

Competition Commission of India

Case No. 16/2009

Informant:

Tata Metaliks Ltd., Kolkata

Opposite Parties

1. The Electro Steel Casting Ltd., Kolkata
2. Lanco Industries Ltd., Srikalahasti
3. Ductile Iron Pipes and Casting Manufacturers Association, Kolkata
4. Secretary, Ministry of Commerce & Industry, (DIPP), New Delhi.
5. The Secretary, Ministry of Urban Development (CPHEEO), New Delhi

18.5.2010

ORDER

This information has been filed by the Informant on 22<sup>nd</sup> December, 2009 under Section 19 of the Competition Act, 2002 in regard to mandating of ISI marked Ductile Iron (DI) pipes for potable water and sewerage system by Government, allegedly on lobbying by Opposite Party No.3, leading to restraining the Informant from manufacturing and marketing of DI pipes, and amounting to contravention of provisions of Sections 4 (2) (b) and 4 (2) (c) of Competition Act, 2002.

2. The Informant has alleged that Opposite Parties No.1 & 2 formed the Ductile Iron Pipes and Casting Manufacturers Association, Kolkata (Opposite Party No. 3) on 22<sup>nd</sup> September, 2003 with the intention to impose limitation or restriction in production, market development etc. relating to DI Pipes by using its dominant position (being pioneer in the field) so that other new entrepreneurs / competitors will be restrained accordingly. It is alleged that Opposite Parties No.1 & 2, under the veil of said Association, initiated a move to have monopoly in the manufacture and marketing of DI pipes, and that at the relevant point of time i.e. in the financial year 2003-04 when the Association was

formed by 11 members, out of which only 2 were ductile iron pipes manufacturers and rest 9 were casting manufacturers, there were more than 270 casting manufacturers in existence in the country but they were not incorporated as members of the Association, which further shows that the Association was formed for the benefit of Opposite Party No.1 and its subsidiary company (Opposite Party No.2) and to serve their individual interests in the market.

3. It has been further alleged that during the period from 23<sup>rd</sup> July, 2004 to 30<sup>th</sup> October, 2009 Opposite Parties No.1 & 2, under the veil of the Association, repeatedly approached the Government and exerted pressure to impose restrictions by way of mandating the use of ISI marked product, which was possible at that point of time only by Opposite Party No.1 on account of its pioneer status. It has been stated that on account of its persistent follow up / reminders with the Government authorities, for imposition of a mandatory certification of ISI marked product, ultimately the Ministry of Commerce & Industry (Opposite Party No.4) introduced a mandatory certification scheme of ISI mark for production and marketing of DI pipes, vide notification dated 30.10.2009. It is contended that by the notification of the said scheme, Opposite Party No.4 has created discrimination and consequently has benefited Opposite Parties No.1 & 2 who have the major share of the market.

4. The Informant has made several prayers including the prayer to declare that the Opposite Parties No.1 , 2 & 3, with the active participation of Opposite Party No.4 & 5, are limiting and / or restricting production, and market development relating to DI pipes, by using their dominance and by causing imposition of condition of 'mandatory certification of ISI marked product', which vitiates the provisions of Competition Act, 2002. A prayer has also been made for declaring that Opposite Party No.3 is not the representative of the manufacturers of DI pipes in India and had no legal right to represent them. The

Informant has also sought ex-parte ad-interim injunction to restrain the Association from representing before any authority in any manner.

5. The matter was considered by the Commission in its meetings held on 5.1.2010, 4.2.2010, 16.2.2010, 9.3.2010, 23.3.2010 and 30.3.2010. During this period the Informant along with its authorised representative appeared before the Commission and explained their case. They also clarified the position with regard to latest status of the writ petition filed in the Calcutta High Court. The advocate of the informant filed copy of the writ petition, the Government notification dated 25.6.2009, a copy of the order of the High Court dated 5.2.2010 and other documents.

6. The Commission has carefully considered the entire material on record and submissions made on behalf of the Informant with regard to the facts and alleged abuse of dominance. The Commission *inter alia* examined the following issues also:-


- (i) Whether Notification dated 30.10.2009 issued by the Ministry of Commerce & Industry (DIPP) can be said to restrict or limit the market of DI pipes and deter competition through the mechanism of specifying quality standards?
- (ii) Were the Notifications issued by the Government in due exercise of statutory powers, or was the decision influenced by Opposite Parties No.1, 2 & 3?
- (iii) Whether Opposite Parties No.1, 2 & 3 enjoyed a dominant position in the DI pipes market and if the same was abused?

7. It is clear from a perusal of the notification dated 30.10.2009 that it provided that no person by himself or through any person on his behalf manufacture or store for sale or sell or distribute such pipes and fittings which do not conform to the specific standards and do not bear the standard mark of the

Bureau. On the basis of the notification dated 30.10.2009, those manufacturers who did not have the required license from BIS have been debarred. In such debarring, neither any unfair condition has been imposed by the Government nor any discriminatory treatment has been given to the informant or any other manufacturer of DI pipes. It is open to any enterprise or company to obtain license from the BIS to deal with DI pipes on fulfilment of requisite conditions.

8. It is evident that the purpose of the said notifications is to lay down quality standards to *inter alia* ensure appropriate hygiene and sanitation standards in the interest of consumers. The standards provide a level playing field and seeking ISI certification is open to all manufacturers. Therefore, the notification cannot be said to restrict or limit the market of DI pipes or deter competition in any way.

9. The process of domination and the mechanics used for implementing standards as alleged by the Informant suggests the lack of application of mind by Government in mandating the requisite standards for DI pipes. It is evident from the record that Government considered the question of issuing of the said notification for a considerable period and significant amount of inter-ministerial consultations were also involved. The initial position is indicated in the letter dated 13.1.2006 issued by the Ministry of Urban Development, which makes a number of points. Firstly, the Ministry has indicated "that the said issue has been taken up with various Ministries and Departments namely, Ministry of Commerce & Industries (being the nodal agency), Ministry of Consumer Affairs, Food and Public Distribution, Department of Drinking Water Supply, Ministry of Rural Development and Bureau of India Standards". Secondly, the letter clarifies that the competent authority for regulations, issue of licenses / certificate and enforcement is the Bureau of Indian Standards (BIS). Thirdly, water supply and sanitation is a state subject and under the purview of State Governments and



their implementing agencies. This process of consultation continued and finally culminated in the issue of notification dated 30.10.2009.

10. The notification was issued by the Government under Section 14 of Bureau of Indian Standards Act, for which it is fully empowered. Government has its own decision making process and there is nothing on record to indicate any malafide or undue influence. The mere fact of somebody petitioning / praying for a particular decision can in no way be seen as exercising undue influence. It is, therefore, clear that the notifications were issued by the Government in due exercise of its statutory powers and the decision cannot be said to have been influenced by Opposite Parties No. 1, 2 & 3.

11. A number of issues have been raised about the membership, genuineness and the representative character of the Association (OP No.3). However, they are not relevant to the present information under Competition Act in view of the observation made in para 9 and 10 above.

12. No case of contravention of provisions of Section 4 of the Act is made out against Opposite Party No.4 & 5 as notification dated 30.10.2009 was issued by the Government department in exercise of the powers granted to them and after adopting the procedure including the procedure of consultative process.

13. On the facts and in the circumstances of this case and on examination of the entire material brought on record by the informant and on considering the submissions as made on behalf of the informant, the Commission does not find any force in the allegations made in the information regarding contravention of provisions of Section 4 of the Competition Act, 2002. The Commission has also taken into account various guiding factors as laid down in Section 19 of the Act for taking the view that abuse of dominance on the part of the Opposite Parties is not made out from the evidence filed by the informant.

14. In view of the above, the allegations made in the information are not covered within the vice of abuse of dominance contemplated under Section 4 of the Act. The information filed by the informant and the material as placed before the Commission, therefore, do not provide basis for forming a prima facie opinion for referring the matter to the Director General to conduct investigation. The matter is, therefore, liable to be closed at this stage forthwith.

15. The matter is, therefore, closed under Section 26 (2) of the Competition Act. Secretary is directed to inform the Informant accordingly.

Sd/ -  
Member (G)

Sd/ -  
Member (R)

Sd/ -  
Member (P)

Sd/ -  
Member (GG)

Sd/ -  
Member (AG)

Sd/ -  
Member (T)

Sd/ -  
Chairperson