



COMPETITION COMMISSION OF INDIA

Case No. 12 of 2016

In Re:

**InPhase Power Technologies Private Limited
No. 59, Kachohalli Village,
Chikkagollarahatti, Magadi Main Road,
Machohalli, Dasanapur Hobli,
Bengaluru-560091.**

Informant

And

**ABB India Limited
21st Floor, World Trade Centre,
Brigade Gateway, Dr. Rajkumar Road,
Malleshwaram West,
Bengaluru-560055.**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

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

**Mr. Sudhir Mital
Member**



Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Dr. M. S. Sahoo
Member

Justice G. P. Mittal
Member

Appearances during preliminary conference:

For the Informant: Mr. Nitin Kumar Gupta, Advocate

For the Opposite Party: Mr. Samir Gandhi, Advocate
Mr. Anind Thomas, Advocate
Ms. Kanya Rajagopal, Advocate
Ms. Shivanghi Sukumar, Advocate

Order under Section 26(1) of the Competition Act, 2002

1. The information in the instant case has been filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the “Act”) by InPhase Power Technologies Pvt. Ltd. (hereinafter referred to as the “Informant”) against ABB India Ltd. (hereinafter referred to as the “Opposite Party”) alleging, *inter alia*, contravention of the provisions of Section 4 of the Act.
2. As per the information, the Informant is a company set up in July 2014 under the provisions of the Companies Act, 2013 in Bengaluru by two technocrats namely Mr. Kamalakannan Elangovan and Mr. Thiyaneshwar M. S., and later on joined by three other experts namely Mr. Panna Lal Biswas, Mr. Natash Mayavel and Mr. Hasan Mydin J. The Informant deals in designing, developing and manufacturing of Power Quality and Power Conversion

products indigenously in India; and supplies them to industries like automobile, railways, steel, cement, IT Parks and office complexes *etc.* The Informant claims to have developed the following products: (a) Solar Inverter, (b) 450 Amps Power Quality Active Harmonic Filter, (c) STATCOM panels for Power Quality Improvement, and (d) Customised Power Converter, indigenously in a span of one year.

3. As per the Information, the Opposite Party is a public listed company and a subsidiary of Switzerland based ABB Group, which has presence in approximately 100 countries and has emerged as a global leader in power and automation technologies over the years. It has been stated that the Opposite Party is engaged in the business of manufacturing of electrical equipment like switch gears, drives, automation *etc.* It also manufactures dynamic reactive power compensators and harmonic filters which are Power Quality and Power Conversion products.

4. It has been stated in the information that the Informant has developed a Static Synchronous Compensator (STATCOM) named as IPC-150 SCOM, which is claimed to be more advanced than the product of Opposite Party in terms of technology and features. Further, the said product of the Informant is stated to be the only product which combines the three applications namely- dynamic reactive power, unbalanced loads and harmonics. It has been further stated that the Informant has applied for a patent of this product and the patent application bearing no. 4055/CHE/2015 dated 5th August 2015 in that regard is pending. The various features of this product are, *inter alia*, stated to include optional Supervisory Control and Data Acquisition (SCADA) connectivity (RS485 – TCPIP), higher reliability because of its in-built feature of Insulated Gate Bi-polar Transistor (IGBT) capable of functioning and working at higher temperatures which increases the life of the product itself. IGBT is a three-terminal power semiconductor device primarily used as an electronic switch to combine high efficiency and fast switching. According to the Informant, this product has the capability to not only stop amplification of harmonics but also to compensate harmonics upto 25th Order with cloud

connectivity and data storage capability. The maximum unit size in a single panel can go upto 1000 KVAR wherein 32 such panels can be connected in parallel to achieve upto 32,000 KVAR. The product also has the capability to operate at a higher voltage till 690v without any additional transformer and has in-built Current Transformer (CT) interchangeability feature which enables shortest commissioning time making it trouble free.

5. It has been averred that the Opposite Party has developed two STATCOMs namely STATCON and PQC STATCON. STATCON functions on dynamic reactive power and is a patented product in India (patent number 206766), whereas PQC STATCON functions on dynamic reactive power and unbalanced loads and it is an advanced version of STATCON. The Opposite Party is stated to have applied for a patent over PQC STATCON and the application in that regard is currently pending before the patent authorities (Application dated 19th December 2011 bearing no. 4428/CHE/2011).
6. The Informant has contended that since its product is unique, highly advanced and technologically superior in comparison to the product of the Opposite Party, it started getting attention of the customers and posed danger to the dominant position of the Opposite Party. It has been claimed that the positive response of the consumers towards the product of the Informant prompted the Opposite Party to find ways to suppress the technological innovation/development and competition posed by the product of the Informant.
7. The Informant has alleged that the Opposite Party abused its dominant position by instituting civil and criminal litigation with *malafide* intention to stop the Informant from doing business. In the patent infringement suit (O.S. No.6254/2015) instituted before the Court of the City Civil and Sessions Judge, Bengaluru, the Opposite Party is stated to have obtained an *ex-parte ad interim* injunction order dated 25th July 2015 which has put the Informant on the verge of bankruptcy as it is not able to do business in the relevant product.

Vide another order dated 20th February 2016, the City Civil and Sessions Judge, Bengaluru has made the *ad interim* injunction absolute.

8. The Informant has suggested that the relevant market in the instant matter is 'manufacture and sale of Power Quality Compensators with IGBT technology for low voltage *i.e.* below 1000V in India'. The Informant has relied upon the Research Report of Ken Research (2015) titled "*India Reactive Power Compensation Market Outlook to 2020*" and alleged that the Opposite Party is dominant in the relevant market with 32% market share which is almost double the next player *i.e.* Alstom which commands 18% market share. Further, the Informant has also submitted self-compiled data on the basis of supplies made by OP to railways, automobile and steel sector, in support of its claim regarding the dominance of the Opposite Party.
9. It has been alleged that due to wide product portfolio of the Opposite Party, the consumers are totally dependent on it for procuring several products other than power quality products. The Opposite Party is stated to have taken undue advantage of this dependency of the consumers, by forcing them to purchase its power quality products *i.e.* PQC STATCON and not to deal with the Informant. It has also been alleged that the Opposite Party threatened to stop supplies to its customers if they deal with the products of the Informant.
10. The Informant has submitted that the Opposite Party has distributed some letters and other written material apart from making personal calls to the customers and suppliers stating that the Informant is an illegal and sham company against which legal proceedings are being initiated. In support of this claim, the Informant has made further submissions on 17th February 2016 and 17th March 2016 giving copies of declarations made by a consumer and a distributor of the Opposite Party. The Informant has sought confidentiality over the identity of the persons who gave the aforesaid declarations on the ground that disclosure of their identity would seriously prejudice the inquiry and investigation process as the Opposite Party would influence them and remove all incriminating materials. The Informant further submitted that the

disclosure would also lead to non-supply of certain products to the concerned consumer/distributor, which would adversely affect their business. In addition, a compact disk (CD) containing certain recorded conversations and their transcripts was also filed by the Informant. A certificate under Section 65B of the Indian Evidence Act, 1872 read with the provisions of the Information Technology Act, 2000 has also been filed regarding the authenticity of the CD.

11. Based on the above submissions, the Informant has alleged that the Opposite Party has abused its dominant position in contravention of the provisions of Sections 4(2)(b)(i), 4(2)(b)(ii), 4(2)(c) and 4(2)(e) of the Act.
12. The Commission has given a careful consideration to the information, additional submissions and other materials available on record. The Commission also had a preliminary conference with the parties on 17th March 2016.
13. During the preliminary conference, the Informant, *inter alia*, relied upon the order of the Commission in Case no. 105 of 2013 (M/s Bull Machines Pvt. Ltd. v/s M/s JCB India Ltd. & Ors.) and pointed that abusing judicial process to restrict competition could be a subject matter of Section 4 of the Act. On the other hand, the Opposite Party argued that the Commission does not have jurisdiction in the present matter in view of the pendency of the patent infringement suit before the Court of the City Civil and Sessions Judge, Bengaluru. In response, the Informant argued that the suit pending before the aforesaid Court relates to purported infringement of patent rights and does not concern anti-competitive practices and abuse of dominance by the Opposite Party.
14. It is observed that the Commission is the appropriate forum to consider matters concerning anti-competitive agreements and abuse of dominant position; and mere pendency of a patent infringement suit before a civil court will not exclude the jurisdiction of the Commission in the said matters if the

Informant is able to make out a *prima facie* case for contravention of Section 3 or Section 4 of the Act. It may be relevant to point the order dated 30th March 2016 of the Hon'ble Delhi High Court in *Telefonaktiebolaget LM Ericsson v/s Competition Commission of India and Another*, (W.P. (C) 464/2014 and CM Nos.911/2014 and 915/2014) wherein, on similar pleas, the Hon'ble Court held that “...*the jurisdiction of CCI to entertain complaints for abuse of dominance in respect of patent rights cannot be ousted*”. Thus, the alleged intellectual property right dispute between the parties will not take away the jurisdiction of the Commission in so far as examining the alleged abuse of dominance by the Opposite Party.

15. The Informant submitted that as a result of the interim orders obtained by the Opposite Party from the City Civil and Sessions Judge, Bengaluru, the Informant had to close down the manufacturing of its product. The Informant pointed out 23 differences between the products of the Opposite Party (STATCON) and the Informant (IPC-150 SCOM); and submitted that there is neither any patent violation nor any theft of information by the Informant. It has thus been argued that the litigations instituted by the Opposite Party are frivolous and with *malafide* intention to restrict competition by ousting the Informant from the business. The Informant further stated that it has filed an appeal before the High Court of Karnataka, *inter alia*, challenging the scope of the order dated 20th February 2016 of the Court of the City Civil and Sessions Judge, Bengaluru.

16. The gravamen of the allegations of the Informant is that the Opposite Party has sought to restrain its suppliers and customers to deal with the Informant. In addition, the Informant has submitted that the Opposite Party has instituted civil and criminal litigation with a view to restrict competition and scientific development. Since, the allegations of the Informant in the instant matter relate to abuse of dominance by the Opposite Party, the matter requires the examination in terms of the provisions of Section 4 of the Act.

17. To examine the matter under the provisions of Section 4 of the Act, the relevant market, consisting of the relevant product market and the relevant geographic market, in terms of Sections 2(r), 2(t) and 2(s) of the Act needs to be delineated before determining the position of dominance of the Opposite Party in the said relevant market and its alleged abusive conduct.
18. In the present matter, it is observed that the products in dispute are IPC-150 SCOM of the Informant (patent application still pending) and STATCON (patent granted) & PQC STATCON (patent application still pending) of the OP. These products come under the category of power quality compensators and function on a uniform technology called STATCOM. The power is supplied in the forms of 'Active Power' and 'Reactive Power'. The active power gets used at the end while the reactive power gets wasted, however, the reactive power though wasted is also accounted for in the electricity bill of the end user. The main purpose of the power quality products is to maintain the power quality for the end user and to minimize the wastage of reactive power. The power quality product is attached as a compensator to the main device in such a manner that the reactive power consumption reduces to a minimum and only active power is drawn from the source. These products are stated to have industrial applications in a number of industries like steel, automobile, railways *etc.*
19. There are different variants of STATCOM as per voltage use, wherein Low Voltage (LV) is below 1000V and High Voltage (HV) is above 1000V. During the hearing, the Informant pointed out that the power quality compensator for low voltage is substitutable with the power quality compensator for high voltage by attaching an additional equipment with the low voltage compensator, however, *vice versa* is not possible. Moreover, the customer requiring a low voltage variant may not opt for the high voltage variant on account of increased purchase and maintenance costs. On the other hand, the Opposite Party submitted that the Informant has misled the Commission by conflating two different relevant markets *i.e.* low voltage and high voltage, to present a distorted view of Opposite Party's market position.

The Opposite Party has further submitted that delineation of the relevant market to only IGBT technology is incorrect as IGBT is one type of interchangeable technology on the basis of which power capacitors operate.

20. The Commission notes that the impugned products of both the Informant and the Opposite Party are low voltage variants (based on comparison of brochures of their products) and compete with similar products of other manufacturers. The Commission does not agree with the submissions of the Opposite Party on relevant product market that defining the market as power quality compensators for low voltage, results in narrowing down the market. The relevant product market comprises of all those products which are regarded as substitutable by the consumers, by reason of characteristics of the products, their prices and intended use. The relevant product market has to be defined keeping in view the competition that prevails among substitutable products available in the market. In the present matter, as explained by the Informant, low voltage power quality compensators are not substitutable by high voltage power quality compensators on account of increased product cost, maintenance cost *etc.* Further, low voltage power quality compensators function with IGBT switch which is one of the main component of the product. Therefore, the Commission agrees with the Informant and delineates the relevant product market in the present case as, the market for *‘Manufacture and Sale of Power Quality Compensators with IGBT technology for low voltage i.e. below 1000V.’*
21. The Commission further notes that Power Quality Compensators are sold by companies all over India, and conditions of competition for demand and supply of this product is homogeneous throughout the country. Therefore, relevant geographic market appears to be ‘India’. Accordingly, the relevant market appears to be *“Manufacture and Sale of Power Quality Compensators with IGBT technology for low voltage i.e. below 1000V in India.”*
22. For the purpose of assessing dominance of the Opposite Party in the relevant market, the Informant has relied on a market research report of Ken Research

(2015) titled “*India Reactive Power Compensation Market Outlook to 2020*”. It is observed from the aforesaid report that the Opposite Party is the biggest player in the ‘reactive power compensator’ market with 32% market share, followed by Alstom occupying 18% of the market. Emerson Electric, General Electric and Schneider Electric command 12%, 8% and 6% market share respectively. Rest 24% of the market is occupied by some of the big and small companies including Crompton Greaves, Shreem Electric *etc.* The Informant submitted that the report pertains to the reactive power compensation including high and low voltage variants and is indicative of the dominance of the Opposite Party in the relevant market. Further, to substantiate the dominance of the Opposite Party, the Informant submitted the data compiled from railway tenders and orders placed by major automobile and steel companies during 2005-2014 period for STATCON. As per the submissions of the Informant, the Opposite Party had 92% market share in two traction substation orders of the Railways, for which tenders were awarded from 2005-2013 and 95% market share in automobile and steel industry, based on orders placed during 2005-2014.

23. On the other hand, the Opposite Party submitted figures from Indian Electrical and Electronics Manufacturer’s Association (IEEMA), which is an industry association of manufacturers of electrical, industrial, electronic and allied equipments. Based on the figures, the Opposite Party submitted that in terms of MVAR (Mega Volts Amps Reactive) total ‘low voltage power capacitor’ manufactured in 2015 was 28708 MVAR, out of which the Opposite Party manufactured only 900 MVARs. Accordingly, its market share is stated to be only 3.13% in the market of low voltage power capacitors. The Opposite Party also submitted that factors listed with regard to assessing dominance in Section 19(4) of the Act, stating that due to ease of entry and exit, the industry is characterised by entry of several new players on regular basis such as Quality Power, Trinity Energy Systems, and C&S Electric Ltd. It further submitted that it is not in a position to act independently of the competitive forces due to the presence of many players in the market, and is not dominant in the narrower relevant market. In the

context of the wider relevant market *i.e.* power capacitors of both high and low voltage power capacitors, the Opposite Party submitted that 48292 MVARs were manufactured during 2015, out of which, the Opposite Party manufactured roughly 9400 MVARs which translates to 19.4% market share. It further stated that it faces competition from four other major manufacturers namely: Shreem Capacitors, Unistar, EPCOS and BHEL, and also from non-IEEMA members such as Energi Capacitor, Megnawin Capacitors, Sharda Capacitors and Viswajeet Capacitors all of which contribute to a significant percentage of the market.

24. The research report submitted by the Informant discusses about reactive power compensators both for high and low voltage and the self-compiled data furnished by the Informant relates to the product of the Opposite Party which falls in the category of low voltage reactive power compensator. The Commission notes that the figures submitted by the Opposite Party are related to production of capacitors, which is not the relevant product in the instant case. Although exact details/data pertaining to the relevant market has not been filed by either parties as they are not readily available in the public domain, the data submitted by the Informant is indicative of the dominance of the Opposite Party. Further, the Opposite Party was also not able to provide any material to rebut the submissions of the Informant regarding the dominance of the Opposite Party in the market for Manufacture and Sale of Power Quality Compensators with IGBT technology for low voltage *i.e.* below 1000V in India. Thus, based on the information available on record, *prima facie*, the Opposite Party is found to be dominant in the relevant market.
25. Coming to the alleged abuse, the Commission notes that the Informant submitted an undated letter signed by the officials of the Opposite Party namely Sh. Shylendra Kumar CM, Local Product Line Manager and Sh. Rupinder Singh, Local Business Unit Manager, allegedly sent by the Opposite Party to the suppliers and customers, indirectly aimed to restrain them from dealing with the Informant. The letter, *inter alia*, contained that:

“It has recently come to our notice that certain third parties have been claiming to be able to manufacture and sell products that are similar to specification and technology to our product PQC STATCON for dynamic reactive power compensation and power quality improvement.

.....

.....

In the event any third party supplier does approach you with products similar to our product PQC STATCON please do contact any of us mentioned below for clarification.”

On being confronted, the Opposite Party contended that this letter is a precautionary step taken by the company that has heavily invested in the creation and protection of its valid intellectual property and such letter is not in any manner indicative of its participation in any anti-competitive or abusive conduct.

26. The Informant has submitted that its product IPC-150 SCOM is unique and superior to other contemporary products in the market and caught the attention of the customers/ suppliers. The Informant alleged that the Opposite Party warned its customers and suppliers against dealing with the Informant Company, failing which the Opposite Party would stop the supply of all materials to them. The Commission notes that the Informant submitted two undated declarations (in public and confidential version) *vide* its submissions dated 17th February, 2016 and 17th March 2016, obtained from the customers/suppliers of the Opposite Party, stating that the Opposite Party has asked the suppliers not to deal with the Informant, otherwise the Opposite Party shall not consider them for its business requirements. The Informant further submitted that the Opposite Party has diversified product portfolio, for which suppliers and customers are dependent on it and because of this, the suppliers and customers are afraid of dealing with the Informant. The Opposite Party was provided with the public version of these declarations during the hearing. In this regard, the Opposite Party pointed out that the information is

unclear; it further reiterated that any communication(s) issued by it have only been precautionary in nature and to the extent reasonably necessary to protect its intellectual property rights. The Opposite Party further contended that no communication has been issued with the intent of ousting a legitimate competitor from the market.

27. The Commission has also considered the CD submitted by the Informant, containing the conversations of its official with a supplier, customer and an ex-employee of the Opposite Party, along with the transcript of the conversations. These conversations have been relied upon to bring out the alleged abuse by the Opposite Party and the apprehensions of suppliers and customers to deal with the Informant under the influence of the Opposite Party.
28. On the other hand, the Opposite Party argued that three current employees of the Informant namely, Sh. Panna Lal Biswas, Sh. Natesh Mayavel and Sh. Hasan Mydin J. were ex-employees of the Opposite Party and contributed primarily in the development of STATCON and PQC-STATCON during their course of employment with the Opposite Party. The Opposite Party alleged that these three ex-employees have stolen confidential information relating to innovation and development of their product and the same information and technology has been used by the Informant for developing IPC 150 SCOM. To substantiate its arguments, the Opposite Party, *inter alia*, referred to a forensic audit report of the hard disc and computer data of Mr. Panna Lal Biswas, prepared by KPMG. However, the Informant pointed out that the said KPMG Report cannot be relied upon as the original hard disc of the computer used by Mr. Panna Lal Biswas was damaged and the report is based on the examination of the imaged hard disc.
29. The Commission notes that the patent applications of both the Informant and the Opposite Party are pending and the latter has instituted a patent infringement suit against the former which is also pending. The Commission is of the view that the steps taken by the Opposite Party, during the pendency of these applications and litigations, to dissuade its suppliers and customers

from dealing with the Informant appear to be anti-competitive in nature. Further, the above discussed letter issued by the officials of the Opposite Party suggest that the Opposite Party attempted to set a mechanism whereby it gets intimation if any of its competitor approaches its customers. A holistic consideration of available material suggests that the Opposite Party through its abusive conduct has attempted to limit supply and scientific development in the market and denied market access to the Informant.

30. Considering in totality the information, oral submissions by the parties and all other material available on record, the Commission is of the *prima facie* view that there exists a case of contravention of the provisions of Section 4 of the Act by the Opposite Party and it is a fit case for investigation by the DG. Accordingly, under the provisions of Section 26(1) of the Act, the Commission directs the DG to cause an investigation into the matter and to complete the investigation within a period of 60 days from date of receipt of this order. During the Course of investigation, if involvement of any other party is found, the DG shall investigate the conduct of such other parties who may have indulged in the said contravention.
31. Before parting with the order, the Commission also observes that the Informant sought confidentiality over the name of the customers/ suppliers, who have come forward to report the anti-competitive conduct of the Opposite Party through the letters/declarations dated 17th February 2016 and 17th March 2016. After duly considering the aforesaid letters/declarations and oral submissions of the Informant, the Commission notes that the disclosure of the identity of these vendors/ customers may affect the business relationship between them and the Opposite Party, and may adversely affect their livelihood. Thus, the Commission considers it appropriate to grant confidentiality regarding the identity of these vendors/customers.
32. The Commission makes it clear that nothing stated in this order shall tantamount to final expression of opinion on the merits of the case and the DG

shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

33. The Secretary is directed to send a copy of this order along with the information and all relevant material available on record to the Office of the DG forthwith.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Dr. M. S. Sahoo)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi
Dated: 09.06.2016