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Fair Competition  
For Greater Good

**COMPETITION COMMISSION OF INDIA**

**Case No. 69 of 2016**

**In re:**

**Suntec Energy Systems**

**Plot No. 56, Phase -1, GIDC Estate,  
Naroda, Ahmedabad, Gujarat – 382330**

**Informant**

**And**

**National Dairy Development Board**

**Kheda District Kheda,**

**Post Box Number - 40**

**Anand, Gujarat – 388 001**

**Opposite Party No. 1**

**Amul Dairy**

**Kaira District Co-operative Milk Producer's Union Ltd.,**

**Amul Dairy Road,**

**Anand, Gujarat – 388 120**

**Opposite Party No. 2**

**CORAM**

**Mr. Devender Kumar Sikri**

**Chairperson**

**Mr. S. L. Bunker**

**Member**

**Mr. Sudhir Mital**

**Member**



**Mr. Augustine Peter**

**Member**

**Mr. U. C. Nahta**

**Member**

**Appearances:**

***For the Informant:*** Shri Sibashish Mishra, Advocate  
Shri Ashish Panchal, Assistant Technical Manager

***For OP 1:*** Shri Kirti Manek, Sr. Manager

***For OP 2:*** None

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

1. The present information was filed by Suntec Energy Systems ('**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against National Dairy Development Board ('**OP 1**'), and Amul Dairy ('**OP 2**') alleging contravention of the provisions of Section 3 of the Act.
2. As per the information, the Informant, a partnership firm, has been engaged in the business of manufacture, supply and distribution of high quality burners in India and it is an exclusive distributor of Riello brand burners in India. OP 1, an institution of national importance created by an Act of Parliament of India, was formed in the year 1965 to extend the success of the Kaira Cooperative Milk Producers' Union to other parts of India and has now integrated 1,17,575 dairy co-operatives in India. OP 2 is a brand managed by a cooperative body,



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the Gujarat Co-operative Milk Marketing Federation Ltd. (GCMMF), which is jointly owned by 3.6 million milk producers in Gujarat.

3. It is stated in the information that under the aegis of OP 1, OP 2 floated a tender dated 12.5.2016 inviting offer for 'design, manufacturing, supply, erection, testing, and commissioning of 28.5 TPH @ F & A 100 degree Centigrade FO/NG Fired Boiler PLC operated with duel fuel economiser'.
4. It is averred that in response to the said tender notice the Informant was interested in supplying the burners being manufactured by it. It is stated that the offer document provided a '*List of Preferred make of bought out items*' in Section V of Technical Specification in the tender document. Under the product name 'Burner' only one manufacturer was specified namely '*Weishaupt only*'. It is alleged that there are other manufactures of burners with the same technical specifications available in India, including the burner manufactured by the Informant. Therefore, putting such a condition in the tender which results into making only one manufacturer a preferred supplier is definitely anti-competitive. It is alleged that this condition shows that there is an arrangement/ understanding between the parties to disqualify all other manufacturers/ distributors of burners which amounts to bid rigging and collusive bidding in contravention of Section 3(3)(d) of the Act.
5. Based on the above, the Informant has requested the Commission to direct OP 1 and OP 2 not to finalise or proceed further with respect to the said tender and pass any other order as the Commission may deem fit in the interest of justice.
6. The Commission has perused the material available on record and heard the Informant. It is noted from the information and the arguments put forth by the learned counsel appearing on behalf of the Informant during the hearing that the Informant is aggrieved by the terms and conditions of the tender dated 12.05.2016 floated by OP 2 inviting offer for 'design, manufacturing, supply,



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erection, testing and commissioning of 28.5 TPH @ F &A 100 degree Centigrade FO/NG Fired Boiler PLC operated with duel fuel economiser' for dairy plant of OP 2 in Anand, Gujarat and has alleged contravention of the provisions of Section 3 of the Act.

7. With regards to the allegation of stipulation of certain specification or the brand name in the tender, the Commission observes that a procurer, as a consumer, can stipulate certain technical specifications/ conditions/ clauses in the tender document as per its requirements which by themselves cannot be deemed anti-competitive. It may be noted that the party floating the tender is a consumer and it has the right to decide on the appropriate eligibility conditions based on its requirements. The Commission also observes that in a market economy, consumers' choice is considered as sacrosanct and in such an economy, a consumer must be allowed to exercise its choice freely while purchasing goods and services in the market. It is expected that a consumer can decide what is the best for it and will exercise its choice in a manner which would maximise its utility that is derived from the consumption of a good/ service.
8. Further, OP 2 may have some specific needs while constructing the boiler in its plant and to achieve that standard/ quality, it might have mentioned the name of 'Weishaupt' as the preferred manufacturer in the list of preferred makes of bought out items. It may also be noted from the list of 'preferred makes of bought out items' provided in the tender that for each product (except the burner), it has given the names of more than one preferred manufacturers, indicating that OP 2 is open to procuring from different manufacturers.
9. In the light of the above analysis, the Commission finds that no case of contravention of the provisions of the Act is made out against the OPs in the



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instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.

10. The Secretary is directed to inform all concerned accordingly.

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**  
**(S. L. Bunker)**  
**Member**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**Dated: 10.11.2016**

**New Delhi**