

Competition Commission of India

Case No. 14/2012

26 July, 2012

India Glycols Limited.

Informant

Vs

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|--|------------------|
| 1. Indian Oil Corporation Ltd. | Opposite Party-1 |
| 2. Hindustan Petroleum Corporation Ltd. | Opposite Party-2 |
| 3. Bharat Petroleum corporation Ltd. | Opposite Party-3 |
| 4. Indian Sugar Mills Association | Opposite Party-4 |
| 5. National Federation of Cooperative Sugar Factories Ltd. | Opposite Party-5 |
| 6. Ministry of Petroleum & Natural Gas. | Opposite Party-6 |
| 7. Ministry of Chemicals & Fertilizers. | Opposite Party-7 |
| 8. Ministry of Consumer Affairs, Food and Public Distribution. | Opposite Party-8 |

Order under section 26 (2) of the Competition Act, 2002

The instant information has been filed by India Glycols Ltd. (Informant) u/s 19(1) (a) of the Competition Act, 2002 ('the Act') against Indian Oil Corporation and Others (Opposite Parties) alleging *inter alia* contravention of provisions of sections 3 & 4 of the Act.

2. Briefly stated, the informant is engaged in the business of manufacturing and marketing of Ethanol based Chemicals and is dependent upon the supply of Ethanol. Ethanol is a value added product produced from molasses which is a product of Sugar Industry. In 2003, Govt. of India mandated use of 5% Ethanol in petrol through its Ethanol Blended Petrol (EBP) Programme. India's Ethanol production is not enough to meet the existing requirements of various users including potable liquor, Chemical Industry and as fuel. EBP Programme which mandates 5% blending of Ethanol with petrol, was further widening the demand and supply gap of Ethanol and as such squeezing the supply of Ethanol to alcohol based Chemical Industry including the informant.

3. It is submitted by the informant that the decision to have a 5% blending of Ethanol with Motor Spirit (MS or gasoline) was taken in 2003 and the first phase of implementation began



in 2006. A three-year programme was devised and single or joint tenders were invited by Government owned Oil Marketing Companies ('OMCs') i.e. Indian Oil Corporation (Respondent 1), Hindustan Petroleum Company Ltd (Respondent 2), Bharat Petroleum Company Ltd (Respondent 3) and Indo Burma Petroleum ('IBP') from manufacturers of Ethanol in 2003 and in year 2006.

4. A single or joint tender was floated by the OMCs, excluding IBP, in the year as well 2009 on the advice of the Ministry of Petroleum. For fixing the price of Ethanol this time, the matter was referred to the Cabinet Committee of Economic Affairs (CCEA). CCEA approved an ad-hoc uniform ex-factory price throughout the country at Rs. 27/litre for Ethanol procured by OMCs from the date of communication of the order till the time price was fixed by the expert Committee. The figure of Rs. 27/litre was also discussed and decided by the members of Indian Sugar Mills Association (ISMA) in its meeting held on 13 May, 2010.

5. It is submitted that from the minutes of the meeting of ISMA it was apparent that 'Price of Ethanol' was discussed in the meeting and the Association decided to put pressure upon the Government to fix the price of Ethanol as discussed by the members of ISMA. The president of ISMA also expressed his desire to enforce the cartelized agreement by threatening to stop supply of Ethanol in case the price suggested by ISMA did not get the approval of the Govt.

6. It is further submitted that the CCEA press release categorically stated about imposition of a penalty on both the supplier sugar factories engaged in producing Ethanol in case they failed to meet the target and on OMCs in case they failed to lift the contracted quantity. This penal condition forced the parties to the agreement to continue to deal with the pre-fixed price of Ethanol.

7. It is alleged by the informant that joint tendering by four OMC's was an agreement between horizontal players to procure Ethanol from various suppliers such as Sugar Mill owners, who too were the players in horizontal relationship and the price fixation by players in the same business breached the provisions of sections 3 (3) (a), (b) & (c) of the Act. The entire chain beginning from ISMA to Ministry of Petroleum, Ministry of Food and Consumer Affairs to OMC's was closely inter connected.

8. It is submitted that the minutes of meeting of ISMA suggest that its members not only discussed the pricing of Ethanol but also discussed the same with another sugar Mill Association viz NFCSF and finally got the nod of the Government through CCEA. It primarily being a business agreement among Sugar Mill owners-players at same level of business, hence a violative of section. 3(3)(a) of the Act.

9. Another allegation made by the Informant is that the Sugar Industry was collectively fixing price of Ethanol and exercising unfair and discriminatory conditions of price and ISMA, using its position of dominance in the relevant product market of Ethanol has been entering into another relevant product market i.e. petroleum Market and protecting latter



market which was an act of abuse of dominant position in terms of section 4 (2) (a) and (e) of the Act.

10. On perusal of the information and the document filed therewith, it may be noted that the OMCs collectively issued a joint tender to purchase Ethanol in 2009. The L1 bidder quoted a price of Rs. 21.50/litre for supply of Ethanol to the OMCs. The L1 bidder was not in a position to supply the entire requirement of the OMCs and as such in terms of the tender, other bidders were required to supply their offered quantities at the negotiated price. Later on the matter was referred to the CCEA for fixation of price of Ethanol, which approved an ad-hoc price of Rs. 27/litre till the time price would be recommended by an expert committee. It is apparent from this that OMCs were not able to get requisite supply of Ethanol at L1 price & to get adequate supplies CCEA decided to increase it to Rs. 27/litre.

11. Ethanol blending programme has been started by Union of India in order to reduce the import of petroleum. The consumption of petroleum has been increasing in India day by day. World over, efforts are being made to depend more on renewable energy as a day will come when petroleum resources will dry up. The compulsory blending policy of the Govt. is also therewith a view to reduce pollution as Ethanol blended petrol pollutes less.

12. Ethanol blending initially has been started with 5%. However, the target is to take it to 20%. This would require production of huge quantity of Ethanol. In order to encourage production of Ethanol and to improve the operations of market, the intervention on the part of the Govt. became necessary. The Govt. has to fix a price so that the farmers are encouraged to produce more sugarcane. Presently in India Ethanol is being produced only from molasses whereas in other countries other agricultural products, specially corn, are also being used for production of Ethanol. Fixing of support price of Rs. 27/- per litre by CCEA for procurement of Ethanol, therefore, cannot be considered as anti-competitive in nature either on the part of OMC's or on the part of Govt. or sugar mills. This is the administered price as decided by CCEA.

13. The price of Ethanol was decided by the CCEA, the apex body for deciding the prices of commodities for procurement and supply by the GOI. As per the information the EBP Programme which started with the floating of a joint or single tender by OMCs in 2006 ran into problems and became dysfunctional because of a sharp decline in sugarcane output in 2008-09 and 2009-10 as compared to two previous years. The manufacture of industrial Ethanol is dependent on the availability of molasses and the availability of molasses is directly proportional to the production of sugar. To encourage more production of sugar so as to further increase the production of molasses from which Ethanol is made, CCEA seems to have decided on fixing the price of Ethanol at Rs. 27/litre. Thus, in the given facts & circumstances of the case, there does not appear to exist any agreement between the association and the GOI's body CCEA.

14. In view of the above, the Commission is of the opinion that there exists no *Prima Facie* case of violation of any of the provisions of either section 3 or section 4 of the Act.



Therefore, the matter deserves to be closed in terms of the provision of section 26 (2) of the Act.

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

Sd/-
Member (C)

Sd/-
Member (A.G)

Sd/-
Member (G)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy



S.P. Gahlaut
30/07/2012
S. P. GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi