

COMPETITION COMMISSION OF INDIA

Case No. 69 of 2012

19/02/2013

Sponge Iron Manufacturers Association

Informant

v.

National Mineral Development Corporation

Opposite Party No. 1

Essel Mining and Industries Ltd.

Opposite Party No. 2

M/s Indrani Patnaik

Opposite Party No. 3

M/s K.J.S. Ahluwalia

Opposite Party No. 4

M/s R.P. Sao

Opposite Party No. 5

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 ('the Act') alleging *inter-alia* contravention of Sections 3 and 4 of the Act.

2. The informant association alleged that OP 1, the largest mineral producer in India, abused its dominant position and colluded with the other opposite parties this affected competition in the iron ore production market in India.

3. For evaluating the contention of the informant regarding contravention of section 4 of the Act, the relevant market is to be considered as per section 2(r) read with section 19(5) of the Act. The relevant market comprises of relevant product market and relevant geographic market. As per the informant, the iron ore market can be divided broadly into two product markets (i) low grade iron ore (less than 60% ferrous content) and (ii) medium to high grade iron ore (more than 60% ferrous content). The informant stated that since low grade iron ore having less than 60% Fe was unsuitable for use as input by steel manufacturers of India, the low grade iron ore would not form part of the relevant market. Therefore, the relevant product market proposed by the informant is the market for 'non-captive iron ore with more than 60% Fe content excluding exports'. With regard to geographic market, the informant stated that the main producers of iron ore having more than 60% Fe content were the states of Karnataka, Chattisgarh, Odisha and Jharkhand. Since Goa produced low grade iron ore (usually for export), Goa be excluded from the relevant geographic market definition. Therefore, the relevant market proposed by the informant is 'non-captive iron ore with more

than 60% Fe content excluding exports in Indian States except Goa'. Within this relevant market, India produced 162 million tons Iron ore (Non-captive) during the year 2010-11 out of which it exported 97.1 million tons, leaving a total of 64.9 million tons iron ore to be sold to domestic steel industry by merchant miners. OP 1 exported 2.56 million tons iron ore during year 2010-11 and sold 23.75 million tons in the domestic market. Thus, the total market share of OP 1 was 36.5% out of the total 64.9 Million Tons sold by merchant miners to steel producers in India. Similarly in the financial year 2011-12, iron ore production in India was 121.7 million tons (Non-captive) out of which 60 million tons was exported, leaving only 61.7 million tons to be sold to the domestic steel producers. OP 1 exported 0.38million tons of iron ore in 2011-12 and sold 26.91 million tons in domestic market. Thus, the total market share of OP 1, in the relevant market proposed by the informant, increased to 43.61% out of the total 61.7 million tons sold by merchant miners to steel producers in India in 2011-12. On the basis of this data, the informant alleged that OP 1 was in a dominant position in the market for non-captive iron ore production in India (except Goa) which resulted into abusive practices being adopted by OP 1, including the following:

- a) Imposition of unfair pricing amounting to contravention of section 4(2)(a)(i) of the Act. It alleged that even when the cost of production of iron ore remained static between Rs. 200-300 per MT, OP 1's sale price ranged between Rs.3200 to 8000 per MT resulting in a very high profit margin of 85%.
- b) Discriminatory pricing between domestic and overseas buyers amounting to a contravention of section 4(2)(a)(i) of the Act.
- c) Imposing unilateral one sided conditions in the contracts entered into between OP 1 and the informants e.g. raising the prices for the e-auction to the arbitrary level with retrospective effect, changing pricing strategy without any consultation with the informants etc.

4. It was pointed out by OP 1 that the informant suppressed material facts from the Commission including orders of the Hon'ble Supreme Court of India ('Supreme Court'). OP 1 contradicted the market share submitted by the informant (43.6%) and stated that if the relevant market was defined correctly by taking India's total iron ore production into account; share of OP 1 on an average had always been around 20%. Therefore, it could not be called as a 'dominant enterprise' in the market of 'iron ore production in India'. OP 1 also submitted that the existence of private parties (M/s. SMIORE, M/s. MSPL and other merchant miners)

having large iron ore deposits at their command as lessees and their collective production was much higher than that of OP 1 and thus the informant's argument with regard to its dominance was misplaced. In addition, OP 1 highlighted that iron ore fines produced by it are not suitable or usable by Sponge Iron Industry. The informant members of the association use iron ore pebbles, float ore, iron ore lumps of 5 to 20 or 10 to 40 mm of specific bulk density (Hard ore). The production of OP 1 of Iron ore suitable to sponge iron manufactures was negligible and OP 1 could not be called as a dominant supplier abusing its position.

5. The Commission considered the facts and data placed on record by both sides and is of the view that the relevant market definition proposed by the informant cannot be accepted. The informant has inflated the market share of OP 1 by excluding captive iron ore production, low grade iron ore having less than 60% Fe content and exports from the relevant market definition. The submission of the informant that low grade iron ore having less than 60% Fe was unsuitable to be used as input by steel manufacturers is not acceptable as the low grade iron ore is utilized by manufacturers incurring some additional cost. As per the publically available information, low grade ore i.e. +45% Fe can be beneficiated by High Gradient Magnetic Separators (HGMS)/Wet High Intensity Magnetic Separators (WHIMS) to produce 'Concentrate of +65% Fe with +70% recovery. Also, iron ore slime/processing waste with 40% Fe can be filtered; so that 30% slime shall yield additional 15% volume of extra iron ore concentrate of 65% Fe (i.e. the total recovery shall be about 85%).¹ Also, as per the submission of the informant, some of the steel manufacturers were importing substitutable product at a much lower landed price to avoid entering into contract with OP 1. This indicates that the relevant market was much broader than the one proposed by the informant. Having regard to these facts and circumstances, the Commission is of the view that the relevant market in this case would be the market of 'iron ore production/supply in India' and OP 1 (which holds only 16% for the year 2011-12) is not a dominant player in this market.

6. It may also be noted otherwise, that 43% market share of high Fe content iron ore (as submitted by informant) was not conclusive for declaring an enterprise as dominant. Section 19(4) of the Act states various factors which the Commission is required to consider while assessing dominance of an enterprise. The intention of the legislature was never to prescribe market share as a conclusive test of dominance. As per the scheme of the Act, it is only one of

¹ http://www.teamorissa.org/Convention_%20Presentations_%20Sessionwise/Session-2/Session2-4%20Utilisation%20of%20Low....MDC-BBPPT_4.pdf

the factors which is to be seen in conjunction with the other factors to assess the dominance of an enterprise.

7. During the submissions made at the Commission, OP 1 highlighted that the Supreme Court has dealt with its pricing policy decisions and has categorically passed an order stating that the fixation of basic price by OP 1 was transparent and could not be interfered with. Also, the Supreme Court left this issue to the Central Empowered Committee to have discussions with OP 1, if they desire any change thereof. However, even the Central Empowered Committee, after discussions with OP 1, agreed that the pricing mechanism of OP 1 in fixing of basic price need not be interfered with. Besides, based on the changes in Government policy and iron ore trade dynamics, OP 1 had also been changing its pricing policy from time-to-time. Since the international market shifted to fixing the prices on quarterly basis, instead of annual system prevalent till 2009-10, OP 1 also started fixing prices for its domestic long-term customers on quarterly basis with effect from 01.04.2010 along with export contracts. Every enterprise was free to undertake such commercial decisions to survive in the dynamic business environment and such changes *prima facie* do not cause a competitive concern.

8. However the relevance of determining relevant market and dominance of an enterprise is only there in free markets. Where mining activities was being done as per the orders of the Supreme Court and pricing was looked after by another Committee, determination of relevant market may not be appropriate. Most of the actions stated in the information filed by the informant were in pursuance of the order of the Hon'ble Supreme Court. The Supreme Court had banned mining in District Bellary and extended such ban to Districts of Chitradurg and Tumkuru by its orders of July, 2011 etc. Thereafter, Supreme Court, *vide* its order dated 05.08.2011 permitted resumption of mining operations of OP 1's Kumaraswamy and Donimalai Mines alone. Further, the Supreme Court made it mandatory that the entire production of OP 1 from the State of Karnataka should be sold only by way of e-auction. The Supreme Court banned the supply of iron ore by OP 1 even to its long term customers under the then existing long term contracts. Thus, OP 1 was producing iron ore in the State of Karnataka under the orders of the Supreme Court, but, neither it was selling nor fixing the sale price of iron ore in the State of Karnataka. Thus, all the actions of OP 1 in so far as it pertained to State of Karnataka were in compliance of the orders of the Supreme Court.

8. With regard to section 3 of the Act, the informant stated that OP1 (in its board meeting held on 16.04.2012) decided that Joint Plant Committee (JPC) would be collecting and furnishing price data to OP 1 so as to enable it to have a long term pricing methodology. This, along with existence of price parallelism resulted in a collusion under section 3 (3)(a) of the Act. Further, the informant alleged contravention of section 3(3)(b) of the Act stating that OP 1 restricted the supply of iron ore to steel manufacturers by creating artificial scarcity through concerted actions with other opposite parties. Therefore, the informant alleged a case of limiting production by the merchant miners to fetch high prices. OP 1 refuted these allegations of the informant with regard to its collusion with private parties under section 3 of the Act stating that JPC was collecting iron ore price data for NMDC as per the advice of the Ministry of Steel which used the same for the growth of iron and steel industry in India.

9. The Commission is not convinced that there existed a deliberate reduction in production in view of the Supreme Court orders. *Prima facie* there seemed to be no collusion between OP 1 and other private parties and no competitive issue was there that required intervention of the Commission.

10. On the basis of aforesaid, the Commission is of the view that there does not exist a *prima facie* case for directing DG to investigate the matter. There is no case either under section 3 or under section 4 of the Act. The case deserves to be closed under section 26 (2) of the Act and is accordingly hereby closed.

11. The Secretary is directed to communicate the decision of the Commission to all concerned accordingly.

Sd/-
(H.C. Gupta)
Member

Sd/-
(R. Prasad)
Member

Sd/-
(Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L. Tayal)
Member

Sd/-
(Justice S.N. Dhingra) {Retd.}
Member

Sd/-
(Ashoka Chawla)
Chairperson