



COMPETITION COMMISSION OF INDIA

Case No. 53 of 2017

In Re:

**Starlight Bruchem Ltd.
PO Sugar Factory, Nawabganj, Gonda
Uttar Pradesh-271304**

Informant

And

- 1. Flora and Fauna Housing & Land
Developments Private Limited
P-41, Ground Floor, Pandav Nagar
Mayur Vihar, Phase-1
Delhi-110091** **Opposite Party No. 1**
- 2. Patiala Kings Liquor Pvt. Ltd.
A-9, 2nd Floor, Siddhartha Nagar
Near Hari Nagar Ashram
New Delhi-110014** **Opposite Party No. 2**
- 3. Royal Beverages Pvt. Ltd.
65, I Block, BRS Nagar, Ludhiana
Punjab-141008** **Opposite Party No. 3**
- 4. Kiwi Wines and Beverages Pvt. Ltd.
9-B, Office No-201
Nehru Complex, Pandav Nagar
Delhi-110092** **Opposite Party No. 4**
- 5. Chadha Holdings Pvt. Ltd.
M-4, Mezzanine Floor, South Extension Part-II
New Delhi- 110049** **Opposite Party No. 5**
- 6. Government of Uttar Pradesh
Through its Chief Secretary
1st Floor, Room No. 110
Lal Bahadur Shastri Bhawan
Secretariat, Lucknow
Uttar Pradesh – 226001** **Opposite Party No. 6**



CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

Appearances:

For the Informant	Mr. Kaushal Kumar Sharma, Advocate along with Mr. Nikhil Bansal, Director of Starlight Bruchem Ltd.
For the Opposite Party Nos. 1 and 5	Mr. Sajan Poovayya, Senior Advocate with Mr. Salman Qureshi, Mr. Pratibhanu Singh Kharola and Mr. Mehul Parti, Advocates along with Mr. Pankaj Kant Tandon, Chartered Accountant.
For the Opposite Party No. 2	Mr. Samar Bansal, Mr. Suvinay Kumar Dash, Ms. Devahuti Pathak, and Ms. Harsheen Madan, Advocates.
For the Opposite Party No. 3	Mr. Ritin Rai, Senior Advocate with Mr. Anant Ram Mishra, Ms. Gunjan Mathur, Ms. Anindita Mitra and Ms. Aditi Rao, Advocates.
For the Opposite Party No. 4	Mr. Raja Chatterjee and Mr. Piyush Sachdev, Advocates.

ORDER

1. The present Information has been filed by Starlight Bruchem Ltd. ('the Informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Flora and Fauna Housing & Land Developments Private Limited ('Opposite Party No. 1' / 'OP-1'), Patiala Kings Liquor Pvt. Ltd. ('Opposite Party No. 2' / 'OP-2'), Royal Beverages Pvt. Ltd. Ltd. ('Opposite Party No.



3'/ 'OP-3'), Kiwi Wines And Beverages Pvt. Ltd. ('Opposite Party No. 4'/ 'OP-4'), Chadha Holdings Pvt. Ltd. ('Opposite Party No. 5'/ 'OP-5') and Government of Uttar Pradesh ('Opposite Party No. 6'/ 'OP-6'), [collectively referred to as 'the Opposite Parties'/ 'OPs'] alleging *inter alia* contravention of the provisions of Sections 3 and 4 of the Act.

Background:

2. The Informant (formerly, Narang Distillery Limited), is a public limited company incorporated on 01.11.2000. As per the Information, the original promoters of the company are engaged in the business of manufacturing and trading liquor in North India since 1942 and have presence in the States of Uttar Pradesh, Madhya Pradesh, Punjab and Haryana, amongst others.
3. OP-1 to OP-4 are exclusive licensees for wholesale trade in country liquor within the State of Uttar Pradesh and are alleged to be owned or controlled by a common parent holding company *i.e.* OP-5. OP-5 is a private limited company incorporated on 25.10.2005 under the erstwhile Companies Act, 1956. As per the Information, OP-5 is the holding company of Chadha Group. It has also been averred that OP-5 has set up/ bought distilleries *viz.* Wave Distilleries and Breweries Limited, AB Sugars Pvt. Ltd. *etc.* OP-6 is Government of the State of Uttar Pradesh which is responsible for framing policy for the manufacture, sale and distribution of liquor in the State of Uttar Pradesh under the powers granted by the United Provinces Excise Act, 1910 (UPE Act). It is also empowered to grant licenses under the UPE Act.
4. The Informant has alleged that OP-1 to OP-4 have been following a non-transparent policy of procurement. It has also been stated that as the manufacturers/ distilleries cannot sell liquor directly to retailers or end-consumers, such conduct of non-transparent procurement by OP-5 'Group' leads to denial of market access to the other distilleries. Moreover, as per the Informant, the same has led to closure of many distilleries including of its own distillery in State of Uttar Pradesh.



सत्यमेव जयते



5. Additionally, the Informant is also aggrieved of the conduct of OP-6 *i.e.* the State Government of Uttar Pradesh, which is statutorily empowered to award licenses to purchase/ sell liquor within the State. As per the Information, OP-6 framed a policy stipulating that one single wholesaler would be granted license in each zone of the State, without any safeguards to ensure that not all the wholesale licenses end-up in the hands of a single Group. Further, the conditions for eligibility to apply for licenses were so restrictive that only certain business groups could apply for licence, creating conditions whereby OP-5's Group became a monopsony *i.e.* sole buyer of country liquor in the State.
6. Elaborating upon the policy of the Government of Uttar Pradesh, the Informant has stated that from the year 2001 till 2007, the Excise Policy provided a direct method for the wholesale purchase of country liquor in which a licence named CL-2 was granted to licensed distilleries/ manufacturers of country liquor to supply the produce to retailers in the State of Uttar Pradesh. The Policy was amended from time to time. In July, 2007, the said Policy was amended to introduce a new category of licence named CL-A1 in favour of a co-operative society *i.e.* Uttar Pradesh Sahkari Chini Mill Sangh, with the aim of stopping smuggling/ theft in liquor trade. The system of procuring country liquor, foreign liquor and beer was modified through which the wholesale vends would have to procure the liquor indirectly *via* Uttar Pradesh Sugar Mills Corporation/ Uttar Pradesh Sahkari Chini Mill Sangh, instead of directly procuring from the distilleries. Thereafter, the Excise Policy was again amended for the year 2008-2009 through which the newly created CL-A1 licence was abolished and the erstwhile system of granting CL-2 category licences to licensed distilleries was resumed.
7. However, in 2009, the system of granting CL-2 licences within the State was abolished and two new categories of licences, CL-1B and CL-1C were introduced. As per this new Excise Policy, the State of Uttar Pradesh was



सत्यमेव जयते



divided into 4 zones, viz., Lucknow (excluding the territory of Bareilly), Agra, Varanasi, and Meerut (including the territory of Bareilly), with Meerut being demarcated as a 'special zone'. It further mandated that for every zone, one single wholesaler would be granted a CL-1B licence, thereby, allowing a maximum of 4 wholesale licences and licence-holders in the entire State. According to the amended policy, CL-1B licence holder would also have to obtain a CL-1C licence for every district within its zone by payment of licence fee and security money as may be fixed by the State Government from time to time. Only holders of these CL-1B licences were allowed to directly procure country liquor from distilleries. Consequently, distilleries could not sell directly to retail vendors or end-customers but had to necessarily depend on the exclusive wholesalers in the zones for off-take of their produce.

8. As per the Information, the Policy further imposed criteria for applying for a wholesale liquor license, under which only a business with a minimum turnover of Rs. 400 crores in one of the three previous years, with prior experience as a wholesaler of country liquor but not a producer of alcohol/ liquor could apply for license. As a result, only two companies applied for CL-1B licence *i.e.* OP-1 and OP-3. A Selection Committee was appointed for scrutinising the applications and, after scrutiny, all the four CL-1B licences for each zone were issued in favour of OP-1. Since every CL-1B holder had to obtain CL-1C licence for every district of that zone, all CL-1C licences also came within the hold of OP-1. Further, the wholesale licences issued to OP-1 were renewed for another excise year *i.e.* 2010-2011.
9. In 2011, the Excise Policy was further amended to include a fifth zone, Gorakhpur and it also stipulated that there may be more than one CL-1B licensees in every excise zone. Only four companies *i.e.* OP-1 to OP-4 applied for wholesale licenses and were granted the same for five zones. The four companies which, amongst themselves, got all the five licences were as follows:



सत्यमेव जयते



- i Flora & Fauna Housing and Land Developments Pvt. Ltd. (OP-1) – Special Meerut Zone
- ii Flora & Fauna Housing and Land Developments Pvt. Ltd. (OP-1) – Lucknow Zone
- iii Patiala Liquors Pvt. Ltd. (OP-2) – Gorakhpur Zone
- iv Royal Beverages Pvt. Ltd. (OP-3) – Agra Zone
- v Kiwi Wines Beverages Pvt. Ltd. (OP-4) – Varanasi Zone

This Excise Policy kept receiving annual renewals until 2016 and, thereafter, got a further extension for two years *i.e.* till 2018. The Informant has averred that this Excise Policy has left the existing manufacturers completely at the mercy of wholesalers and led to a situation where the wholesalers can operate independently of competitive forces and affect the market in their favour, thereby causing appreciable adverse effect on competition in India.

10. The Informant has further alleged that although it has sent several letters to OP-1 to OP-4 (CL-1B license holders) requesting that supply indents be issued to it so that its produce can be lifted, no response or action has been forthcoming from them. Also, the Informant has claimed that when it wrote to Excise Commissioner apprising him of such denial of market access by the licensees and requesting for his intervention, Excise Commissioner responded by stating that his office cannot direct the licensees to procure country liquor from a particular distillery.
11. It has also been alleged that OP-1 to OP-4 are operating under a mutual agreement to source their purchases of country liquor only from certain manufacturers to the exclusion of others, thereby limiting or controlling the market of country liquor in violation of the provisions of Section 3(1) read with Section 3(3)(b) of the Act.



सत्यमेव जयते



12. In addition, the Informant has also alleged abuse of dominant position by the OPs in violation of the provisions of Section 4(2)(a)(i) and Section 4(2)(c) of the Act. For this purpose, the Informant has defined the 'relevant market' as the '*market for purchase of country liquor from licensed manufacturers within the State of Uttar Pradesh*'. Further, it is averred that OP-5 as the holding company for the entire 'Group', owns or controls OP-1 to OP-4 and has exclusive control over purchase and supply of country liquor in entire State of Uttar Pradesh. Thus, as per the Informant, OP-1 to OP-5 are a 'Group' entity enjoying an absolute monopsony or dominant position with 100% market share. The Informant has alleged that OP-5/ Chadha Holdings Pvt. Ltd. as a 'Group' has abused its dominant position by indulging in practices which are totally non-transparent, selective and discriminatory. Accordingly, the Informant has stated that such act on part of the OPs is in violation of the provisions of Sections 4 of the Act. Also, the Informant has averred that OP-6 has contravened the provisions of Section 4(2)(a) of the Act, by imposing a policy that is unfair and discriminatory, to the detriment of manufacturers/ distilleries such as the Informant with a view to favour OP-5 'Group'.
13. Accordingly, the Informant had prayed that the Commission may (a) initiate an investigation under the provisions of Section 26(1) of the Act against the OPs; (b) pass cease and desist order against the acts of the OPs which are in violation of the Act; (c) direct OP-1 to OP-4, by way of an interim order, to procure country liquor from distilleries in a transparent and competitive method without any discrimination; (d) direct OP-6 to suitably amend the Excise Policy ensuring a competitive market; and (e) pass any other order which the Commission may deem fit.

Directions to the DG:

14. The Commission *vide* order dated 09.07.2018 passed under Section 26(1) of the Act, found the OPs to be in *prima facie* contravention of the provisions of Section 4 of the Act. Accordingly, the Commission directed the Director



सत्यमेव जयते



General ('DG') to cause an investigation into the matter and submit investigation report to the Commission.

15. With respect to allegations made about contravention of the provisions of Section 3 of the Act, the Commission noted that the same were merely based on conjectures. No credible material was placed by the Informant to show existence of any agreement amongst OP-1 to OP-4 in support of such allegations made by the Informant. Accordingly, such allegations were noted to be devoid of merit.
16. The DG, after receiving the directions from the Commission, investigated the matter and, after seeking extensions, submitted investigation report on 26.02.2020.

Investigation by the DG

17. During the course of investigation, the DG, primarily, examined the following five issues: (a) whether 'country liquor' is distinct and different from other alcoholic beverages and what is the relevant market in the present matter? (b) whether OP-1 to OP-5 belong to same 'Group' as per clause (b) of the Explanation to Section 5 of the Act? (c) whether OP-1 to OP-5 either severally or as a 'Group' have a dominant position in the relevant market(s) so delineated? (d) whether OP-1 to OP-5 either severally or as a 'Group' have abused their dominant position in the relevant market by refusing to procure country liquor from the Informant and have thereby violated the provisions of Section 4 of the Act? (e) whether OP-6 has violated provisions of the section 4(2)(a)(i) as alleged by the Informant?
18. On the first issue, the DG noted '*country liquor*' is different from spirit, beer and wine, considering the factors such as ingredients, alcoholic content, manufacturing process, class of consumers and regulatory requirements. In respect of relevant geographic market, the DG pointed out that Excise Policy did not specify any instruction/ direction as to procurement of country liquor



सत्यमेव जयते



by CL-1B/ CL-1C licensees from a particular zone. The DG has also observed that the OPs have not limited themselves in purchasing country liquor from distilleries located in the Excise Zones for which they had exclusive CL-1B or CL-1C license. Accordingly, the DG noted that relevant geographic market should be '*State of Uttar Pradesh*', instead of restricting it to the geographical limits of the Excise Zones as demarcated under the Excise Policy. Moreover, as per the DG, the condition of competition for purchase of country liquor by CL-1B license holders are distinctly homogenous in the geographical area of the State of Uttar Pradesh. Thus, DG delineated the relevant market as '*market for purchase of country liquor from licensed manufacturers within the State of Uttar Pradesh*'.

19. In respect of second and third issues, the DG firstly noted that there were more than one OP operating in the relevant market. However, during 20.05.2009 to 31.03.2011 ('first relevant period'), only OP-1 had the CL-1B license, granting it the exclusive right to procure country liquor from the distilleries located in the State of Uttar Pradesh. Whereas, for the 'second relevant period' *i.e.* from 01.04.2011 to 31.03.2018, OP-1 to OP-4 were the holders of CL-1B licences. In light of this, the DG noted that it becomes important to identify whether OP-1 to OP-5 belonged to the same 'Group' *i.e.* OP-5/ Chadha Holdings Pvt. Ltd. during the second relevant period *i.e.* from 01.04.2011 to 31.03.2018.
20. In this regard, the DG, in order to identify the relationship between the OPs (OP-1 to OP-5), examined their shareholding patterns; common directorships, besides examining the third limb of the definition of 'Group', as given in Explanation (a) to Section 5 of the Act and as made applicable to the provisions of the Section 4 thereof, *i.e.* 'control of the management and affairs of other enterprise' in terms of material influence, *de-facto* control and *de-jure* control. Based on the analysis, the DG noted that the available evidences did not indicate OP-2 to OP-4 belonging to Chadha Group, during the second relevant period *i.e.* from 01.04.2011 to 31.03.2018. The DG also



noted that there may be possibilities of some random linkages between OP-1 to OP-5 at different points of time, but such random linkages were neither strong enough nor consistent enough during the entire second period to satisfy any of the three tests of 'Group' as given in clause (b) of the Explanation to Section 5 of the Act, which can be said to enable OP-2 to OP-4 to be designated as a 'Group' along with OP-1/ OP-5/ Chadha Holdings Pvt. Ltd., under the provisions of the Act.

21. On the issue of dominance in the relevant market *i.e.* 'market for purchase of country liquor from licensed manufacturers within the State of Uttar Pradesh', the DG analyzed the same in regard to two different period *i.e.* for the period 20.05.2009 to 31.03.2011 and for the remaining period of alleged abuse *i.e.* for 01.04.2011 to 31.03.2018. In relation to the first relevant period, the DG noted that owing to the exclusive monopsony status, control over entire supply chain, financial strength *etc.*, OP-1 was in a dominant position in the said relevant market.
22. In relation to the 'second relevant period', the DG noted that State of Uttar Pradesh was divided into five Excise Zones for the purposes of award of CL-1B license. In the relevant market, the DG observed that there were four procurers/ wholesalers of the country liquor and 19 possible sellers *i.e.* distilleries. Thus, the DG noted that the relevant market was characterized by the presence of more than one procurer and 19 sellers *i.e.* distilleries (some of the 19 distilleries including that of the Informant, were closed during the 'second relevant period', due to the directions issued by UP Pollution Control Board/ UPPCB or for other commercial reasons). Therefore, the DG concluded that both sellers and purchasers had multiple options and none of the OPs (*i.e.* OP-1 to OP-4) was dominant on its own or otherwise in the relevant market during the second relevant period.
23. Thus, as per the DG, during the second relevant period, when the relevant market was dynamic and was characterized by the presence of multiple



सत्यमेव जयते



players, no single player can be said to be in a position to affect the competitors or consumers or the market in its favour and consequently, the question of dominance of any one of them does not arise. Further, in the absence of dominance, the issue of abuse of dominant position does not arise during the second relevant period *i.e.* for 01.04.2011 to 31.03.2018.

24. In respect of the allegation regarding abuse of dominant position, during the first relevant period *i.e.* from 20.05.2009 to 31.03.2011, the DG noted that OP-1 procured about 18.86% of its requirement for country liquor during this period from its own distillery *i.e.* Wave Distilleries and Breweries Limited and thereby concluded that OP-1 violated the provisions of Section 4(2)(c) and Section 4(2)(e) of the Act. However, in the absence of any purchase or sale between the Informant and the Opposite Parties due to closure of the factories of the Informant during the relevant period by an order of National Green Tribunal (NGT) and UPPCB, the allegation of the Informant regarding imposition of unfair or discriminatory condition in contravention of the provisions of Section 4(2)(a)(i) of the Act, was not found to be tenable by the DG.
25. As regards allegations levelled by the Informant against OP-6 *i.e.* State of Uttar Pradesh, the DG observed that policy making is not an economic activity and as such cannot be examined within the purview of the provisions of Section 4 of the Act.

Consideration of the DG report by the Commission

26. The Commission considered the investigation report submitted by the DG in its ordinary meeting held on 23.06.2020 and decided to forward copies thereof to the parties (the Informant/ OP-1 to OP-5) for filing their respective replies/ objections thereto. Thereafter, the Commission heard the arguments of the parties on 26.11.2020 and decided to pass an appropriate order in due course.



Objections/ Suggestions etc. of the Informant

27. The Informant filed its response to the DG Report.
28. At the outset, the Informant stated that OP-1 to OP-4 were never eligible to participate in the tender process as they never fulfilled the tender conditions *viz.* requirement of turnover of Rs. 400 crores in preceding three years; experience as a wholesale liquor licence holder *etc.* Accordingly, the Informant alleged that OP-1 to OP-5, in collusion with OP-6 or otherwise, manipulated the bidding process and controlled the production, supply and market in violation of the provisions of Sections 3(3)(b) and 3(3)(d) of the Act. The Informant has also submitted that the DG has indirectly refused to investigate into the allegation that Excise Policy from 2009-2018 was tailored in such a way to hand over control of country liquor trade to OP-5/ Chadha Holdings Pvt. Ltd.
29. The Informant further contended that the DG ignored various circumstantial evidences such as rotation of Chartered Accountants by OPs; sharing of lawyers *etc.*, which may not be sufficient to support allegations as to existence of 'Group' between OP-1 to OP-5, yet the same clearly indicated violations of the provisions of Section 3(3)(d) of the Act. The DG has failed to conduct thorough investigation by using various investigating tools such as analysis of call data records ('CDRs') of the OPs; independent commissioning of some officers to visit the premises of OPs; conducting dawn raids *etc.*
30. The DG has artificially divided the relevant period of violation into two parts *i.e.* from 20.05.2009 to 31.03.2011 and from 01.04.2011 to 31.03.2018 in violation of the directions given by the Commission in its order dated 09.07.2018 passed under the provisions of Section 26(1) of the Act. The Informant has also challenged the delineation of relevant market by the DG.



31. Further, the Informant has alleged that the DG failed to analyse the issue as to 'control' in order to identify the relations between OP-1 to OP-5 as a 'Group', in light of factors such as appointment of directors; shareholding pattern *etc.* Elaborating further, the Informant has argued that definition of 'control' is not exhaustive but inclusive as discerned from the use of words 'directly' or 'indirectly' in clause (iii) of Explanation (b) of Section 5 of the Act. The Informant has also stated that there are large number of documentaries produced by TV channels that have well established the fact that OP-1 to OP-4 belong to the same 'Group' *i.e.* OP-5/ Chadha Holdings Pvt. Ltd. Moreover, as per the Informant, clause (i) and (ii) of Explanation (b) to Section 5 of the Act, do indicate the parameters which are reflective of a '*de jure* control' of one enterprise by the other. Whereas, there are a large number of arrangements in real life scenarios where there may be '*de facto* control' as covered under the provisions of clause (iii) of Explanation (b) to Section 5 of the Act. The Informant has submitted that some of such 'indirect'/'*de facto*' factors to determine 'control' have been elaborated in various seminal decisions such as *Arcelor Mittal India Private Limited v. Satish Kumar Gupta and Others* (Civil Appeal No. 9402-9405 of 2018); *Raghuvanshi Mills Ltd. v. Commissioner of Income Tax* [(1961) 2 SCR 978] *etc.*
32. The Informant submitted that only the distilleries recommended by the OPs were getting the quota of molasses. The Informant is also stated to have raised the same issue before the Excise Commissioner, Uttar Pradesh but with no avail. Resultantly, as per the Informant, there were at least 5 distilleries including that of the Informant, whose turnover went down to 'zero' after OP-1 to OP-4 were allotted CL-1B license. Some of these distilleries as stated by the Informant whose turnover went down to 'zero' are tabulated as under:



Table 1: Distilleries whose turnover allegedly fell to ‘zero’ post allotment of CL-1B licence to OP-1 to OP-4

S. No.	Name of the Distillery	Remarks
1.	Majhola Distillery	Zero Purchase
2.	Starlight Bruchem Ltd.	Zero Purchase
3.	Shami Distillery	Zero Purchase
4.	Shravasti Kisan Sehkari	Zero Purchase from 2011 onwards
5.	Ojas Industries Ltd.	Zero Purchase from 2012 onwards
6.	Modi Distillery	Zero Purchase from 2013 onwards

33. Lastly, the Informant submitted that OP-1 to OP-5 had acquired a dominant position in the relevant market on account of Statute/ policy enacted by OP-6. Therefore, the Informant has alleged that OP-6 has also violated the provisions of Section 4 of the Act.

Objections/ Suggestions etc. of OP-1 & OP-5

34. The OP-1 & OP-5 in their common response supported the findings of the DG that during the second relevant period, OP-2 to OP-4 were not part of the same ‘Group’ *i.e.* OP-1/ OP-5/ Chadha Holdings Pvt. Ltd. This aspect will be elaborated in detail during the analysis part of this order while deciding the issue as to whether OP-2 to OP-4 constitute Group alongwith OP-1/ OP-5.
35. At the outset, a preliminary objection was taken by making reference to doctrine of *res extra commercium* to contend that the right to carry on any business would not be available for activities that are inherently immoral or criminal. It was stated that a business in alcoholic beverages including country liquor falls in this category. A market where there is no right to trade should not be tested under the Act which essentially tests conducts in a competitive market or market where legitimate competition is possible.



सत्यमेव जयते



36. OP-1 was not in a position of strength that could allow it to operate independently during the first relevant period *i.e.* from 20.05.2009 to 31.03.2011. The fact that the commercial and operational freedom of OP-1 was severely restricted by the relevant Excise Policy in terms of determination of procurement price, selling price *etc.*, has not been given due consideration by the DG.
37. Further, it was contended that the conduct of OP-1 was not abusive during the first relevant period in terms of provisions of Section 4 of the Act as the Informant did not manufacture any country liquor and in absence of such production, OP-1 could not have procured any country liquor from the Informant. Moreover, it was pointed out that the Informant failed to produce even a single documentary evidence to support its allegation that it requested OP-1/ OP-5 to secure order for supply of country liquor.
38. In respect of the allegation regarding alleged violation of the provisions of Section 4(2)(a)(i) of the Act, it was submitted that the DG Report in no uncertain terms has stated that the Informant did not manufacture any country liquor during the relevant period. Thus, in absence of any production of country liquor by the Informant, it would not be possible to impose unfair or discriminatory conditions for purchase of country liquor. Additionally, allegations of unfair or discriminatory treatment to other distilleries are also untrue as the DG Report has also recorded that none of the 11 other distilleries claimed to have suffered from alleged unfair conditions imposed by OP-1/ OP-5 in procurement of country liquor.
39. In respect of the alleged violation of the provisions of Section 4(2)(c) of the Act, OP-1/ OP-5 submitted that the Informant could not have suffered denial of market access, in the absence of production of country liquor by it. Further, OP-1/ OP-5 have also submitted that the Informant was closed for majority of the relevant period as it did not have the requisite permission from the Uttar Pradesh Pollution Control Board (UPPCB). In such a situation, no



सत्यमेव जयते



denial of market access could have been possible as the Informant itself was not in a position to access the market. Moreover, even before OP-1/ OP-5 entered the relevant market, the Informant's production of country liquor was on a downward spiral and plummeted at a whopping rate.

40. It would be commercially imprudent to procure from an entity which has been mired with shutdown and has been barred by the authorities from manufacturing goods (country liquor). To support the said contention, OP-1/ OP-5 have pointed out that even the Commission in its decision in *Gujarat Industries Power Company Limited v. Gail (India) Limited*, (Case Nos. 55 & 56 of 2015) has held that safeguarding the commercial interest cannot be termed as abuse of dominant position.
41. Moreover, OP-1/ OP-5 have also contended that the DG was also not correct in its finding with respect to violation of the provisions of Section 4(2)(c) of the Act, merely on the basis that dominant entity has special responsibility not to impair genuine undistorted competition. The DG failed to consider the fact that even European Court of Justice in multiple decisions including in *Compagnie Maritime Belge Transports SA v. Commission* [2000] ECR I-1365 and *Tetra Pak v. Commission* [1996] ECR I- 5951 *etc.* had noted that scope of special responsibility of a dominant entity must be considered in light of special circumstances of each case, which in the present case is non-production of country liquor by the Informant after 2008-09 due to order of UPPCB (also recognized by the Hon'ble Allahabad High Court in its decision in *Starlight Bruchem Ltd. v. State of UP and others* dated 31.05.2017); and lack of even a single documentary evidence to support the allegation that the Informant requested OP-1/ OP-5 to secure order for supply of country liquor.
42. Similarly, in respect of violation of the provisions of Section 4(2)(e) of the Act, OP-1/ OP-5 stated that the biggest two gainers during the first relevant period, who were alleged to have been treated unfavorably (as claimed by the Informant) were Modi Distillery and Kesar Enterprise Limited. OP-1/ OP-5 has also pressed that the Commission in its previous decision in *Biocon*



सत्यमेव जयते



Limited & Anr. v. F. Hoffmann-La Roche AG & Ors. (Case No. 68 of 2016) unequivocally accepted the fact that purpose of the Act is to protect the process of competition and not individual competitors.

43. Further, OP-1/ OP-5 have vociferously contended that none of the 11 other distilleries has claimed that OP-1/ OP-5 had preferentially procured country liquor from its group entity *i.e.* Wave Distilleries and Breweries Ltd. OP-1/ OP-5 have also submitted that even the Commission in its decision in *Association of Third-Party Administrators v. General Insurers (Public Sector) Association of India* (Case No. 49 of 2010) has held that if an entity is better off and none other is worse off then, the dominant entity cannot be held to have contravened the provisions of Section 4(2)(e) of the Act. The relevant extract of the decision of the Commission are as follows:

“15. After the formation of said JV TPA, the overall situation in the market for non-life insurance in India would remain the same for the consumer. The consumer will be served by a TPA selected by the insurance company as before and it would be open for the other TPAs to strive for the business of other insurance companies. If members of Opposite Party form a JV TPA and feel more satisfied by its services, while the consumer remains unaffected, it would be the case where one entity is ‘better off’ without making another one ‘worse off’; technically termed as ‘Pareto Improvement’ or ‘Pareto-optimal move’.”

(Emphasis supplied)

Accordingly, it was submitted by OP-1/ OP-5 that they cannot be held responsible for the contravention of the provisions of Section 4(2)(e) of the Act.

44. OP-1 and OP-5 have also challenged the contention of the Informant that OP-1 was ineligible to obtain a CL-1B license, by pointing out that the matter has already been settled by the Hon’ble Allahabad High Court *vide* order dated 31.05.2017 in case of *Starlight Bruchem Ltd. v. State of Uttar Pradesh* and



सत्यमेव जयते



others by holding as follows:

‘...We have examined the respondents’ eligibility as well as qualification to get the licence and as per discussions made above, we are of the view that the respondents do not incur any ineligibility or disqualification to get the licence...’

(Emphasis supplied)

45. It was submitted that the Informant in the present case has filed an appeal against the said decision and same is pending before the Hon’ble Supreme Court. However, OP-1/ OP-5 have clarified that the decision of the Hon’ble Allahabad High Court has not been stayed. It was, therefore, submitted that by raising similar issues before the Commission, the Informant is abusing the process of law by engaging in ‘forum shopping’.
46. OP-1/ OP-5 have also vehemently contended that the Informant lacks any *bonafide* as it misled the Commission by not disclosing the fact that it was prohibited from producing country liquor by UPPCB. Accordingly, OP-1/ OP-5 have emphasized that the Informant did not come with a ‘clean hand’ before the Commission as it failed to disclose the fact that it was not capable of producing country liquor due to its own mistake/ wrongdoing. Thus, OP-1/ OP-5 have prayed the Commission to initiate the proceeding against the Informant for providing false and misleading information.
47. Lastly, it was submitted by OP-1/ OP-5 that the present Information filed before the Commission suffers from laches/ delay as the Informant has chosen to file the same in 2017 *i.e.* after a gap of nearly 8 years since OP-1 was first granted a CL-1B licence. The Commission should not be considered as a forum to recoup profit that the Informant was not able to make due to its own commercial decisions. The proceedings before the Commission should not be used as a tool to harass other enterprises.



सत्यमेव जयते



Objections/ Suggestions etc. of OP-2

48. OP-2 submitted a brief reply/ objections/ submission to the report of the DG.
49. It was submitted that DG Report has recommended that there is no contravention of provisions of the Act by OP-2. Accordingly, OP-2 filed its reply without making any specific submissions in its defence. OP-2 also submitted that if the Commission disagrees with the observations and findings in respect of OP-2 as set forth in the DG report, then the Commission should provide adequate opportunity to OP-2 to present its case.

Objections/ Suggestions etc. of OP-3

50. OP-3 also submitted a brief reply/ objection/ submission to the reports of the DG.
51. It was submitted that the entire trade of country liquor was being controlled by the State Government through minimum guaranteed quantity to be sold by retail vendors; price of country liquor from distilleries to whole sellers; price at level of retail vendors; rate of molasses; storage of country liquor *etc.* OP-3 has also contested the evidence of the Informant, wherein it specified that it wrote a letter dated 24.04.2012 to OP-3 for issuing indent for supply of country liquor.
52. Further, OP-3 has also contested the allegation of the Informant that OP-3 is a part of OP-5 'Group' as none of criteria as specified under Explanation (b) to Section 5 of the Act, is fulfilled.

Objections/ Suggestions etc. of OP-4

53. In its reply, OP-4 supported the various findings of the DG such as delineation of relevant market; OP-4 not being a part of OP-1/ OP-5 'Group'. It was pointed out that any commonality of its directors with any other OP is a mere coincidence and the Informant has only established some random linkages between different OPs at different points of time. Therefore, in the



absence of concept of “collective dominance”, OP-4 cannot be held as a dominant enterprise.

54. Further, OP-4 has also submitted that the Informant was flouting the pollution control norms and had been reported to be self-closed as per the report of the Central Pollution Control Board, submitted before the National Green Tribunal, Principal Bench in *Krishna Kant Singh & Anr. vs. National Ganga River Basin Authority & Ors.* (MA No. 879 of 2013 in OA No. 299 of 2013). Thus, the closure/ shut down of the Informant was on account of its own account/ action and not due to action on the part of OP-4. Lastly, OP-4 has also opposed request on the part of the Informant to summon the financial records of Mr. Kamal Bhola, Director of OP-4, as the request was more in the nature of fishing expedition.

Analysis

55. On a careful perusal of the Information, the report of the DG and the replies/ objections filed and submissions made by the parties and other material available on record, the following issues arise for consideration and determination in the matter:
- I. Whether ‘country liquor’ is distinct and different from other alcoholic beverages and what is the relevant market in the present matter?
 - II. Whether OP-1 to OP-5 belong to same ‘Group’ as per clause (b) of Explanation to Section 5 of the Act?
 - III. Whether OP-1 to OP-5 either severally or as a ‘Group’ have a dominant position in the relevant market(s) so delineated?
 - IV. Whether OP-1 to OP-5 either severally or as a ‘Group’ have abused their dominant position in the relevant market by refusing to procure country liquor from the Informant and other distilleries and have thereby violated the provisions of Section 4 of the Act?
 - V. Whether OP-6 has violated provisions of the Section 4(2)(a)(i) as alleged by the Informant?



56. Before dealing with the issues on merits, the Commission would first deal with the preliminary issues raised by some of the Opposite Parties to contend that the Commission does not have the jurisdiction to adjudicate the present matter as trade, commerce or business in 'country liquor' is *res extra commercium*.
57. It was contended by OP-1/ OP-5 that the Hon'ble Supreme Court of India in its several decisions has held that the right guaranteed by the Constitution to carry on any business would not be available for activities that are inherently immoral or criminal (this includes business in alcoholic beverages such as country liquor). Thus, as per OP-1/ OP-5, a market where there is no right to trade should not be tested under the provisions of the Act considering the fact that the instant case falls under the ambit of *res extra commercium* (outside the sphere of trade/ commerce *etc.*).
58. Similarly, OP-4 argued that the present case is directly hit by the provisions of Article 47 of the Constitution of India which *inter alia* obligates the State to endeavour to bring about prohibition of intoxicating drinks and drugs which are injurious to health. Further, it has been pointed out that even the Hon'ble Supreme Court of India in the case of *Khoday Distilleries Ltd. v. State of Karnataka and others* [1995 (1) SCC 574], had held that the State can create a monopoly either in itself or in the agency created by it for manufacture, possession, sale and distribution of liquor as beverages and also to sell license to the citizens for the said purpose by charging fees. In other words, OP-4 has submitted that in the matter of intoxicating drinks or drugs that are injurious to health, the State has paramount authority to restrict the sale of such substances and therefore there can be no market or trade in such commodities.
59. *Per contra*, the Informant contended that Article 47 of the Constitution only outlines the contours of liquor trade in the form of Excise Policy of each State.



सत्यमेव जयते



Moreover, the unfettered jurisdiction of the Commission to carry out its duties under the provisions of Section 18 of the Act and the mandate given under the preamble thereof, can only be limited by operation of provisions of Section 54 of the Act *i.e.*, exemption from the application of the Act by notification issued by the Central Government, which is not the case in the present matter.

60. The Commission has considered the jurisdictional plea as raised by the OP-1/ OP-5 and OP-4 and is of the considered opinion that the same are untenable.
61. At the outset, the Commission notes that decision of the Hon'ble Supreme Court in *Khoday Distilleries* case (*supra*) was given in an altogether different context and setting where right to trade in liquor was sought to be enforced as part of fundamental right to carry on trade or business in terms of Article 19(1)(g) of the Constitution of India. In this context, the Hon'ble Supreme Court opined that the right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It was further noted that such right does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, *i.e.*, *res extra commercium*, (outside commerce). Applying this principle in the context of potable liquor, it was noted by the Hon'ble Supreme Court that potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commerce* being inherently harmful. Accordingly, it was concluded that a citizen has, therefore, no fundamental right to do trade or business in liquor and therefore, the trade or business in liquor *can be completely prohibited*. Having held so, the Supreme Court went on to add that the State can impose limitations and restrictions on the trade or business in potable liquor as a



beverage on which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are *res commercium*. Further, it was observed that the restrictions and limitations on the trade or business in potable liquor can again be both under Article 19(6) or otherwise. In fact, it was added that the restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

62. Furthermore, it would be apposite to excerpt the definitions of ‘goods’ and ‘services’ as given under Sections 2(i) and 2(u) of the Act, respectively and the same are reproduced hereinbelow:

Section 2(i)

‘goods’ means goods as defined in the Sale of Goods Act, 1930 (8 of 1930) and includes -

- (A) products manufactured, processed or mined;*
(B) debentures, stocks and shares after allotment;
(C) in relation to goods supplied, distributed or controlled in India, goods imported into India;

(Emphasis supplied)

Section 2(u)

‘service’ means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising...”

(Emphasis supplied)

63. A plain reading of the definition of ‘goods’ indicates that it has a wider meaning and connotation to cover *any* kind of products within its ambit. Similarly, a reading of the definition of the term ‘service’ shows that it also



सत्यमेव जयते



uses the term ‘*service of any description which is available to potential users*’, which clearly indicates that it also has a wider meaning to cover *any* kind of service within its purview. In this view of the matter, the argument of the Opposite Parties to the effect that a market where there is no right to trade should not be tested under the provisions of the Act, cannot be sustained as appointment of wholesalers/ distributors of country liquor is decidedly and indisputably a ‘service’, which is covered under the provisions of the Act.

64. In fact, the aforesaid conclusions are further fortified from the wider ambit of the definition of ‘trade’ as given in Section 2(x) and for ready reference, the same is noted below:

Section 2(x)

‘trade’ means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services.

(Emphasis supplied)

The aforesaid definition would cover within its sweep the business of marketing, distribution and sale of country liquor.

65. In this regard, it is pertinent to note that by virtue of the objectives highlighted in the long title to the Act and the duty vested in the Commission under Section 18 of the Act, the Commission is obligated to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India. The provisions of the Act extend to cover all goods and services except the sovereign functions of the Government as provided in Section 2(h) of the Act. In this view of the matter, the jurisdictional plea raised by the Opposite Parties fails and is rejected.
66. At this stage, before adverting to the merits of the case, it would be appropriate to consider an application dated 14.10.2020 moved by the Informant under the provisions of Regulation 44 of the Competition



सत्यमेव जयते



Commission of India (General) Regulations, 2009 ('the General Regulations'). In the said application, the Informant has stated that in order to identify the relationship between OP-1 to OP-5 as a 'Group', there is a need for production of certain additional documents by OPs. Accordingly, the Informant prayed the Commission to direct OPs to produce these documents *viz.* financial statements, bid documents for award of tender for CL-1B license *etc.*

67. Before dealing with this application, it is observed that the Commission *vide* its order dated 28.10.2020 directed to forward copies thereof to Opposite Party Nos. 1 to 5 with a direction to file their reply thereon, if any, latest by 09.11.2020 with advance copies to the Informant. The Informant was thereafter, directed to file its rejoinder to such replies of Opposite Party Nos. 1 to 5 within one week of their receipt, with advance copies to the Opposite Party Nos. 1 to 5. It was also ordered *vide* the said order that no separate hearing shall be granted in respect of the said application. Accordingly, the matter was listed for final hearing on 26.11.2020.
68. When the matter came up for final hearing on 26.11.2020, Shri K. K. Sharma, the learned counsel appearing on behalf of the Informant submitted that the Informant has filed a writ petition before the Hon'ble High Court of Delhi, titled *Starlight Bruchem Ltd. v. Competition Commission of India and others*, wherein it has *inter alia* been requested to issue a writ of mandamus directing the Commission for providing a separate hearing for adjudicating an application moved by the Informant under the provisions of Regulation 44 of the General Regulations for production of certain documents. The learned counsel for the Informant also submitted that the matter was listed before the Hon'ble High Court on that day itself *i.e.* 26.11.2020 as Item No. 46. Accordingly, the learned counsel requested the Commission to defer the proceedings.
69. Having heard the learned counsel appearing on behalf of the Informant, the Commission was of the opinion that it would be appropriate to await the



सत्यमेव जयते



directions of the Hon'ble High Court, if any, in the matter and accordingly, the matter was directed to be taken up at 02:30 PM on that day itself, as prayed for.

70. The aforesaid writ petition came to be dismissed by the Hon'ble High Court of Delhi *vide* an order of even date *i.e.* 26.11.2020 noting as follows:

2. Admittedly, the application filed by the petitioner is pending adjudication before the respondent no.1 and is fixed for consideration today pursuant to the order dated 28.10.2020 passed by the respondent no.1.

3. The learned counsel for the petitioner, however, vehemently submits that this application should be decided prior to hearing the final arguments in the proceedings under Section 26 of the Competition Act, 2002 pending before the respondent no.1.

4. The learned Additional Solicitor General appearing on behalf of the respondent no.1 submits that it is only during the course of hearing that the respondent no.1 would form an opinion as to the relevance of the documents sought to be produced by the petitioner and pass appropriate directions thereon. He submits that presently the petition is clearly pre-mature as the application has not been disposed of by the respondent no.1.

5. I find merit in the submissions made by the learned ASG. The application being pending before the respondent no.1, the present petition is clearly pre-mature in nature. No infirmity can be found in the order dated 28.10.2020 passed by the respondent no.1.

71. In the above backdrop, when the hearing resumed at 2:30 PM, the Commission took up the application dated 14.10.2020 moved by the Informant for consideration and heard the learned counsel appearing on behalf of the Informant at length thereon.



सत्यमेव जयते



72. The learned counsel appearing on behalf of the Informant *inter alia* contended that some of the documents sought to be produced *vide* the instant application, were indeed summoned by the DG from the OPs but the DG neither enforced their production before him nor reported the matter to the Commission for imposition of penalty under Section 45 of the Act, when OPs did not comply with the directions issued by the DG.
73. On the other hand, OP-1/ OP-5 in their reply and oral arguments with respect to application dated 14.10.2020 submitted that the Informant has drawn some random linkages to allege that OP-1 to OP-5 are part of the same ‘group’, without even establishing any of the three criteria specified under clause (b) of the Explanation to Section 5 of the Act which defines ‘group’, the definition whereof has been engrafted in Section 4 of the Act by virtue of Explanation (c) thereto. It has also been contended that the Informant has failed to even consider the relevant period *i.e.* from 20.05.2009 to 31.03.2011 to establish the said random linkages. Further, as per OP-1/ OP-5, the Informant has not placed on record even a single piece of evidence to show that OP-2 to OP-4 were under any influence of OP-1/ OP-5 or *vice versa* with respect to their commercial operations/ strategic direction.
74. After considering the rival submission of the parties, the Commission notes that the gravamen of the Informant made in the application dated 14.10.2020 stems from the fact that the documents that were initially summoned by the DG from the OPs, were not produced and, as such, without enforcing their production, the DG could not have submitted its final report. Further, as per the Informant, some of these documents were also essential to identify the relationship between OP-1 to OP-5 as a ‘group’.
75. Having examined the issue carefully, the Commission is of the considered opinion that role of the Informant in the investigation before the DG or for that matter, before the Commission is very narrow. No doubt, by filing Information, the Informant sets the machinery of the law into motion but



सत्यमेव जयते



thereafter the proceedings are conducted in an inquisitorial manner and the Informant can only render the assistance to the DG or the Commission, if so required, during investigation or inquiry, as the case may be. In such proceedings, it would be wholly out of scheme of the Act if the Informant is allowed to consider itself as *dominus litis* in such *in rem* proceedings. The Informant cannot decide much less dictate the process, mode or manner of investigation. As detailed in the succeeding paras, the DG has conducted a detailed analysis to ascertain the relationship between the OPs (OP-1 to OP-5) and further in light of the view, elaborated later in this order, on the alleged abusive conduct, it is unnecessary to further dilate on this aspect. The Commission is of the considered opinion that the application dated 14.10.2020 moved by the Informant seeking summoning of further documents, is wholly without any merits and the same is accordingly rejected. When the conduct itself has not been found to be abusive as detailed in the succeeding paras in this order, it is wholly unnecessary to determine as to whether OP-2 to OP-4 formed part of OP-1/ OP-5 'Group' or not, as nothing turns upon such determination in light of findings on merits on the issue of abusive conduct of OPs, which remains unsubstantiated.

76. In view of the foregoing, the Commission now proceeds to examine the matter on merits in terms of relevant market, dominance and abuse.
77. However, before venturing into these issues, the Commission deems it appropriate to summarily deal with a plea raised by the Informant that OP-1 to OP-4 were never eligible to participate in the tender process as they did not fulfill the stipulated tender criteria for allotment of Cl-1B licence *viz.* turnover of Rs. 400 crores in preceding three years; experience as a wholesale liquor licence holder *etc.*
78. The Commission has noted the plea and is of the opinion that the same is of no consequence and relevance as far as the present inquiry is concerned. The issue whether bidders fulfilled the tender conditions or not, is entirely in the



सत्यमेव जयते



realm and domain of the procurer and the issues of eligibility or ineligibility are to be decided as per the tender conditions, applicable rules governing procurement process and other *extant* instruments issued by the Department or other relevant authorities. Non-fulfillment of tender conditions and acceptance of bids from such vendors, cannot *per se* give rise to any action under the Act. The provisions of the Act relating to bid rigging would trigger once it is shown that there was collusion amongst the potential bidders while participating in the tendering process. Deviation from the norms in accepting ineligible bids may give rise to appropriate administrative action by the procurer itself besides initiating other actions as per law. Be that as it may, the Commission takes note of the submissions made by OP-1 to OP-5 that the Hon'ble Allahabad High Court in its decision in *Starlight Bruchem Ltd. v. State of UP and others*, Misc. Bench No. 3221 of 2017 decided on 31.05.2017, has already put to rest such questions as to eligibility of the OPs (OP-1 to OP-4) and affirmed that there was no infirmity in allotment of wholesale country liquor licences. The decision is stated to be challenged by the Informant before the Hon'ble Supreme Court of India in SLP(C) No. 23051 of 2017 but the Apex Court has not granted any stay on the decision of the Hon'ble Allahabad High Court and the matter is currently *sub-judice*.

79. After disposing of the preliminary objections and pleas, the Commission proceeds to examine the matter on merits to ascertain as to provisions of Section 4 of the Act have been contravened by any of the Opposite Parties.
80. In this regard, as noted *supra*, first the relevant market needs to be defined and thereafter the dominance of the enterprise or group concerned has to be ascertained therein before proceeding any further to examine the alleged abusive conduct.
81. As per Section 2(r) of the Act, 'relevant market' means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or both. Further, the term 'relevant product market' has been defined in Section 2(t) of the Act as a market



comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of their characteristics, prices or intended use. The term 'relevant geographic market' has been defined in Section 2(s) of the Act to mean 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.

82. For determining whether a market constitutes a 'relevant market' for the purposes of the Act, the Commission is required to have due regard to the 'relevant geographic market' and the 'relevant product market' by virtue of the provisions contained in Section 19(5) of the Act.
83. To determine the 'relevant geographic market', the Commission, in terms of the factors contained in Section 19(6) of the Act, is to have due regard to all or any of the following factors *viz.*, regulatory trade barriers, local specification requirements, national procurement policies, adequate distribution facilities, transport costs, language, consumer preferences and need for secure or regular supplies or rapid after-sales services.
84. Further, to determine the 'relevant product market', the Commission, in terms of the factors contained in Section 19(7) of the Act, is to have due regard to all or any of the following factors *viz.*, physical characteristics or end-use of goods, price of goods or service, consumer preferences, exclusion of in-house production, existence of specialized producers and classification of industrial products.
85. Thus, in any case of alleged abuse of dominant position, normally delineation of relevant market is important as it sets out the boundaries of competition analysis. Proper delineation of relevant market is necessary to identify in a systematic manner, the competing alternatives available to the consumers and accordingly the competitive constraints faced by the enterprise under



सत्यमेव जयते



scrutiny. The process of defining the relevant market is in essence a process of determining the substitutable goods or services as also to delineate the geographic scope within which such goods or services compete.

86. In light of the aforesaid statutory landscape, the Commission proceeds to determine the relevant market in the instant case.
87. In this regard, it is observed from the DG report that '*country liquor*' has been taken as a separate relevant product market by the DG. The Commission also notes that none of the parties has challenged the classification of '*country liquor*' as a separate relevant product market.
88. Considering the various distinguishable factors such as ingredients, alcoholic content, manufacturing process, class of consumers, other regulatory requirements/ restrictions and the relevant issues in hand *i.e.*, procurement of country liquor by Cl-1B licensees from the distilleries/ manufacturers, the Commission is of the opinion that relevant product market in the present case can be delineated as '*Market for procurement of country liquor from licensed manufacturers*'.
89. On issue of the relevant geographic market, the DG was of the opinion that conditions of competition for purchase of country liquor by CL-1B license holders were distinctly homogenous in the geographical area of State of Uttar Pradesh and accordingly, the relevant geographic market was delineated by the DG as '*State of Uttar Pradesh*'.
90. None of the Opposite Parties to the present case has challenged such delineation of the relevant geographical market by the DG. In fact, the Informant in its objections and suggestions dated 23.10.2020 to the DG report did not raise any objection as to the delineation of relevant geographic market as whole of the State of Uttar Pradesh by the DG. It was only during the course of final hearing and in the written submission dated 10.12.2020 post-final hearing in the matter, the Informant sought to differ with the relevant



सत्यमेव जयते



geographic market suggested by the DG by contending that the five different zones as demarcated in the relevant excise policy viz. Special Meerut zone; Lucknow zone; Gorakhpur zone; Agra zone and Varanasi zone should be categorized as separate relevant geographical markets in themselves. The plea is not only an afterthought but is also untenable, as detailed below.

91. The 'relevant geographic market', has to be demarcated in light of the provisions of Section 19(6) of the Act, particularly that of regulatory trade barriers, local specification requirements; transportation cost *etc.* In this light, the Commission notes that OP-1 to OP-4 were procuring country liquor even outside their assigned excise zones and the same was not even prohibited as per the *extant* Excise Policy. In fact, the Informant has not challenged the delineation of relevant product market as defined by the DG *i.e.* 'Market for procurement of country liquor from licensed manufacturers' and in this scenario, when there was no prohibition for CL-1B licensees to procure country liquor from outside their zones, it is futile for the Informant to lay any challenge to the determination of the relevant geographic market at this belated stage. In fact, the Informant has itself stated that it requested the holders of CL-1B licenses to procure the country liquor even outside the excise zones where it had its distillery. In this backdrop, the Commission is of the considered opinion that no fault can be found with the relevant geographic market delineated by the DG. The details of purchase of country liquor from 01.04.2009 to 31.03.2018 submitted by OP-1 to OP-4 clearly evidences that these OPs have actually not limited themselves in purchasing country liquor from distilleries located in the Excise Zones for which they had exclusive CL-1B licenses. Thus, the Commission is of the considered opinion that the relevant geographic market cannot be restricted to the geographical limits of the excise zones as demarcated under the relevant Excise Policy. Further, it is also noted that conditions for competition is homogenous throughout the State of Uttar Pradesh and different from that from outside the State of Uttar Pradesh. Accordingly, in light of the aforesaid reasons and statutory provisions, the 'relevant geographic market' may be



सत्यमेव जयते



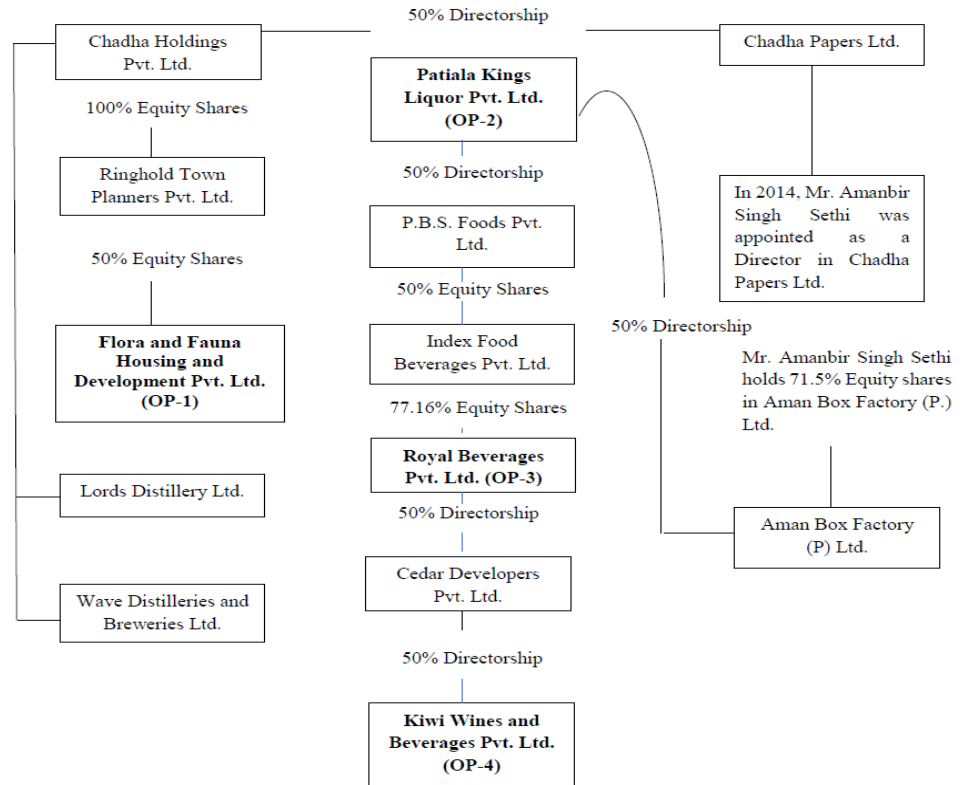
delineated as '*State of Uttar Pradesh*'.

92. Resultantly, the relevant market in the present case is '*Market for procurement of country liquor from licensed manufacturers in State of Uttar Pradesh*'.
93. After delineation of the relevant market, the issue of dominance of the OPs therein may need to be considered.
94. At this stage, it is important to note that the DG has divided the relevant period into two different parts *i.e.*, from 20.05.2009 to 31.03.2011 (first relevant period) and from 01.04.2011 to 31.03.2018 (second relevant period). It was pointed out by the DG that during the first relevant period only OP-1 operated in the relevant market as being the sole wholesaler for the country liquor in the entire State of Uttar Pradesh. After the amendment in the Excise Policy from 01.04.2011 to 31.03.2018 (second relevant period), there were at least four different CL-1B licence holders in the State of Uttar Pradesh, who were assigned different excise zones.
95. The DG in the investigation report stated that during the first relevant period, OP-1 enjoyed 100% market share in the relevant market and controlled the entire supply chain of country liquor in the State of Uttar Pradesh. Thus, by virtue of being a monopsony, OP-1 was found to be dominant in the relevant market.
96. OP-1, however, challenged the aforesaid findings of dominance by contending that the DG failed to recognize the fact that OP-1 did not enjoy commercial or operational freedom due to the severe limitation placed by the State Government through its Excise Policy in terms of determination of procurement price, selling price *etc.* of country liquor.



97. The Commission, after carefully examining the submissions made by OP-1, notes that by virtue of being sole wholesaler for country liquor during the first relevant period *i.e.* from 20.05.2009 to 31.03.2011, OP-1 enjoyed 100% market share in the relevant market. As per the *extant* Excise Policy, *i.e.* UP Excise Policy, 2009, only OP-1 was having CL-1B license, granting it exclusive right to procure country liquor from the distilleries located in the State of Uttar Pradesh. Thus, OP-1 enjoyed indisputably a dominant position in the relevant market during the first relevant period.
98. In relation to dominant position of OP-1 to OP-5 during the second relevant period *i.e.* from 01.04.2011 to 31.03.2018, it is pertinent to note that there were at least 4 different CL-1B license holders in the relevant market. In such a scenario, none of the Opposite Parties (*i.e.* OP-1 to OP-5) was found to be individually dominant in the relevant market.
99. Before examining the matter any further, it is relevant to note that the DG categorically observed in the investigation report that OP-5 group, as alleged by the Informant, did not exist during the second relevant period and further noted that there were only four parties *i.e.* OP-1 to OP-4 which were operating in the relevant market during the second relevant period. As per investigation, the allegation of the Informant that OP-1 to OP-4 alongwith OP-5 were part of a 'group' during the entire second relevant period, was not found to be established. However, as regards relationship between OP-1 and OP-5, it is an admitted position that OP-1 is a subsidiary of OP-5.
100. The learned counsel appearing on behalf of the Informant challenged the finding of the DG and strenuously contended that OP-1 to OP-5 belonged to the same 'group'. The Informant has graphically sought to depict the relationship between OP-1 to OP-5 in support of its submissions that they constituted 'group'. The same is reproduced below:

Structure of the OP-5 Group



101. It was contended by the Informant that Ringold Town Planners Pvt. Ltd. is a wholly owned subsidiary of OP-5. In turn, Ringold Town Planners Pvt. Ltd. holds 50% of the equity shares in OP-1. Further, Chadha Papers Ltd. is part of the 'group' by virtue of two out of three of its Directors being family members/ Directors of OP-5. The Informant has also submitted that in 2014, Mr. Amanbir Singh Sethi was appointed as a whole-time Director in Chadha Papers Ltd., who also held 71.5% of the equity shares in Aman Box Factory Pvt. Ltd. The Informant has further stated that Mr. Amanbir Singh Sethi being one of the Directors in Aman Box Factory Ltd. and also a Director in OP-2, show OP-2 being part of OP-5 'group'. Further, it has also been submitted that Index Food Beverages Pvt. Ltd., holds 77.16% of the equity shares in OP-3. Further, PBS Foods Pvt. Ltd. holds 50% of the equity shares in Index Food Beverages Pvt. Ltd. Accordingly, it has been submitted that PBS Foods



Pvt. Ltd. is a holding company of Index Food Beverages Pvt. Ltd. which in turn is the holding company of OP-3 and thereby, it was argued that OP-3 is part of OP-5 'Group', by virtue of sharing a common Director with OP-2 *i.e.* Mr. Anil Kumar. Further, the Informant has submitted that one of the Directors of OP-3, Mr. Manmohan Walia, is also a Director of Cedar Developers Pvt. Ltd. (another 'Group' company of OP-5), which has two Directors in total, thus bringing Cedar Developers Pvt. Ltd. within the OP-5 'Group'. Moreover, the Informant has also submitted that other Director of Cedar Developers Pvt. Ltd. *i.e.* Mr. Kamal Bholia, is a Director in OP-4, which has only two Directors. Accordingly, OP-4 is also a part of the OP-5 'Group'.

102. Elaborating further, the Informant has contended that the DG has failed to analyze the third important clause of Explanation (b) of Section 5 of the Act *i.e.* 'control the management or affairs of the other enterprise' to determine the status of OP-1 to OP-5 as a 'Group'. The Informant has submitted that the definition of 'control' is not exhaustive but inclusive. The Informant has also stated that there are large number of documentaries produced by TV channels have well established the fact that OP-1 to OP-4 belong to the same 'Group' *i.e.* OP-5/ Chadha Holdings Pvt. Ltd.

103. In response to the aforesaid contentions urged by the learned counsel appearing on behalf of the Informant, OP-1 and OP-5 in their submissions have admitted that both are part of the same 'Group' *i.e.* OP-5/ Chadha Holdings Pvt. Ltd. However, OP-1 to OP-5 have supported the findings of the DG that OP-2 to OP-4 are not part of OP-5 'Group' *i.e.* Chadha Holdings Pvt. Ltd. OP-1/ OP-5 have submitted that Directorship of Mr. Amanbir Singh Sethi (who held 36.36% of paid-up capital in OP-2) in Chadha Papers Ltd. ('Group' company of OP-1/ OP-5) has been for only intermittent duration during the second relevant period. Moreover, Mr. Amanbir Singh Sethi was only one of the four/ nine Directors in Chadha Papers Ltd., thus, did not have the necessary influence to shape the policy and other day-to-day affairs either



सत्यमेव जयते



of Chadha Papers Ltd. or OP-2. In respect of the allegation that OP-3 belonged to OP-5 'Group', it has been submitted by OP-1/ OP-5 that the Informant has drawn random linkages without satisfying any of the criteria specified for 'group' under Explanation (b) of Section 5 of the Act. In respect of the allegation that OP-4 belonged to the OP-5 'Group', OP-1/ OP-5 have submitted that neither OP-4 nor OP-1/ OP-5 were in a position directly or indirectly to exercise 26% or more of the voting rights in each other or appoint more than 50% of the members of the Board of Directors in each other's Board during the entire second relevant period.

104. Adverting to the plea urged by the learned counsel appearing on behalf of the Informant elucidating the concept of control as provided in third clause of Explanation (b) to Section 5 of the Act which provides '*control the management or affairs of the other enterprise*' as one of the criteria to determine 'group', it was submitted by OP-1/ OP-5 that the Informant has tried to suggest that the enterprises exercised material influence by virtue of sharing common Directors for a very short period of time. OP-1/ OP-5 have stated that without prejudice to the fact that the random linkages do not amount to even material influence, it is clear that the Informant has failed to show how the influence, if any, that existed has resulted in operational control. Moreover, the Informant has not placed even a single evidence on record to show that OP-2 to OP-4 were under any influence of OP-1/ OP-5 or *vice versa* with respect to their commercial operations/ strategic decisions.

105. The learned counsel appearing on behalf of OP-1/ OP-5 has also submitted that reference by the Informant upon the Order dated 12.03.2018 passed by the Commission in *UltraTech Cement Limited: Combination* Regn. No. C-2015/02/246 under the provisions of Section 44 of the Act in a Notice given under Section 6(2) of the Act, is misplaced. It was submitted that the Commission in the said case had considered the fact that presence of Mr. Kumar Mangalam Birla on the Board of Century Textiles and Industries has a *likelihood* of material influence and noted as follows:



“12.17. ii. With the presence of Mr. Kumar Mangalam Birla on Board of Century, likelihood of material influence of Mr. Kumar Mangalam Birla over Century...”

(Emphasis supplied)

106. It was thus contended that the presence on the Board has not been held to have material influence but only a likelihood of it. Therefore, the presence itself would not amount to material influence but would only lead to a likelihood of material influence.
107. Having considered the submissions made by the parties on the issue as to whether OP-1 to OP-5 form part of the same ‘Group’ *i.e.* Chadha Holdings Pvt. Ltd. or not, the Commission is of the considered opinion that the issue is of no consequence and relevance in light of the finding recorded by the Commission in the succeeding paras on the alleged abusive conduct of OPs, which itself is not found to be substantiated. When the alleged abusive conduct itself has been examined on merits and is found to be not substantiated or otherwise established, the issue of dominance loses its salience.
108. In this backdrop, coming now to the issue of abuse of dominant position, the Commission first proceeds to examine the conduct of OP-1 in respect of the first relevant period *i.e.* 20.05.2009 to 31.03.2011 and thereafter the conduct of OPs shall be examined with reference to the second relevant period *i.e.* 01.04.2011 to 31.03.2018.
109. In respect of the alleged violation of the provisions of Sections 4(2)(a)(i) and 4(2)(c) of the Act during the first relevant period, the Informant has alleged that OPs have abused their dominant position by abstaining from purchasing the country liquor from the Informant. Thus, OP-1/ OP-5 directly or indirectly, imposed unfair or discriminatory condition in purchase or sale of country liquor and also denied market access to the Informant.



सत्यमेव जयते



110. As regards the allegations of the Informant regarding imposition of unfair or discriminatory conditions during the first relevant period, OP-1/ OP-5 submitted that it is an undisputed fact established by the DG Report that the Informant did not produce any country liquor during this period. Thus, in the absence of any production, it would not be possible to impose any unfair or discriminatory conditions on the Informant for purchase of non-existent country liquor. Moreover, as per OP-1/ OP-5, the Informant has produced no documentary evidence to prove that it ever made any attempt to sell/ secure orders from OP-1. It has also been submitted that allegation of the Informant that some distilleries were treated unfairly/ discriminatorily is also false and incorrect as none of the 11 distilleries (operating in State of Uttar Pradesh) examined by the DG, claimed that OP-1 treated them unfairly or that they closed down due to anti-competitive conduct of OP-1.
111. Further, in relation to the allegations of denial of market access, OP-1/ OP-5 again submitted and reiterated that the Informant did not produce country liquor during the entire first relevant period. Therefore, in the absence of ability to produce and production of country liquor, no access to the market could have been denied to the Informant. OP-1/ OP-5 also submitted that the order of the Hon'ble High Court of Allahabad dated 31.05.2017 in *Starlight Bruchem Ltd. v. State of Uttar Pradesh and others* held that the Informant had a licence to manufacture absolute alcohol, rectified spirit, denatured spirit, Indian Made Foreign liquor apart from country liquor, yet it chose not to produce even the other alcohols (besides country liquor) on account of closure order passed by UPPCB. Thus, OP-1/ OP-5 cannot be attributed with liability for denial of market access, as the same arose out of the situation independent of any volition of OP-1/ OP-5. The same is also evident from the fact that OP-1 had fairly distributed its purchase of country liquor from the distilleries who were in a position to supply the same (operational distilleries). Therefore, OP-1/ OP-5 have contended that they have not contravened the provisions of Section 4(2)(c) of the Act.



सत्यमेव जयते



112. The Commission has considered the submission of the parties and notes that the provisions of Section 4(2)(a)(i) of the Act declares that there shall be abuse of dominant position, if an enterprise or a 'group' either directly or indirectly imposes unfair or discriminatory condition in purchase/ sale of goods or service. The issue that what constitutes 'unfair' or 'discriminatory' has to be ascertained on case-to-case basis depending upon the facts and circumstances of each case.
113. It is observed from the records that the DG directed the Informant to submit copies of any correspondence (letter, e-mail *etc.*) entered into by it or any of its representatives, with either OP-1 or OP-5, during the period 01.04.2009 to 31.03.2011, for getting the indent for country liquor. However, the Informant failed to produce any documentary evidence to support its allegations that it ever requested OP-1 or OP-5 to purchase its country liquor. The Commission also observes that Informant has alleged that around 11 distilleries such as National Industrial Corporation Pvt. Ltd.; Cooperative Company Limited; Starlight Bruchem Ltd.; Bajaj Hindustan Sugar Limited *etc.* operating in the State of Uttar Pradesh got closed or suffered heavy losses due to imposition of unfair and discriminatory condition in purchase of country liquor by OPs. In this regard, the DG sought replies from all the 11 distilleries and some of the relevant replies of the aforementioned distilleries is reproduced illustratively hereinbelow:

Cooperative Company Limited

*d. Supply to CL-1B licensee was made pursuant to payment of Govt duty and confirmation by concerned officials of Licensee and our company. Further **no denial order for supply of country liquor was made by licensee to us.***

(Emphasis supplied)

National Industrial Corporation Pvt. Ltd.

*5) That in reply to para 3(e) of the notice, all CL dispatches were supplied to the respective depots of the CL-1B Licensee as per their advise/ instruction. Further **no order was denied by the said licensee for sale of***



country liquor and order was placed at destination location as per their advise.

(Emphasis supplied)

Bajaj Hindustan Sugar Limited

During the period financial year 2009-10 to 2017-18, in between above distilleries remained intermittently closed from time to time because of pollution control related issues and state excise norms.'

(Emphasis supplied)

114. From the detailed analysis of the responses of 11 distilleries including that of above stated replies, it becomes axiomatic that none of the 11 distilleries has claimed to be closed partly or fully due to any alleged conduct of the C.L.-1B licence holder (OP-1), as alleged by the Informant. Rather, most of the distilleries have stated to be closed due to pollution control norms (as was the case with the Informant, which was closed on the directions of UPPCB/ National Green Tribunal), commercial/ operational reasons *etc.* From the DG Report, it is also clear that the Informant was adversely affected by the closure order issued by UPPCB/ National Green Tribunal, on account of violating pollution norms. The same resulted in Informant's country liquor production plummeting steeply at a whopping 617% between 2005-06 to 2008-09 (even before the start of first relevant period *i.e.* 20.05.2009 to 31.03.2011). Thus, the allegation of the Informant that its losses and closure of distillery were on account of unfair and discriminatory condition imposed by OP-1/ OP-5 in purchase of country liquor does not hold any substance.
115. As regards the contravention of the provisions of Section 4(2)(c) of the Act, the Commission notes that the Informant has failed to produce any evidence to support its allegations that it requested OP-1 or OP-5 to purchase its country liquor during the relevant period. The Commission also notes that none of the 11 distilleries, which were alleged to be closed partially or fully or had suffered heavy losses have claimed any denial of market access by OP-1/ OP-5, as adumbrated previously. In this connection, the Commission



सत्यमेव जयते



has also taken note of the fact that the Informant was not even operating in the relevant market during the first relevant period on account of its closure by order of UPPCB/ NGT so as to claim any denial of market access. The same is also substantiated from the reply of Excise Commissioner, Uttar Pradesh dated 05.11.2019 (Annexure- B5 of the DG Report) to the DG. The relevant excerpts from the same are reproduced herein below:

*'...It is further submitted that **Informant's distillery was not manufacturing spirit since 2009-2010 in spite of allotment of molasses sanctioned by the office of Excise Commissioner.** The informant did not have timely renewal of PD-2 license for 2014-15, 2015-16 and 2016-17 albeit their renewals were sought to have been obtained only on 24.09.2016 concurrently for three years. As **Informant was not manufacturing spirit, at the first place his averment that he was not able to sell any country liquor in the State is false and misleading...**'*

(Emphasis supplied)

*It is submitted that the **Informant has evinced no interest in running the distillery since 2009. Even the quantum of the molasses lifted by the Informant has not been utilized in the production of liquor albeit it has been kept lying for many years without any use.***

(Emphasis supplied)

116. Further, the Commission also observes that the procurement data of country liquor as submitted by OP-1 to the DG, sufficiently demonstrates that it made its purchase of country liquor from almost all entities that were regularly operating in the relevant market viz. India Glycols Ltd.; Unnao Distillery Ltd.; Wave Distilleries and Breweries Limited; Saraya Industries; Sir Sadi Lal Distillery; Superior Industries Ltd. etc. Thus, the allegation of the Informant that it was denied market access by OP-1/ OP-5 in violation of the provisions of Section 4(2)(c) of the Act, also does not hold any substance.



सत्यमेव जयते



117. With respect to the allegations under the provisions of Section 4(2)(e) of the Act, the Informant has alleged that OPs have violated the provisions of Section 4(2)(e) of the Act by entering into the business of distilleries. OP-1/ OP-5 have submitted that about 81.14% of the procurement of country liquor in the year 2009-10 was made from distilleries other than Wave Distilleries and Breweries Limited. ('Group' company of OP-5).
118. In this regard, the Commission notes that as per the provisions contained in Section 4(2)(e) of the Act an enterprise or group is said to have abused its dominant position in the relevant market if the enterprise or group concerned uses its dominant position in one relevant market to enter into, or protect, other relevant market.
119. It is, therefore, necessary to first delineate the second relevant market by considering the provisions of Section 19(6) and 19(7) of the Act before examining the allegations of the Informant made in regard to leveraging of dominant position by OP-1 in one relevant market to enter or protect another relevant market. The Informant has alleged that OPs have violated the provisions of Section 4(2)(e) of the Act by entering into the business of distilleries. In this backdrop, the Commission agrees with the DG that the second relevant market to analyse such allegations has to be '*market for manufacture and supply of country liquor in the State of Uttar Pradesh*'.
120. It is observed from the DG report that Wave Distilleries and Breweries Ltd. was set up in 2008 by OP-5 and was operating in the second relevant market during the first relevant period. Further, the other distilleries of OP-5 'group' such as AB Sugars Limited and Mohan Gold Water Breweries Limited *etc.* were not operating during the 'first relevant period' in the 'second relevant market' as delineated *supra*. AB Sugars Limited was operating in Punjab (AB Sugars Limited was having distillery in Dasuya, Hoshiarpur, Punjab outside the State of the Uttar Pradesh) and Mohan Gold Water Breweries Limited was in the business of producing 'beer'. Thus, in light of the above factual matrix and evidences, it is noteworthy to mention here that any allegation



with respect of provisions of Section 4(2)(e) of the Act has to be limited to the alleged preferential procurement of country liquor by OP-1 from Wave Distilleries and Breweries Ltd. (which was already operating in the second relevant market during the first relevant period).

121. In this regard, the Commission notes that procurement details as submitted by OP-1 to DG revealed that the procurement of country liquor during the first relevant period was also made from distilleries other than Wave Distilleries and Breweries Limited. Further, it also appears that OP-1 purchased country liquor from almost all distilleries that were in a position to supply the same *i.e.* operational distilleries.
122. The commercial wisdom of a dominant procurer in sourcing its requirements cannot be faulted unless the same is demonstrably unfair or discriminatory. The competing suppliers/ distilleries cannot claim violation of the provisions of the Act, unless the choice of the procurer is made in a manner, which restricts competition in the market, in contravention of the provisions of the Act. In the present case, as noted previously, OP-1 purchased country liquor from almost all distilleries that were operating and in a position to supply. This is also substantiated from the fact that many unrelated distilleries *viz.* Modi Distillery and Kesar Enterprise *etc.* saw a high year-to-year growth in sale of country liquor. The evidence on record establishes the fact that OP-1 distributed its purchase of country liquor from the operational distilleries who were in a position to supply the same *viz.* India Glycols Ltd.; Unnao Distillery Ltd.; Saraya Industries; Sir Sadi Lal Distillery; Superior Industries Ltd. *etc.*
123. In view of the above discussion, no case of contravention of the provisions of Section 4(2)(e) of the Act is made out against OP-1/ OP-5 on this count as well.



सत्यमेव जयते



124. As regards the second relevant period *i.e.* 01.04.2011 to 31.03.2018, there were four different CL-1B licence holders (OP-1 to OP-4) in the relevant market. From the data furnished by OP-1 to OP-4 regarding country liquor procured by them from various distilleries during the period 2011-12 to 2016-17, it can be observed that OPs have been procuring country liquor from multiple distilleries including from their own distilleries *i.e.* Lords and Wave. OP-1 has been procuring country liquor from around 15 distilleries, OP-2 from 9 distilleries, OP-3 from 13 distilleries and OP-4 from 10 distilleries. Thus, this period was characterized by presence of multiple procurers (4) and multiple distilleries (19). As such, both sellers and purchasers have multiple option and in this market construct and diffused procurement landscape, it is not substantiated that any preferential treatment in favour of OPs' own two distilleries was accorded. There is no evidence on record either before the DG or the Commission, which suggests otherwise.
125. From the material on record, it emerges that the Informant has failed to establish that it made efforts towards securing orders/ indents to supply country liquor to OPs. If an entity feels that it has been deprived of any order for a considerable period, it would be axiomatic to assume that it would have written at least some letters or issued other communications to the procurers. In fact, it has also come in evidence that from the reply of UPPCB before the DG that the Informant remained intermittently closed for the major portion of the period starting from 20.05.2009 to 31.03.2018. Be that as it may, for the reasons already recorded, in the market characterized by multiple buyers and sellers, the allegations made by the Informant remain unsubstantiated in the absence of any evidence or material to the contrary wherefrom any preferential treatment accorded by OP in favour of their distilleries can be gathered. In this view of the matter and as also for the reasons previously indicated, the plea of the Informant contending OPs to be part of a 'group' are of no significance and consequence in the present inquiry.



126. Lastly, the Commission notes that the Informant has also alleged that OP-6 (Government of Uttar Pradesh) has contravened the provisions of Section 4(2)(a) of the Act, by imposing a policy that is unfair and discriminatory, to the detriment of the manufacturers/ distilleries such as the Informant with a view to grant favour to the OP-5 'Group'.
127. In this regard, OP-6 has been arrayed as one of the OPs for its role in formulating a policy that has allegedly resulted in creation of dominant position in favour of OP-1/ OP-5 in the relevant market. In fact, the Informant has also indirectly alleged that OP-6 failed to put in place and enforce relevant safeguards to prevent any dominant enterprise from abusing its dominant position.
128. The Commission has considered the allegations made by the Informant against Government of Uttar Pradesh and is of the opinion that the same are beyond the purview and scheme of the enforcement mechanism as provided under the Act. Suffice to note, policy formulation is in the realm of sovereign activities and cannot be a subject matter of examination under the enforcement mandate of the Commission.
129. Before concluding, the Commission notes that the Informant has also made allegations pertaining to contravention of the provisions of Section 3 of the Act by the OPs by contending that OP-1 to OP-5 in collusion with OP-6, or otherwise, manipulated the bidding process and controlled the production, supply and relevant market in violation of provisions of Sections 3(3)(b) and 3(3)(d) of the Act.
130. In this regard, it is observed that the Commission itself noted such allegations to be based on mere conjectures in the order dated 09.07.2018 passed under Section 26(1) of the Act and in the absence of any evidence to the contrary on record, it is unnecessary to again revisit this aspect.



सत्यमेव जयते



ORDER

131. In view of the above discussion, no case of contravention of the provisions of Sections 3 and 4 of the Act is made out against any of the Opposite Parties and the matter is directed to be closed forthwith.

132. The Secretary is directed to communicate to the parties, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 15/04/2021