



COMPETITION COMMISSION OF INDIA

Case No. 42 of 2016

In re:

**Indian Paint & Coating Association,
Through its President,
Mr. Sanjeev Gupta
M-190, G.H.K Nagar,
Paschim Vihar, New Delhi-110087**

Informant

And

**Kanoria Chemicals & Industries Limited,
'Park Plaza', 71 Park Street,
Kolkata-700016**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

**Dr. M. S. Sahoo
Member**

**Justice G. P. Mittal
Member**



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

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (“Act”) by Indian Paint & Coating Association, through its President, Mr. Sanjeev Gupta (“Informant”) against Kanoria Chemicals & Industries Limited (“OP”) alleging contravention of the provisions of Section 4 of the Act.
2. The Informant is a registered association duly incorporated and registered under Section 25 of the Companies Act, 1956. As stated, the Informant consists of paint, ink and powder coating manufacturers, raw material manufacturers and traders, machinery manufacturers and allied industries and has a pan India presence.
3. OP is stated to be a public company incorporated under the Companies Act, 1956. It is involved in, *inter alia*, manufacturing and sale of chemicals, renewable energy, automobile industrial electronics and textiles. It is stated by the Informant that as per the website of OP that it enjoys leading position in India in the production of Pentaerythritol (“Penta”), hexamine and formaldehyde, in addition to other chemicals.
4. Penta is a basic organic chemical which is used in the manufacture of alkyd resin, rosin esters, plasticizers, printing inks, synthetic rubber, stabilizers for plastics, modified drying oils, detonators, explosives, pharmaceuticals, core oils and synthetic lubricants.



5. The Informant has submitted that the OP is the sole domestic manufacturer of Penta in India which supplies to the domestic market (the other manufacturer being Asian Paints but it uses most of its production for captive consumption). According to the Informant, Asian Paints also buys Penta from OP for fulfilling its requirements apart from the quantity produced by it for captive consumption. The Informant has stated that another player, namely, M/s Perstorp Chemicals India (P) Ltd. (“**Perstorp**”) has stopped the production of Penta since 2009-10.

6. The Informant has further submitted that as the demand for Penta in India exceeds the quantity manufactured by the OP, the user industries have to rely on imports from other countries to meet their requirements. It has been alleged by the Informant that since OP is the only domestic manufacturer of Penta in India, heavy anti-dumping duties have been imposed on such imports at the behest of OP. As a result of which, there is no country which has been able to supply Penta on a sustained basis to India. This enables OP to impose arbitrary prices and conditions on the sale of Penta within India. It has been further alleged that the complaints regarding imposition of anti-dumping duty on the imports by OP limits or restricts the provision of Penta in India, and also results in denial of market access.

7. With regard to the allegation regarding excessive pricing by OP, the Informant has submitted that in 2015, the basic price charged by OP was Rs. 136 per kg amounting to Rs. 1,36,000 per metric tonne (against a production cost of Rs. 82,500 per metric tonne, *i.e.*, Rs. 82.5 per kg).



8. Thus, the Informant has alleged that OP has abused its dominant position in the relevant market for sale of Penta in India, thereby violating the provisions of Section 4(1) read with Section 4(2)(a)(ii), 4(2)(b)(i) and 4(2)(c) of the Act and has specifically alleged that:
- a. OP has imposed unfair prices on its customers by charging excessively;
 - b. OP has limited or restricted the provision of “*services of sale of Penta in India by hindering import of Penta at fair prices*”; and
 - c. that since the OP has maintained its dominant position as sole producer of Penta in India despite no apparent entry barriers, there is reasonable assumption that its conduct has resulted in denial of market access.
9. The Commission has perused the information and other material available on record.
10. While assessing whether an entity has abused its dominant position under Section 4 of the Act or not, it needs to be shown that the said entity is dominant in a relevant market delineated by the Commission as per section 2(r), 2(s) and 2(t) of the Act read with Section 19(6) and 19(7). Hence, the need to define relevant market arises. It is noted that the relevant market may be defined with reference to the relevant product market or the relevant geographic market or with reference to both the markets.



11. As per Section 2(t) of the Act, 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.*” The Informant has defined the relevant product market to be market for sale of Penta. The Commission observes that on account of its specific characteristics such as biodegradability and less hazardous composition as compared to other chemicals used as ingredient for the same purpose, Penta forms a separate relevant product market.
12. With regard to the relevant geographic market, as per Section 2(s) of the Act, 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.*” Based on the information furnished by the Informant, it is observed that Penta being sold in India is either domestically manufactured and distributed across India or is imported from other countries. The imports of Penta arrive through sea/ air routes which are well connected with the distribution points/nodes resulting in pan India distribution facilities. Further, the Informant has submitted that the share of transportation cost in the total cost of Penta is not significant. Based on the same, it appears that the conditions of competition for supply of Penta are homogenous in India and therefore, the relevant geographic market would be India. Thus, the relevant market in the present case may be delineated as “*the market for sale of Penta in India*”.



13. Once the relevant market has been delineated, the next step would be to examine whether OP is a dominant player in the said relevant market. Since the relevant market is “*the market for sale of Penta in India*”, it would include all those sellers of Penta in India including domestic sellers such as OP and other domestic manufacturers and importers.
14. It is observed that the submissions of the Informant appear to suggest that, OP being the sole domestic producer has monopoly over the production and sale of Penta in India and that none of the other domestic producers supply or have the ability to supply Penta in India. However, the information submitted by the Informant shows that during the period 2009 -12 (*i.e.*, after Perstorp ceased production), firms other than OP had a market share of around 10% in the relevant market while the market share of OP ranged around 33% -27% during the same period with the remaining market share attributable to imports (see Table 1). Thus, it is observed that there are firms other than OP in the relevant market who are supplying Penta in India. It is further noted that the Informant has averred that Asian Paints uses most of its production for captive consumption. However, a perusal of the Annual Reports of Asian Paints for the years 2011-15 reveals that Asian Paints has utilized only 42% - 52% of its production of Penta for internal consumption purposes and thus, in the event Penta’s demand or price increases in India, the remaining volume of Penta (*i.e.*, volume of production not used for in house consumption) by Asian Paints can be made available for domestic sale thereby providing competitive constraint to OP.



Table 1: Data on Sales of Penta in India between 2006-12

Year	Total Sales of Penta in India	Sale of Penta by OP		Sale of Penta by other Indian manufacturers		Imports of Penta in India	
		Volume (in MT)	%	Volume (in MT)	%	Volume (in MT)	%
2006-07	16,469	5,750	34.91	7,479	45.41	3,240	19.67
2007-08	21,335	6,117	28.67	8,342	39.10	6,876	32.23
2008-09	17,189	5,401	31.42	5,092	29.62	6,696	38.96
2009-10	20,168	6,725	33.34	2,125	10.54	11,318	56.12
2010-11	22,723	6,629	29.17	2,509	11.04	13,585	59.79
2011-12	23,958	6,518	27.21	2,592	10.82	14,848	61.98

Source: Information provided by the Informant

15. Further, it is observed that as per Chemicals & Petroleum statistics published by the Ministry of Chemicals & Fertilizers (December 2015) in the total consumption of Penta in India during 2014-15 share of imports was 53.48% and the share of domestic producers was 46.52%. Therefore, on the basis of the information provided in Table 1, it can be reasonably concluded that the said market share of 46.52% would comprise of OP as well as other domestic firms. Thus, on the basis of the market share, OP does not appear to be dominant in the relevant market.

16. It is observed that market share is not the sole criterion for determining dominance. Evidence of barriers that prevent other firms in the market from



expanding their output or new firms from entering are also some of the factors to be examined in order to assess the dominance.

17. The significant market of imports evidences lack of barriers to entry in the relevant market. In this regard, it is also observed that though anti-dumping duties on Penta have been levied since the year 2002, the market share of imports had in fact increased between the years 2006–12 which shows that the anti-dumping duties have not created significant hindrance to the supply of Penta in the Indian market. Thus, imports seem to have provided competitive constraint to domestic manufacturers. Further, as per the press release issued by Perstorp on its website, it is observed that Perstorp has signed a memorandum of understanding with the Government of Maharashtra in 2016 for setting up a Penta facility and thus, may re-enter the market in foreseeable future. Thus, any supra-competitive price charged by a player in the relevant market could be countervailed by (a) increase in imports; and (b) increase in output by new players such as Perstorp. Based on the analysis undertaken and factors considered supra, the Commission concludes that the contention of the Informant that OP has market power in the relevant market is not found to hold indicating that the OP is not dominant in the said market.
18. Accordingly, allegations regarding excessive pricing or restricting market access seem to be misconceived.
19. In light of the above, the Commission is of the view that no case is made out against OP for contravention of any of the provisions of Section 4 of the Act



and the information is ordered to be closed forthwith in terms of the provisions of Section 26 (2) of the Act.

20. The Secretary is directed to inform the Informant accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S.L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Dr. M. S. Sahoo)
Member

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

New Delhi
Date: 08.06.2016