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COMPETITION COMMISSION OF INDIA

Case No. 47 of 2014

In Re:

Dwarikesh Sugar Industries Limited

Informant

And

- | | |
|--|----------------------|
| 1. Wave Distilleries & Breweries Ltd. | Opposite Party No. 1 |
| 2. National Industrial Corporation Ltd. | Opposite Party No. 2 |
| 3. Unnao Distilleries & Breweries Ltd. | Opposite Party No. 3 |
| 4. Lord Distillery Ltd. | Opposite Party No. 4 |
| 5. Superior Industries Ltd. | Opposite Party No. 5 |
| 6. Sir Shadilal Distillery & Chemical Works
(A unit of SVP Industries Ltd.) | Opposite Party No. 6 |
| 7. Radico Khaitan Ltd. | Opposite Party No. 7 |
| 8. Brijnathpur Distillery Division
(A unit of Simbhaoli Sugars Ltd.) | Opposite Party No. 8 |
| 9. Simbhaoli Sugars Ltd. | Opposite Party No. 9 |

CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U.C. Nahta
Member



Mr. Justice G. P. Mittal
Member

Appearances: Shri Pinaki Mishra, Senior Advocate with Shri Sumit Goel, Shri Ishan Nagar and Ms. Pavitra Singh, Advocates for the Informant alongwith Shri Salil S. Arya, CGM (ADM) of the Informant.

Shri P. K. Tandon, Chartered Accountant for OP-1.

Shri Arunava Choudhury, CFO and Shri Pankaj Rawat, Assistant Manager (Legal) for OP-2.

Shri Amit Jha, Head- Operations & Finance for OP-4.

Shri Manoj Kumar Bansal, Sr. General Manager (C & M) and Shri Darbara Singh, Chartered Accountant for OP-6.

Shri Amit Kumar Pandey, DGM for OP-7.

Order under Section 26(6) of the Competition Act, 2002

1. The present information was filed by Dwarikesh Sugar Industries Limited ('the Informant') under Section 19(1) (a) of the Competition Act, 2002 ('the Act') against Wave Distilleries & Breweries Ltd. and eight other liquor manufacturers ('the Opposite Parties'/ OPs') alleging contravention of the provisions of Sections 3 and 4 of the Act.

Facts

2. Facts, as stated in the information, may be briefly noted.



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3. The Informant is engaged in the manufacturing of crystal sugars through vacuum pan process. It has three manufacturing units located in Bijnor and Bareilly Districts of the State of Uttar Pradesh. The OPs are Uttar Pradesh based manufacturers of country liquor.
4. It was stated that molasses is a natural by-product in the process of sugar manufacturing which is a basic raw material for manufacturing of alcohol based products, including potable liquor. The control, storage, gradation, regulation of supply and distribution of molasses in the State of Uttar Pradesh is governed by the U.P. Sheera Niyam Adhiniyam, 1964 and the Molasses Policy ('the Policy') issued thereunder by the Controller of Molasses, Government of Uttar Pradesh. The Policy is issued for each molasses year (November to October) with respect to the molasses produced during that year. It was averred that the Policy so issued mandates the sugar mills (like the Informant) to sell/ supply certain percentage of their molasses to the manufacturers of country liquor ('reserved molasses') within the State of Uttar Pradesh and rest of the molasses can be sold freely in the open market ('unreserved molasses').
5. As per the information, for 2009-2010 molasses year, the Policy mandated the sugar manufacturers to maintain a dispatch ratio of 3:7 between reserved and unreserved molasses. The sugar manufacturers were required to supply 30% of the molasses produced to the distilleries *for manufacture of country liquor i.e.* to the OPs and the rest could be sold in the open market or could be used for captive consumption. For 2011-12 molasses year, the Policy mandated the sugar manufacturers to reserve 22% of their production for country liquor manufacturers and to maintain molasses dispatch ratio 1:3.5 between the reserved and unreserved molasses. Similarly, as per 2012-2013 Policy, the sugar manufacturers were required to reserve 20% of the total production (excluding what is required for captive consumption) of molasses for the



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country liquor distilleries. The ratio mandated to be maintained between sale and dispatch of reserved and unreserved molasses was 1:3.5.

6. The Informant alleged that since it did not have any unit to manufacture country liquor, it was compelled to sell its reserved quota molasses to the OPs as they are the only manufacturers of country liquor who were entitled for reserved molasses in the State of Uttar Pradesh.
7. It was also alleged that the OPs are in a dominant position in the relevant market of reserved molasses in the State of Uttar Pradesh and have also been abusing the same by determining the purchase price of molasses at unreasonably low rates. The price at which reserved molasses was sold was 9 to 10 times lower than that of the unreserved molasses. The Informant, being bound by the State's policies, had no other option but to accept the price offered by the OPs, which was unreasonably low as compared to the open market price.
8. As per the Informant, the price of the reserved molasses is not regulated by the Government and is solely dependent upon what the OPs offer to the sugar manufacturers. The prices offered by the OPs for various months during 2011-12, 2012-13 and 2013-14 for reserved molasses indicated that the OPs had quoted much lower price for the reserved molasses as compared to unreserved molasses price and the open market price. The Informant also stated that while fixing the selling price of country liquor by the Government, the cost of molasses is taken as Rs.200/- per quintal whereas the price offered by the OPs to the sugar manufacturers for reserved molasses range between Rs. 35/- to 60/- per quintal only.
9. Based on the above averments and allegations, the Informant prayed to the Commission to issue a direction to the OPs to cease and desist from indulging in the said anti-competitive activities and to impose a fine for having contravened the provisions of Sections 3 and 4 of the Act.



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Directions to the DG

10. The Commission, after considering the material available on record, *vide* its order dated 12.09.2014 passed under Section 26(1) of the Act, *prima facie* opined that the OPs have formed a cartel to fix prices for procuring reserved molasses in violation of the provisions of Section 3(3)(a) read with Section 3(1) of the Act. Accordingly, the Director General (DG) was directed to cause an investigation into the matter and submit a report. The DG, after receiving the directions from the Commission, investigated the matter and after seeking extensions submitted the investigation report on 05.01.2017.

Investigation by the DG

11. To examine the allegations, the DG had issued probe letters to country liquor manufacturers named in the information. Probe letters were also issued to third party sugar mills including U.P. Cooperative Sugar Factories Federation Limited which were suppliers of reserved molasses in the State of U.P. Apart from this, the DG also examined the relevant statutory/ regulatory framework and the Policy.
12. Before examining as to whether there was an agreement amongst the OPs to determine the purchase price of reserved molasses in the State of U.P., the DG analyzed the regulatory and policy framework pertaining to molasses to ascertain its impact on the price of reserved molasses in the State of U.P.
13. The DG noted that due to the provisions of the Molasses Policy of the Government of U.P., there were two separate and distinct markets of the same product in the form of reserved and unreserved molasses having varying factors and conditionalities. The DG opined that it would be



useful if a Competition Impact Assessment of the existing Molasses Policy of the Government of U.P. was carried out at the earliest.

14. Thereafter, the DG conducted a detailed analysis of the purchase price of reserved molasses and noted the following:

- (i) The sugar mills as well as the OPs were aware of the prevalent market prices of reserved molasses at any given point in time. Still, there was a considerable difference in the average basic purchase price of the various OPs at any given point of time in different years during the relevant period.
- (ii) At any given point of time during the relevant period, there was a difference in the basic price at which purchases were made by the different OPs from different sugar mills including the sugar mills of the Informant.
- (iii) In spite of the fact that the OPs, third parties and the Informant were located in close vicinity of each other, the OPs had a different basic purchase price in respect of purchase of reserved molasses during the relevant period from third parties and the Informant.
- (iv) A standalone analysis of the three main OPs *i.e.* Wave Distilleries & Breweries Ltd. (OP-1), Sir Shadilal Distillery & Chemical Works (OP-6) and Radico Khaitan Ltd. (OP-7) who had together purchased more than 70% of total reserved molasses was also carried out. A comparison of the purchase prices of reserved molasses by these three OPs from the sugar mills of the Informant, third parties as well as from the sugar mills of U.P. Cooperative Sugar Factories Federation Limited revealed that there was a difference in the basic purchase prices of these three OPs from the same sugar mill during the same



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months during the relevant period.

- (v) A further analysis of the above referred three main OPs in respect of purchases made by them from a large number of third party sugar mills and from the sugar mills of the Informant in certain specific common months during the relevant period revealed that there was a significant difference in the basic purchase prices of these three OPs in different common months during the relevant period.
- (vi) The analysis of the purchase rates of reserved molasses was also made from different perspectives. No pattern in purchase prices was noticed suggesting coordinated action or agreement between the OPs.

15. Based on the above, it was concluded by the DG that the OPs had purchased reserved molasses independently at market determined negotiated rates during the relevant period. Thus, the DG concluded that the OPs had not violated the provisions of Section 3(3)(a) read with Section 3(1) of the Act. The DG also examined the role of U.P. Distillers Association (UPDA). However, no evidence was found to substantiate the allegations made by the Informant about formation of a cartel involving UPDA and as such, it was not made an OP by the DG during investigation.

Consideration of the DG report by the Commission

16. The Commission considered the investigation report submitted by the DG in its ordinary meeting held on 13.06.2017 and decided to forward copies thereof to the parties for filing their respective replies/ objections thereto. Thereafter, the Commission heard the arguments of the parties and decided to pass an appropriate order in due course after conclusion of the arguments.



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Replies/ Objections/ Submissions of the Parties

17. The Informant filed its objections to the DG Report reiterating essentially the points made in the information. No response, however, was filed on behalf of any of the OPs.

Points for determination

18. The matter was listed for final hearing on 17.08.2017 when Shri Pinaki Mishra, the learned senior counsel appearing on behalf of the Informant opened the hearing and made detailed submissions and urged the Commission to remand the matter back to the DG for further investigation. Additionally, he submitted that the Commission should make a strong competition advisory to the Government of Uttar Pradesh for reviewing the existing Molasses Policy of the State.
19. On a careful perusal of the information, the report of the DG and the submissions made by the parties thereon and other materials available on record, the following issue arises for consideration and determination in the matter:

Whether there was an agreement between the OPs which directly or indirectly determined the purchase price of reserved molasses in violation of the provisions of Section 3(3)(a) read with Section 3(1) of the Act?

20. To investigate the matter, the DG collected evidence, relevant data and statistics from various sources and persons. The DG issued probe letters to country liquor manufacturer (OPs as well as) third party sugar mills including U.P. Cooperative Sugar Factories Federation Limited which are suppliers of reserved molasses in the State of U.P. Probe letters were also issued to U.P. Sugar Mills Association (UPSMA) which is the trade



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association primarily representing sugar industry comprising of suppliers of reserved molasses in the State of U.P. Further, probe letters were issued to UPDA, which is a trade association primarily representing the distilleries who are consumers of reserved molasses in the State of U.P. and Controller of Molasses/ Excise Commissioner of Uttar Pradesh/ Uttarakhand/ Maharashtra to understand the control, storage, gradation, regulation of supply and distribution of molasses in the above mentioned States.

21. Based on their replies and submissions, the DG conducted the analysis regarding the impact of the policies of in the State of Uttar Pradesh on the price of molasses and the alleged cartelisation or price fixation by the OPs.
22. In the investigation report, the DG has observed that Section 8 of the U.P. Sheera Niyamtram Adhiniyam, 1964 imparts power to the Controller of Molasses to issue policy that requires the sugar mills to sell/ supply certain percentage of molasses (reserved molasses) to the manufacturers of country liquor within the State of U.P. and rest of the molasses (unreserved molasses) can be sold freely in the open market. In pursuance of Section 8 read with Rule 22 of the U.P. Sheera Niyamtran Niyamavali, the Controller of Molasses issued an order on 09.04.1994 whereby 30% graded molasses stored or produced in all the vacuum pan sugar mills of U.P. were notified to be reserved for the commitment of supply of potable liquor and for fulfilment of other indispensable requirement.
23. In this regard, the Commission is of the opinion that due to Section 8 of the U.P. Sheera Niyamtram Adhiniyam, 1964, which has already been upheld to be a valid legislation by the Hon'ble Supreme Court, the present matter needs to be examined keeping in view the policy framework of the State. As far as the impact of the Policy is concerned, there is no doubt that reservation of molasses is made by the U.P.



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Government to control the sale of spurious liquor in the market. As far as the practical implications of the Policy are concerned, it can be observed that for sale of reserved molasses, the sugar mills quote their prices and if the rates are viable for the country liquor manufacturers, the parties finalise the deal. The parties can negotiate on a higher price for the unreserved molasses as there is no control on the prices of Indian Made Foreign Liquor (IMFL) by the State Government in U.P. However, due to limitation on the prices of country liquor, negotiation beyond a price is not possible. The Commission agrees with the DG's finding that due to the regulatory structure in the State of U.P., the prices of reserved molasses are low.

24. On further analysis of the Molasses Policy of the U.P. Government, it appears that there are separate and distinct markets of the same product in the form of market of reserved molasses and market of unreserved molasses, as would be evident from the analysis of the monthly data of the average basic prices of these two kinds of molasses during the period November 2012 to October 2013, as conducted by the DG:

Table-1

S. No.	Months/ Years	Average basic price of reserved Molasses (Rs./ qtl.)	Average basic price of unreserved Molasses (Rs./ qtl.)	Difference in Average basic price of unreserved and reserved Molasses (Rs./ qtl.)
1.	November, 2012	72.86	388.74	315.88
2.	December, 2012	67.20	358.52	291.32
3.	January, 2013	66.35	353.00	286.65
4.	February, 2013	98.00	349.16	251.16
5.	March, 2013	71.17	347.80	276.63
6.	April, 2013	63.00	347.39	284.39
7.	May, 2013	57.93	350.86	292.93
8.	June, 2013	69.93	366.38	296.45
9.	July, 2013	83.15	388.63	305.48
10.	August, 2013	75.76	402.48	326.72
11.	September, 2013	80.81	407.01	326.20
12.	October, 2013	113.39	406.88	293.49



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25. From perusal of the movement of prices of reserved and unreserved molasses as delineated hereinabove, the Commission notes that there does not seem to be any pattern in the movement of prices of reserved and unreserved molasses at any given point of time. The difference in the prices of reserved and unreserved molasses in various months is varying in a wide range of Rs. 251.16 per quintal to Rs. 326.72 per quintal. As compared to January 2013, in February 2013, the average price of reserved molasses increased by 47.70 % while the price of unreserved molasses decreased by 1.08 %. Further, from March 2013 to April 2013, there is a decrease of 11.48% in the price of reserved molasses while the price of unreserved molasses remained static during the said period. In August 2013, the price of reserved molasses decreased by about 9 % while the price of unreserved molasses increased by 3.56 % as compared to their respective average prices in July 2013. The price of reserved molasses has increased by about 40% in the month of October 2013 while the price of unreserved molasses was almost static. It was also observed by the DG that even when the price of both reserved and unreserved molasses increased or decreased, the percentage of increase or decrease was unrelated and quite different.

26. The Commission further observes that it is to ensure constant and uninterrupted supply of molasses throughout the year that the Government has fixed a ratio for dispatch of reserved and unreserved molasses. The provisions are such that unless the sugar mills dispatch their share of reserved molasses, they cannot dispatch unreserved molasses and thus they are constrained to sell reserved molasses to the country liquor manufacturers at substantially lower price than unreserved molasses so as to sell or consume their unreserved molasses. This is another reason why the Policy of U.P. Government is a major factor in determining the price of reserved molasses. Thus, it is evident that the provisions of the Molasses Policy of the U.P. Government have a huge



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and decisive impact on the price of molasses.

27. The Commission, on further examination of the Molasses Policy of the U.P. Government from competition perspective, observes that for a fair competition in the market, there should neither be any reservation nor any dispatch ratio, and the market forces should be allowed to discover the price of molasses without getting impacted by any policy constraints.
28. However, the Policy of the U.P. Government has legal backing in the relevant provisions of the U.P Sheera Niyantam Adhiniyam, 1964 which has been upheld by the Hon'ble Supreme Court of India in *SIEL Limited & Ors. v. Union of India & Ors.* (1998) 7 SCC 26. The Hon'ble Supreme Court of India has upheld the notification issued in the year 1993-94 under Sections 7 and 8 of the said Act by holding it to be non-discriminatory and non-violative of Article 19(1) (g) of the Constitution of India. The Commission after looking at the said Act from competition perspective, is of the opinion that even though the Policy of the Government is legally sustainable in terms of constitutionality, yet it lacks real price determination condition as far as competition is concerned. The Commission agrees with the DG and the recommendations of the Rangarajan Committee that emphasizes that the Policy is not in tune with the principles of competition neutrality and that it impedes development of national market and consequently reduces economic efficiency. The Commission notes that any earmarked end use allocations or any quantitative restrictions on by-products of sugarcane is detrimental for competition in the country.
29. Having analysed the policy framework governing the control, storage, gradation, regulation of supply and distribution of molasses in the State of Uttar Pradesh, the DG proceeded to examine as to whether there was an agreement amongst the OPs which directly or indirectly determined the purchase prices of reserved molasses.



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30. In this regard, the DG analysed the basic purchase price of reserved molasses of each distillery individually in respect of the purchases made from the Informant and the third parties during April 2011-October 2014:

Purchase of Reserved Molasses by Wave Distilleries & Breweries Ltd. (OP-1) from the Informant and Third Parties
(basic price per quintal)

Table-2

OP-1 Wave Distilleries & Breweries Ltd.

	The Informant-Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	Triveni Engineering & Industries Ltd.	DCM Shriram Ltd	L H Sugar Factories Ltd.	Anamika Sugar Mills Pvt. Ltd.
Month	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl
Apr-11	-	-	-	51	-	-
May-11	-	-	-	-	-	-
Jun-11	-	32	-	-	-	-
Jul-11	-	-	-	-	-	-
Aug-11	35	-	-	-	-	-
Sep-11	-	55	-	-	-	-
Oct-11	35	-	-	-	-	-
Nov-11	-	-	-	56	-	-
Dec-11	35	-	25	72	-	-
Jan-12	-	-	36	72	-	-
Feb-12	-	-	-	72	-	-
Mar-12	-	51	-	36	-	-
Apr-12	-	-	-	36	-	-
May-12	-	-	-	-	-	-
Jun-12	-	-	-	51	-	-
Jul-12	-	-	-	46	-	-
Aug-12	65	58	-	50	-	-
Sep-12	-	-	-	76	-	65
Oct-12	80	-	76	-	-	-
Nov-12	-	-	76	-	-	75
Dec-12	65	-	-	81	-	60
Jan-13	45	-	-	81	-	-
Feb-13	40	-	-	81	-	-
Mar-13	-	-	-	51	-	45
Apr-13	40	-	-	51	40	-
May-13	-	-	-	51	-	-
Jun-13	-	-	-	-	-	-



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	The Informant-Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	Triveni Engineering & Industries Ltd.	DCM Shriram Ltd	L H Sugar Factories Ltd.	Anamika Sugar Mills Pvt. Ltd.
Jul-13	-	52	-	-	-	-
Aug-13	-	76	-	-	-	-
Sep-13	-	100	-	-	-	150
Oct-13	-	-	-	-	-	-
Nov-13	-	141	150	-	150	-
Mar-00	-	67	81	-	-	-
Jan-14	-	68	81	81	-	-
Feb-14	-	-	81	81	85	90
Mar-14	-	64	-	89	-	90
Apr-14	-	-	-	-	-	-
May-14	-	70	-	-	-	-
June-14	-	80	-	-	-	-
Jul-14	-	-	-	-	-	-
Aug-14	-	-	-	-	-	-
Sep-14	-	100	-	-	-	-
Oct-14	-	-	-	-	-	-

Purchase of Reserved Molasses by National Industrial Corporation Ltd. (OP-2) from the Informant and Third Parties
(basic price per quintal)

Table-3

OP-2 National Industries Corporation Ltd.

	The Informant Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	L H Sugar Factories Ltd.	DCM Shriram Ltd.	Anamika Sugar Mills Pvt. Ltd.
Month	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl
Apr-11	-	-	75	51	-
May-11	-	-	75	-	-
Jun-11	-	-	-	-	-
Jul-11	-	-	-	73	-
Aug-11	-	-	-	73	-
Sep-11	-	55	-	65	-
Oct-11	-	-	-	-	-
Nov-11	-	-	-	73	-
Dec-11	-	-	-	-	-
Jan-12	-	-	40	-	-
Feb-12	-	-	40	-	-
Mar-12	-	-	-	-	-
Apr-12	-	-	-	38	-
May-12	-	-	-	57	-



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	The Informant Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	L H Sugar Factories Ltd.	DCM Shriram Ltd.	Anamika Sugar Mills Pvt. Ltd.
Jun-12	-	-	61	-	-
Jul-12	-	-	-	56	-
Aug-12	-	-	-	-	-
Sep-12	-	-	-	-	-
Oct-12	101	-	-	-	-
Nov-12	101	-	-	-	-
Dec-12	60	70	-	-	-
Jan-13	60	-	-	-	-
Feb-13	-	-	-	-	-
Mar-13	-	-	-	-	-
Apr-13	-	-	-	-	-
May-13	40	-	-	51	-
Jun-13	80	-	80	-	-
Jul-13	80	-	-	-	-
Aug-13	70	-	100	93	-
Sep-13	-	-	-	105	138
Oct-13	-	-	-	-	170
Nov-13	-	-	-	132	-
Dec-13	-	-	-	-	-
Jan-14	-	-	-	-	-
Feb-14	-	80	-	-	-
Mar-14	-	-	-	-	-
Apr-14	-	65	-	-	-
May-14	-	70	-	-	-
June-14	146	80	-	162	-
Jul-14	-	-	-	151	-
Aug-14	-	-	190	-	-
Sep-14	-	100	-	-	-
Oct-14	-	110	-	-	-

Purchase of Reserved Molasses by Unnao Distilleries & Breweries Ltd. (OP-3) from the Informant and Third Parties (basic price per quintal)

Table-4

OP-3 Unnao Distilleries & Breweries Ltd.

	The Informant Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	Parle Biscuits	DCM Shriram Ltd.
Month	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl
Apr-11	-	-	-	-
May-11	-	-	59	-
Jun-11	-	-	-	-
Jul-11	-	-	-	62



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	The Informant Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	Parle Biscuits	DCM Shriram Ltd.
Aug-11	-	-	-	62
Sep-11	-	55	-	62
Oct-11	-	-	-	-
Nov-11	-	-	-	65
Dec-11	-	-	-	65
Jan-12	-	-	-	-
Feb-12	-	-	-	-
Mar-12	-	-	-	44
Apr-12	-	-	-	55
May-12	-	-	-	-
Jun-12	-	-	-	-
Jul-12	-	-	-	-
Aug-12	-	-	-	-
Sep-12	-	-	-	-
Oct-12	101	-	-	-
Nov-12	101	-	-	70
Dec-12	-	-	-	65
Jan-13	-	-	-	66
Feb-13	-	-	-	-
Mar-13	-	-	-	-
Apr-13	-	-	-	54
May-13	-	-	-	53
Jun-13	-	-	-	92
Jul-13	-	-	-	92
Aug-13	-	-	-	100
Sep-13	-	-	-	70
Oct-13	-	-	-	-
Nov-13	-	-	-	-
Dec 13	75	70	-	92
Jan-14	75	48	85	82
Feb-14	-	-	-	111
Mar-14	-	-	-	82
Apr-14	-	-	165	-
May-14	-	72	-	-
June-14	-	80	-	-
Jul-14	-	-	-	-
Aug-14	-	-	-	-
Sep-14	-	100	-	-
Oct-14	-	110	-	-



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Purchase of Reserved Molasses by Lords Distillery Ltd. (OP-4) from the Informant and Third Parties
(basic price per quintal)

**Table-5
OP-4 Lords Distillery Ltd.**

	The Informant Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	Parle Biscuits	The United Provinces Sugar Co. Ltd.	DCM Shriram Ltd.
Month	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	
Apr-11	-	-	52	-	-
May-11	-	-	53	-	-
Jun-11	-	35	-	-	-
Jul-11	-	-	-	-	-
Aug-11	-	-	-	-	-
Sep-11	-	-	-	-	-
Oct-11	-	-	-	-	-
Nov-11	-	-	60	-	-
Dec-11	-	-	-	-	-
Jan-12	-	-	-	-	-
Feb-12	-	-	-	-	-
Mar-12	-	51	-	-	-
Apr-12	-	-	-	-	-
May-12	-	-	-	-	-
Jun-12	-	-	-	-	-
Jul-12	-	-	-	-	-
Aug-12	-	55	60	-	-
Sep-12	-	-	-	-	-
Oct-12	-	-	-	-	-
Nov-12	-	-	-	-	-
Dec-12	-	-	-	-	-
Jan-13	-	-	65	-	-
Feb-13	-	60	-	-	-
Mar-13	-	45	-	-	-
Apr-13	-	45	-	-	-
May-13	-	-	-	-	-
Jun-13	-	60	-	-	-
Jul-13	-	-	70	-	-
Aug-13	-	-	-	-	-
Sep-13	-	-	-	-	-
Oct-13	-	-	-	-	-
Nov-13	-	-	-	-	-
Dec 13	-	-	-	-	129



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	The Informant Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	Parle Biscuits	The United Provinces Sugar Co. Ltd.	DCM Shriram Ltd.
Jan-14	-	-	85	-	92
Feb-14	-	-	-	-	-
Mar-14	-	-	-	-	-
Apr-14	-	-	-	150	-
May-14	-	-	-	-	-
June-14	-	-	-	-	-
Jul-14	-	-	-	-	-
Aug-14	-	-	-	-	-
Sep-14	-	100	-	-	-
Oct-14	-	-	-	-	-

Purchase of Reserved Molasses by Superior Industries Ltd. (OP-5) from the Informant and Third Parties (basic price per quintal)

Table-6
OP-5 Superior Industries Ltd.

	The Informant Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	L H Sugar Factories Ltd.	DCM Shriram Ltd.
Month	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl
Apr-11	-	-	40	-
May-11	-	-	80	-
Jun-11	-	32	-	-
Jul-11	-	-	-	-
Aug-11	-	-	-	-
Sep-11	-	55	-	-
Oct-11	-	-	-	-
Nov-11	-	-	-	-
Dec-11	65	-	-	-
Jan-12	-	-	-	41
Feb-12	-	-	-	41
Mar-12	-	51	-	59
Apr-12	-	-	-	38
May-12	-	-	-	-
Jun-12	-	-	51	65
Jul-12	42	53	-	52
Aug-12	69	58	-	66
Sep-12	-	-	-	-
Oct-12	69	-	-	-
Nov-12	73	-	93	-
Dec-12	73	-	-	-



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	The Informant Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	L H Sugar Factories Ltd.	DCM Shriram Ltd.
Jan-13	-	-	-	-
Feb-13	-	-	-	-
Mar-13	-	-	-	-
Apr-13	-	-	-	-
May-13	-	-	-	-
Jun-13	85	-	-	-
Jul-13	80	-	-	-
Aug-13	-	-	-	86
Sep-13	-	-	-	117
Oct-13	-	-	150	157
Nov-13	-	-	-	157
Dec 13	-	65	65	-
Jan-14	-	-	70	-
Feb-14	-	-	-	-
Mar-14	-	-	-	-
Apr-14	-	-	-	-
May-14	-	-	-	-
June-14	-	80	-	-
Jul-14	-	-	-	182
Aug-14	-	-	-	-
Sep-14	-	100	150	-
Oct-14	-	-	-	-

Purchase of Reserved Molasses by SVP Industries Ltd. (Unit: Sir Shadilal Distillery) (OP-6)
from the Informant and Third Parties
(basic price per quintal)

Table-7

OP-6 SVP Industries Ltd. (Unit: Sir Shadilal Distillery)

	The Informant Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	Triveni Engineering & Industries Ltd.	Anamika Sugar Mills Pvt.
Month	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl
Apr-11	-	-	-	-
May-11	-	-	-	-
Jun-11	-	32	-	-
Jul-11	-	-	-	-
Aug-11	35	-	-	-
Sep-11	-	55	-	-
Oct-11	-	-	-	-
Nov-11	-	-	-	-
Dec-11	-	-	-	-



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Jan-12	-	-	-	-
Feb-12	-	-	-	35
Mar-12	-	51	-	-
Apr-12	-	-	-	-
May-12	-	-	-	-
Jun-12	-	-	-	-
Jul-12	-	53	-	-
Aug-12	-	65	-	-
Sep-12	-	-	-	-
Oct-12	105	-	-	-
Nov-12	81	-	-	-
Dec-12	-	-	-	-
Jan-13	40	-	-	-
Feb-13	40	-	-	-
Mar-13	35	45	-	-
Apr-13	-	45	-	-
May-13	-	-	-	-
Jun-13	-	115	-	-
Jul-13	-	55	-	-
Aug-13	-	-	-	-
Sep-13	-	-	-	-
Oct-13	-	-	-	-
Nov-13	-	-	-	-
Dec-13	70	67	-	-
Jan-14	70	63	-	-
Feb-14	100	-	-	-
Mar-14	145	65	-	-
Apr-14	-	-	-	-
May-14	85	-	-	-
June-14	-	80	-	-
Jul-14	-	-	-	175
Aug-14	-	-	-	-
Sep-14	-	100	-	-
Oct-14	-	-	-	-

Purchase of Reserved Molasses by Radico Khaitan Ltd. (OP-7) from the Informant and Third Parties
(basic price per quintal)

Table-8
OP-7 Radico Khaitan Ltd.

	The Informant Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	Triveni Engineering & Industries Ltd.	DCM Shriram Ltd.	L H Sugar Factories Ltd.	Anamika Sugar Mills Pvt. Ltd.
Month	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl
Apr-11	-	-	101	-	-	-
May-11	-	65	92	-	-	-



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	The Informant Dwarikesh Sugar Industries Ltd.	UP Co-operative Sugar Factories Federation Ltd.	Triveni Engineering & Industries Ltd.	DCM Shriram Ltd.	L H Sugar Factories Ltd.	Anamika Sugar Mills Pvt. Ltd.
Jun-11	-	32	78	-	-	-
Jul-11	-	-	-	-	-	-
Aug-11	-	-	78	-	-	-
Sep-11	-	45	78	-	-	-
Oct-11	-	-	-	-	-	-
Nov-11	-	-	-	-	-	-
Dec-11	40	-	-	-	45	-
Jan-12	-	-	-	-	-	-
Feb-12	-	-	-	-	-	-
Mar-12	-	51	-	-	-	-
Apr-12	-	51	-	-	-	-
May-12	-	-	-	-	-	-
Jun-12	-	-	-	-	-	-
Jul-12	-	53	-	35	-	-
Aug-12	-	54	-	71	-	-
Sep-12	-	-	-	-	-	-
Oct-12	-	-	-	-	-	-
Nov-12	-	-	-	-	-	-
Dec-12	-	55	57	-	70	-
Jan-13	40	-	56	-	-	-
Feb-13	-	-	66	-	40	-
Mar-13	40	50	66	-	-	-
Apr-13	-	50	66	-	-	-
May-13	-	-	66	-	-	-
Jun-13	-	61	-	-	-	-
Jul-13	-	62	-	71	-	-
Aug-13	-	-	-	71	-	-
Sep-13	-	-	91	-	-	-
Oct-13	-	-	91	-	-	-
Nov-13	-	-	-	-	-	-
Dec-13	70	71	-	70	-	-
Jan-14	-	70	-	70	-	-
Feb-14	85	66	-	70	68	80
Mar-14	120	71	-	-	-	122
Apr-14	-	-	-	-	-	-
May-14	-	72	-	-	-	-
June-14	-	80	-	148	-	-
Jul-14	-	-	-	151	-	-
Aug-14	-	-	-	-	-	-
Sep-14	-	100	-	-	-	-
Oct-14	-	110	-	-	150	-



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Purchase of Reserved Molasses by Simbhaoli Sugars Ltd. (including Brijnathpur Distillery Unit)
(OP-8 & 9) from the Informant and Third Parties
(basic price per quintal)

Table-9
OP-8 & 9- Simbhaoli Sugar Ltd. (including Brijnathpur Distillery Unit)

	The Informant Dwarikesh Sugar Industries Ltd.	The United Provinces Sugar Co. Ltd.	Parle Biscuits	Anamika Sugar Mills Pvt. Ltd.
Month	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl
Apr-11	-	-	-	-
May-11	-	-	-	-
Jun-11	-	-	-	-
Jul-11	-	-	-	-
Aug-11	-	-	-	-
Sep-11	-	-	-	130
Oct-11	45	-	-	-
Nov-11	-	-	-	-
Dec-11	40	-	-	52
Jan-12	40	-	-	-
Feb-12	-	-	-	-
Mar-12	-	-	-	-
Apr-12	-	-	-	-
May-12	-	-	35	-
Jun-12	-	-	-	-
Jul-12	-	-	-	-
Aug-12	-	-	-	-
Sep-12	-	-	-	-
Oct-12	-	-	-	75
Nov-12	-	-	-	-
Dec-12	-	-	55	50
Jan-13	-	-	-	-
Feb-13	-	-	65	-
Mar-13	40	-	-	-
Apr-13	-	-	-	-
May-13	-	-	-	-
Jun-13	-	-	-	-
Jul-13	-	-	-	-
Aug-13	-	-	-	-
Sep-13	-	-	-	-

	The Informant Dwarikesh Sugar Industries Ltd.	The United Provinces Sugar Co. Ltd.	Parle Biscuits	Anamika Sugar Mills Pvt. Ltd.
Oct-13	-	-	-	-
Nov-13	-	-	-	-
Dec 13	-	-	-	-
Jan-14	-	-	-	-
Feb-14	-	-	-	-
Mar-14	-	-	-	-
Apr-14	-	150	-	-
May-14	-	-	-	-
June-14	-	-	-	-
Jul-14	-	-	-	-
Aug-14	-	-	-	-
Sep-14	-	-	-	-
Oct-14	-	-	-	-

31. On perusal of the aforesaid data as contained in Table Nos. 2 to 9, the Commission observes that all the OPs had a different basic purchase price for specific transactions of purchases of reserved molasses. This clearly evidences that all OPs have purchased reserved molasses independently at market determined negotiated rates.
32. Even after considering the close locations of the players in the market, wide variation is found in the basic purchase price at which reserved molasses was purchased by the different OPs, during the same time frame and during the relevant period. On analysis of the data, it is noticed by the Commission that at any given point of time during the relevant period, there is a significant difference in the basic price at which purchases are made by the different OPs from different sugar mills. The price ranges from Rs. 32 per quintal to Rs.108 per quintal. There is no *price parallelism* that can be observed from the data so provided.
33. On a careful perusal of the DG Report and the data contained therein, it is noted that on a month wise analysis of the basic price, no discernable concerted pattern is observed. For felicity of reference, the same is



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tabulated below:

Table-10**Basic purchase price of reserved molasses of all the OPs**

(Rs. per quintal)

Month	OP 1	OP 2	OP 3	OP 4	OP 5	OP 6	OP 7	OP 8/OP 9
Apr-11	51	75	-	52	40	-	101	-
May-11	-	75	59	53	80	-	65/92	-
Jun-11	32	-	-	35	32	32	32/78	-
Jul-11	-	73	62	-	-	-	-	-
Aug-11	35	73	62	-	-	35/90	78	-
Sep-11	55	55/65	55/62	-	55	55/90	45/78	130
Oct-11	35	-	-	-	-	-	-	45
Nov-11	56	73	65	60	-	-	-	-
Dec-11	35/25/72	-	65	-	65	-	40/45	40/52
Jan-12	36/72	40	-	-	41	-	-	40
Feb-12	72	40	-	-	41	35	-	-
Mar-12	51/36	-	44	51	51/59	51	51	-
Apr-12	36	38	55	-	38	-	51	-
May-12	-	57	-	-	-	-	-	35
Jun-12	51	61	-	-	51/65	-	-	-
Jul-12	46	56	-	-	42/53/52	53	53/35	-
Aug-12	65/58/50/65	-	-	55/60	69/58/66	65	54/71	-
Sep-12	76/65	-	-	-	-	-	-	-
Oct-12	80/76	101	101	-	69	105	-	75
Nov-12	76/75	101	101/70	-	73/93	81	-	-
Dec-12	65/81/60	60/70	65	-	73	-	55/57/70	55/50
Jan-13	45/81	60	66	65	-	40	40/56	-
Feb-13	40/81	-	-	60	-	40	66/40	65
Mar-13	51/45	-	-	45	-	35/45	40/50/66	-
Apr-13	40/51/40	-	54	45	-	45	50/66	-
May-13	51	40/51	53	-	-	-	66	40
Jun-13	-	80/80	92	60	85	115	61	-



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Month	OP 1	OP 2	OP 3	OP 4	OP 5	OP 6	OP 7	OP 8/OP 9
Jul-13	52/50	80	92	70	80	55	62/71	-
Aug-13	76/50	70/100/93	100	-	86	-	71	-
Sep-13	100/150	105/138	70	-	117	-	91	-
Oct-13	-	170	-	-	150/157	-	91	-
Nov-13	141/150/150	132	-	-	157	-	-	-
Dec-13	67/81	-	75/70/92	129	65/65	70/67	70/71/70	-
Jan-14	68/81/81	80	75/48/85/82	85/92	70	70/63	70/70/68	-
Feb-14	81/81/85/90	-	111	-	-	100	85/66/70/80	-
Mar-14	64/89/90	65	82	-	-	145/65	120/71/22	-
Apr-14	-	-	165	150	-	-	-	150
May-14	70	70	72	-	-	85	72	-
Jun-14	80	146/80/162	80	-	80	80	80/148	-
Jul-14	-	151	-	-	182	175	151	-
Aug-14	-	190	-	-	-	-	-	-
Sep-14	100	100	100	100	100/150	100	100	-
Oct-14	-	110	110	-	-	-	110/150	-

34. Furthermore, an analysis was done by the DG to examine the comparative average basic purchase price of reserved molasses for each OP during the relevant period. The data so captured was compiled and plotted on graph. The same is excerpted below:

Average Basic purchase price of Reserved Molasses during relevant period by all OPs

Table-11

(Rs./Qtl.)

Name of the Parties	F. Y 2011-12 (Rs./Qtl.)	F.Y. 2012-13 (Rs./ Qtl.)	F.Y. 2013-14 (Rs./ Qtl.)	F. Y. 2014-15 (04.04.2014 to 31.10.2014) (Rs./ Qtl.)	Overall (01.04 2011 to 31.10.2014) (Rs./ Qtl.)
OP1-Wave Distilleries & Breweries Ltd.	38.12	48.69	75.10	117.33	58.85
OP2- National Industrial Corporation Ltd.	57.60	63.15	84.25	125.66	82.72



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OP3- Unnao Distilleries & Breweries Ltd.	57.41	61.25	82.57	122.74	73.56
OP4- Lord Distillery Ltd.	51.62	56.23	82.24	128.84	77.61
OP5- Superior Industries Ltd.	56.46	64.12	94.20	149.79	79.14
OP6- SVP Industries Ltd. (Unit: Sir Shadilal Distillery & Chemical Works)	50.86	59.54	93.25	114.43	79.12
OP7- Radico Khaitan Ltd.	49.50	54.10	71.40	128.70	68.82
OP8- Simbhaoli Sugars Ltd. (Brijnathpur Unit)	-	49.48	57.98	-	53.15
OP9-Simbhaoli Sugars Ltd. (Simbhaoli Unit)	55.59	39.11	85.25	-	65.19

35. The Commission notes that the OPs had different average basic purchase price of reserved molasses during the period of FY 2011-12, FY 2012-13, FY 2013-14 and FY 2014-15 (upto 31.10.2014). Hence, the Commission is of the opinion that during the relevant period, the OPs have purchased reserved molasses at market determined rates, negotiated independently by the respective OPs.

36. The DG has also analysed and compared the quantities of reserved molasses purchased by the different OPs during the relevant period and has noted that OP-1, OP-6 and OP-7 have purchased the maximum quantity of reserved molasses which constitutes a total of 70-75% of the total purchases made every year. After going through the data provided by the DG in respect of the purchases made by these three OPs from the Informant/ third parties during the relevant period, the Commission is of the opinion that no pattern can be observed in the basic purchase price of reserved molasses in respect of the purchases made by OP-1, OP-6 and OP-7 also. The relevant analysis is noted below:

Comparison of basic purchase price per quintal of Reserved Molasses by OP-1, OP-6 & OP-7 from Dwarikesh Sugar Industries Limited (IP) during certain common months of relevant period

Table-12

[IP-Information Provider, TP- Third Party]

IP- Dwarikesh Sugar Industries Ltd.



	Wave Distilleries & Breweries Ltd. (OP-1)	SVP Industries Ltd. (unit: Sir Shadilal Distillery) (OP-6)	Radico Khaitan Ltd. (OP-7)
Month	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl
Aug-11	35	35	-
Oct-11	35	-	-
Dec-11	35	-	40
Aug-12	65	-	-
Oct-12	80	105	-
Nov-12	-	81	-
Dec-12	65	-	-
Jan-13	45	40	40
Feb-13	40	40	-
Mar-13	-	35	40
Apr-13	40	-	-
Dec-13	-	70	70
Jan-14	-	70	-
Feb-14	-	100	85
Mar-14	-	145	120
May-14	-	85	-

Comparison of basic purchase price per quintal of Reserved Molasses by OP-1, OP-6 & OP-7 from DCM Shriram Ltd. (TP) during certain common months of relevant period

Table-13

TP-DCM Shriram Ltd.

	Wave Distilleries & Breweries Ltd. (OP-1)	Sir Shadilal Distillery and Chemical Works (OP-6)	Radico Khaitan Ltd. (OP-7)
Month	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl
Apr-11	51	-	-
Nov-11	56	-	-
Dec-11	72	-	-
Jan-12	72	-	-
Feb-12	72	-	-
Mar-12	36	-	-
Apr-12	36	-	-
Jun-12	51	-	-
Jul-12	46	-	35
Aug-12	50	-	71
Sep-12	76	-	-
Dec-12	81	-	-
Jan-13	81	-	-
Feb-13	81	-	-
Mar-13	51	-	-



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	Wave Distilleries & Breweries Ltd. (OP-1)	Sir Shadilal Distillery and Chemical Works (OP-6)	Radico Khaitan Ltd. (OP-7)
Apr-13	51	-	-
May-13	51	-	-
Jul-13	50	-	71
Aug-13	50	-	71
Dec-13	-	-	70
Jan-14	81	-	70
Feb-14	81	-	70
Mar-14	89	-	-
Jun-14	-	-	148
Jul-14	-	-	151

Comparison of basic purchase price per quintal of Reserved Molasses by OP-1, OP-6 & OP-7 from Triveni Engineering & Industries Ltd. (TP) during certain common months of relevant period

Table-14

TP-Triveni Engineering & Industries Ltd.

	Wave Distilleries & Breweries Ltd. (OP-1)	Sir Shadilal Distillery and Chemical Works (OP-6)	Radico Khaitan Ltd. (OP-7)
Month	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl
Apr-11	-	-	101
May-11	-	-	92
Jun-11	-	-	78
Aug-11	-	90	78
Sep-11	-	90	78
Dec-11	25	-	-
Jan-12	36	-	-
Oct-12	76	-	-
Nov-12	76	-	-
Dec-12	-	-	57
Jan-13	-	-	56
Feb-13	-	-	66
Mar-13	-	-	66
Apr-13	-	-	66
May-13	-	-	66
Sep-13	-	-	91
Oct-13	-	-	91
Nov-13	150	-	-
Dec-13	81	-	-
Jan-14	81	-	-
Feb-14	81	-	-



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Comparison of basic purchase price per quintal of Reserved Molasses by OP-1, OP-6 & OP-7 from Anamika Sugar Mills Pvt. Ltd. (TP) during certain common months of relevant period

Table-15

TP-Anamika Sugar Mills Pvt. Ltd.

	Wave Distilleries & Breweries Ltd. (OP-1)	Sir Shadilal Distillery and Chemical Works (OP-6)	Radico Khaitan Ltd. (OP-7)
Month	Rs./ Qtl	Rs./ Qtl	Rs./ Qtl
Feb-12	-	35	-
Sep-12	65	-	-
Nov-12	75	-	-
Dec-12	60	-	-
Mar-13	45	-	-
Sep-13	150	-	-
Feb-14	90	-	80
Mar-14	90	-	122
Jul-14	-	175	-

37. Thus, it is observed that the three main OPs viz. Wave Distilleries and Breweries Ltd. (OP-1), Sir Shadilal Distillery & Chemical Works (A unit of SVP Industries Ltd.) (OP-6) and Radico Khaitan Ltd. (OP-7) have purchased reserved molasses at different basic purchase prices not only from the Informant but also from other third party sugar mills in the same months during the relevant period.

38. In fact, to examine the purchase price pattern to a further level, the DG conducted an analysis of certain specific common months during the relevant period in respect of purchases by the aforesaid three OPs from a number of other third party sugar mills (*i.e.* other than the third party sugar mills which were considered by the DG for the purposes of investigation) including the sugar mills of the Informant. On an analysis of the plotted data, it was noticed that there was a wide variation in the basic purchase prices of these three OPs in respect of purchases made from the same third party sugar mills in different common months



during the relevant period. The analysis is excerpted below:

Basic purchase price of Reserved Molasses (Rs. Per qtl.) by Wave Distilleries (OP-1) from different parties during certain common months of relevant period

Table-16

OP-1- Wave Distilleries & Breweries Ltd.

	IP Dwaikesh Sugar Industries Ltd.	TP-1 Dewan Sugars Mills	TP-2 Uttam Sugar Mills	TP-3 Indian Potash Limited	TP-4 Titawi Sugar	TP-5 SBEC Sugar Ltd.	TP-6 Mawana Sugars Ltd.
Month	Rs./Qtl		Rs./Qtl	Rs./Qtl	Rs./Qtl	Rs./Qtl	Rs./Qtl
Dec-11	35		-	40	-	-	
Mar-12	-	-	25	-	-	40	-
Apr-12	-	25	-	-	50	-	-
Dec-12	65	-	-	-	40	-	40
Dec-13	-	-	150	-	-	60	-
Sep-14	-	-	150	-	-	130	-

Basic purchase price of Reserved Molasses (Rs. Per qtl.) by Sir Shadilal Distillery (OP-6) from different parties during certain common months of the relevant period

Table-17

OP-6- Sir Shadilal Distillery & Chemical Works Ltd.(Unit of SVP Industries)

	IP Dwaikesh Sugar Industries Ltd.	TP-2 Uttam Sugar Mills	TP-3 Indian Potash Limited	TP-4 Titawi Sugar	TP-5 SBEC Sugar Ltd.	TP-6 Mawana Sugars Ltd.
Month	Rs./Qtl	Rs./Qtl	Rs./Qtl	Rs./Qtl	Rs./Qtl	Rs./Qtl
Apr-11	-	25	25		60	
Jul-11	-	-	45	111	-	100
Dec-11	-	26	27	35	-	-
Nov-12	81	-	-	-	110	-
Dec-12	-	45	50	-	-	-
Feb-13	40	50	50	95	-	-
Jul-13	-		80	76	-	-



	IP Dwaikesh Sugar Industries Ltd.	TP-2 Uttam Sugar Mills	TP-3 Indian Potash Limited	TP-4 Titawi Sugar	TP-5 SBEC Sugar Ltd.	TP-6 Mawana Sugars Ltd.
Aug-13	-	80	-	-	72	-
Dec-13	70	-	75	60	70	-
Jan-14	70	-	-	60	75	-
Feb-14	100	-	-	-	90	-
Mar-14	145	-	152	95	90	-

Basic purchase price of Reserved Molasses (Rs. Per qtl.) by Radico Khaitan Ltd. (OP-7) from different parties during certain common months of relevant period

Table-18

OP-7-Radico Khaitan Ltd.

	IP- Dwarikesh Sugar Industries Ltd.	TP-1 Dewan Sugars Mills	TP-2 Uttam Sugar Mills	TP-3 Indian Potash Limited	TP-4 Titawi Sugar	TP-5 SBEC Sugar Ltd.	TP-6 Mawana Sugars Ltd.
Month	Rs./Qtl	Rs./Qtl	Rs./Qtl	Rs./Qtl	Rs./Qtl	Rs./Qtl	Rs./ Qtl
Dec-11	40	45	40	40	-	-	-
Dec-12	-	-	-	-	60	50	60
Feb-14	85	-	-	-	75	75	75
Mar-14	120	115	-	-	-	-	-

39. Thus, it is obvious that there is significant variation in the basic purchase prices of reserved molasses in respect of purchases made by the main OPs (OP-1, OP-6 and OP-7) from the sugar mills of the Informant and different third party sugar mills in different common months during the relevant period. Hence, it is safe to conclude that these OPs have purchased reserved molasses at market-determined rates after negotiating independently.

40. The Commission further notes that the DG also examined the purchases of reserved molasses made by OPs from the Federation. In this regard, it was found by the DG that there was no coordination or agreement amongst the OPs in respect of purchase of reserved molasses from the U.P. Cooperative Sugar Factories Federation Limited as sale of reserved molasses by it took place at market determined negotiated rates.



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41. Adverting to the specific allegation of coordination amongst the OPs in respect of purchase of reserved molasses from the Informant, it is observed that on 04.10.2012, the Informant wrote letters to 9 country liquor manufacturers (Wave Distilleries, Unnao Distilleries, National Industrial Corporation, Lords Distillery, Radico Khaitan, India Glycols, Sir Shadilal Distillery, Superior Industries and Saraya Distillery) offering them a total quantity of 75,630 quintals of reserved molasses at a basic price of Rs. 300 per quintal. However, out of these 9 distilleries, only 5 country liquor manufacturers (Wave Distilleries, National Industrial Corporation, Unnao Distilleries, Lords Distillery and Radico Khaitan) responded to the letter of the Informant in respect of its offer of sale of reserved molasses at a basic price of Rs. 300 per quintal.
42. The Commission observes that during investigation, the DG asked the Informant to provide information regarding the final sale of reserved molasses incorporating the details of all its sale transactions against what was offered by it for sale *vide* its offer letter dated 04.10.2012 and what was finally sold by it and also the basic price at which the reserved molasses was finally sold. In response, the Informant provided the following details:

Table-19

Name of the party to whom sold	Date of sale of reserved molasses	Total quantity sold in Qtl	Sale price Rs/ Qtl	Total value of sale in Rs.
National Industrial Corpn. Ltd. Bilari, Moradabad	17-10-12	13,200.00	101.00	1,333,200
Sir Shadi Lal Distillery &	18-10-12	10,000.00	105.00	1,050,000



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Name of the party to whom sold	Date of sale of reserved molasses	Total quantity sold in Qtl	Sale price Rs/ Qtl	Total value of sale in Rs.
Chem. Works, Mansurpur				
Sir Shadi Lal Distillery & Chem. Works, Mansurpur	18-10-12	5,000.00	105.00	525,000
U Bio Chemicals/ Wave Distillery, Aligarh	19-10-12	22,550.00	80.00	1,804,000
U Bio Chemicals/ Wave Distillery, Aligarh	19-10-12	8,900.00	80.00	712,000
Unnao Distillery, Unnao	19-10-12	16,200.00	101.00	1,636,200
Total Quantity		75,850.00		

43. Besides, the DG also asked the OPs to furnish the details of their purchases made from the Informant against the offer letter of the Informant dated 04.10.2012. From the details furnished by the OPs, the following emerged:

- (i) On 20.10.2012, Wave Distilleries purchased 31372.90 quintals of reserved molasses from the Informant at a basic rate of Rs. 80 per quintal.
- (ii) Between 24.10.2012 to 01.11.2012, Unnao Distilleries purchased 16,119.10 quintals of reserved molasses from the Informant at a basic rate of Rs. 101 per quintal.



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- (iii) On 18.10.2012, Sir Shadilal Distillery purchased 15025.55 quintals of reserved molasses from the Informant at a basic rate of Rs. 105 per quintal.
- (iv) Between 23.10.2012 to 28.10.2012, National Industrial Corporation purchased 12,841.50 quintals of reserved molasses from the Informant at a basic rate of Rs. 101 per quintal.
44. From the aforesaid, it is observed that Sir Shadilal Distillery did not write any letter to the Informant making any counter offer to its letter dated 04.10.2012. Despite this, the Informant sold 15025.55 quintals of reserved molasses to Sir Shadilal Distillery at a basic rate of Rs.105 per quintal. It was further observed by the DG that National Industrial Corporation made the counter offer to the Informant to purchase 8,200 quintals of reserved molasses at Rs. 80 per quintal but it finally purchased 13,200 quintals of reserved molasses at Rs. 101 per qtl. which was much higher than its offer price of Rs.80 per quintal. Similarly, it was noted by the DG that Unnao Distilleries made the counter offer to the Informant to purchase 16,100 quintals of reserved molasses at Rs. 70 per quintal but it finally purchased 16,200 quintals of reserved molasses from the Informant at Rs. 101 per qtl. which again was much higher than its counter offered price.
45. In view of the above, the Commission is of the considered opinion that the Informant has not sold its reserved molasses to the OPs at the prices offered by them but it further entered into a process of negotiation with the OPs and ultimately sold its reserved molasses at the market determined and mutually negotiated varying prices to different OPs and third parties. No evidence of coordination amongst the OPs is found with regard to the purchase price of reserved molasses. The DG did not find any evidence to conclude that an agreement was entered into amongst OPs to directly or indirectly determine the purchase price of reserved molasses.



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46. During the course of investigation, the Informant made an application dated 26.10.2015 before the Commission seeking impleadment of UPDA as an Opposite Party in the present case. The Commission, after hearing the Informant disposed of the application *vide* its order dated 12.01.2016 with the observation that as the matter was under investigation and at an advanced state, it would be appropriate if the DG was directed to ascertain the contravention of the Act by UPDA, if any. However, the DG, after investigation as to whether UPDA's forum was being used by the country liquor manufacturing distilleries (who are the OPs in the present case) for coordination and to form a cartel, concluded that there was no evidence to substantiate the allegations of Informant in this regard.
47. In view of the above discussion, the Commission is of the opinion that the allegations made by the Informant that the OPs have entered into an agreement to determine the purchase price of reserved molasses are not substantiated. Hence, no contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act is made out and the Commission is in agreement with the DG in this regard. Further, with regard to the allegations of the Informant regarding abuse of dominance by the OPs in contravention of the provisions of Section 4 of the Act, the Commission is of the view that the concept of collective dominance does not find a place under the Act. Hence, no case of contravention of Section 4 of the Act is also made out against the OPs.
48. It may, however, be pointed out that there is a need to review the controls over molasses' distribution and dismantle them in a phased manner so that the industry can realize its full potential, emerging more competitive and competitive neutral. There is a need to do Competition Impact Assessment of the U.P. Sheera Niyam Adhiniyam, 1964 and the attendant Rules and Policy governing the entire value chain. A copy of this order hence, be forwarded to Chief Secretary of Government of Uttar Pradesh.



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Conclusion

49. Based on the above discussion, the Commission is of the opinion that no case of contravention of the provisions of Section 3 of the Act is made out against OPs.

50. The Secretary is directed to inform the parties 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/-
(Justice G. P. Mittal)
Member

New Delhi
Date: 29/12/2017