



COMPETITION COMMISSION OF INDIA

Case No. 24 of 2016

In Re

**South Gujarat Warp Knitters Association,
Block No. 505, N. H. No. 08,
Palsana, Surat-394315, Gujarat**

Informant

And

**Prafful Overseas Private Limited,
101-102, 1st Floor, Sagar Shopping Centre
Sahara Darwaja Ring Road,
Surat-395003 Gujarat**

Opposite Party No. 1

**Welspun Syntex Limited
(Presently Known as AYM Syntex Limited)
610, SNS Business Park,
Vesu Road Cross, Vesu,
Surat- 395007, Gujarat**

Opposite Party No. 2

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. S.L. Bunker
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**



Appearances:

For the Informant

Mr. Sharad Bansali, Advocate
Mr. Jinendra Singhvi, Advocate

For OP-1

Mr. Sushil Kumar Dubey, Advocate
Mr. Rakshit Thakur, Advocate

For OP-2

Mr. Rajshekhar Rao, Advocate
Ms. Mansi Tewari, Advocate

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

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') by South Gujarat Warp Knitters Association (hereinafter, the '**Informant**') against Prafful Overseas Private Limited (hereinafter, '**OP-1**') and Welspun Syntex Limited (hereinafter, '**OP-2**') alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.
2. As per the information, Informant is an association of warp knitting companies. OP-1 and OP-2 (collectively referred to as '**OPs**') are manufacturers of various types of yarn.
3. During the preliminary conference held on 12th July, 2016, on the request of the Informant, the Commission allowed it to file amended information on or before 5th August, 2016. Subsequently, the Informant, *vide* letter dated 25th August, 2016, furnished a revised information (hereinafter, '**Information**').
4. As per the Information, the Informant has alleged that OP-1 and OP-2 have formed a cartel with respect to Nylon Fully Drawn Yarn of 240 Deniers with 12 Filaments Semi-dull variant (hereinafter, '**Nylon FDY 240/12 Semi-dull**'). The Informant has also alleged that OP-1 has abused its dominant position in the market for Nylon Fully Drawn Yarn of 240 Deniers with 12 Filaments Bright variant (hereinafter, '**Nylon FDY 240/12 Bright**'). Both Nylon FDY 240/12 Semi-dull variants and



Nylon FDY 240/12 Bright variants are used by the Informant as a raw material for knitting.

5. With regard to the allegation of cartelization with respect to Nylon FDY 240/12 Semi-dull variant, the Informant has furnished data of sale price charged by OPs, their average sale price, international price and price of Nylon Chips (raw material), which are as under:

Table.1 Comparison of Sale Price of Nylon FDY – 240/12 Semi-dull variant of OP-1 and OP-2 with its international price and Nylon Chips price between Sep-2014 and Jul-2015

Month	Sale Price by OP-1 (Rs./KG)	Sale Price by OP-2 (Rs./KG)	Average Sale Price (Rs./KG)	International Price (Rs./Kg)	Nylon Chips price (Rs./KG)
Sep-14	311.00	304.00	307.00	204.41	153.87
Oct-14	311.00	304.00	307.00	177.68	153.30
Nov-14	311.00	301.00	306.00	174.33	146.02
Dec-14	285.00	289.00	287.00	174.10	143.99
Jan-15	288.00	285.00	286.50	169.81	133.58
Feb-15	284.00	285.00	284.50	157.55	119.29
Mar-15	308.00	300.00	304.00	155.52	121.43
Apr-15	303.00	300.00	301.50	162.61	126.10
May-15	308.00	305.00	306.50	174.49	130.63
Jun-15	308.00	305.00	306.50	181.85	134.63
Jul-15	300.00	300.00	300.00	185.30	128.77

6. In this regard, the Informant has submitted that OP-1 and OP-2 are the only manufactures of Nylon FDY 240/12 Semi-dull variant in India. Relying on the above data, the Informant has argued that:
- Change in the sale prices of Nylon FDY 240/12 Semi-dull variant for the said manufacturers had no link with the change in international price but were higher than that. In some instances, despite a drop in international price, there was an increase in the prices of the OPs and *vice versa*.
 - The average sale price charged by OPs are following a totally different trend as compared to the international prices.



- c) Prices of OPs were moving in parallel to each other.
- d) Worldwide Nylon FDY 240/12 Semi-dull variant prices are a direct function of the prices of Nylon Chips, however, in India such relationship did not exist during the alleged period. Further, that there were some instances, which indicate that despite drop in the price of Nylon Chips, the prices of Nylon FDY 240/12 Semi-dull variant had increased and *vice versa*.

In view of the above, the Informant has alleged that OPs have formed a cartel to keep the prices of Nylon FDY 240/12 Semi-dull variant artificially high.

7. Similarly, with respect to the allegation regarding the abuse of dominant position by OP-1 in the Nylon FDY 240/12 Bright variant market, the Informant has submitted the following:

Table.2 Comparison of sale price of Nylon FDY 240/12 bright variant charged by OP-1 with international price and raw material price between Sep – 2014 and Jul - 2015

Month	Price by OP-1 (Rs./KG)	International Prices (Rs./Kg)	Nylon Chips Price (Rs./KG)
Sep-14	257.55	242.58	153.87
Oct-14	257.55	249.1	153.30
Nov-14	260.83	218.17	146.02
Dec-14	288	271.22	143.99
Jan-15	279.5	223.69	133.58
Feb-15	279.5	228.76	119.29
Mar-15	292.5	242.01	121.43
Apr-15	292.5	221.67	126.1
May-15	297.14	242.37	130.63
Jun-15	297.14	256.29	134.83
Jul-15	297.14	222.48	128.77

- a) OP-1 is the sole manufacturer of Nylon FDY 240/12 Bright variant in India. Hence, it enjoys a dominant position.
- b) Change in the sale price of Nylon FDY 240/12 Bright variant manufactured by OP-1 had no link with the change in the international price but was higher



than that. In some instances, despite a drop in the international price, there was an increase in the sale price of OP-1 and *vice versa*.

- c) Worldwide Nylon FDY 240/12 Bright variant prices are a direct function of the prices of Nylon Chips, however, in India such relationship did not exist. Further, that there were some instances, which indicate that despite drop in the price of Nylon Chips, the prices of Nylon FDY 240/12 Bright variant had increased and *vice versa*.

Based on the above analysis, the Informant has alleged that OP-1 has abused its dominant position.

8. The Informant, *inter alia*, prayed the Commission to conduct an investigation by the Director General.
9. During the preliminary conference held on 30th August, 2016, the Commission considered the Information and heard Mr. Sharad Bansali, Advocate on behalf of the Informant, wherein, he reiterated the facts and allegations mentioned in the Information. On 31st August, 2016, the Commission heard the OPs and on request of OPs, allowed them to file their responses to the Information.
10. With regard to the allegation pertaining to Section 3, OP-1 has submitted that
 - a) Price of Nylon FDY 240/12 Semi dull variant is determined by various factors collectively, such as, cost of setting up the company, demand & supply of product, price of raw material, taxes imposed by the government, geographical factors, benefits given to a particular industry by the government, transportation facilities, negotiations with the customers, dealers *etc.* Price of Nylon Chips cannot be the sole deterministic factor for the price of the final product.
 - b) Apart from OP-1 and OP-2, there are several other players in the market, such as, J. Korin, Century Enka, who are selling 240/12 Nylon Mother Yarn.



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Todi Rayon, Goenka Industry Pvt. Ltd. and Shiven Yarn Pvt. Ltd. were expected to commence their operation in October 2016, November 2016 and March 2017, respectively.

- c) 240/12 Mother Yarn is considered to be an important intermediate good in the production of 20/1 Monofilament Yarn and both can be used in the warp knitting industry. Taking the above aspect into consideration, the existing manufacturers engaged in the production of 20/1 Mono Filament Yarn, such as, JCT Ltd., Century Enka Ltd., Gujarat State Fertilizers & Chemicals Limited (GSFC), Eagle Fibres, Salasar Polytex Pvt. Ltd., J. Korin Spinning Pvt. Ltd., Orilon India Pvt. Ltd., Gupta Synthetics Ltd. and Alliance Fibres Ltd., also pose a competitive constraint in the market for OP-1.
- d) Comparison of the sale prices of OP-1 and OP-2 for Nylon FDY 240/12 Semi dull variant indicates that there does not exist any fixed or definite pattern being followed by OPs and that the price charged by the OP-1 is completely independent of the price charged by OP-2. However, it is submitted that the products of OP-1 and OP-2 are homogeneous, if the prices charged by one varies too much in comparison to the other, it would result in one gaining at the cost of another. Hence, in commercial interest, the prices are kept at commercially suitable levels so that there is no loss of market for OP-1.
- e) Comparison with international prices (*i.e.* with Vietnam) is baseless as Nylon Mother Yarn Semi-dull is not imported from Vietnam.
- f) Further, it is submitted that parallel pricing would not establish the allegation of cartel in India.

In view of above, OP-1 has denied the allegation of cartel between OP-1 and OP-2.

11. Similarly, with regard to allegations pertaining to Section 4, OP-1 reiterated some of the above arguments, such as, price of any product is determined by various



factors collectively; OP-1 has always been producing well below its minimum capacity of production; comparison with international prices (*i.e.* with Vietnam) is baseless. Accordingly, OP-1 submitted that OP-1 does not enjoy a position of strength which would enable it to operate independently of competitive forces prevailing in the relevant market or to affect the market in its favour.

12. As regard to the allegation pertaining to Section 3, OP-2 has submitted that
 - a) There does not exist any definite pattern being followed by OPs, the price of the two OPs moved in the opposite direction during several months.
 - b) International price comparison done by Informant is erroneous as it does not relate to Mother Yarn. There has been no imports of Mother Yarn from Vietnam during the reference period, *i.e.*, between September, 2014 – July, 2015.
 - c) Apart from price of Nylon Chips, there are several other factors which are considered while determining the price of Mother Yarn, especially the prevailing demand and supply conditions in the market.
13. On 15th December, 2016, the Commission considered all the written and oral submissions made by the parties and decided to pass an appropriate order in due course of time.
14. The Commission notes that the allegation of cartelization, between OP-1 and OP-2, under Section 3 of the Act with regard to Nylon FDY 240/12 Semi-dull variant is primarily based on three arguments: a) OP-1 and OP-2 were sole producers of Nylon FDY 240/12 Semi-dull variant; b) sale prices of OP-1 and OP-2 were not moving in tandem with the international price but were higher than that; and c) sale prices of OP-1 and OP-2 were not moving in line with sale prices of Nylon Chips. In this regard, the Commission has made following analysis.



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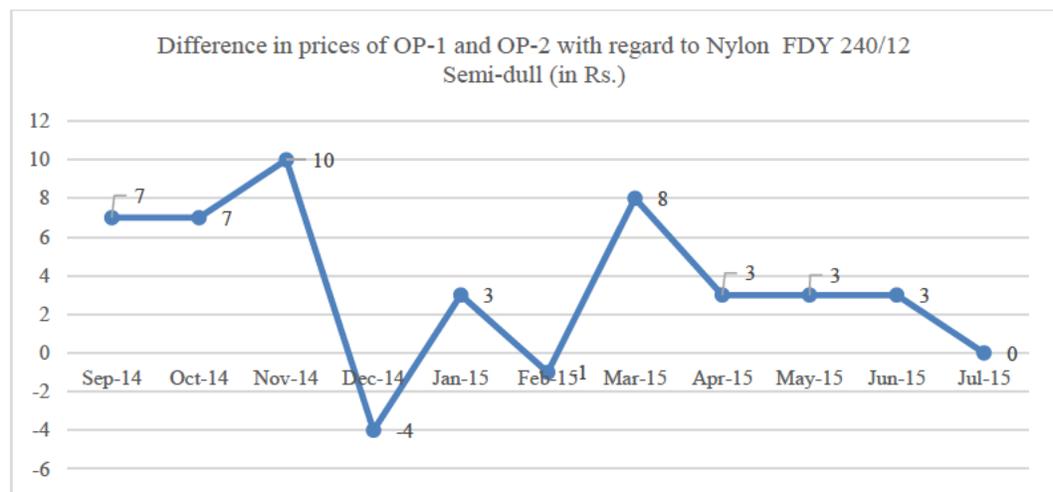


- a) As submitted by the Informant and OPs, until 2000-01, Nylon Mono Yarn was produced from Low Oriented Yarn and same was used by Warp Knitting Industry. Thereafter, TMT Japan introduced a new technology, whereby Nylon chips are converted into 240/12 Mother Yarn which is then split to produce 20/1 Nylon Mono Filament Yarn wound on metallic Cops and the same is then used to produce warping Beam which is subsequently used for either knitting or weaving. In 2010, another new technology, viz., 'Warp Splitting', was introduced to save cost. In Warp Splitting method, Mono Yarn on Beam can be directly produced from Mother Yarn by bypassing the need to produce Mono Yarn on Cops. Based on the above discussion, it appears that Mother Yarn is used to produce Mono Yarn, which is then used for knitting. In the present case, it is observed that both Nylon FDY 240/12 Semi-dull variant and Mono Yarn both can be used for knitting purpose but due to cost advantage of Nylon FDY 240/12 Semi-dull variant over Mono Yarn, the Informant primarily uses Nylon FDY 240/12 Semi-dull variant for knitting. In view of the above and considering the various characteristics of Nylon FDY 240/12 Semi-dull variant and Mono Yarn, the Commission opines that they both are close substitutes of each other. Though, during the alleged period, while OP-1 and OP-2 were the only producers of Nylon FDY 240/12 Semi-dull variant, both the variants were manufactured in India and were also available to the knitters. Thus, producers of Mono Yarn were also posing a competitive constraint on the OPs during the alleged period.
- b) With regard to comparison of prices of OPs with international prices, OPs have submitted that this comparison is baseless. Data on international prices relied upon for comparison is from Vietnam, but no export of Nylon FDY 240/12 Semi-dull variant to India from Vietnam has been reported during the alleged period. Notwithstanding the said fact, the Commission is of the view that such comparison does not give any clear indication of cartel



especially when there is anti-dumping duty on Nylon FDY 240/12 Semi-dull variant.

- c) With respect to the comparison of OPs sale price with the price of Nylon Chips, the Commission observes that the prices of raw material cannot be the sole deterministic factor on which the price of final product would depend. There are various other factors which are taken into consideration while determining the price of Nylon FDY 240/12 Semi-dull variant, such as, cost of setting up the company, demand & supply of product, price of raw material, taxes imposed by the government, geographical factors, benefits given to a particular industry by the government, transportation facilities, negotiations with the customers, dealers *etc.*
- d) The Commission further notes that the comparison of the sale prices of Nylon FDY 240/12 Semi-dull variant of OP-1 & OP-2 during the alleged period does not follow any specific pattern. Following chart depicts the price difference between the OPs.



15. For the purpose of examining the allegations under the provisions of Section 4 of the Act, it is necessary to determine the relevant market at the first instance. Thereafter, it is required to assess whether OP enjoys a position of strength to operate independently of the market forces in the relevant market. Once



dominance is established in the relevant market, only then the question of examining the allegation of abuse of such dominance arises.

16. As per Section 2(r) of the Act, the relevant market is *“The market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.”* and *“relevant product market means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;”* In this regard, it noted that Nylon FDY 240/12 Bright variant and Mono Yarn variant are both close substitutes of each other for the purposes of warp knitting, (as explained in para 11 (A)).
17. Therefore, the Commission is of the view that the relevant market would be *“market for Nylon FDY 240/12 Bright variant and Mono Yarn variant”*. With regard to relevant geographic market, it is noticed that Nylon FDY 240/12 Semi-dull variant and Mono Yarn variant can be procured across India and the condition of competition for demand & supply are homogenous. Hence, the relevant geographic market would be *“India”*. Accordingly, the relevant market in the instant case would be, *“market for Nylon FDY 240/12 Bright variant and Mono Yarn variant in India”*.
18. To assess the market power/ dominance of OP-1, the Commission observes that there are many spinners in the Nylon spinning industry, such as, JCT Ltd., Century Enka Ltd., Gujarat State Fertilizers & Chemicals Limited (GSFC), Eagle Fibres, Prafful Overseas Pvt. Ltd., Salasar Polytex Pvt. Ltd., J. Korin Spinning Pvt. Ltd., Orilon India Pvt. Ltd., Gupta Synthetics Ltd., Alliance Fibres Ltd. and OP-2. Further considering the fact such as low entry barriers in terms of low initial investment and high supply-side substitutability *i.e.* switching to Nylon FDY 240/12 Bright variant from Mono Yarn production can be made with slight modification to the machines, the Commission opines that OP-1 cannot operate independently of the competitive forces and charge an exorbitant price in the



relevant market. Therefore, it appears that OP-1 is not dominant in the relevant market. In the absence of dominance of OP-1, the question of abuse of dominance in terms of Section 4 of the Act does not arise.

19. In view of the above, the Commission is of the view that there exists no *prima facie* case against OPs for contravention of the provisions of Section 3 and Section 4 of the Act and the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
20. The Secretary is directed to communicate to the parties accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S.L. Bunker)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U.C. Nahta)
Member

New Delhi
Dated: 09.03.2017