

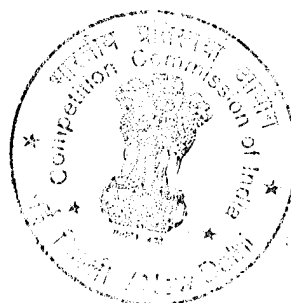
**BEFORE THE COMPETITION COMMISSION OF INDIA**

**Suo-Motu**

**Case No.1 of 2010**

**(In Re: Sugar Mills)**

**Date of Order: 30. 11. 2011**



## Order

### 1. Background

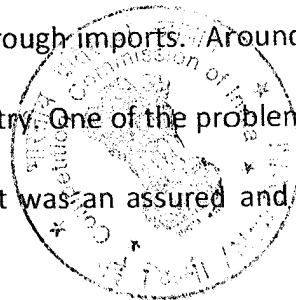
The case under consideration relates to the allegations of certain anti-competitive practices of sugar mills in India.

1.1 Before the proceedings of the case are discussed and analysed, it would be better to keep the specifics of sugar industry in the backdrop, since that would help in understanding the dynamics of the entire industry.

1.1.1 Sugar Industry occupies an important place in the Indian economy and is the second largest agro-based industry next to textiles in India. India is the second largest producer of sugar after Brazil. However, India is the largest consumer of sugar in the world.

1.1.2 Sugar is normally produced from Sugar Cane. In addition to White Sugar, traditional sweeteners – Jaggery (Gur) & Khandsari, which are consumed mostly by the rural population in India, are also produced from Sugarcane. Molasses, Ethanol and Bagasse are the by-products of sugar. The latter two can also be used as bio-fuels. Bagasse is also used as a renewable resource in manufacture of pulp, paper products, building materials and power generation.

1.1.3 The first sugar plant in India was probably established by the French people at Aska in Orissa in 1824 and the first vacuum pan process sugar plant was set up at Saran in Bihar in 1904. Till about late 1920s, however, sugar industry had not grown much in India and the country had to meet its requirement largely through imports. Around 1930, initiatives were taken for giving a boost to the sugar industry. One of the problems which required intervention and support from the government was an assured and regular supply of



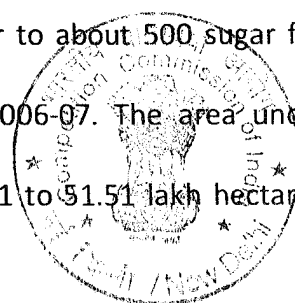
sugarcane for the sugar mills. Accordingly laws were framed for ensuring a regular supply of sugarcane to sugar mills.

1.1.4 Various regulations were also made for the general development of the sugar industry in 1930s. Sugar Industry Protection Act was passed in 1932 to protect domestic industry from the imported sugar. The number of sugar mills gradually increased from 30 in the year 1930 -31 to 135 in the year 1935-36 and the production during the same period increased from 1.20 lac tonnes to 9.34 lac tonnes. Cane Pricing Act was enforced to provide good price to the farmers. Subsequently, cane grower cooperatives were formed to set up sugar mills jointly with farmers. These mills came to be called as cooperative mills, to be run on ownership and sharing basis.

1.1.5 The Industries (Development and Regulation) Act, 1951, placed the sugar industry in the First Schedule (Item No.25) to the Act which meant that no sugar industry could be set up without a licence of the Central Government. In exercise of the powers conferred by Section 3 of the Essential Commodities Act 1955, the Central Government made Sugarcane (Control) Order 1966 and the Sugar (Control) Order 1966. In addition to the above, Levy Sugar Supply (Control) order, 1979, Sugar (Packing and Marking) order, 1970, Levy Sugar Price Equalization Fund Act, 1976, Sugar Cess Act, 1982, Sugar Development Fund Act, 1982, Sugar Development Fund Rules 1983 were also passed and enacted.

1.1.6 Sugar industry witnessed remarkable growth from 139 sugar factories in operation in 1950-51 producing 11 lakh tonnes of sugar to about 500 sugar factories producing approximately 282 lakh tones in the year 2006-07. The area under sugarcane also increased from 24.15 lakh hectares in 1960-61 to 51.51 lakh hectares in 2006-07. It is

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estimated that the per capita consumption of sugar increased from 4.8 kg per annum in 1960-61 to 18 kg per annum in 2006-07.

1.1.7 There are now over 650 installed sugar mills in India of which about 490 mills were in operation during the crushing season 2009-10. Out of the total mills, about 50% are in cooperative sector, 260 mills (about 40%) in the private sector and 62 (about 10%) in the public sector.

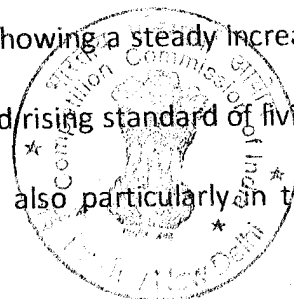
1.1.8 The main cane growing states in the country are Maharashtra, Uttar Pradesh, Karnataka, Tamil Nadu, Gujarat and Andhra Pradesh. Maharashtra and Uttar Pradesh are the leading sugar producing states.

1.1.9 Sugar production in the country is cyclical in nature. It is generally observed that a year of high sugar production leads to decline in sugar prices and lower profitability, which in turn cause delay in making payments to the farmers by sugar mill owners. High sugarcane arrears lead to decline in the overall area under sugarcane cultivation and consequently lower sugarcane production. This situation gives rise to spurt in sugar prices. The high prices provide higher profitability to mills and higher payments to the farmers. This causes increase in the area under sugarcane cultivation, higher sugarcane production and also enhanced sugar production. This way the cycle keeps on repeating itself.

1.1.10 During the sugar season 2009-10 estimated production of sugar was 18.912 Million Tonnes as against 14.539 Tonnes during 2008-09. The yield per hectare increased to 66.1 Tonnes in 2009-10 as against 64.6 Tonnes during 2008-09.

1.1.11 Domestic demand for sugar has been showing a steady increase due to increase in population, enhanced purchasing power and rising standard of living. There is a rapid increase in industrial consumption for sugar also particularly in the food processing

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sector and sugar based bulk consumer sector such as soft drink and ice cream manufacture. It is estimated that approximately 61% of the sugar produced in the country is consumed by the industries and small units and the household consumption accounts for approximately 39%.

### **Profile of Parties in the Case**

1.2 At this stage, it would also be pertinent to bring out a profile of the two bodies - Indian Sugar Mills Association (ISMA) and National Federation of Cooperative Sugar Factories Ltd (NFCSF), who have been named in various newspaper reports, as parties to the alleged anti-competitive practices during the period under consideration.

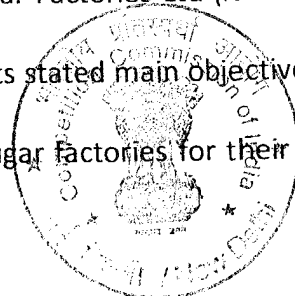
#### **1.2.1 Indian Sugar Mills Association**

Indian Sugar Mills Association (ISMA) is an association of private mills in India. Any person owning or managing one or more factories worked by steam, water, electric and/or other power for the manufacture of sugar by vacuum pan process shall be eligible for the membership of the Association in respect of each such mill or factory. The affiliated associations of ISMA are U.P. Sugar Mills Association, West U.P. Sugar Mills Association, Central U.P. Sugar Mills Association, East U.P. Sugar Mills Association, Uttaranchal Sugar Mills Association, South Indian Sugar Mills Association, South Indian Sugar Mills Association – Tamil Nadu, South Indian Sugar Mills Association - Andhra Pradesh, South Indian Sugar Mills Association – Karnataka, West Indian Sugar Mills Association, Mumbai and Bihar Sugar Mills Association.

#### **1.2.2 National Federation of Cooperative Sugar Factories Ltd (NFCSF)**

1.2.2.1 National Federation of Cooperative Sugar Factories Ltd (NFCSF) is an apex body of all the cooperative sugar factories in India. Its stated main objective is to protect and foster the collective interest of cooperative sugar factories for their continued growth

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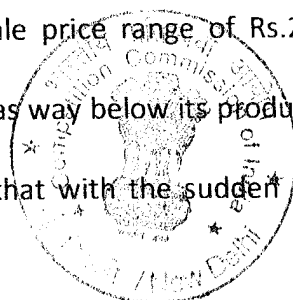
and progress through Project Management, Engineering, Sugarcane management Up-gradation, Financial Management, Manpower Management, Liaison with Central Government and other agencies. NFCSF was registered as a Multi-Unit Cooperative Society on December 2, 1960 for promoting and guiding the increasing number of cooperative sugar factories at national level. Since 2002, NFCSF is deemed to be under the Multi State Cooperative Societies Act, 2002. Maharashtra Rajya Sahkari Sakha Karkhana Sangh Limited and other state level cooperative organizations, whose conduct is under examination in the instant case are the members of NFCSF.

## 2. Information:

2.1 The Commission took note of a news article titled "Cartelization by industry to push up sugar prices: Traders" published on 26.07.2010 in The Economic Times that the Indian Sugar Mills Association and the National Co-operative Sugar Mills Federation had indulged in anti competitive activities.

2.2 In the said news item, quoting Shri Ashok Jain, President, Bombay Sugar Merchant Association, it was stated that somewhere between 13<sup>th</sup> July to 24<sup>th</sup> July, 2010 the Indian Sugar Mills Association and the National Cooperative Sugar Mills Federation held a meeting in which it was decided to boost the ex-factory price of sugar by 4-6% in order to prevent open market sugar prices falling below the cost of production. It was alleged that the cooperative and private sugar mills had formed a cartel to boost ex-factory price of the sugar by an average of Rs. 3 per kg strategically just one month before the peak demand season. The news item also mentioned that sugar retail price stood around Rs.29-30 per kg, against a wholesale price range of Rs.2350-2600 per quintal which the industry had been contending was way below its production cost. The Bombay Sugar Merchant Association had stated that with the sudden increase in ex-





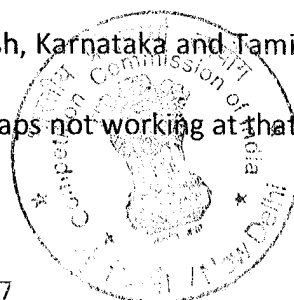
factory prices of sugar, prices in the wholesale market would go up to Rs.2900 - Rs. 3000 and retail prices would go up by about Rs.3 per kg.

2.3 The said news item also stated that with the Centre still to take a decision on whether or not to impose duty on white sugar, the industry had been claiming that its losses could total over Rs.12,000 crore, if duty level remained zero until September, the start of new sugar crushing season. According to said news item, with the projected sugar production of over 25 million tonnes for the sugar season 2010-11, the industry feared that high sugar production would mean fall in domestic prices. The industry also feared that continued cheap imports could allow traders to stock up now and release sugar during peak demand season, keeping prices down.

2.4 The Commission also took on record a copy of press release dated 22.07.2010 forwarded by Shri Ashok U. Jain, President, Bombay Sugar Merchants Association on the issue.

2.5 Taking note of the news item regarding cartelization by sugar producers, the Commission sought comments from the Ministry of Consumer Affairs, Food and Public Distribution which is responsible for the overall sugar policy in the country. The Ministry forwarded its comments stating that the Central Government has been following the policy of partial control over sugar. The Ministry also stated in its reply that there was firming of ex-mill prices of sugar in the 3<sup>rd</sup> week of July, 2010, which indicated that there might have been some attempt for cartelization. But in the 4<sup>th</sup> week of July, 2010 and beginning with August 2010, the ex-mill prices of sugar had shown a sliding trend in Maharashtra, Uttar Pradesh, Andhra Pradesh, Karnataka and Tamil Nadu which pointed out that the so called cartelization was perhaps not working at that moment.





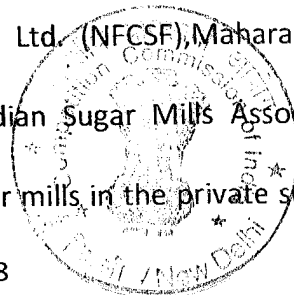
2.6 The Commission also took on record two study reports on Sugar viz, Report on Sugar Industry in India & Report on Competition assessment in Indian Sugar Industry carried out by the Commission and its observations, in which it has been inter alia, stated that the cause of sugar price rise cannot be attributed to the demand pull factors as there are always more stocks in the country than the domestic demand. Further, the contribution of cost factor to price rise of sugar is not very significant and despite huge production of sugar since 2004 to 2007, the price of sugar has continued to rise at a high pace.

### 3. Reference to Director General

3.1 Based upon above, the contents of the news article published on 26.07.2010 in the Economic Times, press note of Bombay Merchants Association and inputs from Ministry of Consumer Affairs, Food and Public Distribution, having formed a prima facie opinion, the Commission directed the office of DG to conduct investigation into alleged cartelization by the Indian Sugar Mills Association and the National Cooperative Sugar Mills Federation (NFCSF) in order to raise price of sugar in violation of provisions of Section 3(3)(b) of Competition Act, 2002.

### Report by Director General

4. Consequent upon the order dated 17<sup>th</sup> August, 2010 under section 26(1) of the Act of the Commission, DG carried out investigation into the whole matter and submitted his report of investigation. In order to examine the issues involved, notices and letters were sent by DG to various parties, viz; Indian Sugar Mills Association (ISMA), National Federation of Cooperative Sugar Factories Ltd. (NFCSF), Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Limited, South Indian Sugar Mills Association and eight (8) private Sugar Mills, identified as major sugar mills in the private sector. The Ministry of



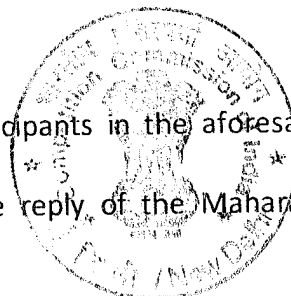


Consumer Affairs, Food and Public Distribution was requested to furnish certain information relevant for the purpose of investigation, particularly the manner of control exercised by the government over the sugar industry. DG also collected various orders and notifications as regards control on sugar from various sources.

4.1 Statements of Shri Ashok U Jain, President, Bombay Sugar Merchant Association, Shri Abinash Verma, Director General, Indian Sugar Mills Association, Shri Prakash Naiknavare, Managing Director of Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Limited, Shri R.S.Bhalerao, Secretary, South India Sugar Mills Association, Andhra Pradesh, Shri K. N. Rathinavelu, Secretary, South Indian Sugar Mills Association, Tamil Nadu, Shri Satish Kansal, Head of Sales, Mawana Sugars Limited were also recorded by DG. The statement of Shri R.P.Bhagria, Chief Director (Sugar), Directorate of Sugar, Department of Food & Public Distribution was also recorded to get insight into the policies of the Directorate of sugar.

3.2 DG after conducting investigation found that a meeting of certain sugar mills, sugar federations/ associations was held on 22.07.2010 at Mumbai. The meeting was convened by Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Limited at Sakhar Bhavan, Mumbai by issuing a notice dated 14.07.2010 on the subject of 'Sugar Price Stabilization And other Issues'. The stated purpose of the meeting was to arrest the sliding sugar prices below the cost of production and to discuss, share views and arrive at a consensus for preventing cash losses and financial crises and to maintain a good balance sheet.

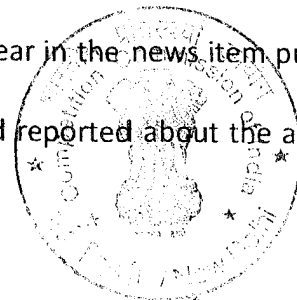
3.3. Based upon the attendance sheet of the participants in the aforesaid meeting, furnished in course of proceedings along with the reply of the Maharashtra Rajya



Sahkari Karkhana Sangh Limited, DG observed that about 45 representatives, mostly the top functionaries of the federations and associations of the Cooperative and private Sugar Mills of Maharashtra, Karnataka, Tamil Nadu, Gujarat and Andhra Pradesh had attended the meeting held on 22.07.2010 at Sakhar Bhawan, Mumbai. Although representatives from four of the major private sugar mills of Northern India (U.P.) also attended the meeting, no one had attended the meeting as representative of the sugar federations and associations of Uttar Pradesh.

3.4 After making analysis of all available evidences on record, DG concluded that the sugar producers and their representative bodies – federations and associations from the states of Maharashtra, Karnataka, Tamil Nadu, Andhra Pradesh and Gujarat entered into an agreement in their meeting held on 22.07.2010 and decided to limit and control the distribution, sale and price of sugar by deciding not to sell sugar below the minimum fixed price in those states.

3.5 According to DG, the meeting was intended to include the sugar mills of Uttar Pradesh too into this arrangement, since representatives from four prominent mills of U.P. had also participated in the meeting. However, no minimum price was fixed for the state of U.P. In this regard, DG has also relied upon the statement of the Secretary, SISMA , Andhra Pradesh (AP), Shri R. S. Bhalerao and Satish Kansal of Mawana Sugar Industries Limited to conclude that no decision was taken to fix the floor price for UP. Further, in the press release dated 22.07.2010 issued by the Sakhar Sangh also, the name of U.P. did not figure. The same also does not appear in the news item published by The Hindu Business Line dated 23.07.2010, which had reported about the aforesaid meeting.



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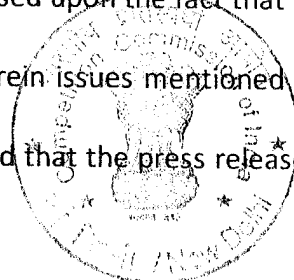
3.6 Based upon the statement of Shri Satish Kansal, Head of Sales, Mawana Sugar Mills Limited, who was present in the meeting held on 22.07.2010, DG has also concluded that in the meeting a core committee was constituted to work out the minimum floor price, to take stock of availability of sugar in the market, unsold stock with the factories and to decide the sugar floor price for the subsequent month. However, there was no presence of any representative from the State of U.P. in the core committee constituted for the purpose of, inter-alia, working out the minimum floor price for each state.

3.7 In view of the above, DG has inferred that the mills of U.P. were not a party to the arrangement of fixation of the minimum floor price and that the agreement remained confined to the states of Maharashtra, Karnataka, Andhra Pradesh, Tamil Nadu and Gujarat and did not include the mills operating from Uttar Pradesh.

3.8 According to DG, ISMA, the national level association of private sugar mills in India and NFCSF; the National Level Federation of Cooperative Sugar Mills, both denied their own participation in the meeting dated 22.07.2010, although the participants in the said meeting which included private mills and cooperative mills also happened to be the members of the two associations.

3.9 DG also investigated the matter about the press release which was allegedly issued after the said meeting as per press reports. The origin of press release, however, could not be traced in course of investigation. Mr. Prakash Naiknavare, Managing Director of Maharashtra Rajya Shakari Karkhana Sangh Limited, the society, which had convened the meeting, in his deposition dated 07.02.2011 before the DG, denied the fact that any press release was issued by the society. However, based upon the fact that the meeting dated 22.07.2010 was convened by the Society wherein issues mentioned in the press release in question were also discussed, DG concluded that the press release must have

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been issued by Maharashtra Rajya Sakhar Sakhari Sangh on the issue. According to DG, Sakhar Sangh and its Managing Director, Shri Naiknavare had given false submissions and concealed the facts by stating that neither any press release was issued by them nor had they indulged in any anti-competitive activity of taking a decision to determine any sales realization price of sugar.

3.10 DG has noted that in the press release issued pursuant to the meeting held on 22.07.2010, it was decided inter-alia to fix the Minimum Floor Price for the different states of Maharashtra, Karnataka, Tamil Nadu, Andhra Pradesh and Gujarat for the period between 23.07.2010 and 31.08.2010. The press release mentioned the minimum floor prices as under:-

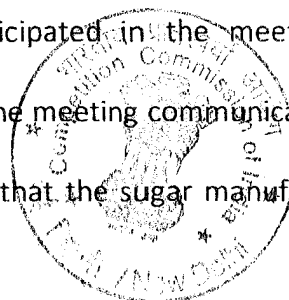
**Minimum Floor Price (Benchmark) for 23 July to 31 August 2010.  
(Rs.Per Qtl.)**

Grade & States	Maharashtra	North Karnataka	South Karnataka	Tamil Nadu	Andhra Pradesh	Gujarat
S-30	2700	2670	2700	2700	2700	2700
Super-S	2725	2700	2725	2725	2725	2725
M-30	2750	2725	2750	2750	2750	2750
L-30	2800				2800	2800

3.11 According to DG, such an agreement to fix the minimum floor price contravened the provisions of sub-section 3 (a) and (b)

of section 3 read with section 3(1) of the Competition Act 2002.

3.12 It has also been observed by the DG that ingredients of cartelization have been found to be present in the conduct of the sugar mills and their federations/associations of all the above mentioned states, who had participated in the meeting dated 22.07.2010. Based upon the details of proceedings of the meeting communicated by the Secretary, SISMA to its members, DG has also found that the sugar manufacturers of



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Maharashtra & Karnataka were in cartel agreement since 24<sup>th</sup>/25<sup>th</sup> June 2010 and the said agreement was extended to include the sugar mills of Tamil Nadu, Andhra Pradesh & Gujarat also after the meeting dated 22.07.2010.

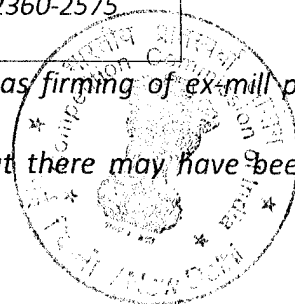
3.13 While arriving at the aforesaid conclusion, DG has also taken note of the reply dated 09.08.2010 of Directorate of Sugar, Department of Food & Public Distribution, New Delhi on the subject, in which it has been stated as under;

*“ There were news reports that the private and cooperative sugar mills of Maharashtra, Uttar Pradesh, Andhra Pradesh, Karnataka and Tamil Nadu had held a meeting at Mumbai on 22.07.2010 and decided inter-alia, to fix the bench mark price of Rs.2700 per quintal for S-30 grade sugar in an attempt to trim losses after the sugar price fell below cost of production. As per our information, the range of ex-mill prices of S-30 grade sugar in the markets of Maharashtra, Uttar Pradesh, Andhra Pradesh, Karnataka and Tamil Nadu during the period 20<sup>th</sup> to 23<sup>rd</sup> July, 2010, 26<sup>th</sup> to 30<sup>th</sup> July, 2010 and 2<sup>nd</sup> to 5<sup>th</sup> August, 2010 were as under:*

State	20 <sup>th</sup> to 23 <sup>rd</sup> July,10	26 <sup>th</sup> to 30 <sup>th</sup> July,10	2 <sup>nd</sup> to 5 <sup>th</sup> August,10
Maharashtra	2500-2725	2310-2685	2290-2400
Uttar Pradesh	2640-2790	2690-2815	2665-2715
Andhra Pradesh	2550-2700	2500-2700	2360-2550
Karnataka	2450-2700	2350-2500	2290-2350
Tamil Nadu	2580-2700	2550-2700	2360-2575

From the table above, it may be observed that there was firming of ex-mill prices of sugar in the 3<sup>rd</sup> week of July, 2010 which indicates that there may have been some

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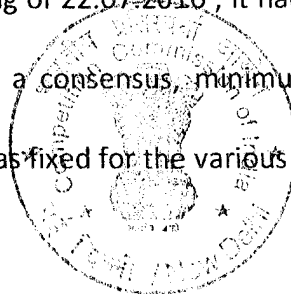


attempt for cartelization. But in the 4<sup>th</sup> week of July, 2010 and beginning with August, 2010, the ex-mill prices of sugar have shown a sliding trend in Maharashtra, Uttar Pradesh, Andhra Pradesh, Karnataka and Tamil Nadu which points out that the so called cartelization is perhaps not working at the moment.”

3.14 DG has also relied upon the statements of Shri R.S. Bhalerao, the Secretary, South Indian Sugar Mills Association, Andhra Pradesh & Shri K.N. Rathinavelu, the Secretary, South Indian Sugar Mills Association, Tamil Nadu who had attended the meeting on 22.07.2010, in which they have confirmed that in the said meeting the issue of fixation of the minimum floor price of different grades of sugar for the period 23 July to 31 August 2010 was discussed by the representatives of the sugar mills. DG has taken note of the fact that Secretary, SISMA, A.P. after the meeting has communicated to its members as follows:

*‘... In the opening remarks Sri Prakash Naik Navare Managing Director, Maharashtra Cooperative federation informed that since 24<sup>th</sup> June, 2010 Karnataka and his state could maintain floor price of Rs.2500/- per Qtl. as was decided by them earlier. However, with cane price averaging around Rs.2000/- per MT, even at Rs.2,500/- the factories would be making cash losses and suggested the floor price should be increased to at least Rs.2,700/- per Qtl. All the members were agreeable for adhering to the floor price to be fixed.....’*

3.15 Similarly, in the communication of The Secretary, SISMA, Tamil Nadu to its members about the deliberations in the said meeting of 22.07.2010, it had been stated that after a lengthy discussion in the meeting, by a consensus, minimum floor price (bench mark) covering the period from 23.7.2010 was fixed for the various states.



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3.16 According to DG, the content and structure of the table showing the minimum floor price for the different grades of sugar for the different states, as communicated to its members by SISMA, A.P. and SISMA, T.N. are same as published in the press release after the meeting dated 22.07.2010.

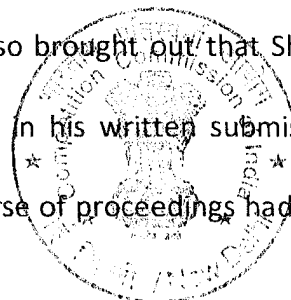
3.17 DG has also taken note of some of the reports and news papers articles like that of Reuters (dated 21<sup>st</sup> to 23<sup>rd</sup> July 2010), Times of India, Pune (dated 24<sup>th</sup> July 2010) and Economic Times, Delhi & Mumbai (dated 26<sup>th</sup> July 2010) in which it has been reported that sugar mills & their federations & Associations had conducted a meeting on 22.07.2010 at Sakhar Bhawan, Mumbai and mutually decided to fix the minimum floor price of sugar in the states of Maharashtra, Karnataka, Tamil Nadu, Andhra Pradesh, and Gujarat.

3.18 DG has also observed that the contents of the articles and news item are similar to the press release issued after the meeting of the cooperatives and federations on 22.07.2010.

3.19 DG has also relied upon the submissions of Shri Satish Kansal, Head of Sales, Mawana Sugar Ltd., who had furnished a copy of the news item reported in The Hindu Business Line, New Delhi published on 23.07.2010, in which Mr. Prakash Naiknavare, Managing Director of Maharashtra State Cooperative Sugar Federation has been quoted as stating that Cooperative mills in Maharashtra, Karnataka, Tamil Nadu Andhra Pradesh and Gujarat had unanimously agreed to raise the floor price for selling sugar in the open market by Rs 200 for 100 Kg in the meeting on 22.07.2010.

3.20 In order to substantiate his findings, DG has also brought out that Shri Ashok U Jain, President, Bombay Sugar Merchant Association in his written submission dated 03.02.2010 and also in his statement recorded in course of proceedings had also stated

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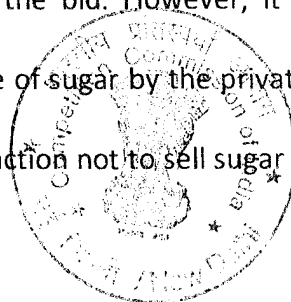
that the sugar factories in meeting dated 22.07.2010 had taken a decision to fix minimum floor price. However, the prices so fixed could be implemented only for a day or two.

3.21 According to DG, evidences like the notice dated 14.07.2010 for the meeting dated 22.07.2010, the attendance record of the said meeting, the statements of the Secretaries of SISMA, Tamil Nadu and SISMA, Andhra Pradesh and the communication made to the member mills by them, the statement of Shri Satish Kansal of Mawana Sugars Limited, the submissions and statement of Shri Ashok U Jain, President, Bombay Sugar Merchants Association, news reports published in The Hindu Business Line, New Delhi dated 23.07.2010, news report of Reuters dated 21<sup>st</sup> to 23<sup>rd</sup> July 2010, Times of India, Pune dated 24.07.2010, The Economic Times, Delhi dated 26.07.2010 and Economic Times, Mumbai dated 26.07.2010 & 29.07.2010 conclusively establish that a meeting of sugar mills and their federations and associations was held on 22.07.2010 at Sakhar Bhawan, Mumbai wherein the sugar mills decided to fix the minimum ex-mill price of sugar.

3.23 Based upon above the aforesaid evidences, DG has concluded that sugar mills through their associations / federations had formed a cartel to fix the price of sugar in contravention to Section 3(3)(a) & (b) of the Competition Act 2002.

3.24 DG has also brought out that the process of sale of sugar by private mills and cooperative mills may differ, as in case of cooperative mills in Maharashtra the sale takes place through a process of tendering where mills invite bids and on the basis of the price received and quoted they accept or reject the bid. However, it has been concluded by DG that irrespective of the process of sale of sugar by the private and the cooperative mills, if all the mills had taken a concerted action not to sell sugar below the

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minimum fixed price then the prices could not have been determined by the dynamics of market as the prices would be those which had been decided by the mills in concert.

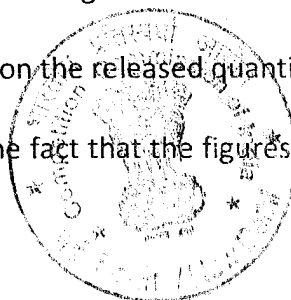
3.25 While concluding that the sugar mills of the states of Andhra Pradesh, Karnataka, Maharashtra, Gujarat and Tamil Nadu had entered into a cartel agreement, DG in his report has also analysed the reasons for the aforesaid agreement among the sugar mill owners. It has been observed by DG that after high prices in the year 2009, the sugar prices had started moderating due to various developments in the beginning of 2010. Production of sugar had also increased and the sugar mill owners were concerned with the declining sugar prices.

3.26 According to DG, by the end of first quarter of 2010 the sugar mills were becoming increasingly apprehensive of financial crunch on account of higher sugarcane prices to be paid to the farmers, declining realizations from sale of sugar on account of lower prices in comparison to the earlier period, the downward valuation of the stocks by the banks and other financial difficulties relating to payments to cane farmers. It was in this background that the sugar mills met on 22<sup>nd</sup> July 2010 and decided to fix the minimum floor price.

3.27 In response to the reply of sugar mills that a need was felt for keeping a minimum floor price in view of the fact that prices were going even below the cost of production and continuing losses, DG has concluded that the claim of continuing losses for all the mills in Maharashtra, Karnataka, T.N., A.P. and Gujarat is not fully correct.

3.28 As regards Sakhar Sangh, DG has concluded that the ex-mill realization of sugar for the mills was much higher during the first quarter of the sugar season 2009-10 and the details of the cost of production and the net cash loss on the released quantity furnished by the Sakhar Sangh, cannot be accepted in view of the fact that the figures for only the

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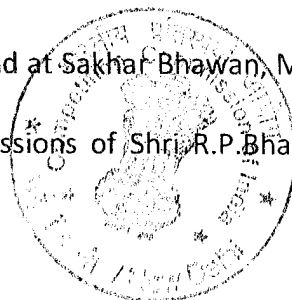
months from April 2010 till July 2010 has been given, by which time the sugar prices had fallen. According to DG, Sakhar Sangh has deliberately not furnished the ex-mill realization from the commencement of the sugar season from October 2009 till March 2010 during which period the average ex-mill realization was very high.

3.29 According to DG, the data furnished by the Sakhar Sangh, wherein they have shown net cash loss from April to July 2010, conceals the huge margins earned by the sugar mills from the month of October 2009 till at least February 2010 during which the ex-mill prices were ruling very high and had touched even Rs.4200 per Quintal as against Rs.2668 per Quintal in the month of April 2010. DG has also brought out that a comparative study of the estimated ex-mill price of sugar at different cane prices and recovery levels and the ex-mill price realization data of the mills show that while the ex-mill realization of some mills were lower than the minimum price fixed in the meeting held on 22.07.2010, the same for other mills was higher. Different mills in different regions have different cost of production and even different ex-mill realization. Similarly, the profit and loss for the sugar mills would also be different. Therefore, the claim of losses advanced by the sugar mills is not entirely true.

3.30 From the data furnished by the sugar mills and Sakhar Sangh, DG has concluded that the claim of loss does not get established and the concerns of the sugar mills were more on account of fall in their profits rather than cumulative losses during the sugar season 2009-10 up to the date of the meeting held on 22.07.2010 for fixation of minimum floor price.

3.31 DG has also brought out that the price of sugar also increased after decision was taken to fix the minimum floor price in the meeting held at Sakhar Bhawan, Mumbai on 22.07.2010. In this regard, DG has cited the submissions of Shri R.P. Bhargia, Chief

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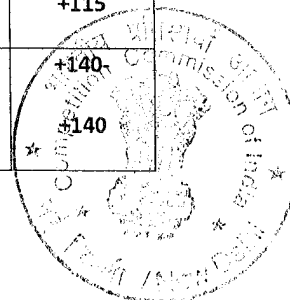


Director Sugar, Directorate of Sugar, in which it has been stated that sugar prices in Maharashtra which were in the range Rs. 2500-2520 per quintal on 21<sup>st</sup> July, 2010, increased to Rs. 2700-2725 per quintal on 22<sup>nd</sup> July, 2010 i.e. increase of Rs. 200 per quintal. Similarly in Karnataka, the Ex-mill prices which were ruling at Rs. 2500 per quintal jumped to Rs. 2700 per quintal on 23<sup>rd</sup> July, 2010 i.e. increase of Rs. 200 per quintal. In the state of Tamil Nadu also, the ex-mill prices which were ruling at Rs. 2580 per quintal on 21<sup>st</sup> July, 2010, jumped to Rs. 2700 per quintal on 22<sup>nd</sup> July, 2010. However, according to Bhagria, the ex-mill prices declined subsequently in a period of a two or three days which suggest that the cartelization was not working.

3.32 DG has also noted from NCDEX website that the spot prices of S-30 grade of sugar in Kolhapur and Vashi also revealed a spurt in prices between 23<sup>rd</sup> July and 28<sup>th</sup> of July 2010.

3.33 According to DG, the state federations/ associations and the private mills in the state of Maharashtra and Karnataka had already taken a decision to implement a minimum floor price of Rs.2500/- per Quintal from 24<sup>th</sup> June, 2010. DG has brought out that ex-mill prices, in accordance with the agreement, had jumped from 24<sup>th</sup> June 2010 to 25<sup>th</sup> Jun 2010 in the states of Maharashtra and Karnataka as under:

In Rs. per Qtl.				
States	Grade	Min. & Max. price	Min. & Max. price on	Change
		on 24 <sup>th</sup> June	25 <sup>th</sup> June	
Maharashtra	S-30	2400-	2515-	+115-
		2430	2545	+115
Karnataka	S-30	2360-	2500-	+140-
		2380	2520	+140



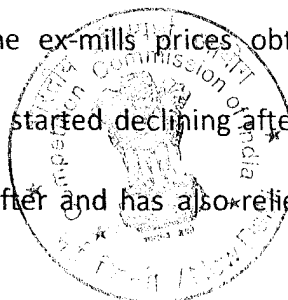
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3.34 DG has noted that the minimum level of Rs.2500 was maintained in Maharashtra from 25<sup>th</sup> June 2010 till 21<sup>st</sup> July 2010, except for only one day i.e.7<sup>th</sup> July, 2010, when the minimum price was Rs.2485. In Karnataka, the minimum level of Rs.2500 was maintained from 25<sup>th</sup> June 2010 till 9<sup>th</sup> July, 2010. Shri Prakash Naiknavare, M.D. of the Maharashtra Sakhar Sangh has been quoted in the 'Hindu Business Line' dated 23.07.2010, stating that mills in the states of Maharashtra and Karnataka had decided in June 2010 to set the floor price for S-30 sugar at Rs.2500 for 100 Kg. till July 15 to limit losses. Thus, according to DG, the agreement reached between the mills of Maharashtra and Karnataka was successful, though for different periods in the respective states.

3.35 DG has observed that the concerted decision not to sell sugar below the minimum fixed price was put into effect which has certainly prejudiced the interests of the consumers at large and has caused injury to them. Such a decision has caused appreciable adverse effect on competition and the same contravenes the provisions of sub-section 3 (a) & (b) of Section-3 read with section 3(1) of the Competition Act 2002.

3.36 DG has also submitted that even if it is assumed that the ex-mill realization had fallen below the cost of production even then the concerted action to fix the prices is in violation of the above stated provisions the Act.

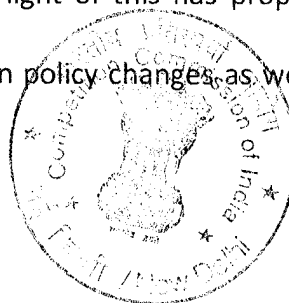
3.37 According to DG, the arrangement to fix and maintain the minimum floor price from 23<sup>rd</sup> July 2010 till 31<sup>st</sup> August 2010 could not be carried forward for long and continued only for a day or two as prices of sugar started declining in the subsequent days. In support of this, DG has relied upon the ex-mills prices obtained from Directorate of Sugar which show that the prices had started declining after showing a spurt on 23<sup>rd</sup> of July 2010 and a day or two thereafter and has also relied upon the



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submissions of Bombay Merchants Associations and its President, Ashok Jain, in which it has been stated that the attempted fixation of minimum price could last only for two days since sugar mills found the same as not practicable. In this regard, DG has also relied upon a report in The Economic Times, Mumbai dated 29.07.2010 which has brought out that after making a 'united attempt' to control the downward spiraling sugar prices by 'agreeing not to sell below a floor price', cooperative sugar mills in Maharashtra had split. The newspaper has also brought out that Malegaon SSK, Baramati was the first mill to break the ranks on 27.07.2010 and began selling at lower than agreed prices. Further, the traders had also adopted a 'wait and watch' policy and did not purchase at the rates specified by the factories. Quoting wholesale traders from Mumbai, the newspaper also reported that there were only two days left for sugar mills to finish their open market quota and more than 40% of this quota was still lying unsold with the factories as on 29.07.2011, which made the agreement to maintain a minimum floor price unsustainable for long.

3.39 Along with the violation of provisions of Section 3(3) of the Act, DG has also brought out that the existing structure of regulations by the government lead to interference in the market, as a result of which sugar prices are not a mere function of demand and supply but a result of complex forces at play which distort the market from working in a competitive and free manner. DG in light of this has proposed that the Commission may suitably advise the government on policy changes as well to promote and sustain competition in the market.



#### **Forwarding of Investigation Report**

4. The report of DG was considered by the Commission and a copy of report was forwarded to the parties who had attended the meeting on 22.07.2011 at Mumbai. Since DG had found that Indian Sugar Mills Association and National Co-operative Sugar Mills Federation, did not attend the meeting on 22.07.2010, notices were not issued to them.

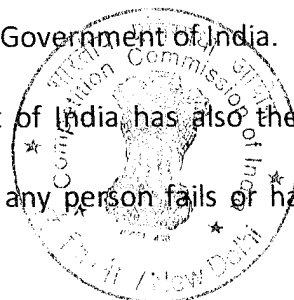
4.1 The replies of the parties were received at various dates. Chief Director, Sugar was also called by the Commission seeking his comments on the report of DG.

4.2 The replies of various parties received by the Commission are summarized in the following paragraphs.

4.2.1 In its reply dated 29.06.2011, South Indian Sugar Mills Association (SISMA), Karnataka has submitted that it is surprised to receive notice from the Commission with regard to the alleged violation of provisions of Section 3(3) (b) of the Act, since sugar & sugarcane have been declared as essential commodities by the Government of India as per the provisions of Essential Commodities Act (EC Act), 1955. The production, supply and distribution of sugar and sugarcane has been clearly controlled and regulated under various Orders issued by the government of India in exercise of its powers conferred on it under section 3 of the EC Act. SISMA has contended that Sugar (Control) order 1966 empowers the Government of India for release of sugar to the open market by issuing release orders in favour of each sugar factories, specifying the dates within which the sugar should be sold in the open market. Further, in situation of failure on the part of sugar factories to comply with such directions, the unsold sugar is treated as levy sugar and the same is sold at a fixed price determined by the Government of India.

4.2.2 SISMA has further stated that the Government of India has also the power of restricting the hoarding or stocking of sugar. In case any person fails or has failed to

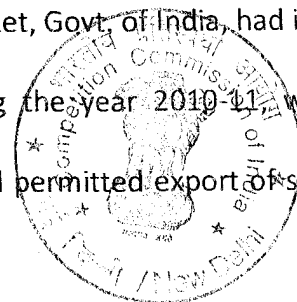
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comply with such orders, such persons or companies are liable for prosecution since an act of hoarding is a clear contravention of the Sugar (Control) Order 1966 attracting the criminal prosecution under Section 7 of the EC Act.

4.2.3 As per the reply filed by SISMA, during the year 2008-09 and 2009-10, there was an increase in the price of sugar in the open market across the country. The government, during 2009-10, in exercise of its powers had imposed restrictions for sale of sugar on weekly basis out of the monthly released quota. Further, it was also ordered that in case of failure on the part of the sugar factories to sell the quota released as per the release orders, the same shall be converted into levy sugar. The orders also indicated that non-compliance of the directions will also attract initiation of criminal prosecution. Under these circumstances, no sugar factory in the country can store the sugar or refuse to release sugar in the open market as and when ordered by the Union of India.

4.2.4 As per the reply filed by SISMA, it is not open for sugar factories in the co-operative sector, private sector and public sector to sell the same in the open market. As of now, 90% of the sugar produced by sugar factories is free sale sugar and the same can be sold in open market as per the release orders of the Government of India. Remaining 10% of the sugar cannot be sold by any sugar factories as the same has been treated as levy sugar. Union of India or its nominees lift the sugar as and when the release orders are issued at a price already determined by the Union of India. In the year 2009-10, in order to bring down the prices of sugar in domestic market, Govt. of India, had imported sugar and released it in the open market and during the year 2010-11 when the production was in excess of the requirement, govt. had permitted export of sugar in a limited quantity.



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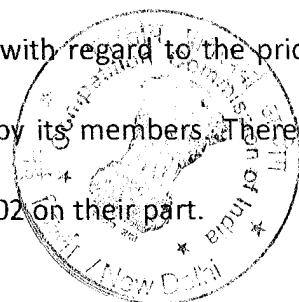
4.2.5 On the basis of the above facts, the SISMA has contended that market forces have no role to play with regard to the production, supply and marketing of the sugar. SISMA has further contended that the sugar is not a commodity, wherein the producers of sugar can make a cartel and make price of the sugar in the open market to rise as it is impermissible and it is also impracticable. Since sugar is not a free sale commodity, the provisions of Competition Act are not applicable.

4.2.6 As per the reply of the SISMA, it is correct that a meeting was held at Mumbai on 22.07.2010 which was convened by Maharashtra Rajya Sakhar Karkhana Sangh Limited. The said meeting was convened during relevant point of time when the sugar prices in the open market had fallen and the sugar factories which had paid higher sugarcane price to the farmers of their respective reserved areas were not in a position to realise the cost of the production of sugar.

4.2.7 SISMA has also submitted that on its behalf the Secretary had attended the aforesaid meeting in which the issue of falling prices of the sugar was also discussed since the sugar mills were not in a position to meet out the cost of production. In the meeting, several other issues were also discussed like the fact that sugar factories were suffering because they could not meet the payment of sugarcane prices to the farmers who had supplied sugarcane during 2009-10 sugar season.

4.2.8 In its reply, SISMA has further submitted that notwithstanding the deliberations with regard to the selling of sugar at a particular price, the same was neither recorded nor was it communicated to any of the sugar factories in the state of Karnataka. Further, neither SISMA nor its members have deliberated the issue with regard to the price of sugar in the open market or any other steps to be taken by its members. Therefore, there is no violation of the provisions of Competition Act, 2002 on their part.

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4.2.9 SISMA has further submitted that the rise or fall of price of the sugar in the domestic market depends upon the supply and demand. For example, during the sugar season 2008-09 and 2009-10 there was shortfall of sugar production for the domestic consumption, thereby, there was rise in the sugar prices in the domestic market. The same cannot be attributed to sugar factories, their federations and associations.

4.2.10 As per the reply of SISMA, sugar industry is not a free industry and completely regulated by the Government of India in exercise of its powers under the provisions of the EC Act and the orders promulgated thereunder. Further, it is also open for the Government of India to confiscate the sugar of any sugar factories and to dump the same in the domestic market. During the sugar season 2009-10 as there was increase in the sugar price in the open market, the government had increased the levy sugar quota from 10% of the production to 20%. As such, the sugar factories were compelled to part with 20% of the sugar produced by them to the government or its nominees who lifted the levy sugar at a price which was fixed one and not subject to market force. The said 20% of the levy sugar was to be distributed through public distribution system to the vulnerable section of the society.

4.2.11 It has also been submitted by SISMA that the main functions, of the South Indian Sugar Mills Association (Karnataka) are of advisory and liaison in nature. It has no role in the sale of sugar by its member factories since each factory has their own arrangements at their own level to do that.

4.2.12 Replies were filed by Karnataka State Federation of Cooperative Sugar Factories Limited together with Shri Doodhganga Krishna Sahkari Sakkare Karkhane Niyamit, Chikodi, Belgaum, Krishna Sahkari Sakkare Karkhane Niyamit, Athani, Belgaum, Shri Someshwara Sahakari Sakkare Karkhane Niyamit, Siddasamudra, Belgaum, Nandi



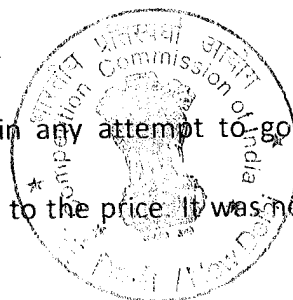


Sahakari Sakkare Karkhane Niyamit, Krishna Nagar, Belgaum, Ryatar Sahakari Sakkare Karkhane Niyamit, Timma pur, Bagalkot. The replies that have been filed are along the same lines as that of SISMA, Karnataka, re-iterating basically the fact that sugar and sugarcane are controlled commodities under EC Act, 1955 and since sugar is controlled and regulated by government, it is not a commodity, wherein the producers of sugar can make a cartel and make price of sugar to rise in the open market to rise.

4.2.13 In replies by Shri Hiranyakeshi Sahakari Sakkare Karkhane Niyamit, Sankeswara, Belgaum (hereinafter referred to as "HSSK") also, the assertions of SISMA have been repeated that sugar is not a free sale commodity and its production, supply and distribution is governed by the Act and various control orders issued by the government time to time.

4.2.14 It has been pointed out that regulatory stranglehold of government over sugar industry makes it extremely difficult for anybody to circumvent the same. The sugar industry is controlled by various Acts, Rules and Orders like EC Act, 1955, Sugar Control Order, 1966 , Sugarcane Control order , 1966, Levy Sugar Supply Control order, 1979, Levy Sugar Price Equalisation Fund Act, 1976, Sugar Development Fund Act, 1982, Sugar Cess Act, 1982, Sugar (Regulation of Production) Act, 1961, Sugar (Packing and Marking) Order, 1970, Molasses Control Order, 1961 and Prevention of Food Adulteration Act,1976. It has also been contended that within these Acts, Rules and Orders, sugar price is not free to be determined by the market forces of demand and supply, which is the basic economic principle governing any market where free competition prevails. Thus, the Commission lacks jurisdiction over the case.

4.2.15 According to HSSK, it was never involved in any attempt to go beyond the mechanism established by the authorities pertaining to the price. It was never involved

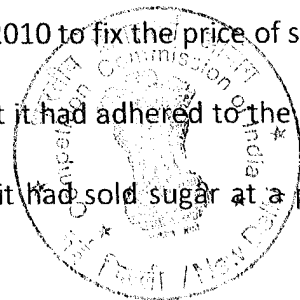


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in any manner in alleged efforts to fix the minimum ex-mill floor price of sugar during the last week of July 2010. Although Chairman of HSSK was present in the meeting held on 22.07.2010 at Mumbai, he had no role in any discussions or deliberations that took place in the said meeting regarding any effort to boost the ex-factory price of sugar by 4-6% in order to prevent open market sugar prices falling below the cost of production. Further, it has also been denied that it was a party to any press release for fixation of ex-mill prices for the states of Maharashtra, Karnataka, Tamil Nadu, Andhra Pradesh and Gujarat for the period of July 23, 2010 to August 31, 2010.

4.2.16 It has also been submitted that the meeting held at Mumbai on 22.07.2010 was an informal gathering of fellow sugar producers to discuss several aspects of the sugar industry apart from stabilization of sugar prices, which had fallen below the average cost of production of sugar. HSSK has denied the allegation of any violation of the provisions of Section 3 by it and has submitted that it had never agreed not to sell small grade sugar at a price below 2700 for 100 Kg from 22.07.2010 till 31.08.2010. It was never a party to the alleged fixation of price of sugar at Rs.2500 since June 24, 2010 and was also not part of any alleged core committee to work out the minimum floor price of sugar.

4.2.17 It has been submitted that DG has relied upon press reports which may not be reliable as sometimes press reports are based upon rumours only and reliance cannot be placed on them. HSSK has also submitted that it was never part of the purported alleged agreement reached in the meeting held on 22.07.2010 to fix the price of sugar at around Rs.2700 per quintal. It has also been disputed that it had adhered to the alleged purported fixed price of Rs.2700 on July 22, 2010 since it had sold sugar at a price of



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Rs.2513.71 on July 23, 2010, Rs.2525. 63 on July 24, 2010, Rs.2511.26 on July 26, 2010 and Rs. 2560.15 on July 27, 2010.

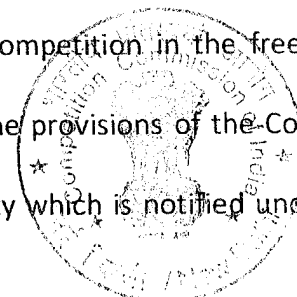
4.2.18 HSKK has also submitted that a daily analysis of the sugar sold during the period of July 19, 2010 till July 30,2010 would show that it had never adhered to the purported ex-mill price fixed in the meeting held on 22.07.2010 and had sold sugar at a rate consistent with the earlier price at which it had sold sugar.

4.2.19 Summing up the remarks on the findings of DG , HSSK has submitted that it has not contravened any of the provisions of the Competition Act and it was not part of any cartel that was purportedly and allegedly formed by way of the meeting held in Mumbai on 22.07.2010. It has also been submitted that the oral submissions made by Maharashtra Rajya Sahkari Sakhar Sangh Limited and South Indian Sugar Mills Association, Tamil Nadu may be taken and adopted as its submissions as well.

4.2.20 On 08.08.2011, M/s South Mills Association, Tamil Nadu (hereinafter referred to as "SISMA-TN") filed its reply/objections to the DG. SISMA-TN in its reply has also objected on the issue of jurisdiction of the Commission and submitted that the suo-motu action taken by Commission, for the alleged violation of the Act, is without jurisdiction in as much as the commodity in question, namely sugar, is an essential commodity governed by the provisions of the EC, 1955 Act and the Sugar Control Order, 1966, and thus, falls outside the purview of the Competition Act, 2002.

4.2.21 It has been submitted by SISMA-TN that the EC Act is a Special Act governing certain essential commodities covered therein, whereas the Competition Act, 2002 is a general enactment for the purpose of ensuring fair competition in the free trade of commodities, which are not covered by the EC Act. The provisions of the Competition Act, 2002 cannot be invoked in respect of a commodity which is notified under the EC

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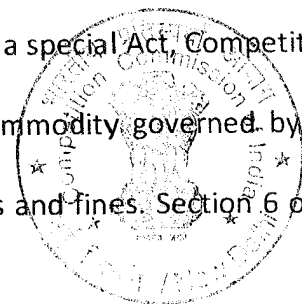


Act, in as much as an essential commodity is severely controlled and regulated and there is no freedom in the manufacture, distribution or the pricing of such commodities.

The word competition is alien and antithetical to a commodity governed by the Essential Commodities Act.

4.2.22 It has been contended by SISMA-TN that the social and economic objects of both the Acts are completely different. The object of the EC Act is to exercise complete or partial control over the production, supply and distribution of or trade and commerce in a commodity which is notified as an essential commodity, whereas the object of the Competition Act is to ensure free and fair competition in the market in respect of those goods and commodities which are primarily free trade commodities and do not come within the purview of any regulatory measures and ensure that the market forces determine the price. In view of these, the commodities which fall under the Essential Commodities Act, by their very nature, fall outside the domain of Competition Act. Since the essential commodities are severally controlled and regulated, the concept of free trade and market forces do not apply to such commodities and are indeed alien to them. The provisions of the Competition Act cannot be made applicable to the sugar industry which operates under the stringent control of the government right from its production to ultimate supply in the market.

4.2.23 According to SISMA-TN, various controls and measures have been enacted under EC Act in public interest which is in conflict with the idea of competition. EC Act, 1955 has been included in the IXth schedule of the constitution as Item No.126 by the constitution (40<sup>th</sup> amendment) Act, 1976. While EC Act is a special Act, Competition Act, 2002 is general in nature and is not applicable to a commodity governed by EC Act, which is a complete code having provisions for penalties and fines. Section 6 of EC Act

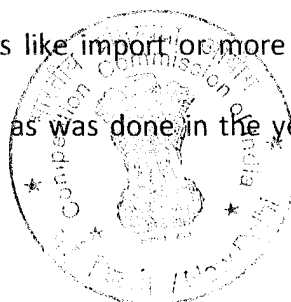


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expressly provides that any order under Section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the EC Act or any instrument having effect by virtue of any enactment other than EC Act.

4.2.24 It has been submitted that before the Competition Law is made applicable to an industry/a commodity, creation of a competitive business environment is an essential pre-requisite. EC Act and orders made there under eliminate every scope for competition in the market. In the absence of liberal and free trade policy, applicable to sugar trade, the Competition Law cannot be made applicable to the same. Even report of High Level Committee (Raghavan Committee) has suggested that it is necessary to do away with dual pricing and price controls leading to distortions in the market as pre-requisites for a competition policy. In this regard, restrictions on sugarcane prices, dual pricing of sugar, restraints of exports and imports having prevented the sugar industry from being competitive have been cited as some of the examples as to how government barriers, controls and regulations come in way of evolution of a competitive environment.

4.2.25 SISMA, TN has further contended that the Competition Act is based on the doctrine of laissez-faire which presupposes no regulations or governmental interference in commercial affairs. Price is to be determined based upon demand and supply etc. These concepts play little role in fixation of price in case of essential commodities governed by the Essential Commodities Act, 1955. As and when there is prediction of less supply and more demand, in case of essential commodities like Sugar, govt. appointed agencies step in to take action. Measures like import or more quantity of sugar under levy are taken in order to control prices as was done in the year 2009-10 when the levy sugar was doubled from 10% to 20%.

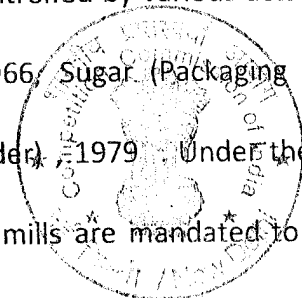


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4.2.26 According to SISMA-TN, far from encouraging competition, the object behind the enactment of Essential Commodities Act is to serve a certain social objective. The government, thus, procures levy sugar at below cost of production from the sugar mills and distributes the same to the people at a subsidised rate through PDS. Although no price is fixed for free market sugar, the price of the non-levy sugar is controlled through Release Order Mechanism. Govt. also tends to make additional releases or supplementary releases to depress market prices. There is absolutely no freedom with respect to the time and the quantity of sale of the non-levy sugar. The sugar mill has to store the non-levy sugar in the warehouse of its factory and as and when the release orders are issued by the government, the sugar mills have to release the Sugar into the market within the time stipulated under the Release Orders. If the quantity of sugar mentioned in the release orders (which may be monthly, fortnightly or weekly), is not released within the time stipulated therein, that part of the Sugar which is not released is liable for forfeiture or the government acquires the same as Levy sugar.

4.2.27 It has further been contended that while in case of sugar its production, distribution, supply and price of Sugar is controlled as well as regulated by the government under EC Act, the sugarcane, the raw material is also an essential commodity purchased at a price determined by the government. Over and above, the Fair and Remunerative Price fixed by the Central Government for the purchase of sugarcane, State Government also fixes State Advised Price (SAP) .

4.2.28 It has also been stated that sugar is regulated and controlled by various acts like Sugar (Control) order 1966, Sugarcane (Control) order 1966, Sugar (Packaging and Marketing ) order, 1970 and Levy Sugar Supply Control (Order), 1979 . Under the EC Act, 1955 read with Sugarcane (Control) order 1966, sugar mills are mandated to pay

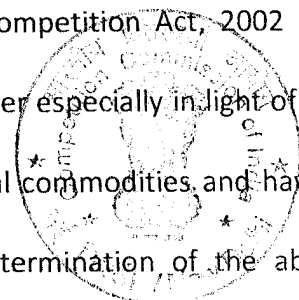


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sugarcane price within 14 days. Thus, it is not practicable for sugar mills to refrain from sugar sales to influence market prices except at the peril of default in cane payment with attendant legal consequences.

4.2.29 It has also been contended that in 2009-10, government took many additional measures to effectively check market forces and rein-in sugar prices. Import duty on raw sugar was reduced from 60% to zero% from 17.04.2009 till 30.06.2011. Import duty on white sugar was also reduced from 60% to zero%, initially for government agencies and later for all. Levy obligation was exempted for raw or white sugar imports as opposed to levy obligation on domestic producers. There were other measures which were also taken like introduction of weekly quota in April 2009, re-imposition of release orders for sugar exports from Jan-Feb 2009, weekly reporting and even daily reporting to sugar directorate, putting bulk consumers under the stock holding norms for the first time since 12.09.2009, removal of VAT on imported sugar while keeping the same on domestic producers, ban on sugar futures in May 2009 which extended upto Sept. 2010. According to SISIMA/TN, under such extensive and excruciating control, there can never be a free play of market forces and promotion of competition in sugar industry. The report of DG also brings out in detail the conditions of sugar industry and corrective measures required on part of government to rectify the situation.

4.2.30 It has been submitted that there are two important questions which would require determination by the Commission, namely, whether a commodity which is governed by EC Act, 1955 falls within the ambit of the Competition Act, 2002 and whether the latter would override the provisions of the former especially in light of the fact that EC Act is a special Act governing only the essential commodities and have a non-obstante clause 6. SISMA has requested that for determination of the above



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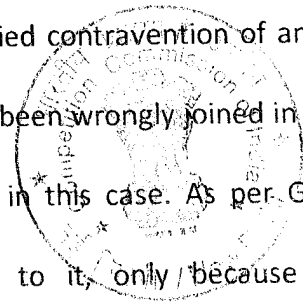


questions, Union of India, being a necessary and proper party to the proceedings must be heard through Secretary, Ministry of Consumer Affairs, Food and Public Distribution and also be impleaded under Section 24 of the Competition Commission of India (General) Regulations, 2009.

4.2.31 As regards the fixation of minimum floor price of sugar and the mail circulated by the Secretary of SISMA-TN, requesting the member mills to adhere to the arrangements arrived at the meeting held on 22.07.2010, it has been stated that it was neither authorized nor approved by SISMA-TN. Further, the mail was neither binding on mills nor was even adhered to by the mill owners. Within the control over release by the government, it was also impossible for the member mills to observe adherence to such directions.

4.2.32 According to SISMA-TN, cartelisation and anti-competitive agreements, presuppose the presence of limited suppliers. However, in case of sugar industry, there are 46 sugar mills in Tamil Nadu itself, fragmented between Public, Private and Cooperative sectors. It was not easy in such a situation to enter into an anti-competitive agreement or cartelise. The meeting held on 22.07.2010 is to be seen in the backdrop of huge cash losses of mills and to discuss the problems being faced by the industry. Even if letter was circulated by SISMA-TN (although not admitted), the said circular cannot be construed as an anti-competitive agreement within the meaning of Section 3 of the Act.

4.2.33 M/s Gujarat State Federation of Cooperative Sugar Factories Ltd, Gandhi Nagar (hereinafter referred to as "GSFC") in its reply has denied contravention of any of the provision of the Act by it and has contended that it has been wrongly joined in this suo-motu case as it is not a necessary and proper party in this case. As per GSFC, the provisions of Sec.3 (3)(b) of the Act don't apply to it, only because its two

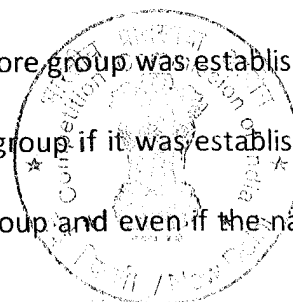


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representatives had attended the meeting on 22.07.2010. The federation has never entered into any agreement in pursuance to meeting dated 22.07.2010 held at Mumbai. It has been submitted by GSFC that report of DG also does not establish any agreement entered into by it with any association or enterprises.

4.2.34 It has been further submitted by GSFC that the meeting conveyed by MRSSK on 22.07.2010 was an informal meeting and was a group discussion about sugar industry for brainstorming. It is in this context that its in-charge Managing Director and Vice President had remained present in the meeting. As per GSFC, its officers did not remain present during the entire meeting and till the presence of its representatives, neither any discussion to enter into any agreement was taken nor was any decision taken in this regard. It has also been submitted that it didn't know about any decision taken in the said meeting. It had not given any oral or written consent to the opinion of any participants in respect to sugar prices.

4.2.35 It has been contended by GSFC that entire sugar industry in Gujarat is run on co-operative basis. All the farmers involved in cultivation of sugarcane are the members of respective sugar factory and the officials of such sugar factory are being elected in democratic manner. As per the prevailing bye-laws of the federation, two representatives of such Board of relevant sugar factory are the members of the Federation Board. The Federation is constituted by Chairman, Vice Chairman and other members which are always amongst the representatives of farmers. It has been denied by GSFC that in the meeting dated 22.07.2010, state-wise core group was established. It has submitted that it is not responsible for any such core group if it was established at all. No official of federation is the member of such core group and even if the name of



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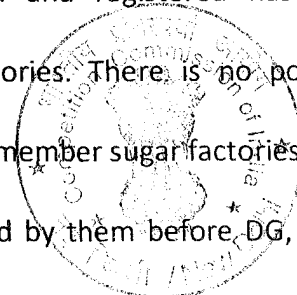
its officials appears in the list of core group members, no consent has been taken from it.

4.2.36 It has been further stated by GSFC that it has not played any role in publishing news items or press release regarding fixation of prices and the publications of news-items seem to be misquoted and misinterpreted.

4.2.37 As per GSFC, even the agenda in the notice of the meeting dated 22.07.2010 was to arrest the sliding sugar prices below the cost of production and it has never agreed on any price fixation. It has been further submitted by GSFC that it is a registered society duly registered under the Bombay Co-operative Societies Act and the entire control and supervision is within the purview of Co-op. registrar/Director of sugar, appointed by the State Govt.

4.2.38 GSFC has further stated that its main and prime object is to carry out liaison work with the government, to research, to improve the methods of cultivation, to impart training and seminars, to provide training and assistance. It is the member of National Federation of Co-operative Sugar Factories Ltd., New Delhi and if any question pertaining to national level arises, it makes use of National Federation for representation before concerned Ministry to resolve such problems and difficulties faced by its member sugar factories. On the basis of the above facts, it has been contended by GSFC that it has no need or requirement to being a part of any informal body for such problems. Federation since established and registered has never interfered in sale of sugar by our member sugar factories. There is no policy of federation to interfere with the day-to-day business of its member sugar factories.

4.2.39 It has also been stated that replies were also filed by them before DG, on the above lines, which have not been considered in the investigation report.



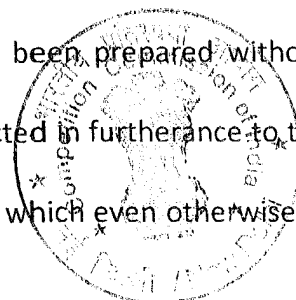
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4.2.40 The federation has further brought out that in a span of two hours when its representatives attended the meeting, some of the members had only expressed their opinion in respect of the suspected reasons for the sliding sugar prices. There was no definite decision or consensus arrived at or communicated to the federation or its members. The Federation does not have any control over its member cooperatives in the matter of sugar pricing. The said issue has always been left to the sole discretion of the member co-operatives who have been selling sugar at prices deemed fit by them. The same is true for the period pre and post 22<sup>nd</sup> July 2010.

4.2.41 It has also been replied that the findings of DG that a decision was taken to fix the minimum floor price for the states of Maharashtra, Karnataka, Tamil Nadu, Andhra Pradesh and Gujarat for the period 23.07.2010 and 31.08.2010, is contrary to the letter dated 09.08.2010 of Directorate of Sugar which mentions that the sugar prices had firmed up only in the states of Maharashtra, Karnataka, Tamil Nadu and Andhra Pradesh. Gujarat has been consciously been omitted since GSFC had not given any benchmark for sale of sugar by its member co-operatives and the member sugar co-operatives had sold sugar at their sole discretion and had not taken any guidance from GSFC.

4.2.42 It has also been brought out by GSFC that there is no connection between the purported Minimum Floor Price (Benchmark) and the prices at which the member co-operatives within Gujarat had sold sugar during the period under investigation.

4.2.43 According to GSFC, while the investigation report has been prepared without considering its replies, the Commission also should not have acted in furtherance to the newspaper report while directing DG to conduct investigation, which even otherwise as



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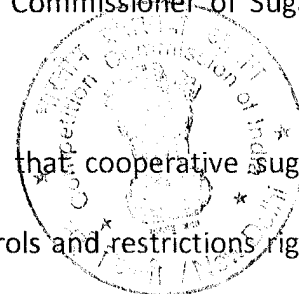
per the records is an unauthenticated news report as its origin could not be investigated by the DG.

4.2.44 GSFC has contended that based on the letter dated 09.08.2010 of Directorate of Sugar furnished to DG and details of sales prices (ex-mills) realizations gathered from the member sugar factories it is clear that there was no cartelization in respect of fixation of prices in so far as GSFC and /or its member sugar co-operatives are concerned.

4.2.45 In its reply, The Khedut Sahakri Khand Udyog Mandli Limited, Pandval, Bahruch, Gujarat, submitted that since it had not attended the meeting held on 22.07.2010 at Mumbai, it was not submitting any comments/objections on the matter.

4.2.46 In its reply, Maharashtra- Rajya Sahakari Sakhar Karkhana Sangh Ltd. (MRSSKSL) has submitted that established and registered under the Bombay Co-operative Societies Act, 1925 and deemed to be registered under the Maharashtra Cooperative Societies Act, 1960, it is an Apex Cooperative Society of all cooperative sugar factories in the State of Maharashtra. It has 168 members and it represents their interests before government. In Maharashtra, sugar industry as a whole is run mostly by co-operative sugar factories which are established for the benefit of its farmer members. The members of the cooperative sugar factories are ultimately the owners through their share holding in the sugar factories. Since the State Government has invested heavily in the capital at the time of formation of the cooperative sugar factories, all cooperative sugar factories are under the supervision and control of the Commissioner of Sugar appointed by the State Govt.

4.2.47 Like other sugar mills, MRSSKSL has also contended that cooperative sugar industry and sugar as a commodity is subject to a lot of controls and restrictions right

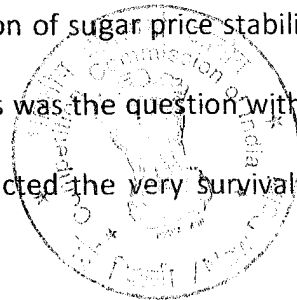


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from the Statutory Minimum Price to be paid to the farmers to the quantity of sugar sold in the open market. Therefore, it is impossible for the cooperative sugar industry to predict the sales realization price compared to its actual production cost which includes the cane price paid to the farmers/members, the processing cost of production of sugar, administrative and other expenses involved which contribute in arriving at the production cost of sugar.

4.2.48 It has further been submitted that since the federation is established by the cooperative sugar mills which are run by sugarcane grower-farmers, who are their shareholders and members, none of their steps, discussions, decisions or actions should be construed as violation of any of the provisions of the Competition Act.

4.2.49 In its reply, MRSSKSL has submitted that the present proceedings are entirely based on a meeting held on 22.07.2010 convened by it. There was nothing secret about this meeting and this was an open meeting, which the members of the press could also attend. The invitation was sent to some of its members, Gujarat and Karnataka Federations, South India Sugar Mills Association to discuss and share views for preventing cash losses, financial crises and maintain a good balance sheet. Such a discussion is not contrary to any of the provisions of the Competition Act. On this subject, various sugar mills and associations had earlier given representations to the government and various govt. organisations. What was discussed at the meeting was exactly what was mentioned in the invitation. The question of sugar price stabilization, among others was also discussed at the said meeting. This was the question with which the sugar industry was vitally concerned and which affected the very survival of the sugar industry.

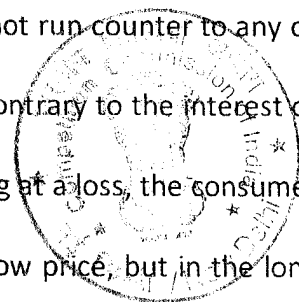


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4.2.50 It has been replied by MRSSKSL that the sugar industry in the country is not a free competitive industry. The free competition in the sugar industry is severely curtailed by the government itself by virtue of quotas of levy sugar which are fixed for each month, the compulsion on the manufacturers to sell the free sugar during the particular month itself and if the free sale quota is to be carried forward to the next month, extension permission to be taken from the Chief Director of Sugar, New Delhi as required.

4.2.51 It has also been replied by the society that the import policy of the government too has a severe impact on the nature of competition within the country. There are government restrictions on the quantities of exports of sugar as well which affect competition within the country. Sugarcane which is the main raw material for sugar and which constitutes the bulk of the manufacturing costs is also subject to various controls under the Essential Commodities Act. Sugar mills have to file monthly reports to the government as regards the free sugar sales such as the details of the tenders received, the quantity of sugar sold and the rate at which sugar has been sold. The Statutory Minimum Price (SMP) and/or Fair Remunerative Price (FRP) is fixed by the government for the sugarcane price to be paid to the farmers. This forms an important part of the production cost.

4.2.52 According to MRSSKSL, if in a meeting, during the course of discussions, views are expressed to the effect that it is not desirable to sell sugar at a price below the manufacturing cost i.e. it is not desirable to sell at a loss, nobody can be faulted for the expression of such a view. The expression of such a view does not run counter to any of the provisions of the Competition Act. Such a view is also not contrary to the interest of the consumer. The reason is that if manufactures keep on selling at a loss, the consumer may benefit only in the short run by getting the product at a low price, but in the long

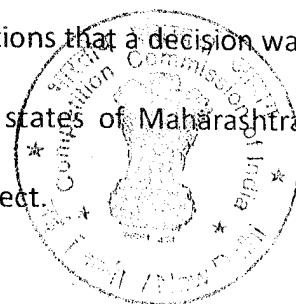


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run, the effect would be exactly the opposite by virtue of closure of units. If mills sell below the cost of production, it also adversely affects the lenders, banks and financial institutions.

4.2.53 It has been further replied by MRSSKSL that the meeting on the subject that had taken place was vital since it was affecting the mills. Even assuming only for the sake of argument that every participant in the discussion expressed a view that it was not desirable to continue selling sugar at prices below the manufacturing cost, such a consensus cannot be said to be an agreement which was likely to cause an appreciable adverse effect on competition within India. The definition of "agreement" includes any arrangement, understanding or action whether it is formal or in writing. The expression of such views does not amount to any arrangement, understanding or action.

4.2.54 According to MRSSKSL, the meeting was attended by the representative of 17 sugar mills out of a total of 168 sugar mills in Maharashtra. These 168 sugar mills are competing with each other in the matter of procurement of sugar cane as well as the sale of sugar. The representatives of 17 sugar mills who were present had no control to give any directions to or to enforce any directions on the remaining 150 sugar mills in Maharashtra on the issue of fixation of price. The society has no authority to give any such directions to the various 168 sugar mills in Maharashtra and it also has no authority to give any such directions to Gujarat State Federation Limited, Karnataka State Federation Limited and SISMA, Bangalore. The said Federations also have no power to give any such directions to their members. Therefore, the allegations that a decision was taken in the meeting to fix the minimum floor price for the states of Maharashtra, Karnataka, Andhra Pradesh, Tamil Nadu and Gujarat are not correct.



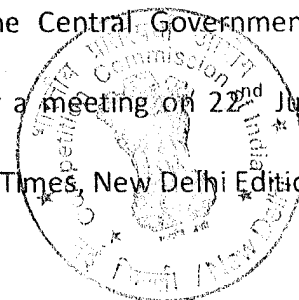
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4.2.55 It has further been replied that even if it is assumed only for the sake of an argument that the representative of the 17 sugar mills in Maharashtra came to an understanding at the meeting that they would not sell below the manufacturing cost and that the manufacturing cost was Rs. 2700/- per quintal, any such understating would not attract the provisions of the Competition Act since if only 17 mills decided to fix a minimum price of Rs. 2700/- per quintal for the period of 23<sup>rd</sup> July, 2010 to 31<sup>st</sup> August, 2010, such an understanding would not cause an appreciable adverse effect on competition (AAEC) in India.

4.2.56 It has also been submitted that no decision was taken in the meeting as regards fixation of minimum prices, no resolutions were passed, no minutes were recorded and no communications were addressed by the society to anybody in respect of discussions at the meeting. The participants were left to take their own decisions. On the alleged press note allegedly issued by the society, it has been stated that no such press note had been issued by it. There is nothing on record to show that such a press note was ever issued by it. A mere report in the newspaper has no evidentiary value and no material evidence has been collected by DG to establish that the press release was indeed issued by it.

4.2.57 It has further been contended by MRSSKSL that it was quite unlikely that the decision to fix minimum price of Rs. 2700/- per quintal on 22<sup>nd</sup> of July 2010 could have been implemented on 23<sup>rd</sup> of July 2010, in the face of the fact that sugar is sold through a mechanism of tender against monthly quota fixed by the Central Government. Moreover, if a press release was intended to be issued after a meeting on 22<sup>nd</sup> July 2010, it is not quite clear as to why it was sent to the Economic Times, New Delhi Edition



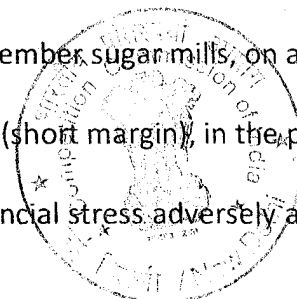
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dated 26<sup>th</sup> July 2010, instead of sending the same to some local newspapers on 23<sup>rd</sup> July 2010. This raises doubt over the whole fact that the press release emanated from it.

4.2.58 According to MRSSKSL, in light of the fact that the government controls both levy and non-levy sugar besides exercising controls in various other ways, sugar mills could have played a little role in controlling sugar prices.

4.2.59 According to the society, the sugarcane cost accounts for 65-70% of the cost of production of sugar. During the season 2009-10, there was a substantial increase in cost of production, due to higher cane prices payable/ paid by the sugar factories. During September 2009 to March 2010, the sugar prices were higher, because of shortage of sugarcane, resulting in sugar production of only 145 lakh tonnes in the sugar season 2008-09 and also due to estimate of a low production in 2009-10 which also was 189 lakh tonnes. This was against domestic demand of around 220-225 lakh tonnes each year.

4.2.60 It has further been brought out by the society that it was because of this mismatch of demand and supply that sugar prices shot up. However, the prices came down sharply during the later months as a result of various steps taken by the Central Government. In Maharashtra ex-mill realization price from the month April 2010 was Rs. 2668/- per quintal which has resulted in cash loss of Rs. 16.28 crore when the average cost of production was Rs. 2700/- per quintal. Similarly, in the month of May 2010 cash loss of Rs 18.18 crore was accrued and it escalated to Rs. 123.31 crore in the month on June 2010, whereas cash loss for July 2010 came around to Rs. 64.62 crore. Such heavy financial losses on continuous basis were being faced by member sugar mills, on account of which there was huge deficit in the value of sugar stock (short margin), in the pledged account of sugar mills with the banks. This precarious financial stress adversely affected



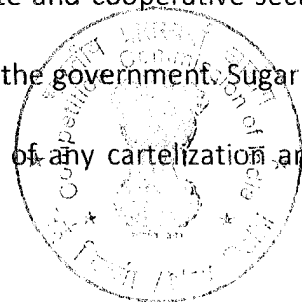
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the release of sugarcane payments to sugar cane growers leading to growing unrest amongst the farmers.

4.2.61 According to MRSSKSL, the adverse situation had the possibility of farmers shifting from sugarcane to some other crops, leading to further financial problems for the mills. There was a grave concern due to the growing suicide by the farmers. In such difficult circumstances, the meeting was convened for having a discussion on all the issues concerning sugar industry on 22.07.2010. To draw the attention of government, a letter was also written on 08.07.2010 to Union Minister for Agriculture, Food and Civil Supplies bringing out various issues plaguing the sugar industry.

4.2.62 Contradicting the statement of Chief Director, Sugar before the DG, it has been submitted by the society that it was wrong to state that the ex-mills prices which were ruling at Rs.2580 per quintal on 21<sup>st</sup> July 2010, jumped to Rs. 2700 on 22<sup>nd</sup> July 2010. There was no single day in the month of July 2010, on which the prices ruled at Rs.2700 per quintal. The statement of Satish Kansal relied upon by DG nowhere suggests that minutes of the meeting dated 22.07.2010 were drawn and that a core group was in fact formed, even when discussions had taken place on various issues pertaining to the sugar industry

4.2.63 The society has pointed out that it is pertinent that Director General, Indian Sugar Mills Association, Abinash Verma, had categorically submitted before DG that sugar industry consisting of about 600 mills in public, private and cooperative sector is highly fragmented and is in a scenario of various controls of the government. Sugar mills are price takers and not price determiners, with no scope of any cartelization among them with regard to the sugar price.



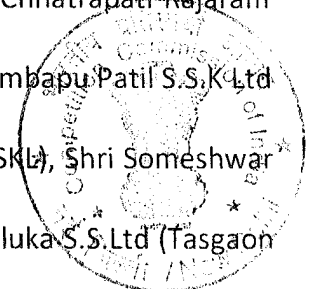
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4.2.64 According to MRSSKSL, the statement of Mr. K.N.Rathinavelly, Secretary, SISMA, Tamil Nadu recorded by DG, makes it clear that although an e-mail was written by him regarding need for maintenance of minimum floor price from 23.07.2010 till 31.08.2010, it was not pursued by him. This shows that there was neither acceptance of such communication nor there was any agreement in respect of the minimum floor price.

4.2.65 Further, it has been disputed by MRSSKSL that Shri Prakash Naiknavare, its MD had ever stated before DG that since 24<sup>th</sup> June 2010, Karnataka and Maharashtra could maintain floor price of Rs.2500/- per quintal as alleged in the investigation report.

4.2.66 It has also been contended that assuming that a decision was taken to fix minimum floor price in the meeting held on 22.07.2010 as alleged, it was never acted upon. In the context that an open meeting was convened and held in which nothing clandestine was discussed, it must be taken as a bonafide act. The alleged decision was taken not to increase profits for the mills, but in a situation when the mills were selling at prices lower than the manufacturing cost and their very survival was at stake. The decision taken at a meeting on 22.07.2010 must be seen keeping in view all these facts in the backdrop.

4.2.67 In their replies, Bhaurao Chavan Sahakari Sakhar Karkhana Ltd (Bhaurao Chavan SSKL), Shrigonda Sahakari Sakhar Karkhana Ltd (Shrigonda SSKL), Sanjivani Sahakari Sakhar Karkhana Ltd (Sanjivani Takli SSKL), Dutta Shethari Sahakari Sakhar Karkhana Ltd.(Shree Dutta SSSKL), Hutatma Kisar Ahir Sahakari Sakhar Karkhana Ltd (Hutatma Kisar Ahir SSKL), Chhatrapati Rajaram Sahakari Karkhana Ltd.(Shri Chhatrapati Rajaram SSKL), Natural Sugar and Allied Industries Ltd (Natural SAIL) , Rajarambapu Patil S.S.K Ltd (Rajarambapu Patil SSKL), Kumbhi Kasari S.S.KLtd (Kumbhi Kasari SSKL), Shri Someshwar Sahakari Sakhar Karkhana Ltd(Shree Someshwar SSKL), Tasgaon Taluka S.S.Ltd (Tasgaon



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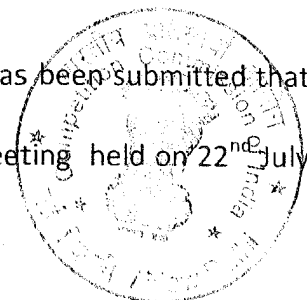
SSKL- now Shri Ganapati Zilha Krishi Audhyogik S.S.S. Society Limited), Sahyadri Sahakari Sakhar Karkhana Ltd. (Sahyadri SSKL) and Vasantdada Sugar Institute (VSI), have reiterated the contentions of MRSSKSL.

4.2.68 S.M. Shankerrao Mohite Patil Sahakari Sakhar Karkhana Ltd, in its replies has submitted that the meeting held on 22<sup>nd</sup> July, 2010 was an informal meeting called at Mumbai by Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Ltd. in order to discuss various issues that were affecting the sugar Industry as a whole. The allegation in the investigation report that a decision was arrived at the minimum price at which sugar was to be sold for various states has been denied stating that no such decision was arrived at in the said meeting.

4.2.69 It has been pointed out by the society that for every sugar factory, at the end of each month, the Government of India issues an order of how much non-levy sugar it can sell in the next month. The mills in cooperative sectors sell this non levy sugar by inviting tender bids from sugar merchants. At the time of the tender, all bids received are opened by a Committee of Board of Directors in the presence of representatives of the sugar merchants. The Committee reviews the bids received and depending upon its own perceptions of the prevailing market conditions, accepts such quantity out of the bids received as it deems fit, beginning with the highest bidders. This method of sale of non-levy sugar is being followed consistently, including prior to the meeting held on 22<sup>nd</sup> July, 2010, as also after the said meeting, which goes to show that the society was not a party to any alleged anti-competitive agreement at the said meeting to sell sugar not below the alleged floor price.

4.2.70 With specific reference to the State of Maharashtra, it has been submitted that the investigation report brings out that it was agreed at the meeting held on 22<sup>nd</sup> July

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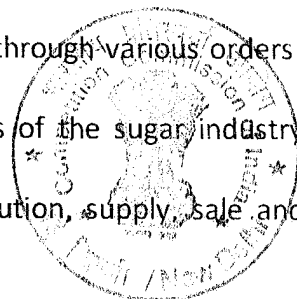


2010 that the minimum price for sale of sugar in the State of Maharashtra would be fixed at Rs. 2700/Qtl (S grade) and Rs 2750/Qtl (M grade). It was further alleged therein that the participants in the said meeting from the State of Maharashtra agreed not to sell sugar below the said minimum price fixed therein. However, this allegation is belied by the fact that even after the date of the said meeting, it continued to invite tenders from sugar merchants for prices at which they were willing to purchase sugar and sugar was sold to them on the basis of the highest bids received.

4.2.71 Based upon the above, it has been submitted that it is evident that the society did not indulge in any of the anti-competitive activities alleged to have been agreed upon in the said meeting held on 22<sup>nd</sup> July, 2010 or in any other anti-competitive activity. It had accepted the prices of non-levy sugar as were offered by sugar merchants in the prevailing market conditions. The rise and fall in prices of non-levy sugar in the markets were due to a variety of reasons, including but not limited to news of various factors which could change perceptions of the participants in the market.

4.2.72 On the lines of other respondents, S.M. Shankerrao Mohite Patil Sahakari Sakhar Karkhana Limited has also submitted that the provisions of the Competition Act will not be applicable to the Sugar Industry as such in as much as Sugar and Sugarcane being essential commodities under the Essential Commodities Act of 1955, the Sugar Industry is heavily regulated and controlled by the Government (both Central and State). The object of the Essential Commodities Act is that the products that fall within its ambit and are specified in the Schedule thereto be available at a fair price determined by the government. Thus, the Central and State Governments, through various orders issued under the Essential Commodities Act, control all aspects of the sugar industry, right from availability of sugarcane to the production, distribution, supply, sale and stock

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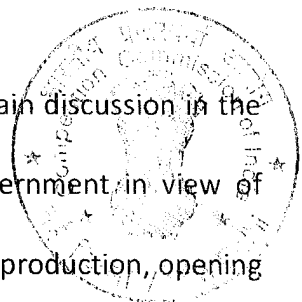
holding of sugar. There can be no competition in such a controlled market, and hence to state that there exists or can exist free competition in the sugar industry is fundamentally fallacious.

4.2.73 It is also to be noted that despite being the later Act, the Competition Act will not have an overriding effect on the Essential Commodities Act as the latter is a special enactment applicable only to the commodities declared essential under it, whereas the former is applicable to all commodities, services, trade, commerce, etc. The Competition Act, though later Act, would not override the Essential Commodities Act in the event of conflict, since the latter is a special statute operating in a limited field. It is settled law that general things do not derogate from special things.

4.2.74 Replies from Samarth Sahakari Sakhar Karkhana Ltd, Jawahar Shetkari Sahakari Sakhar Karkhana Ltd. have been filed along the lines of S.M. Shankerrao Mohite Patil Sahakari Sakhar Karkhana Ltd.

4.2.75 In its replies, Godavari Sugar Mills Limited has reiterated the contention that the Indian sugar Industry is a highly regulated industry whereby there are regulatory measures imposed by the government with regards to sugarcane price, quantity of sugar to be sold in the market, quantity of sugar to be supplied under Public Distribution System at subsidized price, restrictions on import or export of sugar etc. The prices of sugar depend upon the demand for sugar in a particular month and the supply which is regulated by the government by the release order system for the free sale of sugar by the each factory.

4.2.76 Godavari Sugar Mills Limited has also submitted that the main discussion in the meeting dated 22.07.2010 was on the point of approaching government in view of increasing sugar cane price and declining sugar prices below cost of production, opening

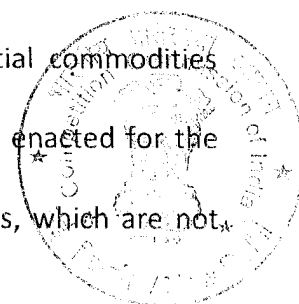


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up of export, un-remunerative levy sugar Price, packaging of sugar, ethanol price as fixed by the government, problems faced by the sugar factories in harvesting & transportation of sugarcane in Maharashtra, Andhra Pradesh, Karnataka and Gujarat. During the meeting, representatives of various sugar factories expressed their views about various problems faced by the sugar industry. This meeting was held essentially to exchange ideas and brainstorm to find out solutions to the problems faced by the Sugar Industry. The views expressed were personal and were not binding on anybody. The meeting being informal in nature, there was no resolution passed or any decision made in the said meeting. Therefore, there was no agreement or intention, either oral or written or express between the parties and that no provision of the Competition Act is violated.

4.2.77 Shri Gurudatt Sugars Ltd. has submitted that they attended the meeting only with a view to get acquainted with the problems faced by the sugar industry and the ways and means under which a redressal could be possible to those problems. Any decisions made by the Maharashtra Rajya Sugar Sangh Ltd. Mumbai were not binding on it nor were they ever acted upon.

4.2.78 As has been stated by other respondents, it has been replied by the company that suo-motu note action taken by the Commission is without jurisdiction in as much as the commodity in question, namely sugar, is an essential commodity governed by the provisions of the Essential Commodities Act, 1955, and the Sugar (Control) Order, 1966 made there under, and thus, falls outside the purview of the Competition Act, 2002. Essential Commodities Act is a special act governing certain essential commodities covered therein, whereas the Competition Act is a general enactment enacted for the purpose of ensuring fair competition in the free trade of commodities, which are not,



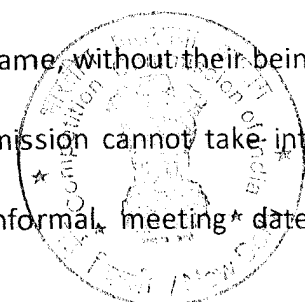
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covered by the Essential Commodities Act. The provisions of the Competition Act cannot be invoked in respect of a commodity which is notified under the Essential Commodities Act, in as much as an essential commodity is severely controlled and regulated and there is no freedom in the manufacture, distribution or the pricing of such commodities.

4.2.79 It has been replied that from the purchase of the raw material to the production and distribution, the sugar is severely controlled by the government. Non-Levy Sugar is also not completely free, and is also controlled. Though no price is fixed by the government for the non-levy sugar, it is also controlled by quarterly/monthly/fortnightly/ weekly release orders by the government. While there is an onerous obligation on the part of Seller (sugar mills) to complete the quota within the month there is no corresponding obligation on buyer to have any time bound purchase of sugar. In view of the time constraints imposed by the release orders, the sugar mills are at the mercy of the traders, who exploit the situation by deferring the purchase of the sugar till the last minutes which results in depressing the price of the sugar. There are a large number of suppliers in the field and therefore it is next to impossible for such a large number of sugar mills to arrive at a common arrangement by forming a cartel and thereby influence the market forces. Therefore, any allegation with regard to its indulgence in anti-competitive activity is not correct.

4.2.80 In its replies, Baramati Agro Limited has submitted that the investigation agency has to appreciate the fact that Mr. Bhalerao who attended the said informal meeting in individual capacity, appears to have prepared his own proceedings of the informal meeting dated 22.07.2010 and appears to have circulated the same, without their being any authority and/or capacity to do so. Therefore, the Commission cannot take into consideration any such self-made proceedings of the informal meeting dated

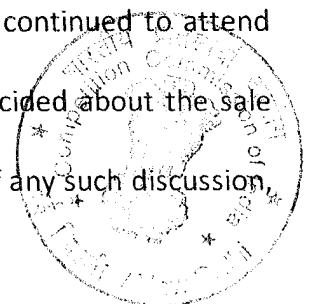


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22.07.2010, while arriving at any conclusions. Further, statement of Mr.Bhalerao, who appears to have attended the said informal meeting in individual capacity, cannot be relied upon as a statement of others like the South Indian Sugar Mills Association, Andhra Pradesh. The Investigation agency has committed gross error while coming to the conclusion that the informal meeting dated 22.07.2010 was convened to arrest the sliding sugar prices below the cost of production. Further, the investigation agency ought to have appreciated the fact that statement given by Mr.Bhalerao and MR. Rathinavelu were not given in their official capacity and therefore, same cannot be relied upon while investigating the matter.

4.2.81 According to Baramati Agro Limited, the Investigation Agency cannot rely upon the news report/ newspapers articles in Times of India and Economic Times, Delhi, and Hindu Business Line, Delhi to arrive at a conclusion that there was cartelization of sugar prices in the meeting 22.07.2010, as it is settled principal of law in this country that mere news item appearing in a newspaper has no evidentiary valued at all.

4.2.82 It has been submitted by the company that only one representative of the company had attended the informal meeting dated 22.07.2010. The meeting was attended by him as an invitee. However, due to some urgent professional work and commitments, he had to leave the said informal meeting before it got concluded. The company therefore cannot be accused of being part of the discussion that might have taken place after the said representative of the company left the said meeting. The company has brought out that so long as the said representative continued to attend the said meeting nothing at all was even discussed, much less decided about the sale price of sugar. Thus, the company cannot be alleged to be a part of any such discussion, much less decision.

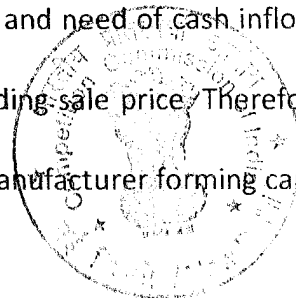


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4.2.83 It has also been submitted that the Investigating Agency, while coming to conclusion, has not taken into consideration the fact that the company, not being the co- operative society, is not a member of Maharashtra Rajya Sahkari Sakhar Karkhana Sangh Limited, Mumbai and therefore, the company cannot be alleged to be a part of any decision that might have been taken, if taken at all, by the Maharashtra Rajya Sahakari Karkhana Sangh Limited, Mumbai

4.2.84 It has also been submitted that the Investigating Agency, while preparing and submitting the investigating report, has failed to note that in India the business of the sugar Industry is fully controlled and regulated by various government rules and regulations. The intention behind informal discussions which took place on 22.07.2010 was to find good, legitimate and viable solution for the existing problems in the sugar industry, through brainstorming and not to enter into any kind of agreement or cartel, as alleged or even otherwise, which may lead to the exploitation of consumers or would harm the society at large. There are various regulatory controls which determine market price of sugar. Taking into consideration these controls it is practically impossible to regulate market price of sugar by forming cartel by manufacturers as it is for the purchasers/ traders who play major role in deciding the market price.

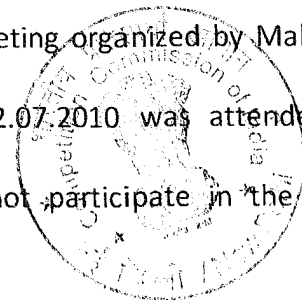
4.2.85 It has further been replied that it is impossible for manufactures of sugar to form cartel as each manufacturer is having different cost of production/manufacturing. Apart from the said factor, economic conditions of manufacturer and need of cash inflow are the factors which weigh with the manufacturer while deciding sale price. Therefore, in absence of any real benefit there was no question of any manufacturer forming cartel to artificially raise the price of sugar.



4.2.86 It has been replied that the investigation agency ought not to have relied upon the statement of Mr. Shivajirao Patil, as the same is in the form of opinion and/or advice without any further proof of its execution. The investigating agency also ought not to have relied upon the statement of Mr. Satish Kansal as same being based upon his hearsay information and the statement of Mr. Ashok Jain, as same being made on the basis of information received by him from news reports. The conclusion of the investigation agency that there was fixation of sugar price since 24.06.2010 which was extended after an alleged meeting dated 22.07.2010 is without any legitimate background and proof and therefore, same being devoid of any merit, cannot be relied upon. The company was and is never part of any cartelization of sugar mills to fix the price of sugar in contravention to section 3(3)(a) and (b) of the Competition Act 2002.

4.2.87 M/s Shree Renuka Sugars Ltd., in its reply has denied the allegation of it being a part of cartel of sugar manufacturers of Maharashtra & Karnataka alleged to have been in operation from 24<sup>th</sup> June /25<sup>th</sup> June 2010 and wherein a minimum floor price of Rs.2500/- per quintal was fixed as per consensus. It has submitted that its spot sales realizations in Karnataka and Maharashtra on 24<sup>th</sup> and 25<sup>th</sup> June 2010 was well below Rs.2500/- , the alleged minimum floor price fixed due to alleged cartelization.

4.2.88 It has submitted that it is a member of Indian Sugar Mills Association (ISMA) only and not a member of Maharashtra Rajya Sahakari Sakhar Kharkhana Sangh Ltd. and SISMA. As per Renuka Sugars, no meeting of ISMA was ever held on 22.07.2010 on the issue of fixation of price as has been alleged. The meeting organized by Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Limited on 22.07.2010 was attended by its Director (Commercial) as an observer and he did not participate in the meeting. Moreover, he left the meeting half way.



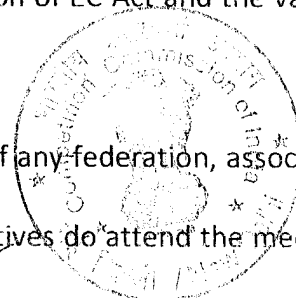
4.2.89 The company has filed data of party wise sales for the period 22.07.2010 to 26.07.2010 to support its contention that it had sold sugar in the domestic market much below the minimum floor price of Rs. 2700.00 per quintal alleged to have been fixed in the meeting.

4.2.90 On the basis of its aforesaid arguments, it has been submitted that the company has not indulged in cartelisation as alleged and there is no question of contravening the provisions of Section 3(3)(b) of the Competition Act, 2002.

4.2.91 M/s Ugar Sugar Works Ltd. in its reply has also denied its participation in any anti-competitive activities. It has also denied any concerted action on its part to fix minimum ex-mill floor price of the sugar during the year 2010 though it has admitted its attendance in the meeting. As per the reply of Ugar Sugar, it is selling the sugar by way of a process of tender wherein negotiations with the bidders are done on the prevailing price.

4.2.92 In its reply M/s. Vishwanath Sugar and Steel Industries Ltd. has denied the allegations of any cartelisation on its part. It has also contended like other respondents that sugar industry is controlled and highly regulated and as such is not free to be determined by market forces of demand and supply. It has also been contended by Vishwanath Sugar that the government is also controlling the prices of the sugarcane which is the main raw material used for the production of sugar in India. The Commission has no jurisdiction to entertain and act on the investigation report of the DG as the sugar as a commodity is governed by the provision of EC Act and the various other orders issued by the government.

4.2.93 It has also been submitted that it is not a member of any federation, association or any group in the sugar industry, however, its representatives do attend the meetings

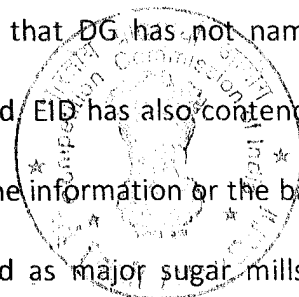


convened by such federations and associations on invitation. The purpose of attending such meetings is simply to be updated with the functioning of the industry as a whole and to adopt the best practices of the industry for better efficiency of its operations resulting in a decrease in cost of production of sugar.

4.2.94 According to the company, it was not involved in the initiation of or actual discussion or deliberation to fix the minimum ex-mill floor price of sugar at any meeting during the last week of July, 2010. Although its representative had attended the meeting but had played no role in any discussions or deliberations that took place in the said meeting regarding any effort to boost the ex-factory price of sugar by 4-6% in order to prevent open market sugar prices falling below the cost of production of sugar. It has also denied its agreement on the fixing of minimum floor price for different states of Maharashtra, Karnataka, Tamil Nadu, Andhra Pradesh and Gujarat for the period from July, 23, 2010 to August, 31, 2010.

4.2.95 It has been further submitted by the company that it had sold the sugar at a price of Rs.2506.76 on 23.07.2010, Rs.2500.15 on 24.07.2010 and 26.07.2010, Rs.2501.48 on 27.07.2010, well below the alleged minimum floor price fixed in the meeting of 22.07.2010. It has also provided daily analysis of quantity of sugar sold during the period 19.07.2010 to 30.07.2010 and has contended that the price at which it has been sold, demonstrates that it had never adhered to the purported price fixation. Therefore, it has not contravened any of the provisions of the Competition Act.

4.2.96 M/s EID Parry India Ltd. in its reply has contended that DG has not named specifically the actors who are alleged to have been cartelized. EID has also contended that there is no explanation provided by DG as to what was the information or the basis on which the eight private sugar mills have been identified as major sugar mills in

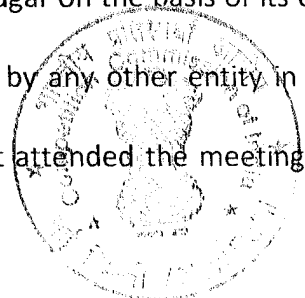


private sector. There is no indication as to the criteria with reference to which the selection has been done. In a cartel inquiry, the least that must be done by the investigation agency is to clearly identify the alleged members of the cartel and not leave a scope for any apprehension that there has been a pick and choose of members of the alleged cartel.

4.2.97 It has been contended by EID that there has been no investigation conducted into whether there is a cartel or whether any anti-competitive conduct is taking place. Hence, the statement of the official of the Central Government cannot in any manner be taken to be an indictment of the sugar industry which in any event is without basis.

4.2.98 It has been further submitted by EID that there is an all pervasive control of the Central Government on sugar, including on free sugar and that it is simply not possible to cartelize. The production, supply and distribution of the sugar is regulated by various Acts such as EC Act & control orders issued by the government. The inputs from the sugar industry are an important aspect of levy sugar price fixation, as is evident from the statement of the Chief Director (Sugar), Government of India, recorded by the DG.

4.2.99 It has also been submitted that any meeting or discussions on a wide ranging set of issues, including price, are not illegal and cannot be characterized as cartelization. Its representative had attended the meeting as a nominee of the SISMA –Tamil Nadu based on the request of the President of SISMA-Tamil Nadu and it was neither invited by MRSSK nor had participated the proceedings of the said meeting in its own capacity. It has further been submitted that it determined the price of sugar on the basis of its own assessment of market and is not being dictated or coerced by any other entity in this behalf. It has also submitted that its representative had not attended the meeting full



time, hence its representative was not aware of any discussion taken place on price fixation in the said meeting.

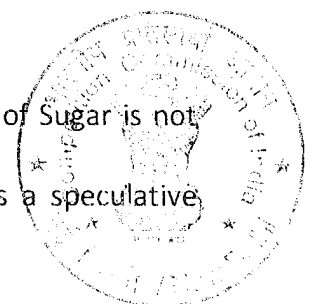
4.2.100 The company has also contended that there is no credibility whatsoever in the press release, which is the basis for the entire proceedings, including the press statement and its publication in the newspapers as far as the charge of cartelisation is concerned. The inference sought to be drawn by the DG that there was a fixation of price, relying on the statements of office bearers of SISMA- Andhra Pradesh and SISMA- Tamil Nadu is entirely without any basis. DG has relied upon the statements made by these representatives and important statements made by them have been dis-regarded.

4.2.101 The company has also submitted a data of its sale during 20.07.2010 to 31.07.2010 to support its contention that its average daily sale realisation never touched Rs. 2700 /QT (the alleged fixed minimum floor price) during the period when according to the DG the alleged cartel was given effect to. The reliance placed by the DG on the statement of the Bombay Sugar Mills Association to conclude that the cartel was given effect to for a couple of days is entirely unsustainable in light of these data.

4.2.102 The company has also denied in its reply that the minimum price in Tamil Nadu was maintained above Rs.2700 a quintal contending that the report of DG does not specify who were the parties who maintained this price. According to the company, DG has failed to establish any agreement of price fixing and also the implementation of alleged agreement by it. As per the company, its pricing continued to be governed by normal market practices and did not even cross the alleged minimum floor price during the period of investigation.

4.2.103 According to the company, the statement of the Chief Director of Sugar is not evidence of any cartelization and does not make any such claim. It is a speculative

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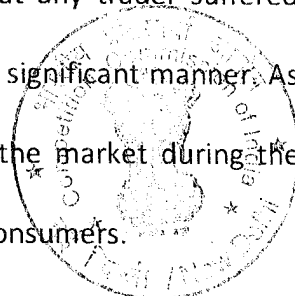




opinion and is not claimed to be backed by any cogent and reliable data. A mere agreement on a desirable price cannot in law be equated to an agreement on pernicious price fixation. The legitimate actions of a trade association cannot by themselves give rise to inferences of cartelization and the allegations in that behalf have to be made good by cogent, reliable and independent data.

4.2.104 It has further been contended by the company that it has not participated in any alleged concerted action and there is no cogent or reliable evidence of any agreement at all since the entire case of the DG proceeds on newspaper reports, hear say, evidently fabricated documents, the genesis of which has not been established by the DG. If there was a price fixing agreement by some players in the market, the same was simply incapable of being acted upon and even if acted upon, would and did not give rise to any appreciable adverse effect on competition.

4.2.105 According to the company, it has been alleged that the agreement between the sugar mills was limited to the period 23.07.2010 through 31.08.2010, which even on the findings in the DG report was not actioned beyond two days after the said alleged decision. This alleged agreement could and did not have the effect of creating a barrier to new entrants in the market. No such new entrants have come forward to allege that even though the new entrants wished to compete, the alleged cartel compelled them to increase prices. There is no evidence whatsoever that on account of a putative and abortive bid at cartelization which remained limited to the third week of July 2010, a new entrant was prevented from setting up a sugar mill or that any trader suffered losses so as to impact the market in any manner, much less in a significant manner. As per the company, there was no foreclosure of competition in the market during the alleged period of agreement and there was also no harm to the consumers.

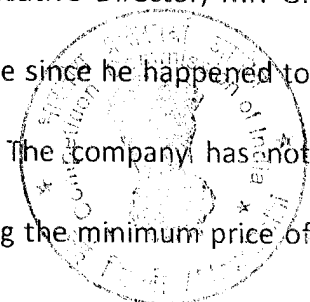


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4.2.106 The company has submitted that the price of levy sugar is entirely controlled by the government and the sugar mills have no say in the matter. Throughout the period under inquiry, as also admitted by the DG, sugarcane producers were paid more than the FRP and SAP fixed by the appropriate governments. Even in respect of free sugar, the government exercises all pervasive and effective control through the release order mechanism and steps into correct price imbalances. No such measures were evidently necessitated during the period under inquiry because even according to the government, no noticeable or significant price distortion was prevalent. There was no significant or remarkable upsurge in sugar prices during the period under inquiry or soon thereafter. Thus, as per the company, there was no adverse impact on consumers, even on an assumption, which is categorically denied, that there was an attempt at cartelization.

4.2.107 In its reply M/s Shree Ambika Sugars Ltd., Tamil Nadu, has contended that there is no prima-facie case made out against it since out of its two units, one unit had no sales during the relevant period and the ex-mills price at the other unit did not show any increase but was actually in the range of Rs.2475 to Rs.2518 per quintal and not Rs.2700 per quintal, the alleged minimum floor price agreed to be maintained.

4.2.108 It has been further submitted that it has been made party to the present proceedings only on the basis of the fact that its Executive Director had participated in the meeting held on 22.07.2010 at Mumbai. However, its Executive Director, Mr. G. Rajagopal was at the meeting held on 22.07.2010 only by chance since he happened to be in Mumbai for some litigation work and not by design. The company has not implemented any alleged concerted action of fixing or increasing the minimum price of the sugar but there was actually reduction in the price on its part.



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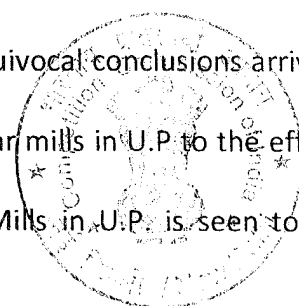
4.2.109 Like in case of other sugar mills, the company has also stated that sugar and its raw material-sugarcane is a regulated commodity and EC Act enforces direct control over the sugar production and distribution. The Competition Act is not applicable on the regulated commodities such as sugar, which is governed by EC Act.

4.2.110 It has further been submitted by the company that sugar industry is highly fragmented industry. Even the largest manufacturer has only about 4% market share. There are not only private sector mills, but public sector and co-operative sugar mills are also operating in the sugar industry.

4.2.111 According to the company, the apprehensions of the sugar industry has been misunderstood by DG. There are a large number of players in the market and DG has not named specific actors alleged to have cartelised. There is no effort to examine as to who are the members of the alleged cartel. It is not definitively explained as to why the sugar mills of UP were not part of alleged cartel while others in Karnataka, Maharashtra, Andhra Pradesh, Tamil Nadu were part of such alleged arrangement even when prices in UP had also shown some upward movement. It has also not been explained how different business entities operating under different circumstances and with different costs can come together to cartelise. There is simply no possibility of any cartel like behaviour to take place or to sustain itself in the sugar industry as is also evident from the reply of the Central Government wherein it has been submitted that prices in the sugar industry are closely monitored by it.

4.2.112 M/s. Mawana Sugars Limited in its reply has submitted that its sugar mills are all located in the state of U.P. Therefore, in view of the unequivocal conclusions arrived at and observations made by the DG in the report about sugar mills in U.P. to the effect that none of the Sugar Mills and/or Association of Sugar Mills in U.P. is seen to be

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involved in any purported cartelization or manipulations of sugar prices, it has requested to be discharged from the proceedings. It has also been denied by the company that it is and/or has ever been part of any cartel as alleged.

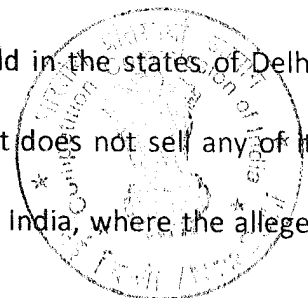
4.2.113 In its reply, DCM Shriram Consolidation Ltd, has contended that no further proceedings are required to be conducted against it as it is based in UP and DG has denied involvement of sugar mills of UP in the alleged cartel.

4.2.114 M/s Dalmia Chini Mills in its reply has submitted that it operates three sugar manufacturing plants in the State of Uttar Pradesh viz. Ramgarh & Jawaharpur in District- Sitapur and Nigohi in District- Shajahanpur. It has contended like other respondents that sugar is a controlled and regulated commodity and this regulatory regime leaves no scope for the formation of cartel of any nature whatsoever.

4.2.115 As per the company, during the months of May-August 2010, it was compelled to sell its product below the actual cost of production. During the period of the alleged cartelization, the prices of the sugar sold by it remained constant with minor variations, which clearly show that it was not part of any alleged cartel. It has been further submitted that it continued to suffer losses even beyond July-August 2010, which corroborates that it could not have been involved in the alleged cartelization.

4.2.116 As per the contentions of the company, the percentage share of production of sugar by it in the State of U.P for the financial year 2009-2010 was around 2.7% and around 0.7% at India level. In the financial year 2010-2011, the same was 3.3% & 0.8% respectively. Its primary market is Northern India where 70% to 90% (approx) of its non-levy sugar is sold in the state of UP and the remaining is sold in the states of Delhi, Haryana, Punjab, West Bengal, Assam and Madhya Pradesh. It does not sell any of its produce in the state of Maharashtra or the southern states of India, where the alleged

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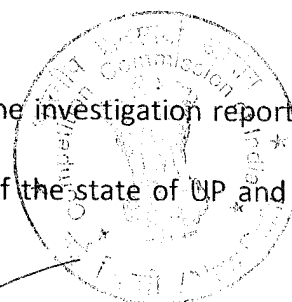
cartel was active. It has no market presence in the Western & Southern states of the country. In view of the aforesaid submissions, the company has submitted that it cannot be a part of the cartel or could not have formed the cartel which is alleged to be operative in the state of Maharashtra and that too for a very short period.

4.2.117 It has been further submitted by Dalmia Chini that there was no evidence or material against it which suggests that it was part of the alleged cartel and it has been made part of investigation only because one of its representatives participated in the meeting on 22.07.2010 at Mumbai.

4.2.118 It has also been contended by the company that DG has already reported that the prices in the State of UP are not comparable with the State of Maharashtra. It has been further reported that there is no prima facie case against the sugar mills in the State of U P. The fact that DG's Investigation Report does not include the State of UP and its sugar mills are situated only in the State of UP coupled with the fact that it is not selling its product in State of Maharashtra or any of the Southern States suggests that it has not violated the provisions of the Competition Act, 2002.

4.2.119 Bajaj Hindustan Limited in its reply has submitted that sugar industry is highly regulated under various regulatory provisions/ Acts. According to the company, it is engaged in manufacturing of sugar and its allied products having its manufacturing units in Eastern U.P. situated in Rudholi (Basti District), Uttarola (Balrampur District), Kudarkhi (Ghonda District) and Pratap pur (Dewaria District). It has sugar mills only in the state of UP and no other part of the country.

4.2.120 It has been submitted by the company that since the investigation report does not find any violations of the Act by the sugar industries of the state of UP and as its



units are located in the state of UP, it has no involvement whatsoever in alleged cartelization.

4.2.121 No reply has been filed by Yogeshwari Sugar Industries Limited and South India Sugar Mills Association, Andhra Pradesh, although notices were issued to them.

## 5. Issues

5.1 On consideration of replies of the sugar mills and their federations/associations, who had participated in the meeting on 22.07.2010 at Mumbai, materials available on record and facts and circumstances of the case, the Commission feels that following issues require determination in this case:

**Issue 1:** Are the provisions of Competition Act, 2002 applicable to the facts and circumstances of the instant case in view of the contention of the respondent sugar mills that Sugar is a controlled and regulated commodity under the Essential Commodities Act, 1955?

**Issue 2:** Was there a meeting of mind or an agreement or an action in concert within the meaning of Section 3 of the Act among respondent sugar mill owners to fix a minimum price?

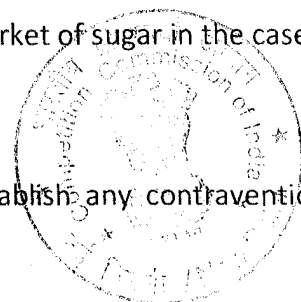
**Issue 3:** Was the alleged decision to fix the price actually implemented?

**Issue 4:** Was any appreciable adverse effect on competition (AAEC) caused due to their actions in the market?

**Issue 5:** Was there any limit on supplies or production or market of sugar in the case due to the acts and conduct of the respondent Sugar Mills?

**Issue 6:** Whether facts as found in course of inquiry establish any contravention of Section 3(3)(a) and Section 3(3)(b) of the Act?

## Determination of Issues



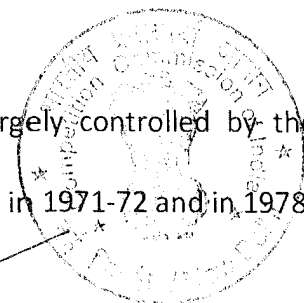
**Issue 1: Are the provisions of Competition Act, 2002 applicable to the facts and circumstances of the instant case in view of the contention of the respondent sugar mills that sugar is a controlled and regulated commodity under the Essential Commodities Act, 1955?**

5.2 The Commission feels that in order to determine the aforesaid issue, it will be appropriate to look at the existing relevant rules and orders of the government concerning the sugar industry at present in India. Further, in light of the contention that sugar is a controlled commodity and therefore its behaviour is not completely dependent upon the market forces, it is pertinent to look at the prevailing structure of the sugar industry as on date. Although in the beginning of the order, a brief overview of the industry is given, these are discussed once again in the order below.

5.3 There are about 651 sugar mills (as estimated in 2009-10) in India, out of which 62 are in public sector, 269 are privately owned and 320 are co-operatives. The concentration level in Indian Sugar Industry, therefore, is not very high. Consequently, production and availability of the sugar in stock is also not restricted in the hands of only few players in India.

5.4 As has been brought out by various respondent sugar mills and their associations/federations in course of proceedings, sugar falls under the category of essential commodity under the Essential Commodities Act 1955 (EC Act). Section 2 (e) of the Act makes specific reference to Sugar. Not only sugar as a 'food stuff' but its raw material, Sugarcane as a 'food crop' is also covered under the class of essential commodities under the Essential Commodities Act.

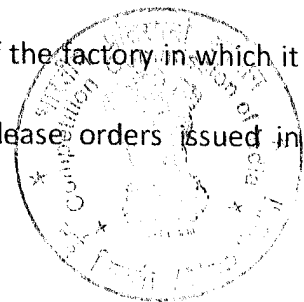
5.5 The Commission notes that sugar industry in India is largely controlled by the government. Attempts to decontrol it were met without success in 1971-72 and in 1978-



79. Although some measures have been taken by the government to relax the regulatory controls, a host of rules and regulations still makes sugar a highly controlled and regulated commodity.

5.6 Sugar (Regulation of Production) Act, 1961 provided for the regulation of production of sugar in the interests of general public and for the levy and collection of a special excise duty on sugar produced by a factory. The government de-licensed the sugar sector in the August 1998, thereby removing the restriction on the expansion of existing as well as on the establishment of new units. However, stipulation of a minimum distance of 15 kms between an existing sugar mill and a new mill continues to be observed.

5.7 The Central Government is authorized under Sugar (Control) Order, 1966 to regulate the sales of produced and imported sugar. The Essential Commodities (Amendment) Act, 2003, incorporates the provisions of clause 4 & 5 of the Sugar (Control) Order, 1966 in the Essential Commodities Act, 1955 through insertion of sub-clause (3D) & (3E). As per the amended act, no producer, importer or exporter of sugar shall sell or otherwise dispose of or deliver any kind of sugar except under and in accordance with the directions issued by the government. Clause 4 of the Order stipulates that no producer shall sell or agree to sell or otherwise dispose of or deliver or agree to deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced except in accordance with the directions and release orders issued in writing by the Central Government.





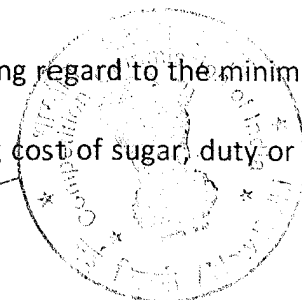
5.8 Clause 5 of Sugar (Control) Order, 1966 empowers the Central Government to issue directions to producers or importers or recognized dealers regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar. Further, the Sugar Control Order also provides for powers for attachment, seizure and sale of attached sugar, regulation of quality of sugar and other administrative powers.

5.9 At present the government is following a policy of dual pricing and partial control for sugar. Under the policy of partial control, a part of sugar production is requisitioned as levy sugar for distribution in the Public Distribution System (PDS) at a uniform retail issue price (RIP) throughout the country. The government is empowered under Levy Sugar Supply (Control) Order, 1979 as amended by Levy Sugar (Control) Amendment Order, 2000 to issue directions to any producer or importer or recognized dealer to supply Levy Sugar to such persons or organizations in such areas or markets or to the State Government/Union Territory administration as the government may specify.

5.10 The levy sugar price is fixed by the Central Government as per the provisions of Section 3A (3C) of the Essential Commodities Act. Further, Section 3 (3c) provides for fixing different prices from time to time for different areas or factories or for different kinds of sugar. The price of levy sugar is determined under the statutory provisions of EC Act for each sugar season by the government on zonal basis and the sugar mills situated in a particular levy price zone are entitled to receive the ex-mill factory levy price so fixed for the levy sugar supplied by it.

5.11 Levy sugar price is fixed by the Central Government having regard to the minimum price fixed for sugarcane by the Central Govt., manufacturing cost of sugar, duty or tax

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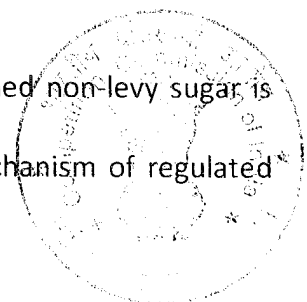
payable thereon and securing of a reasonable return on the capital employed in the business of manufacturing sugar.

5.12 Levy Sugar Price Equalization Fund Act, 1976 provides for the establishment, in the public interest, of the Levy Sugar Price Equalisation Fund to ensure that the price of levy sugar is uniform throughout India. The LSPEF Act is administered by the government and is funded both by excess realizations made by producers and by government loans or grants. Money unclaimed by recipients after six months from the date on which it is credited vests in the government and is utilized to ensure that the retail price of Levy Sugar is uniform throughout the country. The LSPEF Act also empowers the government to recover excess realizations made by sugar factories as "Arrears of Land Revenue". The LSPEF Act prescribes certain penal provisions, including imprisonment, fines or both, for defaulting sugar mills seeking credit for excess realizations. The Levy Sugar Price Equalisation Fund Rules, 1977 were promulgated under LSPEF Act and govern (i) how money is credited to the Fund (ii) the account of transactions relating to the Fund (iii) application from buyers for refund and (iv) utilization of the Fund by the government.

5.13 Keeping in view the demand for decontrol over the sugar, the compulsory levy obligation of the sugar factories was reduced by the government from 40% to 30% w.e.f. January 1, 2000. With effect from February 1, 2001, the compulsory levy obligation was further reduced to 15%. The levy obligation now stands at 10% of the production, although in the year 2009-10 the prescribed levy obligation was 20%.

5.14 Sugar produced over and above the quota of levy sugar, called non-levy sugar is allowed to be sold by sugar mills in the market subject to a mechanism of regulated

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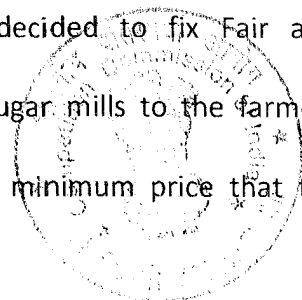


release. Order for release of non-levy sugar is issued generally on a monthly basis. One of the conditions of the release order stipulates that the sugar mills are required to sell and dispatch their allotted non-levy quota within stipulated period failing which the same is liable to be converted into levy sugar.

5.15 The Central Government is empowered under the Sugarcane (Control) Order, 1966 to fix minimum price of sugarcane to be paid by producers of the sugar for sugarcane purchased by them having regard to certain factors as mentioned in clause 3 of the said Order. Different price may be fixed for different areas or different qualities or varieties of sugarcane. Further, the Central Government or the State Government with the approval of the Central Government, may, subject to such conditions as specified in the Order, allow a suitable rebate in the price so fixed. The said order also contains various provisions for regulating the supply and distribution of sugarcane. The Central Government is also empowered to direct the producers of the sugar to pay additional price for sugarcane in addition to the minimum sugarcane prices fixed in accordance with the provisions of the second schedule to the said Order.

5.16 With a view to providing support to the sugarcane growing farmers, in 1965-1966, the sugar cane price for sugar mills was fixed based on production and input costs called SMP (Statutory Minimum price). The SMP used to be fixed by the Central Government. Sugar mills are also required by the States to pay State Advised Price (SAP), which sometimes are much higher than the SMP.

5.17 From the 2009-10 sugar season, the Centre has decided to fix Fair and Remunerative Price (FRP) as the price to be paid by the sugar mills to the farmers instead of the Statutory Minimum Price (SMP). FRP is the minimum price that the

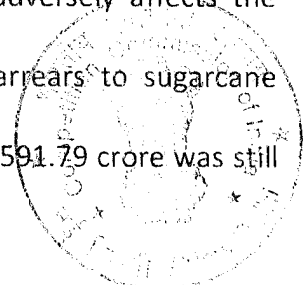


sugarcane farmers are guaranteed. However, the sugar mills are free to offer any price above the FRP. The FRP is fixed after taking into consideration the margins for sugarcane farmers on account of risk as well as profit on the cost of production of sugarcane, including the cost of transportation. It includes a margin of nearly 45 per cent on account of profit and risk to the farmers on all India adjusted average cost of production of sugarcane, including the cost of transportation to the mill gate.

5.18 As per recommendations of Commission for Agricultural Costs and Prices (CACP), the FRP for 2009-10 was fixed at Rs.129.84 per quintal linked to a basic recovery rate of 9.5 per cent, subject to a premium of Rs 1.46 for every 0.1 percentage point increase in recovery above 9.5 per cent. Recovery rate is the sugar produced from the crushed cane.

5.16 The FRP of sugarcane for 2010-11 was fixed at Rs 139.12 per quintal. The government has further hiked the Fair and Remunerative price (FRP) of sugarcane by 4.2 per cent at Rs 145 per quintal for 2011-12. Sugar mills sometimes have to pay higher price for sugarcane than the FRP, like in 2009-10, due to initial estimates of lower sugarcane and sugar production.

5.19 Payment of cane price, as has been reported by DG, is to be made within a period of 14 days of the delivery of sugarcane to the factory and any failure in this regard would attract penal interest at the rate of 15% per annum. The mill owners often face the problems of cane arrears which build up when there is excess production of sugar in a season leading to decline in sugar prices; a situation which adversely affects the capacity of the sugar mills to make payments including cane arrears to sugarcane farmers. As on May 15, 2011, as per estimates, an amount of Rs 2591.79 crore was still

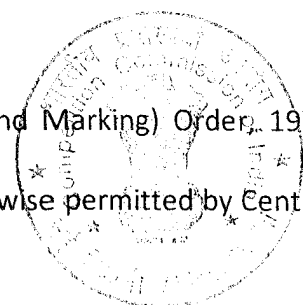


pending for payment for the current season. In addition, a sum of Rs 211.22 crore was pending for the payment for previous seasons.

5.20 Government as enabler enacted Sugar Development Fund Act, 1982 ("SDF Act") which has established the sugar development fund to promote the development of the sugar industry by providing low interest loans to rehabilitate and modernize sugar factories and to help expand sugarcane production. The Fund is also used to purchase excess sugar production to create a buffer stock to help stabilize the price of sugar. Sugar Development Fund Rules, 1983 were promulgated pursuant to Section 9 of the SDF Act and govern (i) the terms and conditions of loans or grants made from fund sources, (ii) the manner and form in which applications are to be made, (iii) the composition of the committee and the procedure to be followed by it in the discharge of its functions and (iv) the form in which and the period within which statistical and other information may be furnished by sugars factories.

5.21 Sugar Cess Act, 1982 empowers the government to levy a cess on sugar. Funds generated by the cess are used to promote the development of the domestic sugar industry by providing financial assistance for the rehabilitation and modernization of sugar factories and to help expand sugarcane production. Net proceeds generated by the cess are credited to the sugar development fund. Sugar Cess Rules, 1982 were promulgated under the Sugar Cess Act, 1982 and govern the accounting reports, accounts and other related returns to be furnished to the government by sugar factories.

5.22 Besides, above rules and regulations, Sugar (Packing and Marking) Order, 1970 provides markings to be indicated on sugar bags. Unless otherwise permitted by Central



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Government, sugar is required to be packed in A-twill jute bags conforming to Indian Standard Specifications. Sugar meant for the purpose of export and small consumed packs of 5 kg and below have been exempted from the compulsory use of jute bags.

5.23 Further, there are zoning orders and area restrictions for sugarcane farmers to supply sugarcane to the mills and there is a restriction of radial distance of 15 Kms also between the two sugar factories.

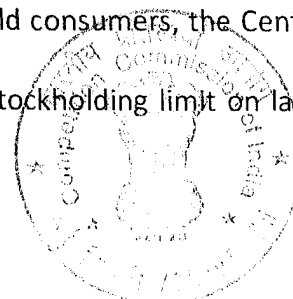
5.24 The Commission observes that the stated objectives of all the above measures adopted by the Central and the State Governments are to protect the interests of the farmers, mill owners and the consumers by ensuring payment of fair price to the cane growers, adequate returns to the sugar mills and supply of sugar to consumers at a reasonable price.

5.25 The Commission has also taken note of the contentions of the respondents that Government of India has in the past 24 months taken a host of measures with the primary objective of controlling the sugar prices, which further establishes that government also intervenes as and when required with additional control measures, over and above, that are in place to control and regulate the industry.

5.26 Release order mechanism as discussed in preceding paras, which in effect controls the exact quantity of sales allowed to each mill, by allocating quantities, was reviewed. Though generally given on a monthly basis, sugar release orders can also be changed to weekly or fortnightly basis to control the supplies and hence the prices. Accordingly, monthly quota for free sugar was changed into weekly quota in April 2009.

5.27 In order to discourage stocking of sugar by non-household consumers, the Central Government issued notification dated 22.08.2009 imposing stockholding limit on large

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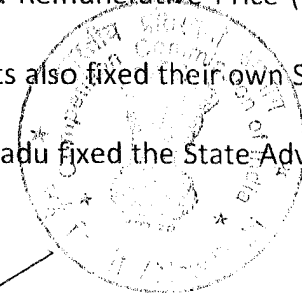
consumers, whose average consumption of sugar is in excess of 10 quintals per month, to the effect that they shall not keep in stock at any time, sugar exceeding fifteen days of such use or consumption. The stockholding limit on large consumers was further reduced to ten days of requirement with effect from 20.02.2010. The government also imposed stockholding and turnover limits on sugar manufactured through vacuum pan process and khandasari sugar through open pan process till 30.09.2010. Turnover limit was kept at 30 days from the date of receipt of stocks by a recognized dealer of sugar and khandasari.

5.28 Import duty on raw sugar was reduced from 60% to zero % from 17.4.2009. This was extended till 31.12.2010. Import duty on white sugar was also similarly reduced from 60% to 0%, initially for government agencies and subsequently for all.

5.29 Levy obligation was exempted for raw or white imports as opposed to levy obligation on domestic producers. The government re-imposed requirement of obtaining release order for export of sugar with effect from 01.01.2009 under OGL and from 13.02.2009 in respect of export under advance authorisation scheme.

5.30 State Governments were advised to remove VAT on import sugar while this tax continued on domestic producers and ban on sugar futures was imposed in May 2009 that extended upto end of September, 2010.

5.31 While the Government of India increased the Fair and Remunerative Price (ERP) from Rs. 1287/MT to Rs. 1389/MT, various state governments also fixed their own State Advised price (SAP); for example the Government of Tamil Nadu fixed the State Advised price (SAP) at Rs. 1900/- MT.

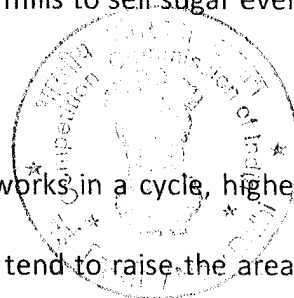


5.32 The Commission, in view of aforesaid rules and orders and interventionist measures of the government, observes that there is a considerable force in the contention of sugar mills, their federations and associations that sugar as on date is controlled and regulated to a large extent. Not only the final product i.e. sugar, but input i.e. sugarcane, also is under regulatory control in this industry.

5.33 The Commission notes that that while price of the levy sugar is determined by the government, the supply of the free sugar is also regulated and sugar mills are not free to determine their own releases. The sugar mill owners are forced to release non-levy sugar only as per the release orders of the Central Government. The government keeps on changing the release mechanism depending upon the position of overall production. Sugar mills cannot leverage the markets fully in a situation of rising sugar prices and the mills also may face a penalty if they fail to sell the quota of free sugar within the stipulated time.

5.34 The Commission observes that this regulated mechanism interferes with the market behaviour. If the market sentiments are low and depressed, then the traders might not lift sugar till the last day of the stipulated release as per release orders of the government in the hope that mills will be under pressure to further reduce the price in order to comply with the directives of the government of selling the non-levy quota within the specified period. Depending upon the financial health and cash flow requirements, such time schedules may also compel many sugar mills to sell sugar even if that meant selling at a price below their cost of production.

5.35 The Commission also observes that since sugar industry works in a cycle, higher minimum cane prices set by the central and state governments tend to raise the areas



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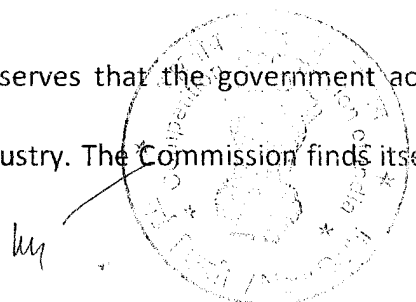


of sugarcane under cultivation in a particular year and therefore sugar output, reducing retail prices of the sugar. In the years of falling sugar prices, sugar mills found themselves cash strapped and therefore make delays in making payments to farmers. The farmers in order to protect their income, consequently, shift to other crops in future years, leading to scarcity and high prices.

5.36 The government also monitors the payments to the farmers. It has been made obligatory on the part of sugar mills to pay growers within 14 days of delivery, failing which 15 per cent interest per annum is leviable on the amount.

5.37 The Commission further notes that in cooperative sugar mills of States, senior representatives of government function as the managing committee members. It has been reported by DG, as has been informed by the Managing Director of Maharashtra Rajya Sakhar Sangh that in the state of Maharashtra, the State Government nominates the Board of Directors for a stipulated period. In Maharashtra, the State Government contributes about 30% of the share capital and stands guarantor for term loans for the project raised from term lending institutions. Orders for plant and machinery for the new mills are placed by a committee of State Government headed by Chief Minister and other ministers as members. The area of operation is determined by the government under zoning order i.e. Maharashtra Sugarcane Reservation of Areas Order and licence for crushing for production of sugar is issued by the Commissioner of Sugar every year under the sugarcane control order. Sugarcane prices are also fixed by the committee of members headed by the Chief Minister and other ministers.

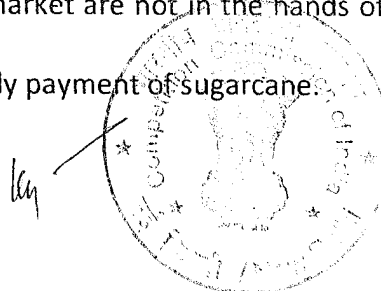
5.38 Keeping in view the above, the Commission observes that the government acts both as a stakeholder and a regulator in the sugar industry. The Commission finds itself



in agreement with the contention of the sugar federations and sugar mills that in the midst of various control and regulations, the dynamics of the market place would not be able to determine the behaviour of the market players. When a sector itself is controlled and regulated, it would also be insulated from the competitive forces to a large extent.

5.39 While holding so, the Commission, however, also observes that the contention of the sugar mills is not tenable that since sugar is covered under EC Act, 1955, it is outside the scope of the Competition Act, 2002. The Commission observes that the two Acts are not mutually exclusive and a commodity which falls under EC Act, 1955 might also be subject matter of inquiry under the Competition Act. What is important is the extent to which a particular commodity covered under EC Act, 1955 is, in addition, subject to the control and regulations of the government, and the impact of such control/regulation on the free play of market forces. If a commodity or industry, even though covered under EC Act, 1955 has been made free from control to behave in accordance with the market forces, the provisions of Competition Act will certainly apply in case of that particular commodity or industry.

5.40 The Commission feels that since sugar is under control either through a mechanism of control over prices or control over release /supply, the industry is not operating within the free market and market dynamics are not able to drive the industry. The behaviour of such an industry is determined not fully by market forces but by the controls and regulations of the government. The Commission further observes that in such a regulated sector as sugar industry, the possibility of successful cartelization of sugar prices is remote because the releases in the market are not in the hands of sugar mills and additionally there is pressure to make timely payment of sugarcane.



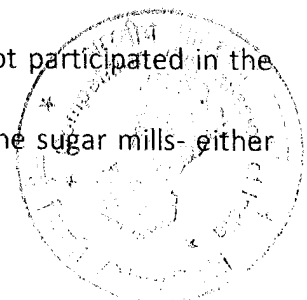
**Issue 2: Was there a meeting of mind or an agreement or an action in concert within the meaning of Section 3 of the Act among respondent sugar mill owners to fix a minimum price?**

5.41 The report of investigation by DG clearly establishes that sugar mills of Maharashtra, Gujarat, Karnataka, UP and Tamil Nadu had met on 22.07.2010 in a meeting convened by Maharashtra Rajya Sahkari Sakhar Sangh Limited at Mumbai. A notice was also issued pursuant to which the aforesaid meeting was held. This fact has also not been disputed by the respondents. There are press reports also to this effect.

5.42 The Commission notes that it has been alleged that a press release was issued incorporating various points including the minimum floor price, after the meeting on 22.07.2010. The fact that press release was allegedly issued by Maharashtra Rajya Sahkari Sakhar Sangh Limited has been disputed by the society. DG in course of his investigation, also could not find out the origin and author of this press release. Further, the press release placed on record is also unsigned.

5.43 The Commission, however, observes that although the origin of press release has been denied, from the submissions of various persons including the communications of General Secretary of SISMA –Tamil Nadu and Andhra Pradesh to its members in which the deliberations of the meeting dated 22.07.2010 have been conveyed, it is clear that the issue of minimum ex-floor price was indeed discussed in the meeting.

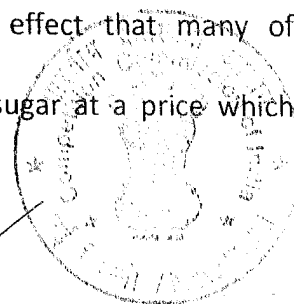
5.44 However, the Commission also notes that in course of investigation it has been found by the DG that the two national level associations/federations of sugar mills of private and cooperative sector, namely, NFCSF and ISMA had not participated in the aforesaid meeting. There is no finding also to the effect that all the sugar mills- either



from the cooperative or the private sector from the states of Maharashtra, Gujarat, Andhra Pradesh and Tamil Nadu, had participated in the aforesaid meeting. The respondents have also raised an issue in course of proceedings that a meeting of some sugar mills cannot be said to be the meeting of all the sugar mills of a particular state. The respondents have also submitted that a decision taken by some sugar federations/ sugar mills cannot be taken as the decision of all the sugar mills. The investigation report also does not bring out as to how many sugar mills were actually parts of the decision or agreement in the meeting dated 22.07.2010.

5.45 The Commission further notes that based upon the communication of Secretary SISMA-AP to its members that in the meeting dated 22.07.2010, MD of Maharashtra Sakhar Sangh had remarked that the prices for Karnataka and Maharashtra were fixed at Rs.2500 per quintal since 24<sup>th</sup> June 2010, DG has concluded that the cartel was in operation since 24<sup>th</sup> June 2010 in Karnataka and Maharashtra and after meeting on 22.07.2010 it was extended to other states of AP, Gujarat and Tamil Nadu. However, no independent corroboration of this alleged decision/arrangement arrived at or adopted in June 2010 has been carried out. There is no evidence on record to support that all the mills of Karnataka and Maharashtra had met and decided to take a concerted action on 24<sup>th</sup> June 2010 or any of the dates in June 2010 to maintain certain minimum floor price and also implemented the same in concert.

5.46 Further, enough evidence has been given to the effect that many of the participants of the meeting held on 22.07.2011 had sold sugar at a price which was lower than the alleged minimum price fixed.



5.47 In view of the above, the Commission feels that while issue of price might have been discussed in the meeting, there is no conclusive evidence that there was a meeting of mind and that it was decided to fix a minimum price at which the sugar should be sold. In any case, cartels do not give press releases.

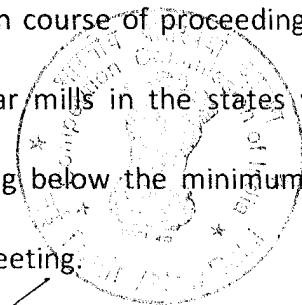
**Issue 3: Was the alleged decision to fix the price actually implemented?**

5.48 The Commission notes that DG has reported based upon the press reports and statement of Shri Ashok Jain that decision to have a minimum ex-mills price could not sustain for long and perhaps lasted for a day or two. The reasons given by Ashok Jain for the same, as under before DG, are pertinent;

*“ It is understood that most of the sugar mills were/are in need of funds and they did not have sufficient sustaining power. Further, the transportation cost for the various sugar factories situated in different areas were also not similar and as such the industry itself was divided/ unhappy over this decision. The factories which were situated away from the large consuming centers like Mumbai would have a higher transportation cost and would therefore not be preferred by the major buyers.”*

5.49 The private mill owners like EID Parry limited before DG have also submitted that in a industry like sugar which is regulated and controlled at the hands of both the Central and State Government, it is not possible to have any price cartelization.

5.50 The Commission notes that DG has not done exhaustive analysis of the ex-mill prices of individual sugar mills that had participated in the meeting dated 22.07.2010 to find out whether decision to maintain minimum floor price was also acted upon. However, from the submissions made by the sugar mills in course of proceedings, the Commission observes that the ex-mills price of the sugar mills in the states where cartelization among the mills has been alleged, was ruling below the minimum price allegedly fixed at the meeting, both before and after the meeting.



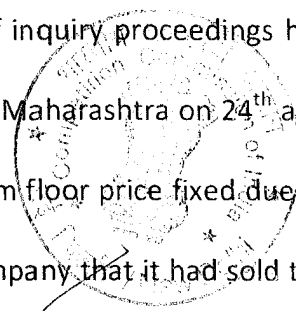
5.51 In proceedings before DG, major private mills which were issued notices, had also given their cost of production and ex-mills price. Balrampur Chini, Kolkata has stated that as against production cost of Rs.3107.93 per quintal for the group, its ex-mills price was Rs. 2693. 07 in July 2010, 2636.80 in August 2010 and 2651.21 in September 2010. Triveni Engineering and Industries Limited, UP has also submitted that ex-mill prices were lower than the cost of production of its units during July-September 2010.

5.52 Similar information has been furnished before DG and in course of inquiry proceedings subsequently by other private mills like DSCL, Delhi and Bajaj Hindustan Limited, Mumbai, Mawana Sugar Limited, Gurgaon operating in UP and EID Parry Limited operating in Tamil Nadu. These mills have reported with figures that their cost of production during the period July 2010- October 2010 was higher than the ex-mills prices.

5.53 The investigation report of DG also contains information to this effect that ex-mills prices of private mills like E.I.D.Parry of Chennai, Shree Renuka Sugars Limited , Karnataka and Nava Bharat Ventures Limited, Andhra Pradesh had not reached the minimum floor price as was decided in the meeting on 22.07.2010.

5.54 It has also been mentioned by DG that in Andhra Pradesh and Gujarat the arrangement had a limited success as the minimum price could rise only upto Rs.2650, which was below the price decided to be fixed by the associations in the meeting dated 22.07.2010.

5.55 Shri Renuka Sugar Mills Limited in its replies in course of inquiry proceedings has also submitted that its spot sales realizations in Karnataka and Maharashtra on 24<sup>th</sup> and 25<sup>th</sup> June 2010 was well below Rs.2500/- , the alleged minimum floor price fixed due to alleged cartelization. It has been further submitted by the company that it had sold the



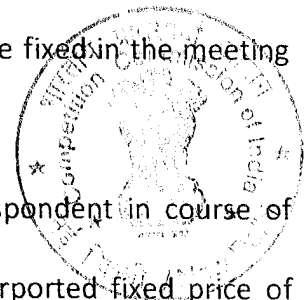
sugar at a price of Rs.2506.76 on 23.07.2010, Rs.2500.15 on 24.07.2010 and 26.07.2010, Rs.2501.48 on 27.07.2010, well below the alleged minimum floor price fixed in the meeting of 22.07.2010. It has also provided daily analysis of quantity of sugar sold during the period 19.07.2010 to 30.07.2010 and has contended that the price at which it has been sold, demonstrates that it had never adhered to the purported price fixation.

5.56 In its reply during inquiry proceedings, M/s Shree Ambika Sugars Ltd., Tamil Nadu , has contended that out of its two units, one unit had no sales during the relevant period and the ex-mill price at the other unit did not show any increase but was actually in the range of Rs.2475 to Rs.2518 per quintal and not Rs.2700 per quintal which is the alleged minimum floor price agreed to be maintained.

5.57 Another sugar mills company, Viswanath Sugar Mills has also submitted that it had sold the sugar at a price of Rs.2506.76 per quintal on 23.07.2010, Rs.2500.15 on 24.07.2010 and 26.07.2010, Rs.2501.48 on 27.07.2010, well below the alleged minimum floor price fixed in the meeting of 22.07.2010. It has also provided daily analysis of quantity of sugar sold during the period 19.07.2010 to 30.07.2010 and has contended that the price at which it has been sold, demonstrates that it had never adhered to the purported price fixation.

5.58 The Commission observes that in course of inquiry proceedings, cooperative mills have also submitted data to support their arguments that their ex-mills prices were below the minimum floor price which was allegedly decided to be fixed in the meeting dated 22.07.2010 for the period - 23.07.2010 till 31.08.2010.

5.59 HSSK, a sugar mill cooperative society in Karnataka, a respondent in course of proceedings, has denied that it had adhered to the alleged purported fixed price of



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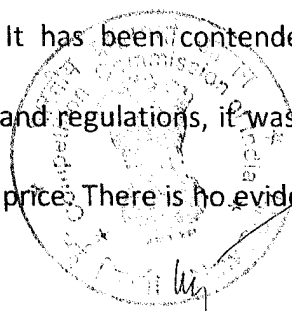
Rs.2700 per quintal on July 22, 2010 since it had sold sugar at a price of Rs.2513.71 on July 23, 2010, Rs.2525. 63 on July 24, 2010, Rs.2511.26 on July 26, 2010 and Rs. 2560.15 on July 27, 2010.

5.60 HSKK has also submitted a daily analysis of the sugar sold during the period of July 19, 2010 till July 30,2010 to substantiate its arguments that it did not adhere to the purported ex-mill price fixed in the meeting held on 22.07.2010.

5.61 The Commission notes that Maharashtra Rajya Sakhar Sangh has also brought out in its submissions that the ex-mills price of various mills remained below Rs.2700 per quintal even after 22.07.2010, a fact which cannot be ignored in absence of any contrary findings. In this regard, the submissions of Shri Naiknavare, MD of Maharashtra Sakhar Sangh are pertinent in which it has been stated as under:

*‘ It is very crucial to take note of that even after the informal meeting which had taken place on 22<sup>nd</sup> July, 2010, the market reports and the study shows no mill resorted to selling sugar at a fixed price (floor price as mentioned in the purported press release) post 22<sup>nd</sup> July, 2010 meeting. It is also to be noted that the average ex mill realization has not leaped to particular ex-mill price level. It is also important to take note that the average ex-mill sugar prices for three months following 22<sup>nd</sup> July, 2010 meeting has shown a decline which has resulted into short margin losses owing to the fact that the mill had abundant stock of sugar as a result of which the financial institutions have converted the short margin losses into fresh loan which has imposed a financial burden on the sugar factories. Thus, it shows that post 22<sup>nd</sup> July, 2010 meeting has in fact not made any benefit to the sugar mills either directly or indirectly.’*

5.62 On the basis of the above facts, the Commission notes that although it appears that the issue of a minimum floor price was discussed, evidences suggest that the prices were below the alleged minimum fixed price. It has been contended in course of proceedings that on the face of various controls and regulations, it was difficult for the sugar mill owners to maintain a particular ex-mill price. There is no evidence that ex-mill



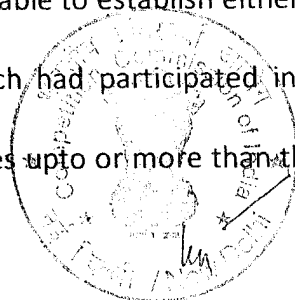


price of sugar was maintained at the desirable level as allegedly decided in the meeting on 22.07.2010. This was not found practicable as has also been outlined by Mr. Ashok Jain, the President of Bombay Merchants Association. DG in his report has also concluded that agreement could remain in force for two or three days only.

5.63 The Commission observes that the provisions of Section 3(3) entail that certain activities will be presumed to be anti-competitive. Section 3(3)(a) of the Act specifically provides that any agreement which determines directly or indirectly price shall be presumed to be anti-competitive. However, once rebuttals have been given by the parties disputing the facts and also that their action has caused AAEC, then the Commission has to consider the case accordingly.

5.64 The Commission further observes that DG appears to have given his conclusions and findings that sugar mills had violated the provisions of Section 3(3) of the Act, based upon the purported press release, press reports and deliberations in the meeting held on 22.07.2010, in light of provisions of presumption provided in the section 3 of the Act. However, in order to hold the presumptions to be correct, it is necessary that the correctness of various facts/reasons regarding limit of the supply, production or market or fixation of prices are ascertained.

5.65 In this regard, the Commission notes that not only sugar mills have given evidences to prove that decision to have certain minimum ex-mills floor price was not acted upon, even though discussed; they have also denied issue of any press release pursuant to that meeting. DG has also not been able to establish either the origin of the press release or the fact that sugar mills which had participated in the meeting on 22.07.2010 had managed to maintain their prices up to or more than the alleged agreed



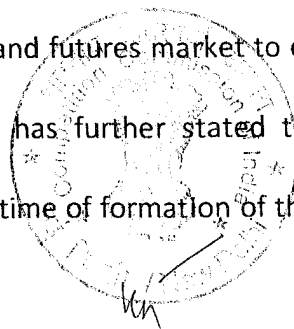
minimum floor price. On the other hand, the sugar mills have given data to support that their prices never reached the minimum floor price as allegedly agreed in the meeting dated 22.07.2010. They have also given their own sets of reasons behind the need for holding meeting, also bringing out that no appreciable adverse effect on competition could have been caused in the market due to their alleged actions.

5.66 The Commission, therefore, concludes that the alleged decision to have minimum price of sugar was never implemented.

**Issue 4: Was any appreciable adverse effect on competition (AAEC) caused in the market?**

5.67 The Commission notes from the submissions of Maharashtra Rajya Sakhar Sangh Limited that in Maharashtra, a large number of sugar mills out of about 168 mills are in the cooperative sugar sector, which have been established for the benefit of its farmer members. The members of the cooperative sugar factories are ultimately the owners through their share holding in the sugar factory. The concept of cooperative movement is to work on the principle of "No profit-No loss" wherein surplus if any, is passed on to the members who are agriculturists.

5.68 The society has also stated that at the start of crushing season the cooperative sugar factory declares its first installment amount which is to be paid mandatorily within 15 days from the date of supply of sugarcane and at that stage the cooperative industry does not oversee the factors such as market price and futures market to determine the first installment to be paid to its members. It has further stated that the State Government has also invested in the capital at the time of formation of the cooperative



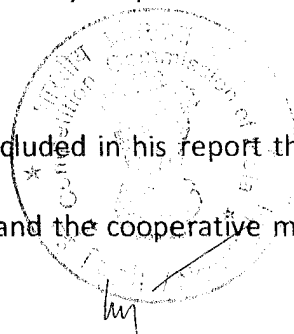
sugar factory and hence all cooperative sugar factories are under the supervision and control of the Commissioner of Sugar appointed by the State Government.

5.69 The Commission feels that in such a scenario, the contention of the cooperative mills appear to be correct that it is very difficult for them to predict the sale realization price compared to its actual production cost and maintain a price fixed by all sugar mills through a concerted decision or action.

5.70 The Commission notes that sugar mills have also contended that in states like Tamil Nadu, the co-operative sugar factories have a production share of 20% and are permitted to sell the sugar within the State only by inviting bids on a daily tender basis. In case of Maharashtra also, a majority of mills are in the cooperative sector which sells the sugar by inviting bids. In this regard, the statement of Shri Naiknavare , MD of Maharashtra Rajya Sahkari Sangh is pertinent as quoted by DG in his report;

*“ As explained earlier, the Cooperative Sugar factories are selling Sugar by calling tenders from all Sugar traders by publishing tender notice in Newspaper. Maharashtra being the surplus state most of the Sugar goes out of the state i.e. North Eastern States like West Bengal, Assam, Orissa & deficit states like M.P. & Rajasthan. The Sugar traders knowing the situation of surplus state take advantage of situation & many times they offer the tender at low rates. It compels the factory to hold the decision of selling Sugar for some time to recoup the cost of production. Factories try to retender & if they feel that, even the cost of production is not recovered then they keep the tenders open @ of production cost.’*

5.71 The Commission observes that the DG has concluded in his report that whatever may be the process of sale of sugar by the private and the cooperative mills, if all the

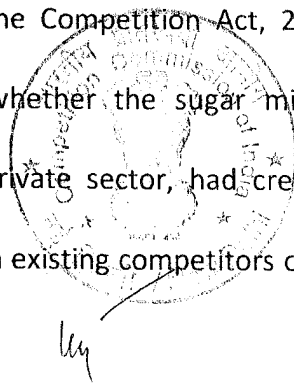


mills take a concerted action not to sell sugar below the minimum fixed price then the prices cannot be determined by the dynamics of market as the prices would be those which have been decided by the mills in concert. However, in this regard, the Commission notes that the DG has failed to appreciate an important aspect that tender itself is a process of market discovery and price cannot be fixed in such circumstances, unless there are evidences of manipulation in the tender process as well, which is not there on record.

5.72 The Commission further observes from the contentions of the sugar mills that ex-mill prices by the private mills other than the cooperative mills are set generally around the tender price of the co-operative mills. Some non-cooperative mills may also opt for the process of tender as informed in course of proceedings. In such a situation, it was not probable that sugar mill owners would have taken a decision to sell sugar at a pre-determined fixed price and thereafter maintain those prices at the time of sale, when a process of sale through tender was also in place.

5.73 In light of the fact that the presumptions in the provisions of Section 3(3) are rebuttable in nature and the respondents have rebutted the findings of the DG, the Commission feels that various factors mentioned in Section 19(3) of the Act need to have been analysed by DG to find out whether any AAEC was caused in the market due to the actions of the sugar mills. However, DG has not done that.

5.74 Looking at the provisions of Section 19(3) of the Competition Act, 2002, the Commission finds that it needs to be established whether the sugar mills, their federations/associations either in cooperative or in private sector, had created any barriers to the new entrants in the market or had driven existing competitors out of the



market or foreclosed competition in the market. The report of DG does not bring out that any of these have been caused due to actions of the entities which held the meeting on 22.07.2010.

5.75 The Commission finds no discussion in the report of investigation to support that there has been Appreciable Adverse Effect on Competition in India due to the alleged actions of sugar mills in terms of provisions of Section 19(3) of the Act.

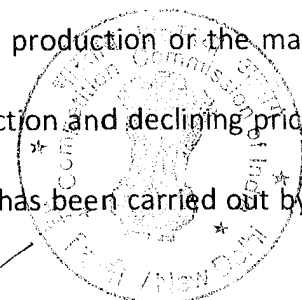
5.76 One of the crucial factors mentioned in Section 19(3)(a) for determination of AAEC is creation of barriers to entry in the market. The investigation has not been able to establish that the acts and conduct of sugar mills acted as barriers to entry of new players in the market.

5.77 Similarly, the investigation has not been able to establish that there was foreclosure of any competition as outlined in Section 19(3)(c) or that any competitor was driven away from the market as mentioned in Section 19(3) (b).

5.78 The Commission, therefore, concludes that there was no adverse effect on competition.

**Issue 5: Was there any limit on supplies or production or market of sugar caused in the case due to the acts and conduct of the respondent Sugar Mills?**

5.79 The Commission also observes that although DG has brought out that the sugar mills have violated the provisions of Section 3(3)(b) of the Act, it is not established how the sugar mills were able to limit or control the supply, production or the market of sugar in face of various regulatory controls, higher production and declining prices. No analysis of production or supply of sugar by various mills has been carried out by DG to

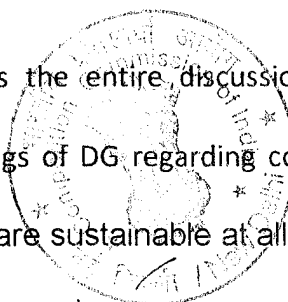


show that the sugar mill owners have acted together in concert to control supply, production or limit the market. It is also important that each sugar mill is bound to release sugar as per directives of govt. and therefore the control over supply of sugar in the market was also not possible.

5.80 The Commission notes that the contention of sugar mills in course of proceedings has been that they were facing a problem of excess production and declining sugar prices as compared to their cost of production in 2010. Thus, it cannot be said that sugar mills had limited the production in order to influence the overall market. DG has also recognized this fact in his report and has submitted that since the production in Karnataka and Maharashtra had risen sharply as compared to previous year, the problem of declining prices was more acute in those states. This was the reason, according to DG, that maximum participation in the meeting held on 22.07.2010 was also from these two states in order to find ways to overcome the problems. Once it is recognized that the production had gone up as compared to previous year and there are regulatory controls of the government over releases in the market, it cannot be maintained that agreement among the sugar mills aimed at limiting or controlling the production or supplies or market of sugar.

5.81 In view of above, the Commission holds that there is no evidence to support that the sugar mills acted in concert to control or limit the supply, production or the market of sugar.

5.82 The Commission observes that this brings the entire discussion to the final determination of the issues, as to whether findings of DG regarding contravention of Section 3(3)(a) and Section 3(3)(b) of the Act are sustainable at all.



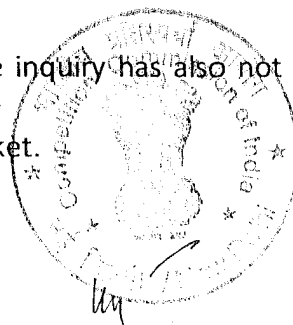
**Issue 6: Whether facts as found in course of inquiry establish any contravention of Section 3(3)(a) and Section 3(3)(b) of the Act as has been finally determined by the DG in the case?**

5.83 As discussed in the order above, the inquiry in the case has not come out with any conclusive evidence to establish that sugar mills have acted in concert to control or limit the supply or production or the market of sugar. Since there is no evidence to substantiate that any control or limit on supply or production or market has been caused there is no case of contravention in violation of Section 3(3)(b) of the Act.

5.84 The facts on record reveal that there was increase in production during the year which caused fall in prices. Under these circumstances, it cannot be said that sugar mills which had participated in the meeting convened on 22.07.2010, tried to limit or control the supply or production of sugar or market of the sugar. Thus, contravention of provisions of Section 3(3)(b) does not get established.

5.85 As far as violation of provisions of Section 3(3)(a) of the Act is concerned, it is not conclusively established that the mills agreed to have a minimum floor price. The facts also reveal that the investigation could not establish that the alleged agreement was implemented by the sugar mills. Many mills which had participated in the meeting in fact have come out with data to show that the ex-mills prices had ruled below the minimum floor price purportedly fixed from 23.07.2010 till 31.08.2010 in the meeting dated 22.07.2010. Since there is no data contrary to what has been submitted by them, their assertions cannot be disputed. Further, the inquiry has also not established that the actions of sugar mills caused AAEC in the market.

**Conclusion**

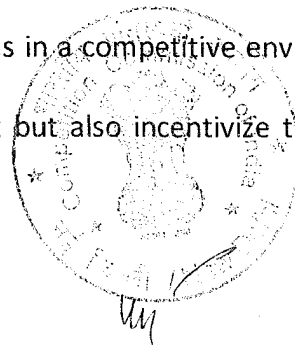


6. The Commission in view of above is of the considered opinion that sugar mills of the states of Maharashtra, Gujarat, Andhra Pradesh, Karnataka and Tamil Nadu have not contravened the provisions of Section 3(3) during the period under investigation and that their actions have not caused AAEC in the market. The commission accordingly deems it fit to close the matter.

7. The Commission also feels that the sugar industry is not free from control and is at present highly controlled and regulated. The Commission also observes that sugar prices are not a mere function of demand and supply and there are complex forces at play which distort and in a way proscribe the market from working in a competitive and free manner.

8. The High level Committee on Competition Policy and Law (Raghavan Committee) has given its finding that restrictions on sugarcane prices and procurement, production capacities, dual pricing of sugar (levy and non-levy) , restraint of exports and imports and many other like restrictions have enabled the inefficient producers of sugar to continue and prevent the rise of a competitive sugar industry.

9. Considering all the above facts, the Commission feels that the government, after taking into account all aspects including need to have such measures in place which may be necessary for overall social and economic welfare, may frame a policy which allows the market and competitive forces to play a bigger role in the sector. While competition in the sector may enable the efficient firms to perform better, it may also ultimately bring benefits to the consumers since efficient firms in a competitive environment may not only compete for greater share of the market but also incentivize the consumers through better product and lower prices.





10. The Secretary is directed to inform the parties accordingly.

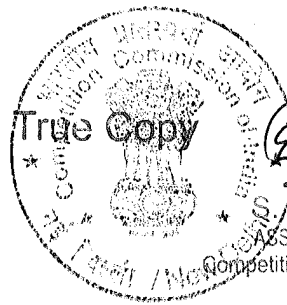
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21/12/2011

ASSISTANT DIRECTOR  
Competition Commission of India  
New Delhi