



COMPETITION COMMISSION OF INDIA

Case No. 34 of 2019

In Re:

**Assam Plywood Manufacturers Association
Panchajanya Bhawan
Block B, 1st Floor
Barthakur Mill Road
Ulubari
Guwahati- 781007**

Informant

Against

**Assam Petrochemicals Ltd.
4th Floor, Orion Place
Bhangagarh, G.S. Road
Guwahati 781005**

Opposite Party

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

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

1. The present Information has been filed by Assam Plywood Manufacturers Association ('the Informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Assam Petrochemicals Ltd. ('Opposite Party' / 'OP'), alleging *inter alia* contravention of the provision of Section 4 of the Act.



2. The Informant is an association of the plywood manufacturers in State of Assam. The OP is a public sector undertaking of Government of Assam established for production of methanol and formalin.
3. As per the Information, formalin is used by plywood units for manufacture of resin, which, in turn, is used as a binding agent in the manufacture of plywoods. The Informant states that formalin is purchased by them from OP, which is the sole unit in North-Eastern India manufacturing the same. The Informant has alleged that the OP is abusing its dominant position by charging a discriminatory price of formalin in State of Assam and State of West Bengal, while it charges Rs. 15,300/- per Metric Tonne ('PMT') in State of Assam, it charges only Rs. 11,000/- PMT in State of West Bengal.
4. The Informant has alleged that such practice on the part of OP to charge discriminatory price puts unnecessary burden on Assam plywood manufacturers and also put them at disadvantageous position as compared to their competitors.
5. Based on the above averments and allegations, the present Information has been filed by the Informant against OP alleging contravention of the provisions of Section 4 of the Act. The Informant has prayed that OP be ordered to charge the same ex-factory price for formalin for the units based in State of Assam as it charges for State of West Bengal.
6. The Commission considered the Information in its ordinary meeting held on 22.10.2019 and decided to forward a copy of the Information to OP with a direction to file its response thereto on or before 09.12.2019. Accordingly, OP had filed its response to the Information on 09.12.2019.
7. The OP *vide* its aforesaid reply stated that the production capacity of its factory is much more than the market requirement of formalin in the States of Assam, Nagaland and Arunachal Pradesh. Accordingly, OP is stated to be dependent



on market outside the said States/ region. The State of Assam contributed to 13% of its total formalin sale, whereas the States of Nagaland & Arunachal Pradesh contributed to 9% of its total formalin sale. Thus, as per OP, 78% of its total formalin sale is from outside the States of Assam, Nagaland and Arunachal Pradesh.

8. Further, responding to the allegations of the Informant, OP stated that the ex-factory formalin price is fixed/ calculated on the basis of the prices being offered by the competitors. OP further stated that it sells formalin below the cost price in the region outside the State of Assam, Nagaland and Arunachal Pradesh on account of low prices of formalin offered by its competitors. To substantiate the same, OP stated that in South Bengal region, OP has to compete *inter alia* with M/s Kanoria Chemicals, Vizag and M/s ARCL Organics, Kolkata. As per OP, M/s Kanoria Chemicals, Vizag and M/s ARCL Organics, Kolkata sold formalin in South Bengal region at Rs. 14800/- Per Metric Tonne (PMT) and Rs. 14,000/- PMT, respectively as on 02.11.2019. The OP has asserted that though it incurs Rs. 16,610/- PMT as an average production cost of formalin but to remain competitive in the market it sells formalin at a price which is competitive to the price offered by the aforesaid companies in the said State/ region. Accordingly, OP has fixed ex-factory price for South Bengal region at Rs. 11,000/- PMT, which results in its landed price (ex-factory Basic Price + freight) being Rs 14,212/- PMT for the said region as on 02.11.2019.
9. The OP has detailed in a tabular format the comparison of Formalin price of ARCL, Kanoria and APL as on 02.11.2019 for the customers located in South Bengal region:

	M/s ARCL Organics, Kolkata	M/s Kanoria Chemicals, Vizag	OP
Basic Price per MT	Rs. 10,800/-	Rs. 14,300/-	Rs. 11,000/-



Freight per MT	Rs. 3200/-	Rs. 500/-	Rs. 3212/-
Landed price per MT	Rs. 14,000/-	Rs. 14,800/-	Rs. 14212/-

10. Therefore, as per OP, the presence of competition in the market outside the State of Assam, Nagaland and Arunachal Pradesh forces it to sell formalin at a price below the cost price. The same has led OP to incur a loss of Rs. 944.01 lakhs before tax as per the unaudited result for the half yearly ending 30.09.2019.

11. Further, as per OP, it sells formalin in State of Assam, Nagaland and Arunachal Pradesh at a price less than the price offered by its competitors in the said region. The OP has drawn a comparative table of the prices offered by its competitors for a customer located in Guwahati area as on 02.11.2019:

	M/s ARCL Organics, Kolkata	M/s Kanoria Chemicals, Vizag	OP
Basic Price per MT	Rs. 13,800/-	Rs. 10,800/-	Rs. 15,300/-
Freight per MT	Rs. 3200/-	Rs. 6400/-	Rs. 1594/-
Landed price per MT	Rs. 17000/-	Rs. 17200/-	Rs. 16894/-

12. In view of the aforesaid, OP has stated that the prayer of the Informant to charge the same basic price for Assam and Bengal is not justified and against the industry practice followed by formalin manufacturers in India. Moreover, any such direction may result in jeopardising the very existence of OP and rather, may be detrimental to the interest of all concerned, including that of the Informant.

13. The Commission has perused the Information and the documents filed along with the information, reply of OP and also considered the material available in the public domain.



14. From the material on record, the Commission is of the opinion that irrespective of the fact that whether the relevant product market of supply of formalin is confined to State of Assam or whether it is extended upto the adjacent States including West Bengal, it is apparent from the submission made by OP that there are multiple players in the market.
15. By virtue of explanation (a) to section 4 of the Act, 'dominant position' means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market; or to affect its competitors or consumers or the relevant market in its favour.
16. Further, the Commission, while inquiring whether an enterprise enjoys a dominant position or not under section 4 of the Act, is required to have due regard to all or any of the following factors *viz.* market share of the enterprise; size and resources of the enterprise; size and importance of the competitors; economic power of the enterprise including commercial advantages over competitors; vertical integration of the enterprises or sale or service network of such enterprises; dependence of consumers on the enterprise; monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise; entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers; countervailing buying power; market structure and size of market; social obligations and social costs; relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition; and any other factor which the Commission may consider relevant for the inquiry.



17. In the aforesaid statutory backdrop, the Commission is of the opinion that the presence of multiple players indicates that the buyers have the option to choose their supplies in State of Assam and in the adjacent states including West Bengal. Therefore, it appears that no purchaser is dependent on a single formalin supplier/ seller as purchaser can easily switch to another player without incurring significant cost in terms of money, time, convenience *etc.* The same also negates the claim of the Informant that OP is the sole unit manufacturing/ selling formalin in North-Eastern India.
18. The presence of other players for supply/ sale of formalin shows that OP cannot operate independently of competitive forces prevailing in the market or affect its competitors or consumers in its favour.
19. Notwithstanding that, the Commission has also perused the submissions made by OP to justify charging differential prices for different regions and notes that landed price per MT of formalin in South Bengal, as on 02.11.2019, was Rs. 14,000/-, Rs. 14,800/- and Rs. 14212/- for M/s ARCL Organics, M/s Kanoria Chemicals and OP respectively. While, for the same players, the landed price of formalin in State of Assam was Rs. 17000/, Rs. 17200/- and Rs. 16894/- respectively, as on 02.11.2019. Thus, it appears that suppliers sell formalin at a price taking into account the price offered by the competitors in a State. Moreover, it is also demonstrated from the submissions of OP that price offered by OP for per MT of formalin is less than that of its competitors in State of Assam.
20. Resultantly, neither OP appears to be dominant in the market for supply of formalin in the State of Assam nor does the impugned conduct appear to be abusive.
21. In view of the above, the Commission is of the view that no case is made out against OP for contravention of the provisions of 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.

22. The Secretary is directed to inform the Parties, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 06/02/2020