PUBLIC VERSION

COMPETITION COMMISSION OF INDIA

Suo Motu Case No. 10 of 2014

In Re: **Cartelisation by Shipping Lines in the matter of provision of Maritime Motor Vehicle Transport Services to the Original Equipment Manufacturers**

Against:	**Nippon Yusen Kabushiki Kaisha**	**NYK Line/ OP-1**
	Kawasaki Kisen Kaisha Ltd.	**K-Line/ OP-2**
	Mitsui O.S.K. Lines Ltd.	**MOL/ OP-3**
	Nissan Motor Car Carrier Company	**NMCC/ OP-4**

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Present:

For Nippon Yusen Kabushiki Kaisha and its 14 individuals	:	Mr. Ramji Srinivasan, Senior Advocate with Mr. Gurdev Raj Bhatia, Mr. Abdullah Hussain and Mr. Rudresh Singh, Advocates
For Kawasaki Kisen Kaisha Ltd. and its 10 individuals	:	Mr. Rajshekhar Rao, Senior Advocate with Ms. Nisha Kaur Uberoi, Ms. Radhika Seth, Mr. Mathew George and Mr. Sarthak Pande, Advocates

PUBLIC VERSION

For Mitsui O.S.K. Lines Ltd. and its 6 individuals	:	Mr. Amit Sibal, Senior Advocate with Ms. Shweta Shroff Chopra, Ms. Gauri Chhabra, Ms. Neetu Ahlawat and Ms. Saumya Raizada, Advocates and Mr. Yuichi Hirano, Authorized Representative of Mitsui O.S.K. Lines Ltd.
For Nissan Motor Car Carrier Company and its 3 individuals	:	Mr. Amit Sibal, Senior Advocate with Ms. Shweta Shroff Chopra, Ms. Gauri Chhabra, Ms. Neetu Ahlawat and Ms. Ujwala Kishore Adikey, Advocates

Order under Section 27 of the Competition Act, 2002

1. The present case pertains to alleged anti-competitive conduct by Nippon Yusen Kabushiki Kaisha ('**NYK Line'/'OP-1'**), Kawasaki Kisen Kaisha Ltd. ('**K-Line**'/'**OP-2**'), Mitsui O.S.K. Lines Ltd. ('**MOL**'/'**OP-3**') and Nissan Motor Car Carrier Company ('**NMCC**'/'**OP-4**'), in the provision of maritime motor vehicle transport services to [redacted] automobile Original Equipment Manufacturers **('OEMs')** for various trade routes, as noted hereinafter.

I. Facts

2. The case was initiated by the Commission *suo motu*, on the basis of an application dated 01.10.2014 filed under the provisions of Section 46 of the Competition Act, 2002 **(**the **'Act')** read with Regulation 5(1) of the Competition Commission of India (Lesser Penalty) Regulations, 2009 ('**Lesser Penalty Regulations**'), by NYK Line. It was mentioned in the application that NYK Line, K-Line, MOL and NMCC (hereinafter the **'OPs'**) colluded in respect of providing maritime motor vehicle transport services to [redacted] automobile OEMs *viz.* [redacted] for certain specific trade routes, as mentioned below:

i. Collusion for [redacted] contract

In [redacted] requested a quote for the trade route from [redacted] from NYK Line, K-Line and MOL. Consultations and discussions took place between NYK Line and K-Line with respect to the freight rates that they would quote to [redacted]. Further, in [redacted], [redacted] issued a new tender for maritime motor vehicle transport services for its trade route from [redacted]. In this tender also, NYK Line and K-Line exchanged information with respect to quoted freight rates/positions/schedules, *etc.* In the bid-rigging process, MOL was also complicit.

ii. Collusion for [redacted] contract

NYK Line and K-Line, *inter alia,* co-ordinated the sailing schedule to control the frequency of shipments per month, in response to the requests made by [redacted] for [redacted]. Further, in [redacted], discussions took place between these shipping lines regarding the request made by [redacted] to decrease the Bunker Adjustment Factor **('BAF')** for the [redacted] route.

iii. Collusion for [redacted] contract

In [redacted], for the trade routes from [redacted] issued a request for quotes. Meetings took place between NYK Line and NMCC in this regard, wherein NMCC requested NYK Line to submit a bid at a price higher than NMCC's indicated rates. Further, for the trade route for [redacted], NMCC requested NYK Line to provide a provisional freight rate. Additionally, meetings took place between NYK Line and MOL also regarding bid prices in this regard.

3. Upon perusal of the above stated information and in light of the documents/ evidence filed by NYK Line in support thereof, the Commission noted that the OPs were exchanging commercially sensitive information to co-ordinate, *inter*

alia, the price to be quoted in the matter of provision of maritime motor vehicle transport services on Pure Car Carrier **('PCC')** vessels to [redacted] automobile OEMs *namely* [redacted]. Based on the same, the Commission, forming an opinion that a *prima facie* case of contravention of the provisions of Section 3(3)(a) and Section 3(3)(d) read with Section 3(1) of the Act is made out, passed an order dated 20.11.2014 under Section 26(1) of the Act directing the Director General **('DG')** to cause an investigation to be made into the matter and submit a report.

4. The DG was also directed to investigate the role of the persons/officers of the OPs in terms of Section 48 of the Act, after giving them due opportunity of being heard. The Commission also observed that, though it is mentioned in the information that the collusion took place during the period 2009 to September 2012, the DG is directed to conduct a detailed investigation into the contravention disclosed in the information up-to-date without restricting and confining itself to the duration mentioned in the information.

5. During the pendency of investigation before the DG, MOL and NMCC also approached the Commission on 29.07.2016 as lesser penalty applicants, by filing a joint application under the provisions of Section 46 of the Act read with Regulation 5(1) of the Lesser Penalty Regulations. The Commission, however, *vide* order dated 03.08.2016, rejected the said application dated 29.07.2016 on the ground that two competing companies have filed a joint application. It was observed by the Commission that under Lesser Penalty Regulations read with Sections 46 of the Act, there is no provision whereby two or more parties can jointly file an application under Section 46 of the Act. It was also noted that such joint application runs counter to the spirit of the lesser penalty provisions. Thus, thereafter, MOL, followed by NMCC, filed separate applications before the Commission on 04.08.2016, under Section 46 of the Act read with Regulation 5(1) of the Lesser Penalty Regulations.

II. Investigation by the DG

6. First of all, the DG noted that the ocean shipping industry comprises of multiple sectors and types of vessels, including bulk carriers, tankers and vehicle carriers. It was noted by the DG that in vehicle carriers, in addition to shipping vehicles, vehicle carriers also ship high and heavy cargo (cargo bigger and heavier than a vehicle and requiring special arrangements) and small, ancillary, non-moveable cargo, *etc*. The DG observed that car carriers consist of RoRo (Roll on and Roll off) ships. A RoRo ship is a special type of ocean vessel that allows cars to be driven and parked on its decks for long voyages. These ships, also known as Car Carriers, have special ramps to permit easy access, high sides to protect the cargo during transport, and numerous decks to allow storage of a large number and variety of cars.

7. The DG further observed that there are different types of RoRo ships. A Pure Car and Truck Carrier **('PCTC')** transports cars, trucks and other four-wheeled vehicles and has a slightly different configuration while a PCC can be thought of as a parking garage and transports only cars. Its layout is designed to carry only cars and is fixed.

8. Noting the aforesaid industry overview, the DG delineated the following two issues for investigation and gave its findings on the same as under:

A. Whether the OPs have indulged in cartelisation, either with one or the other(s), in the matter of provision of Maritime Motor Vehicle Transport Services by PCC Vessels to OEMs – [redacted], and if so, the provisions of the Act so contravened?

[redacted] contracts

9. The DG found anti-competitive conduct in relation to [redacted] contracts of [redacted] and [redacted] by NYK Line, K-Line and MOL, on the basis of several key evidence.

Based on the same, the DG observed that for the [redacted] route of [redacted], NYK Line, K-Line and MOL colluded with each other. The *modus operandi* for this collusion was found to be centred on initial negotiations between these three OPs. It was found that NYK Line and K-Line agreed to offer joint services to [redacted] and that NYK Line and K-Line also agreed to follow 'Respect Rule' with MOL. MOL was agreeable to retaining its hold on the OEM [redacted] and in exchange for NYK Line and K-Line not interfering with [redacted] business, MOL allowed them to retain their stronghold on [redacted]. This enabled NYK Line and K-Line to secure the contract from [redacted]. Further, freight rates were also discussed between these three OPs. The investigation, therefore, concluded that NYK Line, K-Line and MOL contravened the provisions of Section 3(3)(a), 3(3)(c) as well as 3(3)(d) read with Section 3(1) of the Act, for 2010 and 2012 [redacted] contracts.

[redacted] contracts

10. The DG found anti-competitive conduct in relation to [redacted] contracts of [redacted] to [redacted] by NYK Line and K-Line, on the basis of several key evidence. Based on the same, the DG has concluded that NYK and K-Line colluded by having meetings and exchanging calls for the [redacted] route of [redacted] from 2008 to 2012. There was also close matching of freight prices for the contracts from [redacted] to [redacted] and [redacted] to [redacted]. The investigation, therefore, concluded that NYK Line and K-Line contravened the provisions of Section 3(3)(a) and 3(3)(d) read with Section 3(1) of the Act during the period 2008 to 2012 with respect to [redacted] contracts.

[redacted] contracts

11. The DG found anti-competitive conduct in relation to [redacted] contract from [redacted] to [redacted] by NYK Line, K-Line, MOL and NMCC, on the basis of several key evidence. Based on the same, the DG has observed that the entire set of evidence which are in the form of memos, e-mails, Affidavits and depositions, establish

that all the four OPs were in regular interaction with each other and formulated strategies with respect to [redacted] contract, which is in contravention of the provisions of Section 3(3)(a), 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act.

12. Based on the afore-mentioned discussions, the DG found that the four OPs had agreements/arrangements/tacit understanding with each other from 2008 onwards till at least 2012, utilizing various *modus operandi* and thereby forming respective cartels which had the effect of limiting competition in India. Accordingly, the DG concluded that the provisions of Section 3(3) read with Section 3(1) of the Act have been contravened by these OPs.

B. In case the answer to Issue No. 1 is in the affirmative, who are the persons of the OPs liable in terms of Section 48 of the Act for the anti-competitive conduct of the OPs and what were their roles at the time of the said contravention?

13. The DG identified various officials of the OPs under Section 48(1) and/or Section 48(2) of the Act, who had been part of the cartelisation amongst the OPs. The role of these individuals in the entire collusion has been discussed subsequently in this order.

III. Proceedings before the Commission:

14. The Commission considered the Investigation Report submitted by the DG in its ordinary meeting held on 23.01.2020 and directed to forward an electronic copy of the non-confidential version *qua* OPs of the same to the OPs and their individuals concerned, for filing their respective objections/suggestions thereto, if any. Further, the OPs were also directed to file their financial details including duly audited financial statements for the Financial Years **('FYs')** covering the period 2008 to 2013, as specified therein. The individuals of the OPs were also

directed to file their income details, including Income Tax Returns **('ITRs')** for the FYs covering the period 2008 to 2013.

15. Thereafter, the Commission, *vide* order dated 10.11.2020, created a 'Confidentiality Ring' in the matter for the purposes of providing access to the unredacted versions of the documents/records to the parties on mutual basis.

16. The parties filed their suggestions/objections to the investigation report of the DG and relevant financial details in June and July, 2021. Thereafter, the Commission heard the respective learned counsel(s) appearing on behalf of the OPs and their individuals concerned, on 24.08.2021 and 25.08.2021 and decided to pass an appropriate order in the matter. As prayed, the OPs were allowed to file synopsis of their oral arguments within 2 (two) weeks, if desired and further, as prayed, K-Line was allowed to file an Affidavit in support of its relevant turnover data within 4 (four) weeks. The same were received and taken on record.

IV. Submissions of the OPs

17. In their suggestions/objections to the DG report, during the oral hearings and in the synopsis of oral arguments, the OPs made, *inter alia*, the following submissions:

Reply of NYK Line/ OP-1 and its 14 individuals:

18. NYK Line has provided full, true and vital disclosures, information, documents and evidence and co-operated genuinely, fully, continuously and expeditiously throughout the investigation and not concealed any information. It agrees with all the findings reached by the DG with respect to collusion in [redacted] and [redacted] contracts.

19. It also agrees with the finding of the DG that the actions of the OPs have caused an appreciable adverse effect on competition **('AAEC')** in the market. The

actions of NYK Line in collusion with the other OPs disrupted the competition landscape in the market for the provision of services for transportation of vehicles across countries.

20. In relation to imposition of penalty, the conduct in question between the OPs was discontinued much before the investigation was ordered; as such, no penalty ought to be imposed upon NYK Line. NYK Line also listed various factors which ought to be considered by the Commission before any penalty is imposed upon it. Further, as the investigation was mounted by the Commission only because of the lesser penalty filing made by NYK Line, it prayed that in the event the Commission deems it appropriate to levy a penalty on NYK Line, it should be granted 100% reduction in penalty in terms of Section 46 of the Act read with Regulation 4 of the Lesser Penalty Regulations.

Reply of K-Line/OP-2 and its 10 individuals:

21. K-Line has contested the jurisdiction of the Commission over the matter as well as the findings of the DG given in the Investigation Report. It prayed the Commission to set aside the DG's findings and direct closure of the captioned matter forthwith. Cartel conduct has been found by the DG on (i) [redacted] route; (ii) [redacted] route; and (iii) [redacted]: [redacted] route, and [redacted], [redacted] and [redacted] route. All these routes considered by the DG in relation to K-Line for alleged co-ordination are outbound, and therefore, if at all any effect on competition would have taken place, it would be within the territorial jurisdiction of other countries and not India.

22. The DG has not even referred to or brought on record, the critical exculpatory evidence submitted by K-Line during the investigation, which is indicative of the fact that K-Line acted on the request of the OEMs themselves. The DG has also failed to take cognizance of the submissions made by the

purportedly affected third parties *i.e.*, [redacted], [redacted] and [redacted], which are also exculpatory in nature.

23. The submissions of K-Line have been examined by the Commission at appropriate places in this order.

Reply of MOL/OP-3 and its 6 individuals:

24. MOL agrees with the findings of the DG on all counts. Through its submissions, MOL has extensively explained the cartel and has made immense value addition. It has extensively assisted the DG in arriving at its conclusions. It would have been difficult for the DG to understand the exact nature of collusion without extensive cooperation from MOL. MOL has also submitted a lot of evidence which has not been relied upon by the DG in the DG Report. MOL has met the standard under Regulation 3(1) of the Lesser Penalty Regulations read with Section 46 of the Act and should be granted maximum reduction in penalty. MOL provided all relevant information in a timely manner, as soon as it became aware of the conduct, in order to assist the DG in its investigation. Unless absolutely required to correct a factual position, MOL has not even objected to any finding of the DG in the Investigation Report.

25. MOL has only relied upon the certified copies of the case records received from the Commission and it is not in receipt of several key case records. Given this, MOL reserves its right to make additional submissions to supplement the response to the Investigation Report, if necessary.

26. The '*Respect Rule'* was at the heart of the cartel activities that took place between the car carrier shipping companies and is also a key focus of MOL's lesser penalty application and additional submissions. The Respect Rule worked in a way that each carrier was able to maintain its established position within its main customer accounts. The carriers could also maintain or increase prices by acting

in concert with the other carriers to jointly resist requests for price reductions by the OEMs.

27. NMCC was a company incorporated on the initiative of [redacted], in which MOL had 40% shareholding as of April 2008 (which was increased to 90% by MOL in September 2009). Both MOL and NMCC hence, should be considered as one entity, and MOL's response to the Investigation Report should be taken to have been filed on behalf of both MOL and NMCC. MOL's response should also entitle NMCC, its subsidiary, to all benefits that MOL may get in terms of immunity or reduction in fines in consonance with MOL's priority status.

28. The Investigation Report has identified various employees of MOL liable for the conduct of business by MOL during the period of contravention of the provisions of the Act, under Section 48 of the Act. Amongst these individuals, [redacted], [redacted] and [redacted] are no longer employed with MOL and could not be contacted at the addresses registered with MOL. Further, given that it has been a long time since these officials left the organization, despite trying, they are no longer contactable at the addresses available with MOL. Hence, MOL does not have alternate means to contact such individuals.

29. In line with its decisional practice, the Commission should grant maximum penalty reduction as may be applicable to MOL as well as its individuals, taking into consideration the detailed submissions made by MOL in its response to the DG Report.

30. Submissions of MOL in respect of penalty assessment are elaborated subsequently in this order.

Reply of NMCC/OP-4 and its 3 individuals:

31. NMCC has submitted that the response to Investigation Report filed by MOL should be taken to have been filed on behalf of both MOL and NMCC. It has also separately filed its response to the Investigation Report and largely reiterated the

submissions made by MOL. NMCC, through its submissions, has extensively explained the cartel by providing details of communication with competitors and entering into agreements with them on allocation of customers and on setting freight rates for transportation of vehicles to and from various overseas ports, thereby operating a cartel. NMCC made immense value addition by way of its submissions and extensively assisted the DG in arriving at its conclusions. Unless absolutely required to correct a factual position, NMCC has not objected to the findings of the DG given in the Investigation Report. The common submissions of MOL and NMCC are not being reproduced for brevity.

32. The DG has not found anti-competitive conduct by NMCC in respect of [redacted] contracts and [redacted] contracts. Therefore, NMCC has only addressed the DG's findings with respect to [redacted] contracts, where the DG has found NMCC to be in contravention of the provisions of the Act.

33. In its lesser penalty application and other response(s), NMCC has admitted to and provided evidence with respect to: (i) communication with NYK Line, K-Line and MOL for entering into informal arrangements in relation to the car carrier business between the years 2009 and 2011, for certain routes originating in India; and (ii) agreement on setting freight rates for transportation of vehicles to and from certain ports in India for tenders floated by [redacted], thereby operating a cartel.

V. Analysis and findings of the Commission

34. The Commission has perused the applications seeking lesser penalty filed by NYK Line, MOL and NMCC under Section 46 of the Act, the Investigation Report submitted by the DG including the evidence collected by the DG, the suggestions/objections to the Investigation Report filed by the parties and heard the oral arguments addressed by the respective learned counsel(s)/senior counsel(s) representing the parties. The Commission has also considered the written submissions made by the parties after the oral hearing.

Preliminary Issues

35. At the outset, the Commission notes that some of the OPs have raised certain preliminary issues in their written submissions as well as during oral hearing. Before proceeding to analyse the allegations on merits, the Commission would firstly deal with such preliminary issues.

36. K-Line has averred that all the routes investigated by the DG in relation to K-Line for the alleged co-ordination are outbound, and therefore, if at all any AAEC would have taken place, it would be within the territorial jurisdiction of other countries and not in India. It has been asserted that the jurisdiction of the Commission only extends to markets within the territorial jurisdiction of India and in relation to acts which may have an AAEC in any relevant market in India. In this regard, the arguments put forth by K-Line are as follows:

36.1. Section 32 of the Act empowers the Commission to exercise extra-territorial jurisdiction in cases where any alleged anti-competitive activity is effected or causes an AAEC in a relevant market in India. While determining the AAEC caused by any alleged conduct in India, the Act also expressly exempts from its purview such alleged conduct or alleged cartelisation, which is in relation to the export of goods/services under Section 3(5) of the Act.

36.2. In terms of the very scheme of the Act itself, there cannot be any AAEC in India due to the alleged cartelisation, as all the cargo of the OPs is outbound and being catered to consumers outside India. The DG Report has failed to recognise that the OPs were often facilitating transport of vehicles manufactured by an Indian subsidiary of a global OEM, such as [redacted], [redacted] or [redacted] to a subsidiary of [redacted] in [redacted], or subsidiary of [redacted] or [redacted] in [redacted] or [redacted]. As such, these were very much intra-company transfers of completely built-up units **('CBU')** of cars (*i.e.,* effectively outbound intra company sales) within global OEMs, wherein the OEMs

themselves have repeatedly informed the DG during the course of the investigation that price wasn't the primary driver in the process of selection of the OPs for routes originating in India.

36.3. The present case *(i.e.,* the provision of PCC services for outbound routes mentioned above) can at best be considered to be pertaining to the 'export market', which is exempted from the application of Section 3 of the Act, under Section 3(5) of the Act.

36.4. In the interest of comity between competition authorities worldwide, it would be expedient and correct for the Commission to conclude the present investigation, given that appropriate orders have already been passed in other affected jurisdictions pertaining to the routes under investigation. The scheme of the Act, in effect, acknowledges that they are subject to the jurisdiction of competition or regulatory authorities in such countries where the said goods are being imported (Section 3(5) of the Act). Decisions have been reached in other competition jurisdictions in relation to the very same conduct and allegations against K-Line, in [redacted] and [redacted], the only routes which concern K-Line in the DG Report.

36.5. Given that India was neither the origin nor the destination for K-Line's PCCs in any of the [redacted] routes that have been investigated by the DG, and since the CBU of cars only 'passed through' India as part of global supply chains, there was, at no point, any effect, let alone an AAEC, caused in the Indian territory. India, as a part of global supply chains for OEMs, was simply a *de facto* origin, whereas [redacted] was the *de jure* origin in such supply chains. Accordingly, for all intents and purposes, the activities of the OPs were affecting global OEMs situated in [redacted]. These global OEMs did not suffer any competitive harm within India and such pass-through effects have already resulted in appropriate orders in other jurisdictions.

36.6. No AAEC has been caused on (a) the ultimate consumers in India as the ultimate consumer was situated outside India; or (b) the global OEMs and their subsidiaries in India, as the pass-through effect of even the alleged

cartel in India was effectively borne by the subsidiaries of the global OEMs in the concerned destination country situated in [redacted] or [redacted].

36.7. The DG has committed a blatant error in assessing the geographic impact of the alleged cartel 'across countries'. Therefore, it is evident that, by loosely and summarily assessing the effect in "*the market for the provision of services for transportation of vehicles across countries*," the DG has acted beyond the mandate of the Act in a prejudicial manner.

36.8. The Commission, in its decision in *Case No. 76 of 2012* titled *Shri Nirmal Kumar Manshani vs. M/s Ruchi Soya Industries Ltd. and Others* **('Ruchi Soya Case')**, took into account the '*effect'* in a wholesome manner. In this instance, where the majority of a commodity, which was the subject of the alleged anti-competitive agreement, was exported out of India, the Commission concluded that lack of AAEC in India alone resulted in the parties not being in contravention of the provisions of the Act.

36.9. In the present case, the OPs are ultimately servicing the global OEMs for outbound CBU of cars once they have been manufactured in India and transported for sale by a foreign subsidiary of a global OEM to a foreign customer. Based on the above, no valid theory of harm in India exists nor has it been established in Investigation Report.

36.10. Any impact of the alleged anti-competitive behaviour was faced by the parent entities of the global OEMs or, in the very least, the importing subsidiaries of the global OEMs, which are demonstrably located outside India, and hence, the allegedly impacted markets were territorially situated outside of India.

36.11. K-Line's submissions in other jurisdictions should not prejudice proceedings before the Commission. K-Line has not caused AAEC in India, while it may have contravened competition laws outside of India. The decisions of other jurisdictions in relation to this cartel make it clear that the violations are case and country specific.

37. In regard to the above stated contentions of K-Line, the opinion of the Commission is as follows:

37.1. K-Line has sought protection under Section 3(5) of the Act. For the ease of reference, the relevant portion of Section 3(5) is reproduced below:

> "*Nothing contained in this section shall restrict—*
>
> *(i) ...*
>
> *(ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export*."
>
> (Emphasis supplied)

37.2. In this regard, at the outset, it is observed that the aforesaid provision does not oust the applicability of the provisions of Section 3 of the Act as it merely declares that nothing contained in Section 3 shall restrict the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export. Furthermore, it is self-evident that the limited protection granted thereunder, is available only to a specified category of service providers *i.e.*, "exporters" of goods, which is clearly reflected in the phrase "right of any person to export goods from India". In the present matter, the Opposite Parties are not the exporters in terms of Section 3(5)(ii) of the Act; instead, they are providing maritime transport services to OEMs who are actually the exporters. Merely because the end product *i.e.*, the vehicles manufactured by these OEMs, in India, were being exported out of India, it would not accord any protection to the anti-competitive agreement entered into by the Opposite Parties. Acceding to the plea raised by K-Line would render the entire scheme of the Act redundant in respect of cartels entered into by the parties for supply of any input goods/ services, where the ultimate product is being exported out of the country. This would not only be an absurd proposition but agreeing to

such interpretation would also make the country's exports as well as India as a manufacturing hub, uncompetitive. This would also have a negative impact on the "economic development" of the country, which is one of the criteria laid down in under Section 19(3)(f) of the Act for determining whether an agreement has an appreciable adverse effect on competition under Section 3 of the Act has an AAEC in India. Therefore, the plea of K-Line to invoke the purported exemption provided to the export cartels under Section 3(5)(ii) of the Act, in the present matter, is thoroughly misconceived, and thus, rejected.

37.3. It has also been averred that K-Line has not caused AAEC in India, as the 'ultimate consumer' was located outside India. In this regard, it is important to note the definition of 'consumer' as laid down under the Act. The relevant extract of Section 2(f) is as follows:

> *"consumer" means any person who—*
>
> *(i) ...*
>
> *(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;*
>
> (Emphasis supplied)

It is clear from the above provision that the Act makes no distinction between an 'ultimate consumer' and an 'intermediate consumer' *i.e.*, where the goods/services are used as an input in the value chain. In the present matter, the OEMs with manufacturing bases in India availed the services of the OPs for maritime transport of vehicles manufactured by them in India to their overseas markets. Therefore, the OEMs located in India would constitute 'consumer' in terms of Section 2(f) of the Act and collusion between the OPs to fix the price, allocate markets, limit supply, collusive

bidding, *etc.* is bound to have an impact on the said OEMs in India. Accordingly, the said plea of K-Line also stands rejected.

37.4. K-Line has also averred that appropriate orders have already been passed in other affected jurisdictions pertaining to the routes which are under investigation in the present matter. Therefore, in the interest of comity between competition authorities worldwide, it would be expedient and correct for the Commission to conclude the present investigation. In this regard, the Commission notes that the mere fact that other competition authorities have already examined and passed appropriate orders on the alleged conduct, may not be of much consequence in the present matter. If the conduct of the parties is found to be violative of the provisions of the Competition Act in India, the same needs to be examined as per the *extant* statutory framework. Accordingly, the said plea of K-Line is also misplaced, and accordingly, rejected.

38. MOL and NMCC, in their written suggestions/objections to the Investigation Report, have submitted that they have only relied on the certified copies of the case records received from the Commission and they are not in receipt of several key case records. Given this, they reserve their right to make additional submissions to supplement the response filed on the Investigation Report, as necessary.

39. In this regard, it is noted that similar plea was made by MOL and NMCC earlier also and the same was duly considered and disposed of by the Commission *vide* its orders dated 04.05.2021 and 22.06.2021. Relevant extracts from the order of the Commission dated 22.06.2021 are as under:

> *"6. It is also noted that counsel of OP-3 and OP-4 in separate letters dated 07.06.2021 have reiterated their earlier submissions that they are yet to receive the entire set of un-redacted versions of the case record. It has also been inter alia submitted that Japan is currently grappling with the fourth wave of COVID-19 and emergencies have been announced in nine prefectures of the country, including Tokyo. These OPs have further*

claimed that it has made it impossible for them to exhaustively review the contents of the Case Records or provide additional supporting documents to support their stance. Accordingly, it has been submitted that OP-3 and OP-4 reserve right to make supplementary submissions based on any additional documents or discoveries (as applicable), once the situation of COVID-19 abates in India and Japan.

7. The Commission has already considered the requests made by these OPs related to allowing access to case records through email/DVD/post to the members of the confidentiality ring and vide its order dated 04.05.2021 decided that the same cannot be acceded to as the records can be inspected in the manner available and parties are advised to inspect and obtain certified copies, if so required, accordingly. Now, the restriction imposed by the local authorities due to surge in COVID-19 cases, have also been eased and therefore, the parties are once again advised to depute any member of the Confidentiality Ring to collect the requisite documents, if so desired, and the Commission shall proceed with the final hearing in the matter as proposed in this order. No further requests in this regard shall be entertained by the Commission."

40. Thus, in the view of the Commission, MOL and NMCC have been given sufficient opportunity to inspect the case records of the matter and obtain certified copies of all documents which form part of the case records. However, MOL and NMCC have chosen to skip the opportunity for reasons best known to them. The statutory proceedings cannot be held up for non-action of the party under investigation. In any event, while examining the conduct of the parties under inquiry, the Commission has confined itself to the Investigation Report, the documents enclosed therewith (copies thereof were duly supplied to OPs) and the submissions of the OPs made thereon. Accordingly, the Commission finds no merit in the contentions raised by MOL and NMCC and the same are thus, rejected.

41. K-Line has also submitted that it reserves its rights to file additional and supplemental submissions post receipt of complete confidential case records of the matter and any other submissions made by the OPs in the matter.

42. In this regard also, for the reasons already adumbrated *supra*, the Commission fails to understand the basis of such submission as the Commission has granted full access to even the confidential case records to all parties and the parties were at full liberty to obtain copies of the case records, if so desired. In this backdrop, reserving such a liberty by any party is completely unwarranted and baseless.

43. MOL and NMCC have also made detailed submissions in relation to the parent-subsidiary relationship between MOL and NMCC. It has been, *inter alia*, averred that the evidence adduced, and arguments put forth by MOL should be considered as being made by both MOL and NMCC jointly. It has also been prayed that the response filed by MOL to the investigation report should also entitle NMCC, being its subsidiary, to all the benefits that MOL may receive in terms of immunity or reduction in fine in consonance with MOL's priority status. NMCC has also reiterated similar arguments in its separate written submissions. These averments of MOL and NMCC have been considered and examined by the Commission subsequently in the present order.

Analysis of the allegations on merit

44. Having dealt with the above preliminary issues, the Commission now proceeds to examine whether the OPs have violated the provisions of Section 3 of the Act in respect of provision of maritime transport services to any OEM, [redacted] and/or [redacted].

[redacted] Contract of [redacted]

45. In [redacted] requested a quote on the trade from [redacted] to [redacted] route from NYK Line, MOL and K-Line. The DG has noted that [redacted] does not undertake tendering process for finalisation of the PCC for transportation of cars. For this purpose, multiple factors which include freight price, services of existing OPs, *etc*., help [redacted] decide on a PCC or a combination thereof. For the selection of PCC on a particular route, [redacted] ('[redacted]'), a subsidiary of [redacted], studies the quotations given and sends the

same to [redacted] to take a final decision. The DG has found that, in the process, NYK Line colluded with the competing international shipping lines in the PCC vessels *namely* K-Line and MOL. The Commission has carefully perused the evidence gathered by the DG in this regard along with the submissions of the OPs, and the same is discussed in the following paragraphs.

46. It has been found by the DG that NYK Line was in discussion with [redacted] of K-Line for joint service offering as well as freight rates for [redacted] contract of [redacted]. The DG has found that by offering joint services to [redacted] for the contract of [redacted] and by discussing prices with each other, NYK Line and K-Line have contravened the provisions of Section 3(3)(a) and 3(3)(d) read with Section 3(1) of the Act.

47. In this regard, it is, at the outset, noted that NYK Line is in agreement with such finding of the DG. As far as K-Line is concerned, the following relevant excerpts from the deposition of [redacted] are noted:

> *"**Q8. Did you have any discussions with your competing PCCs with reference to India and [redacted]?***
> *Ans: Yes, I did.*
>
> ***Q9. Name the person whom you interacted with and also elaborate the exact discussions that you recall you had with this person?***
> *Ans. Regarding NYK as previously mentioned, I was in contact with [redacted] and [redacted].*
> *Regarding [redacted] historically K-Line and NYK have been providing joint roster services on the [redacted] route. The contact was to figure out the possibility of potentially providing similar service to cover India. As part of the service offering from [redacted], even previously there had been contact between K-Line and NYK regarding scheduling of liner timings before.*
>
> ***Q19. So K-Line has no evidence that [redacted] asked it for joint servicing?***
> *Ans. While there is no explicit request from [redacted] for us to provide joint roster servicing, given the scale and frequency of shipping required, we made the offer based on the existing services being offered to [redacted] at that time.*

[redacted] *has no opinion conveyed to us regarding whether one company or more is required. The offer was based on our understanding of the frequency required by* [redacted].

Q25. Were approximate freight rates discussed, directly or indirectly?
Ans. Yes. Some part of the discussion covered the topic of freight. The background being that the two companies already contracted by [redacted] *on the* [redacted] *route so in the context of India some part of the discussion touched upon the freight level that would be feasible.*

Q26. Why were freight rates discussed between competitors?
Ans. Both parties were of the opinion that the level of service that was required by [redacted] *should be maintained even on this route. As part of that, we discussed to the extent what should be the level of conditions to be maintained in order to meet customer requirement. This was to the level of a guideline."*

(Emphasis supplied)

48. From on above, the Commission notes that [redacted] of K-Line has also admitted to being in contact with [redacted] and [redacted] of NYK Line in relation to [redacted] business for exploring the possibility of joint services on the [redacted] route in [redacted], on lines similar as [redacted] route. It is further noted that NYK Line and K-Line, on their own initiative, decided to offer joint servicing to [redacted], and there seems to be no explicit request from [redacted] for the same. Even if assuming that joint services were required considering the frequency of vessel shipments required, in view of the Commission, there was no occasion for the two competitors to discuss the freight rate with each other, as admitted by [redacted] in his deposition. Further, if the OPs were of the view that they cannot handle the business volume of [redacted] individually, they could have communicated the same to [redacted] and let [redacted] decide on how to avail the services from the OPs. However, to avoid competing with each other, these two OPs decided to divide the business amongst themselves. By this *modus operandi*, they secured sufficient business for each of them at prices they wanted.

Competition amongst these OPs would have resulted in competitive prices for [redacted].

49. During the course of the investigation, NYK Line also submitted a set of internal emails, which included an email dated 09.03.2010 from its employee [redacted] to [redacted], another employee of NYK Line. Relevant excerpts from the said e-mail are noted hereunder:

> *"If [redacted] greedily eats [redacted], [redacted] will greedily eat [redacted] ...*
> *The basic stance should be: "If you touch [redacted], we will touch [redacted]"*
> *Regarding this tender, we'll pretend to meddle with [redacted], and make [redacted] say: "Please stop. We'll keep our word to behave on [redacted] front."*

From the above email, the arrangements of 'mutual respect' between NYK Line and MOL is noted. It is discussed how NYK Line would keep the [redacted] contract for [redacted] and in return, refrain from undercutting or competing against MOL's bids for the [redacted] contracts. It was discussed that in case MOL tried to capture [redacted] contracts, NYK Line would retaliate by interfering with MOL's bid for [redacted] contracts. The DG has stated that traditionally, [redacted] is serviced by NYK Line and K-Line jointly, whereas [redacted] is serviced by MOL. Thus, the tenor of the email suggests that market shall continue to be shared in accordance with the existing arrangements. In other words, the e-mail speaks about 'respecting' the business of each other.

50. In this regard, the deposition of [redacted] of NYK Line is also noted. The relevant extracts from the deposition are as follows:

> ***"Q21. In an email dated [redacted], 18.11 on page 230 of your submission dated 5.1.15, [redacted] has written to [redacted] of NYK Line amongst others. Please explain this mail.***
> *Ans. This email is from [redacted] of NYK Line (NYK) to [redacted] of NYK Line (also NYK). As NYK had been approached by [redacted], NYK would show that it is interested in servicing them. NYK*

believed that MOL would ask NYK not to take on the [redacted] business. NYK would then agree to their request after MOL has agreed that they would respect NYK's [redacted] business. …

…

Further, there was a meeting between [redacted] (NYK) and [redacted] of MOL, [redacted] (MOL) to confirm the discussions that [redacted] of NYK Line had with his counterpart at MOL.

Additionally, the last part of the email (point no. 4 on Page 231) indicates that NYK had instructed MOL to stick to discussing only general business details and not try to expand its business during their one on one information exchange meetings with [redacted] which were held with all shipping lines. NYK asked MOL not to propose any new service to [redacted] at that meeting. In exchange, NYK agreed to 'behave' on the [redacted] business and that if MOL did not behave then NYK would go after [redacted] MOL agreed and confirmed that they will only discuss general information at information exchange meetings with [redacted]."

(Emphasis supplied)

From the above, it is evident that [redacted] of NYK Line also accepted that there existed collusion between NYK Line and MOL during [redacted] in the form of 'Respect Rule' *i.e.*, NYK Line and MOL had reached an understanding that each would respect the other's trade route and incumbent status. [redacted] also mentioned a meeting between [redacted] of NYK Line and [redacted] of MOL, which was held in relation to this collusion between NYK Line and MOL.

51. Similar collusion in the form of 'Respect Rule' is also evident between K-Line and MOL from the deposition of [redacted] of K-Line, who happens to be the predecessor and reporting authority of [redacted] till [redacted]. The relevant excerpts from his deposition are as follows:

*"**Q.20 It is learnt that you had discussions on vessel allocation and freight prices from India to [redacted] for [redacted] contract. Please elaborate on the same.***

Ans. As far as I remember the exports of [redacted] from [redacted] to [redacted] started after I had left my position as incharge. There

was no discussion to decide upon anything. However, there were talks. My answer may be very detailed but I would like to add that before [redacted] *Cargo for* [redacted] *I remember there was a tender for* [redacted] *Cargo from* [redacted] *to* [redacted]*. At that time MOL said to K-Line that* [redacted] *Cargo belongs to MOL so we must respect that.* [redacted] *Cargo was mainly being handled by MOL as the carrier globally. I think that is the reason why they requested it. On the other hand, K-Line was the main supplier for* [redacted] *so we requested MOL to respect that.*

Q.21 This route splitting and freight price discussion with competitors in your business is called collusion. Are you aware of this?
Ans. I know it is wrong.

Q.22 Why in that case did you indulge in the same?
Ans. In order to protect our business."

(Emphasis Supplied)

52. MOL has accepted the findings of the DG in respect of its collusion with K-Line. K-Line, on the other hand, in its submissions, attempted to downplay its role in implementing/ accepting the 'Respect Rule' with respect to MOL and submitted that it was competing with legacy carriers of the OEMs. It has been emphasized by K-Line that NYK Line was the primary carrier for [redacted], and K-Line was not independent in its operations to India as it was operating a joint service with NYK Line. K-Line has pointed out to certain statements made by various individuals before the DG in support of its assertions of being a passive player. The Commission, however, is of the view that even though NYK Line was the primary carrier for [redacted], K-Line also decided to accept the primacy of NYK Line in relation to [redacted] business instead of competing independently with NYK Line. Secondly, even if the argument of K-Line is accepted that K-Line would have to follow NYK Line's lead in terms of their existing service offerings due to operational reasons, it is noted that K-Line was still always privy to the collusion between the other OPs, which is also proscribed under the Act. Despite knowledge, it still decided to continue to be a part of such illegal activities. By aligning its commercial activities with those of colluding parties like NYK Line

and MOL, K-Line also became part of the collusion agreement, in violation of the provisions of Section 3(3) of the Act. Such complicity of K-Line in customer and market allocation is bolstered by the fact that K-Line also discussed freight level with its counterparts in NYK Line (as elaborated *supra*) as well as by the deposition of [redacted] of K-Line.

53. It has also been contended by K-Line that price fixing on longer route does not imply price-fixing on the smaller Indian route. The route which concerned [redacted] for the investigation was the route from [redacted] to [redacted] and that the DG Report at various points has attempted to paint [redacted] to [redacted] route as part of a larger route between [redacted] and [redacted] and attempts to conclude that since the OPs were engaging in price-fixing on the larger route in various jurisdictions, the same holds true for the specific route which is the subject of the present investigation as well. It has been further averred by K-Line that freight rates were discussed in a larger context for which K-Line has already admitted in relevant jurisdictions and K-Line did not engage in price fixing in relation to [redacted] to [redacted] route.

54. In this regard, the Commission is of the view that, in light of the deposition of [redacted] of K-Line (extracted *supra*), the said contention of K-Line is thoroughly misconceived. [redacted], in response to Q. 25 and Q. 26, has admitted that freight discussion was in fact specifically in relation to the [redacted]-[redacted] route.

55. K-Line has also contended that the DG Report wrongly infers Guideline Rates fixed for [redacted]-[redacted] route as evidence of price fixing. It has been averred that the so-called Guideline Rates were derived from existing rates and existing customers on the longer route between [redacted] and [redacted] and served only as a reference.

56. The Commission, however, is of the view that even assuming that the discussion between the OPs with respect to freight served as a reference, it is beyond comprehension as to what was the need to discuss even reference levels between competitors. Such discussions could have been between the procurer *i.e.,* [redacted] and the concerned OP and not between the OPs themselves. Therefore, such contention of K-Line is also dismissed. There is no occasion for competitors to discuss and share commercially sensitive information with each other. Such arrangements are clearly proscribed under the extant provisions of Section 3(3) read with Section 3(1) of the Act.

57. Further, it is also of no consequence that [redacted] subsequently negotiated rates and brought down the freight rates for the [redacted] route, even below the supposed Guideline Rates. In the view of the Commission, once the OPs have distorted the price discovery process by colluding with each other, any effort by the procurer to further negotiate the price is not likely to achieve the same competitive freight rates that would have been discovered under competitive conditions.

58. Therefore, from the above, it is evident that there was an agreement/meeting of minds between the OPs NYK Line, K-Line and MOL with regard to retaining/securing the business from the respective OEMs and not to compete with each other. Such conduct of sharing of business by these three OPs who are engaged in similar trade of providing maritime transport services is presumed to have an AAEC within India unless rebutted. It is noted that NYK Line and MOL have not objected to such AAEC, and K-Line has been unable to rebut the same. Thus, such conduct of NYK Line, K-Line and MOL is found by the Commission to be in contravention of the provisions of Section 3(3)(c) read with Section 3(1) of the Act. In addition, NYK Line and K-Line, by discussing freight rate as well as *suo motu* deciding to allocate customer/routes, are also found to have directly/indirectly determined price, which agreement is also presumed to have an AAEC in India unless rebutted. It is noted that NYK Line has not objected to

such AAEC, and K-Line has been unable to rebut the same. Thus, such conduct of NYK Line and K-Line is also held by the Commission to be in contravention of the provisions of Section 3(3)(a) and 3(3)(d) read with Section 3(1) of the Act.

59. The common arguments made by K-Line in relation to AAEC have been examined and addressed by the Commission subsequently in this order.

[redacted] Contract of 2012

60. During the course of the investigation, the DG also found that in [redacted], there were extensive meetings and discussions between NYK Line, K-Line and MOL for the [redacted] tender of [redacted] for [redacted] route in relation to [redacted] business. The DG concluded that collusion between these three OPs in regard to [redacted] contract, is in contravention of the provisions of Section 3(3)(a), 3(3)(c) and Section 3(3)(d) of the Act read with Section 3(1) of the Act.

61. In this regard, the Commission has carefully perused the evidence gathered by the DG along with submissions of the OPs, and the same is discussed in the following paragraphs.

62. MOL submitted a memo dated [redacted] prepared by its employee [redacted] which is with reference to [redacted] tender under consideration. Relevant excerpts of this memo are reproduced hereunder:

> *"[redacted] new model, in light of MOL's activities at [redacted], complete respect is not possible. If the proposed share among the three (NYK + Kline + MOL) companies is not acceptable, MOL should do independently."*
> *3) Other companies situations*
> *Managers at NYK have already asked us to respect them because their [redacted] shipments are bound for [redacted] (they have contracts with [redacted] for cargo from [redacted]), but we just told them that we cannot give a prompt reply and we will sort things internally.*
> *4) Response to other companies/aims of compromise*
> *As shown by the enquiries ... based on the above perception that shipments for [redacted] from [redacted] to [redacted] are the same as new cargo from [redacted] and they are transplants.*

> • *Cargo share among the three companies:*
> *The three companies (NYK + K-Line + MOL) will confirm the minimum freight rate level. Each company will make a bid based on its own service. If, as a result, no order is given to the companies (it is natural that two companies will receive the order in light of the number of vehicles), the three companies will relet cargo that the shipping share will be adjusted to be almost equal ...*
> *[Seal-[redacted]]*
> *(2)... K-Line is not in a position where it can speak independently, and it should basically follow NYK. However, NYK's service is not as good, but if [redacted] is its customer, it will probably start a new service.*
> *(3) ...*
> *(4) While we assert that NYK and K-Line should respect MOL for [redacted], we will explain that we will compete on service content, not on rates, and leave the selection of shipping companies up to [redacted]. After receiving an order, we will at the best tell them that we will accept an adjustment. In consequence, I ([redacted]) think we (all the readers of this memorandum) need to act by proactively aiming for the order to be given to MOL and other company."*
>
> (Emphasis supplied)

As per the contents of the above memo, for the [redacted] business, MOL proposed to split the business between itself and NYK Line and K-Line instead of 'completely respecting' NYK Line and K-Line. It was also proposed that in case the route could not be split amongst the three OPs, MOL wanted to function independently of the other two OPs. Further, the three OPs would confirm the minimum freight rate level and would continue to bid based on their services. [redacted] also mentions that NYK and K-Line should respect MOL for [redacted] and that MOL would compete on service content only and not on rates. However, if NYK Line and K-Line procured the contract after a successful bidding for it, MOL wanted them to split the business amongst all three OPs equally.

63. MOL also submitted an Affidavit of [redacted] dated 17.03.2017, wherein he explained the contents of the memo under reference. Based on his calendar and diary notes, [redacted] confirmed a meeting with

[redacted] and [redacted] of K-Line and [redacted] of NYK Line on [redacted] at the MOL office. He confirmed that the discussions with NYK Line and K-Line continued for another three months, and by the end of [redacted], MOL finally agreed not to participate or offer higher prices for [redacted] contract as a form of respect to NYK Line and K-Line.

64. The investigation also recorded the statement of [redacted], Associate General Manager of MOL. During his deposition, he confirmed the existence of 'Respect Rule' between NYK Line, K-Line and MOL. He confirmed the existence of alignment between NYK Line, K-Line and MOL for the [redacted] contract. He explained that the other OPs refrained from actively competing or quoting a rate lower than the incumbent OP. If an OEM contacted all the OPs, they would all jointly discuss their strategy. In his statement, he specifically admitted to the following:

> "*As Associate General Manager, I was one of the officers whose approval* was *required. I commented that there should be a sharing of [redacted] business from [redacted] to [redacted] ([redacted]) amongst NYK, K-Line and MOL from [redacted] onwards. However, MOL should do it independently if such arrangement* was *not acceptable to other PCCs. This was in response to an enquiry from [redacted] for shipping [redacted] cars."*
>
> (Emphasis supplied)

65. Regarding the *modus operandi* of cartelisation, he stated as under:

> "*As a general matter there is respect for the PCC which has already been carrying the cargo. The carriers do not want to see the rates go down and that is why they respect the incumbent PCC by responding 'no service' or by indicating a higher price* than *the incumbent. In relation to new business, we look at the OEM, loading and discharge ports, to determine who should be given preference/ respect for that contract.*
> *If an OEM has contacted more than one PCC, we get in touch together and decide jointly depending on the volume of the cargo, frequency required etc. Generally, it is the Managers who do the talking with their counterparts. If it is from [redacted] to [redacted] it would be [redacted] in [redacted] on behalf of MOL."*
>
> (Emphasis Supplied)

66. The memo of [redacted], the Affidavit filed by [redacted], as well as the submissions of MOL in this regard, identified [redacted] of K-Line as the person with whom discussions were held. Accordingly, the investigation posed several questions to [redacted] of K-Line in this regard, during his deposition. Relevant excerpts from his deposition are as follows:

> *"Our company's stance has been that given our previous experience in providing services to [redacted] along the [redacted] and [redacted] route, we were keen to provide services if [redacted] were to begin operations of transporting vehicles from India. We have expressed this intention to MOL.*
>
> ***Q49. I repeat the question - Managers at NYK have already asked us to respect them because their [redacted] shipments are bound for [redacted] … KL services of two shipments … [redacted] cargo bound for [redacted]. What is the respect that is being talked of?***
> *Ans. This is at a very early stage, with no discussions on rate or nature of services. The word respect here alludes to respecting our intention to expand our relationship with [redacted] in its transportation need from India.*
>
> ***Q51. In other words respecting rates - Is it a factor of respect.***
> *Ans. In a general perspective, respect can include many things such as taking into account rates or nature of service. I want to clarify that this interaction occurred at the very initial stage, and included our request to respect our intention towards [redacted] only.*
>
> ***Q52. What does that mean?***
> *Ans. I reiterate. We have a long history of providing services to [redacted]. At this initial stage, the communication to MOL was solely pertaining to respecting the long years of our relationship and our intention to provide further services.*
>
> ***Q53. How would you show respect to MOL in that case?***
> *Ans. We communicated to MOL to respect our intention.*
>
> ***Q54. Intention for what?***
> *Ans. Our intention to provide shipping services to [redacted].*

Q55. So in effect K-Line communicated to MOL its intention to provide shipping services to [redacted]?
Ans. Yes"

(Emphasis supplied)

From the above, it is noted that [redacted] of K-Line, in his deposition, admitted that K-Line communicated to MOL that it is keen to provide services to [redacted] if it were to begin operations of transporting vehicles from India. Though [redacted] downplayed the importance of such communication with MOL, however, when the same is seen in the context of the 'Respect Rule' prevailing in the industry, the statement of [redacted] (extracted *supra*), the memo of [redacted] and his Affidavit and the reply of MOL, it is clearly established that K-Line expected MOL to refrain from undercutting K-Line in its business relationship with [redacted], which was ultimately the result.

67. The DG also deposed [redacted], General Manager of car carrier business group of K-Line who had oversight over [redacted], [redacted] route during [redacted] to [redacted]. Both managers of K-Line for the above-stated respective routes *namely* [redacted], and [redacted], used to report to him, as informed by him to the investigation through his Affidavit. In his Affidavit dated 23.08.2017, [redacted] accepted that he had communications with competitors regarding route from [redacted] to [redacted], where he discussed with [redacted] of NYK Line, the joint service of NYK and K-Line to be offered to [redacted] and the possibility of excluding MOL from this trade. He also stated that he had contacts with [redacted] of MOL and requested him to respect NYK and K-Line regarding this trade. Relevant excerpts from the Affidavit of [redacted] in this regard, are as follows:

"Q12. Other PCCs are stating that K-Line has colluded with them to obtain shipping contracts from [redacted] and [redacted]. Please explain.

Ans. I do not remember that I interacted with competitors regarding the contract with [redacted] for the India related Routes
With respect to [redacted] for the India-related routes, I remember that I had communication with competitors regarding the route from [redacted] to [redacted] of NYK and I discussed the joint service of NYK and K-Line to be offered to [redacted], and the possibility of excluding MOL from this trade. I also had contacts with [redacted] of MOL and requested him to respect NYK and K-Line regarding this trade. I remember that such communication with [redacted] of MOL was conducted by phone over a couple of conversation from the middle of [redacted] I did not discuss freight rates with them.
Other than that, I do not recall I had a contact with competitors with respect to India-related Routes."

(Emphasis Supplied)

68. The defense taken by K-Line which, *inter alia,* includes that it was competing with legacy carriers of OEMs or that it would have to follow NYK's lead in terms of their existing service offerings due to operational reasons, has already been negated by the Commission earlier, and the same is not being repeated here for brevity.

69. Similar corroboration is also found during investigation from the submissions of NYK Line. It has been submitted that "*Before the award was made by [redacted] of NYK Line was informed by [redacted] that MOL was likely to win the bid. [redacted] business was important for OP1 NYK Line, and it could not afford to lose the business. Hence, [redacted] and [redacted] (both NYK official) verbally asked [redacted], General Manager of MOL not to submit bid. MOL agreed to offer a higher rate than that of NYK Line*". As already stated, NYK Line is in agreement with the findings of the DG in relation to [redacted] business.

70. The memo dated [redacted] of [redacted] of MOL was followed by another memo dated [redacted] which contains a description of events in continuation of the earlier memo. This memo provided details about the

discussions that took place between the OPs on the freight rate with respect to the [redacted] contract. [redacted] submitted that the OPs co-ordinated the price level (around $[redacted]/cbm) to be submitted to [redacted] at the time of the first offer. Relevant extracts of the memo dated [redacted] are replicated below:

> *"Ultimately, [we decided that]* we *will [set rates at] around $[redacted] (that is, between $[redacted] and $[redacted]) without comparing and adjusting [our rates] in detail (as a unified rate level and not the higher limited price given to MOL by NYK).*
> *We also considered using the [redacted] rates as a benchmark and making an offer at an even lower level, but we will offer that level of price first. [We] will lower our rates as appropriate and we are aiming to conclude [a contract] at around $[redacted]."*

71. The contents of this memo were also corroborated by the Affidavit of [redacted] dated 17.03.2017.

72. [redacted] of K-Line, in his deposition, also admitted discussions on the freight level (though as a Guideline). Relevant extracts from the statement of [redacted] are as follows:

> *"Q33. What was the guideline level?*
> *Ans. Since we are already contracted with [redacted] on the [redacted] and [redacted] route, those freight level form a reference point for us for potential India operation.*
> *MOL is contracted by [redacted] for the India [redacted] route. So the content of the discussion was that the overall level of freight (guideline) should be in accordance with the existing port to port service being offered by MOL to [redacted] and by us to [redacted]. The guideline figure was not an exact one but approximately $[redacted]/cbm. The $[redacted]/cbm figure is predominantly based on MOL's shipment figure for [redacted].*
> *I would like to reiterate here that this was only a guideline figure with no obligation or commitment from either side. We do not know the final figure that may have been decided by MOL."*
>
> (Emphasis supplied)

73. As is evident from the above, [redacted], in his deposition, admitted discussions on freight levels. However, he claimed them to be a guideline and not the final

figure. Even assuming that final figure was not discussed or fixed, the Commission is of the view that discussion over a Guideline Rate would also vitiate the entire price discovery process, which would have entailed following a competitive process. The fixation of a Guideline Rate amongst competitors would set a higher benchmark for the ultimate price to be determined for the provision of services.

74. During the course of the investigation, other evidence of interaction and consultation between representatives of NYK Line and K-Line were also gathered, which had been in relation to the provision of services on [redacted] route for [redacted]. In this regard, NYK Line submitted a number of internal e-mails which indicate collusion between the OPs. The DG has noted that NYK Line and K-Line intended to offer a joint service to [redacted], and accordingly, [redacted], Manager of NYK Line, on several occasions exchanged information with [redacted], Manager of K-Line.

75. Further, the DG noted that *vide* an email dated [redacted] of NYK Line appraised [redacted] of NYK Line that for the India-[redacted] contract for [redacted], NYK Line is considering a joint service with K-Line, and both are continuing to consult each other on the best services. It is further stated in the email that three plans as scheduling options for PCCs were discussed with K-Line. The quote on freight price for [redacted] (or [redacted]) to [redacted] was decided to be between $[redacted]-$[redacted]/cbm. During the course of the investigation, NYK Line also submitted the [redacted] CBU freight rate for the period [redacted] to [redacted], as consolidated by NYK Line in the form of a chart. It is noted from the same that the freight rates were indeed between $[redacted]/cbm to $[redacted]/cbm.

76. The investigation also confronted [redacted], Team Manager of K-Line, with the afore-mentioned email dated [redacted] during recording of his

statement. In his deposition, he accepted that there were consultations with NYK Line, though not for business in India, as the volume of trade was small. He also accepted that "*It was a common practice to exchange customer information with competitors*."

77. [redacted] of K-Line, during his deposition, also stated the nature of discussions undertaken whenever competitors met each other. It included discussion about ship space availability, frequency of sailing, OEM-wise volume of cargo being handled by each shipping lines and trends in freight rate. On being enquired as to what he meant by "*trends in freight*", he stated that by asking "*trends in freight*", he used to enquire whether negotiation about freight increase is going well with the OEMs or whether they were also able to apply increased bunker prices to the freight. When asked whether enquiring about "*trends in freight*" would also cover exchange of freight prices, he answered in affirmative. He also stated that during the course of exchanging customer information, as was the industry practice, even with regard to India, they might have exchanged information, though he did not believe it to be collusion.

78. Some of the other emails relied upon by the DG in regard to collusion between NYK Line and K-Line for [redacted] contract, are as follows:

a. E-mail dated [redacted] at [redacted] pm sent by [redacted] of NYK Line to [redacted] and [redacted] of NYK Line wherein it was stated that *"...We are making adjustments with KL and in order to solidify our foothold, we must ask you to kindly wait a while for our response"*.

b. E-mail dated [redacted] at [redacted] pm sent by [redacted] of NYK Line to [redacted] of NYK Line, relevant part of which states that NYK Line would conduct sales to [redacted] ([redacted] feeder) and would also make proposals to K-Line (or MOL) as port users. The DG has noted from this email that the plan of higher ups in NYK Line was to rope in K-Line for presenting joint proposal to

[redacted]. It was also stated by [redacted] of NYK Line that he was going to rush some people in the company so that NYK Line could present the service details and freight price together with the details to [redacted] for [redacted] as a joint proposal with K-Line in May. The DG has found that this was also given effect to by organizing a meeting with K-Line around the end of [redacted], where [redacted] of NYK Line met with [redacted] of K-Line, as is evident from the diary entries of [redacted] of NYK Line.

c. Email dated [redacted] sent by [redacted] of NYK Line to [redacted] of NYK Line, wherein it was mentioned in relation to [redacted] route that "*K-Line thinks as long as MOL is proposing the above service, KL should propose three sails/ month*."

79. In order to garner more information about the matter and the extent of agreement reached during the meetings amongst the three OPs, the investigation also confronted relevant officials of MOL with these e-mails. [redacted] as well [redacted] of MOL corroborated the overall arrangement between NYK Line, K-Line and MOL as indicated by the contents of the e-mails provided by NYK Line.

80. In the view of the Commission, these communications are indicative of the fact that both NYK Line and K-Line, instead of independently competing to provide services to [redacted], decided to offer joint services in relation to the tender for maritime motor vehicle transport for its trade route from [redacted] to [redacted] in [redacted]. By virtue of this arrangement, they secured [redacted] business for both of them. NYK Line agrees with such findings of the DG and K-Line has also accepted offering joint services to [redacted] (as adumbrated *supra*).

81. [redacted] of MOL (as well as [redacted] of MOL), *vide* Affidavit dated 17.03.2017, also gave details about the meeting with

K-Line officials (*i.e.* [redacted] and [redacted] on [redacted] at K-Line's office, and on [redacted], at MOL's office. In addition, [redacted] also mentioned the dinner meeting held on [redacted] with NYK Line official (*i.e.*, [redacted]). [redacted] of MOL was also stated to be present at this meeting. Discussion during such meetings were stated to be centred around the fact that while MOL thought it could offer competitive price for [redacted] business, NYK Line had historically been servicing [redacted] from [redacted] to [redacted] route from the beginning of [redacted] business in [redacted]. NYK Line therefore, claimed that the shipment to [redacted] should belong to NYK Line. As per [redacted], he disagreed, but between [redacted] meeting with NYK Line's officials and date of the internal memo of MOL *i.e.* [redacted], someone senior at NYK Line strongly complained to [redacted] of MOL, and MOL ultimately decided to pay respect to NYK Line and K-Line and quoted a higher price.

82. The investigation confronted the factum of above-stated meetings to the concerned official of K-Line *i.e.,* [redacted] during his deposition. The relevant questions and responses of [redacted] in this regard are reproduced hereunder:

> *"**Q27. Did you attend any meeting with your competitors in connection with [redacted] tender/RFQ for [redacted] route in [redacted] and/or [redacted]?***
> *Ans. I do not remember the exact month. However, I do recall meeting with NYK and MOL during [redacted] Regarding NYK my response is from Ans. No. 20 to 26. In addition to [redacted] his Manager, [redacted] and [redacted] were also present.*
>
> *Regarding MOL, the company was interested in providing services to [redacted]. However, as stated before, it is difficult for any one company to be able to provide the level of frequency alone. The discussion with MOL* was *similarly along the lines of the possibility of a joint roster servicing.*
>
> ***Q28. Were freight rates discussed?***
> *Ans. The discussions with MOL did not fructify, and* we *made the offer with NYK. However, discussions around the topic of freight were*

discussed to the extent of being guidelines for maintaining appropriate service level.

Q29. Did officials of MOL or you visit each other for discussion on [redacted] contract of [redacted]
Ans. Yes.

Q30. Who participated and where? What were the discussions?
Ans. As far as I can recall, we did have a discussion in which I was present, with MOL being represented by [redacted] and [redacted] The location was MOL office. It was probably in [redacted] and the content of discussion was the possibility of providing joint roster service.
I do not recall discussing freight at the meeting held at the MOL office.

Q31. Do you recall anything else? What was the outcome of this meeting?
Ans. The final result of the meeting was that K-Line ultimately decided not to go ahead with the joint arrangement with MOL.

Q32. Did MOL make any commitment on the pricing they were going to offer for this tender*?*
Ans. The content of discussion did include freight to the extent of an understanding at the guideline level.

Q33. What was the guideline level?
Ans. Since we are already contracted with [redacted] on the [redacted] and [redacted] route, those freight level form a reference point for us for potential India operation.

MOL is contracted by [redacted] for the [redacted] route. So the content of the discussion was that the overall level of freight (guideline) should be in accordance with the existing port to port service being offered by MOL to [redacted] and by us to [redacted]. The guideline figure was not an exact one but approximately $[redacted]/cbm. The $[redacted]/cbm figure is predominantly based on MOL's shipment figure for [redacted].

I would like to reiterate here that this was only a guideline figure with no obligation or commitment from either side. We do not know the final figure that may have been decided by MOL.

Q34. On [redacted] a meeting was held with K-Line officials at [redacted] pm and on [redacted] at [redacted] pm at MOL's office. Were you present at these

meetings?
Ans. I do not recall.

Q35. Since you do recall meetings in [redacted] this could be one of them. Please confirm.
Ans. I cannot say anything. If the MOL representative at the above meetings is confirmed to be either [redacted] or [redacted], then in that case there is a possibility that I may have been the K-Line official in Question.

As already stated above, the meeting dated [redacted] was attended by that [redacted] and [redacted] on behalf of MOL.

Q36. What was discussed with NYK Line with respect to [redacted] business for the [redacted] to [redacted] route between [redacted] to [redacted]?
Ans. The content of the meeting was covered in Ans. No. 20 to 26.

Q37. So you have confirmed meetings in [redacted] and [redacted] between your company and NYK and MOL?
Ans. Yes , that is correct.

Q38. [redacted] in an email dated [redacted] at [redacted] hrs. has mentioned that you informed him that [redacted] of MOL and [redacted] of MOL had contacted you to jointly service the [redacted] business. Is that correct?
Ans. I do not recall the date but I can confirm that MOL contacted us regarding potential joint service.

Q42. I am now showing you Annexure-11 from File-IX submitted by NYK which has both the Japanese and the English translation of this meeting which you are unable to recall. Please see and comment. Also explain what is the 6/17 deadline mentioned in the English version.
Ans. I can recall that as mentioned in the Japanese version, MOL approached K-Line and MOL was interested in the [redacted] India business. This is in line with my previous comment. I can only comment on the four lines on the [redacted] business. The other contents are not pertaining to us.
I do not recall what is the 6/17 deadline."

(Emphasis supplied)

83. It is noted from [redacted] deposition above that he accepted the meetings between NYK Line and MOL during [redacted]. He also accepted that K-Line also

discussed offering joint services to [redacted] both with NYK Line and MOL and finally decided to go ahead with NYK Line. He also accepted discussing freight guidelines with the other OPs. The freight rate mentioned by [redacted] matches the freight rate mentioned by [redacted] of MOL in his Affidavit. The details about the meeting as well as the discussions therein have been corroborated by [redacted], [redacted] as well as [redacted] of MOL during their depositions. [redacted] has also added that "… *This meeting was held after the first offers were made in* [redacted] *by NYK, K-Line and MOL to* [redacted] *Discussion had been held prior to the second offer in* [redacted] *so that near about the same rates were offered* ...".

84. [redacted] of MOL who attended the dinner meeting with NYK Line on [redacted] alongwith [redacted] of MOL, *vide* his Affidavit dated [redacted], has also corroborated these meetings and discussions therein. He has stated that during the meeting on [redacted], NYK Line mentioned that there was an agreement among the seniors at MOL and NYK Line to allocate [redacted] business to MOL and [redacted] business (bound for [redacted]) to NYK Line.

85. [redacted] of NYK Line, who attended the dinner meeting with MOL officials on [redacted], during his deposition, has also described the contents of the meeting. The description of the meeting as given by [redacted] corroborates the description as given by [redacted] of MOL. The relevant question and [redacted] response thereto are reproduced below:

> *"**Q9. What all can you recall of the meetings held with competitors during the period of cartelization?***
> *Ans. I do not have any immediate record other than what has already been submitted with your office but I will give you details of the meetings based on my memory.*
>
> *Generally NYK Line has had close contact with K-Line for the* [redacted] *to* [redacted] *and* [redacted] *routes since we had been providing joint*

services for [redacted] previously. Subsequently, an opportunity to service [redacted] for the [redacted] to [redacted] route came up. Since we *had been jointly servicing [redacted] for other [redacted] ([redacted] [redacted] & [redacted]) to [redacted] ([redacted]) routes, we wanted to also try jointly servicing [redacted] for the [redacted] to [redacted] route.*

For this, I would like to narrate one specific meeting of [redacted] where [redacted] of K-Line came on his own initiative to meet us at the NYK Line HQ. in [redacted]. He informed me that [redacted] and [redacted] of MOL visited him earlier in the day to show interest in jointly servicing [redacted] for the new business. [redacted] wanted to know from us how they should handle this interest of servicing [redacted] from MOL. Traditionally, K-Line and NYK Line had jointly serviced [redacted] and therefore, I informed [redacted] that I would not like MOL to enter into the [redacted] business of transportation of cargo to [redacted] I immediately reported this matter to my superiors ([redacted], [redacted]).

Further, I had a dinner meeting with [redacted] the subsequent day. We inter alia discussed that MOL should not participate in the bid and respect NYK-K-Line. [redacted] however, noted that this was a *new business and that they were not capturing an existing NYK business. I reported this to my superior [redacted]. [redacted] suggested that he would independently speak with MOL and ask them not to bid for this business. Probably he spoke with [redacted] (MOL) who informed NYK Line that they would take part in the bid but not bid lower than NYK."*

From the above, it is noted that K-Line has claimed that NYK Line was the primary carrier for [redacted] and K-Line was not independent for its operations to India as it was operating a joint service and that K-Line was forced to be part of the overall arrangement. However, it is noted that when another OP *i.e.*, MOL approached K-Line for offering services to [redacted], it disclosed all the details of discussions with MOL to NYK Line and inquired as to how to handle the interest expressed by MOL in servicing [redacted]. Such conduct of K-Line establishes clearly that it was very much a part of the collusive activities of the OPs and regularly interacted with other competing OPs to secure the business.

86. As noted earlier, the initial discussion amongst NYK Line, K-Line and MOL in respect of freight rate level was around $[redacted]/cbm. The Affidavit as well as memo

of [redacted] of MOL confirms the same. [redacted], in his Affidavit, has stated that *"NYK Line and K-Line did not want MOL to submit a competitive price; therefore, they requested MOL to price higher. NYK, K-Line and MOL coordinated the price level around $[redacted]/cbm to be submitted to [redacted] at the first offer"*. [redacted] of K-Line also, in his deposition, has accepted discussions with MOL around the same rate (Q.33). As far as NYK Line is concerned, *vide* an internal e-mail dated [redacted], [redacted] of NYK Line appraised [redacted] of NYK Line that for the [redacted] contract of [redacted], NYK Line and K-Line are continuing to consult each other on the best services and the quote on freight price for [redacted] (or [redacted]) to [redacted] was decided to be between $[redacted]-$[redacted]cbm depending upon the scheduling option.

87. From such evidences, it is noted that all the three OPs, in their submissions, have accepted the same freight rate, which establishes discussions between them on the freight rate.

88. It is also noted from an internal memo dated [redacted] of [redacted] that in [redacted] (*i.e.* at the time of first offer to [redacted]), MOL adjusted its freight rates to NYK Line and K-Line's freight rate level. After confirming NYK Line and K-Lines rates at '$[redacted]-$[redacted]', MOL responded with the rate of $[redacted]/cbm for the first offer. In this regard, it is also noted from the [redacted] CBU freight rate for the period [redacted] to [redacted] submitted by NYK Line that NYK Line's first offer was also $[redacted]/cbm.

89. Subsequently, another offer was made by the OPs to [redacted] in [redacted], and as per the internal memo dated [redacted] as well as the Affidavit of [redacted] of MOL, NYK Line and K-Line designated $[redacted]/cbm or higher freight rates assuming three vessels to sail and $[redacted]/cbm or higher freight rates for two vessels sailing. NYK Line and K-Line communicated to [redacted] on [redacted] and also designated the price which MOL should submit to [redacted].

Further, as per the memo dated [redacted] of [redacted], after noting the above-mentioned freight rates of NYK Line and K-Line, MOL decided to offer $[redacted]/cbm for two sailings per month. [redacted], in his Affidavit, also stated that "*I visited* [redacted] *in* [redacted] *on* [redacted] *and submitted the price following the agreement with NYK and K-Line*."

90. It is further noted from the submissions of NYK Line based on [redacted] internal morning sales meeting of [redacted] that "*negotiations with* [redacted] *had reached the final stage. It can be observed from this noting that for the final stage of negotiation NYK Line quoted $[redacted]/ cbm, K-Line $[redacted]/ cbm and MOL $[redacted]/ cbm.*"

91. From the submissions of NYK Line, it is further gathered that "[redacted] *of NYK Line (DGM, in charge of* [redacted] *and* [redacted] *team)* was *informed by* [redacted] *that MOL* was *likely to win the bid. However,* [redacted] *business* was *important for NYK Line and it could not afford to lose the business. Hence,* [redacted] *and* [redacted] *of NYK Line is reported to have contacted* [redacted] *of MOL and instructed not to submit a bid. However, NYK Line is not very sure whether MOL respected its commitment in this regard."*

92. It is further reported that *"following a meeting on* [redacted] *between* [redacted] *and* [redacted] *purchase division, NYK and K-Line reduced the bid price. K-Line brought the freight rate down to $[redacted]/ m3 and NYK Line also reduced the rate to prevent MOL from entering this trade on this route. This reduction in the freight rate* was *noted by* [redacted] *on* [redacted] *and* [redacted] *Further, NYK Line and K-Line agreed to increase the frequency of shipment, and were eventually awarded the bid by* [redacted]*."*

93. The entire sequence of events as narrated above, thus, clearly reflects that the three OPs *namely* NYK Line, K-Line and MOL, were in constant touch with each

other with respect to [redacted] contract of [redacted] and they were frequently sharing sensitive information related to freight rates. The outcome of the entire process also corroborates such conclusion.

94. It is also noted that NYK Line and MOL, being lesser penalty applicants in the matter, have agreed with such findings of the DG. Further, various pleas of K-Line have already been examined by the Commission earlier and held untenable. Same are not being repeated here.

95. In addition to those pleas, K-Line has also averred that the DG Report has ignored considerable evidence on record demonstrating that [redacted] itself was engaged in discussions amongst the OPs in relation to the possibility of providing joint service to [redacted] and at times, even disclosed freight rates of one OP to the other as a bargaining tool to bring them to quote lower rates. In this regard, the Commission notes that firstly, the internal e-mails relied upon by K-Line in support of this assertion are in relation to only the [redacted] tender and not in relation to the [redacted] tender, wherein K-Line, with NYK Line, had decided to offer joint services to [redacted]. As such, such plea raised by K-Line is of no legal consequence whatsoever, as the prohibited act is complete as soon as an anti-competitive agreement is reached and the factum of knowledge of such act imputed to the OEM cannot be used as an *alibi* to escape liability by the cartelists.

96. Secondly, it is also noted that [redacted] of K-Line, in his deposition (as mentioned *supra*), has also specifically stated that there was no explicit request from [redacted] to NYK Line and K-Line to provide joint roster servicing, and further that [redacted] has conveyed no opinion to the two OPs regarding whether one company or more is required. The two OPs had initiated the discussion of their own volition to offer joint services to [redacted] for the [redacted]-[redacted] route. Further, in the view of the Commission, keeping [redacted] in the loop in the emails in relation to joint services is also of no consequence,

specifically keeping in mind that NYK Line and K-Line had already provided joint services for the [redacted] tender of [redacted], for which no evidence has been placed on record to establish that joint services were offered at the instance of [redacted].

97. On the basis of the response filed by [redacted] before the DG, K-Line has also submitted that with respect to [redacted] contract in India, there was no tendering process, and the OPs were approached directly by [redacted]. Further, the carrier of each route was decided by taking into consideration not only the freight rates, but also many other factors such as shipping frequency, shipping volume (space), flexibility of schedule, *etc.* K-Line has further submitted that, therefore, the DG's conclusion that joint servicing was an idea initiated by NYK Line and K-Line is erroneous. K-Line has also averred that when the OEM *i.e.*, [redacted] itself deemed the price to not be the sole factor in determining its service providers, a finding against K-Line on price fixing under Section 3(3)(a) of the Act is plain non-application of mind by the DG.

98. In this regard, the Commission notes that [redacted], in its response, never stated that it approached NYK Line and K-Line for a joint service. Rather, it has been stated by [redacted] that it "*conducted individual negotiations with each PCC on separate occasions"*. It is further noted that [redacted] did not ask the PCCs to co-ordinate and agree on prices that were to be offered for the transportation of vehicles. Rather, [redacted] was negotiating with the OPs to reduce the freight rate, and it merely requested one OP to match the existing rates that were offered to it. Though pricing may not be the sole criteria for [redacted], it was an important one, as admitted by K-Line itself when it stated that "… *subsequent to negotiations,* [redacted] *fixed the price for the* [redacted] *route well below the purported guide level for price*." Further, liability under Section 3(3)(a) of the Act is not dependent on whether price is the sole criteria for choosing a service provider or not.

99. As far as assertions of K-line with respect to absence of a formal tendering process at [redacted] is concerned, it is noted that the presence of a formal tendering process is not a *sine qua non* for establishing a violation under Section 3 of the Act. The procurer may decide to have individual negotiations with the suppliers to arrive at a competitive offering. Mere absence of a formal tender would not grant immunity to the negotiating suppliers from the provisions of Section 3(3)(d) of the Act if they have otherwise colluded. The essence of the provision is to ensure competitive offerings. This may be attained by floating a formal tender or by engaging in negotiations with prospective suppliers. Acceding to the interpretation advanced by K-Line, would render the entire scheme of Section 3(3)(d) of the Act redundant, besides frustrating the very objective of the Act. In any event, the impugned conduct is also being examined under the provisions of Sections 3(3)(a) and (c) of the Act, in addition to the provisions of Section 3(3)(d) of the Act. Resultantly, the said contention of K-Line is also thoroughly misdirected, and therefore, rejected. Further, K-Line has misinterpreted the observations of the Commission in its decisions in *Suo Motu* Case No. 01 of 2016 titled *In Re: Cartelisation in the supply of Anti-Vibration Rubber Products and Automotive Hoses to Automobile Original Equipment Manufacturer* as well as Case No. 42 of 2018 titled *NLC India Limited v. M/s Phoenix Conveyor Belt.* The Commission, in its such decisions, never stated that presence of a formal tendering process is a *sine qua non* for establishing violation under Section 3(3)(d) of the Act.

100. It has been further averred by K-Line that if the OPs had no means to ensure whether the 'guideline' price was actually followed by the other participants or not, it cannot be said that the OPs were indeed in a cartel. In this regard, it is noted that the DG has recorded that the officials of NYK Line were taking regular feedback from [redacted] about the follow-up action undertaken by K-Line in pursuance to the meeting and discussions between NYK Line and K-Line.

101. K-Line has also averred that the DG Report does not, at any stage, investigate whether the guideline pricing was actually implemented by the OPs. Further, the DG refers to the initial discussions between the OPs, where each party attempted to conceal their true intentions to compete, to conclude that there was a violation of Section 3(3)(a) of the Act, which goes against the grain of the decisional practice of the Commission. In this regard, K-Line has relied upon the decision of the Commission in *Suo Motu* Case No. 01 of 2017 titled *In Re: Alleged Cartelization in Flashlights Market in India* ('**Flashlights Case**') to assert that it is an established position that mere sharing of information between competitors does not constitute a cartel and the Commission itself has noted that there has to be an implementation of illegal activities to constitute a violation of Section 3 of the Act.

102. In this regard, at the outset, it is appropriate to highlight the statutory scheme governing the issue under consideration. From a bare reading of the provisions of Section 3 (1) of the Act, it is evident that these provisions not only proscribe the agreements which cause AAEC but the same also forbid the agreements which are *likely* to cause AAEC. Hence, the pleas that there is no contravention of the provisions of the Act because either the anti-competitive agreement was not implemented or that no AAEC has been caused as a result of the alleged cartel between the parties, are misdirected and untenable in the face of clear legislative intent whereby even the conduct which can potentially cause AAEC, is prohibited. Furthermore, once an agreement of the types specified under Section 3(3) of the Act is established, the same is presumed to have an AAEC within India. Therefore, it follows that once an 'agreement' of the types as specified in Section 3(3) of the Act, is shown to be established, the same falls within the presumptive rule of AAEC as provided thereunder. Mere fact that the alleged agreement between the parties was not implemented would not *ipso facto* take such arrangement out of the purview of the provisions of Section 3 of the Act, unless some positive material is placed to show that the impugned arrangements were not even *likely* to cause AAEC. This would, perforce, require a high degree

of evidence to rebut and to dislodge the statutory presumption engrafted in Section 3(3) of the Act.

103. Further, the plea raised by K-Line by placing reliance on *Flashlights* case to contend that mere sharing of sensitive information does not infringe the Act and there has to be an implementation of the same, is also misplaced. In this regard, *firstly*, it is noted that the Commission in a more recent case *i.e. Suo Motu* Case No. 06 of 2017 titled *In Re: Alleged anti-competitive conduct in the Beer Market in India* decided on 24.09.2021 has laid down the jurisprudence succinctly on the point, by observing that "*In the view of the Commission, any 'agreement' between competitors, which may or may not have actually been implemented, if was even likely to cause an AAEC in India, amounts to contravention of the provisions of Section 3(3) of the Act. Implementation of such anti-competitive agreement or actual causing of AAEC is not a sine qua non for establishing contravention*." *Secondly*, the facts of the *Flashlights* case were completely different from the facts of the present case. In the *Flashlights* case, the parties, who roped in the association to reach an understanding for increasing the price of the product under consideration, decided not to proceed fearing action by the Commission. Be that as it may, in the instant case, the OPs not only shared sensitive information including price, but also implemented the pricing arrangement. As already stated, discussions over a Guideline Rate would vitiate the entire price discovery process which would have entailed following a competitive process. The fixation of a Guideline Rate itself amongst competitors would set a higher benchmark for the ultimate price to be determined for the provision of services. Further, it has been noted above that the agreement amongst the OPs was multifold, wherein they had agreed to follow the 'Respect Rule' in favour of the incumbent player by either not responding to the concerned OEM or by quoting a higher price. Further, as already stated, [redacted] of K-Line, in his deposition, has admitted that K-Line communicated to MOL that it is keen to provide services to [redacted] if it were to begin operations

of transporting vehicles from India. When it is seen in the context of 'Respect Rule' prevailing in the industry, it is clearly established that K-Line expected MOL to refrain from undercutting K-Line in its business relationship with [redacted], which was ultimately the result. Therefore, in the present matter the agreement between the OPs was not only implemented but the OPs were successful in harming the process of competition, also.

104. In view of the above, it is noted that the three OPs, *namely*, NYK Line, K-Line and MOL, had been under regular interactions with each other with reference to [redacted] business for [redacted] route, [redacted] contract. Based on the afore-elucidated evidence, the Commission is of the view that the conduct of NYK Line, K-Line and MOL which, *inter alia*, included *suo motu* discussions to offer joint services to [redacted], sharing of commercially sensitive information including freight rates (even Guideline Rates which resulted in vitiating the entire price discovery process) and implementation of the so-called 'Respect Rule', establishes collusion on part of these three OPs. The above-mentioned agreement between the three OPs resulted in price fixing, sharing of market/customer and collusive bidding, which is presumed to have an AAEC within India unless rebutted. It is noted that NYK Line and MOL have not objected to such AAEC and K-Line has been unable to rebut the same. Thus, the Commission finds NYK Line, K-Line and MOL to have contravened the provisions of Section 3(3)(a), 3(3)(c) and 3(3)(d) of the Act, in this regard.

105. The common arguments made by K-Line in relation to AAEC, have been examined and addressed by the Commission subsequently in this order.

[redacted] Contracts

106. In relation to [redacted], the DG has observed that [redacted] did not have a tendering system for awarding contract to the PCCs for transport of cars manufactured by it. [redacted] issued informal Request for Quotations ('**RFQs**') through email to the

OPs with whom it had previously worked. After receiving quotations from the PCCs concerned, [redacted] selected the service provider based on various parameters including technical capability, past experience and price competitiveness. Thereafter, based on mutual discussions, the PCC was finally approved by [redacted]

107. With respect to [redacted] contracts, the DG has found that the provisions of Section 3(3)(a) and Section 3(3)(d) read with Section 3(1) of the Act were infringed by NYK Line and K-Line by determining the freight prices and by directly indulging in collusive bidding during the period [redacted] to [redacted].

108. The Commission has carefully perused the evidence gathered by the DG in this regard along with the submissions of the OPs. The same are discussed in the following paragraphs.

109. Investigation has gathered that NYK Line was the exclusive carrier of [redacted] automobiles from [redacted] to [redacted]. However, in [redacted], [redacted] decided to re-enter the [redacted] market with higher volumes and decided to opt for a two-carrier system. In this regard, the DG has referred to the Affidavit provided by NYK Line of its official [redacted], wherein he has stated the relevant facts. In the year 2008, K-Line approached NYK Line in the context of [redacted] which wanted to increase export volumes to [redacted] in 2009. K-Line inquired about the pricing of NYK Line. This is as stated by [redacted] in his affidavit on para 4 and 5, which are replicated below:

> *"That in [redacted] decided to substantially increase its export volumes to [redacted] from [redacted] also thought that it ought to have two carriers instead of one in order to spread its risks. Although we tried to persuade [redacted] to retain OP1 as the sole carrier, we were not successful. Eventually, [redacted] decided to allocate [redacted] per cent of the volume to K-Line. After [redacted] approached K-Line having decided they wanted to follow a two carrier policy from [redacted]), K-line approached OP1 to enquire whether what [redacted] had said about NYK Line's*

freight rates was accurate. I do not remember the details of this contract."

"That on [redacted], I along with [redacted], the Deputy Manager of the [redacted] team and my immediate sub-ordinate, met with [redacted], Manager at K-Line, to discuss the [redacted] business. Primarily the discussion involved coordinating shipping frequencies, schedules and other operational issues in order to provide coordinated service for [redacted]. However, [redacted] also discussed the Bunker Adjustment Factor (BAF) rates that were to be charged by both companies to [redacted] for these [redacted]-[redacted] shipments. This meeting is recorded in my personal diary. I also established contacts with [redacted] of K Line on [redacted] when we discussed space issues in respect of vessels from India which also has been recorded in my personal diary."

(Emphasis supplied)

110. The contents of the above-extracted submission made by NYK Line are self-explanatory, that NYK Line and K-Line officials met in [redacted] to discuss coordinating shipping frequencies, schedules, BAF rates and other operational issues, in order to provide coordinated services to [redacted].

111. In relation to BAF, the DG has observed that BAF is a factor to accommodate the variations/fluctuations in fuel prices. During the process of arriving at prices, the range of fuel price for the period of quotation is fixed. If the fuel prices cross the ceiling (range), the factor is introduced to cover up the increase in price and is recovered from the shipper. Similarly, if fuel prices fall below the floor level, the benefit of fall in prices is passed on to the shipper and its account credited accordingly.

112. In this regard, further relevant extracts from the deposition of [redacted] of NYK Line, are reproduced hereunder:

"Q16. Please refer to your affidavit which is provided vide your submission dated 5.1.2015 filed before the DG's office in which you have stated that a person belonging to K-Line approached NYK Line for negotiation regarding tender quotes for [redacted] in [redacted] (para-4). Please furnish the details of the persons involved.

Ans. [redacted]*, Team Manager of K-Line. approached me (*[redacted]*of NYK Line) for a meeting on* [redacted]*. The meeting took place in conference room of NYK Line's HQs building located at* [redacted]*,* [redacted]*. This meeting is recorded in the log entry, a snap shot of which is placed at pages 73-74 of submission dated 5th January, 2015.*
The electronic log referred by [redacted] *in response to Q.16 above was provided to the investigation by NYK Line has been placed at Annexure….*

Q17. How was the meeting arranged? Did you or someone from your office call [redacted] ***Team Manager of K-Line for appointment or did*** [redacted] ***Team Manager of K-Line approached you suo-moto? Is there any call record of the same or any other proof of the meeting apart from Log Entry?***
Ans. The computer sheet is the proof of the booking of the conference hall at NYK office. I will try my best to provide any CCTV coverage of the entry of [redacted] *Team Manager of K-Line as well as the login signature of the meeting.* [redacted] *of NYK Line, Deputy Manager, NYK Line was also present in the said meeting. I do not recall who was the fourth person.*

Q19. How did this meeting benefit your company and K-line, if any?
Ans. We wanted to ensure that K-line does not go below our rates so that [redacted] *continues to give us business as was being previously done, as close to 100% as possible.*
K-Line's interest was to get a part of the contract by quoting an equivalent quote so that they did not bid very high. We understand that K-line quoted closely similar rate and therefore, [redacted] *allocated business to both NYK Line and K-Line. It was basically quid pro quo between us both i.e. each one of us would not undercut the other. The understanding of the same may be restricted to* [redacted] *and no other company."*

(Emphasis supplied)

113. From the above, it is noted that a meeting between the officials of NYK Line, *namely,* [redacted] and [redacted] on one side, and the officials of K-Line, *namely,* [redacted] and [redacted] (named by [redacted] in his memo) on the other, on [redacted], was held. The factum of the said meeting and deliberations held therein were also confirmed by

[redacted] of NYK Line during his statement. Relevant excerpts from the deposition of [redacted] have been reproduced subsequently in this order.

114. The investigation has also recorded the statement of [redacted], Team Manager of K-Line, who had allegedly attended the meeting held on [redacted] and prepared a memo in this regard.

115. [redacted] of K-Line was confronted with the Affidavit of [redacted] of NYK Line with special reference to para 4 and 5 (reproduced *supra*), where the said meeting had been discussed. Relevant parts of his statement are reproduced hereunder:

> *"**Q40. Who called for the meeting? And the contents.***
> Ans. *I don't know who called for the meeting. The memo is made by me. We discussed about five customers for [redacted] in one hour. [redacted] was just one of the topics of the discussion. Earlier evidence provided indicated that [redacted] was the only agenda of this meeting and that we discussed prices. However, as per my memo, it is not true.*
>
> ***Q106. In yesterday's deposition in answer No.13 which is being shown to you, you stated that "You approached [redacted] in the second half of [redacted]". You said you approached [redacted] to look into the possibility of working together. If there is not enough space on the ship we can give them the space needed to handle the extra volume." What is working together implying?***
>
> Ans. *By working together, I mean sharing some of the load handled by NYK for [redacted]. So far, NYK was handling hundred percent cargo of [redacted] we wanted to look into the possibility of sailing one out of the four ships in a month of K-Line and also when in the month K-Line ships sails. For example, at the beginning of the month or in the middle or at the end of the month.*
>
> *I want to just add that after having answered this question, I recalled my internal memo wherein I recalled the meeting was not in the second half of [redacted] but on [redacted] "*
>
> (Emphasis supplied)

116. Based on the above evidence, it is evident that a meeting between the officials of NYK Line and K-Line happened on [redacted], where business related to [redacted] was discussed. The DG has observed in the said meeting, both the competitors NYK Line and K-Line exchanged strategy with each other to further their interest, wherein NYK Line was keen to retain its rights, but K-Line made proposals to either make a joint proposal or enter into business with [redacted] by consensus with NYK Line. The DG has found such conduct of these parties to be in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act.

117. The DG has also analyzed the contracts signed by NYK Line and K-Line with [redacted] respectively. NYK Line had submitted a copy of the contract with [redacted] dated [redacted]. The said contract with NYK Line was effective from [redacted] and was later extended till [redacted]. This contract had as its integral part, eight addendums, whereby the periods of validity had been extended from time to time. The first addendum or addendum no.1 dated [redacted] was valid for the period [redacted] to [redacted]. NYK Line, *vide* email dated 22.03.2017, submitted that the BAF during this period was zero.

118. K-Line had also submitted a copy of the Ocean Carrier Agreement dated [redacted] entered into between itself with [redacted] for the period [redacted] to [redacted] Later on, a fresh Ocean Carrier Agreement was also entered into between K-Line and [redacted] which extended up to [redacted].

119. The Commission notes that the contracts executed by [redacted] with NYK Line and with K-Line were both in the beginning of the year [redacted] *i.e.*, on [redacted] and [redacted], respectively. The investigation has compared the effective freight rates for the common period covered by these two agreements for various destinations of [redacted]. The said analysis is captured in the table below:

Country	Freight Price $/Unit for NYK Line (01.01.2009 to 31.07.2009) (A)	Freight Price $/Unit for K- Line (01.01.2009 to 31.07.2009) (B)	Difference (A)-(B)
[redacted]	[redacted]	[redacted]	2.31
[redacted]	[redacted]	[redacted]	249.65
[redacted]	[redacted]	[redacted]	249.65
[redacted]	[redacted]	[redacted]	2.31
[redacted]	[redacted]	[redacted]	2.31
[redacted]	[redacted]	[redacted]	3.76
[redacted]	[redacted]	[redacted]	7.35
[redacted]	[redacted]	[redacted]	7.35
[redacted]	[redacted]	[redacted]	2.31
[redacted]	[redacted]	[redacted]	3.79
[redacted]	[redacted]	[redacted]	2.31
[redacted]	[redacted]	[redacted]	5.31
[redacted]	[redacted]	[redacted]	2.84
[redacted]	[redacted]	[redacted]	2.31
[redacted]	[redacted]	[redacted]	2.31
[redacted]	[redacted]	[redacted]	2.31
[redacted]	[redacted]	[redacted]	2.31
[redacted]	[redacted]	[redacted]	2.31
[redacted]	[redacted]	[redacted]	2.31
[redacted]	[redacted]	[redacted]	2.31
[redacted]	[redacted]	[redacted]	1.61
[redacted]	[redacted]	[redacted]	1.61
[redacted]	[redacted]	[redacted]	5.03
[redacted]	[redacted]	[redacted]	2.84
[redacted]	[redacted]	[redacted]	6.19

120. From the above analysis, it is noted that out of 25 destinations, freight price difference between NYK Line and K-Line for 23 destinations is very small and ranges between $1.61 per unit to $7.35 per unit only (as already noted NYK Line, *vide* email dated [redacted], submitted that the BAF during this period was zero). In terms of percentage of freight price, it works out to be around [redacted]% to [redacted]% or so. As per the DG, such miniscule differences cannot be a co-incidence. It is noted that [redacted] of NYK Line in his deposition stated that "….*K-Line's*

interest was to get a part of the contract by quoting an equivalent quote so that they did not bid very high. We understand that K-line quoted closely similar rate…". The above-mentioned comparison of the rate quoted by two PCCs reveal that two rates were indeed similar to each other with minor difference. Further, as deposed by [redacted] and noted by the DG, [redacted] finally awarded contracts to both NYK Line and K-Line in [redacted] in the ratio of [redacted], respectively. In fact, the difference between the freight rates is $2.31 in respect of 12 cities out of 25 cities.

121. In the view of the Commission also, such similarity and minor difference in freight rates, when seen in the context of the meeting held between the officials of NYK Line and K-Line on [redacted] in relation to [redacted] contract, makes it very clear that the two PCCs must have discussed the freight rate to be offered to [redacted] in the meeting dated [redacted]. The deposition of the officials of these two PCCs and other evidence on record also indicates that NYK Line intended to retain most of its business from [redacted] and K-Line intended to enter the business of [redacted]. For the said purpose, they both decided not to undercut each other.

122. The DG has also recorded that the discussions between competitors *namely* NYK Line and K-Line continued even after the initial discussion on [redacted] and during the currency of contracts of [redacted]. [redacted] of K-Line, during his deposition, stated that after the award of contract by [redacted], during one of the discussions " … *I half jokingly asked NYK what their price to* [redacted] *was. I did not ask it directly but instead asked if it was in five hundreds or in six hundreds, whether it included BAF and what was the calculation for BAF rate. We did not disclose K-Line price* … ". This statement has to be seen in the context of continuing services rendered to [redacted] by both NYK Line and K-Line by extensions of their respective contracts.

123. [redacted] of NYK Line, in his Affidavit, has also referred to another meeting with [redacted] of K-Line on [redacted]. The investigation

posed certain questions to [redacted] during his deposition in relation to the said meeting, relevant parts of which are reproduced hereunder:

> *"**Q20. You have further submitted that you again met [redacted], Team Manager of K-Line on [redacted]. Where did this meeting take place and what was discussed during the meeting?***
> *Ans. The meeting had taken place at NYK Line's HQs in Tokyo. The same can be substantiated from my diary entry at page no. 128 of the submission dated 5th January 2015 wherein the name of K-Line [redacted] Team Manager of K-Line at room no. 815.*
> *We continued to discuss operational issues including rates and customer's request w.r.t reducing the offtake. During one of the meeting we discussed rate for the [redacted] route.*
>
> ***Q21. How did this meeting benefit your company and K-line, if any?***
> *Ans. We coordinated our responses in respect of requests received from [redacted], e.g. we agreed on what rate revisions should take place in the next six months after the contracted period [redacted]. Specifically, we revised our rates collectively for minor ports and at the same time coordinated in removal of quantity restriction as received from [redacted]. This mutually benefited both businesses as we did not have to compromise more than what was necessary."*
>
> (Emphasis supplied)

124. In this regard, the following question posed to [redacted] of NYK Line is also pertinent:

> *"**Q11. Was there cartelization on this route? Please explain how it took place?***
> *Ans. Yes. Originally we serviced all of [redacted] business on the [redacted] route. However, in [redacted] decided to incorporate another carrier and approached K-Line in [redacted] of K-Line informed and consulted with [redacted] of NYK Line on how they should respond to this request. [redacted] my immediate senior told me the same and also informed me that he asked [redacted] to quote a higher rate than theirs.*
>
> *Thereafter, [redacted] of K-Line took over from [redacted] and continued the process of cartelization. After [redacted] took over the process.*
>
> *I remember one particular memo I took down in which I noted the freight rates quoted by K-Line. I remember this because K-Line's all-in rate (i.e. base rate + BAF) could be lower than ours. It may be noted that our rates had just been approved by [redacted] and if*

K-Line quoted a rate lower than ours, it would affect our market share. NYK's all-in-rate (i.e. base rate + BAF) was going to be affected. NYK's old base rate was $ per car ( ) and $ per car for the new . We negotiated the rate to $ per car for and $ for the new car.

and I, negotiated these prices with . Thereafter, asked K-Line to quote for the same business. K-Line got in touch with us to know how they should respond and what prices should be quoted. To elaborate, on , which I had noted in my memo pad, called me as had asked him to submit an all-in-rate that day itself. This call was made because K-Line ( ) was respecting our right to this route."

(Emphasis supplied)

125. of K-Line was confronted with the meeting of and also shown a list of meetings with competitors from to submitted by NYK Line. He admitted having met the officials of NYK Line, specifically on , and that he also exchanged visiting cards with other players in the industry. However, he claimed that he was not involved in collusion meetings with regard to India. It has been noted by the DG that this assertion of has not been substantiated by any evidence or circumstantial evidence, particularly when he was attending the same meetings as are referred to by the officials of NYK Line. It is also relevant to mention that NYK Line had submitted a detailed log of conduct of meetings with certain competitors, which includes K-Line, with regard to the contract, where the name of appeared for the meeting held on .

126. The investigation also deposed of K-Line wherein he accepted meetings with competitors in the year In this regard, it is pertinent to note his reply to Q. 26, wherein he accepted that he could be a part of the alleged collusion. The same is reproduced below:

"Q.26 and have mentioned your name as part of the collusion. Could you say you were not part of the collusion?

Ans. I did speak with [redacted] *but I do not know what* [redacted] *and* [redacted] *are referring to. I cannot say that I was not part of the collusion."*

(Emphasis supplied)

127. The DG further recorded that after the meetings in [redacted] and [redacted], meetings were even held in [redacted] between the officials of NYK Line and K-Line. In the year [redacted], [redacted] of NYK Line was also a part of calls with [redacted] of K-Line. [redacted] of NYK Line, in his response, stated as follows:

"I being the Deputy General Manager during the relevant period, was the representative of NYK Line for discussions with [redacted] *It is submitted that the sole incident where I was involved in the cartelization with NYK Lines competitors can be traced back to the year* [redacted]*, when* [redacted] *had contacted NYK Line and K-Line to reduce the BAF rates for the freight via the* [redacted] *route. On receiving the aforementioned request from* [redacted] *I was in receipt of a call from* [redacted] *Manager,* [redacted] *team, CC Business group, Kline, where we discussed the request made by* [redacted] *to decrease the BAF rates."*

(Emphasis supplied)

128. The DG has noted that the relevant contracts for discussion extended from [redacted] to [redacted]. While K-Line had given a composite rate in the same, NYK Line had given the base rate and also stated that the BAF for this period was $[redacted]. The investigation also asked K-Line to provide the BAF rates it had negotiated with any of the OEMs from [redacted] to [redacted]. The answer was provided by [redacted] of K-Line, who corroborated that K-Line had quoted BAF inclusively in the quotation. The investigation, thereafter, added the BAF rate to the freight rate quoted by NYK Line and found that the freight prices of NYK Line and K-Line were very close to each other. The table below illustrates the same:

Difference between prices of NYK and K-Line				
Country	**NYK Rate Period (A) (1.2.2012 - 31.7.2012) (in $/unit)**	**(A+BAF) i.e. (A+$) =(B)**	**K-Line Freight Price (in $/unit) (1.2.2012 - 31.7.2012 (C)**	**Difference between (C-B) (in $/unit)**
[redacted]	[redacted]	[redacted]	[redacted]	3.78
[redacted]	[redacted]	[redacted]	[redacted]	243.18
[redacted]	[redacted]	[redacted]	[redacted]	243.18
[redacted]	[redacted]	[redacted]	[redacted]	3.78
[redacted]	[redacted]	[redacted]	[redacted]	3.78
[redacted]	[redacted]	[redacted]	[redacted]	5.23
[redacted]	[redacted]	[redacted]	[redacted]	8.82
[redacted]	[redacted]	[redacted]	[redacted]	8.82
[redacted]	[redacted]	[redacted]	[redacted]	29.22
[redacted]	[redacted]	[redacted]	[redacted]	3.78
[redacted]	[redacted]	[redacted]	[redacted]	5.27
[redacted]	[redacted]	[redacted]	[redacted]	3.78
[redacted]	[redacted]	[redacted]	[redacted]	6.78
[redacted]	[redacted]	[redacted]	[redacted]	4.31
[redacted]	[redacted]	[redacted]	[redacted]	3.78
[redacted]	[redacted]	[redacted]	[redacted]	3.78
[redacted]	[redacted]	[redacted]	[redacted]	3.78
[redacted]	[redacted]	[redacted]	[redacted]	3.78
[redacted]	[redacted]	[redacted]	[redacted]	3.78
[redacted]	[redacted]	[redacted]	[redacted]	3.78
[redacted]	[redacted]	[redacted]	[redacted]	3.78
[redacted]	[redacted]	[redacted]	[redacted]	3.08
[redacted]	[redacted]	[redacted]	[redacted]	3.08
[redacted]	[redacted]	[redacted]	[redacted]	98.49
[redacted]	[redacted]	[redacted]	[redacted]	4.31
[redacted]	[redacted]	[redacted]	[redacted]	1.13 &35.87

129. From the above table, it is noted that the difference between the rates quoted by NYK Line and K-Line for most destinations is miniscule. It is noted that for 15 of the total 26 entries, the difference between the freight rates is a mere $3.78 per

unit or even lower. It thus, indicates that the prices of both NYK Line and K-Line matched very closely in about 60% of the cases in 2012 also.

130. To verify the statement of [redacted] of NYK Line that he met [redacted] of K-Line in [redacted] and they discussed decrease in BAF rates, [redacted] was also summoned for deposition. The relevant extract from the statement of [redacted] is reproduced below:

> *"**Q4. Who do you know professionally/personally from Q.No.3 and other competitors?***
> *Ans. NMCC - I don't remember. It was only one or two times that I did sales call there.*
> *WWL - I don't remember.*
> *MOL - Don't remember.*
> *NYK - I remember. I met [redacted] and the reason I remember [redacted] because there is a background which I would like to talk about. I met [redacted] apart from the meetings at [redacted] with regard to [redacted] cargo bound from India to [redacted]. Initially, NYK had 100% of this business of [redacted]*
> *K-Line also wanted a part of this business. With support from Japanese trading company, Itochu, we were able to get business of [redacted] cargo through [redacted] and eventually got 25% of the share.*
> *Post this, in [redacted], during price bidding of [redacted] and that time [redacted] sale in [redacted] were declining and so in order to increase sales they requested for a major price reduction. At that time, an Indian was in-charge of negotiation on behalf of [redacted]. They said that NYK is accepting [redacted] request for reduction and if K-Line also does not accept this reduction your business will be finished. So we wanted to confirm this fact and at that time I had contacted [redacted] of NYK.*
> *Earlier, if such, a thing happened when we wanted to confirm if what the Indian in-charge at [redacted] was saying, was true we would confirm that with a Japanese expat in [redacted]. K-Line India would try and get this information. However, when I was in-charge, the Japanese expat was not involved in the negotiations so we did not have a way to confirm if what the Indian in-charge was saying was true so we contacted NYK to confirm if such an action had happened. This is the reason, I contacted [redacted] of NYK. I did not ask him his price and I did not tell him our price. I asked him if NYK had received a request to reduce from the original price. Hence, I contacted [redacted] "*
>
> (Emphasis supplied)

131. From the above, it is evident that [redacted] of K-Line accepted that he had met [redacted] of NYK Line in [redacted] with respect to the [redacted] contract. The only point he refuted was that he had not talked of the price to be offered by NYK Line. [redacted] of NYK Line, however, on Affidavit has stated that the BAF rates were discussed.

132. K-Line has contended that the DG Report's analysis of prices offered to [redacted] by NYK Line and K-Line is fundamentally flawed. In this relation, at the outset, the Commission notes that from a bare reading of the provisions of Section 3(1) of the Act, it is evident that these provisions not only proscribe the agreements which cause AAEC but the same also forbid the agreements which are *likely* to cause AAEC. Thus, any collusive or concerted conduct amongst competitors by way of exchange of commercial information resulting in *inter alia* determining price or limiting/ controlling provision of services *etc.*, itself stands captured within the prohibition imposed and is presumed to have AAEC, by virtue of provisions of Section 3(1) of the Act read with Section 3(3) thereof. In this backdrop, it is not understood as to why K-Line had to approach its competitor to confirm something about the freight rates, specifically when it claims to be competing with the same competitor on price. Given the near proximity of rates quoted by the two PCCs (as detailed *supra*) and the admission of collusion by the official of NYK Line, the submissions of K-Line in this regard are not acceptable.

133. The DG also recorded that [redacted] made contradictory statements. At Ans. No. 22, he stated that he does not remember if he was the one to initiate the call to [redacted] of NYK Line, whereas in Ans. No. 4 (*supra*) he had categorically stated that he had contacted [redacted] of NYK Line. Extract of [redacted] reply from Ans. No. 22 is as follows

> *"Firstly, I don't remember if I was the one to initiate the call to* [redacted] *...."*

134. NYK Line, in its submissions, has stated that it completely agrees with the findings of the DG with respect to [redacted] contract.

135. As far as K-Line is concerned, its submissions in respect of the findings of the DG with respect to [redacted] contract, are as follows:

135.1. Co-ordination amongst the OPs took place at the request of [redacted]. In this regard, K-Line relied on internal email dated [redacted] exchanged between K-Line officials. As per K-Line, [redacted] was instrumental in the exchange of price information between K-Line and NYK Line due to its intention to extract competitive prices from both of them. K-Line relied on the deposition of its own officers to assert its averment.

135.2. Referring to the submissions of [redacted], K-Line argued that [redacted] in its submissions admitted that "… [redacted] *does not have a formal tendering system for awarding a contract to PCCs for the transport of cars manufactured by it.* [redacted] *issues informal RFQs through email to PCCs with whom it has previously worked. After receiving quotations from PCCs' across the globe,* [redacted] *selects a PCC based on various parameters including technical capability, past experience with* [redacted] *and price competitiveness. Based on mutual discussions, the PCC is finally approved by* [redacted]*. It is clarified that price alone is not the sole criteria for award of PCC contracts ...*". Accordingly, K-Line has claimed that there was no competitive RFQ, which is a *sine qua non* for a violation under Section 3(3)(d) of the Act. In this regard, K-Line relied on the Commission's order dated 08.09.2015 passed in *Reference Case No. 06 of 2013* titled *Deputy Chief Materials Manager, Rail Coach Factory, Kapurthala v. Faively Transport India Limited and Others*, and claimed that where parties are aware that the tender will be awarded to more than one bidder, the bidders are left with no incentive to compete.

135.3. The Hon'ble Supreme Court of India in *Rajasthan Cylinders and Containers Ltd. V. Union of India and Others, (2020) 16 SCC 615*, has

observed that the competition regulator needs to produce sufficient evidence to exclude the possibility that firms acted under normal market conditions. In particular, the evidence must show that the conduct of the parties cannot be explained other than as a result of a concerted practice. In the present case, the DG has failed to consider a valid alternative explanation for K-Line's conduct. Further, the DG Report has relied upon comparison of rates to a large degree, failing to take into account that K-Line and other PCCs face similar costs on the same routes considering the same distance covered and fuel expenses on what was often, a joint service by K-Line with the other OPs.

136. Upon careful perusal of the averments made by K-Line, the Commission observes as follows:

136.1. In relation to K-Line's averment related to the role played by OEM *i.e.* [redacted] in exchange of price information between K-Line and NYK Line, it is noted that, firstly, K-Line, except relying upon self-serving internal emails/documents and depositions of its own officials to attribute complicity of [redacted], has failed to place on record any material to establish that [redacted] disclosed the price quoted by one PCC to another PCC or advised/ directed the ship liners to co-ordinate and agree on prices that were to be offered to it for the transportation of vehicles. Secondly, it is noted that the Act explicitly prohibits such co-ordination, and therefore, on whose instructions such co-ordination was initiated, is immaterial. As already stated, [redacted] of K-Line has admitted sharing information with other PCCs on the Guideline Freight Rate. Thirdly, even if it is assumed that [redacted] was instrumental in the exchange of price information amongst NYK Line and K-Line, given that exchanging price information is proscribed under the Act, the PCCs should have not exchanged such sensitive information amongst themselves. Active exchange of price information between NYK Line and K-Line, who

are supposed to be competing with each other, is also evident from the deposition of [redacted] of K-Line, as reproduced below:

> *"... With regard to cargo for [redacted] at the time of price negotiations with [redacted] as part of [redacted] company policy, for the same destination ([redacted]) same price should be paid. So they asked us to match NYK price and specified it. I remember having talked to NYK for confirming the price. It was [redacted] of NYK and [redacted] I don't remember if I spoke directly. I don't remember the specific figure or the exact response of NYK but the conclusion was that it was the same price ..."*
>
> (Emphasis supplied)

One fails to understand as to why K-Line spoke with its competitor in respect of commercially sensitive information *viz.* price in the first place. It should have taken an independent decision, without any communication with NYK Line, as to whether it can accept the request made by [redacted] or not. By speaking with its competitor in relation to price, K-Line vitiated the process of competition. Independent commercial decision based on its own business interest, on part of K-Line, could have resulted in another price for [redacted].

136.2. K-Line has also relied on the deposition of [redacted] of K-Line to assert that co-ordination happened at the behest of [redacted]. The relevant extract of [redacted] statement is as follows:

> "***Q49. So the [redacted]% and other differences in freight rates between NYK and K-Line are by chance according to you?***
> *Ans. I don't think it is by chance. The reason for that is that this freight was decided by the will of [redacted]. I guess that [redacted] wanted to set the freight of the two companies to as close to each other as possible*."

It is noted from the above that if [redacted] disclosed the price of NYK Line and required K-Line to match the price, and as admitted by [redacted], it is normal to comply with customer request, then it is not understood as to why there is a price difference between the prices of the two PCCs. In such a scenario, the prices should ideally be the same. Rather, here it seems that,

to cover their co-ordination, the two PCCs did not quote identical prices and maintained some differential to avoid any suspicion.

136.3. In relation to the averment of K-Line that competitive RFQ is a *sine qua non* for a violation under Section 3(3)(d) of the Act, the Commission notes that such argument raised by K-Line is wholly misconceived and misdirected. K-Line is trying to add words to the statute where none is provided. Even in cases where the procurer decides not to issue a formal tender but initiates individual negotiations with potential suppliers, a violation of Section 3(3)(d) can be found if these suppliers attempt to fix price or engage in any activity which tantamount to various forms of bid rigging. In the present matter, though [redacted] did not have a formal tendering process, but it does not mean that it was not looking for competitive prices. By colluding with each other and sharing commercially sensitive information, the PCCs distorted the competitive process of price discovery and thus, can be held liable for action under Section 3(3)(d) of the Act.

136.4. K-Line has also averred that given that [redacted] opted for a two-carrier system, the competitiveness of the bid was anyhow compromised and NYK Line and K-Line were left with no incentive to compete. In this regard, first of all, the Commission does not agree with the proposition that if the procurer decides to distribute the contract between two suppliers, it will result in absence of incentive to compete. Further, even assuming that there was no incentive to compete, it does not allow suppliers to start coordinating with each other and share confidential price sensitive information. The aim of the procurer in such cases is to reduce dependence on one supplier resulting in diversification of risk. However, even in such cases, the procurer would not like to forego competitive pricing by multiple suppliers.

136.5. In relation to the reliance placed by K-Line on *Rajasthan Cylinder* case (*supra*) to assert that the evidence must show that the conduct of the parties cannot be explained other than as a result of a concerted practice, the

Commission is of the view that the evidence in the present matter, as discussed above, clearly brings forth that NYK Line and K-Line shared commercially sensitive information which has been admitted by NYK Line. Further, as already stated, K-Line has also not been able to submit any evidence to establish that [redacted] disclosed the price quoted by one PCC to another PCC which can be examined as an alternative explanation for the conduct of the PCCs.

136.6. In view of the above, the Commission is of the view that the submissions made by K-Line are not sufficient to exclude the finding of collusion between NYK Line and K-Line in relation to the [redacted] business.

137. In light of the evidence extracted above, the Commission finds that the two PCCs, *namely*, NYK Line and K-Line, had been under regular interaction with each other with reference to the [redacted] business for [redacted]-[redacted] route. The conduct of NYK Line and K-Line which, *inter alia*, includes sharing of commercially sensitive information including freight rates, establishes collusion on the part of these two OPs, from at least [redacted] to [redacted], in contravention of the provisions of Section 3(3)(a) and 3(3)(d) read with Section 3(1) of the Act. The above-mentioned agreement between the two PCCs resulted in fixing freight rate and collusive bidding and is presumed to have an AAEC within India. It is noted that NYK Line has not objected to such AAEC and K-Line has not been able to rebut the same.

138. The common arguments made by K-Line in relation to AAEC, have been examined and addressed by the Commission subsequently in this order.

[redacted] Contracts

139. In relation to [redacted] contracts, the DG, in its investigation report, has found that all the four PCCs, *namely*, NYK Line, K-Line, MOL and NMCC, had colluded amongst themselves, and in the process, reached understanding wherein

they tried to determine the freight prices, shared the market/OEM customers amongst each other, and indulged in collusive bidding. Thus, the DG has concluded that all the four OPs contravened the provisions of Section 3(3)(a), 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act in regard to [redacted] contracts.

140. The Commission has carefully perused the evidence gathered by the DG to give its such findings along with submissions of the OPs in this regard, and the same is discussed in the following paragraphs.

141. As per the Investigation Report, NMCC was a dedicated 'Industrial' carrier, mainly carrying [redacted] cars. In India, [redacted] had outsourced the manufacture of its cars to [redacted] in [redacted].

142. NYK Line submitted an Affidavit of [redacted], Manager of Car Carrier Group of NYK Line, which contained certain particulars regarding meetings with other PCCs in relation to the [redacted] route for provision of services to [redacted]. In this Affidavit, [redacted] stated that he had meetings with NMCC officials a few times. Relevant excerpts from the Affidavit are reproduced below:

> *"On [redacted], I met with an NMCC official, [redacted] of NMCC but I cannot recall the details of the meeting.*
>
> *On 24 October 2008, NMCC approached me through [redacted] of NMCC, my counterpart at NMCC, to request my company for an idea of the appropriate costs to be charged, and also for respect for the business, i.e. not to compete for [redacted] business. This meeting was inadvertently not recorded in my diary. However NMCC made an internal presentation on the approach to take with [redacted] (although the presentation is titled [redacted]). A perusal of this presentation dated [redacted] shows (at slide Nos. 6 and 7) that NMCC intended to meet idea of the costs involved in providing service."*
>
> (Emphasis supplied)

143. The DG also recorded the statement of [redacted] of NYK Line on oath on 13.08.2015. During his deposition, he stated that:

i. On [redacted] he had met with NMCC officials again as recorded in his personal diary.

ii. He gave an account of another meeting held with NMCC officials on [redacted], as recorded in his personal diary.

iii. Thereafter, he had a meeting with NMCC officials on [redacted], as recorded in his personal diary.

iv. He also had a meeting with NMCC officials on [redacted], as recorded in his personal diary.

v. The purpose of these meetings held in [redacted] had been explained by [redacted] in his Affidavit *i.e.* to primarily discuss operational issues.

vi. Additionally, on [redacted] met [redacted], General Manager of NMCC, to discuss operational issues.

144. During his deposition[redacted] also admitted having discussed appropriate costs to be charged and respect for each other's business with [redacted] of NMCC. Relevant excerpts in this regard from [redacted] deposition, are reproduced below:

> *"**Q. 25. In your affidavit (which is provided vide NYK line submission dated 5.1.2015) you have stated that some [redacted] from NMCC met you on [redacted] What exactly was discussed in the meeting and what evidence do you have buttress your case?***
> *Ans. Please refer page no. 215 to 217 of submission dated 5th January, 2015, the NMCC General Overseas Market (GOM) Team dated [redacted] They handed over a colored copy of the presentation after the presentation was made at conference room, 8th floor, office of NYK Line, [redacted] We discussed that NMCC wants to obtain exclusive contract for [redacted] exports from [redacted] to [redacted] commencing from around [redacted] and onwards and that NMCC did not want NYK to obtain any of this business.*
> *Finally, agreed to NYK doing business from western coast i.e. [redacted] & [redacted] and [redacted] from [redacted].*

Q26. Did you agree to the proposal and how did this help NYK Line?
Ans. We are mainly doing business from the western coast of India namely, [redacted] *&* [redacted] *The* [redacted] *business is carried out from another geographical area-*[redacted] *So the idea was to mutually restrict ourselves to our respective areas for the* [redacted] *business."*
(Emphasis supplied)

145. From the above, it is noted that [redacted] has mentioned his meetings with [redacted] of NMCC. During these meetings, NMCC had requested NYK Line to provide NMCC with an idea of approximate costs involved in the provision of transportation services to [redacted] on the [redacted] route, and to ascertain that NYK Line would respect NMCC's territory and not compete for [redacted] business from [redacted].

146. The investigation has also recorded the statement of [redacted] of NMCC in this regard, and relevant excerpts from the same are as follows:

*"**Q3. Please give the names of the people who you were aware of or in touch with for the collusion.***
Ans. [redacted]*, Manager/Deputy General Manager of NYK.*
[redacted]*, Manager of K-Line.*
[redacted] *Assistant Manager of K-Line.*
[redacted] *route for* [redacted] *cars.*
There was a tender in [redacted] *for which talks were held around* [redacted]*,* [redacted].
Further, in [redacted] [redacted] *I believe MOL approached NMCC to ask NYK and K-Line not to reduce their freight rates. NMCC asked NYK probably* [redacted] *and K-Line (*[redacted]*) to keep their rates between $*[redacted]*cbm to $*[redacted]*/cbm ...*
I myself was *quite busy preparing for* [redacted] *shipments out of* [redacted] *to* [redacted] *that were scheduled to begin in October, 2010. However, I have subsequently learnt from* [redacted] [redacted] *that he had engaged in some conversations around* [redacted] *for* [redacted] *with NYK and K-Line. I have no personal knowledge of this matter.*
Q14. We are now showing you Annexure-16 (page-176 to 178) given to us by NYK. At Page-178 in para-7 your name figures. Please give the purpose and the discussion you had with your competitor.
Ans. I don't recall this specific presentation but this kind of presentation would entail a discussion on frequency of sailings and number of units to be shipped. Freight rates might have been discussed but it would not have been the final rate judging from

[redacted] *This is because shipment was to commence from* [redacted], [redacted]."

(Emphasis supplied)

147. It is noted from the above deposition of [redacted] of NMCC that he confirmed meetings with other PCCs in [redacted] to discuss the [redacted] contract. He also admitted that there might have been discussions on freight rates between NYK Line and NMCC. In the later part of the reply to Ques. No. 3, [redacted] brought out that in [redacted], MOL approached NMCC to ask NYK Line and K-Line not to reduce the freight rates. It was further stated that [redacted] of NMCC had engaged in discussions with NYK Line and K-Line around [redacted] also for [redacted] route.

148. The DG has also noted that the details of [redacted] meeting between the OPs (as referred to para 2 of Ques. 3 of [redacted] deposition) is appearing in the inter-company e-mail correspondence submitted by NMCC also.

149. On the basis of the above, the DG has concluded that all the four PCCs had been interacting and discussing with each other on various accounts including freight rates in relation to the [redacted] route.

150. MOL, in its submissions, filed an internal memo dated [redacted] with [redacted] designated as the Manager of the [redacted] Group in the Car Carrier Division. The same contains communication by MOL with the officials at K-Line ([redacted], Team Manager) and NYK Line ([redacted]). Excerpts from the memo are extracted below for the tender for the year [redacted]:

> "*Those on FOB* [redacted] *basis* <u>*will be coordinated by NMCC*</u>*, but we need to see NYK's reaction. We should not be affected by NYK's freight rates for* [redacted]*. Give assistance to coordination by NMCC.* <u>*I will talk to NYK if necessary*</u>*."*
> *"NMCC will take a prominent position to the extent that the terms of business between* [redacted] *and* [redacted] *regarding the arrangement of*

marine transport are FOB. We (MOL) will support NMCC in addition to vehicles to be shipped from [redacted] after the year [redacted]. We will respond to this RFI in line with NMCC's intention."
"We (MOL Officials) requested the Manager in charge of [redacted] ([redacted]) to wait until NMCC replies to the Manager in charge of Cross Trade.
We (MOL Officials) requested the Manager in charge of [redacted], Team Manager of K-Line) to wait until NMCC replies."

(Emphasis supplied)

151. It is clear from the above memo that there were detailed communications between [redacted] of NMCC, MOL, K-Line and NYK Line. MOL was in close discussions with [redacted] and [redacted] in relation to the [redacted] route for [redacted]. [redacted] also mentioned that NMCC would take prominent position with respect to this contract, and he would talk to NYK Line if necessary to ensure that they respect NMCC. MOL was going to respect NMCC's position with respect to the [redacted] contract and would quote freight rates in line with NMCC's intentions. MOL would also support NMCC with respect to the vehicles to be shipped from [redacted] after [redacted]. Strategies with reference to K-Line and NYK Line are also clearly mentioned in the memo.

152. NYK Line, *vide* its submission dated 05.01.2015, had placed on record certain visitor logs that also establish that various meetings took place between NYK Line and NMCC (specifically meetings dated [redacted] and [redacted]). NMCC officials (*i.e.*, [redacted] and [redacted]), in their respective depositions, did not dispute these meetings between the two PCCs. Therefore, these cross confirmations obtained from the officials of NYK Line and NMCC along with the above referred electronic log submitted by NYK Line establishes the fact that meetings and discussions took place between the OPs' officials before consummation of the [redacted] contract.

153. [redacted] of NMCC also detailed the discussions held on freight rates between NYK Line, NMCC and K-Line. Relevant excerpts in this regard from [redacted] statement, are as follows:

> *"**Q8. For [redacted] as an OEM what can you tell us about the collusion for [redacted] ([redacted] etc.) and [redacted], [redacted] and [redacted] routes?***
> *Ans. Approximately towards the end of 2009 and early 2010, I approached NYK and K-Line and asked them to submit a price higher than the one given by NMCC. This was because I did not want NYK and KLine to give a quote lower than [redacted] of NYK and [redacted] of K-Line.*
> *I indicated our rate level to them which was between $[redacted] to $[redacted]/cbm and asked the other parties to quote a higher rate. They responded that they understood which in [redacted] means they would go along with it. ... "*
>
> (Emphasis supplied)

154. It is noted from the above statement of [redacted] that he approached [redacted] of NYK Line and [redacted] of K-Line at the end of [redacted] and early [redacted] and asked them to submit bids higher than NMCC.

155. It is also noted from the deposition of [redacted] that NMCC and K-Line discussed [redacted] route, including freight rate, around November 2008. The relevant excerpts of [redacted] deposition in this regard, are as follows:

> *"**Q.4. When did you speak to [redacted], for what route and what were the contents of the conversation?***
> *Ans. I spoke to [redacted] for the [redacted] route around [redacted] and it was to ship [redacted] vehicles produced by [redacted] out of India. Thereafter, [redacted] communicated with [redacted] of K-Line. Ultimately, we determined that it would not make economic sense to use their services.*
>
> ***Q.5. What do you know of [redacted] of K-Line and his negotiations with NMCC?***
> *Ans. There were discussions concerning the frequency of their sailings, how many units were being transported and at which ports the vessels would call. The idea was to find out when K-Line Ships*

would be sailing to determine whether the sailings in combination with NMCC could be increased for the benefit of [redacted] *We also discussed freight rates and colluded on the same.*

Q.6. What freight rates for which cars and for which routes did you discuss? And when?
Ans. The conversation was between [redacted] *and myself concerning freight rates for* [redacted] *cars produced by* [redacted] *for the India* [redacted] *route, K-Line indicated the rate which I think was between $*[redacted] *and $*[redacted]*/cbm while our rate for transporting* [redacted] *cars was between $*[redacted] *and $*[redacted]*/cbm. This was sometime in the same period as indicated in the above questions."*
(Emphasis supplied)

156. Considering that other PCCs were also involved in the co-ordination/discussions, the investigation also confronted the relevant documents submitted by NYK Line to the official of MOL ([redacted]), who corroborated the meetings evidenced in the visitors' log submitted by NYK Line. [redacted] confirmed the meetings of [redacted] of MOL with NYK Line on [redacted] and [redacted] also confirmed various other meetings between MOL and NYK Line between [redacted] and [redacted].

157. NMCC also submitted certain internal emails *vide* its submission dated 22.08.2016, which were exchanged amongst officials of NMCC. The investigation first examined the email dated [redacted] at [redacted] pm sent by [redacted] of NMCC to [redacted] of NMCC and others regarding shipment from India to [redacted] of cars manufactured for [redacted] by [redacted]. In the said email, [redacted] was appraising [redacted] about the communication by [redacted] of [redacted] to [redacted] of MOL on the [redacted] shipment from [redacted] to [redacted]. Relevant excerpts of the said email, are as follows:

"D [redacted] *of NMCC,*
I received a phone call from MOL General Manager [redacted] *of MOL.*

1. [redacted] at [redacted] called [redacted] of MOL directly today to say that they would like the rate of shipments from [redacted] to [redacted] lowered from $[redacted]/m3 to $[redacted]/m3.
2. [redacted] of MOL asked [redacted] of [redacted] whether the decision hadn't been made to handle that cargo through NMCC.
3. [redacted] said that it has been decided that, once [redacted] vehicles begin shipping from [redacted] NMCC's newly built ships will be used to cover both the [redacted] and [redacted] ports and ship through NMCC, but until then there is free competition. (They will have MO carry the entire volume if MO can give them $[redacted]/m3.)
4. For its part, MO is not thinking about going so far as to lower the freight rate and moreover compete with NMCC, but they have various direct deals with [redacted] to the alliance area, so they are concerned with how to answer as they cannot treat them harshly. They would like to hear NMCC's opinion on how to respond to [redacted]
5. MOL is worried that NYK or K-Line might give them a cheap rate and steal the cargo.
[redacted] of NMCC has inquired about NYK's situation, but as of now they have not received this type of request from [redacted], and it seems that the rate NYK secured with [redacted] is about $[redacted]/m3.
Incidentally, the rate our company has presented is $[redacted]/m3, and also a special rate of $[redacted]/m3 if they ship [redacted] vehicles together on the Universal Spirit.
If possible we don't want MOL to lower their rate. If political consideration are necessary towards [redacted] even if it is lowered, by [redacted]$ at most. I would like to answer that they should consider it carefully, because if a rate decrease is allowed here, there will be no choice but to allow rate decreases on all of the other routes on which MO currently is requesting increases. What do you think? [redacted] of NMCC."

(Emphasis supplied)

158. It is noted from the above email that [redacted] and [redacted] of NMCC had a conversation on what [redacted] (official at [redacted]) communicated to [redacted] of MOL regarding the [redacted] tender from India to [redacted], requesting him to lower MOL's freight rates from $[redacted]/cbm to $[redacted]/cbm. [redacted] wanted to know NMCC's view on the same, and informed [redacted] that he was worried that NYK Line or K-Line would charge a lower rate and take the tender. [redacted] of NMCC checked with NYK Line whether it had received a similar request from [redacted] and was informed that it

had not. NMCC did not want MOL to reduce its rates more than $[redacted] and wanted the two PCCs to mutually respect each other's businesses. Therefore, it is evident from the matters referred to in the said email that NMCC was continuously trying to determine the freight rate for this route by convincing MOL not to determine freight rates independently.

159. The said email of NMCC was also confronted to [redacted] of MOL by the DG, during recording of his statement. [redacted] statement before the DG confirmed the series of events outlined in the emails submitted by NMCC and the collusion between MOL and NMCC on the freight rates to be offered to [redacted] He also confirmed that NYK Line and K-Line were already shipping [redacted] cars out of [redacted] port and NMCC was their backup carrier. He stated that [redacted] of NMCC contacted [redacted] of K-Line to understand their service offerings, frequency of sailings, freight rates, *etc.* in relation to this tender. Relevant excerpts of the response of [redacted], are as follows:

> *"**Q15. Please explain Annexure-4 of NMCC's submission.***
> *Ans. The background to this is that NYK and K-Line were shipping [redacted] cars out of [redacted] and NMCC was the backup carrier. [redacted] of NMCC contacted [redacted], Team Manager of K-Line to find out what sort of services, frequency of sailings, freight rates etc. were being used. [redacted] of NMCC reported this to me."*
>
> (Emphasis supplied)

160. Further, the email dated [redacted] at [redacted] pm sent by [redacted] of NMCC to [redacted] of NMCC and others in this regard is also relevant to note. In this email, [redacted] appraises [redacted] that [redacted] is yet to approach NYK and K-Line. [redacted] insists that [redacted] convinces MOL not to accept the counter-offer made by [redacted] as can be seen in the last email at [redacted] p.m., which seems to be unattainably low. [redacted] of MOL, during his deposition, also confirmed the contents of the said email. Relevant excerpts of the said e-mail, are as follows:

".. GM [redacted] of NMCC
I recently also spoke to [redacted] of NMCC, but now things are appearing completely insane. It seems that NYK and K-Line have not been approached by these [redacted], but they wouldn't seriously go along with [redacted] either Even though [redacted], which has never done any favors in the past, goes around crying for help at the top of their lungs, wouldn't it just be seen as ravings?
Please have MOL answers firmly that there is no way to accept such a ridiculous price although it can go along if the decrease is about $[redacted].
Please try asking MOL about your idea.
[redacted] [redacted] of NMCC…"

161. The DG has also relied on another email dated [redacted] at [redacted] p.m. sent by [redacted] of NMCC to [redacted] of MOL and others. The said email reads as under:

"Mitsui O.S.K. lines [redacted] of MOL,
I am e-mailing you because I could not reach either you or [redacted] (General Manager) by phone
1) According to what our company has found out, neither NYK nor K-line received a request like your company received.
2) I think the proper freight rate level for [redacted] is $[redacted]/m3.
3) We are having both NYK and K-line answer [redacted] at the $[redacted]-[redacted]/m3 level, even if they were to receive a request in the future similar to the one you received, I think that would not offer a freight rate lower than the proper [redacted] freight rate considering the volume.
4) Consequently, I would appreciate it if you did not lower the freight rate if possible. However, as I think you have relationships with [redacted] on other routes, if you do lower the rates, please consider holding it to $[redacted] (or $[redacted]) at most.
5) Currently, the other shipping companies are also negotiating with a target of a freight rate increase in fiscal year [redacted] and if we lose control now I think there will certainly be an impact on other routes.
Thanks you for your help.
[redacted] Motor car carrier [redacted] of NMCC"
(Emphasis supplied)

162. This email also corroborates the discussions between NMCC and MOL over freight rates to be offered to [redacted] informed [redacted] that the appropriate rate for MOL to offer, as per NMCC, was $[redacted]-[redacted]/cbm. [redacted]

[redacted] had accordingly informed NYK Line and K-Line to charge $[redacted]/cbm if they were to receive a similar request from [redacted].

163. In response to the said email, [redacted], *vide* e-mail dated [redacted] at [redacted] a.m., replied to [redacted] that MOL would respond to [redacted] in line with NMCC's directions. This was also corroborated by [redacted], Group Leader, Car Carrier Division at MOL. The relevant excerpts of the said e-mail, are as follows:

> *"....[redacted] Motor car carrier [redacted] of NMCC,*
> *Apologies, I had been away on a business trip since yesterday afternoon. I understand your company's position, and I am of the same opinion. We cannot just give in after being suddenly told to reduce to $[redacted] over the phone, and we will respond in line with your directions.*
> *Please allow us to consult with you again if they blow up.*
> *Mitsui O.S.K. Lines [redacted] of MOL..."*

164. Subsequently, [redacted] of MOL also wrote an email dated [redacted] at [redacted] pm to [redacted] of NMCC, updating the discussion with [redacted]. The said email reveals that [redacted] of MOL called [redacted] of [redacted] and said that, after reviewing the profitability, MOL couldn't reduce the freight rate. Further, it was stated that [redacted] of MOL would again contact NMCC if there are any further developments. There is also another email dated [redacted] at [redacted] pm from [redacted] of NMCC to [redacted] of MOL and others, which also establishes contact between these two PCCs. Relevant excerpts of the said e-mails, are as follows:

> Inter Company Email dated [redacted] at [redacted] pm from [redacted] of MOL, to [redacted] of NMCC and others
>
> *"[redacted] of NMCC.*
> *I just called [redacted] at [redacted]. I said that after reviewing the profitability, our conclusion is that we indeed cannot reduce the freight rate. Of course his reaction was not good, but the conversation ended briefly*

as he said that he would circulate our answer internally and consider what to do next. As I thought offering the $[redacted] or $[redacted] reduction in today's call would be meaningless, today I only answered that we would not give them a reduction. I will contact you again if there are any further movements.
[redacted] *of MOL"*

Intercompany email dated [redacted] at [redacted] pm from [redacted] of NMCC to [redacted] of MOL and others

Subject: [redacted] OEM freight rate to Europe (NMCC and MOL)
"[redacted] *of MOL*
Thank you for your e-mails.
Please contact me if there are any developments.
[redacted] *of NMCC"*

165. Thus, it is noted from the above emails that through continuous exchange of information with each other, MOL and NMCC made active attempt to determine/maintain the freight level for the route in question with respect to the tender floated by [redacted].

166. Further, collusion between NYK Line and NMCC is also illustrated from the following other emails as well:

i. Email dated [redacted] at [redacted] pm sent by [redacted] of NYK Line to [redacted] of NYK Line – [redacted] to [redacted] route

ii. Email dated [redacted] at [redacted] pm sent by [redacted] of NYK Line to [redacted] of NYK Line – [redacted] route

iii. Email dated [redacted] at [redacted] pm sent by [redacted] of NYK Line to [redacted] of NYK Line – [redacted] route

iv. Email dated [redacted] at [redacted] pm sent by [redacted] of NYK Line to [redacted] of NMCC

v. Email dated [redacted] at [redacted] pm sent by [redacted] of NYK Line to [redacted] of NMCC, the contents of which have

already been elaborated *supra*, along with the deposition of [redacted] of NYK Line, which corroborated the same, while discussing evidences in relation to [redacted] tender of [redacted]. This email talks about continuation of the existing system and in case there is disruption by MOL to take business of [redacted], NYK Line will intrude into the business of [redacted] In this email, NYK Line and MOL are about to reach an understanding that each would respect the other's incumbent status. If MOL does not propose any new service to [redacted] during their one on one information exchange meet with [redacted], NYK Line would respect MOL's [redacted] business.

[redacted] Global Tender of [redacted] floated for [redacted] business

167. [redacted] of NYK Line, in his Affidavit dated 06.11.2014, stated that in [redacted], [redacted] floated a global tender for [redacted] [redacted] business. In this regard, he talked with [redacted], Manager of NMCC, with respect to the [redacted] route. NMCC also wanted to retain the [redacted] business from [redacted] to [redacted] as it was important for NMCC. NMCC wanted to protect the incumbent business commonly established contacts with the other carriers, if necessary. Both routes from [redacted] and from [redacted] to [redacted] were included as part of the Global Tender issued by [redacted] in which the carriers were to offer rates for the [redacted] business. [redacted] [redacted] noted down the details on a sheet of paper, which showed that for the routes from [redacted] to [redacted], [redacted] and [redacted], NMCC asked NYK Line to submit a bid higher than the indicated rates and for the route from [redacted], with the indicated rate. As the pricing for these trade routes was not his responsibility or that of the Global Marketing and Cross Trade Team, [redacted] passed on the information to the relevant team (*i.e.*, to the [redacted] Team, *etc*.). He further stated in his Affidavit that "*I believe the relevant teams took this into consideration and accordingly bid a price higher than those*

indicated by NMCC with regard to the said routes from India to the said destinations".

168. During the course of his deposition, [redacted] was also requested to elaborate on his meeting with [redacted] of NMCC. [redacted] stated that [redacted] of NMCC directed NYK Line to 'respect' NMCC's incumbent position with respect to [redacted] and [redacted]. He further stated that the information was shared with the relevant official in-charge of these routes ([redacted] of NYK Line), and eventually, NYK Line quoted a rate that was much higher than the indicative rates shared by NMCC for some trade routes, including [redacted], and NYK Line did not bid for some.

169. The investigation confronted [redacted] of NMCC with the averments made by [redacted] of NYK Line on his Affidavit. [redacted], in his deposition, corroborated the collusion between NMCC and NYK Line for the [redacted] Global Tender for [redacted] for the [redacted] route for [redacted] [redacted] cars and [redacted] cars manufactured by [redacted]. He, during his deposition, stated that he used to meet [redacted], Team Manager of K-Line, very frequently, around once a month; he also stated with conviction that the venue used to be NMCC's office at [redacted], and they talked about the [redacted] route, including [redacted], for the shipment in [redacted]. They talked about freight rates of K-Line, which were not far from those of NYK Line. Accordingly, the investigation deposed [redacted] of K-Line as well.

170. [redacted], during his deposition, admitted that he used to frequently visit NMCC's office but to meet some other official of NMCC. [redacted] remained silent on the claim by [redacted] that they used to exchange information including freight rates for the [redacted]-[redacted] route. He also admitted that there had been various information exchanges between him and the officials of NMCC, but he could not recall whether they colluded on freight rate or not. The DG noted that [redacted] had been selective or evasive in his replies to the DG.

171. NYK Line, MOL and NMCC, in their submissions, have stated that they agree with or do not object to the findings of the DG with respect to [redacted] global tender.

172. As far as K-Line is concerned, its submissions in respect of the findings of the DG are briefed below:

172.1. K-Line serviced [redacted] and competed for its contracts when opportunities presented. K-Line only transported a very miniscule batch of cars from [redacted] to [redacted] and [redacted] to [redacted] in [redacted] and [redacted] based on a spot contract, for which the method of calculating BAF was purely designed and fixed by [redacted] based on spot prices, and there was no scope of negotiating the BAF formula with [redacted].

172.2. NYK Line, in its submissions before the DG, has mentioned only MOL and NMCC as the PCCs with whom it colluded with respect to the [redacted] contract, and not K-Line. This crucial piece of information was not considered by the DG and was not even included as part of the DG Report.

172.3. K-Line also reiterated its submissions that an allegation of Section 3(3)(d) under the Act with respect to any of the OEM contracts is clearly unsustainable as there was no competitive bidding process to begin with.

172.4. The DG Report has failed to recognise that K-Line was competing with legacy carriers of OEMs. Further, far from engaging in anti-competitive behaviour, K-Line was effectively a newcomer entering the market for the provision of car carrier services to [redacted], [redacted] and [redacted], thereby effectively increasing competition in the market for provision of PCC services in India.

172.5. Given that NYK Line was the primary carrier for both [redacted] and [redacted], and NMCC was the industrial carrier for [redacted], the 'Respect Rule', if any, would apply only to the afore-mentioned two car carriers and not to K-Line, which was a relatively smaller player in the market for provision of PCC services to [redacted], [redacted], and [redacted]. This has been clarified by both NYK Line and MOL themselves in a number of instances, which the DG

Report has failed to factor in while drawing its conclusions against K-Line under Section 3(3)(c) of the Act.

172.6. Relying on the decision of the [redacted], K-Line averred that even in other judications, K-Line has not been found engaging in customer allocation, unlike its counterparts such as NYK Line and MOL.

172.7. Relying on the Commission's decision in *Case No. 66 of 2011* titled *Shailesh Kumar v. Tata Chemicals Ltd. and Others*, K-Line averred that the 'Respect Rule', which has been relied upon in the DG Report, does not imply 'non-competition', but indicates the existence of a form of oligopolistic market in which a new player was increasing the competition and gaining market share in a market largely dominated by a single player.

173. The Commission has carefully perused the averments made by K-Line, and the observations of the Commission thereon are as follows:

173.1. In relation to the assertions of K-Line that it transported a very miniscule batch of cars from [redacted] to [redacted] and [redacted] to [redacted] in [redacted] and [redacted] based on a spot contract, the Commission notes that the very basis of the cartel allegations in the matter pertains to enforcement of 'Respect Rule' by the PCCs in favour of the incumbent player (which in case of [redacted], was NMCC). Therefore, the outcome of the said rule would obviously be that K-Line did not provide services to [redacted]. K-Line has not asserted that it was not approached by [redacted] seeking maritime transport services for its vehicles manufactured in India. Accordingly, the said assertion by K-Line is of no consequence. As elaborated earlier, there is sufficient evidence on record to indicate that other PCC(s) approached K-Line to either respect the incumbent status or quote a higher price. The assertion by K-Line that it provided limited services to [redacted], and that too from [redacted] to [redacted] and [redacted] to [redacted] (and not [redacted]-[redacted]), in fact corroborates the evidence presented by the DG.

173.2. In relation to the assertions of K-Line that NYK Line, in its submissions, has not mentioned K-Line as a PCC with whom it colluded with respect to the [redacted] contract, it is noted that the conclusion of the DG that K-Line was an active member of the collusion with respect to the [redacted] contract is based on a comprehensive appraisal of the evidence presented by all the three other PCCs as well as other evidence collated by the DG, and not solely the submissions made by NYK Line.

173.3. The assertion of K-Line relating to existence of a competitive RFQ as a *sine qua non* for reaching a finding of collusive bidding has already been addressed by the Commission *supra* in this order and therefore, is not being reproduced here again for brevity.

173.4. K-Line has asserted that NMCC was the industrial carrier for [redacted] and it was competing with legacy carriers for OEMs. K-Line has also asserted that it was effectively a newcomer entering the market for provision of car carrier services to OEMs. In this regard, the Commission is of the view that even though NMCC was the primary carrier for [redacted], it does not imply that instead of competing independently with the incumbent player, K-Line should start colluding with the other PCCs. By aligning its commercial activities with those of the colluding parties, K-Line became part of the agreement to collude, which may be in violation of the provisions of Section 3(3) of the Act. A comprehensive assessment of the evidence collated in the matter indicates active role of K-Line in the whole collusion, and K-Line has not been able to place any evidence on record to suggest otherwise.

173.5. In relation to the averments of K-Line that 'Respect Rule' in India, if any, was between NYK and MOL only, and not between NYK (and K-Line) and MOL, it is noted that, in relation to [redacted] business, the incumbent was NMCC, and therefore, as per the evidence presented, respect was expected from all the other PCCs, which also included K-Line.

173.6. In relation to the assertions of K-Line that it has not engaged in customer allocation even in other jurisdictions where it has been held to have

colluded, it is noted that this averment of K-Line is completely contrary to its own averment that "*K-Line's submissions in other jurisdictions should not prejudice proceedings before the Hon'ble Commission*". Therefore, K-Line itself argues that proceedings in other jurisdictions should not prejudice the proceedings in India. As the findings in the present matter are based entirely on the evidence presented during the course of investigation and inquiry in India, such submissions of K-Line hold no water.

173.7. K-Line has also relied on the observations of the Commission in *Shailesh Kumar* case (*supra*), which are reproduced below, to assert that 'Respect Rule' indicates existence of a form of oligopolistic market:

> "*The non-competitive nature of a market, standing alone, does not imply an 'agreement'. Interdependent behaviour is not an 'agreement' (i.e., price and output decisions are arrived at independently, but take into account rivals reactions). There is not enough evidence in the DG report from which an agreement on prices or supply between the players can be inferred."*
>
> (Emphasis supplied)

In this regard, the Commission notes that K-Line has completely misunderstood and misapplied the observations of the Commission in the said matter. In oligopolistic markets also, competitors are ultimately expected to take their independent decisions, may be after mimicking and taking into account rivals' actions. However, in the present matter, the evidence on record clearly establishes that the four PCCs were regularly interacting with each other through multilateral or bilateral meetings and sharing commercially sensitive information, which is proscribed under Section 3(3) of the Act.

173.8. K-Line has also averred that none of the OEMs, whose tenders and contracts were subject to investigation in the present matter, has made any allegations of collusive bidding against OPs in India. On the contrary, it has submitted that, based on the facts placed on record, OEMs, *i.e.*, [redacted] and [redacted], have submitted that there has been no cartelisation amongst OPs in relation to the India routes. The plea is thoroughly misdirected. The finding of

cartelisation has to be returned by the Commission based on material and evidence available on record. Mere *ipse dixits* of parties under inquiry or of third parties (as is the case in the present case) denying collusive conduct, is not determinative of existence of cartel. In any event, the two OEMs referred by K-Line have actually not denied the existence of the cartel, if not confirmed it. This is clear from the submissions of K-Line itself, which has relied on the submission of the OEMs made before the DG. [redacted], in its submissions before the DG, has stated that, "[redacted] *at that time has not observed any instance of cartelization or similar practices in relation to the* [redacted]*-route shipping contract with NYK-Line/K-Line during the given period*." Similarly, [redacted], in its submissions before the DG, has stated that, "[redacted] *is not aware of any cartelization amongst PCC companies, in relation to the Indian market*." Therefore, the Commission notes that not only do the arguments of K-Line lack merit, they also wrongly interpret the submissions made by OEMs. In this regard, the Commission also takes note of the submission of NYK Line that "… *post the ship liners being subjected to penalties in various jurisdictions, several ship liners are facing damages claims filed by car manufacturers/ OEMs*."

174. Therefore, based on a comprehensive appraisal of the evidence presented by the DG, the Commission is of the view that K-Line has been a part of the collusion between NYK Line, MOL and NMCC, with respect to the [redacted] contracts. The Commission, hence, finds that all the four PCCs, *namely*, NYK Line, K-Line, MOL and NMCC, colluded amongst themselves for the contracts of OEM [redacted], and in the process, reached various agreements, wherein they tried to determine the freight prices, shared the market/OEM customers amongst each other and indulged in collusive bidding. Such conduct on the part of the OPs is presumed to have an AAEC within India. It is noted that NYK Line, MOL and NMCC have not objected to such AAEC and K-Line has not been able to rebut the same. Thus, the Commission finds the four OPs NYK Line, K-Line, MOL

and NMCC, to have contravened the provisions of Section 3(3)(a), 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act with respect to the [redacted] contract.

175. The common arguments made by K-Line in relation to AAEC have been examined and addressed by the Commission subsequently in this order.

AAEC

176. K-Line has also made submissions relating to pro-competitive factors ignored in the investigation report and argued that no AAEC has resulted from the alleged conduct. These submissions of K-Line are briefed as follows:

176.1. The DG Report has erred in finding efficiency enhancing agreements between the OPs as an egregious cartel. K-Line made efforts to enter into a market where it was not present and such market (of serving [redacted] contracts) was being serviced only by NYK Line. The entry of K-Line in servicing contracts of [redacted] marks increase in competitiveness in the market, which fact has been completely disregarded by the DG.

176.2. The DG does not weigh aggravating factors against mitigating factors, as is required under the Act. Relying on the literature of OECD as well as that of the European Commission, K-Line has submitted that joint bidding would be effectively legal under the Act, even if one party could have submitted the bid independently, provided that formation of the joint venture/ consortium leads to submission of a better bid or there are prudential commercial or technical reasons for submitting a joint bid.

176.3. K-Line officials have submitted that the specific service/route offered in India to [redacted] was historic and part of joint service offered by NYK Line and K-Line. K-Line wished to merely enter a service historically performed by NYK Line, and subsequently, continued offering the service jointly with NYK Line on insistence of [redacted] and [redacted]. Such competitor contacts/ agreements are claimed as a defense under the Act by way of presumption under Section 3(3) of the Act being rebuttable.

176.4. The shipping industry is peculiar and requires constant competitor contacts as evidenced by block exemptions provided to it by various jurisdictions.

176.5. Exchange of information was benign for India. The OEMs actively encouraged and even initiated and facilitated co-ordination amongst the OPs for their business continuity, security and logistical reasons in order to enhance efficiency. Further, exchange of information and discussions on issues of operations in the matter of rendering of services in the market, are not uncommon.

177. In this regard, as pointed out previously, it is important to note that the provisions of Section 3(1) of the Act, not only proscribe the agreements which cause AAEC but the same also forbid the agreements which are *likely* to cause AAEC. Hence, the plea that there is no contravention of the provisions of the Act in the present matter because allegedly no AAEC has been caused as a result of the alleged cartel between the parties, is misdirected and untenable in the face of clear legislative intent whereby even the conduct which can potentially cause AAEC, is prohibited. Furthermore, once an agreement of the types specified under Section 3(3) of the Act is established, the same is presumed to have an AAEC within India. Therefore, it follows that once an 'agreement' of the types as specified in Section 3(3) of the Act, is shown to be established, the same falls within the presumptive rule of AAEC as provided thereunder. The parties, however, can rebut such statutory presumption in light of the factors provided under Section 19(3) of the Act.

178. In the instant matter, K-Line has failed to show as to how their impugned conduct resulted into any accrual of benefits to consumers; improvements in production or distribution of goods or provision of services; or promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services, in terms of Section 19(3) of the Act. On a holistic evaluation of the replies filed by K-Line in light of the factors enumerated in

Section 19(3) of the Act, the Commission is satisfied that it has not been able to dislodge the statutory presumption by adducing cogent evidence, as required. Specifically, the Commission notes as follows:

178.1. Except bald statements, K-Line has not been able to submit any evidence in support of its assertions on the pro-competitive effects of the horizontal co-ordination it had with its competing PCCs. Even assuming that joint offer of services was pro-competitive, it does not grant freedom to competing PCCs to start exchanging commercially sensitive information *e.g.*, price.

178.2. In relation to the averments of K-Line that shipping industry requires constant competitor contacts as evidenced by block exemptions provided to it by various jurisdictions, it is noted that firstly, such block exemption was not provided under the statute in India at the time of the alleged conduct, *i.e.*, the years [redacted] to [redacted]; therefore, protection under such exemption cannot be claimed for the alleged conduct. Secondly, it is noted that the Vessel Sharing Agreements ('**VSAs**') as exempted subsequently by the Ministry of Corporate Affairs *vide* Notification No. S.O. 3641(E) dated 11.12.2013 do not include price fixing, customer allocation and collusive bidding agreements, which the PCCs have been found to have entered into, in the present matter. Thirdly, K-Line in its argument, while relying on the Press Release dated 23.04.2015 by the Ministry of Shipping, Government of India, has very conveniently omitted an important clarification mentioned in the press release itself. The same reads as "*Vessel Sharing Agreements are meant to promote ease of doing business in the liner shipping industry*. *Best practices consist of not indulging in anti-competition practices which include fixing of prices, limitation of capacity or sale and allocation of markets or customers*." Fourthly, the Notification No. S.O. 354(E) dated 05.02.2015 issued by the Ministry of Corporate Affairs while exempting VSAs of Liner Shipping Industry from the provisions of Section 3 of the Act, itself creates a carveout for agreements resulting in concerted practices involving fixing of prices, limitation of capacity or sales and allocation of

markets or customers. Therefore, the conduct for which the OPs have been found to be liable in terms of Section 3(3) of the Act in the present matter, has been specifically excluded from the purview of the exemption notification(s). Consequently, the reliance placed on such notification by K-Line and assertion of K-Line that VSAs have not been defined properly are outrightly misplaced and misdirected.

178.3. Exchange of information and discussions in the present matter were not restricted to operational issues. The PCCs actively exchanged/discussed, *inter alia*, price-related information as well as requested each other to enforce the 'Respect Rule'. By no stretch of imagination can discussion on such issues be assumed to be restricted to operational issues.

Liability under Section 48

179. Now that contravention of the provisions of the Act by the OPs has been established, the Commission proceeds to determine in the subsequent paragraphs, the role and liability of the respective individuals of the OPs in terms of Section 48 of the Act. For ease of reference, Section 48(1) of the Act has been reproduced below:

> "*Where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:*
>
> *Provided that nothing contained in this sub-section shall render any such person 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 commission of such contravention*."
>
> (Emphasis supplied)

180. The DG has found 14 individuals of NYK Line, 10 individuals of K-Line, 9 individuals of MOL and 3 individuals of NMCC liable in terms of Section 48 of

the Act, for the anti-competitive conduct of their respective companies. The role and liability of each is discussed as follows:

NYK Line

181. The DG has identified the following three officers of NYK Line responsible under Section 48(1) of the Act:

i. [redacted], [redacted] and [redacted]
ii. [redacted]
iii. [redacted]

([redacted] and [redacted] have also been found responsible by the DG in terms of Section 48(2) of the Act)

182. These three individuals, *vide* their respective submissions, completely agree with the findings of the DG in the Investigation Report with respect to NYK Line's and specifically their participation in the cartel between the car carrier shipping lines. Based on the evidence discussed above and the admission of respective individual, the Commission holds the abovementioned officials of NYK Line, namely, [redacted], [redacted] and [redacted], guilty in terms of Section 48(1) of the Act. Further, [redacted] and [redacted], are also held to be guilty in terms of Section 48(2) of the Act.

183. In addition, the DG has identified the following officials of NYK Line responsible under Section 48(2) of the Act:

i. [redacted], [redacted]
ii. [redacted], [redacted]/[redacted]
iii. [redacted], [redacted]
iv. [redacted], [redacted]
v. [redacted], [redacted]

vi. [redacted]
vii. [redacted]
viii. [redacted]
ix. [redacted]
x. [redacted]
xi. [redacted]

184. These individuals, *vide* their respective submissions, agree with the findings of the DG in the Investigation Report with respect to NYK Line's and specifically their participation in the cartel between the car carrier shipping lines. Based on the evidence discussed above and the admission of respective individual, the Commission holds the abovementioned officials of NYK Line, namely, [redacted] and [redacted], guilty in terms of Section 48(2) of the Act.

K-Line

185. The DG has identified three officers of K-Line responsible under Section 48(1) of the Act, *i.e.*, [redacted], Car Carrier Division; [redacted]; and [redacted] (collectively, "**K-Line Officers**").

186. K-Line Officers, in their written submissions, have contested the said findings of the DG on multiple counts. Relying on various pronouncements of the Hon'ble Supreme Court and other authorities, it has, *inter alia*, been contended that:

186.1. K-Line Officers have been held liable under Section 48(1) of the Act prematurely, without any evidence relating to their roles and involvement in relation to the alleged contravention of the Act.

186.2. The onus to demonstrate that a director was responsible for and in-charge of the conduct of the company's business lies with the DG and has not been discharged in the present case.

186.3. No evidence has been furnished in the DG Report which proves that K-Line Officers had knowledge of pricing, pricing strategy, sales/volume data and targets, and had any say in the decision-making process in relation to sales or prices.

186.4. Individual liability cannot be fastened on the basis of mere designation, and if an individual was not in-charge of and responsible to the business which is found to have contravened the law, then no liability can be imposed on such individual.

186.5. K-Line Officers were not even called for a deposition (for the recording of their statements) by the DG during the course of the investigation.

187. In relation to the contentions of the K-Line Officers, it is noted that as soon as the concerned party is found to be in contravention of the provisions of Section 3(3) of the Act, the liability of the persons in-charge and responsible for conduct of its business, flows from the provisions of Section 48 of the Act. Further, a plain reading of Section 48(1) of the Act suggests that where a person is found to be the *in-charge of* and *was responsible to the company for the conduct of the business of the company* at the time the contravention was committed shall be *deemed* to be guilty of the contravention.

188. It has been clearly brought out in the Investigation Report of the DG that the K-Line Officers were in-charge of the Car Carrier Division of K-Line as of 2011 and responsible for the conduct of the business. Hence, it was incumbent upon the concerned officers to rebut this finding by adducing cogent evidence to show that the impugned conduct took place either without their knowledge or that they had exercised all due diligence to prevent the commission thereof. In this regard, the Commission notes that K-Line Officers, in their submissions, have not denied

that they were not responsible for the conduct of K-Line. On the contrary, it has been admitted that these three officers, as part of their roles and responsibilities at K-Line, managed India-related routes. Though the same has been claimed to be 'miniscule' compared to all the routes managed by them in all the jurisdictions, it is wholly inconsequential for the present purposes. Moreover, no basis whatsoever has been provided to assert or corroborate the same, let alone any reasonable basis. It is further evident from the Car Carrier Groups' Organization Chart of K-Line as submitted in response to the Investigation Report that the three K-Line Officers were at the helm of affairs of K-Line's *Car Carrier Planning & Development Group* or *Car Carrier Business Group*, or both, during the concerned period.

189. Moreover, [redacted] has been identified by K-Line as holding the position of [redacted] of K-Line from [redacted], *i.e.*, substantially overlapping with the collusion period investigated by the DG. In this regard, the Commission also takes note of the submission of K-Line *vide* letter dated 28.09.2021, wherein it has been, *inter alia* stated that "…*the* [redacted] *under Japanese law is a director who has the highest authority of the company*…." and by corollary, ultimately responsible for the conduct of business of K-Line.

190. Apart from bald assertions and being evasive in replies, nothing has been shown or brought on record before the Commission by such persons to absolve themselves from the liability in terms of the provisions and mechanism contained in Section 48(1) of the Act *i.e.*, they have not demonstrated that contravention of the Act was committed without their knowledge nor anything to show that they had exercised due diligence to prevent the commission of contravention. Therefore, the contentions of K-Line Officers deserve to be rejected. It is also noted that as against their contention, K-Line Officers have been provided sufficient opportunity to present their case by way of seeking their comments/objections to the Investigation Report of the DG. Accordingly, the

Commission holds [redacted], [redacted], Car Carrier Division; [redacted]; and [redacted], guilty in terms of Section 48(1) of the Act.

191. Further, the DG has identified seven officers of K-Line responsible under Section 48(2) of the Act, namely:

i. [redacted]
ii. [redacted]
iii. [redacted]
iv. [redacted]
v. [redacted]
vi. [redacted]
vii. [redacted]

192. In their respective submissions, the concerned officers of K-Line have denied active involvement in the alleged anti-competitive activities of K-Line and thus, claimed that no liability is attracted under Section 48(2) of the Act. However, after a perusal of the evidence presented in the Investigation Report and as examined by the Commission in the earlier part of this order, it is noted that all the above-named individuals had played a role in collusion on behalf of K-Line with officials of other OPs. The evidence in respect of each of these individuals has been discussed in detail earlier, and therefore, the same is not being repeated here for brevity. These individuals have not been able to rebut the roles played by them in cartelisation for which the DG has gathered cogent and sufficient evidences. Accordingly, the Commission holds [redacted], [redacted] and [redacted] guilty in terms of Section 48(2) of the Act.

MOL

193. The DG has identified the following officials of MOL responsible under Section 48(1) of the Act:

i. [redacted], [redacted]
ii. [redacted], [redacted]
iii. [redacted], [redacted]
iv. [redacted], [redacted]

([redacted] and [redacted] have also been found responsible by the DG in terms of Section 48(2) of the Act.)

194. In this regard, it is noted from the submissions of MOL that [redacted] and [redacted] are no longer employed with MOL and could not be contacted at the addresses registered with MOL. MOL also submitted that it had tried to reach out to these three ex-employees (at their last known addresses) but was unsuccessful. In view of the same, and the fact that the Investigation Report cannot be served onto these three individuals, the Commission decides to drop the proceedings against them.

195. [redacted], [redacted] of MOL, has been found by the DG to be responsible, both under Section 48(1) as well as Section 48(2) of the Act. In this regard, it is noted from the submissions of MOL that [redacted] was the [redacted] for the Car Carrier Division from [redacted] to [redacted]. In [redacted], [redacted] was the [redacted] of the CC Division. [redacted] held all positions specifically with a reference to India within MOL. It has been submitted that [redacted] was the [redacted] at MOL and was in charge of approving the freight rates and business policies that his subordinates would make. It has also been submitted that [redacted] added immense value to the DG's investigation by providing full disclosure through his submissions and continuous co-operation. Therefore, [redacted] must be allowed lenient

treatment and the highest possible reduction in the penalty amount. Based on the evidence discussed above and the abovementioned submissions, the Commission holds [redacted] guilty in terms of both Section 48(1) as well as Section 48(2) of the Act.

196. In addition, the DG has identified the following officials of MOL as responsible under Section 48(2) of the Act:

i. [redacted]
ii. [redacted]
iii. [redacted]
iv. [redacted]
v. [redacted]

197. In their respective submissions, the concerned officers of MOL have not contested the findings of the DG and have further submitted that they have added significant value to the DG's investigation by providing full disclosure through his submissions and continuous co-operation. Accordingly, they must be allowed lenient treatment and the highest possible reduction in the penalty amount.

198. The role of the abovementioned officials of MOL, by way of evidence presented in the Investigation Report and subsequent submissions of MOL, has already been examined by the Commission in the earlier part of this order. Accordingly, it is noted that all the above-named individuals played a role in collusion on behalf of MOL with officials of other OPs. The evidence in respect of each of these individuals has been discussed in detail earlier, and therefore, the same is not being repeated here for brevity. Accordingly, the Commission holds [redacted] guilty in terms of Section 48(2) of the Act.

NMCC

199. The DG has identified the following officials of NMCC responsible under Section 48(1) as well as Section 48(2) of the Act:

[redacted], [redacted]
[redacted]

200. In relation to the role of [redacted] in NMCC, it has been submitted that he was the [redacted] of the Marketing and Operations Department and managed the shipment of [redacted] cars on the [redacted] route from [redacted] to approximately [redacted], and from [redacted] onwards, he managed the [redacted] factory established in [redacted]. Further, [redacted] as [redacted] approved the ocean freight quotes for the above-mentioned routes.

201. Further, in respect of [redacted], it has been submitted that he was the Director at NMCC for the entire duration of the investigation. Moreover, as a Director, [redacted] approved ocean freight rates quoted by his subordinates.

202. It has been further submitted that both [redacted] and [redacted] added significant value to the DG's investigation by providing full disclosure through their submissions and continuous co-operation. Accordingly, both these individuals must be allowed lenient treatment and the highest possible reduction in the penalty amount.

203. Based on the evidence discussed in the earlier part of this order highlighting the role played by these two individuals and the abovementioned submissions, the Commission holds [redacted] and [redacted] guilty in terms of both Section 48(1) as well as Section 48(2) of the Act.

204. In addition, the DG has also found [redacted] of NMCC responsible in terms of Section 48(2) of the Act. In this regard, it has been submitted that [redacted]

[redacted] was the [redacted] of the Marketing and Operation Department of NMCC for the India to [redacted] and other places in [redacted] for both [redacted] [redacted] and [redacted] from [redacted]. Additionally, he managed the [redacted] and [redacted] routes for [redacted] cars. Further, [redacted] as [redacted] was involved in fixing the freight rates for the above-mentioned routes.

205. It has been further submitted that [redacted] added significant value to the DG's investigation by providing full disclosure through his submissions and continuous cooperation. Accordingly, [redacted] must be allowed lenient treatment and the highest possible reduction in the penalty amount.

206. The role of the [redacted], by way of evidence presented in the Investigation Report and subsequent submissions of NMCC, has already been examined by the Commission in the earlier part of this order. Accordingly, it is noted that [redacted] had played a role in collusion on behalf of NMCC with officials of other OPs. The evidence in respect of each of these individuals has been discussed in detail earlier, and therefore, the same is not being repeated here for brevity. Accordingly, the Commission holds [redacted] guilty in terms of Section 48(2) of the Act.

VI. Conclusion

207. The evaluation of available evidence indicates that there was an agreement between NYK Line, K-Line, MOL and NMCC with the objective of enforcement of "Respect Rule", which implies avoiding competition with each other and protecting the business of incumbent PCC with the respective OEM. The PCCs would respect the business of the incumbent carrier by either providing a quote above the incumbent's rates or refraining from quoting. To achieve the said objective, the OPs resorted to multi-lateral as well as bilateral contacts/ meetings/ e-mails with each other to share commercially sensitive information which, *inter alia*, includes freight rate. The OPs engaged in such practices with the aim of restricting competition and maintaining the *status quo*, *i.e.*, ensuring that the car

carriers would keep their respective businesses for certain customers and/or certain routes. They also aimed to preserve their position in the market and maintain or increase prices, including by resisting requests for price reduction from certain OEMs.

208. It is also noted that the contacts between the OPs were route or customer-specific and not all parties were involved in every exchange. Further, the conduct was an ongoing process and did not consist of isolated or intermittent occurrences. [redacted].

209. The said conduct on the part of the OPs can be classified as an agreement which is presumed to have AAEC within India under the provisions of Section 3(3) of the Act. It is noted that NYK Line, MOL and NMCC have not objected to such AAEC and K-Line has not been able to rebut the same. Accordingly, based on a cumulative assessment of the evidence discussed above, the Commission holds all the four OPs, *i.e.*, NYK Line, K-Line, MOL and NMCC, guilty of contravention of the provisions of Section 3(3)(a), 3(3)(c) and 3(3)(d) read with Section 3(1) of the Act from 2009 to 2012.

210. As far as individuals' liability is concerned, the Commission holds the following individuals liable for the anti-competitive conduct of their respective companies:

Individuals liable under Section 48(1) of the Act	
NYK line	[redacted]
K-line	[redacted]
MOL	[redacted]
NMCC	[redacted]

Individuals liable under Section 48(2) of the Act	
NYK line	[redacted]
K-Line	[redacted]

	[redacted]
MOL	[redacted]
NMCC	[redacted]

VII. Penalty Assessment

211. Once contravention of the provisions of the Act has been established, the Commission now proceeds to determine the penalty, if any, to be imposed upon the contravening parties, under the provisions of Section 27(b) of the Act.

212. It has been argued by the OPs that penalty, if any, ought to be imposed on the basis of principle of proportionality, as envisaged by the Hon'ble Supreme Court in *Excel Crop Care Limited v. Competition Commission of India and Another (2017) 8 SCC 47 (Excel Crop Care Judgment).*

213. NYK Line in its submissions has also mentioned factors for the consideration of the Commission, in relation to penalty, if any, to be imposed upon NYK Line. These factors are summarized below:

213.1. [redacted].

213.2. NYK Line has provided the DG with all relevant evidentiary documents and statements that have assisted the DG in confronting the other three OPs, as has been recorded in the DG Report at various instances.

213.3. The quality and nature of the disclosures made by NYK Line throughout this investigation have been of better quality, and no attempts have been made by it to distort the nature of the evidence or the background of this co-ordination.

213.4. NYK Line co-operated fully with the DG throughout the course of investigation without seeking any adjournments.

213.5. NYK Line has since 2013 built a very robust competition compliance program pursuant to international best practices and ensures that all its personnel globally, including in India, maintain the highest standards of competition law compliance.

[redacted]

214. The submissions of MOL in relation to penalty and relevant turnover are as follows:

214.1. The Commission should take into account only the turnover or profits derived from the contracts in respect of which a contravention has been found by the DG. Alternatively, data only for the passenger car services segment to be considered instead of the entire maritime motor vehicle segment for penalty assessment.

214.2. MOL can only be penalized for the duration of the cartel after the relevant provisions of the Act came into effect, *i.e.* 20.05.2009 onwards. It has been further averred that the end point of the duration of the cartel for the party should be considered as per the last instance of cartelization MOL.

214.3. MOL has [redacted] complied with the conditions stipulated in Regulation 3 of the Lesser Penalty Regulations and should be granted maximum applicable reduction in penalty (based on its priority status) under the Lesser Penalty Regulations.

214.4. MOL has also cited the following mitigating factors that should be taken into consideration while calculating penalty:

a. MOL ceased its participation in the cartel before all the other OPs, as early as June 2011.

b. MOL has continuously co-operated during the investigation; despite the global COVID-19 pandemic severely affecting its administrative capacity in Japan recently, MOL has supplemented its response as much as possible.

c. MOL played a limited role in the cartel, and its involvement with respect of contracts was restricted.

d. The market situation during the duration of the cartel, *i.e.* post-global economic crisis of 2008, may be considered a mitigating circumstance in their favour.

e. MOL has already been penalized in other jurisdictions.

f. MOL is a first-time offender with intensive antitrust compliance measures in place.

215. NMCC, in its separate submissions, has largely reiterated the submissions of MOL, including submissions related to Lesser Penalty Application and consequent request for maximum applicable reduction in penalty. Additionally, it has been averred that it should not be penalized if MOL has already been fined for the same conduct. In this regard, it has been submitted that, as per the concept of single economic entity and that of joint and several liability, a subsidiary entity should not be penalized in respect of the conduct for which the parent company has already been penalized. It has been submitted that if NMCC is penalized again for the [redacted] contracts or for its involvement in the cartel, it would

amount to a double penalty on MOL (as a parent), which would be unjust and unlawful.

216. In respect of the abovementioned submissions of NMCC, the Commission notes that NMCC avers that the profits or turnover from the cartel, earned by the parent entity, *i.e.*, MOL, will necessarily already include the turnover and profits earned by its subsidiary, *i.e.*, NMCC. However, neither MOL nor NMCC have clarified that the value of profits or turnover of MOL, provided to the Commission, are on 'consolidated' basis and thus, includes those of NMCC. If the arguments of NMCC are to be accepted, then the consolidated value of turnover and profit of MOL (which would include the value of turnover and profits of NMCC) needs to be considered for determination of penalty. Therefore, in the absence of such clarification, the contention of NMCC is baseless.

217. K-Line has also submitted that, in the event the Commission finds K-Line in contravention of Section 3 the Act and decides to impose a penalty on it under Section 27 of the Act, the turnover of K-Line must be limited on the basis of the principle of proportionality based on:

217.1. relevant product, *i.e.*, the following items of revenue should be excluded for the purposes of calculating the relevant turnover/revenue of K-Line:

i. any revenue/profit earned from the operation of any PCTCs (or any other type of vessel other than PCCs) in relation to the transportation of motor vehicles.

ii. revenue earned from the transport of other items which do not constitute a motor vehicle.

iii. revenue earned from any ancillary service rendered by K-Line;

217.2. relevant geography, *i.e.*, revenue generated by K-Line in relation to only the routes which are the scope of investigation should be considered for the purposes of calculating the revenue/generated; and

217.3. relevant period, *i.e.*, in view of the period of the investigation, *i.e.*, 2008 - 2012, and the fact that, even at a global level, any alleged anti-competitive

conduct ceased to exist by September 2012 (in view of proceedings in United States of America, EU and Japan), the relevant period should be restricted till 2012.

218. K-Line has also mentioned the following mitigating factors to be considered by the Commission for levy of penalty:

218.1. Each of the routes which have been investigated by the DG are outbound to other ports in the world, and thus, there is no AAEC in India.

218.2. K-Line has fully cooperated with the DG during the investigation and with the Commission.

218.3. K-Line has already put in place a dedicated competition compliance policy which aims to ensure strict compliance with the competition, antitrust and anti-monopoly laws of all countries that are applicable to the businesses of the K-Line Group, including India.

218.4. The present case is the first time K-Line has been investigated by the Commission for entering into alleged anti-competitive agreements, with no previous orders or investigations being faced by K-Line in India.

219. With regard to such arguments raised by the OPs, at the outset, it is noted that the principle of proportionality as envisaged in *Excel Crop Care Judgment (supra)* by the Hon'ble Supreme Court was in the context of multi-product companies only. A bare perusal of the said judgement makes it clear that nowhere it held or otherwise declared that relevant turnover should be limited to the turnover earned from the specific customer/tender/route, wherein the effect of the anti-competitive conduct takes place. Any suggestion to impute such interpretation to the said order would frustrate the underlying policy objective of deterring the cartelists besides providing them a fertile ground for regulatory arbitrage, as detailed hereafter. *E.g.*, owing to the implementation of "respect rule", if an OP has refrained from undercutting the incumbent PCC in respect of a particular OEM, the turnover of the said OP from the said OEM would obviously be nil,

resulting in nil penalty. To allow such parties to walk free without incurring any monetary penalty for their anti-competitive conduct would not only stultify the Parliamentary intent in providing deterrence through penalties against such behaviour but would also run contrary to the underlying spirit of the judgment of the Hon'ble Supreme Court of India in *Excel Crop Care* judgment. Taking such a pedantic interpretation would provide a virtual free run to the infringing parties and an effective immunity against any antitrust action for their anti-competitive behaviour. This cannot be the purport or intent either of the Parliament or the Hon'ble Supreme Court of India in laying down the parameters and perimeter for imposition of monetary penalty upon the contravening parties. Therefore, such contentions by the OPs need to be dismissed.

220. In view of the facts of the case, the Commission has arrived at a finding that there existed a cartel amongst the OPs from 2009 to at least 2012. As such, the 'relevant turnover/profit' of the OPs would be the turnover/profit earned by the OPs from the provision of maritime transport services in relation to India during the cartel period.

221. The proviso to Section 27(b) of the Act reads as under:

> "*Provided that in case any agreement referred to in Section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten percent. of its turnover for each year of the continuance of such agreement, whichever is higher.*"

222. As such, in terms of the said *proviso*, in cases of cartelization, the Commission is empowered to impose upon the contravening entities, a penalty of up to three times of its profit for each year of the continuance of the cartel or 10% of its turnover for each year of the continuance of the cartel, whichever is higher.

223. It may be noted that the twin objectives behind the imposition of penalties are: (a) to reflect the seriousness of the infringement; and (b) to ensure that the threat of

penalties will deter the infringing undertakings. Therefore, the quantum of penalties imposed must correspond with the gravity of the offence and the same must be determined after having due regard to the mitigating and aggravating circumstances of the case. The Commission is also guided by the judgment of the Hon'ble Supreme Court of India in the *Excel Crop Care* case which enunciates the principle of proportionality. Proportionality achieves the balance between two competing interests: harm caused to the society by the infringer which gives justification for penalizing the infringer, on the one hand, and the right of the infringer in not suffering the punishment which may be disproportionate to the seriousness of the Act, on the other.

224. Based on revenue and profit details as submitted by the OPs and considering the mitigating factors put forth by the OPs as stated above, the Commission proceeds to determine the quantum of penalty imposed on the parties @ 1.5 times profit for each year of the continuance of the cartel or 5% of the turnover for each year of the continuance of the cartel, whichever is higher. In relation to the period of the cartel, it is noted that the agreement between Opposite Parties ceased to exist *w.e.f.* 06.09.2012 *i.e.,* immediately after Japanese Fair Trade Commission conducted an on-site inspection, in connection with alleged cartelisation by the Opposite Parties. Accordingly, in terms of the proviso to Section 27(b), the Commission has considered the period of continuance of the agreement between the Opposite Parties, as starting from 20.05.2009 (*i.e.*, the date when the relevant provisions of the Act came in force) till 05.09.2012. The computation of the penalty is as follows:

NYK Line (OP-1)

(In ₹)

FINANCIAL YEAR	RELEVANT TURNOVER	RELEVANT PROFIT	5% OF RELEVANT TURNOVER	1.5 TIMES OF RELEVANT PROFIT

2009-10[1]	1,85,91,07,293	(97,66,81,636)	9,29,55,365	(1,46,50,22,454)
2010-11	2,45,37,46,907	(1,04,18,00,396)	12,26,87,345	(1,56,27,00,594)
2011-12	2,25,72,39,117	(61,76,01,131)	11,28,61,956	(92,64,01,697)
2012-13[2]	1,05,09,56,845	(24,46,42,745)	5,25,47,842	(36,69,64,118)
Total	**7,62,10,50,163**	**(2,88,07,25,908)**	**38,10,52,508**	**(4,32,10,88,863)**

K-Line (OP-2)

(in ₹)

FINANCIAL YEAR	RELEVANT TURNOVER	RELEVANT PROFIT	5 % OF RELEVANT TURNOVER	1.5 TIMES OF RELEVANT PROFIT
2009[3]	47,30,65,751	(6,38,00,110)	2,36,53,288	(9,57,00,164)
2010	1,52,53,31,584	3,51,90,000	7,62,66,579	5,27,85,000
2011	1,75,80,23,447	(7,36,70,000)	8,79,01,172	(11,05,05,000)
2012[4]	1,09,00,20,709	7,59,24,590	5,45,01,035	11,38,86,885
Total	**4,84,64,41,490**	**(2,63,55,519)**	**24,23,22,075**	**(3,95,33,279)**

MOL[5] (OP-3)

(In ₹)

[1] From 20.05.2009 to 31.03.2010 *i.e.,* for 316 days out of 365 days. Relevant Turnover for the FY 2009-10 was INR 2,14,73,86,589 and relevant profit/(loss) was INR (1,12,81,29,105)

[2] From 01.04.2012 to 05.09.2012 *i.e.,* for 158 days out of 365 days. Relevant Turnover for the FY 2012-13 was INR 2,42,78,43,345 and relevant profit/(loss) was (INR 56,51,55,709)

[3] From 20.05.2009 to 31.12.2009 *i.e.,* for 226 days out of 365 days. Relevant Turnover for the FY 2009 was INR 76,40,22,120 and relevant profit/(loss) was (INR 10,30,40,000)

[4] From 01.01.2012 to 05.09.2012 *i.e.,* for 249 days out of 366 days. Relevant Turnover for the FY 2012 was INR 1,60,21,99,114 and relevant profit/(loss) was INR 11,16,00,000

[5] The financial data includes details in relation to export/import of cargo from/to India

FINANCIAL YEAR	RELEVANT TURNOVER	RELEVANT PROFIT	5% OF RELEVANT TURNOVER	1.5 TIMES OF RELEVANT PROFIT
2009-10[6]	76,17,25,538	(2,70,48,159)	3,80,86,277	(4,05,72,238)
2010-11	1,16,37,18,204	(21,16,97,723)	5,81,85,910	(31,75,46,584)
2011-12	1,35,82,26,462	(32,56,73,760)	6,79,11,323	(48,85,10,640)
2012-13[7]	76,82,19,519	(14,28,24,053)	3,84,10,976	(21,42,36,080)
Total	**4,05,18,89,723**	**(70,72,43,695)**	**20,25,94,486**	**(1,06,08,65,542)**

NMCC (OP-4)

(In ₹)

FINANCIAL YEAR	RELEVANT TURNOVER	RELEVANT PROFIT	5% OF RELEVANT TURNOVER	1.5 TIMES OF RELEVANT PROFIT
2009-10[8]	1,19,77,16,230	1,89,23,813	5,98,85,812	2,83,85,719
2010-11	1,90,07,98,400	10,46,50,130	9,50,39,920	15,69,75,195
2011-12	3,35,93,94,174	3,37,18,525	16,79,69,709	5,05,77,787
2012-13[9]	1,74,04,95,011	(2,20,31,027)	8,70,24,751	(3,30,46,540)
Total	**8,19,84,03,815**	**13,52,61,441**	**40,99,20,191**	**20,28,92,161**

[6] From 20.05.2009 to 31.03.2010 *i.e.*, for 316 days out of 365 days. Relevant Turnover for the FY 2009-10 was INR 87,98,41,207 and relevant profit/(loss) was (INR 3,12,42,335)

[7] From 01.04.2012 to 05.09.2012 *i.e.,* for 158 days out of 365 days. Relevant Turnover for the FY 2012-13 was INR 1,77,46,84,332 and relevant profit/(loss) was (INR 32,99,41,642)

[8] From 20.05.2009 to 31.03.2010 *i.e.,* for 316 days out of 365 days. Relevant Turnover for the FY 2009-10 was INR 1,38,34,38,051 and relevant profit/(loss) was INR 2,18,58,201

[9] From 01.04.2012 to 05.09.2012 *i.e.,* for 158 days out of 365 days. Relevant Turnover for the FY 2012-13 was INR 4,02,07,63,791 and relevant profit/(loss) was (INR 5,08,94,461)

225. As can be seen from above tables, for all the OPs, 5% of the relevant turnover is higher than 1.5 times of the relevant profit. As such, the Commission decides to impose penalty @ 5% of the relevant turnover for each year of continuance of cartel on all the OPs *i.e.*, ₹ 38,10,52,508 (Rupees Thirty-Eight Crore Ten Lakh Fifty Two Thousand Five Hundred Eight only) upon NYK Line (OP-1); ₹ 24,23,22,075 (Rupees Twenty Four Crore Twenty Three Lakh Twenty Two Thousand Seventy Five only) upon K-Line (OP-2); ₹ 20,25,94,486 (Rupees Twenty Crore Twenty Five Lakh Ninety Four Thousand Four Hundred Eighty Six only) upon MOL (OP-3); and ₹ 40,99,20,191 (Rupees Forty Crore Ninety Nine Lakh Twenty Thousand One Hundred Ninety One only) upon NMCC (OP-4).

226. In relation to income to be considered for computation of penalty to be levied on individuals, the officials of K-Line have averred that the Commission should consider the relevant turnover/income of the K-Line Officers only to the extent that it is attributable to India. The said individuals have also urged the Commission to consider certain mitigating factors while determining the quantum of penalty (if any) to be imposed on K-Line Officers which, *inter alia*, includes co-operation with the investigation of the DG.

227. Considering the aforesaid submissions of the individuals of the OPs, the Commission, is inclined to take a holistic view in the matter. Accordingly, the Commission decides to impose a penalty on the individuals, at the rate mentioned below as against the maximum penalty which is otherwise provided under the statute. In this regard, the Commission takes into account income details for the three financial years immediately preceding the financial year in which the agreement between the Opposite Parties ceased to exist. Accordingly, the Commission decides to impose penalty @ 5% of the average of their incomes, for the last three financial years preceding the date when the agreement between Opposite Parties ceased to exist. The detailed computation of the penalty imposed

and penalty payable (*i.e.*, after accounting for the reduction in the penalty in terms of the Lesser Penalty Regulations) in relation to the individuals of the OPs is given subsequently in this order.

Lesser Penalty

228. Regarding lesser penalty, it is noted by the Commission that NYK Line was the first lesser penalty applicant to approach the Commission. As such, it is eligible for up to 100% reduction in the penalty amount imposed upon it. It is noted by the Commission that the order passed under Section 26(1) of the Act by the Commission was based on the disclosures made by NYK Line in its lesser penalty application. At that stage, the Commission and/or the DG had no evidence in their possession regarding cartelisation between the OPs. In its lesser penalty application as well as subsequent submissions, NYK Line provided detailed account of the collusive actions of NYK Line with its competitors along with documents (including affidavits of its individuals) of evidence in support of such actions. Full and true disclosures of information and evidence and continuous co-operation provided by NYK Line and its individuals not only enabled the Commission to order an investigation into the matter but also helped the Commission in establishing contravention of the provisions of Section 3(3) of the Act by the OPs. NYK Line and its individuals extended genuine, full, continuous and expeditious co-operation not only during the course of investigation before the DG, but also during the subsequent proceedings before the Commission. As such, the Commission decides to grant NYK Line and its individuals found liable in terms of Section 48 of the Act, a 100% reduction in the penalty amount imposed upon them.

229. As already stated, both MOL and NMCC have filed Lesser Penalty Applications, and accordingly, MOL and NMCC have been granted second and third priority status marker, respectively, based on receipt of their applications. In this regard, both MOL and NMCC have made detailed submissions as to why they should be

treated jointly and not as separate entities. MOL has submitted that NMCC was a company incorporated on the initiative of [redacted], in which MOL had 40% shareholding as of April 2008 (which was increased to 90% by MOL in September 2009). It has been averred that MOL and NMCC should be considered as one entity, and the response to the investigation report should be taken to have been filed on behalf of both, MOL and NMCC. MOL has prayed the Commission that its response should also entitle NMCC, being its subsidiary, to all the benefits that MOL may receive in terms of immunity or reduction in fines in consonance with MOL's priority status.

230. In relation to the above stated contentions of MOL and NMCC, suffice to note that this issue in the instant case has already been settled *vide* order dated 03.08.2016 and the Commission has no power to review or recall such order. The same has attained finality as regards the proceedings before the Commission are concerned. Furthermore, it needs no reiteration that concept of 'group' or single economic entity is inherently unknown and inapplicable to the proceedings relatable to cartelisation. The legislature in its wisdom has not extended the definition of 'group' as given in Section 5 of the Act to the proceedings relatable to Section 3 of the Act which relate to anti-competitive agreements, unlike the proceedings relatable to Section 4 of the Act which relate to abuse of dominant position and the concept of 'group' has been explicitly extended to such proceedings. The parties have not been able to show any provision in the Act or the Regulations framed thereunder which enable the parties to file joint application for leniency. Taking a different view, in the opinion of the Commission, may not be in accord with the scheme of the Act and therefore, such a course needs to be eschewed.

231. Based on the above, the Commission decides that MOL being the second lesser penalty applicant in the matter, MOL and its individuals are eligible for reduction in penalty up to 50% of the full penalty leviable. As such, the Commission decides to grant to MOL and its individuals found liable in terms of Section 48 of

the Act, a 50% reduction in the penalty amount imposed upon them. Further, NMCC being the third lesser penalty applicant in the matter, NMCC and its individuals are eligible for reduction in penalty up to 30% of the full penalty leviable. As such, the Commission decides to grant to NMCC and its individuals found liable in terms of Section 48 of the Act, a 30% reduction in the penalty amount imposed upon them.

232. Consequently, the penalty amounts imposed upon and payable by the OPs are as follows:

(In ₹)

OP	Penalty Imposed	Penalty payable after reduction
NYK Line (OP-1)	38,10,52,508	-
K-Line (OP-2)	24,23,22,075	24,23,22,075
MOL (OP-3)	20,25,94,486	10,12,97,243
NMCC (OP-4)	40,99,20,191	28,69,44,134

233. As far as the individuals of the OPs are concerned, the penalty amounts calculated for them and payable by them is as follows:

NYK Line (OP-1)

(In ₹)

S. No.	Individual	Year	Income
1	[redacted]	2009	2,38,33,255
		2010	2,16,10,800
		2011	3,42,51,700
		Total	**7,96,95,755**
		Average	**2,65,65,252**
		Penalty Imposed @5%	**13,28,263**
		Penalty Payable	***Nil***
2	[redacted]	2009	41,74,798
		2010	1,44,34,605
		2011	2,26,95,780
		Total	**4,13,05,183**
		Average	**1,37,68,394**

		Penalty Imposed @5%	**6,88,420**
		Penalty Payable	***Nil***
3	[redacted]	2009	1,25,46,354
		2010	1,32,04,858
		2011	1,16,61,764
		Total	**3,74,12,976**
		Average	**1,24,70,992**
		Penalty Imposed @5%	**6,23,550**
		Penalty Payable	***Nil***
4	[redacted]	2009	80,11,334
		2010	73,92,773
		2011	91,10,202
		Total	**2,45,14,309**
		Average	**81,71,436**
		Penalty Imposed @5%	**4,08,572**
		Penalty Payable	***Nil***
5	[redacted]	2009	60,84,563
		2010	56,00,799
		2011	68,99,517
		Total	**1,85,84,879**
		Average	**61,94,960**
		Penalty Imposed @5%	**3,09,748**
		Penalty Payable	***Nil***
6	[redacted]	2009	73,61,566
		2010	69,32,966
		2011	83,83,855
		Total	**2,26,78,387**
		Average	**75,59,462**
		Penalty @5%	**3,77,973**
		Penalty Payable	***Nil***
7	[redacted]	2009	89,36,956
		2010	62,02,517
		2011	75,48,243
		Total	**2,26,87,715**
		Average	**75,62,572**
		Penalty Imposed @5%	**3,78,129**
		Penalty Payable	***Nil***
8	[redacted]	2009	65,59,145

	[redacted]	2010	60,52,916
		2011	56,79,371
		Total	**1,82,91,432**
		Average	**60,97,144**
		Penalty Imposed @5%	**3,04,857**
		Penalty Payable	***Nil***
9	[redacted]	2009	54,27,243
		2010	48,55,533
		2011	59,49,866
		Total	**1,62,32,642**
		Average	**54,10,881**
		Penalty Imposed @5%	**2,70,544**
		Penalty Payable	***Nil***
10	[redacted]	2009	32,83,349
		2010	73,57,042
		2011	81,40,769
		Total	**1,87,81,159**
		Average	**62,60,386**
		Penalty Imposed @5%	**3,13,019**
		Penalty Payable	***Nil***
11	[redacted]	2009	64,25,467
		2010	59,17,718
		2011	1,16,71,949
		Total	**2,40,15,135**
		Average	**80,05,045**
		Penalty Imposed @5%	**4,00,252**
		Penalty Payable	***Nil***
12	[redacted]	2009	81,32,157
		2010	72,48,492
		2011	91,61,319
		Total	**2,45,41,968**
		Average	**81,80,656**
		Penalty Imposed @5%	**4,09,033**
		Penalty Payable	***Nil***
13	[redacted]	2009	51,56,548
		2010	47,91,503
		2011	58,79,212

		Total	**1,58,27,263**
		Average	**52,75,754**
		Penalty Imposed @5%	**2,63,788**
		Penalty Payable	***Nil***
14	[redacted]	2009	76,49,873
		2010	1,09,01,158
		2011	1,50,76,812
		Total	**3,36,27,843**
		Average	**1,12,09,281**
		Penalty Imposed @5%	**5,60,464**
		Penalty Payable	***Nil***

K-Line (OP-2)

(In ₹)

S. No.	Individual	Year	Income
1	[redacted]	2009	1,73,86,537
		2010	2,05,95,616
		2011	2,87,29,133
		Total	**6,67,11,286**
		Average	**2,22,37,095**
		Penalty Imposed @ 5%	**11,11,855**
2	[redacted]	2009	N.A.
		2010	1,35,26,660
		2011	2,37,91,199
		Total	**3,73,17,859**
		Average	**1,86,58,930**
		Penalty Imposed @ 5%	**9,32,946**
3	[redacted]	2009	1,43,44,873
		2010	1,34,95,178
		2011	1,81,55,995
		Total	**4,59,96,046**
		Average	**1,53,32,015**
		Penalty Imposed @ 5%	**7,66,601**
4	[redacted]	2009	44,27,235
		2010	N.A.

[10] Proportionally on the basis of his income attributable to FY 2009.

		2011	N.A.
		Total	**44,27,235**
		Average	**44,27,235**
		Penalty Imposed @ 5%	**2,21,362**
5	[redacted]	2009	59,73,987
		2010	58,80,276
		2011	80,71,943
		Total	**1,99,26,206**
		Average	**66,42,069**
		Penalty Imposed @ 5%	**3,32,103**
6	[redacted]	2009	64,02,387
		2010	60,45,674
		2011	74,84,810
		Total	**1,99,32,871**
		Average	**66,44,290**
		Penalty Imposed @ 5%	**3,32,215**
7	[redacted]	2009	19,93,896
		2010	62,16,132
		2011	84,57,635
		Total	**1,66,67,663**
		Average	**55,55,888**
		Penalty Imposed @ 5%	**2,77,794**
8	[redacted]	2009	63,37,617
		2010	63,08,819
		2011	83,59,283
		Total	**2,10,05,719**
		Average	**70,01,906**
		Penalty Imposed @ 5%	**3,50,095**
9	[redacted]	2009	49,49,845
		2010	53,33,179
		2011	44,98,176
		Total	**1,47,81,200**
		Average	**49,27,067**
		Penalty Imposed @ 5%	**2,46,353**
10	[redacted]	2009	69,98,985
		2010	69,53,098
		2011	93,11,028
		Total	**2,32,63,111**

		Average	**77,54,370**
		Penalty Imposed @ 5%	**3,87,719**

MOL (OP-3)

(In ₹)

S.No.	Person	Financial Year	Income
1	[redacted]	2009-10	67,55,333
		2010-11	65,93,251
		2011-12	79,05,844
		Total	**2,12,54,428**
		Average	**70,84,809**
		Penalty Imposed @ 5%	**3,54,240**
		Penalty Payable	**1,77,120**
2	[redacted]	2009-10	1,07,08,484
		2010-11	78,93,645
		2011-12	1,00,26,893
		Total	**2,86,29,022**
		Average	**95,43,007**
		Penalty Imposed @ 5%	**4,77,150**
		Penalty Payable	**2,38,575**
3	[redacted]	2009-10	61,85,133
		2010-11	63,08,650
		2011-12	76,64,955
		Total	**2,01,58,738**
		Average	**67,19,579**
		Penalty Imposed @ 5%	**3,35,979**
		Penalty Payable	**1,67,989**
4	[redacted]	2009-10	68,82,742
		2010-11	68,24,467
		2011-12	82,68,810
		Total	**2,19,76,019**
		Average	**73,25,340**
		Penalty Imposed @ 5%	**3,66,267**
		Penalty Payable	**1,83,133**
5	[redacted]	2009-10	72,62,238
		2010-11	73,00,735
		2011-12	92,99,773
		Total	**2,38,62,746**
		Average	**79,54,249**
		Penalty Imposed @ 5%	**3,97,712**

		Penalty Payable	**1,98,856**
6	[redacted]	2009-10	84,47,144
		2010-11	85,71,405
		2011-12	1,16,40,752
		Total	**2,86,59,301**
		Average	**95,53,100**
		Penalty Imposed @ 5%	**4,77,655**
		Penalty Payable	**2,38,828**

NMCC (OP-4)

(In ₹)

S.No.	Person	Financial Year	Income
1	[redacted]	2009-10	71,41,938
		2010-11	76,39,155
		2011-12	93,63,025
		Total	**2,41,44,118**
		Average	**80,48,039**
		Penalty Imposed @ 5%	**4,02,402**
		Penalty Payable	**2,81,681**
2	[redacted]	2009-10	51,21,522
		2010-11	55,42,708
		2011-12	15,15,240
		Total	**1,21,79,470**
		Average	**40,59,823**
		Penalty Imposed @ 5%	**2,02,991**
		Penalty Payable	**1,42,094**
3	[redacted]	2009-10	83,43,254
		2010-11	88,40,400
		2011-12	1,17,03,866
		Total	**2,88,87,520**
		Average	**96,29,173**
		Penalty Imposed @ 5%	**4,81,459**
		Penalty Payable	**3,37,021**

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

ORDER

235. The Commission, in terms of Section 27(a) of the Act, directs OPs and their respective individuals, as mentioned above, who have been held liable in terms of the provisions of Section 48 of the Act, to cease and desist in future from indulging in practices which have been found in the present order to be in contravention of the provisions of Section 3 of the Act, as detailed in the earlier part of the present order.

236. Further, under the provisions of Section 27(b) of the Act, the Commission directs the following parties to pay the following amounts of penalty:

S. No.	Name of the party	Amount of Penalty (in ₹)	Amount in Words
1.	NYK LINE (OP-1)	*Nil*	*Nil*
2.	K-LINE (OP-2)	24,23,22,075	Rupees Twenty Four Crore Twenty Three Lakh Twenty Two Thousand Seventy Five Only
3.	MOL (OP-3)	10,12,97,243	Rupees Ten Crore Twelve Lakh Ninety-Seven Thousand Two Hundred Forty-Three Only
4.	NMCC (OP-4)	28,69,44,134	Rupees Twenty-Eight Crore Sixty-Nine Lakh Forty-Four Thousand One Hundred Thirty-Four Only
5.	[redacted]	*Nil*	*Nil*
6.	[redacted]	*Nil*	*Nil*
7.	[redacted]	*Nil*	*Nil*

8.	[redacted]	*Nil*	*Nil*
9.	[redacted]	*Nil*	*Nil*
10.	[redacted]	*Nil*	*Nil*
11.	[redacted]	*Nil*	*Nil*
12.	[redacted]	*Nil*	*Nil*
13.	[redacted]	*Nil*	*Nil*
14.	[redacted]	*Nil*	*Nil*
15.	[redacted]	*Nil*	*Nil*
16.	[redacted]	*Nil*	*Nil*
17.	[redacted]	*Nil*	*Nil*
18.	[redacted]	*Nil*	*Nil*
19.	[redacted]	11,11,855	Rupees Eleven Lakh Eleven Thousand Eight Hundred Fifty-Five Only
20.	[redacted]	9,32,946	Rupees Nine Lakh Thirty-Two Thousand Nine Hundred Forty-Six Only
21.	[redacted]	7,66,601	Rupees Seven Lakh Sixty-Six Thousand Six Hundred One Only
22.	[redacted]	2,21,362	Rupees Two Lakh Twenty-One Thousand Three Hundred Sixty-Two Only
23.	[redacted]	3,32,103	Rupees Three Lakh Thirty-Two Thousand One Hundred Three Only
24.	[redacted]	3,32,215	Rupees Three Lakh Thirty-Two

			Thousand Two Hundred Fifteen Only
25.	[redacted]	2,77,794	Rupees Two Lakh Seventy-Seven Thousand Seven Hundred Ninety-Four Only
26.	[redacted]	3,50,095	Rupees Three Lakh Fifty Thousand Ninety-Five Only
27.	[redacted]	2,46,353	Rupees Two Lakh Forty-Six Thousand Three Hundred Fifty-Three Only
28.	[redacted]	3,87,719	Rupees Three Lakh Eighty-Seven Thousand Seven Hundred Nineteen Only
29.	[redacted]	1,77,120	Rupees One Lakh Seventy-Seven Thousand One Hundred Twenty Only
30.	[redacted]	2,38,575	Rupees Two Lakh Thirty-Eight Thousand Five Hundred Seventy-Five Only
31.	[redacted]	1,67,989	Rupees One Lakh Sixty-Seven Thousand Nine Hundred Eighty-Nine Only
32.	[redacted]	1,83,133	Rupees One Lakh Eighty-Three Thousand One Hundred Thirty-Three Only
33.	[redacted]	1,98,856	Rupees One Lakh Ninety-Eight Thousand Eight Hundred Fifty-Six Only
34.	[redacted]	2,38,828	Rupees Two Lakh Thirty-Eight Thousand Eight Hundred

			Twenty-Eight Only
35.	[redacted]	2,81,681	Rupees Two Lakh Eighty-One Thousand Six Hundred Eighty-One Only
36.	[redacted]	1,42,094	Rupees One Lakh Forty-Two Thousand Ninety-Four Only
37.	[redacted]	3,37,021	Rupees Three Lakh Thirty-Seven Thousand Twenty-One Only

237. The Commission directs these OPs and the individuals liable under Section 48 of the Act to deposit the penalty amount within 60 days from the receipt of this order.

238. Before parting with the order, the Commission deems it appropriate to deal with the request of the OPs seeking confidentiality over certain documents/information filed by it under Regulation 35 of General Regulations, 2009. Considering the grounds put forth by the OPs for the grant of confidential treatment, the Commission grants confidentiality to such documents/information in terms of Regulation 35 of the General Regulations, 2009, read with Section 57 of the Act for a period of three years from the passing of this order. It is, however, made clear that nothing used in this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same have been used for the purposes of the Act in terms of the provisions contained in Section 57 thereof. Accordingly, the Commission directs that two versions of the present order may be prepared – non-confidential *qua* parties version and public version. The same shall be prepared keeping in mind the confidentiality requests made by the parties and the provisions of Section 57 of the Act.

239. The Secretary is directed to forward a certified copy of the present order to the parties through their respective legal counsel(s), accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 20 / 01 / 2022