

COMPETITION COMMISSION OF INDIA

18.06.2010

F.No. DGIR/2008/IP/11

UTPE Case No. 30(146)/2008

Filed by : All India Distillers' Association, New Delhi

Against : Haldyn Glass Gujarat Ltd. Baroda & Ors.

ORDER

1. Consequent upon the repeal of the MRTP Act this complaint has been received by transfer on 04.03.2010 from the office of DGIR, MRTP Commission, under section 66(6) of the Competition Act, 2002.

2. The facts as stated in the complaint, in brief, are: -

2.1 This complaint was filed by the All India Distillers' Association against glass bottle manufacturers in India alleging restrictive and monopolistic trade practices being adopted by the four major manufacturers namely: Haldyn Glass Gujarat Ltd., Hindustan National Glass & Industries, AGI Glasspac & Mohan Crystal Glass Work who together control 90% of the glass bottle market.

2.2 It has been stated that Potable Alcohol Industry of India comprises of Indian Made Foreign Liquor (IMFL), Country Liquor, Beer and Wine. The packaging material for the potable alcohol is primarily glass bottles. The glass bottles are used because these ensure longer shelf life, prevent alcohol from evaporation, retain taste, color and aroma intact even after the opening of bottles. Other packaging materials like PVC, pet bottles, metal containers etc. do not have wide acceptance in the market. The glass bottles are essential for distribution and marketing of potable alcohol. The cost of the glass bottles is a major component in the costing of alcoholic beverage ranging from 6% to 35% of the cost of potable liquor. The Bureau of Indian Standards has prescribed the standard for manufacturing of glass bottles and because of this reason there is homogeneity of the product 'glass bottle'.

2.3 As per averments made in the complaint the glass bottle manufacturing companies have recently threatened to increase the price of glass bottles by at least 20% on the ground that the cost of some of the inputs has gone up namely Soda Ash by 57%, liquid petroleum gas by 14%, and furnace oil by 48% though in fact the extent of increase in the price of these inputs is not as much as is being

portrayed. Moreover, there appears to be no increase in the prices of various other main ingredients such as cullet, silica, calcite and host of chemicals. Thus, the impact of increase in cost is much less than that of the 20% by which the price of glass bottles is being threatened to be increased.

2.4 It has also been stated that the glass bottles manufacturers have in the past increased the prices of glass bottles to about the same extent and at the same time e.g. prices were hiked by 10% simultaneously in February, 2007, again by 10% in December, 2007 and now again there is a threat that they will increase price by 20% simultaneously. Thus, these glass bottles manufacturers have been emboldened as their past conduct has remained undetected and unpunished.

2.5 The complainant has alleged that the uniformity in percentage price increase being sought is unjustified given the difference in variable cost of each glass manufacturer in view of the fact that some glass bottle manufacturer use gas while others use furnace oil, obvious difference in plant efficiency due to their differential age and wide variation in labour cost and transport component.

2.6 It has been further alleged that in view of the unique market structure of the industry, homogeneity of the product, lack of substitutable product, absence of competitive pressure of import, capital intensive industry, low technical advancement, strong ability to exchange information of price and other terms amongst the glass bottle manufacturers and tamed countervailing buyer's power, the glass bottles manufacturers in India are indulging in restrictive trade practice of cartelisation with impunity.

2.7 In order to ensure price increase immediately, glass bottle manufacturers are increasingly refusing to honour their pending commitment to supply under one pretext or the other and there is a serious threat that future supplies would be stopped sooner than later unless the unjustified and unlawful demand for a price increase by the cartel of glass bottle manufactures is met by the potable alcohol industry.

3. In terms of the powers conferred under section 11(2) of the MRTP Act, 1969 DG (I&R) initiated probe against the four major manufacturers of glass bottles and vide letter dated 21.08.2008 they were asked to submit relevant information.

4. Haldyn Glass Gujarat Ltd. Hindustan Glass & Industries Ltd. & AGI Glasspac have furnished their replies in response to the probe letter of DG (I&R) whereas Mohan Meakin Ltd. has stated vide its letter 8.09.2008 that it is a member of the complainant-Association and as such should be deemed to be a complainant and probe letter issued to it should be withdrawn.

4.1 The respondent Haldyn Glass Gujarat Ltd. in its reply dated 07.10.2008 has stated that the allegations made by the complainant are baseless as the prices of the glass bottles are increased when the prices of the inputs are increased by the Government and this increase is not due to the collective meeting of minds of

glass bottle manufacturers. Further it has been mentioned that the price is negotiated with the parties and no unilateral decision is imposed on the customers.

4.2 The Hindustan National Glass & Industries Ltd. in its response dated 14.10.2008 has stated that it manufactures glass bottles for industrial users and not for retail sale and customers are directly supplied the product by the company on the basis of mutual negotiation. The company has never adopted any restrictive practice and the allegations made by the complainant are baseless and devoid of any merit.

4.3 The AGI Glasspac in its reply dated 14.10.2008 has also denied the allegations levelled by the complainant and has stated that synchronization in the increase in prices is merely co-incidental and it has to be viewed in the prevailing economic scenario. It has also been stated that the prices are calculated on the basis of the input cost of the product and there has not been even a single instance of stopping or reducing the supply of bottles.

5. The DG (I&R) also issued a letter to the complainant requesting it to furnish the following information/documents for the purpose of investigation:-

- i) Names and addresses of the members of the Association;
- ii) Details of different types of glass bottles purchased by the members of the complainant Association along with details of the prices at which the same were offered for sale by the respondent companies during the last two years;
- iii) In case the respondent companies are issuing price-lists to the buyers of glass bottles in question, copies of the same for the last two years;
- iv) In case the respondent companies are marketing the glass bottles to the members of the complainant Association by way of rate contracts, the details of the same for the last two years;
- v) Any other information/documents which the complainant would like to furnish in support of the allegations made by it.

6. In response to the letter of DG (I&R) the complainant vide its letter dated 25.09.2008 intimated that in the absence of any backup information required by the Commission and non receipt of information from its members, it is left with no other alternative but to withdraw the complaint.

7. At this stage, the case was transferred to the Competition Commission of India with the observation that this matter relates to alleged restrictive trade practices.

8. The matter was placed before the Commission in the meeting held on 18.06.2010 and the Commission considered the relevant material available on record.

9. On close examination of the matter it is borne out that the main grievance of the complainant-Association is that the above-mentioned four major glass bottle manufacturers have formed a cartel and they are increasing the prices of the glass bottles arbitrarily on the pretext of increase in the cost of raw material like Soda Ash, LPG, LSH & furnace oil and are withholding the supply to enforce the increase in price. On the other hand, the respondent glass manufacturing companies have denied this allegation and have contended that they have not taken any collective decision to increase the price but when the cost of inputs goes up they have no option but to increase the price of glass bottles. They have also taken the plea that price of the product is always mutually negotiated with the customers.

10. As far as the allegation of cartelization by the respondent glass manufacturing companies is concerned, no reliable material has been placed on record which can lend support to such an assertion. Definitely something more than bare allegation is needed to show concerted action on the part of the respondents to fix the prices of glass bottles. The complainant has itself admitted in the complaint that cost of various inputs which are used in manufacturing of glass bottles like Soda Ash, Liquefied Petroleum Gas, Furnace Oil etc. has gone up though their contention is that the intended increase in price of glass bottles is much more than warranted by the increase in the cost of inputs. The complainant has also not placed on record any details from which this inference can be drawn that the increase in the price of glass bottles is not commensurate with the escalation in the cost of raw material. It is also noteworthy that the details sought by the DG (I&R) from the complainant were not furnished and instead the complaint was sought to be withdrawn on the ground that the members of the complainant -Association failed to supply any information in this regard.

11. In the absence of any credible material, bare assertion of complaint cannot be relied upon and the allegations made by the complainant have remained unsubstantiated and uncorroborated. On the basis of the material available on record and in view of the forgoing discussion, no case is made out to warrant any further action and the matter deserves to be closed.

12. The proceedings are hereby closed. The Secretary is directed to inform the complainant accordingly.

Sd/-
Member (G)

Sd/-
Member (P)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
(Chairperson)