



Fair Competition for Greater Good

PUBLIC VERSION

COMPETITION COMMISSION OF INDIA

Case No. 51 of 2011

In Re:

M/s HNG Float Glass Ltd

Informant

And

M/s Saint Gobain Glass India Ltd.

Opposite Party

CORAM

**Mr. Ashok Chawla
Chairperson**

**Dr. Geeta Gouri
Member**

**Mr. Anurag Goel
Member**

**Mr. M. L. Tayal
Member**

**Mr. Justice (retd.) S.N. Dhingra
Member**

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



Appearances: Ms. Avaantika Kakkar and Shri Arijeet Mukherjee Advocates, Khaitan & Co., Mumbai alongwith Dr. Ramji Tamarappoo and Ms. Jincy Elizabeth Francis, Economists, Nathan Economic Consulting

Shri Ramji Srinivasan, Senior Advocate with Shri Sharan Bhansali and Ms. Surbhi Mehta Advocates, APJ-SLG Law Offices and; Shri P. Ramkumar, Advocate, Dhall Law Chambers

Order under Section 26(6) of the Competition Act, 2002

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by M/s HNG Float Glass Ltd. ('the informant'/ HNG) against M/s Saint Gobain Glass India Ltd. ('the opposite party'/ SGGIL) alleging *inter alia* anti-competitive practices and abuse of dominant position in clear float glass market in India in contravention of the provisions of sections 4 of the Act.

2. Facts, as stated in the information, may be noted. SGGIL is engaged in business of sale and distribution of float glass and it has dominated the float glass market in India over the years. Only in 2008-09, many significant domestic players such as M/s Gold Plus Glass Industry Limited ('Gold Plus'), HNG, M/s Sezal Glass Limited ('Sezal') have entered into the float glass market. Gold Plus, Sezal and HNG are the only homegrown domestic players in the Indian glass industry that have not forayed into this business with the assistance of any specialized international glass manufacturing company.

3. As per the informant, the three multinational companies such as SSGIL, M/s Gujarat Guardian Limited ('GGL') and M/s Asahi India Glass



Limited ('AIS') operating in India have a culture and history of not adhering to the competitive market principles. They have been repeatedly held in violation of competition laws across the world for their anti-competitive practices. Saint Gobain (group entity of SGGIL) has, in particular, repeatedly attracted the ire of competition law enforcement authorities worldwide and has been penalized on numerous occasions for its anti-competitive conduct.

4. It is further averred that SGGIL is enjoying dominant position in the float glass market in India. Citing different issues of PV Magazine and Glass Yug, the informant has submitted that till June 01, 2010, SGGIL had substantial market share of 25.8% to 28% in the float glass market in India followed by AIL (23% to 24%), HNG (13% to 14.2%), Sezal (12% to 13%), GGL (12.4% to 14%) and Gold Plus (10% to 10.66%).

5. In support of its allegation that SGGIL is dominant in the float glass market in India, the informant has submitted that SGGIL is the only manufacturer that is capable of producing all types of float glass for the Indian market. Further, SGGIL is also in the business of manufacturing of reflective glass which requires high investment, capabilities and modern technology. For a new entrant including the established manufacturers, it is difficult to enter into the reflective glass segment of the glass market. Thus, in the reflective glass segment SGGIL is enjoying near monopoly position.

6. SGGIL is also the market leader in production capacity and enjoys clear dominance in the value added glass segment. Because of its international network, it is able to procure imports and dump these imported inferior products in Indian market. SGGIL is an international brand name which allows it to be the leader in setting prices of float glass in India. Because of its brand value, other players are constrained to set prices below the price of SGGIL. In addition, SGGIL has the largest dealer network with about 1000-1200 dealers. The other competitors have a network of only about 500-600 dealers. HNG has about 860 dealers.



7. In the aforesaid background, the informant has made the following allegations:

(i) The informant has alleged that SGGIL is abusing its dominant position by charging unreasonably low prices in the clear float glass segment. The price of clear float glass dropped from Rs. 52 per mm in October 2010 to Rs. 45 per mm in April 2011. While prices started increasing after April, 2011, in June 2011 they were still below the levels that prevailed in October 2010. This price decline is extremely significant given the almost continuous increase in prices from April 2010, and the increasing demand for glass.

(ii) The other anti-competitive and abusive market strategies of SGGIL includes bundled sales and arm-twisting of dealers (forcing them to buy clear glass from SGGIL if they also want to buy value added glass) and foreclosing competition by not following the fair competitive market principle.

(iii) SGGIL has also pursued aggressive and unfair pricing strategy with the intention of driving out the new competitors in the market. Because of this unlawful strategy, SGGIL has succeeded in taking over the management and operations of Sezal's float glass lines and assets on 31.03.2011. Accordingly, SGGIL's market share jumped from 25% - 28% to about 40% overnight in the float glass market. SGGIL was able to succeed in this strategy because of its dominance in value added products other than the clear float glass products.

(iv) SGGIL is the only company that manufactures value added products which makes dealers, processors and consumers highly dependent upon it. It is because of its market dominance and strength in value added products, that it is able to subsidize the losses that it made by charging lower prices in the clear glass segment.

(v) The declining clear float glass prices post-October 2010 does not correspond to changes in the factors that determine the demand and supply of



flat glass. Rather prices moved contrary to these factors. Float glass is consumed primarily by construction and automotive sectors of the Indian economy. Throughout the period of declining prices, both sectors experienced growth. At a macro-level economic, growth has a strong impact on construction activity. Hence, demand for glass. The drop in clear float glass prices during the period from October 2010 to April 2011 was contrary to what was expected.

(vi) The informant has alleged that the cost of production of float glass also rose during the period of price decline. HNG's float glass variable costs increased steadily over time. In early 2011, Glass Yug, a magazine based on glass industry, reported that over a period of time, prices of furnace oil, natural gas used in glass melting, raw materials such as soda ash and silica sand used for float glass manufacturing have increased.

(vii) The increasing trend in variable costs during the October 2010 through June 2011 period was not being reflected in the prices. Comparing the relative movement of variable cost, clear float glass prices for the period from April 2010 through June 2011 shows wide divergence. Variable cost and the index of clear float glass price diverge, implying that while the variable cost has been increasing, the prices of clear float glass have been decreasing which is in contradiction to what one would expect.

(viii) Demand for glass has been increasing since January 2010 and supply too has been increasing with capacity additions in February 2010 and again in May 2010. In fact, market prices increased even with these significant capacity additions due to the entry of HNG, Gold Plus and Sezal as demand was strong during that period. In October 2010, suddenly the prices started to fall and they continued to fall up to May 2011. The supply situation had not changed in October 2010; the demand was robust and growing at the same rate as during the early part of the year.

**PUBLIC VERSION**

(ix) Rather, during the period from October 2010 to April 2011, there was a reduction of supply capacity. Because of closure of GGL plant between September - December, 2010, capacities in the market were down by about 600 tonnes per day. Further, for around six weeks during February- March 2011, Sezal had shifted to manufacturing tinted glass and this too meant that the capacities/ supply in the clear market were reduced by 400 to 500 tonnes per day. The demand supply dynamics in the market clearly show that prices of clear flat glass would not have dropped during October 2010 through April 2011 if pricing was purely based on market forces.

(x) The depressed float glass prices in the first three months of 2011 placed Sezal in a precarious financial position with a cash loss amounting Rs.90.6 lacs. Sezal was unable to compete given the unsustainable prices because of which it sold out to SGGIL. Once SGGIL was certain of acquisition of assets of Sezal, it suddenly issued a notice to its dealers revising the prices forthwith.

(xi) The informant has alleged that HNG was adversely impacted by SGGIL's unreasonable low pricing. Its net revenues and profits based on HNG Flat Glass' actual sales volumes were lower than they would have been in the absence of SGGIL's unreasonable pricing. SGGIL after assessing the implications of entry of three new entrants into the market set about a conscious strategy to use its dominant position in the market to weaken its competitors and opportunistically acquire their assets and consolidate its market share.

Directions to the DG

8. The matter was considered by the Commission in its ordinary meetings held on 13.09.2011 and 12.10.2011. After considering the entire material available on record, the Commission *vide* its order dated 12.10.2011 directed



the Director General (DG) to cause an investigation into the matter and to submit a report.

9. The DG, after receiving the directions from the Commission, investigated the matter and filed an investigation report on 28.02.2013.

Investigation by the DG

10. The DG delineated the relevant market in the present matter as '*production and sales of clear float glass in India*'.

11. The DG on detailed analysis and comparison of various glass manufacturers on various parameters like market share of the enterprise with respect to volume produced and sold, largest range of products and marketing network, largest production and installed capacity, financial strength *etc.*, noted that SGGIL enjoys a dominant position in the relevant market as per explanation (a) to section 4 read with section 19(4) of the Act.

12. On the issue of abuse, the DG concluded that the opposite party did not abuse its dominant position in the relevant market in contravention of the provisions of section 4(2) of the Act. The summary of the findings is as under:

- a) The examination of allegation relating to unfair pricing including predatory pricing was not found to be substantiated during the course of examination. The prices of the opposite party were found to be moving in a price band with the prices of competitors. It was found that during the relevant period the supply in the market was more than the demand. The entry of new players in the market was found to be the primary reason for reduction in the prices of clear float glass. No evidence was found to indicate that the low prices were triggered by the opposite party. Rather, the reduction in prices of the opposite party was found to be much late than the other players. Thus, although for some period the prices of the



opposite party was below the average total cost, but that was attributable to various factors as discussed in the relevant paras of the report.

- b) The investigation did not show that the new player Sezal was forced to sell its plant due to the strategy of the opposite party in violation of the provisions of section 4(2) of the Act. The allegations relating to tie-in arrangement and cross subsidy by the opposite party were also not found to be substantiated. The investigation did not reveal that the opposite party was imposing any unfair or discriminatory condition on the buyers in the relevant market.
- c) Thus, the investigation, based on facts and evidence on record, concluded that the opposite party did not abuse its dominant position in violation of the provisions of section 4(2) of the Act.

13. The report of the DG was considered by the Commission in its ordinary meeting held on 19.03.2013 and *vide* its order of even date the Commission decided to send copies thereof to the parties for filing replies/objections thereto. The Commission also directed the parties to appear for oral hearing, if so desired.

14. The informant in its response to the report of the DG assailed the findings of the DG that market entrants were keeping prices low by contending that the same is based on insufficient analysis. It was argued that the market entrants would not keep their prices below the established players unless market forces required this or one or more of the established players exerted sustained downward pressure on the market. It was argued that the DG should have taken into consideration the market factors, particularly SGGIL's brand value, which explained why the prices of the new market entrants were lower than as SGGIL's. It was also argued that the informant never alleged predatory pricing and the entire emphasis of the information was on the unprecedented low pricing by SGGIL which remained unexplained by the factors that influence prices in a competitive market. Thus, it was sought to be



argued that the DG only investigated a sub-set of allegations leveled against SGGIL. It was pointed out that section 4 of the Acts includes unfair pricing which is the universal set and that predatory pricing is only one form of unfair pricing. It is the case of the informant that even if prices of SGGIL were above the average variable cost, but lower than the average total cost, the prices may still be considerable unfair/ abusive, if they were a part of a plan for eliminating competition. The informant was aggrieved by the fact that the DG has only made an observation on the pricing, but has not gone ahead and found out the reasons behind the lowered cost or the nexus between these lowered costs and the elimination of a competitor *i.e.* acquisition of Sezal.

15. It was further argued by the informant that the DG ignored the almost immediate rise in prices by 15% in the months following acquisition of Sezal by SGGIL.

16. It was suggested that the prices were unfairly low between October 2010 and May 2011 because conditions including demand, supply and the rising cost of production did not justify these prices during the said period. Immediately after the acquisition of Sezal, the prices began to rise suggesting that SGGIL after having achieved its purpose of acquiring Sezal had started recoupment of its losses suffered on the clear float market. Furthermore, the informant argued that statements of various persons recorded by the DG clearly showed that there could have been recoupment by SGGIL after acquisition of Sezal. The DG has not independently studied or analyzed the international legal precedents and literature available in respect of the need to show recoupment as regards the unfair pricing strategy followed by SGGIL. Reference was made to various case laws from foreign jurisdictions to buttress the point. Based on the same, it was sought to be argued that judicial precedents dictate that whenever there is a risk that competitors will be eliminated, there is no need to prove the possibility of recoupment. This is because the weakened state of competition on the market on which the



undertaking holds a dominant position will, in principle, ensure that losses are recouped.

17. Objection was also taken to the fact that the DG has ignored the statement regarding costs incurred by the glass manufacturers *vis-à-vis* the price and the fact that the low prices were *abnormal*.

18. Further, it was alleged that out of statements made by the six players in the market, even if one chooses to ignore the statements made by HNG and the statements of SGGIL, there is no reasoning provided by the DG as to why the statements of the representatives of AIS and Gold Plus have been ignored, which clearly state that SGGIL leads the determination of the prices.

19. It was also contended that the price in the market was not in line with market conditions and the DG's conclusion that excess supply was the cause of pressure on prices is flawed.

20. On the issue of acquisition of Sezal, it was pleaded by the informant that SGGIL was in touch with Sezal about the likely acquisition of Sezal's new plant around June 2009. However, the MoU that they executed expired in the year 2010. It seems the initial negotiations between these two companies did not work out because SGGIL did not agree to pay INR 750 to INR 800 crores that SGGIL was demanding for a plant that was not yet in production. Further, it was argued that negotiations once more renewed in March 2011, when Sezal contacted SGGIL again and that after two months of the negotiations, the transaction was completed in May 2011. Sezal was forced to look for an investor because of the abnormally low prices that all the new entrants were constrained to charge for clear float glass. It is obvious that while Sezal is immensely grateful to SGGIL for bailing it out, SGGIL procured for itself a working and readymade plant increasing its market share to 40% overnight. The possibility that the abnormally low prices of clear float glass between October 2010 and June 2011 were imposed on the market with



a view to exclude competition, particularly Sezal was a possibility worth investigating but the DG seems to have accepted facts and statements on face value without an analysis of the abnormalities of the market during the period complained of.

21. As regards the issue of allegations of tie-in arrangement and cross-subsidy by the opposite party, informant wondered as to how the DG recorded the finding that no evidence or documents have been produced by the informant or any other stakeholder to show that the opposite party has imposed such conditions on buyers. It was argued that it is not clear why the informant would be burdened with evidence when the updated information clearly stated that the prices of reflective glass is not available in the public domain and the same would have to be inquired into by the DG. Further, the informant had neither alleged tie-in arrangement nor was any evidence sought from it regarding the same by the DG.

22. As concerns the issue of cross-subsidising or the use of market power in the reflective glass segment to abuse its position in the clear glass market, the informant submitted that some of the statements made by the DG are unclear.

23. As regards the investigation by the DG regarding *whether the market power of the opposite party in architecture glass (reflective) has been abused in the other market, issue of supply of processing machine to processors (SEVA), whether the conduct of the opposite party has resulted in elimination of glass processors from the market and whether the opposite party has indulged in imposition of exclusive conditions on buyers*, it was submitted that the DG has analyzed the issues which the informant never alleged and the informant is not in a position to comment on the same.

24. Grievance was also made of the fact that the DG purportedly investigated the issue *i.e. whether the alleged import from Egypt by the*



opposite party attracts the provisions of section 4(2) of the Act, he concentrated the time, energy and efforts of his office in detailing the import of clear float glass only from Egypt ignoring the imports of clear float glass from any other country.

25. The informant also made detailed response to the various other findings of the DG and further stated that it be excused from the need for further involvement in the matter. Subsequently, the informant filed written submissions on unfair pricing and business strategy.

26. The opposite party filed its reply to the written submissions made by the informant denying the contentions raised by the informant. While supporting the findings of the DG, it denied that there has been any improper analysis of the allegation of unfair price by the DG. It was also denied that the DG has limited its investigation to the concept of predatory pricing alone. Further, it was denied that the DG has failed to investigate the surrounding circumstances brought to light in the information and updated information filed by the informant. It was denied that the prices of SGGIL during the investigation period was not a result of legitimate competition, rather were artificially depressed prices to ensure that the new entrants in the market could not over a long period sustain themselves financially.

27. It was submitted by the opposite party that the price of a commodity product like float glass is a function of several factors which *inter alia* include demand and supply position, prices offered by competitors, cost changes of permanent or *quasi*-permanent nature, tax structure, entry of new producers and additional supply in the market, demand disruption in the markets, if any, prices and supply position of substitute products like sheet glass, demand and supply position in the processed glass industry *etc.* It was further submitted that any unfairness in the price and the surrounding circumstances leading to such unfairness have to be assessed in the given commodity product market from the perspective of these factors. It was contended that the investigation



report clearly revealed that the DG has duly investigated the allegations of unfair pricing by analyzing a number of such factors determining price in a given commodity product market. Even otherwise, it was argued that a perusal of the definition of unfair price as suggested by the informant revealed that the opposite party cannot be said to be charging any unfair price. The opposite party also made its submissions on the different determinants of unfair pricing proposed by the informant.

28. It was argued that the DG rightly concluded that the allegations of unfair or predatory pricing by the opposite party have not been substantiated.

29. The opposite party also joined issue with the informant and denied that the reference cannot be placed on the order of the Commission titled *Re: Glass Manufacturers of India* (MRTP Case No. 161 of 2008) dated 24.01.2012 to determine market conditions in the present investigations. It was argued that the conclusion reached in the above cited case clearly established that there is a healthy competition in the clear float glass market in India and that prices are determined by the dynamics of the market. Under these circumstances, it was submitted by the opposite party that having reached the conclusion that the clear float glass market is highly competitive in one inquiry, it would not be appropriate to conclude in this inquiry that the opposite party is in a dominant position in the very same market. This is more so, when the periods under consideration in the two inquiries are overlapping, submits the opposite party.

30. It was further denied by the opposite party that the DG has not fully investigated the acquisition of Sezal by the opposite party. It denied that the questions put to Sezal's promoters during recording of their oral statements were an exercise in '*ticking the boxes*' by the DG. It was submitted that the DG examined all surrounding circumstances relating to acquisition of Sezal by the opposite party by analyzing their replies to the questionnaire sent by the DG and supporting documents. Moreover, it was pointed out that the DG has also recorded the statement of Shri Amrut Shavjjibhai Gada, Chairman and

**PUBLIC VERSION**

Managing Director of Sezal to ascertain the correct facts relating to the allegations of the informant. It was submitted that the questions posed by the DG during the course of such oral examination were direct, specific and aimed at bringing forth correct facts by Sezal regarding any abusive conduct faced by them. It was submitted that a perusal of the answers to such questions clearly revealed that the acquisition of Sezal by SGGIL was a legitimate business transaction and not a result of any abusive conduct of the opposite party.

31. It was further denied that the DG has not sought relevant documents from Price Waterhouse Coopers (PWC) relating to the acquisition of Sezal by the opposite party. It was submitted that from a perusal of the investigation report, it is clear that the DG sought detailed documents pertaining to the said transaction from PWC which included information relating to its role in the negotiation/ takeover and process of the business of Sezal, copies of documents/ opportunity synopsis sent to the potential investors and its agreement with Sezal *etc.* Moreover, the DG has also recorded the statement of Shri Rajehs Vig, Executive Director of PWC to ascertain the correct facts relating to the allegations of the informant. It was also submitted that the questions posed by the DG during the course of such oral examination were direct, specific and aimed at understanding the complete sequence of transaction relating to sale of Sezal.

32. In view of the above, it was contended by the opposite party that it cannot be said that the DG has not sought relevant documents and/ or has not conducted proper analysis relating to the acquisition of Sezal by the opposite party.

33. Accordingly, the opposite party concluded that no case is made out against it under section 4 of the Act and prayed that the Commission may proceed to close the matter under section 26(6) of the Act.

**PUBLIC VERSION**

34. The Commission has perused the information, report of the DG, replies/ objections thereto filed by the parties, written submissions and other material available on record.

35. To examine the allegations pertaining to abuse of dominant position, it is first necessary to determine the relevant market and then the dominance of the undertaking under inquiry needs to be ascertained therein. It is only when the enterprise is found to be in dominant position in the relevant market, the issue of abuse arises for consideration.

Relevant Market

36. As per section 2(r) of the Act, 'relevant market' means 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. Further, the term 'relevant product market' has been defined in section 2(t) of the Act as 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. And, the term 'relevant geographic market' has been defined in section 2(s) of the Act to mean a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.

37. For determining whether a market constitutes a 'relevant market' for the purposes of the Act, the Commission is required to have due regard to the 'relevant geographic market' and 'relevant product market' by virtue of the provisions contained on section 19(5) of the Act. To determine the 'relevant geographic market', the Commission is to have due regard to all or any of the following factors viz., regulatory trade barriers, local specification requirements, national procurement policies, adequate distribution facilities, transport costs, language, consumer preferences and need for secure or regular

**PUBLIC VERSION**

supplies or rapid after-sales services. Further, to determine the 'relevant product market', the Commission is to have due regard to all or any of the following factors viz., physical characteristics or end-use of goods, price of goods or service, consumer preferences, exclusion of in-house production, existence of specialized producers and classification of industrial products.

38. The issues raised in the present case relate to float glass industry in India. It may be noted that float glass can be divided into the following types of glasses on the basis of its uses and value additions: clear glass, tinted glass, reflective glass or mirror glass. From the product mix and the details of the nature / uses of each of these products, it appears that the float glass market comprises of several relevant products and markets. However, as can be seen from the report of the DG, both in terms of production and sale / revenue, the clear float glass segment is on the top with 60% of the total float glass market, followed by other categories.

39. The clear float glass is the common product which needs to be analyzed for competitive concern as raised by the informant. Thus, in view of its use, distinct features and substitutability, the relevant product was taken by the DG as *production and sale of clear float glass* as per provisions of section 2(s) of the Act. As the condition relating to production and sales of the clear float glass is similar in whole of India and therefore, the relevant geographic market was considered as the whole of Indian domestic market by the DG.

40. None of the parties made any grievance about the determination of relevant market in this manner. Resultantly, the Commission is in agreement with the determination and delineation of the relevant market by the DG as '*production and sales of clear float glass in India*'.

Dominance

41. Once the relevant market is defined, the next step is to examine whether the opposite party is in dominant position in the said relevant market.

**PUBLIC VERSION**

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.

42. 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.

43. In the present case, the DG on analysis and comparison of various glass manufacturers on various parameters like market share of the enterprise with respect to volume produced and sold, largest range of products and marketing network, largest production and installed capacity, financial strength *etc.*, noted that SGGIL enjoys a dominant position in the relevant market. It was also noted that SGGIL has largest network of processors and distributors chain in India. It has a brand image with largest acceptance with the customers. Thus, by virtue of its range of products and distribution

**PUBLIC VERSION**

network, it is in a position to operate independently in the market and is also able to influence the consumers in its favour to qualify as a dominant enterprise as per explanation (a) to section 4 read with section 19(4) of the Act.

44. For the reasons noted below, the Commission does not agree with the conclusion of the DG that the opposite party is in a dominant position.

45. The market share analysis of the players in the relevant market done by the DG in terms of annual production and quantity sold of the relevant product indicates a highly competitive market. This is also supported by the fact that after entry of Sezal, the established players suffered significant reduction in their market share. The entry of new firms in the market only shows low entry barriers in the market. So far as the analysis of financial statements of the participants, as done by the DG, is concerned, suffice to note that the fixed assets of AIS were higher than the fixed assets of SGGIL. In such circumstances, from the analysis done by the DG it does not appear that SGGIL has any economic strength or market power which can enable 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.

Annual Production and Quantity Sold of Clear Float Glass Manufacturers

(In MT)

Name of the Company	2009-10		2010-11		2011-12	
	Quantity produced and its % of the total production	Quantity sold and its % of the total sold	Quantity produced and its % of the total production	Quantity sold and its % of the total sold	Quantity produced and its % of the total production	Quantity sold and its % of the total sold
SGGIL	--	--	--	--	--	--
AIS	--	--	--	--	--	--
GGL	--	--	--	--	--	--
HNG	--	--	--	--	--	--
Gold Plus	--	--	--	--	--	--
Sezal	--	--	--	--	--	--
Total	--	--	--	--	--	--



46. Thus, even on the basis of data gathered by the DG during the course of the investigation which is float glass segment specific, the dominance of the opposite party is not clearly established. In this connection, it may be noted that the DG during the course of investigation gathered information from various glass manufacturers regarding quantity produced and sold *vis-a-vis* their percentage for the years 2009-10, 2010-11 and 2011-12. The same is noted above.

47. It was also noted by the DG that SGGIL has largest network of processors and distributors chain in India. It has a brand image with largest acceptance with the customers. Thus, by virtue of its range of products and distribution network, it is in a position to operate independently in the market and is also able to influence the consumers in its favour to qualify as a dominant enterprise as per explanation (a) to section 4 read with section 19(4) of the Act.

48. From the above table, it appears that during the FYs 2009-10, 2010-11 and 2011-12, the quantity produced by SGGIL for the clear float glass had been the maximum in comparison to all other glass manufacturers. Similarly, quantity sold for the clear float glass by SGGIL for the FYs 2009-10, 2010-11 and 2011-12 was the maximum among the glass manufacturers. In view of the above, the DG noted that SGGIL had the largest share of production and sales of clear float glass in the FYs 2009-10, 2010-11 and 2011-12.

49. The Commission is of the view that from the above data as also the data relating to production facility and installed capacity, it may be possible to infer that SGGIL is the largest player in the market. But, to conclude on the basis thereof that SGGIL is the dominant player as envisaged under the Act is not borne out. It is true that the DG or the Commission is not required to examine all the factors enlisted in section 19(4) of the Act in every case and in some cases examination of only one factor may prove sufficient to draw a conclusion of dominance of an entity. However, in this case the dominance



was not decisively coming out on the basis of the factors analysed by the DG and it was incumbent upon him to examine other factors as enumerated in section 19(4) of the Act holistically to determine the dominance or its absence.

50. Further, it is also observed that the market is distributed between 5 or 6 players as indicated in the table above. The facts of the case bring out a natural experiment in form of Sezal's entry in the market. The erosion of market shares for established players like SGGIL, AIS point out the competitive constraints exercised by a new firm on the old experienced firms. The fact that Sezal acquired 13% share in its first year itself, HNG increased its share to 21% in three years and Gold Plus to 16% in three years is indicative of the degree of competition in this market.

51. Even if the fact of SGGIL's acquisition of Sezal and consequent jump in installed capacity to around 42% is considered, the dominance cannot still be presumed given the market shares of the firms in 2011-12 (post acquisition of Sezal by SGGIL). During the year, SGGIL was able to improve its market share by around 6% yet was not able to completely reverse the loss of sales due to Sezal's entry. The year saw GGL gaining by around 6% while other players such as AIS, Gold Plus were able to maintain their shares. The trend of change in market shares indicate a competitive industry.

52. Further, it is also noted that the industry saw entry of three new firms, namely Gold Plus, HNG and Sezal in a very short span of time, which points to the ease of entry in the market.

53. The testimonies of customers of glass manufacturers are also indicative of the market structure. Almost all of the glass manufacturers have stated that HNG's prices are lower than SGGIL. The fact of price competition coming from new players implies the perception that market can be gained by reducing prices.



54. Accordingly, the Commission is of the view that dominance of the opposite party in the relevant market is not established.

Abuse of dominance

55. As the dominance of the opposite party is not established, the issue of abuse may not arise for consideration. However, the Commission, to satisfy itself about any possibility of any anti-competitive conduct, has also gone into the allegations relating to abuse of dominant position.

Predatory Pricing/ Unfair Pricing

56. The allegation that the opposite party was imposing unfair prices in the market was found to be not substantiated on the basis of figures of prices as mentioned in the report. The prices of the opposite party were not found to be abnormal to show any independent movement in the market. The allegation relating to predation before the acquisition of Sezal or excessive pricing after the acquisition also was not found to be substantiated. The prices of SGGIL were normally at the highest level during the period of April-10 to Oct-11. There was no evidence found to show that the prices of the opposite party were the lowest or that the downward trends of prices were triggered by it. The investigation found that the pricing of relevant products was similar in the case of established players, whereas the prices of new entrants were mostly less than the established players. Further, the price movement after the acquisition of Sezal was also not found to be excessive or unfair. Thus, it appears that the opposite party has not imposed unfair or predatory prices during the relevant period in violation of the provisions of section 4 (2) (a) (ii) of the Act. Post - October 2010, the opposite party did not impose unfair or predatory price contrary to the demand and supply in the market in violation of the provisions of section 4(2) (a) (ii) of the Act.

57. On the issue whether the opposite party, shortly after the acquisition of Sezal, increased its prices overnight with further continuous and successive price increases, it may be noted that the prices of SGGL were not increased



immediately after the acquisition of Sezal by the opposite party. It may, however, be noted that there was a pressure of excess capacity and supply in the market in comparison to the demand. Further, the prices of the opposite party were above the cost of production for most of the period except few months, which did not show any intent of the opposite party to reduce the prices in order to eliminate the competitors. Thus, the information gathered during the course of investigation did not indicate that the opposite party had imposed unfair prices in the relevant market even after the acquisition of Sazel. The allegation in this regard is not found to be substantiated. Nothing has been shown by the informant to dislodge the findings of the DG in this regard.

58. On the allegation that the alleged predatory prices of the opposite party led to elimination of Sezal or other competitors from the market, it may be observed that it was not the conduct of the opposite party which led to selling out the manufacturing unit of float glass within one year of the commencement of operations but its own operational and financial conditions led to such decision. This has been brought out very clearly by the DG by highlighting the detailed account of factors leading to acquisition of Sezal. The informant has not been able to assail the account given by the opposite party in this regard.

Tie-in arrangement

59. So far as the allegation made by the informant alleging tie-in arrangement and cross subsidy by the opposite party, it may be observed that no evidence or documents were produced by the informant or any other stakeholder to show that the opposite party imposed such condition on the buyers while selling its product. Secondly, the DG specifically asked the buyers and processor as to whether any condition or influence was imposed on them by the opposite party or any other player. From the replies given, it was concluded by the DG that the allegation regarding tie-in arrangement was not substantiated against the opposite party. The investigation also did not find



any evidence to conclude that the opposite party was imposing any condition of tie-in or discriminatory prices on the consumers. Hence, no case is made out on this count as well.

60. The allegations of the informant regarding takeover of Sezal, pricing strategy and cross-subsidy by the opposite party were also not found to be substantiated during investigation. In the absence of any evidence in this regard, the Commission is in agreement with this finding.

Leveraging

61. On the allegation that the market power of the opposite party in the architecture glass (reflective) was abused in the other market, it was concluded by the DG that there was no denial that the market power of the opposite party in architectural glass was much more than other players. The other big player ASI also produces the reflective glasses but has main focus on automotive glass segments. Thus, it was noted that there was little competition on the opposite party in the reflective segment. It was further noted that the opposite party had been running various sales promotion programs, conducting seminar and providing technical training and guidance to architects and consumers. The amount of money spent by it on such programs was much higher than its competitors. However, such conduct was found not to attract the provisions of section 4(2) as this was noted to be one of the sales strategies for selling products. No abuse regarding pricing or pressurizing the consumers to buy its other product while selling architecture glasses was found to be imposed by the opposite party in the market. The Commission is in agreement with the findings of the DG.

62. Lastly, the DG concluded that there was no evidence to show that the opposite party or other glass manufacturers was/ were using their market power to eliminate the processors from the market. As none of the processors alleged so during investigation, the allegation that the opposite party was

**PUBLIC VERSION**

indulging in exclusionary practice or refused to deal with them is not made out.

63. The allegations made by the informant relating to imports from Egypt were found to be not based on correct appreciation of the facts. It was concluded that the quantity imported by the opposite party from Egypt was a very small quantity having no impact on demand and supply position. It is unnecessary for the Commission to delve into this aspect as this does not fall in its domain.

64. In the result, the Commission is of opinion that no case of contravention of the provisions of section 4 of the Act is made out against the opposite party and concurs with the findings of the DG in this regard.

65. Before parting with this order, it may be noted that SGGIL has moved an application dated 17.04.2013 under sub-regulation (10) of Regulation 35 of the Competition Commission of India (General) Regulations, 2009 by way of an appeal against the orders of the DG dated 27.02.2013 and 01.04.2013. By the said orders, the DG while granting confidentiality to the applicant therein restricted the duration thereof till final passing of the order by the Commission. Thus, the grievance of the applicant relates only to this aspect. The applicant has sought confidential treatment in perpetuity. The prayer is thoroughly misconceived. The applicant except citing the grounds for grant of confidentiality as provided for in Regulation 35 of the General Regulations has not been able to show as to why the confidential treatment in perpetuity is required. A bare reading of the provisions of Regulation 35(4) of the General Regulations would reveal that the grant of confidentiality treatment has to be for a limited duration as due to efflux of time the data may become of historical nature. Be that as it may, the Commission is satisfied that no infirmity can be found or has been otherwise shown in the orders of the DG granting confidentiality for a limited duration. On a careful consideration of the averments made in the application, the Commission is of opinion that ends



Fair Competition for Greater Good

PUBLIC VERSION

of justice would be met if the duration of the confidentiality period is extended by a further period of 60 days from the date of receipt of this order by SGGIL.

66. It is ordered accordingly.

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

**Sd/-
(Ashok Chawla)
Chairperson**

**Sd/-
(Anurag Goel)
Member**

**Sd/-
(M. L. Tayal)
Member**

**Sd/-
(S.N. Dhingra)
Member**

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

New Delhi

Date: 24/10/2013