

BEFORE THE
COMPETITION COMMISSION OF INDIA

[CASE NO.13/2011]

DATE OF DECISION: 23.04.2012

Manappuram Jewellers Pvt. Ltd.
15A, Manappuram House, Valapad,
Thrissur, Kerala - 680567

-Informant

1. Kerala Gold & Silver Dealers Association, Thrissur, Kerala
2. Justin and Tharakan Royals Jewellery, Chavakkad, Thrissur, Kerala
3. Swaran Mahal Jewellery, Kaipamangalam, Thrissur, Kerala
4. Mangalya Jewellers, Kaipamangalam, Thrissur, Kerala
5. Chungath Fashion Jewellery, Chalakkusy, Thrissur, Kerala
6. Twinkle Diamond Shop, Chalakkusy, Thrissur, Kerala



- Opposite Parties

ORDER UNDER SECTION 26(6) OF THE COMPETITION ACT, 2002

The Commission has received the present information from M/s Manappuram Jewellers Pvt. Ltd. (hereinafter referred to as "the Informant") on 30.03.2011 under the provisions of Section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as "the Act"). The information relates to the alleged anti-competitive agreement and abuse of dominant position by the members and office bearers of Kerala Gold & Silver Dealers Association (hereinafter referred to as "the Opposite Parties") in gold and silver jewellery business in Thrissur district of Kerala.

2. As per the information, followings are the brief facts of the case:

2.1 The informant is a registered company under the Companies Act, 1956 and is engaged in the business of gold and silver jewellery in India. The Opposite Party No. 1, Kerala Gold & Silver Dealers Association (hereinafter referred to as "KGSDA"), is an unregistered association of gold and silver jewellery shop owners in the State of Kerala. The Opposite Party No. 2 to Opposite Party No. 6 are some of the members of KGSDA.



2.2 The informant has submitted that it has been engaged in the gold and silver jewellery business in the state of Kerala since a long period of time and has good business reputation amongst the customers in the market in Kerala as well as in other parts of the country. Because of its long experience and large economies of scale, compared to other gold and silver jewellery shop owners operating in Kerala, it is able to take less manufacturing/making charges for ornaments from the customers. Further, with a view to give more benefits to the customers it has been paying a substantial proportion of VAT to the government on behalf of the customers which is supposed to be paid by the customers while making purchases from it. The informant has been paying 4% VAT to the Government for each transaction but it has been collecting only 1% VAT from the customers and the remaining 3% VAT has been paid by the informant out of its own fund. The informant has also submitted that it sells only 916 Hall marked gold Jewellery with BIS certification to the customers and gives special offers/schemes on different occasions with a view to give benefits to the customers.

2.3 As per the informant, because of its long experience in the gold and silver jewellery business, large consumer base and successful business operation in the state of Kerala it never became a member of KGSDA. It has been alleged by the



informant that since it did not become a member of KGSDA, the members of KGSDA have been indulging in various anti-competitive trade practices against it with a view to ruin its business reputation and to reduce its market competitiveness. The members of KGSDA had been putting up stickers, boards/notices, banners in their shops to the effect that they would not be buying/accepting the gold jewellery purchased from the informant as the gold sold by the informant was of inferior quality. Such notices in the form of stickers, boards and banners were kept at places near the cash counter of their showrooms with an ulterior motive to give a negative publicity to the consumers about the informant. The members of KGSDA were also spreading other negative rumours about the informant with a view to tarnish its market reputation and to erode its consumer base. As per the informant the above said activities of the members of KGSDA were anti-competitive as per the provisions of the Act.

2.4 The informant has also alleged that KGSDA had been prescribing/fixing the prices of gold and silver jewellery for its members and compelling/forcing its members to buy/sell gold and silver jewellery at the price prescribed by it which was nothing but fixation of sale and purchase price of gold and silver jewellery. KGSDA has made mandatory for all its members to adhere the prices fixed by it for



buying/selling of gold and silver jewellery even though, the individual jewellers might charge less price from the customers.

2.5 It has been stated by the informant that the conduct/decision of KGSDA that its members were not to accept/ buy gold and silver jewellery sold by the informant and to put up notices/boards in their showrooms to that effect amounted to anti-competitive agreement under the provisions of Section 3 (3) of the Act. It has also been alleged by the informant that the agreement/decision of the members of KGSDA was an act of discouraging the customers to deal with Jewellery sold by the informant. This act of the members of KGSDA amounted to limiting and restricting the market for the informant and denial of market access to the informant which was anti-competitive as per the provisions of Section 4 of the Act.

3. The Commission considered the matter in its meeting held on 13.04.2011 and formed an opinion that a *prima-facie* case existed in the matter. Accordingly, the Commission ordered the Director General (hereinafter referred to as the "DG") to cause an investigation into the matter and submit a report of investigation within the prescribed time period. Investigation in the matter has been conducted by DG



and a report of investigation in the matter has been submitted to the Commission on 12.12.2011.

4. Investigation by DG

4.1 For investigation into the matter DG has identified following issues:

- i. Whether any condition/restriction has been imposed by KGSDA on its members which resulted in direct or indirect determination of sale price of gold and silver jewellery?
- ii. Whether there was any tacit understanding or agreement between the members of the KGSDA to not to purchase/accept the gold ornaments sold by the informant.
- iii. Whether the members of the KGSDA were directly or indirectly imposing unfair or discriminatory conditions in purchase or sale of gold ornaments in the relevant market, affecting the business of the informant?



iv. Whether any action of the members of the KGSDA causing denial of market access to the informant in any manner in the concerned geographical area?

4.2 DG has based the investigation on the facts and evidences gathered from various primary and secondary sources. DG has collected information pertaining to the allegations from the Opposite Parties, informant and other concerned bodies such as Department of Commercial Tax, Kerala.

4.3 For the purpose of investigation DG has delineated the relevant market in the present case as the market of trading of gold ornaments in Thrissur District of Kerala.

4.4 In response to DG's probe letter/notice, the Opposite Parties had replied that no circulars/notices or direction had been received from the KGSDA during last 3 years with regard to the sale price of gold and silver jewellery. It has been submitted that KGSDA did not interfere in the pricing decision of gold and silver ornaments of the individual member shops. The price of the each and every gold item has been fixed by the shops themselves as per the prevailing principles of



cost and price management as well as on the basis of customary business practices.

4.5 Considering the submissions of the Opposite Parties and other relevant evidences, DG has concluded that no directions or instructions had been issued by KGSDA in connection with bench mark price. The members of KGSDA were free to fix their own selling price. The DG report further states that KGSDA did not interfere or impose any restrictions in the business deal of a member shop. On examination of the minutes of meetings of KGSDA since 2008, DG has observed that no such discussions on price fixation had been made by the members of KGSDA nor any such communication had been passed to its member shops. DG has noted that the sale prices of gold ornaments varied from shop to shop and no uniform rate had been adopted by the members of KGSDA.

4.6 As per the DG report no other evidences were available on record to suggest that the members of the KGSDA were fixing the prices of gold ornaments or any directions/circulars or written communication had been issued by KGSDA with regard to the price fixation. Further, there was nothing on record to conclude that KGSDA was not allowing its members to sell gold/ ornaments at a price



lower than the price fixed by it. The informant was also not able to provide any evidence to substantiate its allegation regarding price fixation by the members of KGSDA.

4.7 On the issue of putting restrictions on re-purchase of jewellery from the informant and putting notices, stickers and banners against the informant, the members of KGSDA have submitted before the DG that KGSDA did not interfere or impose any conditions/restrictions in the business deal of a member shop and there was no such understanding between the members of association. Further, it has been observed by DG that no direction had ever been issued or imposed by the association to its members orally or in writing with respect to the gold or other jewellery articles in connection with buying or selling of any items which had been purchased by the customer from any non-member jewellers in general and the informant in particular. The Opposite Parties have denied that they ever made a display in the shop regarding not dealing with the customers who had purchased jewellery from the informant. However, some of the members of the Opposite Parties accepted that they had displayed for 2-3 days a sticker inside their shops inscribing "our shop will not purchase the



jewellery items sold by Manappuram Jewellers (P) Ltd” and provided justifications for their action.

4.8 DG has concluded that the decision to accept or not to accept the ornaments made by either members or non-members was that of the individual jeweller and the association had no role to play in the same. According to the report of DG examination of the minutes of the meeting of KGSDA revealed that no discussions/decision had been taken by KGSDA regarding non-acceptance of jewellery from the customers who had purchased the jewellery from non-members, especially from the informant. In this regard, DG has found no evidence except the photographs of stickers, notices and banners as submitted by the informant along with the information.

4.9 As per the DG report, some of the members of KGSDA such as Tharkan Royal Jewellers, Swaran Mahal Jewellery and M/s Fashion Jewellers have accepted that they had displayed such sticker for 2-3 days inside their shop premises stating not to purchase/accept the jewellery from the customers which had been sold by the informant whereas M/s Mangalya Jewellers have categorically denied of putting any such notice/sticker etc. It is also seen that the KGSDA has



not discussed this matter in its meetings nor any circular or communication of this regard is found to have been sent to the members. Thus, DG has concluded that such decision is of the individual jewellers and not of the KGSDA.

4.10 Relying on the sales and purchase figures of gold jewellers in Thrissur district as received from the office of Deputy Commissioner, Commercial Tax, Thrissur, DG has reported that the sales or purchase figures of the informant was much higher than that of the other jewellers or the members of KGSDA. Therefore, any imposition of ban or non-acceptance of the jewellery sold by the informant would not affect the total market as well as the sales and purchases of the informant.

4.11 As per the DG report, though some of the members of KGSDA had put up notices about not to accept the jewellery sold by the informant, looking to the size and nature of the market, it could have adverse effect on competition. The DG report states that no proof/evidence regarding negative publicity against the informant by the members of KGSDA was available on record to substantiate the allegations of the informant in this regard.



4.12 DG has reported that the action of some members of KGSDA not to purchase the jewellery sold by informant related to repurchase of old gold jewellery. The repurchase of old gold jewellery is the discretion of the buyer (shopkeeper). Moreover, it did not affect supply of gold jewellery in the market. Though such action of some members of KGSDA not to purchase the jewellery sold by informant seemed to be collusive in nature but as per DG report, it had not caused any appreciable adverse effect on competition. Thus, such conduct was not anti-competitive under the provision of Section 3(3) of the Act.

4.13 DG has also assessed the dominance of the members of KGSDA in the relevant market. As per the DG report, there were approximately 650 jewellers in the Thrissur district out of which only 242 jewellers were the members of KGSDA, which was about 37% of the total jewellers. It has been further stated in the DG report that the market share of the members of KGSDA was approximately 10-12% of the total market share of the area. DG, on the basis of the figures supplied by the Deputy Commissioner, Commercial Tax, Thrissur, has arrived at the conclusion that even if the figures of sale and purchase of all the members of KGSDA was considered, it was way behind the sale and purchase figure of the informant. In absence of any other data to arrive at a conclusion to the contrary,



DG has concluded that none of the members of KGSDA or all the members of KGSDA taken together were in a position of dominance in the relevant market.

4.14 On the issue of denial of market access to the informant, DG has reported that if the buyer shopkeeper was declining to purchase anything from a customer, it would not affect market and could not be treated as causing denial of market access. There were other jewellers in the market who were purchasing second hand gold and silver jewellery sold by the informant. No evidence was either found or brought on record to show that all other jewellers were not buying the jewellery of the informant. Therefore, neither the members of KGSDA were in a *dominant* ~~dominate~~ position in the relevant market nor any unfair or discriminatory practice was found to have been carried out by them which caused denial of market access or limiting of market to the informant. The display regarding not to purchase the jewellery items sold by informant by some of the member of KGSDA did not cause any denial of market access or limit/restrict the market to the informant. Thus, as per DG, there is no case of abuse of dominance within the meaning of Section 4 of the Act made out against the Opposite Parties.



4.15 On the basis of above, DG has come to the conclusion that there was no agreement or tacit understanding or a cartel like behaviour amongst the members of KGSDA with regards to determination/fixation of the gold and silver jewellery price. During the course of investigation no evidence was found to substantiate that any price fixation or controlling supply of gold had taken place at the instance/directions of the KGSDA. Accordingly, DG has concluded that there was no infringement of Section 3(3) of the Act in the case by the Opposite Parties.

4.16 DG report has also concluded that none of the members of KGSDA was in a dominant position in the relevant market. Therefore, there was no case of abuse of dominant position under the provisions of Section 4 of the Act.

5. The Commission considered DG investigation report in its meeting held on 05.01.2012 and decided to send a copy of the DG report to the informant for inviting its comments/objections, if any.



6. Reply/Objections of the Informant to DG Investigation

6.1 The informant has submitted its comments/objections on the investigation report to the Commission on 05.03.2012. Followings are briefly the submissions of the informant:

6.1.1 The informant has submitted that putting up stickers, boards and banners at conspicuous places near the cash counters of the show rooms of the members of KGSDA with an ulterior motive to give negative publicity to the public that the gold sold by it was of inferior quality was anti-competitive. Also, the members of the KGSDA were spreading rumors against it with a view to tarnish its reputation.

6.1.2 The informant has stated that the decision and the agreement between its members not to accept gold/silver ornaments sold by the informant/applicant and putting up stickers/board/banners in their show rooms was violative of the provisions of the Act.



6.1.3 It has also been submitted by the informant that the factum of putting up stickers by some of the members of KGSDA was admitted by them in response to the notice issued by the DG. KGSDA has admitted that there were 242 members in the association and all 242 members were operating in Thrissur District of Kerala State. Informant has stated that the stickers put up by the members of KGSDA were identical. Without any agreement between these members of KGSDA stickers could not be of identical.

6.1.4 It has been further stated that the replies made by all the Opposite Parties in response to DG investigation were of identical nature and it also transpired from their reply that they had a common grievance against the informant.

6.1.5 With regards to dominant position of KGSDA, it has been submitted by the informant that the KGSDA was dominant in Thrissur district of Kerala and the members of KGSDA have been abusing their dominant position. As per the informant the dominant position cannot be ascertained only by comparison of sales figures of the informant and the Opposite Parties, as done by DG. It has been submitted that even though sales of the informant were much more than the sale of the individual members of KGSDA, still there are 242 shop owners



who are in the same business and therefore 242 shop owners put together against the informant certainly have an impact on the sales of the informant.

6.1.6 The informant has also submitted that the members of KGSDA were spreading rumors against it with a view to tarnish its reputation which can be proved through independent witness. It has been submitted that the conclusion of DG that there was no agreement or tacit understanding or aggressive behavior by the members of KGSDA to determine the gold price is erroneous. The informant has also disputed the finding of the DG that there is no case of violation of Section 3(3) (a) of the Act by the Opposite Parties.

7. Decision

7.1 To arrive at the decision in the matter, the Commission has carefully perused the entire material submitted by the informant, the report of the DG, the submissions made by the Opposite Parties as well as the written submissions filed by the informant before the Commission in response to DG report and all other relevant material and evidence available on record.



7.2 The issues for consideration before the Commission in the matter are:

- I. Whether the members of KGSDA entered into any agreement with regard to fixation of sale price of gold ornaments in violation of section 3 of the Act?
- II. Whether members of KGSDA collectively refused to deal with the jewellery purchased from the Informant and if so whether such refusal violated any provisions of section 3 of the Act?
- III. Whether a case of abuse of dominant position is made out against any of the members of KGSDA in the relevant market?

7.3 Determination of Issue No. 1: Whether the members of KGSDA entered into any agreement with regard to fixation of sale price of gold ornaments in violation of section 3 of the Act?



7.3.1 On the issue as to whether the members of KGSDA had entered into an agreement with view to fix sale price of gold and silver jewellery, the Commission is in agreement with the findings of the DG that existence of any such agreement among the members of KGSDA is not established. No evidence has been found to show that any price fixation or limiting the supply of gold had taken place at the instance/directions of the KGSDA. There is no evidence to suggest that any or all of the members of KGSDA had entered into an agreement to fix the sale price of gold and silver jewellery. Even after giving full opportunity, the informant has also failed to give any evidence. Accordingly, the Commission is of the view that in the absence of any evidence no infringement of Section 3(3) of the Act has been found to have been made by the members of KGSDA. This issue is decided accordingly.

7.4 Determination of Issue No. 2 : Whether members of KGSDA collectively refused to deal with the jewellery purchased from the Informant and if so whether such refusal violated any provisions of section 3 of the Act?

7.4.1 On the basis of analysis of evidence gathered during the course of investigation the DG has come out with clear finding that KGSDA had not issued any directions to the members to not to deal with the ornaments which were



purchased from the Informant. The Informant has not been able to furnish any material to dislodge that finding in any manner. In such a situation the Commission is of the view that no evidence is available on record to substantiate the allegation that KGSDA has issued any such direction to its members.

7.4.2 As regards the allegation of the Informant that the members of KGSDA had displayed posters and stickers in their jewellery shops to the effect that they would not deal with ornaments purchased from the Informant the DG has found after investigation that only three jewellers had admitted displaying such stickers for 2-3 days inside their shops and no evidence was available to establish that this practice was adopted uniformly by the members of KGSDA. If out of 242 members of KGSDA only three members were found to be displaying the stickers inside their shops for 2-3 days the only inference which can be drawn is that it was their individual decision, as even among them no trace of agreement has been found. The Informant has also failed to provide any material to the contrary.

7.4.3 In the light of the above discussion no violation of any provisions of section 3 of the Act is established.



7.5 Determination of Issue No. 3: Whether a case of abuse of dominant position is made out against any of the members of KGSDA in the relevant market?

7.5.1 It is noted by the Commission that according to the findings of the DG report, there are approximately 650 jewellers in the Thrissur district out of which only 242 jewellers are the members of KGSDA, which is barely 37% of the total jewellers in the district. It is further noted that the market share of the members of KGSDA is to the tune of only 10-12%. On the basis of the figures supplied by the Deputy Commissioner, Commercial Tax, Thrissur, the DG has arrived at the conclusion that even if the figures of sale and purchase of all the members of KGSDA are taken together, it is way behind the sale and purchase figure of the informant. In absence of any other data to arrive at a conclusion to the contrary, DG has concluded that none of the members of KGSDA or all the members of KGSDA taken together are holding a position of dominance in the relevant market.



7.5.2 On the other hand in its objections to the DG report, it has been submitted by the informant that the KGSDA is dominant in Thrissur district of Kerala and the members of KGSDA had been abusing their dominant position. It has been submitted by the informant that the dominant position should not be ascertained only by comparison of sales figures of the informant and the Opposite Parties. It has been submitted that even though sales of the informant were much more than the sale of the individual members of KGSDA, still there were 242 shop owners who were in the same business and therefore 242 shop owners put together against the informant certainly can have an impact on the sales of the informant.

7.5.3 Although the informant has submitted that the comparative sale figures should not be the sole determining factor for assessing the dominance and the members of KGSDA are dominant on the basis of their numerical strength, which is 242 and they can certainly impact the business of informant but in the view of Commission the dominance of an enterprise or group can be assessed only within the parameters provided in Section 4 and the factors enumerated in Section 19(4) of the Act. Furthermore, the concept of collective dominance is not envisaged under Section 4 of the Act though the DG has categorically



stated that even on collective basis the market share of members of KGSDA is less than that of informant. The informant has failed to show the dominance of any individual member of the Association in terms of the relevant provisions of the Act.

7.5.4 Based on the DG findings and evidences available on record, the Commission holds the view that since none of the individual members of KGSDA is in a dominant position in the relevant market of 'purchase and sale of gold and silver jewellery in the state of Kerala', the question of abuse of dominant position does not arise. In the light of above facts and circumstances, no violation of the provisions of Section 4 of the Act by the Opposite Parties is established.

7.6 Therefore, on the basis of above discussion, the Commission comes to the conclusion that no violation of provisions of either Section 3 or Section 4 of the Act is established against the Opposite Parties in the instant matter.



7.7 In view of the above findings the matter relating to this information is disposed off accordingly and the proceedings are closed forthwith.

7.8 The Secretary is directed to communicate the decision of the Commission to the informant and the Opposite Parties accordingly.

Sd/-
Member (G)

Sd/-
Member (R)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy

