



(Case No. 99/2013)

**In Re:**

....Informant

M/s Shubham Sanitarywares

And

Hindustan Sanitarywares & Industries  
(HSIL) Ltd.

....Opposite Party No. 1

Roca Bathroom Products Pvt. Ltd.

....Opposite Party No. 2

Cera Sanitarywares Limited

....Opposite Party No. 3

**CORAM:**

Mr. Ashok Chawla  
Chairperson

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

Mr. M. L. Tayal  
Member

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

Mr. S. L. Bunker  
Member

Present: Informant in person.

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



The information in the present case was filed under Section 19(1)(a) of the Competition Act, 2002, (“Act”) by M/s Shubham Sanitarywares (hereinafter “the informant”), a dealer of ceramic tiles, sanitarywares and C.P. fittings, etc. in Indore, Madhya Pradesh, alleging the violation of the sections 3 and 4 of the Act by M/s Hindustan Sanitarywares & Industries Ltd.(HSIL) (“OP-1”), M/s Roca Bathroom Products Pvt. Ltd. (“OP-2”), and M/s Cera Sanitarywares Limited (“OP-3”).

2. It was alleged by the informant that OP-1 had abused its dominant position in the relevant market by blocking supply of material to the informant on various grounds including the ground that informant was also selling products of *Johnson Pedder Sanitarywares*. Informant submits that the fact that it was selling Johnson Pedder products was made clear to the OP-1 on 28.10.2003 when an agreement was entered between OP-1 and informant, appointing informant as the authorized dealer of OP-1. It was alleged that OP-1 being in a dominant position has imposed one-sided conditions in the ‘Dealership Agreement’ and has abused its dominant position. It has also been alleged by the informant that OP-1 using their power of dominance instructed other HSIL Dealers to not to supply products to the informant. Informant further alleged that OP-1 decides the rate of discount on MRP to various classes of customers to their subjective satisfaction without applying uniform touch and tone to achieve vertical price control for its dealers; however, this does not apply to OP-1 when it directly supplies the products. According to the informant, this amounts to vertical price maintenance which is a violation of the provisions of the Act.

3. It was also alleged by the informant that the OP-1, OP-2 and OP-3 had formed a cartel and while between the years 2004 to 2010 (*duration of*



6-½ years) there was an increase from 20% to 55%, between the years 2010 to 2013 (3 years) the prices have increased from 40% to 90%. As per the informant, this abnormal price rise is due to the horizontal price cartel between OP-1, OP-2 and OP-3 and may be attributable to their high market shares of 40%, 35% and 20% respectively in branded sanitaryware segment.

4. Thus, while the informant alleges a cartel to fix prices between OP-1, OP-2 and OP-3, it also alleges an abuse of dominant position by OP-1 as well as imposing vertical restraints in the form of '*vertical price maintenance*.' The Commission considered the information, oral arguments of informant, and material available on record to form a *prima facie* view as to whether there was a case requiring any investigation by the Director General in the matter.

5. As per the HSIL's Annual Report (2012-13), the size of Indian sanitarywares market is valued at Rs.2,400/- crores. Based on the organization of production structure, the ceramic sanitaryware industry can be categorized into three broad segments viz. (a) organized (b) unorganized and (c) imports and the share of these three segments are 55%, 30% and 15% respectively. The organized sector has relatively few players compared to many small players in unorganized sector and the organized sector manufactures high value added products<sup>1</sup>. About 92% of the sanitaryware demand stems from new construction projects and the rest stems from the replacement market. The ceramic sanitaryware products manufactured in the organized sector can be differentiated based on brands, design, size, colour, price and imported ware.

6. In view of the above, the relevant product market in the instant case seems to be the market for branded ceramic sanitary wares such as wash basins,

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<sup>1</sup> HSIL Annual Report 2010-11



sinks, bidets, closets, cisterns, urinals etc. The differentiation of ceramic sanitarywares is based on brands, colour, size, design, and price in the organized segment; however, imported wares also offer many choices to consumers as per their preference and budget. The availability of ceramic sanitarywares products manufactured by unorganized segments caters to low income buyers. The relevant geographic market in the instant case appears to be the territory India as the conditions of competition for supply of branded ceramic sanitary wares is homogenous throughout India. Products can be transported from manufacturing plants to depots and sold at any destination in India. Based on the above discussion, the relevant market in the instant case seems to be “the *market of branded ceramic sanitaryware in India.*”

7. In the organized segment of this industry there are about 18 players out of which data is available for about 7 players (*CMIE Industry Outlook*). The market share for each of the OP-1 and 3, as per their sales value in 2010-11, was 42.83% and 21.15%. The market share of OP-2 is 16.84% in the same year. Further OP-1 has an aggregate installed capacity of 3.8 million pieces per annum of sanitarywares whereas its nearest competitor OP-3 has an aggregate installed capacity of 2.7 million pieces of sanitarywares. In terms of number of distributors and Profit after Tax, the OP-1 is ahead of its rival, the OP-3. The sales turnover figure as stated in the table given in information also suggests that the OP-1 is way ahead of its nearest competitor. Thus, based on above analysis, OP-1, *prima facie*, appears to be in a dominant position in the relevant market.

8. Informant had alleged that the OP-1 has abused its dominant position by prescribing unfair and discriminatory conditions in ‘dealership agreement’; however, an examination of the relevant clauses of the ‘dealership agreement’ does not disclose any unfairness or discrimination, rather it reveals that these terms and conditions were as per the prevailing business practices in the industry. As regards the stoppage of supply to the informant, it may be noted from the facts



that the stoppage of supply was intermittent and was due to strained commercial relationship between OP-1 and the informant. Thus, the alleged terms and conditions of the dealership agreement, does not appear to be unfair or discriminatory, and do not constitute a violation of Section 4 of the Act.

9. Informant has alleged further that OP-1 had engaged into the vertical 'resale price maintenance' by regulating the discount structure. Clause 10 of the dealership agreement states "*We shall advise you maximum retail prices from time to time for selling HINDWARE products to your customers. Under no circumstances, you will charge prices higher than our recommended MRP.*" There is no illegality with this clause, as it only prescribes for the MRP and the dealer is free to give discount, i.e. the minimum sale price is not prescribed or monitored. Informant had further alleged that the differential discount policy of OP-1 is creating vertical price maintenance which is in contravention of the Act.

10. The rationale for differentiating the discount offered between the various category of buyers such as retail consumers, dealers and bulk buyers is owing to the difference in quantity of demand made by each of the category of buyers. A retail buyer might place an order for one or two pieces at a time, a dealer might place order for a large number of pieces while a bulk buyer such as a builder might place an order for still larger quantity at a time. In case of bulk purchase, a seller can offer more discount because of occurrence of economies of scale to it. When a seller sells large quantity, it is able to reduce its administrative and logistic expenses substantially which it pass to the purchaser. Thus, differentiating the discount offered between various categories of buyers such as retail consumers, dealers and bulk buyers cannot be *per se* construed as anti-competitive.

11. Offering differential discounts to different group of buyers seems to be the practice followed within the industry and it could be the avenue for competition enabling the players to compete with each other by offering higher discounts to



consumers as large numbers of items are brought. Thus, the practice of offering differential discounts to different consumers *i.e.* less discount for retail buyers and a higher discount for bulk buyers (such as institutions, builders, colonizers and persons of importance) may not be construed as a violation of Section 3(4) of the Act but maintaining the specific rate of discounts to different consumers as the policy of differential discounts which are forcibly implemented by the OP-1 on their dealers may be construed as a violation of Section 3(4)(e) of the Act subject to this practice causing an Appreciable Adverse Effect on Competition (AAEC) in markets in India. In the instant case the Opposite Party has set a range of discount for different group of customers which is based on economic rationale as said *supra*. The dealer has the flexibility to pass the discount to the end consumers within the prescribed range provided by the Opposite Party. Thus, the allegation of the Informant that by specifying the varied rate of discount for different groups of customers the Opposite Party No. 1 has maintained resale price under Section 3(4) (e) of the Act does not get substantiated. Moreover, there does not seem to be any AAEC caused due to the aforesaid scheme of discounts. Hence, *prima facie*, no case is made out against the Opposite Party No. 1 under Section 3(4) of the Act.

12. Informant had also alleged that OP1, OP-2 and OP-3 have formed a cartel by raising the prices of ceramic sanitaryware products despite a marginal rise in the price of raw materials. However, there is no material available on record to indicate a 'meeting of minds' by OPs on pricing of the sanitaryware products nor there is any evidence regarding the behaviour of OPs indicating a cartelization.

13. An examination of the wholesale price index for non-ferrous sanitary ware between 2010-11 and 2012-13 indicates that the value of the index has been hovering between 137.66 and 139.40. Further, an examination of year-to-year changes in wholesale price index for this category indicates that the index has hardly increased between these three years with the year-to-year changes slowing down from 1.53% to 0.5%. The behavior of wholesale price index indicates that



prices have not increased over time and rather they have been stable. A higher rate of increase might have indicated something suspicious. Moreover, china clay is not an item in the whole sale price index, hence its price movements could not be examined therefore it is difficult to verify the claim of the Informant that input prices have increased only marginally.

14. The Commission, on perusal of available material, finds no evidence regarding any communication or collusion between the Opposite Parties regarding the existence of a formal or informal agreement or arrangement. Further, there are no indications that these parties collaborated between themselves through some association or through other channels. In the absence of such evidence it is prima facie not possible to conclude that OPs have formed a cartel to fix prices in violation of the provisions of Section 3(3)(a) of the Act.

15. As such, the Commission finds that no *prima facie* case is made out for directing the Director General to carry out investigation into the matter under Section 26(1) of the Act.

16. For the reasons mentioned above, the Commission is of the opinion that the case deserves to be closed under Section 26(2) of the Act. The case is therefore, hereby closed under Section 26(2) the Act.

17. The Secretary is directed to inform the concerned parties accordingly.

New Delhi  
Date: February 05,2014

Sd/-  
(Ashok Chawla)  
Chairperson

Sd/-  
(Geeta Gouri)  
Member



Sd/-  
(Anurag Goel)  
Member

Sd/-  
(M.L. Tayal)  
Member

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

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