



Case No. 87of 2013

**In re:**

Global Tax Free Traders. ....Informant  
Regd. Office:87, Sainik Farms, Central Avenue, Khanpur, New Delhi- 110062

And

William Grant & Sons Ltd. ....OP 1  
AB55 4DH, Scotland

William Grant & Sons International Ltd. ....OP 2  
Independence House, 84 Lower Mortlake Road, Richmond, Surrey TW9 2HSm  
United Kindom.

William Grant & Sons Distillers Ltd. ....OP 3  
Phoenix Crescent, Strathclyde Business Park, Bellshil ML4, United Kingdom.

(collectively referred to as 'Opposite Parties')

**CORAM:**

Mr. Ashok Chawla  
Chairperson

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

Mr. M. L. Tayal  
Member

Mr. Justice (retd.) S. N. Dhingra  
Member

Mr. S.L.Bunker  
Member

Present: Rohit Sharma (Advocate), Adil Mehra (Partner) & Mukul Mehra  
(President) for Informant



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

The informant was engaged in the business of importing and distributing foreign liquor in the territory of India. For this purpose, the informant owned and operated a customs bonded warehouse at its registered office at New Delhi. The Opposite Parties (OPs) belonged to the William Grant & Sons group of companies, a group engaged in the production, sale, marketing and distribution of spirits all around the world. It offered Scotch whisky, single malts, handcrafted single malts, gin, and other spirits. William Grant & Sons is stated to be headquartered in Dufftown, United Kingdom with additional offices around the world.

2. The informant submitted that from November, 2005 till March, 2013, the informant operated as exclusive distributor for the territory of India except the states of Maharashtra, Karnataka and Goa for OPs products such as William Grants Family Reserve Scotch whisky, Glendfiddich Single Malt Scotch whisky and Balvenie Single Malt Scotch whisky. During contractual relationship between the informant and OPs, OPs had complete discretion to quote the prices for their products to be imported by the informant, and the informant had no option but to accept those prices. This contract between informant and OPs was mutually extended from year to year with minor variations in the terms of engagement. The Informant stated that vide letter dated 08.08.2011, it was appointed as Exclusive Importer and Distributor in India until 31.03.2013 for some specified brands. On 06.08.2012, the Informant, keeping in mind the investments made over the years, wrote an email to OPs requesting them to renew the distribution contract between them ending on 31.03.2013 for a period of 5 years. In response to the same, the OPs assured the Informant through an email dated 06.08.2012 that the relationship would be refreshed for a longer term once the existing contract expires. However, on 25.01.2013, OP 3 wrote a letter to the Informant stating that they were reviewing their business model in India and that the OPs would let the Agreement expire on 31.03.2013 after which the Agreement will cease to be effective and binding on either of them.



3. Consequently, the contract between the informant and opposite parties came to an end in March, 2013. After termination of its relationship with the OPs in March, 2013, the informant received detailed information from ICD Tughlaqabad, New Delhi, regarding the price charged by the OPs for its goods from William Grant Sons India Ltd. (the OP group's Indian subsidiary) in the month of May, 2013. The informant was primarily aggrieved as the prices charged by the opposite parties from its Indian subsidiary were significantly lower than those charged from the informant during November, 2005 till March 2013.

4. The informant also realised that during the period when the informant served as exclusive distributor for the OPs, the OPs permitted import of their products into India through a number of entities such as Delhi Duty Free Services and other private companies, at prices much lower than those charged from the informant.

5. The informant claimed that these facts conclusively established abuse of its dominant position by the opposite parties as the OPs imposed unfair/discriminatory price in purchase or sale of goods within the meaning of Section 4(2)(a)(ii) of the Competition Act, 2002 ('the Act').

6. On the basis of foregoing facts, the informant prayed the Commission to get an investigation conducted through DG office into the abuse of dominant position by OPs.

7. The Commission has perused the facts mentioned in the information as well as additional information and heard the informant at length. The informant has alleged that the OPs imposed exorbitant, unfair and discriminatory prices on the informant which were possible only due to the dominant position enjoyed by OPs in the relevant liquor market in India. The Informant contended that the relevant market in which the opposite parties enjoyed a dominant position was market for 'single malt scotch whiskey in India'. It was submitted that single malt scotch whisky was a separate and distinct product which would classify as the relevant product market.

8. Every kind of alcoholic beverage available in the market, e.g., vodka, rum, whisky, wine, beer, etc., has different alcoholic contents and is made



from a different raw material / grain, and undergoes a different distilling / fermentation process.

9. Amongst whisky, it was submitted that there is a clear qualitative difference between Scotch whisky and other kinds of whisky. Scotch whisky is widely regarded as qualitatively the best kind of whisky, which makes it a completely distinct product from domestically made whisky or whisky imported from other parts of the world. The informant distinguished 'single malt scotch whiskey' from 'single grain scotch whiskey'. Single malt scotch whisky means a scotch whisky produced from only water and malted barley at a single distillery by batch distillation in pot stills. Single grain scotch whisky means a scotch whisky distilled at a single distillery but which, in addition to water and malted barley, may also be produced from whole grains of other malted or unmalted cereals. It was highlighted that the legislation in UK regulating Scotch Whisky treats Single Malt Scotch Whisky as distinct product. The informant, therefore, contended that the relevant market in the present case was 'Single Malt Scotch Whisky in India'. In context of dominance, the informant submitted that Glenfiddich is the world's largest selling single malt scotch whisky holding a 42% market share in India.

10. The Commission has considered the arguments of the informant and the additional information furnished by them. At the outset it may be noted that the demarcation done by the informant so as to conclude that 'single malt scotch whiskey' was a relevant product market in itself seems misconceived. There may be differences in the raw material / grain used in different types of whiskeys and their distillation process however, the end consumer generally see them as substitutable. The Commission in Combination Case No. 97/2012, noted as under:

*"It is observed that in the Indian branded spirits, Whisky, which alone accounts for 60 per cent of the total sales volume, constitutes the largest segment. Whisky can further be segmented into IMFL Whisky, Scotch Whisky and Imported Whisky. As per the data provided in the notice and in the IWSR Report, the total whisky sales in India, in the year 2011, were around 149 million 9-litre cases, of which IMFL*



Whisky sales were around 147 million 9-litre cases, constituting a large chunk of around 98.54 per cent of the total Whisky segment. It is also observed that all the IMFL Whisky brands are priced below INR 800 and that none of Diageo's Whisky brands are significantly present below this price point, thereby indicating no significant market concentration in the IMFL Whisky segment, post-combination. **The Scotch Whisky and the Imported Whisky segments, which together constitute less than 2 per cent of the overall Whisky segment and around 1 per cent of the branded spirits segment in India, are characterized by the presence of a large number of brands positioned across various premium and luxury price points starting from INR 800 and going up to INR 10000 and even further.** It is observed that the consumers of these brands (in the Scotch Whisky and Imported Whisky segments) may generally have a higher degree of brand affinity, which can be witnessed from the relatively high sales volume of brands like Pernod Ricard's Royal Salute, Chivas Regal 18/12Year Old, Ballantine's Finest, 100 Pipers, Beam Global's Teacher's 50, Teacher's Original; WM Grant's Glenfiddich, Grant's Family Reserve, Diageo's Johnnie Walker Blue/Red/Black, USL's Black Dog, etc. **This segment of Scotch and Imported Whisky has the presence of many other brands of Scotch and Imported Whisky including some brands of BII Scotch Whisky also.**" (emphasis supplied)

11. The above factual situation about the market for spirit makes it clear that for whiskey constitutes a separate market in itself. It is further clear from the information in public domain that Scotch Whiskey and Imported Whisky together amounts for less than 2% market share in the relevant market of 'sale of Whiskey in India' and there are various competing brands of Scotch and imported whiskey in that relevant market in India. Therefore, we believe that the informant defined the market very narrowly. The single malt, blended malt, single grain, blended grain etc. are different forms of whiskeys. However, they are perceived as substitutes by the common consumers



intending to buy whiskey. Some consumers may be having very strong preferences for single malt whiskey but relevant product market has to be defined keeping in mind overall consumer behaviour towards substitutes.

12. As per the publically available information, the OPs are the third largest producer of 'scotch whiskey' (which is a broader market than that defined by the informant) having around 10% market share after Diageo and Pernod Ricard in the world. If we further broaden the market so as to include 'market for whiskeys (IMFLs as well as imported liquor) in India', the Indian scenario suggests that United Spirits Ltd. (USL) holds more than 50% of the market share in whiskeys followed by various other alcoholic beverages manufacturing companies in India. The percentage of imported liquor in India is very minimal, around 3%. Therefore, in such a scenario, it cannot be said that OPs were dominant in any of the alternative relevant market definitions discussed herein before.

13. On the basis of foregoing, the Commission is of the *prima facie* view that OPs were not dominant in the relevant market within the meaning of section 4 of the Act and therefore, the issue abuse their position in the relevant market would not arise.

14. For the reasons stated above, the case deserves to be closed down under section 26(2) of the Act. The Secretary is directed to send a copy of the order to all concerned.

New Delhi

Dated: 11/02/2013

Sd/-  
(Ashok Chawla)  
Chairperson

Sd/-  
(Dr. Geeta Gouri)  
Member

Sd/-  
(Anurag Goel)  
Member



Sd/-  
( M. L. Tayal)  
Member

Sd/-  
(S. N. Dhingra)  
Member

Sd/-  
(S.L.Bunker)  
Member