forces including competition with other tyre companies. As per OP-2, the decrease and increase of raw material prices is not the sole criteria for pricing of the product and increase in operating margin by itself does not indicate any coordinate action.

42. With respect to the operating margins (EBITDA) of OP-2's tyres for the years 2009-10 to 2013-14, it was stated that the Hon'ble Commission in its order dated 30<sup>th</sup> October, 2012 in *RTPE Case No. 20 of 2008* exonerated the tyre companies including OP-2 which covered the period from 1<sup>st</sup> April, 2005 to 31<sup>st</sup> March, 2010 and in fact, AITDF referred to the price revision on 1<sup>st</sup> July, 2011 (para 71 of the said order). However, it may be noted that the margins for 2011-12 were higher than the margins for 2010-11. Also, increase in EBITDA is not contrary to law. EBITDA increased in 2012-13 and 2013-14 for the tyre industry as a whole. The margins of 2011-12 were higher than that of 2010-11 and continued to rise in 2012-13. It was argued by the learned counsel for OP-2 that there is no law limiting the operating margins of the companies. There was no disproportionate growth in the operating margin of OP-2 which had gone up generally. There is no law mandating that decline in input costs must be passed on to the consumers. It must be appreciated that prices are not normally reduced immediately unless one sees a sustainable reduction in costs. Considering the relatively lower margins and consequently lower profits earned during 2010-11 and 2011-12, it was a natural response from market participants in the tyre industry to be gradual in reducing the prices.
43. The DG has alleged that decision making process of OP-2 is not transparent to which it was submitted that OP-2 follows a detailed process of discussion with Sales and Marketing team on the status of the product, competitive market



scenario, capacity utilisation, costs and the product segments to which the tyre belongs. The competitive market scenario is periodically assessed, documented and approved by the Executive Vice President after obtaining inputs from the finance department, sales and product groups and considering various data/documents. The DG has completely ignored these facts in its report.

44. The DG has relied on email communications of May 2011 between the market leaders *i.e.* OP-2 and OP-1 through the DG, OP-6 with regard to the strategy for price increase despite the softening of Natural Rubber prices to maintain healthy EBITDA suggesting active collusion to indirectly determine tyre prices. OP-2 has denied exchanging any email communication in May 2011 with OP-1 through the DG of OP-6 with regard to pricing strategy, as alleged. No copy of the email dated 18<sup>th</sup> May, 2011 at 9:50 AM from the DG, OP-6 to OP-1 was marked to it and it was not aware of the existence of such email till 4<sup>th</sup> November, 2015 when confronted by the DG while recording the statement of Mr. Koshy Varghese. It was submitted that OP-2 had revised its prices on 12<sup>th</sup> May, 2011 and consequently the question on any discussion on prices for deciding a 'price strategy' cannot and does not arise. The price increase of 10-11% referred in the said email did not take place. On the contrary, but for an increase 3-5% during June 2011, there was absolutely no further price increase till 1<sup>st</sup> March, 2012.
45. It was observed by the DG that OP-1 and OP-4 in the year 2013-14 had held up the tyre prices. As per OP-2, the charge of coordination must fail since OP-4 had increased prices whereas the other OPs had reduced prices ranging from 0.80% to 5.22%. There was wide variation in the selling prices during 2013-14. It was pointed that the range of price revisions to the extent that price increase by OP-4 was 1.21% and price reduction by OP-5 was 5.22%.



सत्यमेव जयते



46. As per the DG, it was the active role of OP-6 which led to an agreement on the pricing of tyres. Frequent meetings of various Expert Groups and Sub Groups in which no minutes were maintained provided a forum for formulating common strategy. However, OP-2 denied OP-6 having any role in its pricing decisions. Also, four sub group meetings were held for transacting specific agenda. Non-OP tyre manufacturers were also invited/ had attended these meetings through their purchase heads and not marketing heads.
47. As far as the issue of 'plus factors' is concerned, it has been made evident that the market of the OPs changed during 2011-12 to 2013-14. Further, the alleged stability in the production was due to broadly stagnant T&B market. The growth in operating margins was an industry wide phenomenon witnessed globally. The decision making of OP-2 was based on relevant data and the alleged sensitive information that was collated by OP-6 was to enable it to respond to the Government, Parliament and other agencies, targeting the domestic tyre industry with complaints.

*Replies/ Objections/Submissions of OP-3 / Ceat Ltd. (Ceat)*

48. OP-3 in its reply to the DG Report, submitted that the DG investigation is beyond the scope of the order of the Commission passed under Section 26(1) of the Act as the investigation is on a particular size of TBB tyres, excluding the different market segments referred to in that order of the Commission. It was submitted that the DG failed to include TBR tyres and global giants including Bridgestone, Yokohama, Michelin, Continental, Goodyear and others having global presence, in its investigation. Further, the direction of the Hon'ble Commission was to conduct an investigation for the period subsequent to the year 2011-12 whereas the investigation has been extended from 2009 to 2014.



49. Responding to the evidence relied upon and conclusion arrived at by the DG in relation to establishment of an 'agreement' amongst the OPs, it was submitted that the emails relied upon by the DG did not establish movement of price in collusion. The DG ought to have examined the relationship of price with the OPs' profits in the preceding years which in the opinion of OP-3 would contradict any such collusion whatsoever. The DG failed to consider the factors set out in Section 19(3) of the Act to establish AAEC in the tyre industry.
50. On the issue of strong price parallelism, in terms of actual quantum and percentage change in product prices, it was submitted that the report contains arithmetical errors because of which inference and conclusion that prices were in tandem is erroneous and a patent error on the facts on record. The percentage variation in prices of OP-3 *vis a vis* the market leaders OP-1 and OP-2 shows wide variation and negates any claim of price parallelism and does not demonstrate the existence of a cartel.
51. It was stated by OP-3 that in the replacement market, it sells its product to the tyre dealers at the net dealer price along with discounts to promote inter-brand competition. It argued that it was erroneous on part of the DG to find correlation between net dealer price/ net billing price. Responding to the exchange of sensitive information *via* email in February 2011 with respect to raw material cost increase vs price increase undertaken by the OPs, it was submitted that the allegation does not manifest in the price changes effected in 2011-2012; neither the report establishes that OP-3 was furnished with the email prior to or subsequent to the meeting of the Purchase Committee on 21<sup>st</sup> February, 2011 nor does it establish that OP-3 acted in any manner in the direction of the alleged sensitive information. Also, such data cannot be considered to be commercially sensitive as it is factual information available in the public domain and furnished in the past years to the Government in



response to the questions raised in Parliament or other authorities.

52. Further, the DG has made a fundamental error in analysing the sales/margins (EBITDA) of the OPs and concluding that the operating margins of the OPs have shown significant improvements from 2011-12 onwards, particularly in 2012-13 and 2013-14. The DG has also analysed whether there was a strong indication of price parallelism from 2011-12 to 2013-14. The DG itself in its summary has concluded that there was a decline in EBITDA of OP-3 in FYs 2010-11 and 2011-12. This, according to OP-3, establishes that the investigation report has been made in haste and in total disregard of the factors like impact of increased crude prices, competition in the market, reduction in net sales realisation of TBB tyres, variation in financial performance or margins of OP-3 *etc.*
53. It was further submitted that the DG has wrongly sought to create a nexus between the sub groups of OP-6 and the alleged price fixing of tyres in the TBB segment which is a mere fishing and roving exercise. The DG has investigated Mr. John M. John of OP- 3 who had clarified that the meeting on 16<sup>th</sup> May, 2011, which is relied on by the DG to allege collusion, was specifically to discuss the demand of Carbon Black manufacturers to increase the price of carbon black.
54. The DG has relied upon the email dated 18<sup>th</sup> May, 2011 sent by Mr. Rajiv Budhreja of OP-6 to the representatives of the member tyre companies of OP-6 on Raw Material Price Trend – Compound Cost Indexation to show exchange of sensitive information on pricing strategy. However, it was submitted that the discussion had nothing to do with TBB tyres and was only with respect to quarterly movements in common raw materials such as natural rubber, carbon black, rubber chemicals, butyl *etc.* On the contrary, the email clearly brings out





सत्यमेव जयते



the fact that the views expressed therein were personal and intended to help in capacity expansion. Also, the said email was neither shown to Mr. Anant Goenka nor to Mr. John M. John of OP-3 at the time of their deposition, nor brought to the attention of OP-3 thereafter.

55. The DG has alleged that certain characteristics of the domestic tyre market, particularly in the TBB segment, like high level of concentration, homogeneous product, high entry barriers, no significant technology changes, heavy dependence of customers, excess capacity of the OPs and active trade/industry association, are factors conducive for cartelisation. In this regard, it was submitted that the DG has categorically conceded that the market is oligopolistic in nature as there is high degree of interdependence among the firms, which takes into account the likely reaction of other firms while formulating plans and strategies to arrive at decisions on pricing and output. This as per OP-3 reiterates its point that there exists competition in the market and pricing strategy is based on pricing by the competitors.
56. It was lastly submitted that OP-6 does not have any role to play in managing the affairs of OP-3 and its marketing strategy is independent of other tyre manufacturers. Issues commonly faced by the tyre industry were discussed at OP-6 meetings which are within the realm of law.

*Replies/ Objections/Submissions of OP-4 / JK Tyres Ltd. (J K Tyres)*

57. At the outset, it was requested that the DG report be rejected solely on the ground of gross negligence on the DG's part for providing incorrect facts and figures which form the basis of the conclusions drawn by the DG. It was further submitted that it was premature on the part of the Commission to initiate proceedings under Section 48 of the Act against OP-4's key individuals when a finding of contravention of Section 27 of the Act has not been made by the



सत्यमेव जयते



Commission.

58. It was submitted that the DG has conducted investigation with gross negligence and carelessness. It has been demonstrated in detail that the DG has committed several errors in calculating the annual price increase in percentage terms of the OPs. The DG has also made incorrect findings of facts and has drawn misleading conclusions to further the observation on price parallelism and has concluded that OP-4 has been a part of the cartel. In the absence of such incorrect and misleading observations, no such case can be made out against OP-4.
59. Claiming the DG report to be barren and devoid of cogent direct as well as indirect evidences to establish an agreement amongst the OPs to fix the prices of TBB tyres or to establish that OP-4 was part of any such agreement, it was submitted that even from the analysis of various emails relied upon by the DG, there is no proof that data in relation to tyre prices was shared or discussed with OP-4 in any of the OP-6 purchase group meetings. The DG's conclusion that OP-4, under the aegis of OP-6, has indulged in cartelisation is clearly unsubstantiated and cannot be upheld. It was also argued by the learned counsel for OP-4 that OP-6 is not the only association which has sub-groups or committees which are responsible for various functions. Various associations such as Cellular Operators Association of India (COAI), Indian Sugar Mills Association (ISMA), and Indian Paper Manufacturers Association (IPMA) also have similar sub-groups and committees.
60. The DG's findings of violation of the provisions of the Act are stated to be purely based on circumstantial evidences relating to alleged 'price parallelism' which is factually incorrect. The DG has miscalculated the annual changes in the OPs' prices and correct calculations demonstrate varied price changes amongst the OPs which do not reflect any cartelisation. There is absolutely no



pattern or similarity in terms of quantum or frequency of price changes over the five years analysed by the DG so as to denote any form of parallelism. The DG has incorrectly considered correlation of absolute prices and even for correlation of percentage changes in prices, weak correlation is demonstrated.

61. Clarifying the context of the email dated 18<sup>th</sup> February, 2011 received from OP-6 that was copied to Mr. Swarnjit Singh and Mr. V. K. Mathur of OP-4 in relation to a meeting dated 21<sup>st</sup> February, 2011, it was stated that various domestic/ international tyre manufacturers such as Bridgestone, Goodyear, TVS, Modi *etc.* were also marked in the same email but they have not been investigated by the DG because of which this email cannot be shown as evidence of the alleged cartel even so when the same was sent during non-cartel period *i.e.* from 1<sup>st</sup> March, 2010 to 28<sup>th</sup> February, 2011.
62. Attention has been drawn to the arguments made by the learned counsel for OP -6 that these emails on OP-6 purchase group meetings refer to information required by the Government in relation to imposition of Anti-Dumping Duty (ADD) and all these emails date prior to 12<sup>th</sup> August, 2011, the date on which OP-6 filed its request for the 'sunset review' of ADD. Moreover, there is no material on record to suggest that OP-4 indulged in any price discussion on tyre prices with any of the OPs. In fact, Mr. Swarnjit Singh who was the recipient of the email dated 18<sup>th</sup> February, 2011 on behalf of OP-4 and had also attended the OP-6 purchase group meetings, has not been held responsible by the DG under Section 48 of the Act and therefore, it would be fair to presume that OP-4 had no role to play in the alleged cartel.
63. It was further submitted that the plus factors identified by the DG have not been evaluated in consonance with the accepted economic theory and practice. The DG has ignored or misrepresented data and has not considered the characteristics of the Indian TBB market while analysing the alleged plus



factors.

64. It was reiterated that the pricing decisions of OP-4 are based on its independent decision making and are not a result of any collusive conduct. The DG's conclusion demonstrates an abject failure on its part to appreciate that the structure of the tyre industry will inevitably lead to independent yet similar business decisions by each market participant in response to its competitors.
65. Responding to the allegation that collusion resulted in improving profitability during the alleged cartel period (2011-12 to 2013-14), it was submitted that OP-4's profit margins in the alleged cartel period were lower than or similar to its profit margins during 2009-10, the year for which the Commission had previously concluded that there was no cartel, and 2010-11, the year regarding which no allegation or finding has been made. Moreover, though the investigation has been limited to the TBB segment, but while analysing the profitability, the DG has relied on the consolidated profits of OP-4 from all the tyre segments. The DG has failed to assess other factors that may have been responsible for OP-4's improved profitability.
66. Pointing to the DG's finding on assessment of price and cost change leading to TBB tyre price increase even though the cost of natural rubber decreased, it was stated that the DG has placed undue reliance on net dealer price instead of net effective price and the net dealer price does not reflect the changes on account of discount. Considering the changes in prices of natural rubber *vis-a-vis* changes in total cost of sales, it is wrong to allege that the OPs cartelised solely on the basis that the tyre prices did not change in line with the price of natural rubber. Further, it was stated that OP-4 did adjust the prices with falling cost of production. Hence, the DG's observation of collusion among the OPs is completely unfounded.



सत्यमेव जयते



67. With regard to the DG's finding on the role of OP-6 as a platform for the other OPs to share sensitive information and reach an agreement on pricing of tyres, it was submitted that there was no impact of dissemination of indexed raw material cost increase data on actual raw material costs of OP-4. Further, the analysis of price changes by the OPs with the timing of OP-6 purchase group meetings does not indicate any trend between price changes and these meetings.
68. The DG's reliance on stable production and market shares of the OPs in the replacement segment as a critical plus factor was controverted by submitting that the DG failed to recognise that market shares may be stable due to transition in the market for tyres from TBB tyres to TBR tyres. Also, the analysis by the DG does not compare monthly market shares during the alleged cartel period which indicates that the OPs have not colluded amongst themselves.
69. Responding to the finding of reduced monthly capacity utilisation in the TBB segment, it was stated that OP-4's capacity utilisation during the investigation period has mostly been remarkably high and similar in both the non-cartel period (2009-11) as well as the alleged cartel period (2011-13). Further, because of factors such as strikes in Kankroli and Vikrant plants, increase in use of radials, increase in stock build-up, fall in production of trucks and buses, etc., capacity utilisation in 2011-12 and 2012-13 should not be seen as a 'plus factor'.

*Replies/ Objections/Submissions of OP-5 / Birla Tyres Ltd. (Birla Tyres)*

70. At the very outset, OP-5 has denied any involvement in colluding with any of the other Opposite Parties (or any other tyre manufacturer). It was submitted that OP-5 has always acted independently in its decision making process of



revising the price of tyres. The DG has completely ignored the submissions of various individual tyre dealers who have clearly stated that there was no simultaneous increase of tyre prices in the Truck Bus Tyre segment and there was no discernible common price trend in the pricing of Truck Bus Tyre by the various tyre manufacturers. Further, the DG has also not considered the submissions of the individual tyre dealers in relation to supply wherein they have stated that there was no shortage of supply of tyres. It was therefore, submitted that the DG has ignored the statements made by various individual tyre dealers and has proceeded with a pre-conceived notion against the OPs so as to arrive at a finding of cartelisation against them. The DG, in the course of investigation, has also violated the principles of natural justice causing grave injustice and prejudice to OP-5.

71. It was pointed that the DG has not provided any reasons for excluding other tyre manufacturers who were also members of OP-6 at the time of alleged contravention of the Act (*i.e.*, Michelin, Bridgestone and Goodyear). The DG has cherry-picked the OPs as opposed to investigating the conduct of all the members (*i.e.* 9 members who were part of OP-6 at the time of the alleged contravention). Further, the DG has failed to provide any reasoning for distinguishing/differentiating the practice/conduct of the above-mentioned entities with the Opposite Parties which led to the DG limiting the investigation only to the Opposite Parties.
72. OP-5 has alleged random sampling of evidence and non-application of mind by the DG as it has only investigated the replacement market and further narrowed the area of investigation to the Truck-Bus tyre segment in the replacement market. The DG, devoid of any merit or reasoning, has further narrowed the investigation in Truck Bus Tyre segment to only Cross ply (Bias) tyre, thereby excluding radial tyres, even though the radial tyre comprises 24% of the Truck Bus Tyre segment based on domestic sale estimates provided by



OP-6. As such, it appears that such a minute delineation of market for the purpose of investigation has been done by the DG with the sole intention of investigating only the Opposite Parties.

73. Replying to the conclusion drawn by the DG that despite a significant decline in the input costs particularly in 2012-13 and 2013-14, the tyre prices were kept at a higher level, which otherwise could not have been possible without an agreement amongst the OPs, it was submitted that the DG has examined the impact of price movement of natural and synthetic rubber in the cost structure of the OPs, but it has failed to appreciate that the cost impact of the price movements of natural and synthetic rubber in relation the OP-5 is at complete variance with the other OPs. In this regard, a table comparing the cost structures for natural and synthetic rubber of the OPs was provided as is reproduced below:

**Table 1**

OPs	2011-12			2012-13			2013-14		
	Sales	Cost of NR & SR		Sales	Cost of NR & SR		Sales	Cost of NR & SR	
		Absolute	As % of Sales		Absolute	As % of Sales		Absolute	As % of Sales
<b>Apollo (OP-1)</b>	8906.53	3874.75	<b>43.50</b>	9452.91	3535.37	<b>37.40</b>	9589.28	3260.25	<b>34.00</b>
<b>MRF (OP-2)</b>	13061.75	5265.04	<b>40.31</b>	13,453.12	4584.89	<b>34.08</b>	14,648.79	4465.63	<b>30.48</b>
<b>CEAT (OP-3)</b>	4792.34	2096.14	<b>43.74</b>	5305.04	2030.01	<b>38.27</b>	5846.14	1915.80	<b>32.77</b>
<b>JK (OP-4)</b>	6148.59	2691.26	<b>43.77</b>	6002.16	2386.86	<b>39.77</b>	6560.29	2328.19	<b>35.49</b>
<b>Birla (OP-5)</b>	3922.44	1999.40	<b>50.97</b>	3588.77	1460.60	<b>40.70</b>	3151.51	1177.41	<b>37.36</b>

74. Based on the table 1, it was submitted that between FY 2011-12 and FY-2013-14, the cost structures of the OPs in relation to the cost of natural and synthetic rubber as a percentage of their annual turnover is the highest for OP-5 varying



सत्यमेव जयते



between 50.97% in FY 2011-12 and 37.36% in FY 2013-14, while the other OPs' costs range between 43% and 30.48%. As such, OP-5's costs have been 10.66% higher than OP-2 (which has the lowest cost) and 7.20% higher than OP-4 (which has the second highest cost after OP-5) in FY 2011-12. Further, OP-5's cost are 6.88% higher than OP-2 (which has the lowest cost) in FY 2011-12 and 1.87% higher than OP-4 (which has the second highest costs after OP-5) in FY 2013-12.

75. With regard to the DG's examination on the overall impact of crude oil derivatives used in tyre manufacturing, as reflected in the financial statements of the OPs between year 2009-10 and 2013-14, it was submitted that between FY 2011-12 and FY-2013-14, the cost structure of the OPs in relation to non-rubber raw material cost as a percentage of sales has been the highest for OP-5 varying between 28.48% and 29.03% while the other OPs have lower non-rubber raw material costs varying between the range of 23% and 26%. Even OP-4 whose costs have been closest to OP-5 had almost 4-5% lesser costs than OP-5 between FY 2011-12 and FY 2013-14. On an annual basis, the dissimilarity in the non-rubber cost structures of the OPs clearly indicates that the cost of non-rubber raw materials for OP-5 is substantially higher and distinct from the cost of non-rubber raw materials of the other OPs.
76. The DG has further observed that the comparative analysis of impact of key raw material costs of the OPs (except OP-5) as a percentage of their sales indicates that after touching a peak height of nearly 70% in the year 2010-11, it has moderated gradually and come down to around 60%. In case of OP-5, the raw material cost which went up as high as 79.45% in year 2011-12 declined by about 13 % by 2013-14. It was submitted that between FY 2011-12 and FY-2013-14, the cost structure of OP-5 in relation to key raw materials (rubber and non-rubber) had been significantly higher than compared with the other OPs which is analysed below:





सत्यमेव जयते



- (a) In 2011-12, OP-5's costs were at 79.45% while the other OPs' costs were in the range of 63%-68%.
  - (b) In 2012-13, OP-5's costs were at 69.83% while the other OPs' costs were in the range of 57%-65%.
  - (c) In 2013-14, OP-5's costs were at 66.39% while the other OPs' costs were in the range of 57 %-61%.
77. Further, the DG has admitted that except OP-5, the impact of key raw material costs on the other OPs came down to around 60% after 2010-11. In fact, OP-5's costs had been close to 6% higher than the OP having the second highest input cost figures (*i.e.* OP-4). As such, the DG ought to have acknowledged that the cost structure of OP-5 was not only significantly higher but very different from the other OPs in all the three financial years between 2011-12 and 2013-14.
78. Additionally, it was submitted that the DG has ignored the fact that besides the raw material costs, there are other costs including power, labour costs, overheads *etc.* which contribute to the overall costs and also impact the pricing decisions of the OPs. Given that the cost structure of OP-5 was incomparable to or asymmetrical with the other OPs, the pricing decisions made by OP-5 cannot be compared with the other OPs. High input cost coupled with poor financial performance of OP-5 demonstrates that OP-5 could not have cartelised with the other OPs to collude with respect to tyre prices.
79. With respect to the DG's observation that the financial performance data of the OPs strongly suggests about success of the cartel, as the OPs could achieve unusually higher growth in the operating margins (EBITDA) when compared with the growth in demand/turnover in the three years period from 2011-12 to



सत्यमेव जयते



2013-14, it was submitted that the above observation/conclusion does not apply to OP-5. In this regard, it was submitted that the DG has admitted that the financial performance of OP-5 deteriorated in the years 2010-11 and 2011-12. The DG has further observed that OP-5 incurred operating loss (EBITDA) of 5.01% in FY 2010-11. The DG has also observed that OP-5 had consistently witnessed decline in sales from INR 3922.44 crores (in FY 2011-12) to INR 3588.77 crores (in FY 2012-13) to INR 3151.51 crores (in FY 2013-14). Based on the above, the DG has observed that except OP-5, all the other OPs have recorded positive turnover from 2011-12 onwards. In this regard, it was submitted that extensive and consistent losses were incurred by OP-5 in the previous years (as is evident from the EBITDA margins) and the pricing decisions were therefore, driven by the need to recover significant losses incurred by OP-5. As such, given the historical losses suffered by OP-5 and the decline in tyre sales, OP-5 needed to recover its losses for business sustainability. OP-5 cannot therefore, be compared to any other OP in light of the divergent business requirements and deteriorating financial circumstances of OP-5. Therefore, OP-5 cannot be said to be a party to the alleged cartel arrangement and its pricing decisions were solely influenced by market imperatives and governed by its financial performance in the previous years including the significant losses suffered by it.

80. The DG has observed that there is a high degree of positive pair-wise correlation between the variables for different OPs indicating that the tyre prices of the OPs had moved in tandem during 2011-2014 and the DG goes on to conclude that there has been strong price parallelism in the tyre prices of the OPs from the year 2011-12 to 2013- 14. In this regard, it was submitted that in RTPE Case No. 20 of 2008 titled *In re: All India Tyre Dealers' Association against Tyre Manufacturers*, the Commission had observed that high concentration may provide a structural reasoning for collusive action resulting in parallelism (price or output), yet it is very important to differentiate between



सत्यमेव जयते



‘rational’ conscious parallelism arising out of the interdependence of the firms’ strategic choices and parallelism stemming from purely concerted action.

81. It was reiterated that sporadic, parallel yet independent behaviour of OP-5 and other tyre producers, responding to the prevalent market conditions, cannot be demonstrative of an agreement under Section 3 of the Act. The DG has failed to provide any evidence of such an agreement. It was argued that aside from this price parallelism, the DG adduces no evidence of the alleged cartelisation *vis-a-vis* OP-5. Therefore, given that price parallelism itself is to be expected in an oligopolistic industry like tyre, this cannot be considered as an evidence of cartelisation. Further, in an oligopoly, there is no reason to believe that the pricing behaviour of the producers is not a result of legitimate market conduct but some collusive conduct.
82. With regard to the correlation analysis done by the DG to establish price parallelism, it was submitted that correlation analysis is only a preliminary step in any analysis of the relationship between variables, because its deficiencies often preclude the investigator from reaching any definitive conclusions. Also, it is not clear whether the DG is purporting to use the correlations as a way to prove the existence of a cartel or merely states that the prices of the various tyre manufacturers move together in the same direction. If the aim of the DG was to support its conclusion of price parallelism, then such analysis does not add any value to the investigation as given the oligopolistic market structure and homogenous nature of the product, it is obvious that one would observe price parallelism in this industry. The positive correlation confirms this hypothesis, and additionally quantifies the degree to which prices and changes in prices are related. Therefore, the DG has not shown anything novel with this analysis. It was submitted that even if the correlation is considered based on absolute prices of the OPs between FY 2011-12 and FY 2013-14, OP-5’ absolute prices are weakly correlated with the prices of the other OPs and falls



within the range of 0.64 and 0.89.

83. It was further submitted that the DG has concluded that there has been a strong price parallelism in the tyre prices of the OPs from the year 2011-12 to 2013-14 and in this regard, the DG has analysed the aggregate annual price changes of the leading tyre variants (TBB) sold by the OPs in percentage terms observing that there is evidently no discernible pattern that can be inferred in terms of pricing by the OPs, particularly in relation to OP-5 whose pricing decisions are primarily governed with the motive to recover losses coupled with increasing input costs. Even in FY 2011-12, the increase in tyre prices was solely based on the intention to recover losses as stated previously.
84. It was submitted that the observation of the DG that OP-5 has not passed on the benefits of reduced costs to the customers is completely unfounded and contradicts the facts as stated below:

**Table 2**

OPs	2011-2012			2012-2013			2013-2014		
	Aggregate annual price increase (%)	Cost of raw materials as % of sales	% of EBITDA / Sales	Aggregate annual price increase (%)	Cost of raw materials as % of sales	% of EBITDA / Sales	Aggregate annual price increase (%)	Cost of raw materials as % of sales	% of EBITDA / Sales
<b>Apollo (OP-1)</b>	11.55	67.37	7.69	10.21	62.37	10.11	-0.87	59.93	12.29
<b>MRF (OP-2)</b>	11.64	63.88	9.90	10.30	57.99	13.35	-0.80	56.65	13.61
<b>CEAT (OP-3)</b>	11.18	67.99	5.57	10.13	63.02	8.41	-3.19	59.04	10.93
<b>JK (OP-4)</b>	11.36	66.82	4.60	10.30	64.52	8.34	1.21	60.56	10.24
<b>Birla (OP-5)</b>	11.62	79.45	-10.67	-1.36	69.83	2.06	-5.22	66.39	6.75



85. Based on Table 2 , OP-5 sought to submit the following:
- (a) In FY 2011-12, OP-5 increased prices given that OP-5 had the highest cost of raw materials at 79.45% and it was suffering operating losses at 10.67%. The increase in prices was simply to recover the losses in the past years.
  - (b) In FY 2012-13, the cost of raw materials fell to 69.83% and OP-5's operating margins became positive at a modest 2.06%. Correspondingly, OP-5 passed on the benefit of reduced cost to the consumers which are reflected in a price decrease at 1.36%.
  - (c) Further in FY 2013-14, OP-5's cost of raw materials fell to 66.39% and its operating margins became positive at 6.756%. Correspondingly, OP-5 passed on the benefit of reduced cost to the consumers which are reflected in a price decrease in negative at 5.22%.
86. It was submitted that the DG has failed to satisfy the test of demonstrating the existence of an unequivocal agreement to collude among the OPs, particularly in relation to OP-5 as required under Section 3(3)(a) read with Section 3(1) of the Act. Also, there must be conclusive proof of meeting of minds *to* act in a concerted manner and such conduct must have been implemented for establishing an infringement under Section 3 of the Act. In the present case, there is no such proof, much less conclusive proof of meeting of minds which may be construed as violation of the Act. Mere identification by the DG of certain meetings attended by OP-5 and e-mails sent to OP-5 by OP-6 regarding the agenda of discussion does not indicate that OP-5 had acted in a concerted manner with the other OPs under a tacit agreement/understanding to determine



सत्यमेव जयते



the sale prices of tyres in the domestic market. Contrary to the DG's findings, the variations in pricing of the OPs stems from independent commercial decisions of each OP and is supported by commercial justifications/explanations.

87. It was submitted that the DG has failed to give substantive evidence of a cartel specifically with regard to OP-5. Further, the DG has failed to find any evidence against the OPs, specifically OP-5, of colluding under the aegis of OP-6.
88. The DG has relied on several e-mail communications between some of the OPs and office bearers of OP-6, and concluded that OP-5 was engaged in discussion regarding commercially sensitive information to influence the prices of tyres. However, neither OP-5 nor its employees were marked in any such e-mail communication which purportedly discussed commercially sensitive information on pricing of tyres.
89. Furthermore, the DG has made a sweeping and unfounded observation that the periodic meetings of the sub-groups of OP-6 consisting of only the OPs facilitated concerted action between them in relation to indirectly determining the price of tyres in the domestic market. In this regard, the DG has relied on the meetings dated 16<sup>th</sup> May, 2011, 25<sup>th</sup> September, 2012 and 28<sup>th</sup> October, 2012 of OP-6.
90. In relation to the meeting dated 16<sup>th</sup> May, 2011, the DG has stated that it was stated by the persons who attended the meeting that it pertained to 'carbon black'. The DG has stated that holding of a separate meeting of sub group comprising representatives of only the five OPs, that too one day prior to the Purchase Group meeting at the same venue, cannot be attributed to the



‘availability of the key persons and the location of the meeting of Sub Group’. It is to be noted that all the members of an association cannot be present at all meetings. As such, the presence of only a few members at the meeting does not suggest that it was a ‘secret’ meeting intended to discuss prices. It was submitted that the DG has ignored facts and also presented only a part of the statement of Mr. Kaushik Roy of OP-1 in order to reach another unsubstantiated finding against the OPs. It was submitted that the DG did not enquire from any of the representatives of OP-5 about the sub-group meeting whereas the executives of OP-1, OP-3 and OP-4 were enquired about the same. Therefore, the adverse conclusions arrived at by the DG against OP-5 are unfounded and are devoid of any merit on this count.

91. In relation to the meeting held on 25<sup>th</sup> September, 2012, it was submitted that although only five members of OP-6 attended the meeting, it can be presumed that the invitation for such meeting would have been extended to all the members of the Purchase Group of OP-6 and mere co-incidence of only the OPs being present in the meeting does not automatically lead to an inference that they were engaged in discussions on price or that there was any discussion which was anti-competitive in nature.
92. In relation to the meeting dated 28<sup>th</sup> October, 2012, it was submitted that the DG has admitted that OP-5 did not attend the meeting. Therefore, there cannot be any adverse finding against OP-5 as the discussions that took place in the meeting were not within the knowledge of OP-5.
93. In relation to its individuals *i.e.* Mr. Basant Kumar Birla (Chairman), Mr. Ashwani Maheshwari (President) and Mr. Arvind Kumar Singh, (President, for a portion of the relevant period), found liable by the DG, OP-5 submitted that the DG report does not return even a single finding of anything specific overt



सत्यमेव जयते



act or any role played by these individuals in the alleged cartel. There is no material on record to even remotely suggest that these individuals connived, consented to or were delinquent in relation to any activity that has been alleged to be anti-competitive. It was further submitted that the standard contained in Section 48 of the Act is a criminal standard and does not have any bearing for the civil remedies set out in Section 27 of the Act. It was also submitted that for any criminal provision to be pressed into service, it is necessary to demonstrate guilt beyond reasonable doubt, to lead to a punishment, which too is a criminal law proposition. In the absence of a whisper of finding against these individuals, it is not possible for these proceedings to be continued against them.

*Replies/ Objections/Submissions of OP-6 / ATMA*

94. It was submitted that OP-6 does not compile and disseminate commercially sensitive data to its members. Till March 2013, it collected data on production and export, category wise as well as company wise from its members. Such data was circulated by OP-6 after a time lag of 6-8 weeks to ensure that there is no dissemination of the current data. Post March 2013, the practice was changed to collection and dissemination with a time lag of almost 6 months and no company wise data was circulated herein. From September 2013, only category wise monthly production and export data from its members was compiled and circulated by OP-6 with a time lag of 6-8 weeks, and since then such data is being compiled by a third party *namely* TPM Consultants, which has a confidentiality agreement with each member of OP-6 separately. TPM Consultants compiles data in aggregated form and provides the same to OP-6 which disseminates the information within its members after a time lag of around 6 weeks to a quarter and such aggregated data does not in any manner enable OP-6 to decipher price or volume of sales of any individual member





सत्यमेव जयते



company and members also cannot bifurcate the information with respect to each member. Also, almost all the members of OP-6 are listed companies and are mandated by the Securities and Exchange Board of India (SEBI) to provide the required information first to SEBI and then to OP-6 and as such, the information is already in public domain and 'not confidential'. Therefore, such actions cannot be construed as sharing of competitively sensitive information.

95. According to the DG, meeting of Expert Groups/ Sub- Groups or *Ad-hoc* Groups every quarter organised by OP-6 gives a convenient platform to the OPs to come together and share their individual price sensitive information and take collective decision. In this regard, it was submitted that OP-6, under the guidance of Managing Committee, functions through various committees set up, consisting of different disciplines, such as Marketing, Taxation, Technical, *etc.* and each committee has a separate and independent function. The DG has considered only those Sub Group meetings wherein only present 5 member companies of OP-6 were present and has ignored the various other meetings attended by the other members also. The DG's reference to a Sub Group meeting *namely "Small Group Meeting on Carbon Black"* dated 16.05.2011 to conclude cartelisation is misconstrued as the said meeting was attended by five members of OP-6 along with the counsel of OP-6 (Lakshmikumaran & Sridharan) in respect of Carbon Black Anti-Dumping Duty case due to which global players *namely* Bridgestone, Continental and Goodyear did not participate in the aforesaid meeting.
96. Replying to the evidence of price discussion and 'agreement' relied upon by the DG, it was submitted that there is no direct evidence to prove the existence of an agreement to prove collusion and thus, AAEC cannot be presumed without proof of the agreement itself. Alluding to the finding of the DG that price parallelism is a result of 'Concerted Action of OPs', it was submitted that



सत्यमेव जयते



to arrive at a finding of an infringement of Section 3(3) read with Section 3(1) of the Act, there must be evidence of an agreement between competitors, which is clearly missing in the instant case and mere higher pricing cannot lead to a conclusion of collusion. The DG has misunderstood the characteristics and regulatory mechanism that impacts the price determination and mere similarity in behaviour is not concerted practice unless concerted practice constitutes the only explanation for such similar behaviour. It was submitted that mere price parallelism amongst the members of OP-6 cannot be treated as contravention of the provisions of the Act, without taking into account the oligopolistic nature of the market.

97. Responding to the DG's reliance on emails dated 4<sup>th</sup> January, 2011 and 12<sup>th</sup> January, 2012 exchanged between Mr. Mayank Malhotra (OP-1) and Mr. Rajiv Budhreja (DG, OP-6) to show collusion amongst the OPs using the platform of OP-6, attention was drawn to the deposition of Mr. Rajiv Budhreja, and further to the depositions of Mr. Koshy Varghese, VP, OP-2 and Mr. Neeraj Kanwar, MD, OP-1 to clarify the context of the said emails. It was stated that data in the above said emails pertaining to raw material vs tyre price increase trends was given in the context of response to be filed by OP-6 to various government agencies demanding response in a time bound manner. Also, price data pertaining to only aggregate of all the members of OP-6 has been mentioned in the email, and no individual or current prices data has been mentioned proving that OP-6 did not provide a platform for its members to collude. It was further clarified that the Ministry of Commerce had imposed anti-dumping duty on 29<sup>th</sup> July, 2007 on import of bias tyres from China and Thailand. In order to continue the levy of such anti-dumping duty, a Sunset Review of the duty imposed was initiated on 3<sup>rd</sup> August, 2011 and OP-6 being the Complainant in these anti-dumping proceedings, was under an obligation to submit the information as asked for in the statutory format prescribed under the Custom



Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

98. With regard to the email dated 18<sup>th</sup> May, 2011 from the DG, the Chairman of OP-6 association referring to the discussion held with Mr. Koshy Varghese, VP-OP-2, it was submitted that OP-2 had already increased the prices before the said meeting. Also, the future increases were small and were not so as alleged by the DG. Similarly for OP-1, the price increase taken as well as the timings of increase were substantially different from that of OP-2 and thus, a finding of 'collusion' is wrong. Further, it was stated that the findings of the DG are based only on circumstantial evidence and no corroborative direct evidence is provided.
99. With regard to the DG's reliance on selected emails of OP-6, it was clarified that the Government expected OP-6 to assist in various inputs in connection with the tyre industry and in this regard, a few communications were addressed to this Commission as well. The DG has ignored all such references to which it had access and undermined the fact that OP-6 was only a facilitator between the members and the Government agencies for the purpose of providing requisite information.
100. Further, it was argued that the DG's comparison of percentage price increase of different OPs has a major computational/ statistical error and since the data itself is incorrect, the findings and conclusions based on it are grossly wrong, misconstrued and misinterpreted. Thus, the DG's analysis is flawed as the increase in prices by the tyre companies was neither at the same rate nor of the same quantum.



सत्यमेव जयते



101. The DG's finding on implicating Mr. Rajiv Budhraj, DG, ATMA was controverted by submitting that the DG has failed to establish any specific role assumed by him and he was only discharging his duties of a Director General as envisaged by OP-6. Moreover, the DG has not provided any proper evidence other than a few emails for the purpose of proving the allegation of exchanging commercially sensitive information on cost and price trends. The DG has not provided any evidence to prove the allegation of price coordination under the disguise of expert groups as that such expert groups provide platforms for coordinated activities by Mr. Rajiv Budhraj.
102. It was alleged that the DG was not inclined to consider the factual and holistic picture and wanted to arrive at predetermined conclusions without examining the relevant and related references as the DG had requisitioned information from various third parties but has completely overlooked requisitioning information from the Informant Ministry of Corporate Affairs and Department of Industrial Policy and Promotion (DIPP) who were sending references on a regular and sustained basis, directing OP-6 to compile and furnish information concerning the tyre industry. Also, the DG in the investigation report for analysis has adopted inconsistent time periods; hence, the analysis and conclusions drawn on the said premises are flawed and wrong *per se*.
103. Lastly, it was submitted that OP-6's practices and policies are in conformity with the Act and therefore, it was prayed that the DG report be out-rightly rejected in so far as this OP is concerned.

#### **Analysis and findings of the Commission**

104. The Commission has perused the investigation report, suggestions/objections of the parties and the other material available on record including the oral



arguments made by the parties. The Commission at the outset notes that some of the parties have raised a preliminary submission regarding violation of principles of natural justice in as much as at the time when deposition of their individuals during investigation was recorded, the DG did not allow their legal representatives to accompany them. This has been alleged to be denying the witness his right to be represented by a lawyer in violation of the principles of natural justice. In this regard, the Commission notes the findings given by the Hon'ble High Court of Delhi in the case of *Competition Commission of India v. Oriental Rubber Industries* where the Hon'ble High Court has observed as below:

*“...The Commission having regard to the appropriate best practices across jurisdictions in antitrust matters may formulate such procedures and incorporate them in regulations; till then, it is open to the DG to make appropriate procedural orders. This court feels additionally that this precautionary note is essential, because often there can be situations where the prominent presence of a counsel might hinder questioning of the witness by the investigating officers or the Director General. Apart from non-verbal communication, the counsel might restrict the element of surprise that is essential when collecting such evidence. Therefore, the DG shall ensure that the counsel does not sit in front of the witness; but is some distance away and the witness should be not able to confer, or consult her or him. The Court does not deem it necessary or appropriate to say more on this aspect of the matter, leaving it to the Commission to decide the appropriate course.”*

105. In the above order, the Hon'ble High Court remarked that prominent presence of a counsel has the tendency of hindering the questioning of the witness by



सत्यमेव जयते



the DG. It has the capacity to restrict the element of surprise which is essential for collecting the evidence in sensitive cases such as the one presently under consideration. Further, it also states that the counsel of the witness should be made to sit at some distance away from the witness so that he is not in a position to confer or consult him. Thus, with regard to the contentions raised by the OPs, the Commission feels that no prejudice is shown to have been caused to the parties by the decision of the DG in refusing the witness to be accompanied by their legal representative at the time of recording of their deposition. The report of the DG cannot be faulted based on such contention.

106. Next on merits of the case, the following issue arises for determination in the present matter:

*Issue: Whether the OPs have indulged in cartelisation in the domestic tyre market by way of an agreement or understanding amongst themselves for increasing/ maintaining the prices of tyres, particularly in the year 2011 and onwards; thus, violating the provisions of Section 3(3) read with Section 3(1) of the Act?*

107. The Commission notes that 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 to cause AAEC 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 association of enterprises or persons or association of persons or between any person and enterprise or any 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; or (b) limits or controls production, supply, markets, technical development, investment or provision of services; or (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 AAEC.

108. Further, it may be noted 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. The understanding may be tacit and the definition covers situations where the parties act on the basis of ‘a nod or a wink’. 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 coordination with each other. In light of the aforesaid definition of the term ‘agreement’, the Commission assesses the evidence on the basis of the benchmark of preponderance of probability.
109. In view of the above and further considering the prohibition on participating in anti-competitive agreements, it is normal that such activities are conducted in a clandestine manner, where the meetings are held in secret and the associated documentation reduced to a minimum. Even if the Commission discovers evidence explicitly showing unlawful conduct such as email communications between enterprises, it will normally be only fragmentary and sparse. Hence, it becomes necessary to reconstruct certain details by deduction. In most cases,



the existence of an anti-competitive practice or agreement must be inferred from a number of co-incidences and *indicia* which, if taken together, may, in the absence of any other plausible explanation, constitute evidence of the existence of an anti-competitive agreement.

110. Parallel behaviour in prices, dispatch and supply, accompanied with some other factors indicating coordinated behaviour among the firms, may become a basis for establishing concerted action. In foreign jurisdictions, circumstantial evidences are being used and relied upon in cartel cases. Such circumstantial evidences are of no less value than direct evidence as the law makes no distinction between direct and circumstantial evidence in cartel cases.
111. In the *Dyestuffs* case (Case No. 48/69 *ICI*, [1972] ECR 619), the European Court of Justice observed that “... *although parallel behaviour may not by itself be identified with a concerted practice, it may however amount to strong evidence of such a practice if it leads to conditions of competition which do not correspond to the normal conditions of the market, having regard to the nature of the products, the size and number of undertakings, and the volume of the said market. This is especially the case if the parallel conduct is such as to enable those concerned to attempt to stabilize prices at a level different from that to which competition would have led, and to consolidate established positions to the detriment of effective freedom of movement of the products in the common market and of the freedom of consumers to choose their suppliers. Therefore the question whether there was a concerted action in this case can only be correctly determined if the evidence upon which the contested decision is based is considered, not in isolation, but as a whole, account being taken of the specific features of the market in the products in question.*”
112. Another significant observation made by European Court of Justice in *T-*





*Mobile v. Commission, (Case No. C-8/08, T-Mobile & Ors. vs Commission, 2009 [ECR] I-04529), in relation to information exchange amongst competitor, is “... with regard to the exchange of information between competitors, it should be recalled that the criteria of, coordination and cooperation necessary for determining the existence of a concerted practice are to be understood in the light of the notion inherent in the Treaty provisions on competition, according to which each economic operator must determine independently the policy which he intends to adopt on the common market ... While it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it does, none the less, strictly preclude any direct or indirect contact between such operators by which an undertaking may influence the conduct on the market of its actual or potential competitors or disclose to them its decisions or intentions concerning its own conduct on the market where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings involved and the volume of that market ...At paragraphs 88 et seq. of Deere v Commission, the Court therefore held that in a highly concentrated oligopolistic market, such as the market in the main proceedings, the exchange of information was such as to enable traders to know the market positions and strategies of their competitors and thus to impair appreciably the competition which exists between traders. It follows that the exchange of information between competitors is liable to be incompatible with the competition rules if it reduces or removes the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings is restricted. ... Article 81 EC, like the other competition rules of the Treaty, is designed to protect not only the immediate interests of individual competitors or consumers but also to protect the*



*structure of the market and thus competition as such. ... as the Advocate General observed ... while not all parallel conduct of competitors in the market can be traced to the fact that they have adopted a concerted action with an anti-competitive object, an exchange of information which is capable of removing uncertainties between participants as regards the timing, extent and details of the modifications to be adopted by the undertaking concerned must be regarded as pursuing an anti-competitive object ... It is for the referring court to determine whether, in the dispute in the main proceedings, the information exchanged at the meeting held on 13.06.2001 was capable of removing such uncertainties .... In the light of all the foregoing considerations, the answer to the first question must be that a concerted practice pursues an anti-competitive object for the purpose of Article 81(1) EC where, according to its content and objectives and having regard to its legal and economic context, it is capable in an individual case of resulting in the prevention, restriction or distortion of competition within the common market. It is not necessary for there to be actual prevention, restriction or distortion of competition or a direct link between the concerted practice and consumer prices. An exchange of information between competitors is tainted with an anti-competitive object if the exchange is capable of removing uncertainties concerning the intended conduct of the participating undertakings”*

113. Accordingly, the Commission proceeds to examine the conduct of the OPs to analyse if they acted in a concerted manner violating the provisions of Section 3 of the Act. In order to establish the presence of collusion and cartelisation amongst the OPs, the DG after investigation, gave its finding based on the following parameters such as (i) existence of price parallelism amongst the OPs; (ii) financial performance of the OPs; (iii) cost analysis of key raw materials; (iv) circumstances conducive for collusion; and (v) evidence of communication exchanged amongst the OPs.



सत्यमेव जयते



114. The Commission firstly proceeds to evaluate the economic evidence collected by the DG to ascertain as to whether the Opposite Parties were acting unilaterally in accordance with the market forces or were acting pursuant to an agreement to collude and co-ordinate their behaviour/ activities.
115. The Indian tyre industry consists of 39 companies with 60 tyre manufacturing plants. 13% of truck/ bus tyres are sold to OEMs while 87% are sold in the replacement market. In case of passenger vehicles segment such as car, sport utility vehicle, etc., 48% are sold to OEMs while 52% are sold in replacement market. Thus, replacement market in case of truck and bus tyres is much bigger than that of passenger vehicle tyres. Further, in terms of factors such as longer service life of buses and trucks, and greater wear and tear due to heavy running, sale of truck and bus tyres in the replacement market is much higher.
116. Further, in India, truck and bus tyre production/ demand is the major segment with over 60% of the total size of the tyre market. It is observed that as per the investigation report of the DG, there are two types of tyres in terms of ply reinforcement: cross ply or bias tyres and radial tyres. Radial tyre has a longer life and offers higher fuel efficiency and hence, over the life of the tyre, it is effectively cheaper than cross ply tyres. The global market is largely radial oriented; however, the Indian market is cross ply oriented particularly in truck and bus tyre segment because of the conditions of Indian roads in different geographic regions in the country with diverse climatic conditions. Radialisation has reached almost 98% in the Indian passenger car segment but it is extremely low in the truck and bus segment at 24% compared to a world average of about 70%.
117. **Market Concentration:** As per OP-6, there are 39 tyre companies in India out



सत्यमेव जयते



of which the following 10 member companies of OP-6 together hold 95% share in the market:

- a. **Apollo (OP-1)**
- b. **Birla (OP-5)**
- c. Bridgestone
- d. **Ceat (OP-3)**
- e. Continental
- f. Goodyear
- g. **JK (OP-4)**
- h. **MRF (OP-2)**
- i. Michelin
- j. TVS Srichakra

118. The OPs together control about 83% of the tyre market in India and in terms of production of cross ply/ bias type tyres belonging to truck bus tyre segment during 2011-12 to 2013-14, they constitute around 93% to 95% of the Indian tyre industry. Hence, the Commission observes that the market is highly concentrated with a few players holding the large chunk of the market indicating strong possibility of a conducive environment for collusive behaviour. Further, the presence of an active trade association, *i.e.* OP-6, of which the OPs are members, that collates sensitive information relating to supply, prices *etc.* from various players in the market, further provides a platform for coordination among the OPs.

#### **Price Parallelism:**

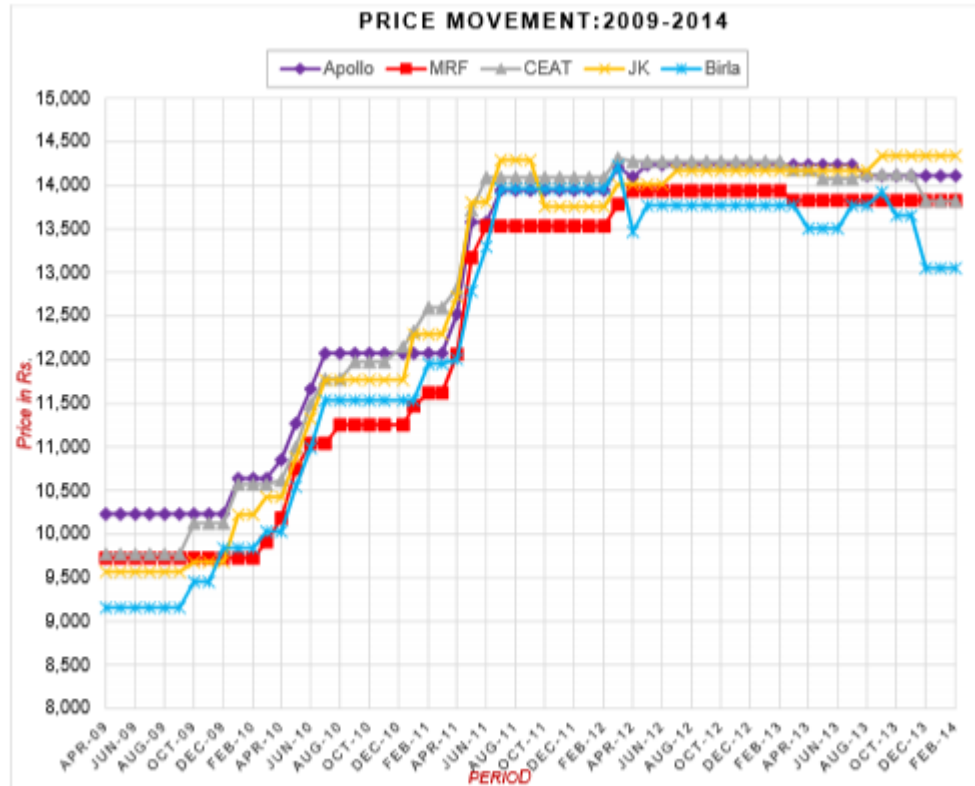
119. It has been alleged that the average yearly prices of tyres have remained high and almost unchanged in the years 2012, 2013 and 2014, despite decline in raw



material prices. In order to ascertain the same, the Commission notes the economic evidence evaluated by the DG to arrive at a conclusion as to whether the OPs were acting independently in accordance with the normal market forces or in a collusive manner.

120. Net Dealer Price (NDP or NBP) of the OPs has been considered by the DG for the purpose of price analysis. This is either inclusive or exclusive of the local freight charges (which is less than 0.50% of NDP). The DG observed that the OPs announce price changes by circulating revised price list of NBP or NDP from time to time. Further, it is up to the dealers to pass on the benefits of various discounts (which is also used to compensate the tyre dealers for their deposit with the tyre company) and incentives to the end customers depending upon the bargaining powers and market conditions. From the summary of replies given by the OPs to the DG, the Commission notes that the margin of dealers is generally 1% - 3% depending on the market conditions. Thus, the prevailing price of tyres in the domestic market is primarily driven by the NBP or NDP which is applicable across the country. In addition, Sales Tax/ VAT are also levied, which varies from state to state. Therefore, for the purpose of examining the alleged contravention pertaining to cross ply/ bias variant belonging to truck-bus tyres, the Commission is of the view that NDP of the OPs has been correctly considered by the DG for his analysis.
121. The absolute NBP/ NDP of a single leading variant belonging to cross ply/ bias type in the truck-bus tyres segment sold by the OPs from 2009 to 2014, are plotted in the graph below (Figure 1) to analyse the trend in the prices charged by the OPs:

Figure 1



122. From figure 1 above, the Commission observes that the prices charged by the OPs have been moving in tandem clearly exhibiting price parallelism. The prices have gradually increased and stabilised at a certain level.
123. Further, the price revisions effected in the above mentioned tyre category undertaken by the OPs during the years 2009 to 2014 were analysed by the DG and have been summarized below:



सत्यमेव जयते



**Table 3**

Aggregate Annual Price Increase by OPs: In Percentage

<b>OPs</b>	<b>Mar-09 to Feb -10</b>	<b>Mar-10 to Feb -11</b>	<b>Mar-11 to Feb -12</b>	<b>Mar-12 to Feb -13</b>	<b>Mar-13 to Feb -14</b>
<b>Apollo (OP-1)</b>	4.00	13.49	11.55	10.21	-0.87
<b>MRF (OP-2)</b>	1.90	17.23	11.64	10.30	-0.80
<b>CEAT (OP-3)</b>	7.76	19.19	11.18	10.13	-3.19
<b>JK (OP-4)</b>	9.01	17.89	11.36	10.30	1.21
<b>Birla (OP-5)</b>	9.56	19.69	11.62	-1.36	-5.22

124. The percentage changes in prices of the OPs in March 2011-February 2012 and March 2012-February 2013, as calculated in table 3, show that the prices have moved in the same direction and have varied within a small range, albeit not by identical percentage. It was contended by the OPs that the percentage change in the prices of the OPs submitted in the Investigation Report are erroneous and are not identical during 2011-12 and 2012-13. However, even if the errors are adjusted for the revised percentage change in the prices as submitted by the parties, the Commission notes that the price revisions were in the same direction and above 11 percent during 2011-12, which was mentioned in the e-mail conversation dated 18<sup>th</sup> May, 2011. Further, the range of price revision effected was in line with the aforesaid email dated 18<sup>th</sup> May, 2011 wherein it was stated that the increase in price would be effected in the range of  $3\%+3\%+4.5\% = 10.5\%$ .

125. In addition to the percentage change analysis, the Commission has also considered the correlation analysis of the prices charged by the OPs. Correlation coefficient ranges between -1 and +1 and it provides the direction and strength of the linear association between two variables. The correlation coefficient between absolute prices of the OPs during the period March 2009-



February 2014, presented in the tables below, show very high correlation, *i.e.* more than 0.97 in all cases (barring that for OP-5 in March 2011-February 2013).

**Table 4**

<b>Correlation Coefficient: Absolute Price (2009-2014)</b>					
	<b>Apollo (OP-1)</b>	<b>MRF (OP-2)</b>	<b>CEAT (OP-3)</b>	<b>JK (OP-4)</b>	<b>Birla (OP-5)</b>
<b>Apollo (OP-1)</b>	1				
<b>MRF (OP-2)</b>	0.996	1			
<b>CEAT (OP-3)</b>	0.993	0.989	1		
<b>JK (OP-4)</b>	0.994	0.989	0.993	1	
<b>Birla (OP-5)</b>	0.987	0.979	0.993	0.983	1

**Table 5**

<b>Correlation Coefficient: Absolute Price (2011-2014)</b>					
	<b>Apollo (OP-1)</b>	<b>MRF (OP-2)</b>	<b>CEAT (OP-3)</b>	<b>JK (OP-4)</b>	<b>Birla (OP-5)</b>
<b>Apollo (OP-1)</b>	1				
<b>MRF (OP-2)</b>	0.985	1			
<b>CEAT (OP-3)</b>	0.929	0.932	1		
<b>JK (OP-4)</b>	0.912	0.915	0.806	1	
<b>Birla (OP-5)</b>	0.779	0.736	0.890	0.646	1

126. Based on the aforesaid observation with respect to the prices of leading variant of cross ply/ bias tyres belonging to truck bus segment, the Commission notes that the direction and close range of percentage change in prices and the high





correlation coefficients seen in conjunction indicate parallel pricing behaviour.

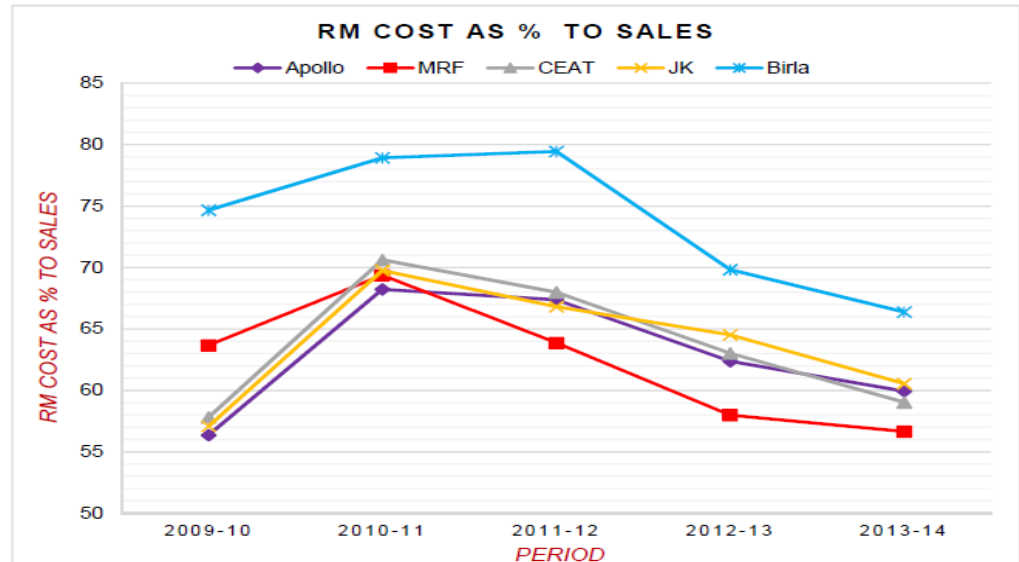
127. However, as price parallelism in itself is not conclusive of collusive behaviour, the Commission has examined the parallel movement of prices charged by the OPs along with the movements in their input price. In this regard, it is observed that the key raw materials in manufacturing of tyres are natural rubber, synthetic rubber, carbon black, nylon tyre cord fabric and rubber chemicals which constitute about 72% of the total cost of production. The manufacturers remain liable for tyre failures throughout the life of the tyre. Thus, the manufacturers tend to rigidly follow the raw material sourcing, the raw material recipe and the production process. The weightage of raw materials in terms of their costs as per the Tariff Commission Report on Study of Tyre Pricing (2011) is as under:

**Table 6**

<b>Raw Material</b>	<b>% Share in Full Costs of tyre</b>
Natural Rubber	30
Nylon Tyre Cord Fabric	14
Excise Duty	10
Synthetic Rubber	8
Carbon Black	8
Rubber Chemicals	7

128. Further, the prices of natural rubber during 2011-12, 2012-13 and 2013-14 were Rs. 214.56 per Kg, Rs. 191.7 per Kg, and 172.56 per Kg respectively. The downward trend in the cost of raw materials consumed as percentage of sales by the OPs is depicted in figure 2 below:

Figure 2



129. In this regard, the Commission observes that the cost of inputs has declined after 2010-11. It has been contended by the OPs that the DG has compared tyre variants that do not compete with each other in the replacement market of the truck bus bias/ cross ply segment. The Commission however observes that the said contention of the OPs does not hold as the raw material cost has declined for all the OPs while all of them have uniformly increased the price of their respective variants of tyres in the said tyre category. The aforesaid conduct indicates that the plea of the OPs that the respective tyre brands do not compete with each other is invalid.

130. In addition, the Commission observes that the market shares of OP-1 to OP-5, both in terms of production of cross ply or bias tyre in the truck bus segment as well as in terms of sale of cross ply or bias tyre belonging to the truck bus segment in the replacement market, were also stable during 2011-12 to 2013-14, as shown in the tables 7 and 8 below. Such stability in the market share in the replacement market indicates that OP-1 to OP-5 were not competing with each other during 2011-12 to 2013-14 in spite of decrease in prices of inputs.

**Table 7**

Cross Ply or Bias tyre Production by OP-1 to OP-5

OPs	2011-12	2012-13	2013-14	2011-12	2012-13	2013-14
	Absolute Numbers			Percentage Share		
<b>Apollo (OP-1)</b>	33,55,540	32,71,308	29,45,327	25.15	25.07	24.14
<b>MRF (OP-2)</b>	32,08,671	33,01,305	32,83,972	24.05	25.30	26.91
<b>CEAT (OP-3)</b>	17,74,632	17,74,520	16,93,237	13.30	13.60	13.88
<b>JK (OP-4)</b>	23,41,458	22,22,595	19,97,000	17.55	17.03	16.37
<b>Birla (OP-5)</b>	21,08,790	18,71,911	15,03,598	15.81	14.35	12.32
<b>Total</b>	127,89,091	124,41,639	114,23,134	95.86	95.35	93.62

**Table 8**

Cross Ply or Bias tyre sales by OP-1 to OP-5 in Replacement Market

OPs	2011-12	2012-13	2013-14	2011-12	2012-13	2013-14
	Absolute Numbers			Percentage Share		
<b>Apollo (OP-1)</b>	23,29,974	23,64,967	23,69,420	25.58	26.44	27.32
<b>MRF (OP-2)</b>	25,86,305	26,72,009	26,60,998	28.39	29.87	30.69
<b>CEAT (OP-3)</b>	12,71,548	11,86,226	11,73,019	13.96	13.26	13.53
<b>JK (OP-4)</b>	16,33,907	14,56,038	13,15,290	17.93	16.28	15.17
<b>Birla (OP-5)</b>	12,88,570	12,66,204	11,52,933	14.14	14.15	13.30
<b>Total</b>	91,10,304	89,45,444	86,71,660	100	100	100

131. The Commission has also examined the sale of cross ply or bias tyre by OP-1 to OP-5 in the replacement market as a proportion of production of cross ply or bias tyre by OP-1 to OP-5. In this regard, it is observed that a major portion of the sales revenue is earned from the replacement market and the share of



revenue earned by OP-1 to OP-5 has remained more or less stable for the OPs indicating that there existed limited competitive constraint by them upon each other's sale in the replacement market.

**Table 9**

Sale of Cross Ply or Bias Tyre by OP-1 to OP-5 in the Replacement Market *vis-a-vis* Production of Cross Ply or Bias tyre by OP-1 to OP-5 in Percentage term

OPs	2011-12	2012-13	2013-14
	Percentage Share (%)		
<b>Apollo (OP-1)</b>	69.44	72.29	80.45
<b>MRF (OP-2)</b>	80.60	80.94	81.03
<b>CEAT (OP-3)</b>	71.65	66.85	69.28
<b>JK (OP-4)</b>	69.78	65.51	65.86
<b>Birla (OP-5)</b>	61.10	67.64	76.68
<b>Total</b>	71.23	71.90	75.91

132. The Commission has also examined the overall financial performance of OP-1 to OP-5 as depicted in the tables below. It is observed that the operating margin/EBITDA of all the OPs except that of OP-5 has remained positive from 2009-10 till 2013-14. Achieving positive operating margin though not a competition issue; but if the same is achieved through coordinated conduct as reflected in terms of price parallelism, maintaining stability of market shares *etc.*, it indicates distortions in the competitive landscape. The financial performance of OP-1 to OP-5 during 2009-10 to 2013-14 is depicted in the table 10 and the movements in EBITDA to sales is presented in the chart below:



**Table 10**

OPs	Sales Revenue Earned (Rs. Crore)				
	2009-10	2010-11	2011-12	2012-13	2013-14
<b>Apollo (OP-1)</b>	5425.64	6000.1	8906.53	9452.91	9589.28
<b>MRF (OP-2)</b>	8080.45	10637.03	13061.75	13453.12	14648.79
<b>CEAT (OP-3)</b>	2989.97	3751.62	4792.34	5305.04	5846.14
<b>JK (OP-4)</b>	3956.29	5247.57	6148.59	6002.16	6560.29
<b>Birla (OP-5)</b>	2849.62	3608.51	3922.44	3588.77	3151.51
OPs	Operating Margin/ EBITDA (Rs. Crore)				
	2009-10	2010-11	2011-12	2012-13	2013-14
<b>Apollo (OP-1)</b>	794.93	560.2	684.5	955.56	1178.15
<b>MRF (OP-2)</b>	858.51	830.07	1293.01	1795.66	1993.56
<b>CEAT (OP-3)</b>	322.7	153.73	275.57	445.97	638.96
<b>JK (OP-4)</b>	420.29	277.42	282.97	500.41	671.65
<b>Birla (OP-5)</b>	76.43	-180.63	-418.68	73.79	212.58
OPs	% of EBITDA to Sales				
	2009-10	2010-11	2011-12	2012-13	2013-14
<b>Apollo (OP-1)</b>	14.65	9.34	7.69	10.11	12.29
<b>MRF (OP-2)</b>	10.62	7.8	9.9	13.35	13.61
<b>CEAT (OP-3)</b>	10.79	4.1	5.75	8.41	10.93
<b>JK (OP-4)</b>	10.62	5.29	4.6	8.34	10.24
<b>Birla (OP-5)</b>	2.68	-5.01	-10.67	2.06	6.75

Note \* For MRF the accounting year is from October to September.



**Figure 3**



133. From table 10 and figure 3 above, it is observed that while the EBITDA/operating margin of the OPs other than OP-5 had increased in the year 2011-12 when compared with the year 2010-11 and the raw material cost as noted earlier in the cost discussion had decreased for OP-1 to OP-5. In the next year 2012-13, while the EBITDA/ operating margin for OP-1 to OP-4 increased further, in case of OP-5 it turned positive. The improvement in the operating margin/ EBITDA in 2012-13 when seen in conjunction with other evidences such as the purchase group meetings and email correspondences between parties, indicates that the coordinated price increase effected in the case of tyres by more than 11 percent by each OP during the year 2011-12 had resulted in an improvement in their operating margin/ EBITDA for the years 2012-13 and 2013-14. The Commission further observes that the contention of



सत्यमेव जयते



OP-5 that it was not part of a cartel as its cost of production was increasing while its operating margin/ EBITDA was deteriorating and it was suffering losses is negated from the figures relating to percentage of sale of cross ply or bias tyre by OP-5 in the replacement market *vis-a-vis* production of cross ply or bias tyre by OP-5 which indicates that OP-5's sale in the replacement market has been increasing from 61.1% in 2011-12 to over 76% in 2013-14 and its EBITDA figures have turned positive in 2012-13 and 2013-14 which is a fallout of the price increase effected in 2011-12 by OP-5. Hence, the Commission is of the view that the said contention of OP-5 is misconceived.

134. In addition to the above economic evidences, the Commission also proceeds to evaluate the direct evidence in form of communicative evidence to ascertain the anti-competitive conduct resorted to by the OPs. The Commission takes note of a bunch of email correspondences regarding price rise exchanged between the OPs and identified by the DG during the investigation. One of such emails was sent by Mr. Rajiv Budhraj, DG ATMA/OP-6 (from [atma@vsnl.in](mailto:atma@vsnl.in)) to Mr. Neeraj Kanwar of OP-1 on 18.05.2011 at 9.50 AM on his email address [neeraj.kanwar@apolloyres.com](mailto:neeraj.kanwar@apolloyres.com). The same reveals a communication on price raise between OP-1 and OP-2 through DG, ATMA/OP-6. The said email is reproduced below:

*“From:* [atma@vsnl.in](mailto:atma@vsnl.in)  
*Sent:* Wednesday, May 18, 2011 9:50 AM  
*To:* Mr. Neeraj Kanwar  
*Cc:* [rajiv@atmaindia.org](mailto:rajiv@atmaindia.org)  
*Subject:* Discussion with Mr. Koshy Varghese

CONFIDENTIAL

Mr. Neeraj Kanwar



Chairman, ATMA

Discussion with Mr. Koshy Varghese

*Mr. Koshy Varghese called me for a meeting at MRF Guest House during his visit to Delhi on Fri. Key issues were reviewed and discussed. I ascertained his views on price increase. His 'personal view' was that tyre companies (looking at the OI financial results) need to go for price increase (roughly) of the same magnitude as (already) done in this current fiscal (3+3+4.5), say roughly between 10-11 pc.*

*According to him, an increase of this quantum was imperative despite softening of NR prices and in view to maintain healthy EBITA margins which, in turn, would fuel capacity expansions.*

*He gave valuable inputs and suggestions on some other issues and asked me to bring these to your attention for action by ATMA. I informed Mr. Koshy that you are abroad and his suggestion was that a detailed mail be sent to you touching all the points made by him (hence even though I could have sent a brief reference on this issues discussed. I am sending you two separate and detailed mails (with cc to Mr. Koshy). You may kindly respond and advice.*

*Regards*

*Rajiv”*

135. Further, the Commission notes the reply of Mr. Rajiv Budhraj, DG, ATMA/OP-6 and the statements recorded by the DG during his deposition on 22<sup>nd</sup> September, 2015 regarding the said email as follows:





*“I met Mr. Koshy on 13.05.2011 at MRF Guest House at Sunder Nagar, New Delhi. He told me that the “.....tyre companies ....need to go for price increase .....of the same magnitude as (already) done in this current fiscal (3+3+4.5), say roughly between 10-11 pc. According to him an increase of this quantum was imperative despite softening of NR prices and in view to maintain the healthy EBITDA margins which in turn would fuel capacity expansions”.*

*I communicated the above message to Mr. Neeraj Kanwar (NK) Chairman ATMA through email since he was abroad at that time (18.05.2011). The above mail was in the context of making a submission to the Government on the issue of capacity expansion in the industry and the need to maintain a healthy EBITDA margin. It is worthwhile mentioning that in view of the high growth in the automobile sector at that time (2011) the Government had inquired from tyre industry/ATMA on the capacity creation in key categories like Radial Truck and Bus tyres, passenger car tyres etc.”*

136. Also the Commission notes that the DG has recorded the deposition of Mr. Koshy K Varghese, Executive Vice President of OP-2. During his deposition, he was shown the above quoted *email* dated 18<sup>th</sup> May, 2011 sent by Mr. Budhraj to Mr. Neeraj Kanwar (of OP-1), the then Chairman of OP-6 titled as ‘Discussion with Mr. Koshy Varghese’ He was asked to comment on the contents of the mail, to which he replied as below:

*“There are periodic occasions when I do meet Mr. Rajiv Budhraj, DG of ATMA to get a briefing on issues relating to the*



सत्यमेव जयते



*industry as well as outcomes of his meetings with Govt. authorities. At no point are any specific price proposals or MRF's intent to increase prices discussed. The discussions are general in nature and may refer to the health of the industry.”*

137. The email mentioned above and the subsequent depositions of Shri Rajiv Budhraj and Shri Koshy K Varghese coupled with the evasive responses of the latter clearly point towards an explicit agreement between OP-1 and OP-2 facilitated by OP-6 to increase the price of tyres by the same proportion during the course of that year (*i.e.* 2011-12) as similar to the current fiscal year. The purported meeting between Shri Rajiv Budhraj and Shri Varghese took place on 13<sup>th</sup> May, 2011 and the outcome of the meeting was duly communicated by Shri Budhraj to Shri Kanwar on 18<sup>th</sup> May, 2011. Further, the Commission notes that the DG, in its investigation report, has relied upon two other emails that were sent by Shri Budhraj on the same date to Shri Kanwar regarding his meeting with Shri Varghese.
138. The Commission also notes emails dated 4<sup>th</sup> January, 2011 and 12<sup>th</sup> January, 2011 sent by Mr. Mayank Malhotra of OP-2 to Mr. Rajiv Budhraj of ATMA/OP-6, referring to the discussion held between Mr. Rajiv Budhraj of ATMA/OP-6 and Mr. Kaushik Roy (OP-2) about raw material compound index also containing a table (as shown below) showing sensitive pricing trend of OP-1:

“Total RM Cost Increase 2009-10	27.0%
2010-11 (Till Q4)	31.7%
Total	58.7%
Tyre Price Increase Required	40.7%
Tyre Price Increase taken	18.3%
Gap	22.4%



सत्यमेव जयते



*From:* atma@vsnl.in  
*Sent:* Friday, February 18, 2011 12:07 PM  
*To:* Mr. George Peter (Birla); Mr. K.J. Rao; Mr. Ramesh Chutani; Mr. John M John; Mr. Kaushik Roy; Mr. Mohan Kurian; Mr. Swaranjit Singh; Mr. V K Mathur; Mr. V R Rangarajan; Mr. Pravin Tripathy; Mr. S K Patodia; Mr. Ajay Sevekari; Mr. Navin Choubey; Mr. A Kasliwal; Mr. Venu Gopal; Mr. P Srinivasavaradhan  
*Cc:* Mr. Joy Josheph  
*Subject:* ATMA Purchase Group Meeting – Mon. 21 Feb. 2011 – Additional Agenda Item Raw Material Price Trend – Compound Cost Indexation  
*Attachments:* 17 Feb COMPOUND COST INDEX.xls; RAW MATERIAL PPT-I.pptx; RM QTR PRICES.xls

*ATMA Purchase Group*

*ATMA Purchase Group Meeting – Mon. 21 Feb. 2011 – Additional Agenda Item Raw Material Price Trend – Compound Cost Indexation*

*Dear Sir,*

*MDs have desired that in view of the volatility in RM prices, especially steep increase Natural Rubber prices, regular feedback be given on RM price/ Compound Indexation. This information will be part of agenda of all meetings of ATMA MDs also.*



सत्यमेव जयते



*As you are aware, RM (landed cost) data is shared in Purchase Group meetings on a quarterly basis, including projections for the next quarter.*

*Based on feedback received and views exchanged in the earlier meeting of ATMA Purchase Group, quarter wise price trend of key RMs of Tyre Industry is captured in the enclosed graphs, giving QoQ change. This is for your information and reference.*

*Based on these data points and taking the RM consumption (per 100 Kg. of rubber), as per SION norms (for Bias T&B Tyres), the enclosed worksheets give RM compound cost, as computed by ATMA Secretariat.*

*Please go through the same carefully and give your confirmation / views & feedback, if any. Please, the RM compound cost does not capture the Butyl price trend as tube is not included in the compound cost indexation. Your suggestion on the same would be appreciated.*

*These worksheets would be discussed as additional agenda item in the Purchase Group meeting scheduled for 21<sup>st</sup> Feb. 2011 at New Delhi.*

*For information.*

*Regards,*

*Rajiv Budhraj  
DG, ATMA*

*Encl a/a*



139. Further, the DG identified another email sent on 18<sup>th</sup> February, 2011 by ATMA/OP-6 to the members of the purchase group, bearing additional agenda item- ‘*Raw Material Price Trend - Compound Cost Indexation*’ indicating that the MDs have desired that in view of the volatility in raw material prices, especially steep increase in Natural Rubber Prices, regular feedback be given on RM Price/ Compound Indexation. Three files were also attached with the said email *namely*:

- i. 17 Feb Compound Cost Index;
- ii. RAW MATERIAL PPT; and
- iii. RMQTR PRICES

The attachments included worksheets containing RM compound cost computed by OP-6’s Secretariat and the Raw Material Compound Cost Index forwarded in power point format. One of the slides in the said PPT is reproduced below:

“

<u>Total RM Cost Increase</u>	
2009-10	26%
2010-11	35%
Total	61%
RM	

”

It was subsequently mentioned that the worksheets would be discussed as additional agenda item in the Purchase Group meeting scheduled for 21<sup>st</sup> February, 2011 to be held at New Delhi.

140. Another email dated 23<sup>rd</sup> February, 2011 referring to the same issue was sent by ATMA/ OP-6 (from the email id atma@vsnl.in) to Mr. V.K. Modi of Modi Tyres with cc marked to Mr. Alok Modi and Mr. Neeraj Kanwar (Chairman of OP-6 and Managing Director of OP-1) indicating that OP-6’s purchase group



meeting consisting of purchase heads of all member companies of OP-6 was held on 21<sup>st</sup> February, 2011. The decision taken during the purchase group meeting was crystallised in the form of a PPT slide and was forwarded as an attachment to the said email. The attachment has been reproduced as under:

22<sup>nd</sup> Feb, 2011

<u>Total RM Cost Increase</u>	
2009-10	24%
2010-11	36%
Total	60%
Total Price Increase Req'd.	36.00%
Total Price Increase Taken	20.25%
Gap	15.75%

141. In reply to the aforesaid reliance placed by the DG on various emails unearthed during the investigation to prove sharing of price sensitive data amongst OP-1 to OP-5 through OP-6, the OPs have stated that the data was collected by OP-6 for the purpose of answering questions raised in Lok Sabha/ Rajya Sabha and the queries raised by various Government Department like DIPP. The list of communications exchanged between OP-6 and the various Government Departments as provided is tabulated below:

**Table 11**

<b>Date</b>	<b>Communication with Department</b>	<b>Purpose</b>
08.02.2010	DIPP	Seeking information regarding domestic production, consumption, and prices of tyres in the TBR segment, including figures on imports



सत्यमेव जयते



<b>Date</b>	<b>Communication with Department</b>	<b>Purpose</b>
07.03.2010	DIPP	Directing attendance for meeting of Committee constituted under Pneumatic Tyres and Tubes for Automotive Vehicles (Quality Control) Order, 2009
13.05.2010	DIPP	Enquiry regarding increase in tyre prices for commercial vehicles in the preceding 3 months
16.06.2010	DIPP	Seeking comments on relaxation of import of TBR tyres and Anti-Dumping Duty on TBR tyres from China and Thailand
08.07.2010	Ministry of Commerce	Seeking information on annual reference
24.07.2010	Lok Sabha Secretariat	Seeking information in response to starred/ unstarred question regarding action taken by the Government in response to AITDF representation demanding probe against domestic tyre manufacturers



सत्यमेव जयते



<b>Date</b>	<b>Communication with Department</b>	<b>Purpose</b>
28.07.2010	DIPP	Seeking comments on representation dated 08.05.2010 by AITDF
09.08.2010	DIPP	Seeking information regarding increase in tyre prices and to respond to provisional starred question dated 16.08.2010
12.11.2010	DIPP	Seeking data for provisional Rajya Sabha question regarding tyre import
24.01.2011	Tariff Commission	Response to detailed questionnaire for study on domestic tyre industry
31.01.2011	DIPP	Seeking comments to the letter dated 17 May, 2011 from All India Confederation of Goods Vehicle Owners' Association and letters dated 20 May, 2011 and 24 May, 2011 from AITDF.
01.03.2011	DIPP	Seeking information on export of rubber products for the questions to be answered in Lok Sabha on 7 March, 2011





<b>Date</b>	<b>Communication with Department</b>	<b>Purpose</b>
07.03.2010	DIPP	Response to Lok Sabha unstarred question to be answered on 14 March, 2011 regarding tyre production and exports
25.05.2011	DIPP	Seeking comments on the representation dated 25 May, 2011 from AITDF on the boycott call against Apollo Tyres by Transporters National Body
20.06.2011	DIPP	Seeking comments on the representation dated 4 June 2011 from AITDF on the boycott call against Apollo Tyres by Transporters National Body
30.08.2011	DIPP	Seeking comments on the representation dated 21 September, 2011 by AITDF regarding increase in prices by domestic tyre manufacturers
06.12.2012	DIPP	Rajya Sabha starred question to be answered on 12 December, 2012 regarding



सत्यमेव जयते



Date	Communication with Department	Purpose
		cartelisation by tyre manufacturers
08.01.2011	DIPP	Seeking clarification on how the tyre companies are responding to the fluctuations occurring in the day to day prices of natural rubber

142. From table 11 above, the Commission notes that OP-6 on various dates had answered the queries/questions raised by the various Government Departments, and had also addressed the parliamentary questions. The Commission further notes that the DG during the investigation has unearthed a bunch of emails sent on various dates by OP-6 which have been relied upon as evidence by the DG against OPs to prove sharing of price sensitive data amongst OP-1 to OP-5 through OP-6. These email communications are as follows:

- a. emails dated 4<sup>th</sup> January, 2011 and 12<sup>th</sup> January, 2011:- from Mr. Mayank Malhotra, (OP-1) to Mr. Rajiv Budhreja (OP-6);
- b. email dated 18<sup>th</sup> February, 2011 from Mr. Rajiv Budhreja (OP-6) to Mr. George Peter (Birla), Mr. K.J. Rao, Mr. Ramesh Chutani, Mr. John M John, Mr. Kaushik Roy, Mr. Mohan Kurian, Mr. Swaranjit Singh, Mr. V K Mathur, Mr. V R Rangarajan, Mr. Pravin Tripathy, Mr. S K Patodia, Mr. Ajay Sevekari, Mr. Navin Choubey, Mr. A Kasliwal, Mr. Venu Gopal and Mr. P Srinivasavaradhan;



सत्यमेव जयते



- c. email dated 23<sup>rd</sup> February, 2011 from Mr. Rajiv Budhraj (OP-6) to Mr. V K Modi of Modi tyres with cc to Mr. Alok Modi and Mr. Neeraj Kanwar (Chairman of OP-6 and Managing Director of OP-1);
  - d. email dated 18<sup>th</sup> May, 2011 at 09:50 from Mr. Rajiv Budhraj (OP-6) to Mr. Neeraj Kanwar (Chairman of OP-6 and Managing Director of OP-1); and
  - e. email dated 18<sup>th</sup> May, 2011 at 09:56 from Mr. Rajiv Budhraj (OP-6) to Mr. Neeraj Kanwar (Chairman of OP-6 and Managing Director of OP-1) with cc to Mr. Koshy Varghese (Chairman of OP-2).
143. The Commission, on examination of the aforesaid submissions made by OP-6 and the emails unearthed by DG (impugned emails) proving sharing of price sensitive data amongst OP-1 to OP-5 through OP-6, observes the following: (a) the dates mentioned in the table submitted by OP-6 and the dates on which emails communications were made do not match with each other; and (b) while the contents of the impugned emails discuss price sensitive details and raw material costs, the responses provided by OP-6 to queries/questions raised by the various Government Departments and Parliament including anti-dumping proceedings did not seek any sensitive information with respect to increase of prices. Therefore, on a holistic assessment, it is observed that the contents of the two are inconsistent with each other.
144. In addition to the above, the Commission notes that OP-6 had also constituted various sub-groups which held regular meetings. Details of the meetings of OP-6 Sub-Groups held during the period January 2010 to February 2014, as reported by the DG, are as under:



सत्यमेव जयते



OP-6's Purchase Sub Group Meetings:

**Table 12**

<b>Sr. No.</b>	<b>Date of meeting</b>	<b>Venue</b>	<b>Participants</b>
1	21-01-2010	Apollo House, Gurugram	Apollo, Birla, CEAT, JK, TVS
2	05-03-2010	PHD House, New Delhi	Apollo, Birla, CEAT, Goodyear, JK, TVS
3	22-04-2010	PHD House, New Delhi	Apollo, Birla, CEAT, Goodyear, JK, MRF, TVS
4	24-06-2010	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, Modi Continental, JK, MRF, TVS
5	25-06-2010	PHD House, New Delhi	Apollo, Birla, CEAT, Modi Continental, JK, MRF, TVS
6	06-07-2010	Hotel Gateway, Kochi	Apollo, Birla, CEAT, Goodyear, JK, MRF, TVS
7	14-09-2010	Mayfair Rooms, Mumbai	Apollo, Birla, Bridgestone, CEAT, Modi Continental, Goodyear, JK, MRF, TVS
8	17-11-2010	Ramada Powia & Residence Hotel, Mumbai	Apollo, Birla, CEAT, Modi Continental, JK
9	07-01-2011	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, Modi Continental, JK, MRF



सत्यमेव जयते



<b>Sr. No.</b>	<b>Date of meeting</b>	<b>Venue</b>	<b>Participants</b>
10	21-02-2011	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, Modi Continental, Goodyear, JK, MRF, TVS
11	18-04-2011	Hotel Windsor Cartle, Kottayam	Apollo, Birla, CEAT, Modi Continental, JK, MRF, TVS
12	16-05-2011	PHD House, New Delhi	Apollo, Birla, CEAT, JK, MRF
13	17-05-2011	India Habitat Centre, New Delhi	Apollo, Birla, CEAT, Modi Continental, Goodyear, JK, MRF
14	15-07-2011	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, Modi Continental, Goodyear, JK, MRF
15	02-09-2011	Ramada Resort, Kochi	Apollo, CEAT, JK, MRF, TVS
16	02-11-2011	PHD House, New Delhi	Apollo, Birla, CEAT, Modi Continental, JK, MRF, TVS
17	23-12-2011	PHD House, New Delhi	Apollo, CEAT, Modi Continental, JK, Goodyear, TVS
18	17-04-2012	Hotel Fairmont, Kottayam	Apollo, Birla, Bridgestone, CEAT, Falcon, JK, MRF, TVS
19	02-05-2012	PHD House, New Delhi	Apollo, CEAT, Modi Continental, JK, MRF
20	24-07-2012	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, JK, MRF, TVS
21	25-09-2012	PHD House, New Delhi	Apollo, Birla, CEAT, JK, MRF



सत्यमेव जयते



<b>Sr. No.</b>	<b>Date of meeting</b>	<b>Venue</b>	<b>Participants</b>
22	28-10-2012	Hotel Uday Samudra, Trivandrum	Apollo, CEAT, JK, MRF
23	22-01-2013	NSE Complex, Mumbai	Apollo, Birla, Bridgestone, CEAT, Goodyear, JK, MRF, TVS
24	04-03-2013	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, Modi Continental, Goodyear, JK, MRF, TVS
25	31-07-2013	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, Goodyear, JK, MRF, TVS
26	22-10-2013	PHD House, New Delhi	Apollo, CEAT, Goodyear, JK, MRF, TVS
27	19-02-2014	Hotel Le Meridian, Kochi	Apollo, Bridgestone, CEAT, Modi Continental, Goodyear, JK, TVS

OP-6 Marketing/ Export/ Industry, Public & Economic Affairs (IPEA) Sub Group Meetings:

**Table 13**

<b>Sl. No.</b>	<b>Date of meeting</b>	<b>Venue</b>	<b>Participants</b>
1	12-02-2010	Hotel Taj Mahal, New Delhi	Apollo, Birla, Bridgestone, CEAT, JK, MRF, TVS
2	12-02-2010	Hotel Taj Mahal, New Delhi	Apollo, Birla, CEAT, JK



सत्यमेव जयते



3	18-05-2010	Hotel Taj Mahal, New Delhi	Apollo, Birla, CEAT, JK, TVS
4	06-07-2010	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, Goodyear, JK, MRF, Modi Continental
5	21-10-2010	PHD House, New Delhi	Apollo, Birla, CEAT, Falcon, JK, MRF, TVS
6	03-08-2011	PHD House, New Delhi	Apollo, Birla, CEAT, Modi Continental, Falcon, JK, MRF, TVS
7	26-04-2012	PHD House, New Delhi	Apollo, CEAT, Modi Continental, JK, MRF, TVS
8	18-10-2012	PHD House, New Delhi	Apollo, Bridgestone, CEAT, JK, MRF, TVS
9	08-03-2013	PHD House, New Delhi	Apollo, CEAT, Modi Continental, JK, MRF
10	25-07-2013	PHD House, New Delhi	Apollo, Bridgestone, CEAT, JK, MRF, Modi Continental
11	17-10-2013	PHD House, New Delhi	Apollo, Bridgestone, CEAT, JK, MRF, Modi Continental
12	03-02-2014	PHD House, New Delhi	Apollo, Birla, CEAT, Modi Continental, JK, MRF, TVS

OP-6 Technical/ Technology, Environment, Safety & Standards (TESS) Sub Group Meetings:

**Table 14**

<b>Sl. No.</b>	<b>Date of meeting</b>	<b>Venue</b>	<b>Participants</b>
1	06-10-2012	PHD House, New Delhi	Apollo, Birla, CEAT, JK, MRF



<b>Sl. No.</b>	<b>Date of meeting</b>	<b>Venue</b>	<b>Participants</b>
2	20-10-2012	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, Goodyear, JK, MRF, TVS
3	11-02-2013	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, Goodyear, JK, MRF, Falcon
4	11-05-2013	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, Goodyear, JK, MRF, TVS
5	31-07-2013	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, Goodyear, JK, MRF, TVS
6	31-10-2013	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, JK, MRF
7	30-01-2014	PHD House, New Delhi	Apollo, Birla, Bridgestone, CEAT, JK, MRF, TVS

OP-6 Taxation/ Government Affairs & Legislation (GAL) Sub Group Meetings:

**Table 15**

<b>Sr. No</b>	<b>Date of meeting</b>	<b>Venue</b>	<b>Participants</b>
1	18-05-2010	Hotel Taj Mahal, New Delhi	Apollo, CEAT, Goodyear, JK
2	06-03-2013	PHD House, New Delhi	Apollo, CEAT, Goodyear, JK





सत्यमेव जयते



3	02-08-2013	Hotel Leela Kempinski,	Apollo, CEAT, Goodyear, JK, MRF
---	------------	---------------------------	------------------------------------

145. From the aforementioned tables 12 to 15 showing details of various sub-group meetings constituted and conducted by OP-6, the Commission observes that OP-6's expert group and various sub group meetings thereof had served as a platform where OP-1 to OP-5 were regularly meeting on some pretext or the other. It is pertinent to note that for these meetings, no minutes had been maintained by OP-6. The Commission further observes that despite OP-6 being an industrial body representing the entire tyre industry and well aware of the previous cartel investigations pertaining to OP-6 and its members, it is surprising to note that OP-6 still did not maintain the minutes of the meetings. Such conduct of OP-6 clearly points towards its malicious intention of hiding some illegal activities including discussion on increase in tyre prices *etc.* Further, the Commission notes that in one such meeting of the purchase group, a sensitive topic pertaining to Raw Material Cost Increase v. Tyre Price Increase and the 'Gap' between them was discussed followed by subsequent tyre prices increase by OP-1 to OP-5 in a concerted manner. Such increase was implemented in the truck bus bias/ cross-ply variant tyres sold in the replacement market and the same has been brought out in the DG's investigation.
146. In this regard, the Commission also notes that OP-1 has submitted that the DG failed to take into account that even before the date of the said meeting, an internal decision was taken by OP-1 to increase its tyre prices *i.e.* on 19<sup>th</sup> May, 2011 which is reflected in email dated 10<sup>th</sup> May, 2011 from Shri Rajesh Dahiya, Group Head of Sales at OP-1. The relevant extract of the said email is provided below:



सत्यमेव जयते



*“Considering the competitive scenario and market volatility, it has been decided to pre-poned the price increase as below. Extent of price increase will be upto 5%.*

*Revised dates of Price increase:-*

<i>Category</i>	<i>Price increase dates</i>
<i>Apollo, TBB &amp; OTR</i>	<i>19 May 2011 (New Rate billing start from 20<sup>th</sup> May)</i>

...

*Further, please note another round of price increase is inevitable in June. Date and extent will be shared in due course of time.”*

147. The Commission observes that the said plea of OP-1 as regard the email sent from Mr. Rajiv Budhreja of OP-6 to Mr. Koshy Varghese of OP-2 on 18<sup>th</sup> May, 2011 is misconceived as the same follows after discussion on price rise with Mr. Koshy Varghese of OP-2. Moreover, as per the said email, OP-1 had announced the revised prices to prevail from 20<sup>th</sup> May, 2011 onwards. The said conduct of OP-1 indicates that it had adhered to what was discussed by OP-6 with OP-2 and the same was effected in the form of a price increase immediately at a higher magnitude *i.e.* at 5% instead of 3+3+4.5 % following the decisions made in the purchase group meetings held on 16<sup>th</sup> May, 2011 and 17<sup>th</sup> May, 2011 followed by email dated 18<sup>th</sup> May, 2011. Further, it is observed that the email sent by Mr. Rajiv Budhreja of OP-6 after discussion with Mr. Koshy Varghese of OP-2 to Mr. Koshy Varghese of OP-2 on 18<sup>th</sup> May, 2011 regarding price increase stands as an indisputable testimony to the existence of a coordination amongst the OPs to increase the prices of tyres in a concerted manner.



148. The Commission also takes note of the argument of OP-4 that there is no material on record to suggest that OP-4 indulged in any price discussion on tyre prices with any of the OPs. In this regard, the Commission notes that OP-4 was a regular participant of the various expert group and sub-group meetings organised by OP-6 from time to time. As noted above, sensitive discussions including one pertaining to Raw Material Cost Increase v. Tyre Price Increase and the 'Gap' happened amongst the OPs of which OP-4 was also a party. Such discussions, as already observed, were followed by subsequent tyre price increase by OP-1 to OP-5 in a concerted manner and thus the argument of OP-4 is misconceived.
149. Further, the Commission observes that the plea of the OPs regarding price increase is also misconceived. This is due to the fact that in an ongoing cartel where prices are being kept high over a long period of time, it is not necessary that prices increase after every meeting. The OPs under the aegis of OP-6 had been meeting every quarter to discuss key issues and challenges faced by the tyre industry, giving the tyre manufacturers a convenient platform to come together and share their individual price sensitive data and take collective decisions on the prices of tyres.
150. Apart from the email communications sent by OP-6, the Commission observes that OP-6 also used to collect and compile information relating to company wise and segment wise data (both monthly and cumulative) on production, domestic sales and export of tyres on a real time basis much prior to the publishing of quarterly results in the public domain. Such compiled data was circulated amongst its members as well. The sharing of such sensitive information made the co-ordination easier amongst the OPs.



151. To substantiate the above deductions, it would be appropriate to note the following submissions of OP-6:

**“Issue: Compilation and Dissemination of commercially sensitive data**

*It is submitted by ATMA in no manner compiles and disseminates commercially sensitive data to its members. It is submitted that upto March 2013 ATMA used to receive monthly (i) category wise production and export data and (ii) company wise production and export data from its members which was compiled and circulated by ATMA with a time gap of 6-8 weeks to ensure there is no dissemination of current data. Further, post this, the practice from collection of monthly wise data was changed to time lag of almost six months. With effect from September 2013, ATMA only received monthly category wise production and export data from its members which was compiled and circulated by ATMA with a time lag of 6-8 weeks.”*

152. Thus, it is evident that OP-6 itself admitted the fact that it had collected monthly category wise as well as company wise production and export data from its members which was then compiled and circulated by OP-6 amongst its members up to March 2013. Further, OP-6 has submitted that after September 2013, it appointed TPM Consultants to aggregate the data received from all its members.
153. In view of the above discussion, it is evident that the platform of OP-6 was used by the tyre companies for resorting to anti-competitive activities and not merely for protecting the legitimate interests of OP-6’s members. It is noted that the various sub group meetings of OP-6, email communications and the follow up in terms of price increase, compilation and circulation of product and



सत्यमेव जयते



export data strongly indicate the existence of an agreement, arrangement and understanding amongst OP-1 to OP-5 by using the platform of OP-6 for sharing of information, as well as communications regarding pricing and production amongst themselves. These evidences provide strong evidence of coordinated behaviour and reveals the existence of an anti-competitive agreement amongst the OPs.

154. With regard to the price data pertaining to the year 2010, the OPs have raised an issue that those figures belong to a period wherein the Commission had already passed an order under Section 26(6) of the Act against the same OPs in *RTPE Case No. 20 of 2008*. In this regard, the Commission observes that the aforesaid case was closed under Section 26(6) of the Act with the following observation of the majority order:

*“366. The Commission has found that there is not sufficient evidence to hold a violation by the tyre companies Apollo, MRF, J.K. Tyre, Birla, Ceat and ATMA of the provisions of section 3(3) (a) and 3(3)(b) read with section 3(1) of the Act.”*

155. It is observed that the Commission in the previous case had closed the matter due to lack of sufficient evidence and not based on the merits of the case. Needless to add that if the effects of such act/ conduct continue post-notification of the provisions relating to anti-competitive agreements, the Commission has the necessary jurisdiction to look into such conduct.
156. Similarly, it was argued that OP-6 had 10 members at the relevant time out of which DG has cherry picked only 5 members. However, the said plea taken by the OPs is not tenable. In this regard, the Commission notes that the present case was instituted on an information referred to by the Ministry of Corporate



सत्यमेव जयते



Affairs against the parties named therein. It is not a case where the Commission has proceeded *suo motu* and has cherry picked a few tyre companies for the purpose of ordering investigation. In order to ascertain contravention as alleged by the Informant, the investigation and the consequent enquiry has been confined to the parties named in the information and therefore, the question of cherry-picking some enterprises or leaving out others does not arise in the present case.

157. The OPs have also raised an objection that the reference by the Ministry of Corporate Affairs is based on multiple vexatious representations made to it by AITDF and have further argued that the reference was made without any *bona-fide* intention. In view of the Commission, though it is no doubt true that if an information provider comes with incorrect facts or suppresses some information, action may be taken against such Informant; however, under the scheme of the Act, it has to be understood that the role of the Informant is only that of an information provider and the proceedings before the DG or the Commission are not adversarial in nature. The Commission independently assesses the information and the material available on record before reaching any final conclusion. Thus, even if an information is motivated or actuated by ulterior motives, it cannot influence the final outcome in any manner, though, as noted earlier, appropriate action may be taken against the Informant for providing false information or for suppressing material information.
158. It is also noted that the Commission *vide* its order dated 27<sup>th</sup> July, 2016 had *inter alia* decided to allow Shri S. P. Singh, Convener, AITDF to be a part of the proceedings in the matter under Regulation 24 of the General Regulations. Subsequently, OP-6 had filed Writ Petition No. 6881 of 2016 in the Hon'ble High Court of Delhi challenging the aforesaid order of the Commission wherein, the Hon'ble High Court of Delhi has ordered as follows:



सत्यमेव जयते



*“It is directed that the hearing that is scheduled to be held before the Commission tomorrow may continue, however, till the next date of hearing, Mr. S. P. Singh will not be permitted to take part in the proceedings and will also not be permitted to be present at the time of hearing.”*

In view of the aforesaid order of the Hon’ble High Court of Delhi, the Commission heard the parties on the investigation report of the DG but not Shri S. P. Singh.

159. Further, the Commission has also considered the plea raised by the OPs contending that the DG has analysed the price of the products that are not even comparable and them questioning the rationale of the DG for examining prices of only one specific type of tyre variant to ascertain the evidence of price parallelism. In this regard, the Commission notes that as per OP-6’s estimates, cross ply or bias tyre constitutes about 74% of the domestic sales as compared to about 26% in case of radial tyres in the truck bus tyre segment. The DG has observed that owing to factors such as initial high price 30% higher than cross ply or bias type tyres, lack of awareness among operators, poor road infrastructure, problem of overloading of trucks *etc.* demand of radial tyres in the truck bus segment has been slow to pick up. After examining the sale of truck bus tyres in terms of revenue (55%) and tonnage (46%), the DG has observed that truck bus tyre sub segment is the largest segment of the Indian tyre industry. Further, it has been observed by the DG that replacement market in case of truck bus tyres is much bigger than passenger vehicles tyres owing to greater wear and tear experienced by trucks and buses. Longer life of trucks and buses results in higher replacement demand for these tyres. In view of the above, the DG restricted the investigation to that segment of the tyre industry.



सत्यमेव जयते



With respect to the contentions of the parties that the DG has compared non-competing variants of truck bus tyres and questions raised against the investigation conducted pertaining to only one specific type of tyre variant to ascertain the evidence of price parallelism, the Commission observes that the DG during investigation had sought details of largest selling tyres from the parties. After analysing the responses received, the DG observed that in terms of revenue earned and allegations of AITDF, cross ply/ bias type tyre belonging to the Medium and Heavy Vehicle category/ truck-bus category of tyres is considered appropriate for further analysis. Subsequently, the DG restricted the analysis to a single tyre variant that had the largest sales revenue in the truck bus segment belonging to cross-ply/bias tyre variant submitted by each OP. The rationale behind the DG's examination was to ascertain as to whether there existed any form of price parallelism amongst the largest selling tyre variants. Thus, the said contention of the OP-1 to OP-5 is addressed.

160. It has been claimed by OP-2 that higher prices would enable it to finance its capacity expansion through own funds route. The Commission observes that this is an untenable argument as, on one side, the OPs have been getting anti-dumping duties imposed on the import of truck bus bias tyres thereby effectively shielding the domestic cross-ply/bias tyres market from external competition by way of imports and on the other hand raising the prices of cross-ply/bias tyre variants in the replacement market. In a market economy, there are alternate ways to finance capacity expansions. The various sources of financing available for undertaking such an expansion include equity market, debt market and loans from financial institutions. The conduct of OP-1 to OP-5 indicates that by foreclosing external competition and increasing the domestic prices, they have been able to generate resources to finance capacity expansion which would lead to creation of surplus capacities over time and would enable OP-1 to OP-5 to erect entry barriers thereby enabling them to





सत्यमेव जयते



dictate prices in future. Such conduct is pernicious and has to be ripped as it affects the competitive process.

161. Lastly, the Commission observes that DG has conducted investigation with respect to replacement segment belonging to the truck bus tyres. Based on the examination and analysis of the factors such as movement in the price of leading cross-ply/ bias tyre variants sold in the replacement market; increase in the price effected by OP-1 to OP-5 during 2011-12 (*...the same magnitude as (already) done in this current fiscal (3+3+4.5) say roughly between 10-11 pc...*) as evidenced from the email communications; absence of competitive pressure between radial tyres and cross-ply/ bias tyres in case of truck bus segment owing to cost differences and other characteristics as outlined by the DG; uniformity in the conduct of OP-1 to OP-5, indicates that the OPs have gradually increased the prices of their respective truck bus tyre variants in close succession in a leader follower type of model by using OP-6 as a medium during the said period *i.e.* 2011-12. The improvement witnessed in the operating margin/ EBITDA for all the OPs in 2012-13 and 2013-14 *i.e.* after effecting a price increase in 2011-12 tends to affirm the existence of a collusion. The OPs have not been able to offer any explanation behind the sharp growth/ improvement witnessed in their respective operating margins/ EBITDA. In the absence of evidence to the contrary, the Commission is of the view that the conduct of OP-1 to OP-5 emanates from a stable demand in the replacement market. The buyers in the replacement market are individual truck/ bus owners/ small fleet owners. Owing to huge price difference between radial tyres and cross-ply/bias tyres, they have not been able to switch over to radial tyres thereby indicating that they are locked in or are dependent on cross-ply/ bias tyres. The conduct of OP-1 to OP-5 during the impugned period as evidenced from rise in price effected and the email communications in this regard clearly reveals that OP-1 to OP-5 have been exploiting this advantage.



सत्यमेव जयते



162. After examination of the facts and reviewing the evidences on record, the Commission concludes that OP-1 to OP-5 have indulged in cartelisation under the aegis of the association OP-6 during 2011-12 in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act. The said agreement has had an AAEC in India. There is a clear violation of the provisions of Section 3(3) read with Section 3(1) of the Act by the OPs.
163. Based on the above discussion, the Commission is of view that the OPs, by acting in concert, have increased the prices of cross ply/ bias tyres variants sold by each of them in the replacement market belonging to the truck/ bus segment and have also limited and controlled the production and supply in the said market thereby clearly contravening the provisions of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act.
164. Having found OP-1 to OP-6 responsible for the contravention of the provisions of Section 3 of the Act, the next issue is to determine whether the office bearers of these companies, as identified by the DG, are liable under the provisions of Section 48 of the Act.

#### **Liability of individuals under Section 48 of the Act**

165. Liability of individuals belonging to the erring companies/ association is enshrined under Section 48 of the Act. It may be noted that the DG has investigated the role of the persons who at the time of such contravention were in charge of and responsible for the conduct of the business of the OPs so as to fix responsibilities of such persons and highlighted the individual roles of key persons of these OPs. The individuals found by the DG to be liable for penalty



under Section 48 of the Act are: i) Mr. Neeraj Kanwar, Vice-Chairman and Managing Director of OP-1, ii) Mr. Satish Sharma, President Asia Pacific, Middle East and Africa of OP-1, iii) Mr. K. M. Mammen, Chairman and Managing Director of OP-2, iv) Mr. Koshy K Varghese, Executive Vice President (Marketing) of OP-2, v) Mr. Anant Goenka, Managing Director of OP-3, vi) Mr. Arnab Banerjee, Executive Director (Operations) of OP-3, vii) Mr. Nitish Bajaj, Vice-President (Marketing) of OP-3, viii) Mr. Raghupati Singhania, Chairman and Managing Director of OP-4, ix) Mr. Vikram Malhotra, Marketing Director of OP-4, x) Mr. Arun Kumar Bajoria, President of OP-4, xi) Mr. Basant Kumar Birla, Chairman of OP-5, xii) Mr. Ashwini Maheswari, President of OP-5, xiii) Mr. Arvind Kumar Singh, President/ Chief Executive Officer of OP-5, and xiv) Mr. Rajiv Budhraja Director General of OP-6.

166. Section 48(1) of the Act provides that where a person committing contravention of any of the provisions of this Act is a company (including a firm or an association of individuals), every person who, at the time such contravention was committed, was in-charge of, and was responsible for the conduct of the business of the company/firm/association, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. Further, the *proviso* to Section 48(1) of the Act entails that such person shall not be liable to any punishment if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the occurrence of such contravention.

167. Section 48(2) of the Act, on the other hand, attributes liability on the basis of *de facto* involvement of an individual. It states that:

*“[n]otwithstanding anything contained in sub-section (1), where*



*a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly”.*

168. In the light of the provisions contained in Section 48 of the Act, the Commission has analysed the role of the office bearers of OP-1 to OP-6 and finds the following office bearers to be liable under Section 48 of the Act.

- Mr. Neeraj Kanwar Vice-Chairman and Managing Director of OP-1 and Ex-Chairman of OP-6

Mr. Neeraj Kanwar, in his statement on oath dated 9<sup>th</sup> November, 2015, has admitted that he had discussed price decisions with Mr. Satish Sharma, President, Asia Pacific Middle East and Africa of OP-1. It was also found that Mr. Rajiv Budhraj, DG of OP-6 had sent a mail dated 18<sup>th</sup> May, 2011 to Mr. Neeraj Kanwar with regard to his communication with Mr. Koshy Varghese of OP-2 on price strategy. It seems that Mr. Neeraj Kanwar has used the platform of OP-6 to discuss commercially sensitive subjects during his tenure as the Chairperson of OP-6. Further, he has not been able to contradict or furnish any counter evidence to challenge the evidence relied upon by the DG.



Thus, based on these evidence, it can be concluded that besides his liability under Section 48(1) of the Act owing to the position held by him, he is also liable under Section 48(2) of the Act for his active involvement in such anti-competitive practice.

- Mr. Satish Sharma, President, Asia Pacific, Middle East and Africa of OP-1

Mr. Satish Sharma, in his statement on oath dated 7<sup>th</sup> July, 2015, admitted that he has approved pricing decisions on behalf of OP-1. Thus, he being the President, Asia Pacific, Middle East and Africa of OP-1 had played a key role in determining the prices and thus connived in the concerted action. Therefore, he is liable under Section 48(1) and Section 48(2) of the Act.

- Mr. Koshy K. Varghese, Executive Vice President (Marketing) of OP-2

Mr. K. M. Mammen, Chairman and Managing Director of OP-2, in his statement on oath dated 15<sup>th</sup> July, 2015, categorically stated that the price decisions were left completely to the discretion of Mr. Koshy K. Varghese. Further, Mr. Koshy K. Varghese also played an active role by discussing the price strategy with Mr. Neeraj Kanwar. The email dated 18<sup>th</sup> May, 2011 sent by Mr. Rajiv Budhraj to Mr. Neeraj Kanwar, explicitly shows active involvement of Mr. Koshy Varghese in discussions on pricing strategies. Therefore, based on his key position and active involvement and knowledge of the discussion relating to price rise, he is held to be liable under Section 48(1) as well as Section 48(2) of the Act.



सत्यमेव जयते



- Mr. Arnab Banerjee, Executive Director (Operations) and Mr. Nitish Bajaj, Vice President (Marketing) of OP-3

Mr. Anant Goenka, Managing Director of OP-3, in his statement on oath on 13<sup>th</sup> July, 2015, has stated that Mr. Nitish Bajaj decides about the pricing of tyres and the final decisions were approved by Mr. Arnab Banerjee. Thus, based on the position held by them and the active role played by them, they are guilty of connivance in the concerted action. Thus, they are held responsible for the conduct of OP-3 under Section 48(1) and Section 48 (2) of the Act.

- Mr. Vikram Malhotra, Marketing Director and Mr. Arun Kumar Bajoria, President of OP-4

Mr. Raghupati Singhania of OP-4, during his statement on oath dated 15<sup>th</sup> July, 2015, stated that Mr. Vikram Malhotra decides the prices of tyres in consultation with Mr. Arun Kumar Bajoria. Thus, based on the position held by them and the fact that they had decided the prices of the tyres, they are held responsible for the conduct of OP-4 under Section 48(1) as well as under Section 48 (2) of the Act.

- Mr. Arvind Kumar Singh, President/ Chief Executive Officer of OP-5

Mr. Arvind Kumar Singh was the President/ CEO of OP-5's tyre division during the period 2011-2012 and hence, was responsible for the decisions on fixing prices of tyres in his company. Thus, based on the position held by him, presumption of his liability for contravention by his company arises. Despite providing opportunity, Mr. Arvind Kumar Singh could



not establish that the fixing of the price was without his knowledge or that he had taken adequate steps and exercised due diligence to prevent concerted action. Thus, he is held responsible for the conduct of OP-5 under Section 48(1) of the Act.

- Mr. Rajiv Budhraj, Director General of OP-6

The DG has examined the role of Mr. Rajiv Budhraj and noted that he had facilitated the anti-competitive conduct of the OPs by organising various sub-group meetings under the banner of OP-6. Commercially sensitive subjects such as ‘raw material cost increase vs. tyre price increase’ and the ‘Gap’ which the parties could fill by increasing tyre prices were discussed in the Purchase Group meeting of OP-6. Mr. Budhraj facilitated an ‘agreement’ by conveying the outcome to the Chairman of OP-6 and also by conveying the pricing strategy of OP-2 to OP-1.

The Commission notes that Mr. Rajiv Budhraj’s duties involved facilitating the discussion among the tyre manufacturers on pressing issues facing their industry. In his capacity as DG of OP-6, he was responsible for organising meetings for discussion on issues mutually beneficial for the leading tyre companies. In garb of his duties, he facilitated anti-competitive conduct amongst the OPs in the purchase group meetings.

In most of the instances, Shri Rajiv Budhraj was actively involved in sending emails, issuing letters, *etc.* Thus, as per evidence and his conduct, he is liable under Section 48(2) of the Act.



169. The Commission further notes that the DG has not placed any evidence to prove the role of Mr. K. M. Mammem, Chairman and Managing Director of OP-2, Mr. Anant Goenka, Managing Director of OP-3, Mr. Raghupati Singhania, Chairman and Managing Director of OP-4, and Mr. Basant Kumar Birla, Chairman of OP-5 except that, in their capacity as Chairman/ Managing Director, they were responsible for the conduct of the business of their respective companies.
170. In this regard, the Commission notes that during the hearing it was argued by OP-5 that the Chairman was not taking part in the day to day affairs of the Company and the pricing decisions were taken by different key persons working with OP-5. Therefore, the Commission observes that in order to fix the responsibility of the Chairman/ Managing Director of OPs under Section 48(1), the DG has not been able to provide any evidence to bring the above stated persons under the purview of Section 48(1) of the Act. Therefore, the Commission is of the view that the above named officials cannot be held liable under Section 48 of the Act.
171. Further, the Commission notes that Mr. Ashwani Maheshwari was the President of OP-5 during the period of 2013-14 whereas, the Commission has concluded that OP-1 to OP-5 had indulged in cartelisation under the aegis of the Association OP-6 during 2011-12. Therefore, the Commission is of the view that the aforesaid key person of OP-5 would not be liable under Section 48 of the Act.





172. In view of the above, the Commission passes the following:

### **Order**

173. The Opposite Parties are directed to cease and desist from indulging in any activity relating to agreement, understanding or arrangement on prices, production of tyres in the market. ATMA is directed to disengage and disassociate itself from collecting wholesale and retail prices through the member tyre companies or otherwise.
174. After carefully examining the pernicious effect emanating out of the cartel and its impact on the economy and the consumers, the Commission is of the considered view that this is a fit case to invoke Section 27(b) of the Act. Under the provisions contained in Section 27(b) of the Act, the Commission may impose such penalty upon the contravening parties, as it may deem fit, which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprise which is party to an anti-competitive agreement or indulging in abuse of dominance.
175. The Opposite Parties have contended that the Report of the DG does not specify the period of the alleged cartel. In this regard, it may be noted that the evidence of concerted price rise has been found only for the period 2011 -12 and this order is therefore confined to the same period *i.e. 2011-2012*.
176. Considering the totality of the facts and circumstances of the present case, the Commission decides to impose penalties calculated at the rate of 5% of average turnover for the last three preceding financial years on the OPs. Details of the quantum of penalties imposed are set out below:

**Table 16****(Rs. in crore)**

Sl. No	Name of the OP	Turnover in year 2011-2012	Turnover in year 2012-2013	Turnover in year 2013-2014	Average Turnover for the last three years	Penalty imposed @ 5 % on Average Turnover
1.	Apollo (OP-1)	8176.07	8564.87	8790.96	8510.63	425.53
2.	MRF (OP-2)	11902.19	12160.19	13263.2	12441.86	622.09
3.	CEAT (OP-3)	4492.027	5069.88	5567.97	5043.29	252.16
4.	JK (OP-4)	5483.08	5443.88	7670.08	6199.01	309.95
5.	Birla (OP-5)	3933.27	3604.24	3162.27	3566.62	178.33

177. A penalty at the rate of 5% of total receipts for the three years in terms of Section 27 (b) is also hereby imposed upon ATMA (OP-6):

**Table 17****(Amount - in Rupees)**

Sl. No.	Name of the OP	Income for FY 2011-12	Income for FY 2012-13	Income for FY 2013-14	Average Income for last 3 years	Penalty imposed @ 5% on Average Income
1	ATMA (OP-6)	14007690	17225894	19270678	16834754	841737

178. Resultantly, the Commission imposes penalty on the following office bearers in terms of Section 27 (b) of the Act calculated at the rate of 5% of average of the income for the last three preceding financial years as follows:



**Table 18**

(Amount - in Rupees)

Sl. No.	Individuals	Income for FY 2011-12	Income for FY 2012-13	Income for FY 2013-14	Income for FY 2014-15	Average Income for 3 years	Penalty imposed @ 5 % on Average Income
1.	Mr. Neeraj Kanwar* of OP-1	86987679	88015363	122245059	-	99082700	4954135
2.	Mr. Satish Sharma* of OP-1	19540620	27351116	34270116	-	27053951	1352697
3.	Mr. Koshy K. Varghese of OP-2	-	8016036	12907658	13169840	11364511	568225
4.	Mr. Arnab Banerjee* of OP-3	10397859	11965908	15457267	-	12607011	630351
5.	Mr. Nitish Bajaj# of OP-3	-	-	4847737	-	4847737	242386
6.	Mr. Vikram Malhotra of OP-4	-	8437207	8461282	11021535	9306675	465333
7.	Mr. Arun Kumar Bajoria of OP-4	-	26043909	31460113	41217590	32907204	1645360
8.	Mr. Arvind Kumar Singh of OP-5	-	25133614	32990950	38274468	32133011	1606650
9.	Mr. Rajiv Budhraja of OP-6	-	4754389	5039050	5785940	5193126	259656

\* For Mr. Neeraj Kanwar, Mr. Satish Sharma & Mr. Arnab Banerjee Income details for FYs 2011-12, 2012-13 & 2013-14 have been considered.

# For Mr. Nitish Bajaj Income details for FY 2013-14 has been considered as he has not furnished Income details for FYs 2012-13 & 2014-15.

For the remaining individuals, the penalty has been computed on the basis of financial information furnished by them *i.e.* for FYs 2012-13, 2013-14 & 2014-15.

179. The Commission directs the Opposite Parties and the aforesaid individuals to deposit the penalty amount within 60 days of the receipt of this order.



180. The Secretary is directed to communicate a copy of this order to the parties.

181. It is ordered accordingly.

**Sd/-**  
**(Augustine Peter)**  
**Member**

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

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

**Dated: 31/08/2018**

**New Delhi**