

COMPETITION COMMISSION OF INDIA

Case No. 13/2012

18.06.2012

All Odisha Steel Federation

... Informant

V.

Orissa Mining Corporation

... Opposite Party

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

1. The information has been filed under section 19(1) of the Competition Act, 2002 ('the Act') by All Odisha Steel Federation ('the informant'), an association of manufacturers of steel and related industries in the State of Odisha, against the Orissa Mining Corporation Ltd. ('opposite party'), a Government of Orissa undertaking for alleged contravention of section 4 of the Act. It is submitted that iron ore is an important natural resource mainly used in the manufacture of steel and is available in abundance in the State of Odisha compared to other States where it is found scarcely.

2. According to the informant, the opposite party was abusing its dominant position by fixing arbitrary and unreasonable price of iron ore. It is contended that upto the year 2009, the opposite party was empanelling buyers for supply of iron ore and these empanelled buyers



were assured of regular allotted/quota of iron ore based on their production and selling capacity even if they did not participate in the tender floated by the opposite party for determining the prices of the ore. Post 2009, the opposite party changed its method and stopped empanelling buyers.

3. It was further contended that the opposite party tendered a small quantity of iron ore through Price Setting Tender (PST) and the highest price quoted by some bidder was accepted as H1 and the same was treated as the benchmark price. This mode of price fixing, according to the informant, was unfair since only a small quantity, not representing the total quarterly production of iron ore, was kept for sale and the companies were allowed to participate in the tender process regardless of their capacity, size or past lifting record. In the said process, in order to out-bid others, some companies would quote unreasonable prices which later becomes the listed price and the entire industry is forced to accept the said rates. While doing that these companies, sometimes do not even lift the tonnage of iron ore for which they successfully bid through an auction.

4. The informant further submitted that clause 9 of PST provided a discretion to the management to either accept the quoted price or fix suitable price considering the market scenario. This eventually frustrated the entire exercise of calling tenders in an open auction. Instance of unfair practice being adopted by the opposite party were highlighted by the informant wherein the opposite party allegedly offered 15,000 MT iron ore for sale through PST during the first quarter of 2011-12, but once the H1 bid was received for the said offer, the



same was taken into consideration to sell the total quantity/entire output of 4,02,500 MT of iron ore.

5. It was stated that few small manufacturers who lifted the iron ore by quoting abnormally high prices, being H1 in the tender, were mostly located outside the State of Orissa where the power tariff/water cess and other taxes were substantially lower in their areas due to the incentives being provided by their respective State Governments. Therefore, the opposite party was not right in setting the benchmark price quoted by these small manufacturers to sell the entire iron ore at higher rates. The members of the informant association had lifted only 31% of the total quantity during the third quarter of 2011-12 because of the above arbitrary practice of the opposite party.

6. Thus main grievance of the informant was that the opposite party, on whom the members of informant association relied heavily for iron ore, was selling it at whimsical prices without following the due procedure. The information alleged contravention of section 4 of the Act which prohibited abusive conduct of an enterprise or group, in a dominant position.

7. The Commission invited the informant and opposite party for preliminary conference. In the preliminary conference, the authorized representative of the opposite party appeared and denied the allegations of contravention of any substantive provisions of the Act. It was further submitted that the market share of opposite party was only 9.52% of the total tradable quantity of domestic sale of iron ore which cannot be considered to have any significant impact on the relevant market.



8. The relevant market as defined in section 2(r) of the Act consists of relevant product market and relevant geographic market. The relevant product market in the present case is 'sale of iron ore' and the relevant geographic market is the 'State of Odisha'. Undisputedly, the market share held by the opposite party was small in the relevant market so it cannot be considered to be a dominant player.

9. In order to attract provisions of the section 4 of the Act, the dominant position of the enterprise needs to be seen under explanation (a) to section 4 of the Act. Dominant position in explanation (a) to section 4 of the Act *inter alia* means enjoying position of strength in the relevant market in India enabling the enterprise to operate independent of the competitive forces prevailing in the relevant market or affect its competitors or consumers or the relevant market in its favour. The market share of the opposite party in the present case being a miniscule 9.52%, the informants can obtain iron ore from other manufacturers/miners. The market is fragmented and many other players are present who can cater to the requirements of the members of the informant association. This is also clear from the averment made by informant in application under section 19 of the Act that it lifted only 31% of the total quantity offered during the third quarter of 2011-12 as the price fixed by the opposite party was higher. Therefore, the dominant position of the opposite party in the relevant market is not made out under section 4 of the Act.

10. In the light of the above facts and situation, we find that no *prima facie* case was made out against the opposite party for referring the matter to DG for investigation. It is a fit case for



closure under section 26(2) of the Act and is hereby closed. It is ordered accordingly.

Secretary is directed inform all concerned to accordingly.

Sd/-
Member (G)

Sd/-
Member (R)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy



19.6.2012
शिवराम बिरवा / S.R. Bairwa
संयुक्त निदेशक (विधि)/Jt. Director (Law)
भारतीय प्रतिस्पर्धा आयोग
Competition Commission of India
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi-110001