



**COMPETITION COMMISSION OF INDIA**

**Case No. 61 of 2016**

**In Re:**

**Indian Laminate Manufacturers Association  
301, Shubham Complex,  
Opp. Sanjivani Hospital,  
Vastrapur, Ahmedabad-380015.**

**Informant**

**And**

**Sachin Chemicals  
301, 3<sup>rd</sup> Floor, Aura Biplax,  
S. V. Road,  
Above Kalyan Jewellers,  
Borivli (W),  
Mumbai – 400092.**

**Opposite Party No. 1**

**Deepak Phenolics Limited  
Aaditya - II, Beside Deepak Nitrite Limited,  
NH-No. 8, Chhani Road,  
Vadodara - 390 024, Gujarat.**

**Opposite Party No. 2**

**B. Chokshi Chem Private Limited  
49/3-B, Shyamal Row Houses,  
Before Sanjay Tower, Satellite,  
Ahmedabad - 380 015, Gujarat.**

**Opposite Party No. 3**

**Chemtrade Overseas Private Limited  
1004/05/06, DamjiSamji Corporate Square,  
next to Kanara Business Center,  
Laxmi Nagar, Ghatkopar – East, Mumbai.**

**Opposite Party No. 4**

**Yug International Private Limited  
A 220, Sakar 7, Nehru Bridge Corner,  
Ashram Road, Ahmedabad,  
Gujarat-380006.**

**Opposite Party No. 5**



**Arintis Sales Private Limited**  
322, DLF, Tower B,  
Jasola District Centre,  
New Delhi- 110025.

**Opposite Party No. 6**

**Shubham Chemicals & Solvents Limited**  
Office 35, Patel Centre Owner Association,  
Plot No. 41, Sector 9, Gandhidham,  
Kutch-370201,  
Gujarat.

**Opposite Party No. 7**

**BMV Overseas Private Limited**  
Office No. 1203, Matrix,  
Near Divya Bhaskar Building,  
Praladnagar, Corpoarte Road,  
Makarba, Ahmedabad-51, Gujarat.

**Opposite Party No. 8**

**Shakumbhari Aromatics Private Limited**  
18, Rabindra Sarani,  
Gate No. 4, Kolkata, West Bengal.

**Opposite Party No. 9**

**Sanjay Chemicals (India) Private Limited**  
Unit G-1, 5th Floor, Kanmoor House 281/287,  
Narshi Natha Street,  
Mumbai – 400009.

**Opposite Party No. 10**

**Sonkamal Enterprises Private Limited**  
Office No-89, 2nd Floor,  
Grain Seed Oil Merchant Association  
Building,  
Plot No-297, Ward 12/B,  
Gandhidham, Kutch-370201, Gujarat.

**Opposite Party No. 11**

**C. J. Shah & Co.**  
105, Bajaj Bhavan, 10<sup>th</sup> Floor,  
Barrister Rajni Patel Marg, Nariman Point,  
Mumbai- 400021

**Opposite Party No. 12**

**Apra Enterprises**  
1, Sai Chambers, 2<sup>nd</sup> Floor,  
Narsinatha Street, Mumbai-400009.

**Opposite Party No. 13**



**Hazel Mercantile Limited**  
04, Shapath 1, Opp. Rajpath Club,  
S.G. Highway, Bodakdev,  
Ahmedabad, Gujarat.

**Opposite Party No. 14**

**Overseas Polymer -Vinmar Group Co.**  
A-41, Vinmar House, MIDC, Road No. 2  
Andheri (East), Mumbai-Maharashtra.

**Opposite Party No. 15**

**Kunjai Synergies Private Limited**  
15D, Everest House,  
46C, Jawaharlal Nehru Road,  
Kolkata-700071, West Bengal.

**Opposite Party No. 16**

**Haresh Petrochem Private Limited**  
510, Acme Plaza, Andheri-Kurla Road,  
Andheri (East), Mumbai-400059.

**Opposite Party No. 17**

**Ketul Chem Private Limited**  
Western Edge-1, Kanakia Space,  
Unit No 403, 4th Floor, Western Express,  
Highway Borivali East Mumbai.

**Opposite Party No. 18**

**Aarey Drugs & Pharmaceuticals Limited**  
107, Sahakar Bhavan,  
340/348, NarahiNatha Street,  
Masjid, Mumbai.

**Opposite Party No. 19**

**CORAM**

**Mr. Ashok Kumar Gupta**  
Chairperson

**Ms. Sangeeta Verma**  
Member

**Mr. Bhagwant Singh Bishnoi**  
Member



***Appearances in the hearing held on 06.02.2020:***

<i>Informant:</i>	<i>Mr. Vishvendra Verma, Advocate</i> <i>Mr. Archit Verma, Advocate</i>
<i>OP-12:</i>	<i>Mr. Rahul L. Gajera, Advocate</i>
<i>OP-17:</i>	<i>Mr. Jaydeep C. Patel, Advocate</i> <i>Mr. Davesh Vora, Manager</i>

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

1. The present information was filed by Indian Laminate Manufacturers Association, (hereinafter, '**ILMA**/' '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the "**Act**") against Sachin Chemicals (hereinafter, the '**OP-1**'), Deepak Phenolics Ltd. (hereinafter, the '**OP-2**'), B. Chokshi Chem Pvt. Ltd. (hereinafter, the '**OP-3**'), Chemtrade Overseas Pvt. Ltd. (hereinafter, the '**OP-4**'), Yug International Pvt. Ltd. (hereinafter, the '**OP-5**'), Arintis Sales Pvt. Ltd. (hereinafter, the '**OP-6**'), Shubham Chemicals & Solvents Ltd. (hereinafter, the '**OP-7**'), BMV Overseas Pvt. Ltd. (hereinafter, the '**OP-8**'), Shakumbhari Aromatics Pvt. Ltd. (hereinafter, the '**OP-9**'), Sanjay Chemical (India) Pvt. Ltd. (hereinafter, the '**OP-10**'), Sonkamal Enterprises Pvt. Ltd. (hereinafter, the '**OP-11**'), C.J. Shah & Co. (hereinafter, the '**OP-12**'), Apra Enterprises (hereinafter, the '**OP-13**'), Hazel Mercantile Ltd. (hereinafter, the '**OP-14**'), Overseas Polymer-Vinmar Group Co. (hereinafter, the '**OP-15**'), Kunjal Synergies Pvt. Ltd. (hereinafter, the '**OP-16**'), Hareh Petrochem Pvt. Ltd. (hereinafter, the '**OP-17**'), Ketul Chem Pvt. Ltd. (hereinafter, the '**OP-18**') and Aarey Drugs & Pharmaceuticals Ltd. (hereinafter, the '**OP-19**'), hereinafter collectively referred to as '**OPs**', alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.

**Facts in brief**

2. The Informant is stated to be an association whose members are involved in the manufacture of decorative laminate sheets, popularly known as Sunmica, one of



whose major raw materials is Phenol. The decorative laminate sheets industry is stated to be fragmented with about 175 active laminate manufacturers most of which are small and medium enterprises.

3. It is averred by the Informant that laminates and plywood consume 68% of the total available phenolic resin or Phenol, however, since in plywood production, usage of phenol is minimal, laminate industry is the single largest consumer of Phenol in India.
4. The Informant has stated that local production of Phenol is unable to meet domestic demand, leading to increased dependency on import of phenol. Majority of Phenol consumed in India is stated to be imported in India by a few importers and it is alleged that these importers have formed a cartel to control the supply and prices of Phenol in Indian markets.
5. The Informant has claimed that since the firms engaged in the production of laminate are usually small to mid-size, they have to bow down to the high prices charged for Phenol by these traders. It is also stated that laminate industry operates on fixed margins and is unable to pass on the increased input prices to the end user.
6. The Informant has alleged that by forming a cartel, the importers of Phenol 'artificially jacked up' Phenol prices from around INR 60 per kg to almost double, *i.e.* around INR 115 per kg during the period January 2016-March 2016, *i.e.* about 90% increase in few days. It has been further stated that due to the alleged cartelization by Phenol importers in January, February and March 2016, decorative laminate manufacturers were compelled to buy phenol at higher prices and as a result a few decorative laminate manufacturers were contemplating shutting down their businesses. It is also averred that cartel members increased the prices by spreading rumors that there was a shortage of Phenol, thereby, prompting laminate manufacturers to rush into enquiries to a limited number of suppliers for purchasing



Phenol. As per the Informant, the rates being quoted by each supplier were in very narrow range as per the cartel directive.

7. The Informant further stated that the OPs raised the prices on 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> February, 2016 post the presentation of one Ms. Malini Hariharan of Independent Commodity Intelligence Services ('ICIS') during ILMA's seminar held in Bangalore on 23-24 February, 2016 in which she stated that phenol prices in India are likely to rise.
8. The Informant also referred to other market conditions during the alleged period such as traditionally low demand for phenol during last quarter of the financial year *i.e.* January-March, on account of lowest sales of laminates during that period. The Informant further pointed towards the near full stock position of Phenol at Kandla Port and at other ports in rest of India due to low demand of phenol. In anticipation of phenol prices dropping further, the laminate and plywood manufactures were keeping the lowest stock of Phenol in their factories.
9. The Informant further stated that the prices of Phenol were also low in international market during the said period due to lower prices of crude oil and gas from which Phenol is manufactured. It was also stated that despite there being not much variance in the import prices during the period under consideration, there was contradiction in import prices and corresponding domestic sales price by the OPs. For instance, Cost and Freight ('CFR') India import prices in the end of Jan-Feb 2016 and Mar-Apr 2016 were in the range of USD 750 to 850 and USD 930 to 960 per tonne respectively, whereas, during the corresponding periods, the domestic sales price jumped from Rs 60 to Rs 114 per Kg during Jan -Feb 2016 and fell from Rs 114 to Rs 70 per Kg during Mar-Apr 2016.
10. The Informant has also alleged that the OPs abused their dominant position in the entire Phenol market of India.



11. It is also averred that Phenol cartel was operative even in the months of March, April and May 2016. The peak price of Phenol was reduced by the OPs as they got the news from various laminate buyers that ILMA was considering filing a complaint before the Commission against the Phenol cartel. It has been claimed that this movement in prices could have not happened without there being an agreement amongst the importer traders.
12. The Informant also prayed for an interim order and injunction against the OPs so as to avoid the small and medium enterprises having to close their business as they would not be able to pass the increase in prices to customers due to the competition prevailing in laminate business.
13. Apart from an interim order and injunction from the Commission, the Informant prayed before the Commission to *a)* order the OPs to stop the cartel activities, *b)* reimburse excess amount charged by way of higher prices to all Phenol buyers, *c)* penalize OPs on their cartelisation activities; and *d)* Order the OPs to pay the Informant and laminate manufacturers for the irreparable and reparable loss suffered by them on account of unfair trade activities of the OPs.

**Prima facie order and directions to the Director General**

14. The Commission heard the Informant in the preliminary conference on 29.11.2016 and *vide* order dated 31.01.2017 passed under Section 26(1) of the Act, directed the Director General ('DG') to cause an investigation into the matter with respect to alleged contravention of provisions of Section 3 of the Act and submit its report. With respect to the alleged contravention of provisions of Section 4 of the Act, however, the Commission did not find a *prima facie* case.
15. After seeking due extensions of time, the DG submitted its Investigation Report dated 29.03.2019 to the Commission.



### **Investigation by the DG**

16. The DG, based on the allegations of the Informant, framed the following issues for investigation:

***Issue 1: Whether the Opposite Parties (OP-1 to OP-19) have colluded to form a cartel and thereby control the supply and control/ fix the price of Phenol in synchronized manner during January 2016 to March 2016 (and till June 2016)?***

***Issue 2: Whether the Opposite Parties (OP-1 to OP-19), collusively reduced the price of Phenol during March 2016 to May 2016, after the Informant filed information with the Commission for the alleged Phenol cartel?***

***Issue 3: If answer to both the above is in affirmative, whether such conduct of the OPs contravenes the provisions of the Act.***

***Issue 4: In the event of investigation concluding that the OPs had acted in contravention of the provisions of the Act, identification of persons who are complicit in the said contravention.***

17. During the course of investigation, the DG brought proceedings under Section 43 against two parties viz. Yug International (OP-5) and Hazel Mercantile (OP-14) before the Commission for their non-cooperation during investigation. The Commission, vide separate orders dated 01.06.2018 and 11.06.2018, issued directions to cooperate with the investigation and also imposed penalty of INR 1 lakh each on OP-5 and OP-14, which was realised.
18. For the purpose of understanding the market, the DG proceeded with delineating the relevant market though the conduct of collusion to manipulate market conditions is a *per se* violation and does not require delineation of relevant market. Considering Phenol's physical characteristics, end use, consumer preferences and that only two





domestic companies are engaged in manufacture of phenol whereas approximately 90% of the domestic demand is being met by imports, the DG delineated the relevant market as *liquid bulk Phenol for sale in India*.

#### **'Relevant period' for economic analysis**

19. The DG noted that the alleged cartel period was confined only to a few months in the first half of the year 2016 (more specifically, the months of February to May 2016). The DG considered the alleged cartel period to be from January 2016 to June 2016, with the first quarter (Jan-Mar 2016) reporting an upward trend followed by a downward trend in the following quarter (Apr-Jun 2016). Furthermore, in order to maintain uniformity in analysis, the DG also analysed six months before the alleged cartel period (Jul 2015 to Dec 2015) and six months after the alleged cartel period (Jul 2016 to Dec 2016) to create benchmarks for comparative analysis. Thus, in total, data pertaining to 18 months starting July 2015 to December 2016 was examined by the DG to study market trends for Phenol.

#### **Data collection and methodology adopted by the DG**

20. During the investigation, the DG observed that only two domestic companies, viz. Hindustan Organic Chemicals Limited and SI Group, are engaged in phenol production which could marginally meet the domestic demand. The DG noted that the demand for phenol rose at a rate of 6-6.5 % over last five years (prior to 2016-17), however, no production capacity was added until Deepak Phenolics Limited commenced its commercial production in Sep 2018 with a production capacity of 2 lakh tonnes. The DG noted that absence of sufficient domestic production capacity, production and availability of phenol in the domestic market resulted in heavy dependence on imports to meet domestic demand. Phenol is generally imported into India from various countries such as Brazil, Taiwan, the USA, China, Korea, Thailand, Singapore, South Africa, etc. The DG further noted that in Aug 2014 the government imposed anti-dumping duty on phenol imports from the USA and



Taiwan, then in July 2015 on phenol imports from South Africa and in Jan 2016 on phenol imports from the European Union, South Korea and Singapore.

21. On account of phenol market being largely an import driven market, the DG, for the purpose of analyzing market trends, collected the data for import of Phenol into India from Central Board of Excise and Customs (CBEC)-Economic Data Wing of Government of India. In addition to this, the DG collected data from major market players and some third parties engaged in trading of phenol.
22. The DG analysed port-wise import of phenol and noted that phenol was imported into 16 ports in India including 7 dry ports and data pertaining to the relevant period of 18 months indicated that Kandla port imported the maximum quantity of Phenol into India with 74% of total phenol imported during the relevant period followed by Nhava Sheva and Hazira ports with 11% and 9%, respectively. In terms of import of Phenol, the DG also analysed the importers who had imported phenol during the relevant period and made a list of top 25 importers in this respect. The DG found that only 10 OPs found place in this list, namely: Sonkamal (OP-11), Shubham (OP-7), CJ Shah (OP-12), Yug International (OP-5), Deepak Phenolics (OP-2), Haresh Petrochem (OP-17), Hazel Mercantile (OP-14), Sanjay Chemicals (OP-10), B. Chokshi (OP-3), and Kunjal (OP-16).

### **Screening of OPs**

23. Probe letters were sent by the DG to all the OPs and the DG sought specific details from them. The DG collected data pertaining to total quantity of Phenol imported, its landed cost, its weighted average price and average consignment price. It is pertinent to mention that despite issuing probe letters, OP-8 *viz.* BMV Overseas Private Limited failed to submit any information as it was reported to be under liquidation after termination of its business operations.



24. The DG conducted analysis for each of the three identified periods and noticed that 15 OPs had imported phenol prior and subsequent to the alleged cartel period and 16 OPs had imported phenol during the alleged cartel period. From the preliminary analysis, the DG noted that 3 business entities (OP-1, OP-9 and OP-19), had not imported even a single phenol consignment and were only engaged in domestic trade during the cartel period.
  
25. To utilise the investigation resources in optimal manner and considering the time bound nature of investigation, the DG decided to use a threshold benchmark. Accordingly, the DG ranked the OPs in order of the quantity of phenol imported by them during the relevant period, *i.e.* 01.07.2015 to 31.12.2016 (refer to **Table A** below) and selected top 12 OPs who accounted for more than 95% of the total sales volume during the relevant period (and covered about 30-36% of the total domestic phenol market) for detailed examination/ investigation. Through this method, the DG selected 12 OPs out of 19 OPs arrayed as opposite parties in the matter.

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**Table A: Market Share of 18\* OPs during Relevant Period (Jul' 15 to Dec' 16)**

S. No.	Name of the Opposite Party (OP)	Total Sales (MTs)	Market Share (%)	Cumulative Market Share (%)
1	SONKAMAL ENTERPRISES PVT. LTD.	65960	22.66	22.66
2	SHUBHAM CHEMICALS & SOLVENTS LTD	39738	13.65	36.31
3	C. J. SHAH & CO	38658	13.28	49.59
4	HAZEL MERCANTILE LIMITED.	32325	11.11	60.70
5	HARESH PETROCHEM PVT. LTD.	17848	6.13	66.83
6	YUG INTERNATIONAL PVT. LTD.	16423	5.64	72.47
7	SANJAY CHEMICALS (INDIA) PVT. LTD.	16376	5.63	78.10
8	DEEPAK PHENOLICS LIMITED	15746	5.41	83.51
9	B. CHOKSHI CHEM PVT. LTD.	12610	4.33	87.84
10	KUNJAL SYNERGIES PVT. LTD.	9790	3.36	91.21
11	CHEMTRADE OVERSEAS PVT. LTD.	7198	2.47	93.68
12	KETUL CHEM PVT. LTD.	4250	1.46	<b>95.14</b>
13	ARINITS SALES PRIVATE LIMITED	3595	1.24	
14	APRA ENTERPRISES	3386	1.16	
15	OVERSEAS POLYMERS PVT. LTD.	2924	1.00	
16	AAREY DRUGS & PHARMACEUTICALS LTD.	2052	0.71	
17	SHAKUMBHARI AROMATICS PVT. LTD.	1096	0.38	
18	SACHIN CHEMICALS	1093	0.38	
<b>Grand Total</b>		<b>291075</b>		

Source: Investigation Report

\* As stated in para 23 that OP-8 filed for liquidation and hence excluded by the DG.

26. Therefore, on the basis of the analysis of market share of the OPs, 12 firms were selected for detailed focused investigation. These 12 firms are: ‘Sonkamal Enterprises Private Limited’ (22.66%); ‘Shubham Chemicals & Solvents Limited’ (13.65%); ‘C.J Shah & Co.’ (13.28%); ‘Hazel Mercantile Limited’ (11.11%); ‘Haresh Petrochem Private Limited’ (6.13%); ‘Yug International Private Limited’ (5.64%); ‘Sanjay Chemicals (India) Private Limited’ (5.63%); ‘Deepak Phenolics Limited’ (5.41%); ‘B. Chokshi Chem Private Limited’ (4.33%); ‘Kunjali Synergies Private Limited’ (3.36%); ‘Chemtrade Overseas Pvt. Ltd.’ (2.47%); and ‘Ketul Chem Private Limited’ (1.46%) and comprise more than 95% of the total sales of



the OPs during the relevant period. The remaining 6 OP firms, namely ‘Arintis Sales Private Limited’ (1.24%); ‘Apra Enterprises’ (1.16%); ‘Overseas Polymers Pvt Ltd. - Vinmar Group Co.’ (1.00%); ‘Aarey Drugs & Pharmaceuticals Limited’ (0.71%); ‘Shakumbhari Aromatics Private Limited’ (0.38%); and ‘Sachin Chemicals’ (0.38%) have an insignificant share in the proportion of the total sales of the OPs and therefore, it was considered appropriate by the investigation to exclude them from detailed analysis.

### **Economic analysis by the DG**

27. The DG divided the period into cohorts. Cohort 1 (July 2015-Dec 2015) is six months prior to the alleged cartel period, Cohort 2 is alleged cartel period (Jan 2016-Jun 2016) and Cohort 3 (Jul 2016-Dec 2016) is six months after the alleged cartel period. Cohort 2 is further divided into two sub-cohorts: one sub-cohort from Jan 2016 - Mar 2016 and another sub-cohort from Apr 2016-Jun 2016. The DG analysed the economic factors along with data and took into consideration the market concentration, normal distribution analysis, dispersion analysis, elasticity analysis with specific attention to elasticity of demand and factor affecting it.
28. The DG undertook price elasticity at market level and firm level. During Jan-Mar 2016, the demand appeared to be inelastic at market level as quantity demanded decreased less than proportionately *vis-a-vis* increase in price. At the firm level during the same period, elasticity of demand showed mixed elasticity trends.
29. The Herfindahl-Hirschman Index (HHI) is a measure of concentration in the markets and US Department of Justice (DOJ) considers a market with HHI of less than 1500 to be a competitive market, an HHI of 1500 to 2500 as moderately concentrated market place and an HHI of 2500 or greater to be highly concentrated. The DG observed that 16 OPs imported phenol during the alleged cartel period and 15 OPs imported phenol into India within six months prior and six months subsequent to the alleged cartel period. The DG found the HHI of the importing



OPs (who had imported during that period) to be 258.05 and 227.76 during six months prior and subsequent to the alleged cartel period; whereas the HHI of the importing OPs for the alleged cartel period (Jan 2016-Jun 2016) was found to be 277.71. The HHI of the importing OPs for the overall period was calculated and found to be 241.13. The DG noted that the HHI figures indicated that the market was highly competitive during that time.

30. The next step by the DG was to undertake a price correlation analysis to assess price parallelism. Correlation analysis is a statistical tool to ascertain the degree of linear association between two variables and varies from -1 and +1. A coefficient value of 1 represents perfect correlation and closer to 1 represents high degree of positive correlation between the variables. The DG calculated the week-wise price correlation for the relevant period of 18 months, *i.e.* 01.07.2015 to 31.12.2016 based on weekly average price for each firm.
31. The correlation analysis for Cohort 1 indicated ten coefficient values equal to or more than 0.75 whereas Cohort 3 indicated two coefficient values equal or more than 0.75. The correlation analysis further indicated twenty-one correlation coefficients higher than 0.75 in the Cohort 2 (alleged cartel period- Jan 2016-Jun 2016). Within cohort 2, more correlation coefficients are higher than 0.75 during sub-cohort 1 (Jan 2016-Mar 2016) as compared to sub-cohort 2 (Apr 2016-Jun 2016).
32. Based on the correlation analysis of prices of the 12 OPs, the DG concluded that there was weak positive correlation of prices during six months prior to the alleged cartel period. During the alleged cartel period, the correlation of prices becomes strongly positive between more firms in first sub-cohort and weakened drastically in second sub-cohort 2. Further, correlation remained low in the six months subsequent to the alleged cartel period.



33. The market price of a commodity is based on demand and supply of the commodity, as such the inventory position of a commodity usually has bearing on its prices. The DG carried out market-level analysis of inventory of phenol of the shortlisted 12 OPs. The DG found that during the months of Dec 2015 and Jan 2016, the parties sold less and purchased more, building up reserves as the price was stable. In the succeeding months of Feb and Mar 2016, the OPs purchased less and sold more by massively de-stocking to gain significant mark up. In the next five months, *i.e.* from April 2016 to August 2016, OPs replenished and built up their stock by purchasing more and selling less as prices were stable.
34. The DG undertook a month-wise market level analysis of the profitability based on the collective data of the shortlisted 12 OP firms using First-in First-Out (**FIFO**) method of inventory valuation. The DG calculated profits/ losses using the matching principle, wherein, cost of goods sold is matched with the value of goods sold following the FIFO principle. The DG found that the market as a whole did not make any profit (in fact booked loss) during Cohort 1 and Cohort 3. However, profits were made during the alleged cartel period. Thus, on the basis of economic analysis, the investigation found a likelihood of cartel which was necessary to be substantiated with evidence.
35. The DG proceeded with further investigation to look for plus factors as evidences to support the allegations of cartelisation. Based on information provided by the 12 OPs, the DG identified the persons responsible for conduct of business of OPs and collected their details. The DG also obtained the call detail records (CDRs) of the relevant persons during the alleged cartel period (Jan 2016-Mar 2016) when the prices of phenol was allegedly manipulated by the market players. Based on the information collected, no regular or frequent communication between the OPs was observed by the DG.
36. As a result of the consolidated analysis of emails, a few emails, which were found to be relevant for further examination/ scrutiny were extracted. At the outset, the



DG found an email dated 09.02.2016 sent by Mr. Vishal of Heritage Laminates to Mr. Vinay Kabra of Yug International (OP-5) indicating that OP-5 is '*trying to take undue advantage of current premium on phenol due to cartel*'. However, when the DG confronted Mr. Vishal with said email, he stated that OP-5 delayed their consignment and was not sharing the details of the vessel of shipment due to which he suspected that OP-5 might take advantage of high prices prevalent at that time due to suspected cartelisation. The email indicated his aggression owing to fear of incurring losses due to high prices. When the DG confronted the said email to official of OP-5 with the said email, the said official stated that the apprehensions of Mr. Vishal were baseless as his company was not in a position to take benefit of increased prices because the goods were already sold to Heritage Laminates and the same were stored in the custom bonded warehouse. The delay was on account of custom formalities which was misunderstood by Mr. Vishal of Heritage Laminates. The Official of OP-5 further stated that even otherwise, there was no cartel at any point in the phenol market. The price movement of phenol was volatile during the first half of 2016 on account of market forces including international crude and benzene prices.

37. During the scrutiny of email dumps of phenol brokers (providing their services as intermediary commission agents for business transactions for chemicals and solvents including phenol), and some third parties such as M/s R S Gosalia & Company, M/s Crescent Chemicals, M/s Jupiter Dye Chem and M/s Daga Chemicals and some OPs such as OP-11, OP-12, OP-14 and OP-7, the DG found two emails dated 15.07.2017 and 20.07.2017 wherein minutes were circulated in respect of two meetings that took place on the same dates. The OPs and third parties were confronted with these emails to understand the purpose and object of such meetings among the competitors despite the fact that these emails were exchanged during the period beyond the alleged cartel period (*i.e.* Jan 2016-Jun 2016).
38. With regard to the email dated 15.07.2017, the DG observed that the minutes containing deliberations of the meeting held on 15.07.2017 at the premises of Hazel





Mercantile (OP-14) were recorded and circulated by Mr. Nihar Gosalia of M/s R.S. Gosalia & Company (third party) to officials of certain OPs, viz. OP-14, OP-12, OP-17, OP-10, OP-5, and certain third parties which included some importers, traders and brokers. The minutes of the meeting of the liquid bulk importers indicated details of payment terms, payment duration, interest on delayed payments, free storage period, and storage charges beyond free period, lift variance and brokerage to the commission agents, amongst other things during the said meeting. The email also revealed that all the trade participants were to follow the agreed terms and conditions and breach, if any, be reported for taking immediate further action. The DG observed that the said email confirmed the fact that the competitors named in the email and engaged in the import/ trading of phenol had met on said date and place for discussions.

39. The DG further observed that the contents of the email dated 20.07.2017 for meeting held at the office of C J Shah & Company were also similar to the ones in email dated 15.07.2017, with incremental changes as were necessitated due to the consequent discussions held between the importers/ traders/ brokers including penalty clause for deviations from the agreed terms.
40. Besides collecting and analyzing data, call records and email dumps, the DG also examined the officials of the shortlisted 12 OPs and 10 third parties (importers/brokers /traders) and recorded their statement on oath. The DG confronted the concerned persons with the aforesaid emails and related annexures at the time of recording of their oral testimonies. It came to fore through the testimonies of third parties viz. Mr. Himanshu Sanghavi, Mr. Nihar Gosalia, Mr. Asit G. Shah, Mr. Ramesh Chokhani and Mr. Satyen Daga that these meetings were generally held to discuss issues of trade interest such as Goods and Services Tax (GST), customs, *etc.* and to enforce discipline in the chemicals trade and claimed the objective and purpose of informal gathering to work for betterment of chemicals trade fraternity.



41. During recording of the testimonies of officials of OPs and third parties, One Mr. Ashit G Shah of Crescent Chemicals put on record an email dated 16.10.2009 in support of his contention of not indulging in any anti-competitive activity at association level. The aforesaid email sent by Mr. Ashit G. Shah to certain individuals including OP-12, and OP-17 indicated the intention of interactions/meetings at regular intervals contained that *“Hope I am not misunderstood as I do not intend to form a cartel or take any advantage and its to ensure that no one takes undue advantage out of us.”*
42. Based upon the analysis of data and testimonies of concerned officials of the opposite parties and third parties, the DG concluded as under:
- i) There were only 10 OP firms out of 19 OPs in the information filed who formed a part of the top 25 importers of Phenol in India during the relevant period. During the alleged cartel period, the concentration ratios were found to be low which indicate low concentration in the industry. Further, the HHI index was found to be 277.71 during the alleged cartel period which indicated highly competitive market (as HHI between 0 to 1500 indicate competitive marketplace).
  - ii) There was a rumor of cartel existing during Feb-Mar 2016 based on the emails exchanged between Mr. Vishal Agarwal of M/s. Heritage Laminates and M/s. Yug International. However, no evidence was available to substantiate the existence of cartel.
  - iii) Documentary evidences in the form of emails dated 15.07.2017 and 20.07.2017 indicated that importers/ traders of liquid bulk solvents and petrochemicals met periodically to discuss issues relating to trade discipline which was also confirmed by brokers and third parties. But they also mentioned that no price sensitive information relating to market demand, supply and inventory stock positions were discussed in such meetings.



- iv) Mr. Ashit G Shah of M/s. Crescent Chemicals Ltd. placed on record two old documentary evidences in the form of emails dated 16.10.2009 and 02.11.2009, which indicated that ‘marketing issues and prices’ as well as ‘prices or credit terms’ would be decided independently by each importer and the intent of informal association is bonafide.
  - v) The oral testimonies of certain parties corroborated that inventory stock position of Phenol was available in public domain through various intermediaries, viz. surveyors, clearing agents/ Clearing House Agents (CHAs), etc., and this information could have been used by individual importers/ traders to draw informed business decisions/ speculate on Phenol prices.
  - vi) All the opposite parties and third parties examined on oath maintained that phenol market is highly competitive and there was no collusion to manipulate market prices.
  - vii) The erratic domestic price movement of Phenol was stated to be internationally dependent on prices of crude, benzene, exchange rate, production, supply, demand and stock position of Phenol, in addition to the inherent nature of petrochemicals being a risky commodity.
  - viii) ICIS CFR India prices *vis-à-vis* domestic market prices in India indicated that the domestic market prices of Phenol in India were in sync with the international market price of Phenol.
  - ix) No cogent evidence was available on record to indicate collusive action on part of the importers/ traders.
43. In view of the above, the DG concluded that there was insufficient evidence to indicate cartel among the market players to manipulate prices of Phenol in India during the relevant period.



### **Proceedings before the Commission**

44. In the Ordinary Meeting held on 10.05.2019, the Commission considered the Investigation Report and decided to send a copy of the same to the Informant for filing its objections/suggestions thereto, if any, by 14.06.2019 which was extended to 15.07.2019 and subsequently to 16.08.2019 on request of the Informant.
45. The Informant filed its objections/suggestions to the Investigation Report on 16.08.2019. In the Ordinary Meeting held on 01.10.2019, the Commission considered the objections/suggestions to the Investigation Report filed by the Informant and decided to forward a copy of the Investigation Report and the objections/suggestions to the Investigation Report filed by the Informant to the OPs. The OPs were directed to file their objections/suggestions to the Investigation Report and to the submissions of the Informant, if any, latest by 08.11.2019 with an advance copy to the Informant. The Informant was directed to file its response to the said objections/suggestions filed by the OPs, latest by 18.11.2019. Further, the Commission decided to hear the Informant and the OPs on the Investigation Report on 26.11.2019.
46. The time for filing of objections/suggestions to the Investigation Report by the OPs was extended to 02.12.2019 and then to 23.12.2019 and then to 31.12.2019 on account of the request made by certain OPs who had not filed their objections/suggestions to the Investigation Report. Accordingly, the hearing in the matter was rescheduled to 19.12.2019 and then to 08.01.2020.
47. On 08.01.2020, the Informant moved an adjournment request expressing personal difficulty which was acceded to by the Commission and hence the matter was fixed for hearing on 06.02.2020.
48. On 06.02.2020, the Commission heard the parties on the investigation report and directed them to file synopsis of their arguments by 21.02.2020. In ordinary meeting



held on 20.05.2020, the Commission considered the synopsis/submissions filed by the Informant, OP-12, OP-17 and OP-1 and decided to pass an appropriate order in due course.

### **Reply/Objections of the Parties**

#### **Suggestions/objections to the Investigation report filed by the Informant**

49. The Informant filed its objections/suggestions to the Investigation Report partly on 16.08.2019 and thereafter on 31.12.2019 after seeking extensions for filing the same. The Informant also filed an independent opinion dated 18.12.2019 of an economic expert, viz. Mr. Sebastian Morris, Professor of Economics and Public Systems, IIM Ahmedabad on the DG Investigation Report. The Informant filed a synopsis of oral arguments on 13.02.2020 upon the directions of the Commission.
50. The gist of the oral and written submissions made by the Informant is as under:
  - 50.1. The Informant reiterated its submissions made in the information with respect to the number of active laminate manufacturers belonging to small and medium enterprises and Phenol being a major raw material for laminate manufacturing with approximately 87% of the total Phenol demand being met through imports.
  - 50.2. The main grievance as per the Informant pertained to substantial increase in day to day phenol price (from INR 60 to INR 115 in a span of 30 days) given the factors of low demand, both domestically (on account of budget period and low inventory being kept by members of the Informant) as well as internationally, and low variation in international prices as per ICIS report.
  - 50.3. The Informant averred that the DG wrongly concluded that the domestic prices were moving in tandem with the international prices. To support this contention, the Informant pointed out that domestic Phenol prices shot up



disproportionately during the alleged cartel period in comparison with international prices. It further pointed out that during Mar-Apr 2016, when international Phenol prices increased from USD 930 to USD 960; the domestic prices decreased from INR 114 to INR 70.

- 50.4. The Informant highlighted the fact that out of 25 Phenol importers, 10-12 importers controlled 90% business and took advantage of their dominant position. However, the DG did not examine all of the importers. Moreover, the DG wrongly opined that there was no entry barrier as the dominant importers did not allow new entrants to establish in the market.
- 50.5. The DG only investigated 12 out of 19 OPs and no broker/ sub-brokers were examined by the DG though trading was being conducted by the brokers/sub- brokers. OP-12 (C.J. Shah) is the biggest company in chemical and solvent imports in India, which was also not examined in depth by the DG.
- 50.6. The DG only investigated one member/ company out of 115 members of Informant' association for and on behalf of the Informant. The DG did not seek Informant's assistance to find out the role of OPs during the investigation.
- 50.7. As per the Informant, when OPs came to know of its decision to approach the Commission against phenol cartel, the prices reduced significantly during next 20-25 days (as some phenol suppliers were also engaged in the business of laminate manufacture). Further, after filing of the information with the Commission no significant news of any phenol cartel/price rise was received from the market during the last three years.
- 50.8. As per the Informant, had there been any shortage in the market, there would have been significant movement in the inventory at Kandla Port. In fact,



during the relevant period, there was hardly any significant movement at Kandla Port. However, the DG did not examine the port records and the surveyor/s of different ports.

- 50.9. The DG failed to note that China is an important consumer of Phenol and due to observance of its New Year, its market is closed for about 15 to 25 days and no manufacturing takes place. Thus, in such a scenario, when there is no heavy Phenol consumption by other countries, the price increase has no relevance except for the fact that there is connivance between the OPs who are involved in illegal activities.
- 50.10. Moreover, in Indian market, the least demand in Phenol market is from January to March when the Parliament passes the Budget, every company examines and assesses its account for closing and aims not to create inventory for books of accounts. Thus, there can be no other reason of Phenol demand increase and the DG also has been unable to provide a reason of the price rise.
- 50.11. OPs colluded with ICIS to spread rumours for price manipulation. Ms. Malini Hariharan of ICIS forecasted that the phenol prices in India were likely to shoot up during the seminar organised by ILMA (Informant) in Bangalore during 23<sup>rd</sup>-24<sup>th</sup> February 2016, an electronic copy of which was submitted by the Informant with the Information. As per the Informant, this piece of evidence provided in the information was ignored by the DG as neither her speech is examined in the Investigation Report nor was Ms. Malini Hariharan examined by the DG.
- 50.12. As per the Informant, though Investigation Report showed that the importers/traders of solvents and petrochemicals met periodically, also a meeting was organised on 15.07.2017 at one of the OP's registered address, yet the DG failed to gather evidence regarding cartel.



- 50.13. As per the Informant, the DG failed to examine the period between February to March 2016 (exclusively), as this was elaborated in the information by the Informant. Rather, the DG diluted the analysis by taking into account a longer period (6 months prior as pre-cartel and 6 months as post-cartel after the period provided by the Informant). The said 26 days should have been strictly seen from the cartel perspective as the price hike during the said period was 90-92%.
- 50.14. While examining the price correlation, the DG found that there was high correlation coefficients during the alleged cartel period and did not deny the possibility of cartelisation. The Informant also pointed towards the supernormal profits earned during the first sub-cohort of the cartel period (January-March 2016) to indicate the existence of cartel.
- 50.15. The DG has not denied the possibility of cartel among the market players importing phenol into India but have not produced any evidence to prove its existence.
- 50.16. The Informant emphasised on the Hon'ble Supreme Court's judgment in *CCI vs. Coordination Committee of Artistes and Technicians of West Bengal Film and Televisions & Ors.* C.A. No. 6691/2014, wherein the Hon'ble Court held that even in the absence of proof of formal agreement it can be concluded that cartel was formed if practical cooperation between the parties is established. Furthermore, the Informant highlighted the Hon'ble Supreme Court's decision in *Technip SA vs. SMS Holdings (P) Ltd.* C.A. No. 9258-9265/2003, where in the Hon'ble court observed that standard of proof in such cases is that of balance of probability and strict proof is not required and that emphasis should be on circumstances indicating that something may have been done and not on what actually has been done.





50.17. The Informant also highlighted that in *Rajasthan Cylinders and Containers Ltd. vs. Union of India* C.A. No. 3546/2014, the Hon'ble Supreme Court recognised Organisation for Economic Cooperation and Development ('OECD') Policy Roundtables prosecuting cartels without direct evidence. The report of said roundtable laid down that existence of facilitating practices (price signaling, communication evidence like meetings, telephonic communications, etc.) can serve as important complement in determining existence of cartel.

50.18. The Informant has also stressed upon the Hon'ble Supreme Court's definition of 'Cartel' in *Excel Corp Care Ltd. vs. CCI* (2017)8 SCC 47, according to which when an agreement is entered with intent to cause adverse effect on competition then it can be said to be anti-competitive.

50.19. The Informant also put forth Opinion dated 18.02.2019 of an independent economic expert, viz. Mr. Sebastian Morris, Professor of Economics and Public Systems, Indian Institute of Management, Ahmedabad regarding the economic analysis carried out by the DG in the Investigation Report. Mr. Morris further asserted that the comments are made in the larger interest of the economy and fairness in regulation of business.

50.20. It is, *inter alia*, stated in the aforesaid opinion that:

- i) HHI value would come low as and when the number of suppliers increase and their shares are not unevenly distributed. HHI should have been calculated by putting the number of Phenol suppliers as one or HHI should not have been taken as a basis to judge the competition level at all. As the Informant claimed of coordinated and cartelised behaviour, HHI becomes irrelevant.



- ii) The DG should have delved deeper into the behaviour of suppliers and structure of concentration to look closely for evidence of coordination and communication among the OPs.
- iii) The DG's analysis of emails showed that the importers and traders' group was meeting regularly, had coordinated modes of delivery, payment terms, tankage and storage terms; yet the DG found no explicit references to prices, thus, finding no evidence of cartelisation as was petitioned by the Informant. However, the DG did not consider social media and telephone call records apparently not available to the DG. DG also did not investigate the reasons for coordination on many aspects of logistics when transportation and safety norms were set by the Government and there was no reason for importers/ traders to coordinate amongst themselves. DG ought to have investigated why the OPs needed to coordinate amongst themselves.
- iv) The DG chose a longer period to investigate and its analysis over the entire period shows "losses" before and after the cartel period and profits for importers/ traders during the period of cartelisation. However, DG did not examine the reasons for change in behaviour of OPs when DG itself admitted having evidence of cartelisation during the mid-period.
- v) The DG ignored the fact that laminate manufacturers were small and did not have the capacity to have their own storage and to moderate price volatility, hence, they were at the mercy of coordinated group of suppliers and there is evidence that the suppliers were coordinating.
- vi) OPs accumulated Phenol during the last quarter of 2015 by importing heavily and sold less quantities which was done with a pre-decided strategy to sell at rigged prices in the first quarter of 2016 to make high profits. This cannot be on account of low prices internationally as the



OPs did not even sell their usual quantities to laminate manufacturers. Moreover, OPs hardly imported in February 2016, thus, the reliability of increase in Phenol prices is questionable as international prices of Phenol CFR India rose during the last part of February 2016.

### **Reply/Objections of the Opposite Parties in response to the Investigation Report**

#### **Reply/ Objections of OP-1**

51. OP-1 filed its submissions on 29.11.2019 after seeking due extension of time *vide* its letter dated 14.11.2019. It refuted the Informant's allegations as baseless stating that it was merely a trader of various chemicals and do not stock these. OP-1 agreed with the findings of the DG and stated that being a small trader it had no control over market rates of chemicals which keep changing as per market forces. OP-1 reiterated the aforesaid submissions in its synopsis dated 20.03.2020 filed with the Commission.

#### **Reply/ Objections of OP-4**

52. OP-4 filed its reply dated 24.12.2019, after seeking extensions *vide* applications dated 06.11.2019 and 29.11.2019. OP-4 averred that it did not participate in any cartel and accepted the findings of the Investigation Report stating that it does not have any objections/ suggestions to the same.

#### **Reply/ Objections of OP-5**

53. OP-5, *vide* its submissions dated 30.12.2019, agreed with the DG Investigation Report and offered no objections to the same.



### **Reply/ Objections of OP-7**

54. OP-7, *vide* its submissions dated 23.12.2019, stated that it has nothing to say in the matter and requested the Commission to set aside Informant's claim stating it to be illogical and absurd.

### **Reply/ Objections of OP-10**

55. OP-10 sought extension of time to file its response *vide* its application dated 06.11.2019, but did not file any submissions/ reply till date.

### **Reply/ Objections of OP-11**

56. OP-11 filed its reply dated 06.12.2019, agreeing with the DG on the findings of the Investigation Report and requested to set aside the objections of the Informant.

### **Reply/ Objections of OP-12**

57. OP-12, after seeking extension *vide* application dated 05.11.2019, filed its reply dated 29.11.2019 and thereafter, filed a synopsis of its oral arguments dated 19.02.2020, stating that the case should be closed as no violation/ no evidence of contravention of section 3 of the Act has been found by the DG in the Investigation Report.

58. Through its written and oral submissions, OP-12 has submitted that:

58.1 The importers of Phenol did not have any specific association for Phenol and the Informant's allegations were unsubstantiated and resulted from only assumptions and presumptions.

58.2 It was stated before the DG also that neither prices nor anti-competitive activities were discussed in the meetings. Issues relating to trade discipline, such as payments, free storage and interest terms, *etc.*, were discussed in such meetings. Moreover, such meetings were at times attended by the brokers also and were not specific to Phenol only. The importers met



informally to discuss trade related issues and such meetings were in particular frequently held at the time of roll out of GST due to lots of issues affecting the trade.

- 58.3 The examination of call records and emails by the DG also demonstrated that during the alleged cartel period, none of the OPs had regular contact with each other. Moreover, Informant's alleged cartel is deemed improbable as 15 out of the top 25 importers were not alleged to be part of the cartel by the Informant.
- 58.4 The allegations of cartel are unfounded as the DG also had found the domestic prices to be moving in tandem with the import prices. OP-12 emphasised that rise in Phenol prices were on account of market forces and demand and supply position.
- 58.5 Reliance is placed on an article dated 22.03.2016 "*Analysis: Continued demand for Phenol from India takes market by surprise*" authored by Surabhi Sahu and edited by Ireme Tang, which stated that Phenol's demand increased during February-March 2016 in India as the end-users looked to replenish inventories before the Government introduced anti-dumping duties. As against the increase in demand, the article states that supply was restricted and shortage was on account of various factors such as shut down of plants of Mitusi, Kumbho P&B chemicals and Chang Chun during Feb - Mar 2016 for scheduled maintenance, China purportedly operating at 60%-65% of its capacity, delay in starting of new plant by PTT Global Chemical. The article further suggested that the tight supply position in February-March 2016 was a temporary phase and the price rise in March 2016 was on account of higher demand and less supply.
- 58.6 The total stock position of crystal phenol at Kandla Port terminals during December 2015 to May 2016 showed that the stock was lowest in March



2016, which was in confirmation with DG Investigation Report, where after, the stock position started improving from April 2016 onwards.

58.7 With respect to the seminar held at Bangalore in February 2016, OP-12 stated that it was organised by the Informant itself and the speaker Ms. Malini Hariharan was also invited by the Informant association itself. Moreover, none from OP-12 attended the said seminar.

58.8 With respect to the contention of the Informant that the DG did not examine brokers/ sub-brokers, it is stated that from page 69-90 of the Investigation Report, the DG had examined third parties including brokers.

#### **Reply/ Objections of OP-14**

59. OP-14 sought extension to file its submissions to the Investigation Report *vide* applications dated 05.11.2019 and 23.12.2019, however, the same has not been filed by the said OP till date.

#### **Reply/ Objections of OP-15**

60. OP-15 filed its reply dated 24.10.2019 and stated that it holds approximately 1% share which is insignificant in proportion to the total market share of Phenol during the relevant period. Thus, the DG correctly excluded OP-15 from detailed analysis.

61. OP-15 stated that it does not undertake any unhealthy business activity which would be unethical in nature, thus, can never be a part of cartels.

#### **Reply/ Objections of OP-17**

62. OP-17 after seeking extension *vide* application dated 05.11.2019, filed its reply dated 29.11.2019 and thereafter, submitted its synopsis of oral arguments dated



19.02.2020 stating that the DG clearly established no evidence of cartel in the Investigation Report.

63. OP-17 made similar submissions as that made by OP-12 relating to phenol market being very competitive and that high prices were on account of market dynamics, the investigation by the DG was robust and covered ports, third parties including brokers, meetings were held infrequently to discuss issues relating to trade discipline, low HHI index indicative of no cartelisation and no cartel allegation against other top importers. Besides these, through written and oral submissions OP-17 averred as under:

63.1 It did not participate in the workshop/ seminar organised by the Informant wherein Ms. Malini Hariharan was invited.

63.2 The objections and allegations made by the Informant association were based on its conjectures and surmises, and were not substantiated by any evidence. OP-17 contended that suspicion about likelihood of cartel cannot substitute evidence of existence of cartel.

63.3 Comparison of international prices of Phenol for CFR India as per ICIS with domestic market prices of Phenol showed that domestic Phenol prices moved in tandem with international market prices, thus, ruling out cartelisation by OPs.

63.4 OP-17 also submitted that OP-17's sales to laminate manufacturers was very less and majority of its sales were made to traders and manufacturers in other industries. Thus, it is wrong to allege that OP-17 was involved in the alleged cartel, if any.

63.5 Based on threadbare examination and analysis of data and evidence, the DG rightly concluded that there was no cartel.



### **Reply/ Objections of OP-18**

64. OP-18 sought extension *vide* application dated 05.11.2019 and filed its reply dated 05.12.2019 requesting the Commission to close the matter as the DG had not found any evidence of cartel.
65. Through its written submissions, it submitted that:
- 65.1. It does not have much import and sale of Phenol.
- 65.2. The contentions of the Informant regarding non-examination of brokers are incorrect and pointed out that the DG has examined some brokers in its investigation report.
- 65.3. The Informant has alleged cartel formation only against a few importers and not against the other top importers which defies the theory of cartel.

### **Analysis by the Commission**

66. The Commission perused the Investigation Report and its annexures and the replies/objections filed by the Informant and the OPs detailed in preceding paras, as also the submissions made by the parties during the oral hearing. The Commission notes that the instant matter pertains to supply of chemical, *viz.* Phenol. Phenol is a chemical having application in diverse industries, more particularly in the laminate industry. Domestic production of phenol, however, is not able to cater to the large demand of the said product, which is met through phenol imports into India from various countries like China, Brazil, Taiwan, the USA, Korea, Thailand, Singapore and South Africa. The Informant association has alleged that the 19 parties, engaged in import of phenol and arrayed as opposite parties in the matter, have colluded to fix high selling price of phenol during the period from January to March 2016, without any significant change in international prices of Phenol during the said period. Likewise, it is further alleged that these parties colluded to reduce phenol prices in subsequent months, *i.e.* from April-May 2016. Accordingly, considering all the material available on record, the Commission is of the view that the following issues need to be determined in the instant matter:





***Issue No. 1: Whether there was an upward movement in domestic prices of Phenol during January-March 2016 and/or downward movement during April-May 2016 as alleged by the Informant?***

***Issue No. 2: If Answer to Issue No. 1 is affirmative, whether the upward movement in domestic prices of phenol during the period January-March 2016 and/ or downward movement during April-May 2016 was the outcome of the concerted action on the part of the OPs?***

67. Before delving into the merits of the case, the Commission deems it apt to first deal with the objections raised by the Informant with regard to manner of investigation conducted in the matter. At the outset the Informant association has raised an objection to the methodology of investigation including the period of investigation, non-examination of brokers and non-examination of relevant ports by the DG. With regard to the period of investigation, the Informant has assailed the same stating that the DG has taken a longer period of 18 months (July 2015 to December 2016) which tended to vitiate the actual effect of cartel on prices. In this regard, the Commission observes that the allegations primarily pertained to rise in phenol prices from January-March 2016 and then subsequent decline in phenol prices during the period of April-May 2016. Accordingly, to see the trend in the prices of phenol, the DG chose to collect the data (pertaining to import prices and sales prices) for the period January-June 2016 as well as six months before and after this period, and analysed the same. Moreover, the DG has carried out detailed examination and analysis of the data and for which purpose it has holistically considered the period (both pre and post as aforementioned) in addition to the alleged cartel period, which in the view of the Commission does not appear to be an incorrect approach as has been suggested by the Informant.
68. The Informant association has further alleged that after Ms. Hariharan indicated possibility of rise in phenol prices in her presentation in a workshop held in February, 2016 at the instance of the said association, the OPs increased the prices



of Phenol. In this regard, the Commission takes note of the averments of both OP-12 and OP-17 that Ms. Malini Hariharan was invited as speaker by the Informant association in the seminar organised by the Informant itself and neither OP-12 nor OP-17 attended the said seminar. The Commission further notes that the Informant has not named any of the OPs being present in the said workshop and merely stated that some laminate manufacturers are also engaged in import of phenol. In the absence of any evidence to the contrary, the Commission is unable to hold that conducting of the said workshop could have played any role in the purported price rise during that period. The Commission is of the view that non-examination of Ms. Hariharan, who made a presentation at the invitation of the Informant association, is not material to the facts and circumstances of the case.

69. Further, with regard to the contention of the Informant regarding non-examination of brokers, the Commission notes from the Investigation Report that the DG has examined numerous third parties including brokers, traders, *etc.*, to get a holistic view of the functioning of phenol market and thus, the contention raised has not been found to be correct.
70. With regard to contention raised by Informant regarding non-examination of ports (from where the phenol is imported into India), the Commission notes that the DG has collected the port-wise phenol import data and found that approximately 74% of Phenol was imported into India through Kandla port during the relevant period of eighteen months. The Commission also notes from testimonies of parties and third parties recorded during the course of investigation that sufficient information of stock position of phenol was available at the ports. In view of the foregoing, the Commission finds the aforesaid objections of the Informant devoid of any merits.
71. With regard to the objection of the Informant that all the OPs were not examined by the DG, the Commission notes that the DG has collected and examined the data pertaining to all the OPs and based on its initial analysis excluded those OPs, *viz.* Sachin Chemicals (OP-1), Arinitis (OP-6), Shakumbhari (OP-9), Apra (OP-13), Overseas Polymers (OP-15) and Aarey Drugs (OP-19), which together accounted



for an insignificant share of imports (approximately five percent of the total phenol imported by all the OPs taken together) during the relevant period of eighteen months. The DG was of the opinion that exclusion of these OPs from detailed analysis will not have any bearing on the ultimate findings of the investigation and that the scarce resources of the investigation need to be utilised optimally. The Commission, thus, notes that the DG has applied an objective criterion to select OPs for further investigation. Moreover, the Commission observes that these excluded OPs had not imported phenol more than once or twice during the relevant period. The Commission is, thus, in agreement with the DG on exclusion of these OPs from the purview of investigation. Accordingly, the Commission does not find any merit in the objections raised by the Informant.

***Issue No. 1: Whether there was an upward movement in domestic prices of Phenol during January-March 2016 and/or downward movement during April-May 2016 as alleged by the Informant?***

72. Regarding issue no. 1, the Commission notes that the DG has examined the data pertaining to import of phenol in India during the alleged cartel period (January-June 2016) and also six months prior as well as six months subsequent to this period. Thus, the DG has collected and analysed phenol import and sales data for eighteen months, *i.e.* from July 2015 to December 2016 and termed this as the relevant period. The Commission notes that DG did not examine one of the OPs as it was reported to be under liquidation and further notes that having considered the quantity of phenol imported by the remaining 18 OPs, (refer Table A at para 25) the DG also did not examine the 6 OPs which taken together accounted for less than five percent of the total phenol imported by all the 18 OPs taken together. Therefore, the DG proceeded to carry out economic analysis on the data collected with respect to the remaining 12 OPs during the alleged cartel period and also the pre- and post-alleged cartel period.



73. The Commission notes the contention of the Informant that domestic phenol prices were high and not in congruence with the international prices during January to March 2016. In this regard, the Commission takes note of the comparative analysis of monthly average domestic prices and average international prices carried out by the DG (refer below Table B). The Commission notes that in January 2016, the international price of phenol declined, but the domestic prices increased marginally. In February and March 2016, both the international and domestic prices moved upwards. However, the Commission notes that there was a greater increase in domestic phenol prices during March 2016 *vis-à-vis* increase in the international prices. The international phenol prices rose by ten percent to INR 60.82 per Kg, whereas the domestic prices recorded a twenty-five percent increase and went up to INR 86.49 per Kg. The Commission, thus, notes that both the domestic and international prices had increased during the period February-March 2016, albeit in different proportions.

**Table B: Comparison of Monthly ICIS-CFR India and Domestic prices**

Month	ICIS Monthly average price per Tonne (USD)	ICIS Monthly average price per KG (INR)*	Change in direction of CFR India prices	Monthly average market price per Kg (INR)	Change in direction of Domestic prices
Sep-15	848	55.09	-	67.36	-
Oct-15	811	52.72	Decrease	67.74	increase
Nov-15	806	52.41	Decrease	63.81	decrease
Dec-15	821	53.38	Increase	62.20	decrease
Jan-16	789	51.31	decrease	62.95	increase
Feb-16	848	55.09	increase	69.01	increase
Mar-16	936	60.82	increase	86.49	increase
Apr-16	999	64.90	increase	71.29	decrease
May-16	1008	65.49	increase	74.88	increase
Jun-16	954	62.03	decrease	74.05	decrease
Jul-16	906	58.89	decrease	73.01	decrease
Aug-16	940	61.10	increase	70.50	decrease
Sep-16	926	60.19	decrease	70.49	decrease

Source: Investigation Report pg.128, change in direction identified separately

\*Converted by using the exchange rate of INR 65 for 1 USD



74. With regard to the contention of the Informant that domestic phenol prices fell in subsequent months, *i.e.* April and May 2016, in the domestic market, the Commission notes that in the month of April 2016, the international prices further increased but the domestic prices declined, whereas both the domestic and international prices increased in May 2016. The Commission observes that, as such, the assertion of the Informant is not borne out. However, the Commission further observes that domestic phenol prices prevailing during April-May 2016 were lower than those in March 2016.

***Issue No. 2: If Answer to Issue No. 1 is affirmative, whether the upward movement in domestic prices of phenol during the period January-March 2016 and/ or downward movement during April-May 2016 was the outcome of the concerted action on the part of the OPs?***

75. Having observed that there was a steep rise in the domestic phenol prices *vis-à-vis* international prices, the Commission proceeds to examine whether such a rise was a result of any concerted efforts on the part of the OPs examined by the DG. The Commission takes note of the correlation analysis carried out by the DG and observes high correlation in the domestic prices of the 12 OPs under examination during the period January 2016 –March 2016. Moreover, the Commission notes the profitability analysis carried out by the DG based on cumulative data of the 12 OPs which indicated that the industry made profits during the period January-May 2016 and incurred losses in preceding and succeeding months. Based on such analysis the DG concluded that there is an indication of the possibility of a cartel amongst these OPs. The Commission agrees with the DG that high correlation among the domestic phenol prices of the OPs during January-March 2016 and profits earned during January-May 2016 when the period prior and subsequent to that were loss making, *prima facie* raises suspicion of collusive behaviour.



76. The Commission observes that in order to establish the alleged concerted efforts by the OPs, the DG examined the email dumps and call records of the OPs and did not find any cogent evidence in support of the allegation that the OPs cartelised by fixing prices of phenol during the alleged cartel period. The Commission further observes that the DG found few emails exchanged between the OPs during July 2017 (much beyond the alleged cartel period) in relation to minutes of two meetings held during July 2017. These emails indicated that the meetings took place between the importers/brokers/traders including the OPs wherein the interest on late payments, payment beyond free storage period on the value plus GST, lift variance and GST on the brokerage to the commission agents payable monthly or annually, amongst other things were discussed. The DG examined on oath the authorised representatives of the OPs and third parties with respect to the said emails. The Commission takes note of the statements of the authorised representatives of the OPs, corroborated by the statements of the third parties that infrequent meetings of OPs used to take place but these were confined to deliberations on issues pertaining to trade discipline. The Commission also notes the contentions put forth by the counsel for OP-12 and OP-17 during the hearing that the said meetings had taken place in July 2017 *i.e.* much after the alleged cartel period and were organised to tackle the issues arising out of implementation of GST which was implemented with effect from 01.07.2017. In the facts and circumstances of the case, the Commission finds it difficult to hold evidence of conduct of such meetings against the OPs as there is an absence of evidence to suggest that prices of phenol were discussed during the said meetings, and most importantly, the meetings do not pertain to the alleged period of cartelisation. The Commission notes that this is a case where no evidence of meeting of minds or an agreement has been forthcoming despite an investigation into the matter.
77. With regard to the contention of the Informant that the economic analysis pointed to high correlation among the prices of the selected OPs during the period January to March 2016, the Commission takes note of the contentions of the OPs that they monitor the movement of vessels and follow the trend of stock available at the ports



in addition to conditions prevailing in the international market which helps them in replenishment of stocks. The importers also collect data from open sources including customs and data collection agencies. The Commission notes the submissions of the OPs that domestic prices are dependent not just on international prices but also on a number of other variables such as local producers' price, anti-dumping duties, crude oil prices, exchange rates, demand conditions, supply factors, *etc.* The Commission further notes the contentions of the OPs that inventories were built up during December 2015 to January 2016 due to which new bookings for imports were very low in that period and that also in the subsequent months there was lower supply due to production cutbacks, feedstock shortage and routine scheduled maintenance of phenol plants overseas. The Commission notes that antidumping duty was imposed on imports of Phenol from European Union, Singapore and South Korea in Jan 2016. The Commission also notes from the material available on record that there were apprehensions of further imposition of anti-dumping duty which may have led to a surge in demand of phenol as the end-users looked to replenish inventories. The Commission takes note of the contentions of the OPs that following a period of inventory buildup and consequent low import bookings during December 2015 to January 2016, the subsequent period saw an excess of demand over supply coupled with a surge in international prices. As per the OPs, this led to an increase in domestic phenol prices during February-March 2016 and the same is not the outcome of any concerted efforts on the part of the OPs.

78. The Commission notes the high correlation in prices of some of the OPs during the period from January to March 2016, and the justification given that it was on account of strong competition in the market as they were all subject to similar demand-supply conditions, which may explain the synchronous response in terms of price changes. In this regard, the Commission notes that the indication of price parallelism *per se* does not amount to collusion between the parties. It is well known in economic theory that 'price parallelism', 'conscious parallelism' and 'collusive parallelism' can theoretically overlap. However, conscious parallelism is viewed as



insufficient for a determination that firms were engaged in concerted action as their pricing behavior can be on their entirely independent action or based on their individual response to the economic conditions that may plausibly explain the price parallelism. The Commission notes that the DG examined the email dumps and call records of the OPs and did not find any cogent evidence in support of the allegation that the OPs colluded to fix prices of phenol during the alleged cartel period. The Commission observes that this is a case where no evidence of meeting of minds or an agreement has been forthcoming despite an investigation into the matter.

79. The Commission is cognizant of the fact that high phenol prices during February-March 2016, coupled with the fact that the importers, trader and brokers of phenol used to meet, though purportedly infrequently, does tend to raise some suspicion, but in the absence of any corroborative evidence, in the facts and circumstances of this case, these OPs cannot be condemned of having indulged in an anti-competitive conduct of forming a cartel and violating provisions of Section 3 of the Act.

### **ORDER**

80. In the present case, there is no corroborative evidence of anti-competitive agreement or arrangement amongst the OPs investigated by the DG. Even though the DG found certain correlation in the prices of some of the OPs during the alleged cartel period, the investigation does not bring out that the same was an outcome of collusion. Though the DG also found instances of meetings of the OPs, the communication evidence unearthed by the investigation pertains to a subsequent period and is further lacking in evidence of discussions having taken place relating to price fixation. In the facts and circumstances of the present case, there is lack of material to show any collusion on the part of the OPs and the Commission, thus, concludes that it cannot be established that the OPs have acted in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act. The Commission is thus of the view that no case of contravention of Sections 3(3)(a) read with Section





3(1) of the Act is made out in the present case. Accordingly, the matter is ordered to be closed.

81. The Secretary is directed to forward a copy of this order to the Informant and the OPs, accordingly.

**Sd/-**  
**(Ashok Kumar Gupta)**  
**Chairperson**

**Sd/-**  
**(Sangeeta Verma)**  
**Member**

**Sd/-**  
**(Bhagwant Singh Bishnoi)**  
**Member**

**New Delhi**  
**Dated: 08.10.2020**