Public Version

COMPETITION COMMISSION OF INDIA

Case No. 62 of 2016

In Re:

XYZ	**Informant**
And	
Association of Man Made Fibre Industry of India Resham Bhawan, 78, Veer Nariman Road Churchgate, Mumbai, Maharashtra.	**Opposite Party No.1**
Grasim Industries Limited Aditya Birla Centre, A-Wing, 2nd Floor, S. K. Ahire Marg, Worli, Mumbai – 400030, Maharashtra.	**Opposite Party No. 2**
Thai Rayon (Group Company of Aditya Birla Group)	**Opposite Party No.3**
Indo Bharat Rayon (Group Company of Aditya Birla Group)	**Opposite Party No. 4**

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Appearances: For Informant – Confidential

For OP-2 and its individuals

Mr. Somasekhar Sundaresan; Ms. Nisha Kaur Oberoi; Ms. Shravani Shekhar and Mr. Shiv Johar, Advocates alongwith Mr. Paresh Thacher, General Counsel and Ms. Shubha Karra, Manager (Legal) of Grasim Industries Ltd.

Order under Section 27 of the Competition Act, 2002

1. The Information in the present case was filed by the Informant under Section 19(1) (a) of the Competition Act, 2002 (hereinafter, the 'Act') against the Association of Man-Made Fibre (MMF) Industry of India ('OP-1'), Grasim Industries Ltd. ('OP-2'), and the Group Companies of Aditya Birla and Grasim Industries Ltd. *i.e.*, Thai Rayon, Thailand ('OP-3') and Indo Bharat Rayon, Indonesia ('OP-4') alleging, *inter alia*, contravention of the provisions of Section 4 of the Act.

Background:

2. It was stated that OP-1 is an association of man-made fibre manufacturers in India; OP-2 is the largest producer and seller of Viscose Staple Fibre (VSF) in India; OP-3 is a company registered in Thailand and promoted by OP-2; and OP-4 is a company belonging to the Aditya Birla Group operating in Indonesia and engaged in the business of manufacturing, selling and exporting VSF to customers located in the US, Europe, Turkey, Japan, Korea, China and other countries in both textile and non-woven segments.

3. The Informant alleged that OP-2 is the sole producer of VSF having a market share of almost 100% in India and it is misusing its sole position in the domestic market to squeeze the textile industry consumers. With regard to OP-3 and OP-4, it was alleged that OP-2 imports and markets its products and

OP-3, operating from Thailand and OP-4, operating from Indonesia, have joined hands to exploit the Indian market.

4. It was further stated that VSF is primarily used as an input in spinning industry to produce yarn, which, in turn, is converted into fabric and various types of apparel, finally produced in the textile industry.

5. It was averred that OP-2 is charging dissimilar prices from different customers in the domestic market and is following the same practice between domestic and foreign customers. OP-2 is selling VSF at lower rates to its international customers, whereas, it is selling the same product at much higher prices to its domestic customers. Further, to practise the policy of discriminatory pricing, OP-2 has segmented the domestic customers into two groups namely, (i) domestic customers who are manufacturing and supplying yarn for the domestic market; and (ii) domestic customers who are manufacturing and supplying yarn for export (deemed exporters). It was averred that such practice of OP-2 keeps some customers at a competitive dis-advantageous position *vis-a-vis* their counterparts in the market. Further, it was alleged that OP-2 is forcing its domestic customers to submit their monthly yarn production data to it before deciding on the discount rate applicable to them. It was also stated that OP-2 follows a non-transparent practice while invoicing and refuses to disclose its discount policies to its customers.

6. As per the Informant, while OP-2 was instrumental in imposing anti-dumping duties on VSF products imported from China, it has been importing VSF products from its group companies such as OP-3 and OP-4 located in Thailand and Indonesia respectively without paying any such anti-dumping duties. It was stated that import of VSF from Thailand by OP-2 has increased substantially after the imposition of anti-dumping duties on China. It was also alleged that since OP-2 sells its excess production of VSF in the international markets at prices much lower than the domestic market, the cost of raw

materials for the local manufacturers becomes higher than their foreign counterparts. As a result, local manufacturers are unable to compete in the international markets.

7. The Informant was hence, aggrieved by the fact that OP-2 was abusing its dominant position in the relevant market by following discriminatory pricing policy and imposing unfair conditions upon its customers. In addition to this, allegations were also made with respect to interfering with the trade of customers by forcing them to disclose their sales and production data and refusing to sell to traders and thereby not allowing competition in the market.

Directions to the DG:

8. The Commission, after considering the material on record, passed an order dated 10.11.2016 under Section 26(1) of the Act opining a *prima facie* case of contravention of the provisions of Section 4 of the Act and directed the Director General (DG) to cause an investigation to be made into the matter and submit a report. While doing so, the Commission looked into the product in question, the relevant market and the abuse by OPs in the said relevant market. It is relevant to note that the Commission in its *prima facie* order delineated the relevant market as the "market of viscose staple fibre in India". The Commission also noted the difference between other fibres and the viscose fibre while delineating the aforesaid relevant market at *prima facie* stage.

9. The DG, after receiving the directions from the Commission, investigated the matter and submitted the investigation report to the Commission on 27.03.2018 ("Investigation Report").

Investigation by DG:

10. The DG firstly noted that the allegations made by the Informant are to the effect that OP-2 is abusing its dominant position in the relevant market by

following a discriminatory pricing policy and imposing unfair conditions on its customers in order to use its dominance in the process of supply of VSF in the textiles industry to influence the whole supply chain. In addition to this, allegations were made regarding non-disclosure of sale and discount prices/policies by the OP-2, invoicing VSF at 13% commercial weight in place of actual weight of the product, interfering with trade of customers by forcing them to disclose their production and sales data and arbitrarily refusing to sell to traders, thus, not allowing a fair competition in the market.

11. While determining the relevant product market, the DG analysed the factors enumerated under Section 19(7) of the Act. The DG first looked into the physical characteristics or end-use of goods as stated in Section 19(7)(a) of the Act. In this connection, DG after examining the order of Director General of Anti-Dumping & Allied Duties, Directorate General of Trade Remedies passed in Case No.14/6/2009-DGAD while imposing anti-dumping duty on VSF, and order of European Commission in *CVC/Lenzing* matter (Case No. COMP/M.2187), observed that VSF is a man-made biodegradable fibre and fabrics made from it are moisture absorbent, breathable, easily dye-able in vivid colours, pill resistant *etc*. Further, it was observed that the prime feature of VSF is its high moisture absorbency combined with its high liquid retention capacity which goes beyond the absorption capacities of all other fibres namely cotton, polyester and polypropylene. Compared with cotton, VSF's softness and drape are of particular relevance in the textile industry. Furthermore, VSF has particular dyeing characteristics distinguishing it both in the area of textile and non-woven applications from cotton and polyester. In addition to that, VSF also has distinct product characteristics which limit its use in certain areas of application. This in itself can be seen as an indication of VSF's distinctiveness, especially when taking into account the fact that VSF is more expensive than other fibres.

12. While analysing the price of goods or service as stated in Section 19(7)(b), the DG observed that on comparing the prices of different fibres in India such

as VSF, PSF, ASF, Cotton, Silk, Wool and Nylon, VSF is closest to cotton in characteristics and use. VSF was invented as an alternative in situations of cotton shortage. In the past, VSF prices were lower than cotton; however, in recent years, its prices have consistently remained higher than cotton.

13. The DG had also analysed the consumer preferences as stated in Section 19(7)(c) of the Act and found that it is not practical to collate the opinion of thousands of apparel purchasers. Further, it was observed that a large number of apparel buyers do not articulate their choice for a particular fibre in technical terms like PSF and VSF *etc*. but convey their demand and preference through the desired quality and characteristics of the apparel they buy. To simplify the process of surveying thousands of retail shops selling garments to infer about the customer preferences and demand for different types of fabrics, the DG examined well-known retail chains like BIBA, Shoppers Stop, Fab India *etc*. by treating them as representative of the large number of their customers.

14. The DG also summoned the senior executives of some apparel retail chains for deposition in the matter. From the depositions, the DG inferred that the front staff of apparel sellers get to know about the preferences of consumers from interaction with them and management collates the feedback from such staff in order to decide about the fabric trends in vogue. Further, the DG observed that the management of the stores are also able to gather information from the movements observed in the sales data/ stocks regarding consumer preferences. Thus, the end consumer conveys preference for specific fibres through his/her transactions and interactions at the stores. It was also noted by the DG that the apparel retailers keep in mind the distinct qualities of different fibres while sourcing the fabrics. It was emphasized by the retailers that one fibre cannot be substituted with another on cost or other such comparison. Thus, the DG found that the distinct demand from end consumers creates a pull which reaches the spinners through the supply chain.

Therefore, for the purpose of analysis in the present case, the DG considered spinners as a reasonable proxy for the end consumer.

15. From the statements of the spinners and their subsequent cross-examination by OP-2, the DG noted that cotton and PSF are not substitutes of VSF in the specific context of competition assessment and that there exists a distinct preference for VSF from the end consumers' perspective leading to VSF demand by the spinners. If a fabric manufacturer who buys yarn from the spinner demands 100% VSF yarn or a blended yarn of VSF with polyester in the ratio of 35/65, the spinner cannot sell any other fibre yarn or blended product to the fabric manufacturer. Therefore, the DG concluded that the demand for VSF is distinct which cannot be substituted by the spinners at their discretion with other fibres.

16. The DG also analyzed the factors relating to exclusion of in-house production and existence of specialized producers as stated in Section 19(7)(d) and 19(7)(e) of the Act. Thereafter, the DG assessed the classification of industrial products under Section 19(7)(f) of the Act as well. The DG noted that industrial classification of VSF is distinct and different from the other fibres.

17. Further, the DG found that VSF is also used in the form of wipes, pads and protective masks in industrial and medical sectors for which unlike textile products, it is not spun into yarn or subjected to weaving or knitting. However, the present case involves only spinning industry, the DG excluded the aforesaid applications from the ambit of the present investigation.

18. Considering the above factors, the DG concluded that VSF, PSF and cotton are different products for the consumers and are not substitutable with each other under the specific facts and circumstances of the present case. Thus, the DG determined the relevant product market as 'the *market for supply of Viscose Stable Fibre to spinners*'. With respect to the assessment of relevant geographic market, the DG opined that the relevant geographic market would

be '*whole of the geographical area of India*'. Based on this, the DG noted the relevant market as '*the market for supply of Viscose Stable Fibre (VSF) to spinners in India*'.

19. The DG then made a detailed analysis regarding dominance of OP-2 in the aforesaid delineated relevant market. The DG observed that OP-2's high market share of more than 85% in the relevant market, its large resources and ability to dictate conditions on its buyers before selling its products, all pointed towards the dominance of OP-2 in the relevant market.

20. Having held OP-2 to be dominant, the DG delved into examining the alleged abusive conduct of OP-2 with respect to discriminatory price in the sale of VSF to spinners in India.

21. To examine the discrimination practised by OP-2, the DG examined the details of quantities and prices at which quantities of VSF were sold to different spinners since 2012 and observed that there was rampant discrimination amongst the customers of the same segment who are buying the same product *i.e.*, dyed fibre for the same month in nearly the same quantity. In this regard, no reasonable explanation was offered by OP-2 before the DG. Similarly, on analysing the data of deemed export customers, the DG found similar discrimination in prices charged to the buyers in the deemed export category.

22. The DG then examined the pricing policy of OP-2 from 2012 onwards which was revised from time to time and observed that OP-2 offered discounts on the price of VSF invoiced under various schemes for which documentary proof was required to be submitted by the spinners. Thus, it seems that different spinners are 'eligible' for different schemes and, therefore, the discount varies, although dissimilar pricing to different customers was not mentioned in the pricing policy of OP-2. In contrast, the DG after examining the actual sales data submitted by OP-2 with respect to similar transactions

found differences in the discount offered by it pertaining to VSF and observed that the said transactions had received dissimilar treatment. Similar instances were also found in Grey VSF that was sold for deemed export purposes.

23. The DG concluded that the discriminatory prices offered by OP-2 were leading to price advantage for some firms as against others. In the long run, such price discrimination distorts the market more if the purchaser who has been discriminated against has no other supplier whom it could bank upon. The DG found that the conduct of OP-2 has distorted competition amongst the spinners by selling them raw material at unfair and discriminatory prices.

24. Similar discrimination in pricing of VSF by OP-2 was found by the DG between the different categories of buyers *i.e.* amongst domestic buyers, amongst deemed exporters (*i.e.* those domestic buyers who export the finished product) and amongst foreign buyers. Based on a comparative analysis of quantity sold and rate charged to the different segments of customers along with the prices at which OP-2 undertakes exports, the DG found that OP-2 has been supplying VSF to domestic spinner's category and deemed exporter's category at different prices which are generally discriminatory and disadvantageous to the spinners in the domestic category. The DG held that the explanation offered by OP-2 and its pricing policy failed to reasonably justify the reasons for higher net prices recovered from domestic spinners as compared to other segments. The domestic spinners have suffered a competitive harm due to the conduct of OP-2 which has resulted in distortion of competition amongst the spinners, and accordingly, its conduct was held anti-competitive under Section 4(2)(a)(ii) of the Act read with Section 4(1) thereof.

25. The DG found that OP-2 was controlling the production of spinners and discriminating against those spinners who were found to be not converting VSF purchased from it into yarn as per its policy by forcing spinners to submit their monthly production data before passing on the required discounts and

spinners were forced to submit the details of products produced and not just VSF consumed. In this regard, the DG observed that seeking production details and proof of export from the spinners amounted to imposing supplementary obligations on sale of VSF which by their nature and according to commercial usage have no connection with the subject of the contract. OP-2 was able to impose such conditions on its customers owing to its monopoly position in the VSF market in India. As such, the DG found contravention of the provisions of Section 4(2)(d) r/w Section 4(1) of the Act.

26. The DG, however, observed that neither OP-2 nor any of its group companies is into spinning or fabric manufacturing in India. The DG also did not find any report regarding OP-2 or its group company's entry into spinning segment. As such, there is no possibility of OP-2 or its group using its dominance in VSF market to enter into or protect any other relevant market. Furthermore, the information and material gathered during investigation did not indicate that OP-2 has used its dominance in one relevant market to enter into or protect other relevant market, and therefore, no case was found under Section 4(2)(e) of the Act against OP-2.

27. With regard to other allegations such as allocation of quantities on pleasing the marketing team of OP-2, not to shoulder any liability if its product fails to perform as required, *etc*., the DG did not find any evidence.

Consideration of the DG Report by the Commission:

28. On 26.07.2018, the Commission considered the Investigation Report of the DG and decided to forward its non-confidential version to the Informant and OP-2 for filing of their suggestions/ objections, if any. Furthermore, OP-2 was also directed to furnish its turnover details including its audited balance sheet and profit & loss account for the last three financial years.

Replies/ Objections/ Submissions of the Informant:

29. The Informant in its reply to the Investigation Report of the DG has stated that it is in agreement with the conclusion of the DG against OP-2 regarding the violation of the provisions of Section 4(2)(a)(ii) and Section 4(2)(d) *r/w* with Section 4(1) of the Act. Further, the Informant has also submitted certain documentary evidences which were already submitted before the DG during the course of investigation.

Replies/ Objections/ Submissions of OP-2:

30. OP-2 filed its submissions to the Commission on 15.11.2018. At the outset, OP-2 submitted that the impugned matter before the Commission pertains to commercial scores arising out of one of the spinners who had defaulted in making payments to it towards the supply of fibre.

Determination of Relevant Market

31. OP-2 contested stating that the DG has incorrectly delineated the relevant market as the '*market for supply of VSF to spinners in India*' and had failed to consider important factors relevant to the determination of '*relevant market*'. The DG had incorrectly appreciated the evidence placed on record by OP-2 as well as evidences gathered by way of deposition and cross-examination of various witnesses. OP-2 stated that the DG has adopted a narrow approach in determining the relevant market by purely relying on physical characteristics and chemical properties of Polyester, VSF and other fibres. By doing so, the DG has excluded all other types of Man Made Fibres (MMFs) as well as Cotton despite their similar characteristics, end-use and easy demand substitutability. OP-2 further contended that two or more fibres can be blended instead of a single fibre in the production of yarns and fabrics, and stated that the DG failed to appreciate that a change in proportion of blends is an evidence of interchangeability and substitutability of one fibre with another.

32. OP-2 stated that the DG has failed to take into account the economic literature of 'indirect substitution' which is obvious in input and wholesale markets. In input markets, substitution may not only take place among the immediate customers but also at the next level *i.e.*, among customers of immediate customers.

33. OP-2 contended that the DG has erred by summoning only three branded retailers' *viz*., Shoppers' Stop, BIBA and Fab India, as they collectively represent less than 1% of the total market for garments/apparels in India and hence, cannot be a representative sample. As per OP-2, the DG should have also reached out to the designers to examine the demand-side substitutability.

34. OP-2 contended that VSF, cotton and polyester witness the same price trends establishing that the prices of the three fibres are closely related and that they should be considered to be a part of the same relevant market thereby demonstrating the fact of substitutability and interchangeability between them.

35. OP-2 submitted that the DG incorrectly relied on 'SSNIP test'as this test was developed for merger cases to assess the prospective impact of a price increase whereas in abuse cases one has to assess the alleged pricing behaviour of an alleged dominant firm on a retrospective basis. OP-2 also submitted that the DG had undertaken a very limited economic analysis of substitutability of VSF while defining the relevant market and it failed to apply a more standardized and rigorous methodology used by European Institutions.

36. OP-2 further submitted that the DG was wrong in relying on 2001 EC merger control assessment of *CVC/Lenzing* order which had prohibited CVC's acquisition of Austrian fibre company Lenzing as it was a merger decision and not a case of abuse. Moreover, OP-2 had contended that the dynamics of

markets have changed in the last 17 years and the geographic market is entirely different from the present case *etc.*

37. Thus, OP-2 submitted that the DG ought to have considered both the physical characteristics as well as end-use in determining the relevant market and contended that the relevant market was '*market of MMFs and Cotton used in spinning for the production of blended yarns, textiles and apparel in India*'.

DG's assessment of dominance and abuse

38. OP-2 stated that the DG has incorrectly referred to Anti-Dumping Duty (ADD) imposed on import of VSF from China and Indonesia by the Government of India in determining its alleged dominance. OP-2 has further stated that the DG failed to appreciate that ADD is a discrete legislative action and has no bearing on Competition Law as evidenced by the Act. OP-2 has submitted that while the DG has used Government policy on ADD to fasten liability on it, however, when OP-2 had referred to a government policy/legislation *i.e.*, the National Textile Policy regarding the substitutability of VSF, the DG refuted it and denied its applicability without giving any cogent reasons.

39. OP-2 has submitted that it does not control any Indian spinner *i.e.*, any of its direct customers and is not vertically integrated in the upstream or downstream market in the relevant geographic market. It further submitted that the DG has erroneously noted that OP-2 has plantations in Canada and Sweden as joint venture entities. In this regard, OP-2 submitted that in Canada it does not own any plantation and the one in Laos is a barren patch of land where there had not been any production. OP-2 further stated that all the procurements by these entities were done on an arms-length basis.

40. With respect to the aspect of countervailing buying power, OP-2 has submitted that the essential requirement to prove that there was sufficient

countervailing buyer power necessitates that buyers/consumers have power to negotiate and to substantially affect the demand for one fibre by shifting to other fibre. In the present case, the end-consumers, who happen to be largely driven by cost factors in a price-sensitive market, have the choice to determine the blend for their preferred product and can opt for any blend or any fibre for that matter. Thus, as per the OP-2, the DG failed to notice that there was enough countervailing buying power in the market for blended yarns.

41. OP-2 submitted that barriers to entry for experienced global producers of VSF are not as high as the DG purports. It was stated that technology used in the production of VSF is not patented, is well known and therefore there are no restrictions with respect to intellectual property rights. Further, capital investment and environmental restrictions are not more stringent than any other fibre manufacturing facility. It was also stated that 100% FDI is also permitted to undertake VSF manufacturing without seeking any government approval.

42. OP-2 has also stated that it did not get the opportunity to cross-examine the employee of Lenzing to clarify the statements made with respect to setting up of a production facility of VSF in India which was later abandoned. Therefore, OP-2 has submitted that it cannot be held responsible for the inability of Lenzing to set up a production unit and operating business in India.

43. OP-2 has also stated that it has been facing significant competitive constraints from other suppliers of MMFs and cotton, both domestic, international suppliers of VSF, credible potential entrants as well as many customers who can, and do, frequently switch away from VSF in favour of other fibres when determining the preferred blends for their yarns and fabrics.

44. OP-2 has pointed out that the DG while holding it to be in contravention of the provisions of Section 4(2) of the Act, has incorrectly considered the

transactions between OP-2 and its customers *i.e.* spinners, on the basis of a wrong understanding of its pricing and discount policy. As per OP-2, the difference in pricing by OP-2 arises for cogent business reasons and are in fact on account of factors such as type of VSF, location of plant, denier, grade, dyeing charges of dyed VSF *etc.* OP-2 stated that the DG was neither able to demonstrate that equivalent transactions had been treated differently nor had it been able to show that its conduct was causing or likely to cause any harm to competition in the relevant market. OP-2 has averred that it is not a vertically integrated firm and does not compete with its customers *i.e.*, spinners. Moreover, it is not having any interest in the downstream market and it would be disadvantageous for it to foreclose any of its customers from the market.

45. OP-2 had also filed an application dated 14.01.2019 seeking the cross-examination of ten individuals whose statements were recorded during the course of investigation by the DG. In this regard, the Commission *vide* its order dated 05.04.2019 directed the DG to conduct the cross-examination of said ten individuals *i.e.*, six representatives of spinners, three representative of retail apparel chains and one representative of Lenzing. Accordingly, cross-examination was conducted by the DG and a report in this regard was submitted to the Commission on 24.05.2019.

Report on Cross-Examination:

46. In the cross examination report, the DG after conducting the cross examination of six deponents (spinners) had concluded that all the six deponents from the spinning industry have maintained their earlier stand during cross-examination. Five of the six spinners have maintained that VSF is not substitutable with other fibres, although, the spinners may change the fibre as per the demand of their customers. As far as the remaining one spinner was concerned *i.e.*, Mr. S. K. Khandelia of Sutlej textile had maintained that any fibre can replace VSF in his industry. However, the DG, taking this into account deduced that this statement by Mr. Khandelia may be understood as

change in production line and not as a factor of substitutability of VSF. Further, all these six deponents have also confirmed that OP-2 requires them to submit proof of export as a supplementary obligation.

47. With regard to the cross-examination of the deponents belonging to apparel retailers, the DG has pointed out that there was no material divergence from the earlier statements which had already been incorporated in the Investigation Report. Therefore, the cross-examination of the aforesaid individuals has not brought any new fact or altered any of the findings of the DG.

Submissions of OP-2 on Cross-Examination Report:

48. OP-2 submitted that the DG had arbitrarily scheduled the cross-examinations, thereby not completing the process of cross-examination of four remaining deponents as allowed by the Commission and thus, violated the specific directions of the Commission.

49. It was submitted that upon receiving the Commission's order on cross-examination, OP-2 consistently raised an issue that in terms Section 26(8) of the Act, after the submission of the DG Report before the Commission, and after the same being forwarded to the parties and response to the same being also taken on record, the remaining cross-examinations can only be held by way of '*further inquiry*' and not in the form of an investigation by the DG thereby, violating the principles of natural justice.

Analysis:

50. At the outset, the Commission notes that the DG has confined the scope of investigation to OP-2 only as there were no specific allegations against the other OPs *i.e.*, OP-1, OP-3 and OP-4. As such, the Commission, in the absence of any material available on record against such OPs, also confines the present proceedings against OP-2 only.

51. In this backdrop, on a careful perusal of the information, reports of the DG, submissions made by Informant,OP-2 and other material available on record, the following issues arise for consideration and determination in the matter:

a) What is the relevant market in the present case?

b) Whether OP-2 is dominant in the relevant market?

c) If yes, whether OP-2 has violated the provisions of Section 4 of the Act.

52. Before examining the aforesaid issues, the Commission deems it appropriate to deal with some preliminary objections raised by OP-2.

53. It was contended on behalf of OP-2 that the Commission has not conducted inquiry in accordance with the scheme of the Act. It was pointed out that Section 26(8) of the Act envisages a situation where the investigation report submitted by the DG concludes that there is a contravention of the provisions of the Act and the Commission is of the opinion that a "further inquiry" is required, it shall undertake such further inquiry on its own in consonance with the provisions of the Act. Elaborating further, it was submitted that the provisions of Section 26(8) of the Act are the only provisions under Section 26 of the Act which apply to the present matter, as the DG Report has concluded that OP-2 acted in contravention of the provisions of Section 4 of the Act. As such, it was submitted that any action pursuant to the circulation of the DG Report to the parties which finds contravention of the Act by OP-2 can only be done by way of "further inquiry" by the Commission, and not by way of further investigation by the DG.

54. The Commission has examined the plea raised by OP-2 and is of the considered opinion that the same lacks merit. In the present case, OP-2 itself moved an application seeking cross-examination under Regulation 41 (5) of the Competition Commission of India (General) Regulations, 2009 which enables the Commission or the DG to grant opportunity of cross-examination to the concerned parties. As the witnesses were examined by the DG, there

cannot be any infirmity in directing the DG to conduct the cross-examination proceedings.

55. Moreover, the Commission finds no merit in the plea raised by OP-2 that further inquiry can be only done by the Commission. In this regard, the Commission notes that under the scheme of the Act, the DG is under a duty to assist the Commission as and when directed by the Commission. A plain reading of Section 41 of the Act makes it clear that the DG shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of the Act or any Rules or Regulations made thereunder. Needless to add, investigation is a subset of wider and overarching inquiry launched by the Commission and during the inquiry process, the Commission is fully empowered to take the assistance of the DG in the manner required by it.

56. Even otherwise, on a conjoint reading of the Act and the General Regulations, it is clear that the Commission's power to order further investigation is not confined to only those cases where contraventions have been recorded by the DG. Regulation 20(6) of the General Regulations provides that if the Commission, on consideration of the investigation report, is of the opinion that further investigation is called for, it may direct the DG to make further investigation and submit a supplementary report on specific issues as provided therein. This provision does not make any distinction between the cases where the DG finds contravention and the cases where the DG records findings of no contravention.

57. The next plea raised by the OP-2 is that the DG acted in violation of Section 36 of the Act and disregarded the principles of natural justice, as it did not provide a response to the request for adjournments made by OP-2 and proceeded with the cross-examination in the absence of OP-2 without responding to the adjournment application.

58. The Commission notes that this plea is not only misconceived but is a brazen dilatory attempt, as would be seen from the sequence of proceedings detailed in this regard in the succeeding paras.

59. It is observed that initially when the DG report was forwarded to OP-2 inviting its objections/ suggestions thereon, OP-2, instead of making a separate application giving detailed justifications as required under the General Regulations for seeking cross-examination, simply made a request for examination/ cross-examination of several persons. As such, the Commission ordered OP-2 to move a separate application detailing the reasons and justification for cross-examination of the deponents whose statements were recorded by the DG during investigation.

60. Accordingly, OP-2 made an application dated 14.01.2019 seeking cross-examination of persons mentioned therein. This application came to be disposed of *vide* an order dated 05.04.2019 whereby the Commission allowed the said request of OP-2 for cross-examination of 10 deponents, as mentioned in the said order. Pursuant to this, the DG scheduled the cross-examination of the said deponents from 23.04.2019 to 09.05.2019. On 23.04.2019 at 01.00 PM, the DG received a request from OP-2 for an adjournment of the dates of cross-examination of the 4 deponents scheduled between 24.04.2019 to 26.04.2019 stating therein that Mr. Rajeev Gopal, Chief Marketing Officer of OP-2 who was to assist with the cross-examinations, had spinal injuries and had been advised to undertake medical rest for a week. Since the deponents were already summoned by the DG and some of them had already reached Delhi from faraway places, the DG did not accede to the said request of OP-2 and the same was communicated to the OP-2 on the same date at 04.54 PM. However, while the said 4 deponents appeared before the DG for cross-examination on their respective scheduled date, neither the counsel nor any representative of OP-2 appeared before the DG during the cross-examination scheduled between 24.04.2019 to 26.04.2019. The Commission is dismayed to note such non-cooperation by OP-2 in as much as it did not even depute its

counsel or any authorised representative to remain present before the DG to avail cross-examination opportunity granted by the Commission.

61. It is evident from the records that OP-2 continued to further delay the proceedings before the Commission which is evidenced from the fact that when the matter was listed for final hearing on 17.07.2019, OP-2 moved an application dated 10.07.2019 requesting to complete the cross-examination of the remaining 4 deponents mentioned therein.

62. The aforesaid application was dismissed *vide* an order of the Commission dated 11.07.2019 whereby the Commission was constrained to observe that OP-2 had already been given due opportunity to cross-examine which it failed to avail. Further, it was also noticed by the Commission that the instant application was filed 2 months after the receipt of communication from the DG declining rescheduling of cross-examination proceedings; 1 month after the receipt of the report on cross-examination and just before the final hearing in the matter. Such chronology speaks for itself and it is obvious that OP-2, instead of availing the opportunity, has only tried to drag and delay the matter from time to time under the garb of seeking an opportunity for cross-examination, which it failed to avail despite grant of sufficient time and indulgence by the Commission as well as the DG.

<u>Determination of Issue (a): Relevant Market</u>

63. The DG in the investigation report has delineated the relevant product market as, 'the market for supply of Viscose Stable Fibre to spinners' and has delineated the relevant geographic market to be 'whole of India'. Based on this, the relevant market was defined by the DG in the investigation report as 'the market for supply of Viscose Stable Fibre (VSF) to spinners in India'.

64. OP-2 argued that the DG was not correct in delineating relevant market as *'market for supply of VSF to spinners in India'* and has failed to consider important factors relating to the determination of '*relevant market*'. It was

contended that the DG had incorrectly appreciated the evidence placed on record by OP-2 as well as the evidence collected by the DG through deposition and cross-examination of various witnesses. OP-2 further submitted that prices of VSF, polyester and cotton are closely related and that VSF, cotton and other MMFs witness the same price trends, showing that they should be considered to be a part of the same relevant market. Therefore, OP-2 has submitted that the DG ought to have considered both physical characteristics and end-use while determining the relevant product market. Based on the aforesaid, OP-2 proposed the relevant market as "*market of MMFs and Cotton used in spinning for the production of blended yarns, textiles and apparel in India*"

65. Before delineating the relevant market, it is observed that the textile fibres can be broadly classified into two categories based on the source from which they are obtained: natural fibres and man-made fibres. Examples of natural fibres are Vegetable Fibres (Cotton, Jute, Flax, Ramie, *etc*.), Animal Fibres (Spider Silk, Wool, Catgut, Sinew, *etc*.) and Mineral Fibre (Asbestos). The second category of fibres called Man-Made Fibres (MMF) are manufactured through chemical processes using different raw materials *e.g.*, if the fibre is derived from wood pulp, it is known as man-made cellulosic fibre *e.g.* Viscose Staple Fibre (VSF) and if the fibre is derived from petrochemicals, it is known as man-made synthetic fibres/ polymers *e.g.*, Polyester Staple Fibre (PSF), Acrylic Staple Fibre, Nylon, Olefin *etc*.

66. Further, as detailed in the succeeding paras, natural fibres and man-made fibres are different in their composition, resiliency, moisture absorption power, and resistance to moth, *etc*. Therefore, natural fibres and man-made fibres are considered as two distinct/ different categories of products which are used by spinners for manufacture of yarn, which in turn is the basic raw material for fabric manufacture of the textile value chain.

67. Furthermore, the Commission observes that as per the DG, within the man-made fibres, VSF, which is a cellulosic based man-made fibre possesses different characteristics when compared with synthetic man-made fibre and can be distinguished as follows: can be readily dyed, blends easily with other textile fibres, has high moisture absorption capacity, acts as a poor heat conductor, biodegradable, susceptible to degradation by acids and bleaches, *etc*.

68. From a comparative analysis noted by the DG in the Investigation Report, it is seen that the various textile fibres are different and distinguishable in terms of various characteristics, as summarized in table-1:

Table– 1

Fibre	**Origin**	**Moisture retention**	**Lustre**	**Drape**	**Breathability**	**Colour retention**	**Usual end use**
VSF	Wood pulp	8-20%	Good	Smooth	Good	High	Apparels, Innerwear, floor covering
PSF	Petroleum	Almost nil	Good	Smooth	Nil	Low	Upholstery, suiting (blend with VSF or cotton)
ASF	Petroleum	Almost nil	Good	Smooth	Nil	Low	Synthetic wool warm clothing
Cotton	Plant produce	High	Poor	Poor	Good	Low	Shirting, Innerwear
Silk	Animal produce	Low	Good	Poor	Good	High	Expensive outer clothing
Linen	Plant produce	High	Good	Poor	Poor	High	Expensive outer upper body apparels
Wool	Animal produce	High	Poor	Poor	High	Low	Warm clothing, outer apparels
Nylon	Chemical produce	High	Poor	Poor	High	Low	Outer clothing, sportswear, industrial

Source: DG Report Page 45

From the above, it is noticed that VSF can be distinguished from cotton and PSF in terms of numerous characteristics such as moisture retention, lustre, drape, colour retention and end-use, VSF and other fibres differ in most of the characteristics as reflected above. Taking into account the above-mentioned aspects, it is evident that VSF differs from other man-made fibres including PSF as well as from natural fibres, including cotton.

69. Further, it is observed that the difference between VSF and other fibres were duly noticed by the Directorate General of Anti-dumping & Allied Duties (Directorate General of Trade Remedies) as well. The Anti-Dumping Authority while distinguishing VSF from other fibres [Order: No. 1416/2009-DGAD] observed as follows:

> *Viscose Staple Fibre was the first man-made fibre, and unlike other manmade fibres, is not a synthetic fibre. It is made through wet spinning technology and is a regenerated cellulose fibre made from wood pulp, which is essentially cellulose extracted from a sustainable natural resource i.e. wood, by subjecting it to various chemical and mechanical processes. On account of its cellulosic base, viscose staple fibre properties are similar to those of natural cellulosic fibres than those of thermoplastic; petroleum based synthetic fibres such as nylon or polyester. Further, it has a distinct advantage of engineered specification and uniformity. Viscose Staple Fibre has silk-like aesthetic with superb drape, soft feel and retains rich brilliant colours. Fabrics made from it are moisture absorbent (even more than cotton), breathable, comfortable to wear, and easily dyeable in vivid colours. They do not build up static electricity and are pill-resistant.*
>
> *Main strength of VSF is its versatility and ability to blend easily with nearly all other textile fibres to impart lustre, softness, absorbency and resulting comfort to the fabric made from such blends. Bamboo fibre, one of the types of Viscose Staple Fibre is excluded from the scope of this investigation. In the initiation notification, Designated Authority has specifically requested the interested parties to make their submissions with regard to exclusion of Bamboo Fibre. None of the interested parties had made any submissions in this regard.*

From the observations of the DGAD, it is clear that not only does the man-made fibre, VSF, differ from other man-made fibres, it is also distinct from other cellulosic fibres including natural fibres such as cotton, in view of its distinct advantage of engineered specification and uniformity.

70. The DG also compared the month wise price of different fibres sold in India and a comparative statement in this regard is excerpted below:

Table –2

Month	Price of fibre (in Rs./Kg)		
	Cotton	PSF	VSF
Apr-12	91.7	102.18	155.52
May-12	96.25	103.12	155.52
Jun-12	96.25	99.8	155.52
Jul-12	96.25	99.8	155.52
Aug-12	96.25	104.22	155.52
Sep-12	96.35	105.6	155.52
Oct-12	82.27	103.57	155.06
Nov-12	90.96	104.7	155.06
Dec-12	93.11	106.66	155.06
Jan-13	92.75	106.66	155.06
Feb-13	96.27	155.06	155.06
Mar-13	103.42	105.58	155.06
Apr-13	99.45	102.73	155.06
May-13	99.84	102.73	155.06
Jun-13	106.64	108.91	--
Jul-13	110.56	108.91	--
Aug-13	122.49	112	--
Sep-13	118.3	115.09	--
Oct-13	113.82	114.83	--
Nov-13	108.66	114.83	--
Dec-13	109.79	114.83	--
Jan-14	116.3	112.21	--
Feb-14	115.99	112.21	--
Mar-14	111.79	108.36	--
Apr-14	111.29	107.26	--
May-14	111.23	108.91	--
Jun-14	113.44	106.71	--
Jul-14	110.77	115.5	156.01
Aug-14	107.13	115.5	156.19
Sep-14	97.55	115.5	156.19
Oct-14	89.92	106.69	156.19
Nov-14	89.09	99.8	156.19

Month	Price of fibre (in Rs./Kg)		
	Cotton	PSF	VSF
Dec-14	91.29	99.8	156.19
Jan-15	84.26	89.88	156.19
Feb-15	83.56	86.57	156.19
Mar-15	87.13	96.41	156.19
Apr-15	91.85	95.86	156.38
May-15	93.68	100.39	156.38
Jun-15	91.42	100.97	160.32
Jul-15	90.89	99.28	160.32
Aug-15	90.68	99.28	160.32
Sep-15	88.78	90.37	160.32
Oct-15	86.6	91.5	160.32
Nov-15	87.44	91.5	160.32
Dec-15	89.46	91.22	160.32
Jan-16	89.86	88.79	160.32
Feb-16	88.65	87.11	160.32
Mar-16	85.91	88.77	160.32
Apr-16	91.07	90.97	163.69
May-16	95.84	89.57	163.69
Jun-16	105.4	88.63	163.69
Jul-16	116.98	88.91	163.69
Aug-16	113.57	88.76	163.69
Sep-16	112.54	89.18	174.94
Oct-16	99.33	88.07	174.94
Nov-16	101.84	88.07	174.94
Dec-16	105.16	88.07	174.94
Jan-17	111.59	95.92	174.94
Feb-17	113.17	100.75	174.94
Mar-17	114.14	101.86	180.57

Source: DG Report Page 64-65

From the above, the Commission observes that VSF was the most expensive fibre and that the price of VSF has been substantially higher than that of cotton and PSF throughout the investigation period *i.e.*, April-2012 to March-2017. During April-2012 to March-2017, the average price of VSF was Rs.160.51/- per kg while the average price of cotton was Rs.99.97/- per kg and PSF was Rs.100.80/- per kg. Thus, difference in the average price of VSF

& cotton and average price of VSF & PSF was around Rs.60/-. In percentage terms price of VSF was around 40% - 60% more than that of cotton as well as PSF, which was maintained almost throughout the observed period.

71. With regard to the consumer preference, the DG recorded the statements of senior executives of three large retail chains *viz*., BIBA, Shoppers Stop, and FabIndia. It has been emphasized by the retailers that one-fibre cannot be substituted with another on the basis of cost or on any other parameter. Furthermore, the DG also recorded the statements of ten spinners who are the customers of OP-2 and use VSF for producing yarn. A majority of the spinners who were examined by the DG, also deposed that VSF is not substitutable with other fibres. In this regard, OP-2 contended that DG has examined just three retailers and ten spinners and the same fails to capture the exact picture of the market structure of spinning and retail sectors. The Commission notes the contention and is of the opinion that it is neither feasible nor required to survey thousands of apparel buyers/ retailers and spinners. The DG had relied on information gathered from leading retail chains who have presence across the country thereby enabling the DG to assess the consumer preferences throughout the country. Therefore, the argument of OP-2 that the evidence collected does not capture consumer preferences adequately does not hold. The Commission notes that the DG recorded the statement of Mr. C. L. Ramchandran, Associate Vice-President (Fabrics), BIBA who deposed that there is a difference in the physical properties of these different fibres in terms of feel, texture, bounce, drape and washability *etc*. During cross-examination, he was not confronted by OP-2 on this aspect.The Commission also notes that the deposition of Mr. Niwas Modani, MD of Sangam India Limited who also stated before the DG that due to the specific use of different fibres, there are no exact substitutes and VSF cannot be replaced by any other fibre. The above statement was also not confronted by OP-2 during cross- examination.

72. The OP-2 next contended that blending of VSF with cotton or PSF can be easily done and, as a result, spinners can use these fibres interchangeably. In this connection, the Commission notes that the rationale behind blending of PSF/cotton with VSF or *vice versa* emanates from the distinct characteristics of each of these fibres as elaborated above and PSF/cotton are blended with VSF to impart desirable characteristics such as strength or durability, to reduce cost by combining expensive fibres with less costly types *etc*. Blends were developed for enhancing certain attributes and suppressing certain qualities inherent in the fibres so that the desired attribute in the fibres can be obtained in the blended yarn and fabric. There are various types of blends and these are cotton polyester blends (CP)/ polyester cotton blends (PC), cotton viscose blends (CV)/ viscose cotton blends (VC), polyester viscose blends (PV)/ viscose polyester blends (VP) blends and these are produced not only based on cost but also depending upon the consumer preference for the physical attributes in the blend. The spinners require VSF in both cases *i.e.*, while spinning 100% viscose yarn as well as while spinning various blended yarns. Therefore, in view of the foregoing, it is observed that under both situations *i.e.*, when spinners produce 100% VSF yarn or produce VSF blended yarn, depending upon consumer preference, the spinners do not have the flexibility to tweak the fibre proportion in the blend. Thus, as an intermediate consumer the demand of the spinner for VSF, PSF and cotton are distinct and not substitutable. Hence, the contention that VSF faces competition from PSF and cotton in the form of blends is also not tenable.

73. The Commission further notes that OP-2 has relied on two statistical tools namely correlation and regression for ascertaining the substitutability between PSF, VSF and cotton.

74. Correlation is a statistical tool used to explore the degree of strength/linear association between two variables/series. Similarly, regression is also another statistical tool used to model the dependent variable depending on the values of one or more independent/ predicted variables. Both correlation and

regression analyses have their own assumptions and limitations and therefore, these tools have to be used in conjunction with the other relevant facts of a case.

75. In relation to the correlation analysis submitted by OP-2, the Commission observes that OP-2 has used prices of a particular type of VSF *i.e.*, VSF grey (*ex*-works) (Domestic + Deemed), Shankar-6 variety for Nett cotton prices and market information for PSF. OP-2 has stated that these fibre prices have been converted from INR/Kg to USD/Kg for the purpose of the analysis. Commission notes that one needs to be cautious when using correlation analysis for delineation of relevant market. The correlation may be different when calculated using domestic currency *vis-à-vis* foreign currency rate depending on exchange rate fluctuations *etc*. The correlation may also be different if the prices of a different variety of the product is used in the calculation. Moreover, correlation will help only corroborate the observations from the fundamental analysis, which in the present case points otherwise. In the case of regression analysis, it is observed that the results presented by OP-2 explore the relationship between demand for VSF and the prices of the three fibres. The statistical analysis submitted by OP-2 shows that the relationship between VSF sales and PSF price is insignificant; with respect to the relationship between VSF sales and cotton prices the statistical analysis shows that for current period this is significant with a positive coefficient, but becomes negative and insignificant when tested for lagged prices. The results, therefore, do not conclusively show any substitutability between VSF and PSF and between VSF and cotton.

76. Taking these aspects into account, the Commission is not inclined to place reliance on the statistical analysis submitted by OP-2. It has been adequately emphasised, VSF is not substitutable with cotton and other man-made fibres in terms of price and characteristics, as discussed *supra*.

77. The Commission notes that OP-2 is in the upstream market whereas spinners who are the consumers of VSF are in the immediate downstream market. The supply chain of VSF from the manufacturer to the retailer is illustrated in Chart-1:

<u>Chart - 1</u>

Stage -I		Stage-II		Stage - III		Stage-IV		Stage-V
Fibre Manufacture (VSF/ OP-2)	→	Spinner (Domestic/ Deemed exporters)	→	Fabric Manufacturer/ Weaver/	→	Garment Manufacturer	→	Retailer (Ready to wear/ Ready to stitch)

It is to be noted from the above supply chain that the final demand for a particular type of fabric emanates from the end consumer *i.e.*, retailers and will correspondingly travel through the supply chain, thereby reaching the spinners. The demand for particular type of yarn (blended/ non-blended) to the spinner is reflective of the final demand of the retailers.

78. As noted earlier, all fibres, including VSF, are distinct in nature due to their physical properties, unique inherent qualities, and consumer preference *etc*. The spinners use a single fibre or blend different fibres depending on the demand of their customers and the purpose of spinning/ blending two or more fibres together is to enhance the desired property in the end product thereby enabling the consumers to avail the best characteristics inherent in both the fibres. Hence, the relevant market for the spinner is delineated fibre by fibre.

79. Based on the above, the Commission concludes that for the spinners different fibres *viz*. VSF, other manmade fibres and cotton are different products and VSF is not substitutable with other fibres for the reasons spelt out in the preceding paras. Therefore, the Commission holds that the relevant product market in the present case would be '*the market for supply of VSF to spinners*'.

80. With regard to the geographic market, the DG has delineated '*whole of India*' as the relevant geographic market. In order to delineate the relevant geographic market, the DG examined the demand side of VSF and has noted that the demand for VSF arises from spinning mills scattered all over the country. It was noted by DG, that OP-2 has four production facilities for manufacturing of VSF located in Madhya Pradesh, Gujarat and Karnataka and has regional offices in major cities to cater to the demand of spinners and supplies are made from its four production plants.

81. Thereafter, the DG examined the conditions of competition for supply of VSF. In this regard, the DG has concluded that the supply of VSF in the country comes from two sources – imports and from OP-2. As per the DG, India's total import of VSF is insignificant as compared to domestic production of VSF. Therefore, the DG has delineated the relevant geographical market in the present case as '*whole of the geographical area of India.*' The OP-2 has not contested the geographical market as proposed by DG.

82. Based on the above, the Commission observes that as the demand for VSF is homogenous and as there exists no geographical advantages/ disadvantages within the country, the relevant geographic market is whole of India. Thus, the Commission is of the opinion that in the present case, the relevant geographic market is defined as India.

83. In view of the foregoing analysis on relevant product market and the relevant geographic market, the Commission holds the relevant market in the present case as '*the market for supply of Viscose Staple Fibre (VSF) to spinners in India*'.

Issue (b): Determination of Dominance

84. After having delineated the relevant market, the Commission proceeds to assess OP-2's dominance in the same. It may be noted that by virtue of explanation (a) to Section 4 of the Act, 'dominant position' means a position of strength enjoyed by an enterprise in the relevant market in India which enables it to operate independently of competitive forces prevailing in the relevant market; or to affect its competitors or consumers or the relevant market in its favour.

85. The DG has assessed the question of OP-2's dominant position in the relevant market identified in terms of Explanation (a) to Section 4 of the Act after a detailed analysis of the above-stated factors enumerated in Section 19(4) of the Act and accordingly, the DG found OP-2 to be a dominant enterprise in the relevant market for supply of VSF to spinners in India.

86. It was noted by the DG that the market share of OP-2 was consistently above 87% in the afore-delineated relevant market; the remaining requirement of VSF was met from imports which constituted around 7-13% of the total supply during the investigated period. Further, the DG opined that due to imposition of anti-dumping duty on imported VSF by the Government of India, the option of importing VSF was not competitive for spinners. Hence, the DG concluded that OP-2 was dominant in the relevant market for supply of VSF to spinners in India.

87. OP-2 contested the relevant market as proposed by the DG and contended that flawed conclusions on the relevant market in the DG Report affected the determination of dominance as well. It was argued by OP-2 that the market share of VSF is constantly decreasing in India and as on 2016, its market share was 4%, whereas the market share of Polyester and Cotton was as high as 39% and 51% respectively in the relevant market proposed by it *i.e., market of man-made fibres (MMF) and Cotton used in spinning for the production of blended yarns, textile apparel in India*. It was further contended that the DG

also failed to appreciate that there exists demand-side and supply-side substitutability in the market, as a result of which OP-2 faces substantial competitive constraints from other fibres such as Cotton, Polyester *etc*. In this regard, it is observed that the contention of OP-2 is misplaced as while determining the relevant market, the Commission has already identified VSF as a separate product from other fibres including cotton and polyester and all such contentions taken by OP-2 have already been dealt with and considered.

88. From the DG report, it is observed that OP-2 is the sole producer of VSF in the country

Table - 3

('000MT)

Year	VSF Production by OP-2	Total Import of VSF	Total Supply of VSF (including opening stock)	Market share of OP-2 in total supply (in %)
2011-12	323	21	348	92.82
2012-13	337	15	374	90.11
2013-14	360	18	404	89.11
2014-15	365	27	404	90.35
2015-16	342	34	392	87.24

Source: DG Report Page 80

From table 3, the Commission observes that the market share of OP-2 has consistently been above 87% during the relevant years and imports have constituted only about 7-13 % of the total supply of VSF.

Table - 4

('000 MT)

Year	OP-2 Production of VSF	OP-2 Export of VSF	Import from Austria (Lenzing)	Import from other countries
2005-06	229	15	0.4	0.3
2006-07	247	19	0.7	3.0
2007-08	280	26	0.7	6.3
2008-09	233	28	1.0	9.6
2009-10	300	59	3.4	14.6
2010-11	302	56	2.2	11.8
2011-12	323	79	3.4	17.0
2012-13	337	100	4.4	10.9
2013-14	361	107	4.6	13.8
2014-15	365	130	8.1	19.2
2015-16	342	154	9.7	23.8
2016-17	365	158	11.7	22.2

Source: DG Report Page 81

Table 4 depicts the volume of VSF production by OP-2 in the relevant market. The Commission notes that during 2016-17, OP-2 produced about 3.65 lakh MT of VSF (valued at more than Rs. 7000 crore as per Table 5) out of which around 2.07 lakh MT was sold within the country and the remaining around 1.58 lakh MT was exported by it indicating that a significant volume of production by OP-2 is sold within the relevant market.

89. With regard to size and resources of OP-2, the Commission observes that OP-2 is the flagship company of Aditya Birla Group in India with controlling stake in many large and small companies. The group companies of OP-2 are present at numerous stages in the value chain of VSF right from timber plantations to apparel retail. It also has fibre manufacturing in many countries through joint ventures *viz*. *Birla Jingwei Fibres Co. Ltd., China, Thai Rayon, Thailand, Indo Bharat Rayon, Indonesia,* spinning facilities in Indonesia, Thailand and Philippines apart from apparel retail business in India. Birla Fashion & Retail Ltd., a related company is into apparel and fashion retail and owns some of the well-known apparel brands such as Peter England, Louis Philippe, Van Heusen *etc*. On its official website, OP-2, proclaims '*from plantation to application*', which clearly shows the vertical reach and depth of the enterprise in the value chain. A comparative picture of the size and resource of group companies of OP-2 as reported in the DG Report are as under:

Table –5

(Rs. crore)

Year	**OP-2 Group Companies**		**VSF Segment**	
	Total Net Revenue	**Assets**	**Revenue**	**EBITDA**
2012-13	31,073	44,123	5428	901
2013-14	32,545	47,736	6331	716
2014-15	36,468	54,033	6643	459
2015-16	38,535	59,576	7656	923
2016-17	40,247	62,747	7715	1439

Source: DG Report Page 80. EBITDA figures for VSF Segment compiled from GIL Annual Reports.
Note: EBITDA – Earnings Before Interest Taxes Depreciation and Amortization.

From the above, the Commission observes that between 2012-13 to 2016-17 the revenue and assets of the group companies of OP-2 have increased. It is observed that while the total net revenue earned by the group companies of OP-2 increased from Rs. 31,073 crore in 2012-13 to Rs. 40,247 crore in 2016-17. The total assets of the group companies of OP-2, increased from Rs. 44,123 crore to Rs. 62,747 crore during the same period. Further, the revenue earned from the VSF segment (*i.e.*, by OP-2) increased from Rs. 5,428 crore to Rs. 7,715 crore and correspondingly, the EBITDA earned by OP-2 from the VSF segment also increased from Rs. 901 crore to Rs. 1439 crore. The aforesaid financials of OP-2 and its group companies indicate growth in terms of size, strength, resource and economic power at their command.

90. The Commission further observes as brought out by the DG, the process of manufacturing of VSF is capital intensive and involves complex technological process which requires huge investment. Further, the industry is subject to stiff environmental restrictions/ regulations and requires large amount of water for the production of VSF which acts as a stringent entry barrier. It would be difficult for a new entrant to offer any sort of price competition to OP-2 in the Indian VSF market due to the latter's ample resources and huge production capacity. Thus, the Commission agrees with the DG regarding existence of entry-barriers for a new VSF producer in India.

91. On the basis of the factors discussed above *i.e.,* market share, size and resources, lack of competitors, vertical integration of the enterprise, sale and service network of enterprise and entry barriers including regulatory barriers, the Commission is of the opinion that OP-2 enjoys a dominant position in the relevant market, as defined *supra*.

<u>Issue (c): Abuse of Dominant Position</u>

92. Having established the dominance of OP-2 in the relevant market, the Commission now proceeds to examine the behaviour of OP-2 which is

alleged to be abusive in terms of the provisions contained in Section 4 of the Act.

93. In this regard, it is noted that the investigation found OP-2 to be selling VSF to different customers (spinners) at different base rates whereas, the base rate, as the name suggests, has to be uniform in a month for the same quality of VSF. The DG also noted that OP-2 does not declare the price of VSF in the open but communicates confidentially to each local customer the price available to it. The DG noted that OP-2 provides discounts to its customers under various heads and found disparity in the discounts given to customers in similar transactions. It was further pointed out by the DG that on many occasions, a buyer who purchases a larger quantity of VSF has to pay a higher price as compared to another buyer who sources a lesser quantity from OP-2. Accordingly, the DG found that OP-2 had indulged in unfair and discriminatory pricing of VSF in the relevant market and thereby violated the provisions of Section 4(2)(a)(ii) of the Act read with Section 4(1) thereof.

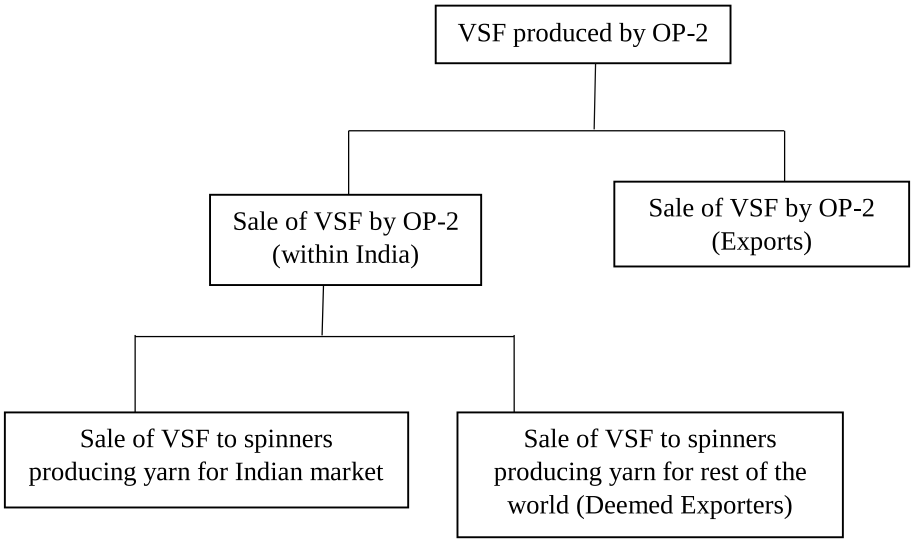
94. Furthermore, the DG found that OP-2 sought details of production and sale of VSF yarn and exports from Indian spinners and it was pointed out that such supplementary obligations on Indian spinners had no connection with the subject due to their nature and commercial usage. Accordingly, OP-2 was also found to be violating provisions of Section 4(2)(d) of the Act read with Section 4(1) thereof.

95. The investigation also examined other allegations made by the Informant, however, no contravention was found to be established from the material and evidences gathered during investigation.

96. In view of the aforesaid, the Commission proceeds to examine the conduct of OP-2 with respect to the findings of contravention recorded by the DG against OP-2. So far as the other allegations levelled by the Informant are concerned, the DG did not find any contravention and the Informant has also not been

able to challenge those findings with cogent material and as such, the Commission confines the scope of the present inquiry with respect to the finding of contraventions recorded by the DG.

97. At this stage, it would be apposite to understand the business model of OP-2 in the sale of VSF to different segments.



98. As discussed earlier, OP-2 is the sole manufacturer of VSF in India. The sale of VSF by OP-2 in the downstream market can broadly be classified into two categories (i) Sale of VSF by OP-2 to Indian customers and (ii) Sale of VSF to foreign customers. The sale of VSF by OP-2 to Indian customers located in the downstream market can be further classified into: (i) Sale of VSF to spinners who manufacture yarn for the Indian market and (ii) Sale of VSF to spinners who manufacture yarn for export purposes (deemed exporters).

99. The DG, in order to investigate the allegation of price discrimination, issued a probe letter to OP-2, through which the DG, *inter alia* sought information, on pricing policy, discount *etc*. In response to the same, OP-2 submitted its price and discount data in the following manner as illustrated in Table 6:

Table-6

Name	Month	Qty MT	Base Value/ Kg	Volume Incentive Scheme	Coarse Count Pure Viscose	Segmental Scheme	Rate/ Weight Diff. Misc)	Dedicated VSF Spinners	Viscose Rich PV (V>48%)	Misc. Disc.	Focus Market Scheme	Technology Discount	Freight Subsidiary (Misc)	Quality Disc. (Misc)	Start up Discount	Total	Net Realised Value/ KG
[redacted]	Apr-14	150 96	138	5 06	-	7	-	2	-	-	-	-	-	-	-	14 06	123 94
	May-14	152 24	138	5 06	-	7	-	2	-	-	-	-	-	-	-	14 06	123 94
	Jun-14	180 9	137 95	5 06	-	10	-	2	-	-	-	-	-	0 0 8	-	17 14	120 81
	Jul-14	174 55	139 21	5 06	-	10	-	2	-	-	-	-	-	0 4 3	-	17 49	121 72
	Aug-14	203 52	139 21	5 06	-	10	-	2	-	-	-	-	-	0 4 4	-	17 5	121 71
	Sep-14	214 4	138 7	5 06	-	10	-	2	-	-	-	-	-	0 4 9	-	17 55	121 15
	Oct-14	207 46	139 5	5 06	-	10	-	2	-	-	-	-	-	-	-	17 06	122 44
	Nov-14	167 09	139 5	5 06	-	13	-	2	-	-	-	-	-	-	-	20 06	119 44
	Dec-14	222 04	139 5	5 06	-	13	-	2	-	-	-	-	-	-	-	20 06	119 44
	Jan-15	203 8	139 5	5 06	-	13	-	2	-	-	-	-	-	-	-	20 06	119 44
	Feb-15	227 12	139 5	5 06	-	13	-	2	-	-	-	-	-	-	-	20 06	119 44
	Mar-15	285 79	139 24	5 06	-	13	-	2	-	0 15	-	-	-	-	-	20 21	119 03
[redacted]	Apr-14	186 06	139 41	5 9	-	7	1 24	-	-	-	-	-	1 89	-	-	16 02	123 39
	May-14	90 99	140	5 9	-	7	2	-	-	-	1 52	-	2 39	-	-	18 8	121 2
	Jun-14	234 01	140 78	5 9	-	10	2 68	-	-	-	-	-	1 78	-	-	20 36	120 42
	Jul-14	376 53	142 5	5 9	-	10	3	-	-	-	0 24	-	2	-	-	21 14	121 36
	Aug-14	301 2	142 5	5 9	-	10	3	-	-	-	-	-	2	-	-	20 9	121 6
	Sep-14	379 44	142 5	5 9	-	10	3	-	-	-	-	-	2	-	-	20 9	121 6
	Oct-14	249 21	142 5	5 9	0 32	10	3	-	-	-	-	-	2	-	-	21 22	121 28
	Nov-14	302 08	142 33	5 9	-	13	3	2	-	-	-	-	2	-	-	25 9	116 43
	Dec-14	351 37	142 5	5 9	-	13	3	2	-	-	-	-	2	-	-	25 9	116 6
	Jan-15	342 37	142 5	5 9	-	13	3	2	-	-	0 18	-	2	-	-	26 08	116 42
	Feb-15	547 8	141 35	5 9	-	7 94	1 85	2	-	-	0 04	-	1 24	-	-	18 97	122 38
	Mar-15	581 78	141 27	4 78	-	13	1 77	2	-	-	-	-	1 18	-	0 87	23 6	117 67

Source: DG Report Page 90

100. Based on the details collected from OP-2 for the period 2012-13 to 2016-17 the DG observed that the monthly purchase quantity of VSF grey/dyed, rate, discounts given by OP-2 under various heads to each spinner keeps changing from month to month and that only the final price paid by the spinner, net of discounts, is material for the purpose of analysis. Accordingly, in order to make the data amenable to easy analysis the DG considered the annual quantity of VSF dyed purchased by each spinner and the monthly weighted average net price of VSF dyed paid by each spinner. The DG categorized the spinners based on their actual annual purchase quantity. Further, the DG

compared the monthly weighted average net price paid by the big buyer to that paid by another buyer who buys a lower quantity and qualified the difference as notional economic loss. The details, as depicted by the DG, for 2016-17 are reproduced below:

<u>Table –7</u>

Name of domestic buyer (Yarn to be sold in India)	Total purchase of Dyed VSF 2016-17 MT	Weighted Avg. Net Price paid by the buyer Rs./ Kg	Notional loss* in comparison to next spinner buying lower quantity Rs. Cr.
[redacted]	20161.03	132.74	6.83
[redacted]	16239.88	129.35	
[redacted]	11751.18	134.09	2.31
[redacted]	8007.02	132.12	
[redacted]	7696.79	135.55	2.3
[redacted]	5244.93	132.56	
[redacted]	5111	140.04	2.16
[redacted]	4975.69	135.81	1.4
[redacted]	4552.19	133	
[redacted]	4423.67	135.67	0.07
[redacted]	3502.72	135.51	
[redacted]	3456.81	137.3	2.09
[redacted]	3214.82	131.26	
[redacted]	3145.39	132.8	
[redacted]	2876.54	137.08	0.34
[redacted]	2842.07	135.89	0.51
[redacted]	2830.57	134.1	
[redacted]	2820.82	138.26	1.8
[redacted]	2820.21	131.89	
[redacted]	2732.84	137.06	0.02
[redacted]	2720	136.97	0.45
[redacted]	2700.88	135.3	
[redacted]	2689.94	137.23	
[redacted]	2673.58	137.81	0.25
[redacted]	2577.05	136.89	1.58
[redacted]	2493.4	130.77	
[redacted]	2480.78	136.95	
[redacted]	2348.42	137.28	0.34
[redacted]	2279.94	135.82	
[redacted]	2215.32	136.47	

Source: DG Report Page 96

Note: *Notional loss is calculated as follows: Total purchase of Dyed VSF by a spinner in 2016-17 x 1000 x (difference in the weighted average net price with the next buyer buying lower quantity) in Rs. crore. For instance ((20161.03*1000*(132.74-129.35))/10000000 = 6.83

101. The DG has brought out similar instances for each year during the period 2012-13 to 2016-17. From the analysis, the DG inferred that there are

instances where a buyer who buys more VSF from OP-2 in a year had been charged a higher price as compared to another buyer who had bought lesser quantity in the same year. Further, based on the monthly weighted average of net price for each spinner, the DG quantified the difference (gains to OP-2/ loss to buyers) in terms of notional loss, as noted in Table 7 indicating harm to the consumers over this period.

102. To illustrate the extent of notional loss suffered by the buyers over the years (*i.e.*, 2012-13 to 2016-17), the DG selected a sample case of two big buyers ([redacted] and [redacted]) who had purchased VSF from OP-2 and the same is shown in Table 8:

Table –8

Name of the Domestic Buyer (Yarn to be sold in India)	**Year**	**Contracted quantity at the beginning of the year MT**	**Total purchase of dyed VSF in the year MT**	**Weighted Avg. Net Price paid by the buyer Rs./Kg**	**Notional loss in comparison to next spinner**
[redacted]	2012-13	4515	7340.74	125.41	0
[redacted]	2012-13	4410	5996.29	126.22	
[redacted]	2013-14	9000	10322.39	121.90	0.47
[redacted]	2013-14	8244	9816.07	121.44	
[redacted]	2014-15	10920	13400.07	118.39	8.12
[redacted]	2014-15	10020	13179.75	112.33	
[redacted]	2015-16	13644	14712.51	121.34	10.89
[redacted]	2015-16	13800	14701.76	113.94	
[redacted]	2016-17	19440	20161.03	132.74	6.82
[redacted]	2016-17	19200	16239.88	129.35	

Source: DG Report Page 97

103. In this regard, it is relevant to note that the Commission has examined the data submitted by OP-2 to the DG and observes that the data illustrated in the Table at pp. 96 & 97 of the Investigation Report and reproduced by the Commission as Table-7 & 8 above pertain to '*VSF grey*' and the same has

been inadvertently mentioned by the DG as data pertaining to '*VSF dyed*' However, the same does not materially affect the DG's analysis.

104. From the Table-8, as excerpted above, the DG observed that [redacted] had paid a higher weighted average net price as compared to [redacted], despite procuring larger quantities of VSF during the years from 2013-14 to 2016-17. With regard to the observations of the DG, OP-2 justified the differential pricing adopted by it and contended that the discriminatory pricing benefits in terms of (a) suppliers will earn higher profits from price discrimination, as the decision to charge different prices to different customers will be driven by trying to maximise profits; (b) price discrimination may lead to increased output as a company may decide to sell to markets that it would have not otherwise supplied; and (c) price discrimination allows fixed cost to be recovered more efficiently *etc*. Furthermore, in response to the differential pricing charged to two big buyers, OP-2 responded that the VSF price differed based on 'intelligible differentia' such as purchase from different plants, thickness of fibre (denier), varied grades of VSF, Grey and Dyed and contented that the DG failed to understand this.

105. In this regard, it is observed that OP-2, along with its response to the investigation report, has provided data with regard to sale of VSF to top 30 spinners with details of grade, plant, denier, month, name of spinner, quantity, base value, *etc*.

106. From the response of OP-2, the Commission notes that 'base rate' has been defined as follows: *denotes the basic rate per Kg of VSF sold to spinners* and it has, *inter alia*, submitted that it treats all its customers equally with respect to the base rate it charges for the sale of VSF. It is further observed that OP-2 in its submission has stated that the data of the top 30 spinners submitted by it clearly demonstrates that the spinners falling in a particular category *i.e.*, Grey VSF, 1st Grade, 1.2 Denier, Domestic or Deemed Export, being supplied

from the same plant were charged the same base rate for each month. The Commission has perused the data submitted by OP-2 and Tables 9-12 bring out a comparison of some of the transactions relating to sale of VSF Grey from the same plant, grade, denier, month to domestic and deemed category customers/ spinners in terms of base rate, discount offered and net realised value.

Table – 9

First Grade VSF Grey Domestic Category Spinners

Plant	Denier	Month	Name	Qty MT	Base Value/ Kg	Total Rebate (Rs/Kg)	Net Realised Value/ Kg	Qty of VSF Grey Purchased (Kg.)	Value of Transaction (Rs)	Difference in Base Value/ Kg	Difference in Total Rebate (Rs./Kg)	Difference in Quantities of VSF Grey Purchased (Kg)	Loss in comparison to next spinner buying lower quantity of VSF Grey* (Rs.)
Kharach	1.2	Aug-12	[redacted]	147.83	145.33	11.97	133 36	147830	197,14,608.80	-0.67	-3.79	21210	4,61,230
Kharach	1.2	Aug-12	[redacted]	126.62	146	15.76	130 24	126620	164,90,988.80				
Kharach	1.2	Sep-12	[redacted]	81.99	147	8	139	81990	113,96,610.00	0.06	-4.68	1560	3,88,633
Kharach	1.2	Sep-12	[redacted]	80.43	146.94	12.68	134 26	80430	107,98,531.80				
Kharach	1.2	Feb-13	[redacted]	326.9	142.48	11.51	130 97	326900	428,14,093.00	-0.02	-0.54	70000	1,69,988
Kharach	1.2	Feb-13	[redacted]	256.9	142.5	12.05	130.45	256900	335,12,605.00				
Nagda	1.2	May-13	[redacted]	43.52	134	13.48	120 52	43520	52,45,030.40	-0.66	-3.58	110	1,27,078
Nagda	1.2	May-13	[redacted]	43.41	134.66	17.06	117.6	43410	51,05,016.00				
Nagda	1.2	May-13	[redacted]	15.98	135	12.5	122.5	15980	19,57,550.00	1	-3.88	1270	77,982
Nagda	1.2	May-13	[redacted]	14.71	134	16.38	117.62	14710	17,30,190.20				
Harihar	1.2	May-13	[redacted]	271.52	134	16.27	117.73	271520	319,66,049.60	-0.1	-0.57	3200	1,27,614
Harihar	1.2	May-13	[redacted]	268.32	134.1	16.84	117 26	268320	314,63,203.20				
Harihar	1.2	May-13	[redacted]	149.87	134.2	16.38	117.82	149870	176,57,683.40	0.2	-1.97	30640	3,25,218
Harihar	1.2	May-13	[redacted]	119.23	134	18.35	115.65	119230	137,88,949.50				
Harihar	1.2	Sep-13	[redacted]	887.84	144.41	11.37	133.03	887840	1181,09,355.20	-0.09	-1.65	395560	13,85,030
Harihar	1.2	Sep-13	[redacted]	492.28	144.5	13.03	131.47	492280	647,20,051.60				
Kharach	1.2	May-15	[redacted]	296.32	146	22.05	123 95	296320	367,25,900.80	0.39	-6.05	113160	19,11,264
Kharach	1.2	May-15	[redacted]	183.16	145.61	28.11	117.5	183160	348,17,600.00				

Plant	Denier	Month	Name	Qty MT	Base Value/ Kg	Total Rebate (Rs/Kg)	Net Realised Value/ Kg	Qty of VSF Grey Purchased (Kg.)	Value of Transaction (Rs)	Difference in Base Value/ Kg	Difference in Total Rebate (Rs./Kg)	Difference in Quantities of VSF Grey Purchased (Kg)	Loss in comparison to next spinner buying lower quantity of VSF Grey* (Rs.)
Harihar	1.2	May-15	[redacted]	251.86	142.89	23.22	119.67	251860	301,40,086.20	0.58	-3.11	16600	9,29,363
Harihar	1.2	May-15	[redacted]	235.26	142.31	26.33	115 98	235260	272,85,454.80				
Vilayat	1.2	May-15	[redacted]	31.56	143	19.74	123 26	31560	38,90,085.60	1.75	-0.83	11840	81,425
Vilayat	1.2	May-15	[redacted]	19.72	141.25	20.57	120.68	19720	23,79,809.60				
Vilayat	1.2	Jun-16	[redacted]	194.64	149	16.66	132 34	194640	257,58,657.60	3	-0.35	63320	6,52,044
Vilayat	1.2	Jun-16	[redacted]	131.32	146	17.01	128 99	131320	169,38,966.80				
Vilayat	1.2	Jul-16	[redacted]	287.74	149	16.66	132 34	287740	380,79,511.60	3	-5.49	930	24,42,913
Vilayat	1.2	Jul-16	[redacted]	286.81	146	22.15	123.85	286810	355,21,418.50				
Vilayat	1.2	Sep-16	[redacted]	213.89	159	16.87	142 13	213890	304,00,185.70	3	-1.83	35150	10,33,089
Vilayat	1.2	Sep-16	[redacted]	178.74	156	18.7	137.3	178740	245,41,002.00				
Vilayat	1.2	Jan-17	[redacted]	235.26	159	17.63	141 37	235260	332,58,706.20	3	0.65	89280	5,52,861
Vilayat	1.2	Jan-17	[redacted]	145.98	156	16.98	139.02	145980	202,94,139.60				
Vilayat	1.2	Mar-17	[redacted]	542.4	164	16.07	147 93	542400	802,37,232.00	3	-1.13	279990	22,40,112
Vilayat	1.2	Mar-17	[redacted]	262.41	161	17.2	143.8	262410	377,34,558.00				

Source: GIL. Note: Calculated from the data submitted by OP-2 to the objections and submission to the DG report.* refers to quantity of VSF grey purchased by the buyer purchasing larger quantity x **difference in net realised value of the buyers. For instance:** 147830 x (133.36 – 130.24) = 4,61,230.

Table – 10

First Grade VSF Grey Domestic Category Spinners

Plant	Denier	Month	Name	Qty MT	Base Value/ Kg	Total Rebate (Rs/Kg)	Net Realised Value/ Kg	Qty of VSF Grey Purchased (Kg.)	Value of Transaction (Rs)	Difference in Base Value/ Kg	Difference in Total Rebate (Rs./Kg)	Difference in Quantities of VSF Grey Purchased (Kg)	Loss in comparison to next spinner buying lower quantity of VSF Grey (Rs.)
Kharach	1.5	Sep-12	[redacted]	32.9	146	9	137	32900	45,07,300.00	2	-1.07	530	1,01,003
Kharach	1.5	Sep-12	[redacted]	32.37	144	10.07	133.93	32370	43,35,314.10				
Kharach	1.5	Sep-12	[redacted]	22.86	145	11	134	22860	30,63,240.00	1	-2	6380	68,580
Kharach	1.5	Sep-12	[redacted]	16.48	144	13	131	16480	21,58,880.00				
Harihar	1.5	Sep-12	[redacted]	276 98	142	8.5	133.5	276980	369,76,830.00	0.1	-1.06	0	3,21,297
Harihar	1.5	Sep-12	[redacted]	276 98	141 9	9.56	132.34	276980	366,55,533.20				
Harihar	1.5	Sep-12	[redacted]	216 1	142	8.5	133.5	216100	288,49,350.00	0.08	-0.34	26420	90,762
Harihar	1.5	Sep-12	[redacted]	189.68	141 92	8.84	133.08	189680	252,42,614.40				
Harihar	1.5	Sep-12	[redacted]	121 13	141 96	8	133.96	121130	162,26,574.80	0.18	-0.65	8260	1,00,538
Harihar	1.5	Sep-12	[redacted]	112.87	141.78	8.65	133.13	112870	150,26,383.10				
Harihar	1.5	Sep-12	[redacted]	111.78	142	8	134	111780	149,78,520.00	0.17	-0.52	30570	77,128
Harihar	1.5	Sep-12	[redacted]	81.21	141.83	8.52	133.31	81210	108,26,105.10				
Nagda	1.5	Sep-12	[redacted]	115 21	141 98	9.5	132.48	115210	152,63,020.80	0.13	-1.69	11130	2,09,682
Nagda	1.5	Sep-12	[redacted]	104.08	141.85	11.19	130.66	104080	135,99,092.80				
Nagda	1.5	Sep-12	[redacted]	90.36	141 92	8	133.92	90360	121,01,011.20	0.33	-3.22	17750	3,20,778
Nagda	1.5	Sep-12	[redacted]	72.61	141 59	11.22	130.37	72610	94,66,165.70				

Plant	Denier	Month	Name	Qty MT	Base Value/ Kg	Total Rebate (Rs/Kg)	Net Realised Value/ Kg	Qty of VSF Grey Purchased (Kg.)	Value of Transaction (Rs)	Difference in Base Value/ Kg	Difference in Total Rebate (Rs./Kg)	Difference in Quantities of VSF Grey Purchased (Kg)	Loss in comparison to next spinner buying lower quantity of VSF Grey (Rs.)
Nagda	1.5	Sep-12	[redacted]	14.93	142	11.25	130.75	14930	19,52,097.50	1	-1.75	430	41,058
Nagda	1.5	Sep-12	[redacted]	14.5	141	13	128	14500	18,56,000.00				
Nagda	1.5	May-13	[redacted]	224.49	132 21	11.71	120.5	224490	270,51,045.00	0.05	-3.53	39830	8,03,674
Nagda	1.5	May-13	[redacted]	184.66	132 16	15.24	116.92	184660	215,90,447.20				
Nagda	1.5	May-13	[redacted]	28.24	134	13	121	28240	34,17,040.00	2	-4.43	190	1,81,583
Nagda	1.5	May-13	[redacted]	28.05	132	17.43	114.57	28050	32,13,688.50				
Kharach	1.5	Jul-14	[redacted]	51.55	140 5	14.51	125.99	51550	64,94,784.50	1.5	-0.61	38640	1,08,771
Kharach	1.5	Jul-14	[redacted]	12.91	139	15.12	123.88	12910	15,99,290.80				
Vilayat	1.5	May-15	[redacted]	244 37	140 92	18.62	122.3	244370	298,86,451.00	0.33	0 3	57830	7,331
Vilayat	1.5	May-15	[redacted]	186 54	140 59	18.32	122.27	186540	228,08,245.80				
Vilayat	1.5	May-15	[redacted]	100 53	141	19.56	121.44	100530	122,08,363.2	1.49	0.86	5660	63,334
Vilayat	1.5	May-15	[redacted]	94.87	139 51	18.70	120.8	94870	114,60,296.00				
Kharach	1.5	Jul-15	[redacted]	99.94	144.08	19.84	124.24	99940	124,16,545.60	0.08	-3.93	82760	4,00,759
Kharach	1.5	Jul-15	[redacted]	17.18	144	23.77	120.23	17180	20,65,551.40				
Nagda	1.5	Sep-16	[redacted]	97.04	155.04	15.22	139.82	97040	135,68,132.80	1.04	-2.82	62220	3,74,574
Nagda	1.5	Sep-16	[redacted]	34.82	154	18.04	135.96	34820	47,34,127.20				

Source: Same as Table - 9

Table – 11

First Grade VSF Grey Deemed Export Category Spinners

Plant	Denier	Month	Name	Qty MT	Base Value/ Kg	Total Rebate (Rs/Kg)	Net Realised Value/ Kg	Qty of VSF Grey Purchased (Kg.)	Value of Transaction (Rs)	Difference in Base Value/ Kg	Difference in Total Rebate (Rs./Kg)	Difference in Quantities of VSF Grey Purchased (Kg)	Loss in comparison to next spinner buying lower quantity of VSF Grey (Rs.)
Nagda	1.2	Sep-12	[redacted]	58.52	144	15	129	58520	75,49,080.00	1	-3	57530	2,34,080
Nagda	1.2	Sep-12	[redacted]	0.99	143	18	125	990	1,23,750.00				
Kharach	1.2	Sep-12	[redacted]	75.97	147	21.54	125.46	75970	95,31,196.20	0.25	-7.21	10290	5,66,736
Kharach	1.2	Sep-12	[redacted]	65.68	146.75	28.75	118	65680	77,50,240.00				
Kharach	1.2	Sep-12	[redacted]	32.86	147	18	129	32860	42,38,940.00	1	-10	21320	3,61,460
Kharach	1.2	Sep-12	[redacted]	11.54	146	28	118	11540	13,61,720.00				
Nagda	1.2	May-13	[redacted]	58.72	134.5	22.38	112 12	58720	65,83,686.40	0 5	-0.16	47030	38,755
Nagda	1.2	May-13	[redacted]	11.69	134	22.54	111.46	11690	13,02,967.40				
Kharach	1.2	Sep-13	[redacted]	63.77	147.5	30.33	117 17	63770	74,71,930.90	3.65	-1.49	39790	3,28,416
Kharach	1.2	Sep-13	[redacted]	23.98	143.85	31.82	112.03	23980	26,86,479.40				
Vilayat	1.2	Dec-15	[redacted]	284.96	143.22	27.18	116.04	284960	330,66,758.40	0.22	-3.06	228090	9,34,669
Vilayat	1.2	Dec-15	[redacted]	56.87	143	30.24	112.76	56870	64,12,661.20				
Vilayat	1.2	Feb-16	[redacted]	1663.03	146	30.1	115.9	1663030	1927,45,177.00	3	-2.7	1234200	94,79,271
Vilayat	1.2	Feb-16	[redacted]	428.83	143	32.8	110.2	428830	472,57,066.00				
Vilayat	1.2	Mar-16	[redacted]	2606.04	146	30.41	115 59	2606040	3012,32,163.60	3	1.99	2288080	26,32,100
Vilayat	1.2	Mar-16	[redacted]	317.96	143	28.42	114 58	317960	364,31,856.80				
Vilayat	1.2	Apr-16	[redacted]	1549.05	148.96	30.51	118.45	1549050	1834,84,972.50	2.96	-3.52	1168810	1,00,37,844
Vilayat	1.2	Apr-16	[redacted]	380.24	146	34.03	111 97	380240	425,75,472.80				
Vilayat	1.2	May-16	[redacted]	1998.18	149	30.44	118 56	1998180	2369,04,220.80	3	-0.71	1715730	74,13,248
Vilayat	1.2	May-16	[redacted]	282.45	146	31.15	114.85	282450	324,39,382.50				

Plant	Denier	Month	Name	Qty MT	Base Value/ Kg	Total Rebate (Rs/Kg)	Net Realised Value/ Kg	Qty of VSF Grey Purchased (Kg.)	Value of Transaction (Rs)	Difference in Base Value/ Kg	Difference in Total Rebate (Rs./Kg)	Difference in Quantities of VSF Grey Purchased (Kg)	Loss in comparison to next spinner buying lower quantity of VSF Grey (Rs.)
Vilayat	1.2	Jun-16	[redacted]	1527.41	149	28.09	120 91	1527410	1846,79,143.10	3	0.34	1251880	40,62,911
Vilayat	1.2	Jun-16	[redacted]	275.53	146	27.75	118 25	275530	325,81,422.50				
Vilayat	1.2	Jul-16	[redacted]	1198.8	149	27.96	121.04	1198800	1451,02,752.00	3	1.91	865310	13,06,692
Vilayat	1.2	Jul-16	[redacted]	333.49	146	26.05	119 95	333490	400,02,125.50				
Vilayat	1.2	Sep-16	[redacted]	899.7	159	25.49	133 51	899700	1201,18,947.00	3	1.01	568140	17,90,403
Vilayat	1.2	Sep-16	[redacted]	331.56	156	24.48	131 52	331560	436,06,771.20				
Vilayat	1.2	Jan-17	[redacted]	872.39	159	29.6	129.4	872390	1128,87,266.00	3	2.46	550580	4,71,091
Vilayat	1.2	Jan-17	[redacted]	321.81	156	27.14	128.86	321810	414,68,436.60				
Vilayat	1.2	Feb-17	[redacted]	921.9	159	22.55	136.45	921900	1257,93,255.00	3	-0.25	725330	29,96,175
Vilayat	1.2	Feb-17	[redacted]	196.57	156	22.8	133.2	196570	261,83,124.00				
Vilayat	1.2	Mar-17	[redacted]	472.33	164	20	144	472330	680,15,520.00	3	1.47	334620	7,22,665
Vilayat	1.2	Mar-17	[redacted]	137.71	161	18.53	142.47	137710	196,19,543.70				

Source: Same as Table –9.

Table – 12

First Grade VSF Grey Deemed Export Category Spinners

Plant	Denier	Month	Name	Qty MT	Base Value/ Kg	Total Rebate (Rs/Kg)	Net Realised Value/ Kg	Qty of VSF Grey Purchased (Kg.)	Value of Transaction (Rs)	Difference in Base Value/ Kg	Difference in Total Rebate (Rs./Kg)	Difference in Quantities of VSF Grey Purchased (Kg)	Loss in comparison to next spinner buying lower quantity of VSF Grey (Rs.)
Nagda	1.5	Sep-12	[redacted]	44.28	142	19.28	122.72	44280	54,34,041.60	1	0 28	15080	31,882
Nagda	1.5	Sep-12	[redacted]	29.2	141	19	122	29200	35,62,400.00				
Kharach	1.5	Jan-13	[redacted]	40.8	139.22	28	111.22	40800	45,37,776.00	1.22	-10.15	3610	4,63,896
Kharach	1.5	Jan-13	[redacted]	37.19	138	38.15	99.85	37190	37,13,421.50				
Nagda	1.5	May-13	[redacted]	132.3	132.44	23.97	108.47	132300	143,50,581.00	-0.07	-9.01	12750	11,82,762
Nagda	1.5	May-13	[redacted]	119.55	132.51	32.98	99.53	119550	118,98,811.50				
Nagda	1.5	Nov-13	[redacted]	117.39	138.07	27.66	110.41	117390	129,61,029.90	2.07	-5.87	73460	9,32,077
Nagda	1.5	Nov-13	[redacted]	43.93	136	33.53	102.47	43930	45,01,507.10				
Nagda	1.5	Mar-14	[redacted]	198.15	137.47	4.05	133.42	198150	264,37,173.00	1.47	-28.77	173960	59,92,056
Nagda	1.5	Mar-14	[redacted]	24.19	136	32.82	103.18	24190	24,95,924.20				
Vilayat	1.5	May-15	[redacted]	252.31	141	29.18	111.82	252310	282,15,827.30	0.47	-11.26	56380	29,57,073
Vilayat	1.5	May-15	[redacted]	195.93	140.53	40.43	100 1	195930	196,12,593.00				
Nagda	1.5	Apr-16	[redacted]	222.84	144	19.15	124.85	222840	278,21,574.00	0.06	-6.91	43760	15,53,195
Nagda	1.5	Apr-16	[redacted]	179.08	143.94	26.06	117.88	179080	211,09,950.40				
Kharach	1.5	May-16	[redacted]	15.97	147	21.35	125.65	15970	20,06,630.50	3	-5.47	2800	1,35,266
Kharach	1.5	May-16	[redacted]	13.17	144	26.82	117.18	13170	15,43,260.60				

Source: Same as Table – 9.

107. As illustration, from Table 9 above, the Commission observes that in the month of May 2015, OP-2 had sold from Kharach plant, 296.32 metric tonne of first grade VSF grey of 1.2 denier to [redacted] (Domestic Category Customer) at base rate of Rs. 146/- per Kg. In the same month, OP-2, had sold from the same plant, 183.16 metric tonne of VSF grey bearing the same specification to [redacted] (another Domestic Category Customer) at a lower base rate per Kg. Further, not only are the base rate and net realised value per Kg. charged by OP-2 in the above transactions different but also the buyer purchasing more quantity of VSF grey (*i.e.*, [redacted]) has paid a higher net realised value per Kg. to OP-2 compared to the buyer purchasing lesser quantity of the same (*i.e.*, [redacted]). Similarly, it is observed that in the month of March 2017, OP-2 had sold from Vilayat plant, 542.4 metric tonne of first grade VSF grey of 1.2 denier to [redacted] (Domestic Category Customer) at base rate of Rs. 164/- per Kg. In the same month, OP-2, had sold from the same plant, 262.41 metric tonne of VSF grey bearing the same specification to [redacted] (another Domestic Category Customer) at a lower base rate per Kg. Further, not only the base rate per Kg. and the net realised value per Kg. charged by OP-2 in the above transactions are different but also the buyer purchasing more quantity of VSF grey (*i.e.*, [redacted]) has paid a higher base rate and net realised value per Kg. to OP-2 compared to the buyer purchasing lesser quantity of the same (*i.e.*, [redacted]).

108. From Table 10, the Commission observes that in the month of May 2013, OP-2, had sold from Nagda plant, 28.24 metric tonne of first grade VSF grey of 1.5 denier to [redacted] (Domestic Category Customer) at base rate of Rs. 134/-per Kg. In the same month, OP-2, had sold from the same plant, 28.05 metric tonne of VSF grey bearing the same specification (1.5 denier) to [redacted] (another Domestic Category Customer) at a lower base rate per Kg. Further, not only the base rate per Kg. and the net realised value per Kg. charged by OP-2 in the above transactions are different

but for similar quantity of VSF grey purchased from OP-2, [redacted] has paid a higher base rate per Kg. and net realised value per Kg. than [redacted]. Similarly, it is observed that in the month of May 2015, OP-2 had sold from Vilayat plant, first grade VSF grey of 1.5 denier, to the following domestic category customers: to [redacted] at a base rate of Rs. 140.92/- per Kg. for 244.37 metric tonne, to [redacted] at a base rate of Rs. 140.59/- per Kg. for 186.54 metric tonne, to [redacted] at a base rate of Rs. 141/- per Kg. for 100.53 metric tonne and to [redacted] at a base rate of Rs. 139.51/- for 94.87 metric tonne. Thus, the base rate per Kg. and also the net realised value charged per Kg. by OP-2 in the above transactions are different. Further, [redacted], the buyer purchasing more quantity of VSF grey, paid a higher base rate per Kg. and net realised value per Kg to OP-2 compared to the other buyers.

109. From Table 11, it is observed that in the month of April 2016, OP-2, had sold from Vilayat plant, 1549.05 metric tonne of first grade VSF grey of 1.2 denier to [redacted] (Deemed Export Category Customer) at base rate of Rs. 148.96/- per Kg. Whereas, in the same month, OP-2, had sold from the same plant, 380.24 metric tonne of VSF grey bearing the same specification to [redacted] (another Deemed Export Category Customer) at a lower base rate per Kg. Further, not only the base rate per Kg. and the net realised value per Kg. charged by OP-2 in the above transactions are different, but also the buyer purchasing more quantity of VSF grey (*i.e.*, [redacted]) paid a higher net realised value per Kg. to OP-2 compared to the buyer purchasing lesser quantity of the same (*i.e.*, [redacted]). Similarly, it is observed that in the month of September 2013, OP-2, had sold from Kharach plant 63.77 metric tonne of first grade VSF grey of 1.2 denier to [redacted] (Deemed Export Category Customer) at base rate of Rs. 147.5/-per Kg. In the same month, OP-2, had sold 23.98 metric tonne of VSF grey from the same plant, bearing

the same specification to [redacted] (another Deemed Export Category Customer) at a lower base rate per Kg. Further, not only the base rate per Kg. and the net realised value per Kg. charged by OP-2 in the above transactions are different but also the buyer purchasing more quantity of VSF grey (*i.e.*, [redacted]) paid a higher base rate and net realised value per Kg. to OP-2 compared to the buyer purchasing lesser quantity of the same (*i.e.*, [redacted]).

110. From Table 12, the Commission observes that in the month of May 2015, OP-2, had sold from Vilayat plant, 252.31 metric tonne of first grade VSF grey of 1.5 denier to [redacted] (Deemed Export Category Customer) at base rate of Rs. 141/- per Kg. Whereas, in the same month, from the same plant, OP-2, had sold 195.93 metric tonne of VSF grey bearing the same specification to [redacted] (another Deemed Export Category Customer) at a lower base rate per Kg. Further, not only the base rate per Kg. and the net realised value per Kg. charged by OP-2 in the above transactions are different but also the buyer purchasing more quantity of VSF grey (*i.e.*, [redacted]) paid a higher base rate and net realised value per Kg. to OP-2 compared to the buyer purchasing lesser quantity of the same (*i.e.*, [redacted]). Similarly, it is observed that in the month of May 2016, OP-2, had sold from Kharach plant, 15.97 metric tonne of first grade VSF grey of 1.5 denier to [redacted] (Deemed Export Category Customer) at base rate of Rs. 147/- per Kg. Whereas, in the same month, from the same plant, OP-2, had sold 13.17 metric tonne of VSF grey bearing the same specification to [redacted] (another Deemed Export Category Customer) at a lower base rate per Kg. Further, not only the base rate per Kg. and the net realised value per Kg. charged by OP-2 in the above transactions are different but also the buyer purchasing more quantity of VSF grey (*i.e.*, [redacted]) paid a higher base rate and net realised value per Kg. to OP-2 compared to the buyer purchasing lesser quantity of the same (*i.e.*, [redacted]).

111. Thus, it is evident that, even for similar transactions involving the same month, the same plant, the same grade and the same denier, customers have been charged different base rate per Kg and net realised value per Kg. Further, customers purchasing larger quantities of VSF grey have paid higher base rate and net realised value per Kg. than customers purchasing a lesser quantity. Thus, the data provided by OP-2, confirms that it was charging discriminatory prices from downstream spinners and negates the justifications provided by it for charging differential pricing. There are many instances of such unfair and discriminatory pricing as is evident from the tables 9-12. The above illustrations indicate rampant price discrimination by OP-2.

112. The said practice indicates losses to the big buyer(s) by charging comparatively higher prices at the same time putting them at a competitive disadvantage thereby distorting competition in the downstream market. The transactions illustrated in tables 9-12 capture only a fragment of the competitive distortion practiced by OP-2. If one takes in to account the sale of VSF to around 300 customer/ spinners of OP-2 in the country in a year, the competitive distortion caused to the downstream domestic yarn manufacturers owing to discriminatory pricing by OP-2 would be substantial and over the years the same would be huge. Such discrimination by a dominant upstream firm may result not only in distortion in the downstream markets but can also have an adverse effect on the production efficiency of the downstream firms. The Commission is, thus, of the opinion that OP-2 has been practising price discrimination amongst its domestic customers and has not been able to offer satisfactory explanation for such differential treatment.

113. Besides, the Commission observes that the domestic buyers of VSF are unclear about the base rate and the amount of discount applicable to them and are also are not sure as to whether the same base rate and discount structure has been applied to their competitors who are equivalently placed. OP-2 communicates these figures confidentially to each spinner. Thus, competing

domestic spinners suffer from information asymmetry which adversely affects their ability to supply yarn at a competitive price.

114. Further, the impact of the impugned conduct of OP-2 in charging discriminatory pricing to its domestic customers, who are otherwise equivalently placed, affects the entire downstream value chain. The value chain of VSF has already been illustrated in Chart-1. The Commission notes that OP-2, located in the upstream market, does not face any direct competition for VSF in the Indian market whereas the domestic spinners, who are consumers of VSF, are located in the immediate downstream market and the conditions of competition differ between OP-2 and its domestic customers. In terms of size and resources, the customers of OP-2 are smaller in comparison with OP-2. Due to absence of an alternate source of supply in the domestic market for VSF, the domestic customers of OP-2 are heavily dependent on it and are in no position to bargain or negotiate the policies adopted by OP-2 even if they are seen to be irrational and discriminatory. At the same time, that spinners have to adhere to the needs and requirements of the downstream buyers. In such circumstances, any discrimination in the VSF prices by OP-2 for similarly placed customers (*i.e.*, domestic spinners) who are located at the same level of the VSF textile chain and who are also competitors in the same market results in competitive disadvantage between them thereby leading to cost differences and resulting in distortion not only in the downstream markets but also perpetuating the distortion in the form of higher prices and lesser choices in the market.

115. The Commission has also perused the pricing and discount policy of OP-2 as revised from time to time and observes that OP-2 has revised the pricing and discount policy many times between April 2012 and December 2016. The policy clearly reveals that OP-2 has complete discretion on pricing and it gives a huge scope for discrimination amongst the spinners. Furthermore, the tenor of the pricing and discount policy is in the nature of unilaterally dictating terms which only reinforces the market power of OP-2 which it has

been enjoying in the relevant market. The pricing policy consists of a plethora of different discounts/ schemes, such as [redacted]. Further, the said policy is non-transparent to its buyers

116. From the aforesaid, Commission observes that the large number of parameters for determining the discounts and frequent changes effected in them provide huge room for exercising discretion by OP-2. A dominant firm has a responsibility to be transparent regarding its pricing policies to its buyers and should not discriminate against similarly placed customers/ buyers.

117. The reasons offered by OP-2 for explaining the observed price differentiation between its customers, as noted in the earlier part of the order are not substantiated. Analysis of the data furnished by OP-2 establishes beyond doubt that, contrary to its claim, OP-2 was charging discriminatory price upon its customers, thereby creating distortions in the downstream value chain and harming the conditions of competition for the domestic spinners. Furthermore, with respect to the pricing and discount policy adopted by OP-2, the plethora of discount parameters, frequent changes effected to the pricing and discount policy coupled with non-transparency of the same to its buyers also indicate the unilateral and abusive behaviour of OP-2 in the relevant market. In view of the foregoing discussion, the Commission is of

the considered opinion that OP-2, in abuse of its market power in the relevant market, has imposed unfair and discriminatory price in sale of VSF upon its customers who are similarly placed and thereby contravened the provisions of Section 4(2)(a)(ii) of the Act.

118. Coming to the next limb of contravention recorded by the DG against OP-2, it is noted that the DG found OP-2 to have sought details of production and exports from Indian spinners for sale of VSF. Such requisitions were found to be in the nature of supplementary obligations imposed upon the Indian spinners having no connection with the primary sale as per the prevailing commercial usage.

119. OP-2 contested the aforesaid findings of the DG and argued that it was very difficult for it to understand as to how the DG recorded such finding on the basis of an analysis of less than one page. It was argued that in the absence of any indication of a theory of harm, it was perplexing as to how OP-2 can be held in violation of the Act on this count.

120. It was further ratiocinated by OP-2 that asking spinners to submit proof of production and export before providing the related discounts for the sale of VSF has everything to do with the subject of the contract. It was also contended that this is an integral part of the price paid and thus, of the contract between OP-2 and the spinners. The relevant spinners would not have entered into a contract without OP-2’s discounts and its request for documentation is merely implementing the agreed contract by ensuring that spinners have met the relevant conditions so as to receive the contractually agreed rebates. OP-2 sought to justify demanding of such documents from the spinners as reasonable to calculate its discounts.

121. The Commission has considered the response of the OP-2 and is of the firm opinion that the submissions made by OP-2 are thoroughly misconceived.

Firstly, the contention that the DG did not conduct a detailed analysis is of no consequence as the factual position regarding demand of documents with respect to production details by OP-2 was neither denied nor disputed or otherwise contested. In such an admitted factual scenario, the DG was required to assess only the validity of the explanations and justifications offered by OP-2. Coming to the next point of contention submitted by OP-2 that the furnishing of documents are part of contractually agreed terms. The Commission notes that the same is begging the question, as OP-2 is holding dominant position with deep pockets and has an overwhelming presence in the VSF value chain in terms of backward integration for VSF production and forward integration in the downstream with textile retail chains. Therefore, making such onerous, unrelated and invasive requirements in the form of furnishing details and documentations is *exfacie* unfair and manifestation of the abuse of market power by OP-2. The discounts may have some nexus with the volume bought but it is not understood as to how the details of production from the spinners are relevant in this context. OP-2 has not provided any justification as to how such details of production are relevant to the computation of discount. A contractual obligation put in place by a dominant undertaking which contravenes the provisions of the Act cannot stand and it is no answer for a dominant undertaking to take such plea that such terms were mutually agreed. If such contentions are accepted, no disadvantaged party can ever complain against a dominant undertaking and the parties enjoying such market power would immune themselves by putting such terms in the contracts making a mockery of anti-trust law. The Commission is satisfied that by requiring the spinners to submit production details, OP-2 has asserted its market power upon the small players and has acted with paramountcy.

122. Further, the Commission is of the opinion that only a seller abusing its dominant position can seek such details to prevent the resale and trading of its products and thereby hinder the emergence of an alternate source of competition in the market. The act of OP-2, with respect to seeking from its

customers' details of VSF bought and used for production of VSF yarn in the garb of offering discounts as a condition for sale of VSF can be interpreted as not only preventing the resale of VSF by its customers in India but also preventing the export of VSF by its customers as a competitor to OP-2 in the export market. By seeking the details of production and sale from its customer, OP-2, has been controlling the entire market in its favour.

123. In view of the aforesaid discussion, the Commission is of the considered opinion that OP-2 has imposed supplementary obligations upon the spinners which by their very nature or according to commercial usage, have no connection with the subject of such contracts. Such conduct is prohibited by Section 4(2)(d) of the Act by a dominant undertaking and in the facts of the present case, the Commission has no hesitation in holding that OP-2 has abused its dominant position in the relevant market instead of behaving as a responsible corporate citizen which is expected to comply with the special and differential obligations of a dominant undertaking. Resultantly, the Commission is of the view that OP-2 has also contravened the provisions of Section 4(2)(d) of the Act read with Section 4(1) thereof.

ORDER

124. In view of the above, Commission is of the opinion that OP-2 has abused its dominant position in the relevant market of '*the market for supply of VSF to spinners in India*' by charging discriminatory prices to its customers besides imposing supplementary obligations upon them in violation of the provisions of Sections 4(2)(a)(ii), 4(2)(d) read with 4(1) of the Act, as detailed in this order. The Commission directs OP-2 to cease and desist from indulging in such practices which have been found to be in contravention of the provisions of the Act. Accordingly, OP-2 is directed to refrain from adopting unfair/ discriminatory pricing practices and also refrain from seeking the consumption details of VSF from the buyers. OP-2 is directed to put in place

a discount policy which is transparent and non-discriminatory to all the market participants, and to make it easily and publically accessible/ available. It is made clear that OP-2 shall not place any end-use restriction on the buyers of VSF and it would be open to them to use the same for spinning or trading or any other purpose, as permissible under law.

125. Further, under the provisions contained in Section 27(b) of the Act, the Commission may impose such penalty upon the contravening parties as it may deem fit which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreement or abuse.

126. It is evident that the legislature has conferred wide discretion upon the Commission in the matter of imposition of penalty. It may be noted that the twin objectives behind imposition of penalties are: (a) to reflect the seriousness of the infringement; and (b) to ensure that the threat of penalties will deter the infringing undertakings. Therefore, the quantum of penalties imposed must correspond with the gravity of the offence and the same must be determined after having due regard to the mitigating and aggravating circumstances of the case.

127. In *Excel Crop Care Limited* v. *Competition Commission of India & Anr.*, Civil Appeal No. 2480 of 2014 decided on 08.05.2017, one of the issues which fell for consideration before the Hon'ble Supreme Court in this case was as to whether penalty under Section 27(b) of the Act should be imposed on the total/ entire turnover of the offending company or only on "relevant turnover" *i.e.*, relating to the product in question. After referring to the statutory scheme as engrafted in Section 27 of the Act and analysing the case law at length, the Hon'ble Supreme Court opined that adopting the criteria of 'relevant turnover' for the purpose of imposition of penalty will be more in tune with the ethos of the Act and the legal principles which surround matters pertaining to imposition of penalties.

128. The Commission notes that OP-2 has not pleaded or argued any factors in mitigation. The Commission, after taking into account the totality of the facts and the circumstances of the present case, decides to impose penalty calculated @ 5% of the relevant turnover generated by OP-2 from the relevant market delineated *i.e.*, the market for sale of VSF to spinners in India during the financial years from 2014-15 to 2016-17, as noted below:

(in Rs. crore)

Turnover for FY 2014-15	Turnover for FY 2015-16	Turnover for FY 2016-17	Average Turnover for Three Years	@ 5% of Average Turnover
4973.6	6022	7101	6032.2	301.61

129. Consequently, the Commission imposes a penalty of Rs. 301.61 Crore only (Rupees Three Hundred One Crore and Sixty One Lakh) upon OP-2 for the infringing impugned conduct. OP-2 is directed to deposit the penalty amount within 60 days of receipt of this order.

130. Before concluding, the Commission notes that the parties have filed confidential as well as non-confidential versions of their responses to the Investigation Report and the confidential versions were kept separately during the pendency of the proceedings. It is ordered that confidentiality claim, as prayed for, shall hold for a further period of 3 years from the passing of this order in respect of confidential response to the Investigation Report and other submissions of the parties which have been filed before the Commission from time to time. It is, however, made clear that no such confidentiality claim shall be available in so far as the data that might have been referred to in the public version of this order.

131. The Secretary is directed to provide copies of the public version of this order to the parties through their respective counsel(s) and inform them accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 16/03/2020
Place: New Delhi