



(Case No. 12 of 2012)

In Re:

All Odisha Steel Federation

Informant

And

Odisha Mining Corporation Limited

Opposite Party

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goyal
Member

Mr. M. L. Tayal
Member

Justice (Retd.) Mr. S. N. Dhingra
Member

Mr. S. L. Bunker
Member

Present: Mr. Amit Gupta, Advocate (On behalf of the Informant)



ORDER UNDER SECTION 26(6) OF THE COMPETITION ACT, 2002

1. The present information has been filed by All Odisha Steel Federation (hereinafter referred to as ‘the Informant’) against Odisha Mining Corporation Limited (hereinafter referred to as ‘the Opposite Party’ or ‘OMC’) under Section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as ‘the Act’) alleging that the Opposite Party has abused its dominant position in fixing the price of chrome ore.

2. Parties to the Case

2.1. The Informant is an association of steel manufacturers and related industries in Odisha. Approximately 69 (sixty nine) steel and related manufacturers from Odisha are the members of the Informant Association.

2.2. The Opposite Party, OMC is a company registered under the Companies Act, 1956 and is a Public Sector Undertaking (PSU) under the Government of Odisha. It is engaged in the activities of raising, assembling and transportation of ore and other minerals in the state of Odisha. The major minerals mined by OMC are chrome, iron and manganese ore which cater to the requirements of mineral based industries such as steel, sponge iron, pig iron, ferro-manganese, ferro-chrome, etc.

3. Facts of the Case, in Brief

3.1 As per the information, in metallurgical industry, chrome ore is used for manufacturing low carbon and high carbon ferro chrome and charge chrome which in turn are used by the steel manufacturers as additives for making different quality of stainless steels and special alloy steel. It has been submitted that Odisha is the only state in India where chrome ore is available and nearly 98% of the chrome ore in Odisha is available in the Sukinda valley.



- 3.2 The Informant has submitted that OMC has monopoly over the extraction of chrome ore in Odisha and almost all the mines are under its control, except some of the mines which have been allotted to private manufacturers such as Tata Steel Limited, India Metals and Ferro Alloys Limited (IMFA), Balasore Alloys and Ferro Alloys Corporation Limited, etc., for their captive use. The members of the Informant Association are entirely dependent upon the Opposite Party for chrome ore for running their business.
- 3.3 The Informant has further submitted that its members have established steel manufacturing industries in Odisha based on the assurance and the representations given by the Government of Odisha to promote integrated steel plant by using rich natural deposits of the State. Therefore, the members of the Informant had a reasonable and legitimate expectation that they would be given the mines, or till such time, supplied iron ore and chrome ore in adequate quantity at a reasonable price so that their plants would be able to run successfully.
- 3.4 It has also been submitted by the Informant that all the members of the Informant Association are registered / empanelled with OMC as a result of which they are given a regular allotment/quota of the chrome ore for lifting based on their production and selling capacity. By virtue of being empanelled, the members of the Informant Association are assured of a regular quantity of chrome ore even if they do not participate in the tender floated by OMC for determining the prices of chrome ore. It is stated in the information that the buyers of chrome ore who are outside the state of Odisha and are not empanelled cannot get any supply unless and until they participate in Price Setting Tenders (hereinafter referred to as 'PSTs') of OMC and only the entity making the highest bid gets the supply of chrome ore.
- 3.5 As per the Informant, the Opposite Party has monopoly power over the extraction of chrome ore in the state of Odisha and has been abusing its dominant position by fixing arbitrary and highly unreasonable price of chrome ore. The Opposite Party is in a position of strength in India and more particularly in Odisha because of its control



over almost all the chrome ore mines for non-captive use. Also, the Opposite Party has been able to operate independently of competitive forces in the market and has been dictating arbitrary and unfair terms for selling the chrome ore.

- 3.6 It is the case of the Informant that up to the year 2007, OMC used to determine the price of chrome ore by considering the sale price of the state owned IFCAL (IDCOL Ferrochrome & Alloys Ltd.) or the purchase price of ferro chrome by Alloy Steel Plant of SAIL (Steel Authority of India Limited). However, from the year 2007, OMC has changed its method of deriving the price of the chrome ore by resorting to a Price Setting Tender in every quarter. As per the Informant, the price at which chrome ore is sold through the PST mechanism has no relation either to its fair market value or to the cost of production.
- 3.7 Further, the Informant has stated that based on PST method a very small quantity, which is not representative of the overall production, is tendered for sale. As a result, a few unknown companies, whose lifting of chrome ore is less than 2% of OMC's total sale, quote abnormally high price and become H1 in the tender and such price becomes the benchmark for all plants including the members of the Informant Association who account for around 70% of the OMC's total sales volume of chrome ore. The Informant has submitted that the price bid for a meager amount of chrome ore made by industries located in states such as Jammu & Kashmir where the power tariff, water cess, tax, etc. are substantially low and by chemical industries located outside the state whose need for quantity and grade of chrome ore is different, cannot become the price for its members who require a major chunk of the chrome ore produced by OMC.
- 3.8 Also, in several cases the highest bidder didn't even lift the quantity/tonnage allotted to them but the H1 price quoted by them would remain the benchmark. It has also been submitted that if some party would bid very high price in certain grade, the price increase percentage was made applicable by OMC even for other grades of the chrome ore. It has further submitted that in case the quoted price in the tender was less than



previous quarter price, OMC would fix its price as per the previous quarter higher price, which defeated the very purpose of the tender. It has also been alleged that in some instances OMC didn't even accept the H1 and fixed higher price without regard to the prevailing market conditions.

- 3.9 The Informant has submitted that OMC on 24.05.2012 issued a notice for e-auction of chrome ore and chrome concentrate through the Metal & Scrap Trading Corporation Ltd. (MSTC). The e-auction was held on 26.06.2012 for certain grades of chrome ore. The Informant has alleged that the reserved price fixed by OMC for various grades of chrome ore in the aforesaid auction were substantially high and has no co-relation with the cost of production. However, the e-auction was cancelled due to some administrative reasons and again the same was held in July 2012 wherein OMC had further increased the base price by about 17%. It is the case of the Informant that OMC has not been making all of its chrome ore mines operational with a view to restrict the supply and to ensure higher prices for chrome ore.
- 3.10 As per the Informant, the said actions of the Opposite Party are at the behest of certain vested interests who stand to gain by artificially high price of the chrome ore and are thus, anti-competitive.
- 3.11 As per the Informant, the procedure of empanelling certain buyers of chrome ore by OMC is wrong and illegal. The empanelled buyers are given a regular allotment/quota of the iron ore and chrome ore based on their production and selling capacity, even if they do not participate in the tender. Whereas, a buyer of chrome ore who is not empanelled cannot get any supply unless and until it participates in PST and makes the highest bid.
- 3.12 As per the Informant, PST process followed by the Opposite Party is a clear abuse of the dominant position because the quantity which is tendered for sale in PST is not representative of the overall production of OMC. Further, the tender call notice contains several clauses that indicate that the entire process is a sham exercise only to



- give an impression that the Opposite Party is selling the chrome ore at a market determined price.
- 3.13 The Informant has also alleged that the reserve prices fixed by the Opposite Party for various grades of chrome ore are on the higher side, having no co-relation with the cost of production of chrome ore and that the reserve price were determined in an ad-hoc manner without using any formula or rational basis. The Informant has submitted that the price fixed by the Opposite Party cannot be justified by any methodology. The prices of chrome ore has increased by over 200% in the last three years solely because of abuse of dominant position by the Opposite Party.
- 3.14 Based on the above information the Informant has alleged that, being the dominant enterprise, the conducts of the Opposite Party are abusive in terms of the provisions of Section 4 (2) (a) (i) and 4 (2) (a) (ii) of the Act.

4. Relief Sought by the Informant

- 4.1 The Informant has prayed to the Commission to :
- 4.1.1 Make an enquiry into the alleged actions of the Opposite Party;
- 4.1.2 Direct the Opposite Party not to abuse its dominant position by imposing unfair and discriminatory price for selling chrome ore through PST mechanism in each quarter and direct it to sale chrome ore at a price which has some relation with its audit certified raising cost;
- 4.1.3 Direct the Opposite Party to sale the chrome ore by calculating the price on the basis of the sale price of the state owned Industrial Development Corporation of Odisha Limited (IDCOL) or the purchase price of ferro chrome by the Alloy Steel Plant of SAIL.
- 4.1.4 The Informant also prayed for interim relief.



5. The Commission, upon examination of the facts of the information, passed an order under Section 26(1) of the Act, on June 18, 2012 recording its opinion that there exists a *prima facie* case, and directed the Director General (hereinafter referred to as “the DG”) to investigate into the matter. Accordingly, DG has conducted a detailed investigation into the matter and submitted his investigation report to the Commission on 28.03.2013.

6. Findings of DG Investigation

The brief of the findings of DG investigation are as follow:

6.1 Issues for Investigation

Considering the fact of the case, allegations of the Informant and prima facie observation of the Commission, following issues were framed by the DG for the purpose of investigation:

- i. Whether the Opposite Party enjoys the position of dominance in the relevant market?
- ii. If so, whether the Opposite Party has abused its position of dominance in terms of Section 4 of the Act.

6.2 Relevant Market

6.2.1 As per the DG report, since no substitute of friable chrome ore is available for use as input in the metallurgical industry for production of ferro chrome or in the chemical industry for production of chromium compounds like chromates and biochromates, chromium pigments etc., friable chrome ore is the relevant product in this case. Thus, as per DG report “the market for sale of friable chrome ore is the relevant product market” in this case. On the relevant geographic market DG report states that almost the entire quantity of chrome ore friable is produced / sold in the state of Odisha. Thus, “the relevant geographic market in this case is the state of Odisha”. Accordingly, DG has delineated the relevant market in this case as ‘*the market for sale of friable chrome ore in the state of Odisha*’.



6.3 Dominance of OMC in the Relevant Market

6.3.1. To ascertain the position of dominance of the Opposite Party in the relevant market of sale of friable chrome ore in the state of Odisha, DG considered in detail the factors enumerated Section 19 (4) of the Act:

6.3.2. On the basis of detailed analysis, DG concluded that *OMC* holds a dominant position as per the Explanation (a) to section 4, read with section 19(4) of the Act.

6.4 Examination of the alleged Abuse of Dominant Position by OMC

6.4.1 The Informant has alleged that the prices at which chrome ore is sold by the OMC are unfair or excessive. It has also alleged that the terms of PSTs are unfair/ arbitrary and, by virtue of the said terms, the OMC has been imposing prices which are in excess of the economic value of the chrome ore and have no relation to their cost of production. The Informant has also alleged that OMC has been abusing its dominant position even in the current e-auction process, so as to maintain unfair and excessive price of chrome ore for the members of its association. The Informant has also alleged that the OMC has not been making all its chrome ore mines operational with a view to restrict the supply and ensure higher prices of chrome ore.

6.4.2 **Method of Fixation of Sale Price of Chrome Ore by OMC:** As per DG report, prior to April 2005 the sale prices of Chrome ore used to be decided by an in-house Committee of OMC through a consultative process. The OMC adopted PST on 19.04.2005 for the first time and the H-1 rates of the various grades of chrome ore remained in force from 01.04.2005 till 20.12.2005. Thereafter, on 14.12.2005, the OMC reduced the above said rates by considering the prevailing market condition and decided to link its chrome ore selling prices with the prevailing ferro chrome selling price of Alloy Steel Plant of SAIL, Durgapur. Accordingly, the percentage increase/ decrease in the ferro chrome price were applied on the prevailing chrome ore of OMC to get the new price for a quarter. Subsequently, on 12th June 2007, on account of difficulty in obtaining the ferro chrome selling price of Alloy Steel Plant of SAIL,



Durgapur, OMC decided to delink the determination of chrome ore prices on the basis of ferro chrome selling price of Alloy Steel Plant of SAIL, Durgapur. The OMC adopted a new methodology for fixation of price, taking the MSTC export price into consideration. The said price remained in force for the quarter July- Sept 2007. The OMC, thereafter, decided to adopt the PST method to determine the sale price of chrome ore.

6.4.3 Based on the submissions of OMC, DG report states that chrome ore prices used to be determined by OMC just before beginning of a quarter. OMC faced problems in getting the ferro chrome price from Alloy Steel Plant of SAIL, Durgapur as well as the export price from MSTC at the right time. Invoices could not be drawn by the OMC at the right time due to delay in price fixation. Following the direction of the Hon'ble Minister, Department of Steel & Mines and Planning & Co-ordination, Government of Odisha, the Board of OMC in its meeting dated 21.08.2007 has approved the proposal for floating a Price Setting Tender to determine the sale price of chrome ore. As per DG report, the method of price discovery through the mechanism of PST by OMC remained in force from 1st Oct 2007 to 30th June 2012.

6.4.4 **The PST Mechanism:** In the investigation report, DG has clearly explained the PST mechanism adopted by OMC for setting the sale prices of chrome ore. Under the PST method, the OMC used to auction a small quantity, ranging from 2.6% to 5.9%, of the total saleable quantity of chrome ore of few grades for the ensuing quarter. Though the total salable quantity was allotted in the ratio of 70:30 between the Odisha based parties and the outside Odisha based parties, the PST was common. The OMC empanelled 21 buyers from within the state of Odisha and 33 from outside the state, who were assured regular supply of chrome ore. The non-empanelled customers were only eligible for supply after having emerged as H1 price bidder in the PST.

6.4.5 In PST, only the end users producing ferro chrome, refractory, chemical finished products in their plant could participate. The PST was not applicable for traders, processing/ beneficiation units. The existing lease holders were barred from



participating in the tender except against specific assurance of the state of government through MoU. The tender terms also included the usual condition of EMD deposit with forfeiture clause that even if the H1 bidder failed to lift minimum 90% of the allotted quantity (base quantity) within the stipulated time, the EMD would be forfeited.

6.4.6 Examination of cases wherein H1 prices in PST were not accepted by OMC: As per clause 9, 14 and 17 of the tender document, the OMC fixed the prices for the total saleable quantity of chrome ore for the ensuing quarter based on the H1 rates for different grades. However, during the period of PST (*i.e.* from 1st Oct 2007 to 30th June 2012), the OMC did not accept the H1 price, for one or more grades of chrome ore, in 10 PSTs out of a total of 19 PSTs on the ground that the H1 rates were not corresponding with the market condition/ scenario. DG has examined these PSTs in detail so as to ascertain whether the decision of OMC not to accept the H1 rates for one or more grades, in exercise of the powers conferred to it in terms of clauses 9, 14 & 17 of the PST, was a result of their legitimate commercial considerations or whether the same was a result of its abusive conduct being the dominant enterprise.

6.4.7 After a detailed examination, DG has observed that whenever the H1 price has been less than the prevailing price, OMC has examined the same in the context of prevailing ferro chrome price. If the percentage fall in chrome ore price has not been commensurate with the percentage fall in the ferro chrome price or the higher grade of chrome ore has fetched a lower price than the lower grade of chrome ore, the OMC has not accepted the H1 price in such cases, treating the same as not commensurate with the market condition. It has invoked the provisions of clause 9, 14 & 17 of PST so as not to accept the H1 rates.

6.4.8 The specific provisions of clause 9, 14 & 17 of PST are stated below:

Clause 9: “.... OMC management reserves the right to either accept the quoted price or fix suitable price considering the marketing scenario.....”



Clause 14: “The tender has been called primarily to establish the best market price for various bids of chrome ore....”

Clause 17: “OMC management reserves the right to defer/ accept/ discharge the part or whole of tender without assigning any reason thereof”.

6.4.9 DG has noted that the OMC has invoked the above said clauses, for one or more grades of chrome ore, in 10 cases out of the 19 PSTs held during the period. By invoking these clauses, the OMC has sought to secure its commercial interests in cases where it has observed that the H1 rates do not reflect the reality of the market.

6.4.10 DG mentioned in his report that the raising cost/royalty etc. do not represent the intrinsic worth of the mineral or their market value. Thus, any mineral pricing formulation should ensure that the producer earns and the consumer pays the true value of the mineral produced and consumed. However, it is extremely difficult to ascertain the value of a mineral on account of variety of factors like correct assessment of demand and supply, usage of the mineral in one or more industry, the level of competition, the government policy, prices of the mineral in other markets etc. In the absence of any prescribed formulation, the Opposite Party has been adopting various methods at different points of time to sell chrome ore.

6.4.11 DG also noted that as the OMC realized that the PST system followed by it may not be reflecting the fair market value of chrome ore based on the market scenario and therefore, it decided to explore alternative price discovery system. Accordingly, the OMC shifted from the PST method to the e-auction method with effect from 20.06.2012.

6.4.12 It has been reported by DG that the OMC has been aware of the problems of ferro chrome industry and has tried to address their concerns both by lowering the H1 rates than the prevailing rates and by changing the terms of PST, at the same time it has also tried to fix the best prices which it has considered to be commensurate with



the scenario in the national/ international ferro chrome market, so as to protect its own commercial interest and mandate.

6.4.13 DG has also reported that that in the view of the OMC, its prices are realistic in context of the ferro chrome price in the international market despite a parallel observation that ferro chrome producers are finding it difficult to dispose of their finished products or have shut down their units or that there may be low lifting of chrome ore indicate that the OMC may not have been responding to the market very fast by lowering its prices. However, it does not emanate from the facts of the case that the OMC intended to extract higher prices in abuse of its position of dominance. The apparent dichotomy appears to be based rather on its understanding that its prices are realistic in context of the ferro chrome price in the international market, which may not be reflecting the fair market value for its customers. DG states that the response may not have been very fast also on account of the fact that the decisions of officials of OMC are subject to scrutiny by the audit authorities and other government agencies.

6.4.14 The proclivity in general not to accept lower prices, despite mounting stocks and assessment of lesser sales on the price decided by OMC, may thus be due to the apprehension that lesser revenue may invite audit queries. Nonetheless, if the market is recessionary, they still have to accept prices much lower than the prevailing prices in order to make sales/liquidate the stocks and thereby generate revenue. This explains why the OMC has sold chrome ore at prices lower by as much as 40% during Oct-Dec 2008 as compared to prices prevailing in the preceding quarters.

6.4.15 **Examination of alleged Unfair/Excessive Pricing by OMC:** DG observed that while discussing the issue of unfair or excessive pricing, it is important to note that the Tata Steel Ltd. which is the only potential competitor of OMC does not sell chrome ore in the market and has opted for conversion. Thus, in the horizontal market of sale of chrome ore friable, there are no competitive constraints/



challenges as of now on the OMC. OMC is also not vertically integrated for exclusionary trade practices so as to harm the competitive position of its competitors or to exclude them from the market. Further, there is no allegation of discriminatory trade practices also.

6.4.16 In order to examine as to whether by not accepting the H1 prices and selling chrome ore at internally determined prices by invoking the various terms of the PST, the OMC, being the dominant enterprise, has imposed unfair/ excessive prices or unfair conditions in sale of chrome ore, DG *inter alia* has looked at the conduct of the Tata Steel Ltd.

6.4.17 Tata Steel used to sell over 4 lakhs tons of chrome ore in the market prior to April 2007. Thereafter, the company has taken a strategic decision to virtually stop the sale of chrome ore in the country as per its volition. Explaining the rationale, the company submitted that the average margin in ferro chrome was more than chrome ore and hence the focus of Tata Steel Ltd. shifted from sale of chrome ore to value addition and sale of ferro chrome.

6.4.18 As per DG report, even the fact that OMC has been able to generate increasing margins cannot *ipso facto* be construed as selling chrome ore at excessive rates. The rates received in the PST have emanated from the market based on the economic value ascribed to the product by the buyers. The buyers of chrome ore are from different industries. The buyers of chrome ore belong to ferro chrome, refractory and chemical industries and by nature of their differential position, including different incentives/benefits from the respective state governments, the prices of chrome ore would impact them differently. The OMC could not be expected to have a differential pricing for the same product or to act as a leveler in a market which does not have a level playing field. The price received in the PST was a result of the various market forces including the fact that demand of chrome ore has been more than supply.



6.4.19 DG has noted that even though the ferro chrome market is a competitive market with large number of domestic and international players, it has still been more profitable for Tata Steel not to sell chrome ore in the relevant market despite the fact that there is only one player *i.e.* the OMC in the market of sale of friable chrome ore. Thus, DG has concluded that if the sale prices of chrome ore by OMC had been at excessive rates, yielding supra competitive profits, it would have attracted Tata Steel to sell chrome ore. The fact that Tata Steel, the potential competitor of OMC, stands to gain more by using chrome ore in ferro chrome market than by making direct sale of chrome ore makes it clear that the selling price of OMC cannot be said to be excessive.

6.4.20 DG report also states that the exports made by the ferro chrome producers, the positive margins of JSL, the marginal loss or profit by Visa Steel Ltd. etc., all of whom are dependent on OMC, do not indicate that the prices at which the chrome ore has been sold by the OMC has been excessive during the period.

6.4.21 DG has noted that in cases where the OMC has observed that the H1 rates do not reflect the market reality, it has broadly adopted the following course to determine the selling prices:

- (i) If the H1 price of a lower grade has been higher than the H1 price of the higher grade of chrome ore, the OMC has accepted the H1 price of only the lower grade and fixed/ increased the prices of other grades on *pro rata* basis. Alternatively, if the percentage fall in the lower grade has been lesser than the percentage fall in the higher grades, then the H1 price of lower grade has been accepted and the prices of all the other grades are fixed on *pro rata* basis.
- (ii) If ferro chrome prices have also shown a decreasing trend, then the prices of chrome ore of the earlier period, when the ferro chrome prices were similar, have been taken/ accepted or it has rolled over the prevailing prices.



6.4.22 Thus, DG has concluded that the method of fixation of prices by the OMC, in cases where it has not accepted the H1 rates cannot be said to be unreasonable or unfair. In order to protect its interests, it was necessary for OMC to incorporate the impugned provisions of clauses 9, 14 & 17 of PST so as to retain the flexibility not to accept the rates arising out of the PST if it was not commensurate with the market condition. In view of the above, DG has stated that clauses 9, 14 & 17 of the PST are not unfair and thus, are not anti-competitive in terms of Section 4 of the Act.

6.4.23 It has also been concluded by DG that the criterion adopted by OMC for fixing the sale price of chrome ore over and above the H1 rates were objective, certain and exercised with limited discretion. The fixation of selling prices appeared to be reasonable and do not indicate that the OMC has unfairly increase the sale price by exploiting its market power/ abuse of its dominant position. From the manner of fixation of chrome ore prices by the OMC during the period of PST, DG has also observed that the prices have mostly emanated as a result of demand and supply position in the market.

6.4.24 On the allegation of the Informant that the method adopted by the OMC during the e-auction is unfair and intended to charge excessive prices by keeping the reserve prices very high and on the allegation of the Informant that the OMC has not been offering the entire quantity available for sale despite having huge stock, DG has noted that for the purposes of selling chrome ore and chrome concentrate after the PST period, the OMC avails the services of MSTC Ltd. to conduct the e-auction. The e-auction is held separately for Odisha and outside Odisha based parties in the ratio of 70:30. The state based units, established and made operational/functional on or before 31.12.2009, are eligible to participate in e-auction. However, for sale of chrome concentrate the cut-off date (31.12.2009) condition is not applicable and there is no quantity specifically earmarked for Odisha based units. The intending



bidders can bid for a maximum quantity equal to three months consumption capacity of their plant.

6.4.25 The first e-auction was held on 22.06.2012 and by 16.02.2013, 16 e-auctions had been conducted. For friable chrome ore separate e-auctions were held for the Odisha and outside Odisha based parties respectively whereas for chrome concentrate, common e-auctions were held for both the Odisha and outside Odisha based parties. Out of the 16 e-auctions conducted, 11 e-auctions have been conducted for friable chrome ore, 6 for the Odisha based parties (out of which 2 were cancelled) and 5 for the outside Odisha based parties (out of which 1 was cancelled). For chrome concentrate, the OMC has conducted 5 e-auctions (out of which one was cancelled).

6.4.26 DG has noted that on account of procedural infirmity/lapse on the part of MSTC in conducting the e-auctions, the OMC had to cancel the respective e-auctions. Thus, DG has concluded that it cannot be stated that the e-auctions were cancelled so as to charge unfair and excessive prices.

6.4.27 As regards the increase in the reserve price by approximately 17% in the rescheduled e-auction for friable chrome ore, the OMC has stated during investigation that the Board committee on sales matter observed that while calculating floor price from the reserved price set by MMTC for export of chrome concentrate in respect of the cancelled e-auctions, only the rate of 48-50% Cr₂O₃ (basis 50%) grade has been considered whereas rates for higher grades were not considered. Accordingly, the floor price was required to be re-calculated taking MMTC's reserve price for all grades in view of the fact that major saleable quantity was in between 50% to 60% grade. The grade and quantity offered for rescheduled e-auction on 20/07/2012 was 70,000 MT of +54% grades, 4000 MT of 52-54% grade and 3000 MT of 46-48% grade. In view of the same, the Board Committee in its meeting held on 12.7.2012 decided that considering the prevailing market price, the net realization derived from 56% Cr₂O₃ chrome concentrate reserve export price



of MMTC should be taken as floor price. Since the net realization derived from 56% Cr₂O₃ of chrome concentrate was taken as the basis, the floor price/base was price increased over the floor price of the initial held on 22.06.2012 and 25.06.2012.

6.4.28 DG has mentioned that the explanation furnished by the OMC reveals that the reserve price was fixed by considering only 48-50% Cr₂O₃ (basis 50%) grade and not by considering the fact that major saleable quantity was in between 50% to 60% grade. Since, the bulk of chrome ore sold was of +54% grades, the reserve price was accordingly revised upwards. In view of the same, the conduct of OMC in increasing the reserve price cannot be said to be abusive.

6.4.29 DG has also observed from the data submitted by the OMC that the export reserve prices of friable chrome ore fixed by MSTC has always been greater than export reserve prices of chrome concentrate, however in few instances, the export reserve prices fixed by MMTC were equal for both chrome ore friable and chrome concentrate. Therefore, DG has found that the allegation of the Informant that the export reserve prices of chrome concentrate are higher on account of beneficiation cost is not substantiated.

6.4.30 DG has also observed from the data submitted by the OMC that the reserve prices have remained more or less the same during the entire period of e-auction. However, the H1 prices have been higher than the reserve prices ranging from Rs.100 to Rs. 7000 and the L1 prices have been either equal to the reserve prices or higher by upto Rs. 6900. It is observed that there is a wide divergence in the H1 and L1 bids received for the e-auction held on 16.2.2013. Further, there has been no occasion when the OMC has not received adequate number of bids and it has been able to sale the entire quantity put on e-auction. The bidders who have emerged successful in the e-auctions are the major buyers of chrome ore and are also the prominent members of the Informant Association. In view of the same, DG



is of the view that the bidders have found it economically viable to quote over and above the reserve prices.

6.4.31 From the bids, DG also observed that the major buyers have been at an advantage in the e-auction, as compared to the earlier PST system. Under the e-auction, unlike the PST, the buyers do not have to purchase at rates determined on the basis of H1 price quoted by small buyers from outside Odisha or within Odisha. The buyers can now quote the rates considered feasible by them for their respective quantities. This explains as to why the major buyers, who have successfully bought the maximum quantity, could quote prices much lesser than the H1 price and still be able to meeting most of their quantity requirements. On account of the transparent bidding process in e-auction, wherein any bidder is able to know the quantity that he is getting at the price quoted by him and is also able to view the H1 and the L1 rates online, enables a buyer to calibrate his quotations during the bidding window time. The purchase of the largest quantities have been made at the lower rates and these have been mostly cornered by the major buyers, namely Rohit Ferro Tech Ltd., Jindal Stainless Ltd., Visa Steel Ltd., Jabamayee Ferro Alloys, Shyam Metalics on account of their large buying requirement /capacity, without whose purchases the entire quantity on offer by OMC cannot also be exhausted. The other buyers have purchased small quantities commensurate with their rated capacities or have either not purchased at all on account of having contracted their manufacturing capacities to other ferro chrome producers on conversion basis. DG has also noted that even though there was an increase in the quantity put on e-auction by the OMC during 24.12.2012, in comparison to the previous period but there was no drastic reduction in the prices.

6.4.32 DG has concluded that the e-auction process has been a more transparent and favorable method of sale of chrome ore for the buyers in comparison to the earlier PST method. It is also concluded that the OMC has not done away with the e-auction even though it has to sale Chrome ore at prices much lower than the prices



received in the PST and further that it has sold most of its quantities at L1 or L2 rates. It may also be observed from the detailed summary of e-auction held on 16.02.2013 that even though the H1 bid of +54% grade in respect of Sukarangi mine was much lower than the bid received for 52% grade, yet the OMC has accepted the said rates. Considering the same, DG concluded that the allegation that the reserve prices were kept artificially high so as to impose unfair and excessive prices could not be found substantiated.

6.4.33 DG has also examined the allegation as to whether the OMC has been restricting production with a view to restrict supply and ensure higher prices. In this regard, DG relied on the submissions of the OMC that it has been allotted 11 mines of chrome ore, out of which only 2 mines are operational. Other mines have not been made operational due to want of the environmental clearance, forest diversion proposal, clearance from the National Board of Wildlife and consent to operate from the Ministry of Environment and Forest and other statutory clearances.

6.4.34 During the course of investigation, DG has also observed that there were wide fluctuations in production of chrome ore by the OMC during the period 2009-10 to 2011-12. In this regard, the OMC has submitted that during the year 2009-10, the production was limited to 508788.732 MT, as consent to operate granted by Odisha State Pollution Control Board was 5 lakh tons during the year 2010-11, the consent to operate was enhanced to 14 lakh MT per year and therefore OMC could produce 1025979.710 MT. It has been observed by DG that during the period 2010-11, the contractual period of M/s ACC with OMC for supply of chrome ore, which was continuing since February 1985, came to an end on 31.12.2010. Due to the transition which involved demobilization of previous agency and mobilization of new agency, the production declined sharply during the period 2011-12. It has further stated that the mine is facing acute shortage of space for dumping as well as for ore stacking and that a portion of the stack yard which was within the Kaliapani



lease hold area of OMC was also prohibited for use. It has submitted that dumps have grown sizably and the Indian bureau of Mines is objecting to further increase of height of the dumps. On account of these constraints, the production during the period 2011-12 was only 435798.745 MT.

6.4.35 As regards the period of e-auction, OMC has submitted that the quantity offered for e-auction is certain because it is mostly based on the actual stock and the least quantity that can be produced during the supply period of sixty days. From the quantities put on e-auction, DG observed that the OMC has also been increasing the quantities offered on sale.

6.4.36 Apart from the issue of statutory clearances, DG has also observed that the reserves in the 9 mines which are not operational are not very significant. In view of the above, DG has concluded that there is no evidence to suggest that the OMC has been manipulating output or sales as to increase the prices.

6.5 Conclusion of DG Investigation: In the DG report it has been concluded that the OMC has been trying to discover the best value of chrome ore in the market and, in the process, has been trying different methods of price discovery like, PST and the e-auction. The examination of the modalities of sale during the period of PST and e-auction, the grounds of the decision of the OMC not to accept the H1 prices, the withdrawal of Tata Steel Ltd. from the sale of chrome ore, the fluctuations in the chrome ore prices during the different PST period and the e-auction period, the absence of any evidence of curtailment of supply, etc., demonstrate that the conduct of OMC has been fair, reasonable and objective. Considering the same, DG has not found any evidence to suggest that the OMC has been abusing its position of dominance in the relevant market so as to charge unfair prices or impose unfair conditions. Thus, as per the DG report there is no violation of the provisions of either Section 4 (2) (a) (i) or (ii) of the Act.



7. Objections filed by the Informant

7.1 In its reply to the DG investigation report the Informant has submitted that DG has rightly concluded that the Opposite Party is in a dominant position in the relevant market. However, DG has wrongly concluded that there is no violation of the provisions of the Competition Act, 2002.

7.2 The Informant has submitted that the DG has completely ignored various material aspect and the submissions of the Informant while concluding that neither the PST method nor the e-auction method adopted by the Opposite Party for determining the price of different grades of chrome ore amounts to abuse of its dominant position.

7.3 **PST and E-Auction Methods:** The Informant in its reply has objected to the observations made in the investigation report regarding the PST method and e-auction method adopted by the Opposite Party. The Informant submitted that for both the methods, the Opposite Party has adopted the very same basis to calculate and determine its floor price/base price. After calculating the selling price of chrome ore, the Opposite Party has thereafter made the buyers/bidders to bid for a very small/insufficient quantity of the chrome ore so as to achieve as much exorbitant price as possible by curtailing the supply.

7.4 The Informant has further submitted that the Opposite Party was first fixing the floor price internally on its own, keeping the same confidential and then was using the flawed method of PST to extract the highest selling price for chrome ore by creating artificial shortage of chrome ore.

7.5 As per the Informant, the reserve price for e-auction is being set by the Opposite Party taking into account the MMTC export reserve price which again shows the contradiction in the stand taken by the Opposite Party in its submissions before DG investigation. At one point the Opposite Party has justified switching over to the PST method for determining the price of the chrome ore in the wake of the problems faced by it to get the export price of MMTC in time. At the other point, the Opposite Party



has fixed the reserve price for e-auction on the basis of the export reserve price fixed by the very same organization. The Informant objects that the DG report does not analyze as to how MMTC fixes the price for export of chrome ore concentrate.

7.6 The Informant has further submitted that the entire purpose of e-auction is a farce. The Informant goes on to state that the export price fixed by MMTC is the price at which a product is to be sold. In the process, the margin of MMTC, moisture %, prevailing exchange rate of USD to INR, export duty, expenses towards transport and loading and port expenses are being deducted. Thus, the floor price fixed by the Opposite Party for the e-auction using the export price of the MMTC is actually the domestic selling price for chrome ore friable without making the said price as the base price and then asking the bidders/buyers to bid for the small quantities as were offered. It is therefore submitted by the Informant that there is no proper justification for adopting the PST or e-auction method, except for the fact that OMC wants to abuse its dominant position and extract an unfair and exorbitant price of the chrome ore friable.

7.7 According to the Informant, the DG report fails to consider that if there had been competition in the relevant market then whether the Opposite Party would have been in a position to adopt the same practices which it has adopted and is continuously adopting.

7.8 **Unfair Price of Chrome Ore:** The Informant has submitted that the submissions regarding the prices by the Opposite Party before DG clearly shows the unfair and excessive price fixed by it, which is recapitulated in the following table:

	2010-11	2011-12
Cost of Production	Rs. 1400.95/ton	Rs. 2238.38/ton
Cost of Sales	Rs. 2225.47/ton	Rs. 4233.20/ton
Net Sales Realization	Rs. 10920.70/ton	Rs. 14016.81/ton

7.9 The Informant has submitted that DG report fails to consider the fact that the net sales realization for chrome ore is unfairly high in relation to the cost of production and the



- cost of sales incurred. According to the Informant, it indicates that the Opposite Party is abusing its dominant position to generate huge net profits at the cost of the consumers.
- 7.10 The Informant further submitted that the office of the DG has erred in not analyzing price-cost analysis and thus lacks sanctity. The Informant objected that merely because the price-cost test requires a further exhaustive investigation, it cannot be a reason for not undertaking the said exercise to assess whether an entity is abusing its dominant position or not.
- 7.11 The Informant has also submitted that the word “unfair” has not been defined in the Competition Act, 2002. It is submitted herein that the phrase “unfair price” has to be interpreted to include “excessive price”. Thus, if any entity charges “excessive price” in sale of goods it amount to “abuse of dominant position”. The Informant has further relied upon the judgment of *Albion Water Limited vs. Water Services Regulatory Authority*, Case No.1046/2/4/04 dated 06.10.2006 wherein the Competition Appellate Tribunal of U.K. held that as per the well settled principles “unfair includes excessive”.
- 7.12 **Restricted production and artificially created scarcity of supplies due to dominance of the Opposite Party for Fixing Unfair Prices:** According to the Informant, the investigation report of DG fails to look into the reasons or investigate for non-operation of the rest 9 mines out of a total of 11 mines leased out to the Opposite Party for chrome ore.
- 7.13 It is submitted that the DG investigation report does not consider or questions the Opposite Party for the steps that have been taken by it to get the remaining 9 mines operational or functional through expeditious approvals. In fact, for 2 of the mines, even the assessment of mineral resources has not been made by the Opposite Party. The Informant objects that the DG has not sought details from the concerned government authorities for confirming the status of the mines and clearances and has



- simply accepted the submissions made by the Opposite Party. The Informant has submitted that 9 out of the 11 mines leased to the Opposite Party are not operational for necessary approvals which are not obtained by the Opposite Party due to its lethargy. The Informant has further submitted that the Opposite Party is inefficient and has no intention to increase the production, thus, creating artificial shortage in the markets, thereby leading to increase in price.
- 7.14 **PST Mechanism adopted by the Opposite Party:** According to the Informant the investigation report of DG has failed to appreciate the implications of the actions of the Opposite Party while determining the sale price of chrome ore by using a wholly arbitrary, illegal and discriminatory mechanism of PST. The Informant has submitted that the investigation report of DG is full of contradictions in so far as justifying the actions of the Opposite Party.
- 7.15 The Informant has also submitted that the investigation report of DG completely overlooks the fact that the PST mechanism was inherently flawed and reflected abuse of dominant position by the Opposite Party in as much as the price of the entire quantity of chrome ore to be sold in a particular quarter was determined only on the basis of tendering 2.6% to 5.9% of the total saleable quantity.
- 7.16 As per the Informant, the investigation report of DG fails to consider that the price of the chrome ore is unfairly and unreasonably high in relation to the cost of production and the cost of sales and abnormal profit margins in itself indicate that the Opposite Party is abusing its dominant position. The DG investigation report justifies the same on the basis that the same was a result of various market forces.
- 7.17 The Informant further submitted that the Investigation Report mentions the innumerable instances where the H1 rate has been arbitrarily fixed by the Opposite Party. Even though the justifications given by the Opposite Party for not accepting the H1 price are baseless, the same have been accepted in the investigation report of DG.



- 7.18 According to the Informant, the price of various grades of chrome ore fixed by the Opposite Party under the PST had no correlation to the prices as per the market forces or the production cost of mineral. However, the investigation report of DG accepts the baseless submissions of the Opposite Party.
- 7.19 The Informant has submitted that the investigation report of DG has merely accepted the submissions and reasoning of the Opposite Party on the face of it and has failed to undertake further investigations and verification of the facts due to which there is a clear abuse of dominant position. The Opposite Party has repeatedly submitted its own logic and reasoning in deriving the selling price of chrome ore which have been accepted and admitted by the DG without any investigation into the sanctity of the same.
- 7.20 **Irrelevant reference to the stand of Tata Steel:** The Informant has submitted that to justify the price of the chrome ore determined by the Opposite Party, the investigation report of DG makes a wrong assessment of the actions of Tata Steel in not selling chrome ore in the open market and only selling ferro chrome. According to the Informant, the assessment that the selling price fixed by the Opposite Party is not high because it does not attract Tata Steel to sale chrome in the open market is purely hypothetical and conjectural.
- 7.21 It is further submitted by the Informant that the inclusion of Tata Steel for arriving at the cost component of chrome ore (friable) in ferro chrome is wrong and unreasonable. Whereas Tata Steel has its own mines, the members of the Informant Association do not have captive mines. Hence, both the parties do not stand at the same pedestal to be compared.
- 7.22 **Cost considered by JSL cannot justify the Unfair Price:** According to the Informant, the investigation report of DG mistakenly relies on the price of chrome ore adopted by Jindal Stainless Limited for its Andhra Pradesh Plant. The DG assumes in



- his report that since Jindal Stainless Limited adopts the price of the chrome ore in its Andhra Pradesh plant, the chrome ore price fixed by the Opposite Party is reasonable.
- 7.23 The Informant has also submitted that it is also wrong to state that at the prices equivalent to that of the Opposite Party, Jindal Stainless Limited has been able to generate profits. It is the contention of the Informant that the Vizag Unit of Jindal Stainless Limited has been able to generate only a marginal profit which could be attributed to variety of factors such as production efficiency and subsidized power tariff etc.
- 7.24 **Cost of Chrome Ore in the Production of Ferro Chrome:** Regarding the cost of the Chrome ore in the production of ferro chrome, it is submitted by the Informant that the investigation report of DG wrongly mentions that the total cost of chrome ore in the production of ferro chrome during the year 2011-12 has been in the range on 22% to 41% and that the cost competitiveness of a ferro chrome producer cannot be linked only to the selling price of friable chrome ore by the Opposite Party.
- 7.25 The Informant has submitted that the analysis of the facts mentioned in the investigation report of DG in relation to the PST method adopted by the Opposite Party clearly shows that the Opposite Party was abusing its dominant position in determining the price of chrome ore to be sold to be buyers. It is reiterated by the Informant that in an efficient market, where there would have been competition to the Opposite Party, it could neither have used unfair and monopolistic terms in the tender document nor could have determined the prices of the chrome ore as per its whims and fancies.
- 7.26 The Informant also submitted that while discussing the e-auction method adopted by the Opposite Party, the investigation report of DG itself states that the PST method suffered from grave and serious lacunae.
- 7.27 **Lack of Transparency on Quantity to be offered in E-Auction:** The Informant has submitted that the process of e-auction is manipulated by the Opposite Party by



putting smaller quantities of friable chrome ore on auction in comparison to total market demand.

7.28 The Informant has further submitted that the DG investigation report has illogically made a statement that ferro chrome producers were aware of the problems. In this regard, it is submitted that Jindal Stainless Limited was assured of regular supply of chrome ore by the State Government through an MOU and when the Informant started production, the selling price of ASP of SAIL was applicable. It was not known to the producers that the Opposite Party will resort to a whimsical PST mechanism or e-auction and arrive at exorbitant prices for sale of chrome ore friable. The Informant has contended that the conclusion drawn in the DG investigation report is wrong.

8. The Commission has carefully perused the entire material submitted by the Informant, the submissions made by the Informant and OMC before the DG, the report of the DG, the objections filed by the Informant in response to DG investigation and all other relevant materials and evidences available on record. The Commission also heard the arguments of the learned advocate Mr. Amit Gupta, who appeared on behalf of the Informant.

9. A bare perusal of the information reveals that the allegations of the Informant pertains to the infringement of the provisions of Section 4 of the Act that forbids abuse of dominant position by an enterprise or group. Thus, to consider the conduct of an entity under this provision, the same should qualify to be an 'enterprise'. The Opposite Party, OMC is a registered public sector undertaking under the Government of Odisha and is engaged in mining activities. The activities of OMC are covered under the definition of enterprise as envisaged under Section 2(h) of the Act.

10. Issues for Determination

Considering the facts of the case, findings recorded by the DG and the contentions of the Informant, the Commission is of the considered view that the following issues need to be determined in order to arrive at a decision in the matter:



- I. What is the relevant market?
- II. Whether the Opposite Party enjoys a dominant position in the relevant market?
- III. If so, whether the Opposite Party has abused its dominant position in terms of Section 4 of the Act?

11. Issue No. I: Determination of the Relevant Market

- 11.1 In order to ascertain the position of dominance of an enterprise the relevant market in terms of Section 2 (r) of the Act needs to be determined. The relevant market may be determined with reference to the relevant product market or the relevant geographic market or both.
- 11.2 **Relevant Product Market:** Section 2 (s) of the Act defines the relevant product market. Accordingly, “*relevant product market means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use*”.
- 11.3 In the instant case the Informant has alleged that OMC has been abusing its dominant position in fixing unreasonable high price of chrome ore under its PST and e-auction methods. Accordingly, the product under dispute is the chrome ore. In the market of chrome ore the Opposite Party is the seller and the members of the Informant Association along with others are the buyers.
- 11.4 Depending on size and use, three different variants of chrome ore *i.e.* friable chrome ore, chrome concentrate and lumpy chrome are available for sale. Now the question is whether steel manufacturers, who are the consumers of the Opposite Party, are substituting or interchanging these three variants of chrome ore as inputs. The answer is apparently no because these three variants are different in shape and are used for different purposes and in different industries such as metallurgical, chemical and



refractory industries. Moreover, different types of furnaces are required for different variants of chrome ore. In metallurgical and chemical industry, mostly friable chrome ore are used whereas lumpy ore are used in refractory industry. The members of the Informant Association for their metallurgical industries mostly procure friable chrome ore from the Opposite Party for their operations. Friable chrome ore cannot be substituted in the metallurgical industry as well as in the chemical industry because of the above said reasons. Considering the above discussion the Commission, in agreement with the DG findings, is of the view that *“the market for friable chrome ore is the relevant product market”* in this case.

- 11.5 **Relevant Geographic Market:** Section 2 (s) of the Act defines the relevant geographic market. Accordingly, *“relevant geographic market means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas”*.
- 11.6 In the instant case, as per DG report 99.5% of the total production of friable chrome ore in the country is available in Odisha. The condition of competition from the demand as well as supply side is distinctly homogenous in the state of Odisha as in no other neighbouring areas there exist a visible market for friable chrome ore. The consumers outside the state of Odisha are also dependent on friable chrome ore market of Odisha. Thus, the Commission is in agreement with DG findings in this regard and is of the view that *“the state of Odisha is the relevant geographic market”* in this case.
- 11.7 Based on the above discussion, in consonance with the finding of the DG, the Commission is of the opinion that the relevant market in the present case is *“the market of friable chrome ore in the state of Odisha”*.



12. Issue No. II: Determination of Dominance of the Opposite Party in the Relevant Market

- 12.1 The position of dominance of the enterprise under question has to be determined in accordance with all or any of the clauses (a) to (m) of the Section 19(4) of the Act along with behavior of the enterprise in the relevant market *vis-à-vis* its competitor and consumers. DG in his investigation report has examined the factors of Section 19(4) for determining dominance of OMC in the relevant market defined supra.
- 12.2 As per DG investigation OMC is in a dominant position in the relevant market. In support of his findings DG has noted that for all the ferro chrome producers who do not have captive mines, OMC is the only domestic source for friable chrome ore. Tata Steel Ltd. which is one of the major producers of the chrome ore in the country has stopped sale of chrome ore friable since April 2007.
- 12.3 DG has reported that in 2010-11 OMC has sold 1004749.235 MT chrome ore and chrome concentrate in domestic market out of total sale of 1170857.095 MT which is 85.81% of the total sale in the domestic market. In term of reserves, OMC's reserves of chrome ore are 25.371 million tons as against 21.772 million tons of Tata Steel Ltd.
- 12.4 On size and resources, DG report states that OMC recorded an impressive growth over the years and today it stands as the largest state PSU in the mining sector of the country. As per DG report, OMC has been given a lease of 11 chrome ore mines out of which only two having a reserve of 165.68 lac tons of chromite are operational. OMC controls 77.66% of the chromite mining lease area in Odisha. The turnover of OMC has also been increasing substantially over the years. It was Rs.196326.77 lakhs in 2007-2008 which increased to Rs. 214181.41 Lakhs in 2011-2012.
- 12.5 The investigation of DG also found that OMC enjoys significant economic power *vis-à-vis* other producers of chrome in the market. The OMC does not produce ferro chrome whereas all other chrome ore miners produce ferro chrome and therefore, in



- terms of the capacity to offer chrome ore in the open market the position of OMC is unparalleled in India. Apart from Tata Steel Ltd., no other chrome ore miner can effectively participate in the sale of substantial quantity of chrome ore friable available on sale in the domestic market. Thus, DG is of the view that size and resources of OMC is considerably high so as to treat it as dominant enterprise in the relevant market.
- 12.6 As per DG report, since OMC is the main available source for friable chrome ore in the relevant market, the consumers are heavily dependent on it.
- 12.7 Going into the details of the constitution of the Opposite Party, DG has found that initially OMC was a joint venture company of the Government of Odisha and the Government of India. Since 1961 it is a wholly owned undertaking of the Government of Odisha. The Government of India, under the provisions of Section 17A of 'The Mines and Minerals (Development and Regulation) Act 1957, has granted lease of 11 chromite mines to the OMC. Thus, the dominant position of the OMC has been bestowed upon it by state action. Also, because of the government policy fresh entry into the market is hardly possible.
- 12.8 DG also found that other customers or the members of the Informant Association are not in a position to exercise countervailing buying power on the OMC. This is so because the supply of chrome ore is limited and the OMC is the only effective source of supply for them.
- 12.9 As per DG report, in the market there is a significant gap in the demand and supply of the chrome ore. The sale is also centralized as the sale of chrome ore by the Opposite Party is done directly from its stack yard and not through dealer network. Thus, the market condition is conducive for OMC to enjoy a position of dominance.
- 12.10 After careful perusal of the above findings of DG with regards to the dominant position of OMC, the Commission is of the opinion that OMC is the market leader and is in a dominant position in the relevant market. It is because of the fact that the



market share of OMC in terms of sale is 85.81%, virtually OMC is the only enterprise who is selling chrome ore in the market after opt out by Tata Steel Ltd. in 2007, size and resources of OMC is also substantial *vis-à-vis* other players, consumers are dependent on it, dominant position of OMC is due to policy decision of the government, there is entry barrier in terms of state policy and there is no countervailing buying power of the consumers because the supply of chrome ore is limited and the Opposite Party is the only source of supply. Thus, it is clear that OMC can operate independently of competitive forces and affects its competitors or consumers in its favour. There is no point to disagree with the above findings of DG on the dominance of the Opposite Party in the relevant market. Therefore, the Commission, like the DG, considers that the Opposite Party is in a position of dominance in the relevant market of friable chrome ore in the state of Odisha.

13. Issue No. III: Determination of Abuse of Dominant Position by the Opposite Party in terms of Section 4 of the Act

- 13.1 Having determined the position of dominance, the next step is to examine the allegations of abuse of dominance by the Opposite Party in the relevant market. It is the case of the Informant that OMC, in its PSTs and e-auctions, has been fixing unreasonably high price for its chrome ore which is unfair. The Informant has also alleged that the terms of the PSTs are unfair / arbitrary and the base price of the e-auction is also unfair. Further, the Informant has alleged that the Opposite Party has not been making all its chrome ore mines operational with a view to restrict supply and ensure high price.
- 13.2 Thus, based on the allegations it is clear that there are three main issues of abuse of dominant position involved in the case. These are; unfair conditions in PSTs, unfair/excessive price in PSTs and e-auctions and restriction of supply of chrome ore.
- 13.3 DG in his investigation report has extensively analysed these issues and found that the Opposite Party has not abused its position of dominance with regards to the issues



- stated *supra* therefore, there is no case of abuse of dominant position in terms of Section 4 of the Act by the Opposite Party.
- 13.4 On unfair conditions such as clause 9, 14 and 17 of PSTs, DG has found that by invoking these clauses the OMC has only sought to secure its commercial interests in cases where it has observed that the H1 rates do not reflect the reality of the market. Whenever the OMC felt that PST may not be reflecting the fair market value of chrome ore it explored the alternative price discovery systems *i.e.* in-house committee decision, PST and e-auction from time to time. Thus, as per DG the PST method of fixation of price by OMC, in cases where it has not accepted the H1 rates cannot be said to be unreasonable or unfair. In order to protect its interests it may be necessary on the part of OMC to incorporate the impugned provisions of clauses 9, 14 & 17 in the PST so as to retain the flexibility not to accept the rates rising out of the PST if the same was not as per the market condition. Such clauses in the said PST document have business justifications.
- 13.5 DG has found that the price charged by OMC under different methods such as PSTs and e-auction are not unreasonable as it were based on the prevailing market conditions and the price of ferro chrome in the international market. It has been found that whenever OMC felt that its prices are not in consonance with the market condition it has adopted different price mechanism so as to offer the chrome ore at a lower price. The adoption of e-auction in place of PST in 2012 is an example of the same. DG has also found that Tata Steel Ltd. opted out from the market of sale of chrome ore and preferred to sale ferro chrome after conversion. If the price of chrome ore in the market, as charged by OMC, was excessive then Tata Steel Ltd. would not left the market.
- 13.6 Moreover, since chrome ore is a mineral, finding its correct economic value is a difficult task. In fact, the raising cost and royalty do not represent the intrinsic worth of the mineral or their market value. Since, the supply of chrome ore is limited,



- setting limit of its price is also difficult. Thus, it cannot be said that the price set by OMC is excessive and therefore unfair in terms of Section 4 of the Act. Based on the above arguments, DG also found that the allegation of higher base price in e-auction has no merit.
- 13.7 On the allegation of restriction in supply of chrome ore by OMC it has been found by DG that the same was due to of lack of environmental clearance, clearance from forest diversion, clearance from the National Board of Wildlife and consent of the Ministry of Environment and Forest and other statutory clearances.
- 13.8 The Commission perused the findings of DG on unfair conditions in PSTs, unfair/excessive price in PSTs and e-auctions and restriction of supply of chrome ore. The Commission is satisfied with the evidences, logic and reasoning provided in the DG report in support of the findings that the Opposite Party has not imposed any unfair condition in PSTs or e-auction and has not charged excessive/unfair prices from its customers. The arguments put forth by DG with regards to limited supply of chrome ore by OMC sound logical and the Commission is in full agreement with these findings of DG.
- 13.9 The Commission is of the opinion that to protect its business interest OMC may adopt any methodology of price setting depending on the market conditions and set conditions in PSTs. On unfair pricing the Commission is of the view that since chrome ore is a non-renewable natural resource, its pricing and supply cannot be determined by the market forces. Chrome ore is not like any other commodity, which can be supplied to any extent, whose price can be determined on the free market economy principle. On supply restriction of OMC, the Commission feels that it was not done intentionally by OMC rather; it was due to pending of statutory clearances which is necessary for extraction of minerals.



Order

- 14.** Based on the above discussion, the Commission feels that DG has rightly investigated the issues, as stated *supra*, involved in this case and there is no reason to disagree with the findings of DG with regards to delineation of relevant market, dominant position of OMC in the relevant market and abusive conduct of OMC. Thus, the Commission, in agreement with the DG findings, is of the considered opinion that even though the Opposite Party is in a dominant position in the relevant market its alleged conduct is not abusive in terms of the provisions of Section 4 (2) (a) (i) and 4 (2) (a) (ii) of the Act.
- 15.** In view of the above findings, the matter relating to this information is disposed of accordingly and the proceedings are closed forthwith.
- 16.** The Secretary is directed to communicate this order as per the relevant regulations to the parties accordingly.

New Delhi
Date: 19 SEP 2013

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member



Sd/-
(M. L. Tayal)
Member

Sd/-
(Justice (Retd.) S. N. Dhingra)
Member

Sd/-
(S. L. Bunker)
Member