



COMPETITION COMMISSION OF INDIA

Suo Motu Case No. 06 of 2017

In Re: Alleged anti-competitive conduct in the Beer Market in India

Against:

1. United Breweries Limited
2. Crown Beers India Private Limited (now a wholly owned subsidiary of Anheuser Busch InBev SA/NV)
3. SABMiller India Limited (now renamed as Anheuser Busch InBev India Ltd. after being acquired by Anheuser Busch InBev SA/NV)
4. Carlsberg India Private Limited
5. All India Brewers' Association

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

Present:

For United Breweries Ltd. (UBL), Mr. Kalyan Ganguly of UBL, Mr. Kiran Kumar of UBL, Mr. Perry Goes of UBL and Mr. Shekhar Ramamurthy of UBL:

For Mr. Shalabh Seth of UBL:

Mr. Amit Sibal, Senior Advocate alongwith Mr. Ravishekhar Nair, Ms. Avantika Kakkar, Mr. Sahil Khanna, Mr. Abhay Joshi, Mr. Kirthi Srinivas, Mr. Ambar Bhushan, Mr. Saksham Dhingra, Mr. Animesh Kumar, Ms. Shreya Joshi and Ms. Sree Ramya Hari, Advocates and Mr. Govind Iyengar, Senior VP Legal of UBL, Mr. Kiran Kumar in person, Mr. Perry Goes in person and Mr. Shekhar Ramamurthy in person

Mr. Ramji Srinivasan, Senior Advocate alongwith Mr. Gaurav Desai, Ms. Apurva Badoni and Mr. Shivkrit Rai, Advocates



For Mr. Steven Bosch of UBL:

For Anheuser Busch InBev SA/NV (*i.e.*, Crown Beers India Private Limited and SABMiller India Limited):

For Mr. Anil Arya of SABMiller India Ltd.:
For Mr. Nilojit Guha of SABMiller India Ltd.:

For Mr. S. Diwakaran of SABMiller India Ltd.:

For Carlsberg India Pvt. Ltd. (CIPL), Mr. Anil Bahl of CIPL, Mr. Dhiraj Kapur of CIPL, Mr. Mahesh Kanchan of CIPL, Mr. Michael Jensen of CIPL and Mr. Nilesh Patel of CIPL

For Mr. Pawan Jagetia of CIPL:

For All India Brewers' Association (AIBA):
For Mr. Sovan Roy of AIBA:

Mr. Prashanto Chandra Sen, Senior Advocate alongwith Ms. Nisha Kaur Oberoi, Mr. Gautam Chawla, Mr. Rishabh Juneja and Ms. Shambhavi Sinha, Advocates

Mr. Manas Kumar Chaudhari, Mr. Pranjal Prateek, Mr. Sagardeep Rathi and Ms. Radhika Seth, Advocates alongwith Ms. Ajita Pichaipillai, Legal and Compliance Director of AB InBev

Mr. Talha Abdul Rahman, Advocate
Mr. Tahir Ashraf Siddiqui, Advocate with Mr. Nilojit Guha in person

Mr. Shreyas Mehrotra, Advocate

Mr. Rajshekhar Rao, Ms. Manika Brar, Ms. Atrayee Sarkar, Mr. Anandh Venkataramani, Mr. Nilav Banerjee, Ms. Kajori De, Ms. Afreen Abbassi and Ms. Raveena Sethia, Advocates alongwith Mr. Amit Sethi of CIPL Ms. Deeksha Manchanda and Mr. Shruti Rao, Advocates

Mr. Subodh Prasad Deo and Ms. Rinki Singh, Advocates, with Mr. Sovan Roy in person

ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002

Facts:

1. The present matter was initiated by the Commission *suo motu*, pursuant to the filing of an application dated 26.07.2017 under Section 46 of the Competition Act, 2002 (the 'Act') read with Regulation 5 of the Competition Commission of India (Lesser Penalty) Regulations, 2009 ('LPR') by Crown Beers India Private Limited ('OP-2') and SABMiller India Limited ('OP-3'), both ultimately held by Anheuser Busch InBev SA/NV ('Ab InBev'), against the captioned parties ('OPs'), for alleged cartelisation in relation to the production, marketing, distribution and sale of Beer in India.
2. From the disclosures made in the lesser penalty application, the Commission noted that there appears to exist collusion amongst OP-2 and OP-3, along with United Breweries Limited ('OP-1') and Carlsberg India Private Limited ('OP-4'), to (i) align the prices of



Beer and (ii) seek/implement price adjustments in several States and Union Territories ('UTs') of India, irrespective of whether the model of distribution of alcohol (including Beer) therein was of corporation market, auction market or free market. The aim of the companies appears to be to ensure consistency in their pricing policies, in particular, price increases and to achieve this aim, OP-1 to OP-4 appears to have co-ordinated by way of a series of multilateral and bilateral meetings and e-mail exchanges amongst themselves as well as through the common platform of the All India Brewers' Association ('OP-5'). The Commission also noted that the period of such co-ordination between the OPs appears to be from as early as March 2005 till at least March 2017, and perhaps beyond.

3. Noting the above, the Commission passed an order dated 31.10.2017 under Section 26(1) of the Act, forming an opinion that *prima facie*, the conduct of the OPs appears to be in contravention of the provisions of Section 3(1) read with Section 3(3)(a) of the Act, and consequently, directed the Director General ('DG') to cause an investigation into the matter and submit a report.
4. During investigation, the DG conducted search and seizure operations on the premises of the OPs on 10–11.10.2018.
5. Thereafter, applications under Section 46 of the Act read with Regulation 5 of the LPR were filed by OP-1 on 12.10.2018, by OP-4 on 15.10.2018, by Mr. Steven Bosch, Chief Financial Officer and Executive Director of OP-1, on 17.10.2018 and by Mr. Shalabh Seth, Chief Supply Officer at OP-1, former Managing Director of OP-3 and former Chairman of OP-5, on 08.01.2019.

Findings of the DG:

6. On 28.06.2019, the DG submitted the confidential version of its investigation report, and on 15.11.2019, the DG submitted the non-confidential *qua* OPs' version ('NCV *qua* OPs') of its investigation report. Thereafter, on 03.03.2020, the DG submitted the revised NCV *qua* OPs investigation report.



7. With respect to the working of the Beer industry in India, the DG observed that, in India, the manufacture, production, possession, transport, purchase and sale of intoxicating liquors, including Beer, falls within the ambit of Item No. 8 in List II of the Seventh Schedule of the Constitution of India (*i.e.*, the State List). Further, as per Item No. 51 of the State List, duties of excise on liquor is also a State subject. Furthermore, the DG noted that the sale of liquor (including Beer) does not fall within the ambit of the Goods and Services Tax ('GST'). As such, each State/UT in India has its own unique method of regulating the sale of liquor (including Beer) within its territory, leading to differences in pricing regulations and approvals, imposition of different taxes, different excise duties and differing terms of licensing, among others.
8. The DG observed that across India, different States and UTs follow anyone of the following four major route-to-market models for the distribution and sale of Beer:
- (a) Corporation Model: The State Government runs the business through a separate public sector company/corporation, which is fully owned by the State Government. This monopoly corporate entity controls the pricing, distribution and retail of alcohol (including Beer). The Corporation procures Beer from the manufacturers, either directly or through an agency, by floating annual tenders, then sells it to consumers through a distribution network. This distribution network could comprise of retail shops owned by Government or by private retailers or a mix of the two. This is the model of distribution of alcohol prevalent in the States of Andhra Pradesh, Chhattisgarh, Himachal Pradesh (till 31.03.2018), Karnataka, Kerala, Madhya Pradesh, Odisha, Rajasthan, Tamil Nadu, Telangana, West Bengal (from 31.03.2018) and Jharkhand (till 31.03.2019) and the UT of Dadra & Nagar Haveli. Pricing in these States/UTs tends to be heavily regulated.
- (b) Auction Market Model: In this model, the relevant State Excise Authorities auction the right to sell liquor (including Beer) in a particular geographical territory to an individual/company on an annual basis. The successful bidders distribute the products through retail outlets which are owned either by such bidders themselves or by other private parties licensed to sell liquor products by the State Excise Authority. The Beer manufacturers get the wholesale as well as retail prices of their products approved from



the State Excise Department. For this, they are required to submit cost cards which include Ex-Brewery Price (**'EBP'**) and the implication of relevant taxes and duties in such States. The terms of sale are executed between the manufacturer and successful bidder(s). The Beer manufacturers sell to the licensed outlets/wholesalers, and then the wholesalers sell to the retailers. This model of distribution is followed in Haryana, Punjab, Uttar Pradesh (till 31.03.2018) and Jharkhand (from 01.04.2019).

(c) Open/Free Market Model: In this model, beer manufacturers have private distributors, and these distributors, in turn, sell to private retailers. The manufacturers are required to declare the Maximum Retail Price (**'MRP'**) and get the same approved by the relevant Government Department. However, Beer manufacturers have substantial freedom in fixing the MRPs of their Beer. This model is followed in Arunachal Pradesh, Assam, Goa, Himachal Pradesh (from 01.04.2018), Jammu & Kashmir, Maharashtra, Meghalaya, Mizoram, Sikkim, Tripura, Uttar Pradesh (from 04.04.2018), Uttarakhand, West Bengal (till November 2017) and the UTs of Andaman & Nicobar, Chandigarh, Daman & Diu and Puducherry.

(d) Hybrid Model: This distribution market has features of both Corporation and Open Market. The State Government forms its own Corporation to procure and distribute liquor products in the territory. It also grants open licences to wholesalers and retailers to sell the product within the State. The hybrid model is currently being followed in the National Capital Territory (**'NCT'**) of Delhi only, where prices of different liquor products for supply to the Corporations are fixed by the Delhi Government based on the lowest price in neighbouring states. 60% of distribution and retail outlets in Delhi are controlled by the four Corporations created by the State Government, and the remaining 40% of distribution and retail outlets are held by private entities.

9. As per the DG, irrespective of the type of distribution market, State Governments play a key role in setting the Excise duties and retail prices of Beer. Given such a regulated nature of the Beer industry, any change in the price of Beer has to be gotten approved from the State Government. Hence, in all marketing models, the price increase proposals are put forth by the Beer companies, then accepted by the State Government. Beer manufacturing companies are required to periodically submit their cost cards setting out



the costs of production and sales for each stock keeping unit ('SKU') and brands to the Excise Authorities of respective State. Pursuant to such review, the respective cost cards (including details such as EBP, Promotional costs, if any, *etc.*) are approved by State Excise Authorities. Besides, in certain States, the wholesaler and retailer profit margins are also fixed by Government Authorities. Thus, the EBP, applicable Excise duties, taxes, various types of fees, and wholesalers' and retailers' margin form part of the MRP of Beer to be sold in a particular State. Since the taxation of Beer falls within the taxation powers of the respective State, export fees are levied on any product exported out of the State, in addition to the Excise duty payable on such a product. Similarly, import fees are levied by the State to which the product manufactured in another State is transported for sale. Thus, the EBP/Landing Cost/cost cards submitted by the Beer manufacturers to the Government are crucial to determine the overall price of Beer and the profitability of the Beer manufacturers.

10. The EBP of Beer declared by Beer companies in their cost cards is the initial base figure for the calculation of the corporation/bidder's purchase price (Landed Cost), Government taxes and levies and wholesalers' and retailers' margin. Since the rates of government taxes and levies, wholesalers' margin and the retailers' margin are worked out on the basis of percentage, the EBP of Beer can also be calculated by taking MRP as the base and doing reverse calculation. The desired MRP inserted in the formula-based cost card will back-calculate the EBP, which the brewer then submits in the tender/price increase applications. Thus, Beer companies may either seek higher EBP fixation by the State Government or ask for higher MRP and align their EBP to it through reverse calculation.
11. In the above scenario, based on the evidences collected during search and seizure operations, including recording of statements on oath of key persons of the OPs, replies received to the notices issued under Section 41(2) read with Section 36(2) of the Act, information collected from the public domain, *etc.*, the DG delineated the following two issues for investigation and gave its findings in its investigation report as under:
 - (1) Whether the OPs indulge in cartelisation in the domestic Beer market in India in contravention of the provisions of Section 3 of the Act?



- (i) Corporation Markets – The documents collected during the investigation reveal that, in certain States where the Corporation Model of distribution of liquor is followed (Andhra Pradesh, Odisha, Karnataka, Rajasthan and West Bengal), OP-1, OP-3 and OP-4 had been in regular contact with each other prior to submitting their bids to the Corporations and even while seeking price revisions in EBP and MRP of their Beer variants offered for sale to the Corporations. In the States of Karnataka and Rajasthan, the trends of MRP revisions of OP-1, OP-3 and OP-4 of strong Beer 650ml SKUs also show price parallelism.
- (ii) Free/Open Markets – In the States and UTs that follow the Open/Free Market Model of distribution of liquor, even though Beer manufacturers have a lot of freedom in the fixation of prices of Beer, OP-1, OP-3 and OP-4 co-ordinated amongst themselves to fix the prices of the Beer they sold (in Maharashtra, West Bengal and the UTs of Puducherry and Daman) to maintain their market share and also have identical MRPs approved by the State Government. In the State of Maharashtra, the trend of MRP revisions of strong Beer 650ml SKUs of OP-1, OP-3 and OP-4 also shows price parallelism.
- (iii) Hybrid Market – In the Hybrid Market of Delhi, in order to get favourable price revisions from the State Government, OP-1, OP-3 and OP-4 joined hands to discuss their pricing strategies and exchanged cost cards to co-ordinate their prices.
- (iv) Auction Market – With respect to States following the Auction Model, no comments are being made with regard to the indulgence of the OPs, if any, in any anti-competitive activity.

From the above, the DG concluded that OP-1, OP-3 and OP-4 indulged in the exchange of vital information amongst themselves about pricing and other confidential and business-sensitive information. They also mutually agreed on price revisions (both MRP as well as EBP) to be sought from the respective State Governments. There were a number of e-mail communications/WhatsApp messages/SMSs and even conference calls exchanged between the top managerial personnel of these three companies to decide upon the price revisions to be sought in their individual price revision requests, follow-up with State Government Authorities



and even co-ordinating a common response to the Show-Cause Notices issued by certain State Excise Commissioners. These companies approached the State Governments collectively through the common platform of OP-5 to get price revisions to agreed levels so as to avoid price wars among themselves. As such, OP-1, OP-3, OP-4 and OP-5 have contravened the provisions of Section 3(3)(a) read with Section 3(1) of the Act.

- (v) Sharing Sales and Stock Data – OP-1, OP-3 and OP-4 have also been sharing their periodical sales and sales data with each other as a monitoring mechanism to check that each has adhered to the ‘understanding/agreement’ reached among them, besides monitoring their *inter se* market share in different States, as well as nationally.
- (vi) Agreement to Limit/Restrict Supply – In addition, OP-1, OP-3 and OP-4 also collectively decided upon the strategy to oppose Government policies (including fixation of prices). In a few cases, for instance in Odisha, Maharashtra and West Bengal, whenever State Governments hiked the Excise duty or reduced EBP/MRP of Beer, these three OPs collectively decided to stop production and supplies in the State in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act.
- (vii) Sale to Premium Institutions in Bengaluru – Since premium institutions (bulk buyers) are a significant platform for Beer manufacturers to promote their products, Beer companies offer marketing support to premium institutions in the form of financial incentives for special offers/events around their brands. OP-1 and OP-3 ‘agreed’ to co-ordinate with respect to premium institutions/bulk buyers in Bengaluru and shared the costs and benefits while keeping competition out.
- (viii) Purchase of Second-Hand Bottles – OP-1 and OP-3 had an ‘understanding’ to share their off-take of old bottles from the market for reuse in their breweries. Further, they also agreed upon the rate at which they would procure such bottles from bottle collectors. They also closely monitored each other’s purchase of old bottles. They had colluded amongst themselves regarding the number of truckloads of second-hand bottles each would buy for reuse in its bottling plants. They had also decided upon the rate at which they would buy such bottles from the market. All Beer companies are hugely dependent on second-hand used bottles in their production cycle since bottles



constitute the largest cost component for Beer manufacturers. As such, limiting the volume of the bottles each could procure from bottle collectors has the direct effect of limiting the production of Beer by the companies.

- (ix) Role of OP-5 – OP-1, OP-3 and OP-4 used to hold discussions among themselves about their prospective quotes and the way forward with State Excise departments, and the representatives of these member companies used to meet Excise Authorities under the umbrella of OP-5 so that there would collectively be better chances of getting price increases. On its part, OP-5 also proposed the rates/quantum of price revisions to be applied for before the State Government. Besides, to facilitate one-to-one discussions among its member companies on various issues, including pricing, OP-5 also arranged conference calls among the top managerial personnel of the companies. As such, OP-5, through its practices, decisions and conduct of its office-bearers, facilitated the anti-competitive agreement/understanding and concerted action between OP-1, OP-3 and OP-4.
- (x) Awareness of Competition Issues – There are multiple e-mails which evidence that OP-5 as well as OP-1, OP-3 and OP-4 were aware that their joint representations on pricing to Government Authorities and discussions with competitors on restraint of trade, pricing *etc.*, violate the provisions of competition law. The top managerial personnel of the OPs had warned/advised each other from holding such discussions on OP-5's platform. However, the parties continued to participate in such discussions with each other and also involved OP-5, while making joint representations to State Government Authorities on pricing issues.
- (xi) Period of Cartel – Price co-ordination and information exchange amongst OP-1, OP-3 and OP-4 began prior to 20.05.2009 (since 2007), when the provisions of Section 3 of the Act came into force, and continued at least upto 10.10.2018, the date on which the search and seizure operations were commenced by the DG. OP-5's platform had been used since 2013 onwards.
- (2) In case the answer to Issue No. 1 is affirmative, who were the persons of the OPs liable for their company's/association's conduct in terms of Section 48 of the Act at the time of the said contravention and what were their roles?



- (i) The DG identified the following two persons from OP-1, three persons from OP-3 and three persons from OP-4 to be liable in terms of the provisions of Section 48(1) of the Act:

Company	Name	Designation
OP-1	Kalyan Ganguly	Former Managing Director from 2009 till July 2015
	Shekhar Ramamurthy	Managing Director since 01.08.2015, Former Joint President from September 2012 till July 2015 and Former Deputy President from October 2007 till August 2012
OP-3	Paolo Alberto Francesco Lanzarotti	Former Managing Director from June 2009 till 2012
	Grant Murray Liversage	Former Managing Director from August 2013 till December 2014
	Shalabh Seth	Former Managing Director from January 2015 till 31.10.2016, Former Sales Director from April 2012 till 2014 and Former Director Supply Chain from 2009 till March 2012 (Is presently working as Chief Supply Chain Officer of OP-1)
OP-4	Soren Lauridsen	Former Managing Director from 2010–11 till March 2014
	Michael Norgaard Jensen	Former Managing Director from April 2014 till April 2017 and Former Deputy Managing Director from June 2013 till March 2014
	Nilesh Patel	Managing Director since May 2017

- (ii) Further, the DG identified the following three persons from OP-1, three persons from OP-3 and four persons from OP-4 to be liable in terms of the provisions of Section 48(2) of the Act:

Company	Name	Designation
OP-1	Steven Bosch	Former Executive Director and Chief Financial Officer till 01.01.2019
	Kiran Kumar	Chief Sales Officer since 28.08.2017, Former Executive Vice President Sales from July 2014 till June 2017 and Former Senior Vice President Sales from July 2009 till June 2014



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Company	Name	Designation
	Perry Goes	Head of Strategic Planning & Analytics till 28.08.2017
OP-3	Nilojit Guha	Former Sales Director from January 2015 till 15.11.2016 and Former Vice President Sales Control from May 2011 till December 2014
	Suryanarayana Diwakaran	Former Vice President Sales till 15.11.2016, Former Vice President Sales South from May 2011 till 2016 and Former General Manager Sales South from 2009 till April 2011
	Anil Arya	Former Director Solutions Business Unit India from June 2017 till 15.10.2018, Former Vice President Financial Control from October 2014 till May 2017, Former General Manager Operations Finance from August 2012 till September 2014, Former General Manager Decision Support Sales from May 2011 till July 2012 and Former Head Decision Support Sales from 2009 till April 2011
OP-4	Pawan Jagetia	Former Deputy Managing Director from September 2014 till March 2018
	Dhiraj Kapur	Vice President Corporate Affairs
	Anil Bahl	Vice President Mont and Premium Business since 2018 and Former Sales Director/Sales Head/Vice President Sales from 2009-10 till 2017-18
	Mahesh Kanchan	Former Vice President Marketing (Head Marketing) from 2014-15 till 2018-19

(iii) Furthermore, with respect to OP-5, the DG identified Mr. Sovan Roy (*alias* Mr. Shobhan Roy), the Director General of OP-5 since 07.01.2013, to be liable in terms of Section 48 of the Act.

Proceedings before the Commission:

12. Upon consideration of the investigation report submitted by the DG, the Commission, *vide* orders dated 26.11.2019 and 12.03.2020, forwarded an electronic copy of the NCV



qua OPs' investigation report to the OPs and their 19 respective individuals identified by the DG to be liable in terms of the provisions of Section 48 of the Act (collectively known as the '**parties**').

13. The parties were given an opportunity to file their suggestions/objections, if any, to the investigation report of the DG, along with a brief synopsis thereof. Further, the OPs were directed to file their duly audited financial statements, including Balance Sheets and Profit and Loss Accounts for the Financial Years ('FYs') 2009–10 till 2018–19 along with their revenue and profit details arising from the sale of Beer in India for the above-stated FYs, duly certified by a chartered accountant, and their 16 individuals were directed to file their income details, including Income Tax Returns ('ITRs') for the FYs 2016–17 till 2018–19.
14. Between July and December 2020, the parties filed their suggestions/objections to the investigation report of the DG and relevant financial details. Thereafter, on 11.02.2021 and 02.03.2021, the Commission heard the oral submissions made on behalf of the parties on the DG report and on the respective applications for lesser penalty filed under Section 46 of the Act. The Commission decided to pass an appropriate order in the matter in due course. Thereafter, the parties submitted their respective written arguments.

Submissions of the parties:

15. In their suggestions/objections to the DG report, during the oral hearings and in their convenience compilations and written arguments, the parties made the following submissions:

15.1 United Breweries Limited (OP-1)

- 15.1.1 Highly regulated industry – The Beer market in India is highly regulated. Every aspect of Beer value chain, from production and dispatch, pricing, labelling and packaging, exports, to purchase and sale, issuance of licences, and imposition of special duties/taxes is controlled by State Authorities. In view of such regulations and control, the role of Beer manufacturers in the market is very limited. Beer manufacturers have negligible control over critical variables that influence demand and competition and ensure healthy profitability and growth in the market, and this



imbalance significantly distorts the Beer market, often putting viability of the business and survival of Beer manufacturers in the market at risk. The extremely imperfect market conditions make the market for manufacture and sale of Beer a peculiar market, unlike other sectors of the Indian economy. As such, applying the same standards that the Commission applies to enterprises that manufacture and retail their products in conditions that do not present such unique challenges to enterprises involved in the Beer industry in India, would lead to an outcome that would be contrary to the spirit of the law as set out in the Act.

15.1.2 No hardcore cartel – The present matter bears no similarity to a typical case of cartelisation, as (i) given the complex and peculiar nature of the Beer industry, the information (cost cards, draft price increase letters and company sales information) shared cannot be considered commercially sensitive as the same did not have the ability to enable the parties to use it and determine or influence prices or any other aspects of Beer industry trade; (ii) information exchanges were infrequent and lacked any specific trend or predictability in terms of timing or objective; and (iii) OP-1 or any other OP neither had the scope nor the intention to control or determine market dynamics, including prices.

An information exchange that practically has no likelihood and has in fact not caused any appreciable adverse effect on competition ('AAEC') and was rather forced upon by market conditions should be distinguished from an anti-competitive cartel under Section 2(c) of the Act. The draconian laws and practices adopted by the States make it impossible for Beer companies to compete in the ordinary course of business.

The DG has found contravention of the provisions of Section 3(3)(a) of the Act, i.e., “*directly or indirectly determining purchase or sale prices*”. As determination of prices of Beer is solely in the hands of the State and the Beer manufacturers are only price takers, the very question of the OPs making an attempt to determine the prices does not arise. Increase in consumer prices of Beer in the States was, in most instances, on account of State Government’s actions and not on account of communications or actions on part of OP-1 and other OPs.



Also, with regard to contravention of the provisions of Section 3(3)(b) of the Act, the DG has recorded only four instances of co-ordination amongst the OPs in disrupting the supply of Beer in the states, *i.e.*, in Odisha (for less than two months during 2015), in Maharashtra (for about two months during 2017), in West Bengal (about two months during 2018) and in Rajasthan (for about one week during 2018) which too were necessitated due to arbitrary actions of the State Governments.

A mere occurrence of a meeting/exchange of information does not signal or establish the possibility of an ‘agreement’. Further, in most cases, exchange of information among OP-1 and other OPs was not even implemented/realised. Hence, all evidence, their credibility and facts surrounding the circumstances have to be weighed in, and the DG cannot conduct a complete and effective investigation without first understanding the market realities and industry dynamics.

15.1.3 Exchange of information to exert countervailing power – OP-1 and other OPs indulged in information exchange either at the insistence of Government officials or, in most cases, to counter the arbitrary actions of the State Government or State Corporations for legitimate interests. By communicating with each other, the OPs were only trying to exert countervailing power in response to the market power of the monopsonist State Authorities. Every e-mail exchanged by OP-1 in regard to all nine States/UTs in respect of which the DG has found contravention of the provisions of the Act by OP-1 can be explained in this context.

15.1.4 Exchange of information at instance of State Authorities – Several instances of objectionable information exchange as identified by the DG, were on account of directions from certain State Corporations itself. In such cases, the OPs, including OP-1, were forced to discuss and collaborate even on commercially sensitive issues, such as price increase proposals, sales data, sales targets, *etc.* Even in cases where OP-1 and other OPs did not discuss or collaborate on prospective price increases, the State Corporations shared details from the cost cards submitted by other OPs to drive a bargain with OP-1 and *vice-versa* or to stall legitimate



attempts for seeking a price increase by OP-1. In such cases, OP-1 or any other Beer company would not have any option but to comply with the directions of State officials. Transparency in prices of competitors existed largely due to the practices adopted by State Governments or State Corporations. To that extent, competition on pricing amongst Beer manufacturing companies was diminished not due to the conduct of OP-1 or other OPs but owing to the arbitrary interference by the State Governments and State Corporations. This problem became multi-fold due to the onerous and complex pricing policies of the State Governments and State Corporations, leaving almost no scope for Beer manufacturing companies to compete freely and fairly on merits.

- 15.1.5 State Authorities not approached by the DG – The DG has not reached out to any State Corporation to: (i) corroborate the evidence already collected; (ii) seek additional evidence; or (iii) seek their views on the functioning of the Beer industry in India.
- 15.1.6 Mere exchange of information/communications is insufficient to prove existence of a cartel – Merely exchanging information with competitors is insufficient to establish that the Parties were acting in a co-ordinated manner contrary to the provisions of the Act. Evidence of information exchange has to be considered in conjunction with evidence establishing that: (i) the agreed co-ordinated behaviour was implemented/realised in the market; and (ii) such behaviour resulted into AAEC and/or consumer harm. The information exchange/discussions between OP-1 and other OPs on prices (*i.e.*, EBP quoted) did not actually translate into EBP approved by the State Corporations.
- 15.1.7 Collective representation by Industry Participants – The DG has mischaracterised the legitimate discussions and sharing of information amongst the OPs for making collective representations on behalf of the industry to the State Governments and State Corporations as communications for cartelisation. While, as a practice, OP-1 does not engage with OP-5 for any sales or pricing-related issues, it is only at the insistence of State Corporations (like Rajasthan and West Bengal) directing that any representation to them be routed through OP-5 that OP-1 was forced to engage



with OP-5 and seek their intervention. OP-5 was at best the mouthpiece of the Beer industry for engaging with State Corporations for complex regulatory impediments. OP-1's interactions with OP-5 was limited to being a member of the industry body and being a significant player in the market, to provide support and insight over policy-related matters which had an impact on the industry as a whole. Representations were made by the OPs through OP-5 only to raise legitimate issues faced by the Beer industry as a whole and not for the benefit of only the OPs or certain specific Beer manufacturing companies. The results, if any, of joint representations/actions were equally relevant for and applicable to the industry and did not specifically benefit only the OPs.

15.1.8 Disruptions in Supply due to abrupt and arbitrary changes in State Policies –

Restriction on supplies by various OPs at different times in the States of Odisha, Maharashtra and West Bengal was necessitated due to significant and arbitrary increase in duty by respective State Authorities, which made it commercially unviable for OP-1 to undertake any supplies until the State Government, based on common representation, agreed to a duty reduction. The act of supply disruptions was not intended to form any quantity-restricting cartel for earning *supra*-normal anti-competitive profits. Further, such disruptions were only for very short durations of time and though the broad range of the OPs stopping such supplies may have been the same, stoppage duration for each OP was dependent on the exhaustion of its stock and resumption of production based on availability of raw materials *etc.* In any event, restrictions on supplies affected the business interests of the OPs only, and it was not in their favour to take such action which would be detrimental to their own interests. If that were the case, then the instances of such purported co-ordination would not be limited to the few that have been found by the DG. This evidences that such co-ordination was only a last resort to survive in the market.

15.1.9 Purchase of Second-hand Bottles – Bottles constitute the largest proportion of cost

for Beer manufacturers (over 30%). Prior to 2010, all Beer manufacturers used the same bottles in terms of design for packaging their Beer, *i.e.*, Industry Bottles. The Beer manufacturers would collect these bottles back from bottle collectors and



reuse them. This was because the price of old bottles was almost two-to-three times less than the price of new bottles. However, due to practices in the industry regarding buying back of old bottles, which included old bottle collectors hoarding the bottles and regional players not injecting new bottles into the market but buying back stock of old bottles (initially injected by the larger manufacturers), the price of old bottles increased over time. This drove OP-1 to launch its own patent bottles in 2010. Due to this, various other Beer manufacturers also launched their own patent bottles. Hence, the OPs discussed amongst themselves the prices at which they would buy back the old Industry Bottles from collectors to safeguard themselves from increasing costs of old bottles. OP-1 and OP-3 discussed and agreed on the basic price for procuring both old standardised Industry Bottles as well as patent bottles to ensure optimal cost management and improve efficiency in procurement of old bottles, as well as, to prevent hoarding of old bottles by suppliers. Any price rise in the cost of procuring bottles would have to be passed on to the end consumers leading to further increase in the Beer retail prices which were already quite high owing to excessive State Government levies and taxes. However, the prices that the OPs had agreed to for buying back their own patent bottles also could not be met.

Further, there was no attempt to limit the volume of procurement of bottles, as that would be detrimental to OP-1's supply of Beer. From the various e-mail correspondences, it is evident that the OPs had exchanged information and discussed bringing an organised structure to an extremely unregulated market of procuring Industry Bottles that were commonly used by all the OPs until patent bottles were introduced. At the time of this transition, Industry Bottle collectors and suppliers took advantage of the low elasticity of demand and created an artificial scarcity, thereby turning each OP against the other and creating a mirage of collusion. The end result was that OP-1 ended up buying its own bottles at higher prices, and any sort of discussion between the OPs to forestall the Industry Bottle suppliers from taking advantage of the situation never fructified.



15.1.10 No AAEC in India – There has been no AAEC in India, as understood under Section 3(3) read with Section 3(1) of the Act, because of the conduct of OP-1. The consumers were not being impacted due to the price increases of EBPs sought by the OPs. The unreasonable increase in price for consumers was a result of the frequent and significant increase in taxes, levies and Excise duties imposed by the State Governments while the OPs continued to function for long periods at the same EBPs.

Further, OP-1 was forced to engage in communications with its competitors only as a means to counter the monopsony powers exercised by the State Governments. Its discussions were not to “*control or attempt to control the production, distribution, sale or price of, or trade in goods*” aimed at illegitimate gains, as would have been the case if the discussions were pursuant to a cartel; rather, at times, exchange of information or interactions were caused at the insistence of officials of the Governments or the State Corporations.

The conduct of OP-1 does not meet the factors inscribed in Section 19(3) of the Act. The conduct was not intended to nor did it: (i) create entry barriers for new entrants in the market; (ii) drive existing competitors out of the market; or (iii) in any way, foreclose competition.

Notwithstanding instances of certain exchange of information for price increases submitted to states such as Rajasthan and Andhra Pradesh, there was no impact at all on the relevant State Excise Corporations’ decisions to not allow price increases for many years. This itself shows the futility of the purported anti-competitive conduct by OP-1 and other OPs.

If anything, the intermittent instances of either information exchange or discussions by OP-1, and few instances of purported co-ordination with its competitors, was intended, in most instances, to safeguard consumers from absurd, arbitrary and unreasonable price increases and, in other instances, in an attempt to counter the single-minded, unreasonable, arbitrary acts, omissions and monopsonic conduct of the relevant State Corporations and State Governments. State Governments have significant control over the price of Beer – they limit the ability



of the Beer manufacturers to increase the prices; however, continue to raise taxes and hence, consumer price.

OP-1 had engaged Nathan Economic Consulting India Private Limited ('**Economic Consultant**') to undertake an independent economic assessment to determine: (i) if the co-ordinated decisions of OP-1 and its competitors were actually implemented/realised in the market; and (ii) if the information communication among OP-1 and its competitors had any AAEC and consumer welfare in the market. The findings of the Economic Consultant were filed with the DG and the Commission in the form of an Economist Report. The Economist Report establishes that the information exchange, discussions and few instances of purported co-ordination between OP-1 and its competitors have not caused AAEC in the Beer market in India for the following reasons:

- (i) Declining profits/losses of OP-1 in most states where cartelisation has been found by the DG are evidence that the information exchange was not driven by the goal of earning *supra*-normal profits.
- (ii) Growth in consumer prices exceeds growth in EBP.
- (iii) Information exchange and discussions amongst OPs did not have any effect on approved EBPs and thus, on the market. In fact, approved EBPs for the OPs were also not uniform in several instances.

There was also no AAEC on account of parallel pricing, since the OPs did not have a motive to gain extraordinary prices but to counteract the practices of the State Governments.

Discussions regarding second-hand bottles also did not lead to AAEC as they were undertaken to: (i) avoid significant increase in retail prices for consumers; (ii) implement optimal cost management in procurement of old bottles; and (iii) improve efficiency in such procurement. Anyhow, such discussions between OP-1 and OP-3 were not implemented. Commercial rationale behind taking off their bottles from market by OP-1 was that State Governments did not allow the OPs to pass on their costs to the consumers and hence, the OPs were



forced to control the prices of their bottles in the market because bottles constitute over 30% cost for a Beer manufacturer. Hoarding of old bottles by bottle collectors and no injection of new bottles by smaller Beer manufacturers in the industry resulted in significant increase in buy-back price of old bottles for OP-1 and its competitors, and thus, drove OP-1 to launch its own patent bottles in 2010.

The one-off incident of discussion related to premium institutions never resulted into an agreement or was implemented, and there was no AAEC.

- 15.1.11 Market conditions post 10.10.2018 remain exactly the same as those existing prior to cessation of the purported co-ordination amongst the OPs.
- 15.1.12 OP-1's market shares (based on sales volume for Kingfisher Strong ('KFS') 650ml) fluctuated significantly from 2008-09 to 2019-20 (until September 2019), across most states. At all India level, across all Beer brands, market share of OP-1 remained similar, however, market share of OP-4 increased from 3% in 2009-10 to 16% in 2018-19 and that of OP-3 decreased from 23% to 12% during this period. This is contrary to an outcome achieved through collusive means. Changes in market shares of OP-1 and its competitors are indicative of volume-based competition in the Beer market.
- 15.1.13 Value addition and lesser penalty – OP-1 in its lesser penalty application and submissions made thereafter explained the *modus operandi* and chronology of related events to each communication/interaction amongst the OPs. Further, OP-1 provided context to the information exchange amongst the OPs, including information exchanged due to suggestion/requirement of the State Corporation. OP-1 also submitted to the DG, instances of sharing of information with regard to their revenue, stock movement, sales and stock held with the distribution channel, which information was not in possession of the DG beforehand. OP-1 further made significant value addition to the investigation by submitting instances of exchange of pricing information amongst the competitors in additional states of Karnataka and West Bengal, and UTs of Puducherry and Daman and Diu. The DG has also relied upon price increase information submitted by OP-1. OP-1 also submitted information, evidence and instances of limiting/restricting supply of Beer by the



OPs in an attempt to protest against the increase in prices or duties on Beer production or sale in certain states like Maharashtra. The order dated 31.10.2017 passed by the Commission forming *prima facie* opinion does not talk about interactions amongst the OPs for the purchase of second-hand bottles. Information pertaining to interactions/communications regarding purchase of second-hand bottles was given by OP-1. Similarly, information regarding the exchange of communications relating to premium institutions and using the platform of OP-5 was also given by OP-1 only. Though some of the evidences furnished by OP-1 have not been considered by the DG in arriving at its conclusions, the same led to significant value addition to the investigation.

During the course of the investigation, OP-1 had provided: (i) copies of communications between OP-1 and other OPs; (ii) cogent data to provide a context to such communications; and (iii) facts demonstrating that there was no AAEC because of such communications. However, the DG has not considered all the information provided by OP-1 in an effective manner.

15.1.14 Penalty and Mitigating Factors – No penalty ought to be imposed as the present is not a typical case of cartelisation. Imposition of penalty on the OPs will have far reaching consequences on highly constrained Beer industry. The Commission ought to consider (i) hardships faced by Beer manufacturers; (ii) the fact that discussions amongst the OPs were a natural reaction to counter the monopsonist State departments' exploitative practices; and (iii) the fact that there has been no AAEC, while deciding if penalty ought to be imposed.

Further, the following mitigating factors ought to be considered:

- i. Instances of interaction amongst the OPs were sporadic and limited only to certain states;
- ii. No harm to consumers caused;
- iii. Information exchange did not have any effect on the approved EBPs since the relevant State Governments decided not to allow the increase, in some



- instances, year after year, nor did the State Governments allow reductions in EBP;
- iv. Co-ordination in supply disruptions was to convince the State Departments to not increase Excise duties unreasonably;
 - v. Information exchange and communication regarding premium institutions and buy back prices of old bottles were never implemented;
 - vi. Beer market was characterised by intense volume-based competition amongst the OPs as evidenced by Economic Consultant's report;
 - vii. OP-1 had initiated a detailed internal investigation in June 2018 prior to Search and Seizure operations of the DG;
 - viii. OP-1 has also drafted and implemented a comprehensive and robust competition compliance manual which provides guidance to the company and its employees on compliance with the relevant laws and regulations (including competition law) which is updated from time to time; and
 - ix. OP-1 has extended full co-operation and provided value additions to the DG's investigation.

Also, if penalty is imposed, the same should be on the basis of principle of proportionality and relevancy of infringement to the turnover from the cartel participant as envisaged by the Hon'ble Supreme Court in *Excel Crop Care Limited v. Competition Commission of India and Another (2017) 8 SCC 47*. The Commission should consider turnover or profits (as applicable) of OP-1 from the sale of Beer only in states affected by OP-1's conduct. Further, the Commission should not consider entire time period of investigation (*i.e.*, FY 2009-2010 to FY 2018-2019) and should only consider actual duration of discussions in such states as the evidence on record clearly establishes that the discussions were not continuous in nature.

15.2 Mr. Kalyan Ganguly, former Managing Director of United Breweries Limited

- 15.2.1 The DG Report is in violation of the principles of natural justice in relation to the findings against Mr. Ganguly under Section 48(1) of the Act. The DG did not grant Mr. Ganguly an opportunity to present his defense during investigation.



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15.2.2 During his tenure as the Managing Director of OP-1, Mr. Ganguly was involved in decision making based on inputs from established senior management teams comprising of senior most executives of the various business verticals like sales, analytics, marketing, supply chain and finance. As the Managing Director, Mr. Ganguly was not involved in day-to-day operations of OP-1. In his role as Managing Director, Mr. Ganguly involved himself only in relation to key and strategic discussions and decisions in relation to operations and management of OP-1. As such, since Mr. Ganguly was not involved in day-to-day affairs of OP-1, there was no reason for him to be aware of the alleged conduct.

15.2.3 In the entire DG Report, the DG has relied on two e-mail communications dated 01-02.06.2010 and 18.05.2011 to affix liability under Section 48(1) of the Act on Mr. Ganguly. The DG has taken no effort whatsoever to independently corroborate the fact that Mr. Ganguly had knowledge of the alleged anti-competitive conduct of OP-1. Mr. Ganguly was the Managing Director of OP-1 at the time and was as such, marked on several e-mails, not necessarily aimed at bringing these issues to his attention or seek his inputs. As Managing Director, Mr. Ganguly was not involved in day-to-day activities of OP-1.

15.3 Mr. Shekhar Ramamurthy, Managing Director of United Breweries Limited and former Chairman of All India Brewers' Association

15.3.1 During his tenure as the Managing Director of OP-1, Mr. Ramamurthy was involved in decision making based on inputs from established senior management teams comprising senior most executives of various business verticals like sales, analytics, marketing, supply chain and finance. As the Managing Director, Mr. Ramamurthy was not involved in day-to-day operations of OP-1. In his role as Managing Director, Mr. Ramamurthy involved himself only in relation to key and strategic discussions and decisions in relation to operations and management of OP-1. As such, since Mr. Ramamurthy was not involved in day-to-day affairs of OP-1, there was no reason for him to be aware of the alleged conduct.



- 15.3.2 Mr. Ramamurthy, as Managing Director of OP-1 at the time, was marked on several e-mails, not necessarily aimed at bringing these issues to his attention or seek his inputs. As Managing Director, Mr. Ramamurthy was not involved in day-to-day activities of OP-1. He was rather entrusted with management of the business which *inter alia* included appointing distributors, dealers, marketing and sponsorship agencies, register and develop intellectual property rights, procure registrations, execute share/debenture certificates *etc.* He was also required to undertake initiatives for corporate social responsibility, apply for licenses and permits *etc.* in the ordinary course of business and perform all other functions as Managing Director.
- 15.3.3 Relying on submissions made on behalf of OP-1, it was submitted that the DG has proposed liability on Mr. Ramamurthy based on certain e-mail communications, disregarding the factual scenario presented and explained in detail by Mr. Ramamurthy and by OP-1 and its other employees.
- 15.3.4 The DG has relied upon a solitary document pertaining to price proposals and brands introduction by OP-1 and its competitors in the State of Andhra Pradesh in 2018–19, to conclude that Mr. Ramamurthy had complete details of the pricing proposals of OP-1’s competitors. To the best of Mr. Ramamurthy’s recollection and knowledge, the said document related to a pricing proposal which was shared with OP-1 by its exclusive distribution partner in the State of Andhra Pradesh. The relevant document was not a pricing proposal exchanged between OP-1 and other competitors of OP-1. The relevant document was drawn up by OP-1’s distribution partner and illustrates the prospective prices in the State of Andhra Pradesh if the Excise department allowed a price increase. The DG inexplicably did not even confront Mr. Ramamurthy with this document while his statement was recorded on oath. Anyhow, such pricing proposals were not implemented. Therefore, there was no AAEC. Mere information of basic prices of the brands of competitors in a State would not constitute contravention of the Act.



- 15.3.5 The DG has also relied upon the Affidavit of Mr. Steven Bosch wherein Mr. Bosch stated that Mr. Ramamurthy was initially reluctant and resisted in bringing up the issues of anti-competitive conduct before the Board of OP-1. However, the fact is that it was Mr. Ramamurthy who initiated an internal investigation by engaging external law firms and forensic experts to review and analyse certain communications between officers/employees of OP-1 with third parties (which could have included competitors of OP-1).
- 15.3.6 The DG has also relied on the statement of Mr. Ramamurthy given under oath to conclude that Mr. Ramamurthy co-ordinated with the competitors. Unfortunately, the DG has completely misconstrued the statement given by Mr. Ramamurthy and has cherry picked parts of the statement/evidence to suit its pre-determined and incomplete conclusions. Mr. Ramamurthy in his statement agreed to the discussions amongst the OPs. However, he also explained in detail that such discussion was, *inter alia*, driven by the need to survive and safeguard OP-1 against colossal losses witnessed by the Beer industry due to the nature of the market. Mr. Ramamurthy also explained that the instance of sporadic interactions/discussions did not lead to any AAEC. On the contrary, actions of OP-1 resulted in safeguarding consumer benefits. Mr. Ramamurthy's explanation regarding the existence of active and vigorous competition through the mechanism of trade discounts, incentives and consumer promotions have been completely ignored by the DG.
- 15.3.7 The mischaracterisation of Mr. Ramamurthy as being the 'kingpin' of the cartel on the basis of him being the Managing Director of OP-1, *i.e.*, the market leader in the industry, clearly depicts non-application of mind by the DG. The DG has not presented any evidence to support an allegation of this magnitude. There is no evidence on record to substantiate the finding that Mr. Ramamurthy was a cartel kingpin. Additionally, none of the competitors of OP-1 have expressed anything that would make the DG reach such a conclusion. Further, discussions amongst industry members were on-going even before Mr. Ramamurthy was appointed as the Managing Director of OP-1, making it baseless to term him as the kingpin.



15.3.8 Mr. Ramamurthy's position of being OP-5's President does not lead to a conclusive finding that OP-5 was used as a hub for the alleged conspiracy or that he was driving any cartel like behaviour using OP-5. In any event, the DG's conclusion is not supported by any evidence. Prior to Mr. Ramamurthy, Mr. Shalabh Seth (of OP-3) had been President of OP-5, and so has Mr. Chris White (of OP-3); however, no such findings and observations have been made against them by the DG.

15.4 Mr. Steven Bosch, Chief Financial Officer and Executive Director of United Breweries Limited

15.4.1 It is an admitted position that there is no evidence of any e-mail correspondence which was either sent by Mr. Steven Bosch to another competitor or sent by another competitor to Mr. Steven Bosch. Further, there is also no evidence in the DG report of Mr. Steven Bosch having met with an official working with a competitor Beer manufacturer. There is also no evidence in the DG report that Mr. Steven Bosch attended an industry association meeting organised by OP-5. There is no evidence in the DG report that Mr. Steven Bosch's mobile device (which was imaged by the DG during the Dawn Raid) had a record of contact with a competitor(s), except for one WhatsApp exchange on 9 November 2017. There is also no evidence in the DG report that the 11 notebooks of Mr. Steven Bosch which were seized by the DG during the Dawn Raid had any incriminating evidence of contact with a competitor. OP-1 has not named Mr. Steven Bosch as one of OP-1's officials who had communication with a competitor Beer manufacturer(s). OP-1 has also not named Mr. Steven Bosch as one of OP-1's officials who were involved in taking decisions for making requests to State Governments for increasing the EBP and MRP of Beer sold by OP-1 from 01.04.2009 till date. Despite these admitted positions, the DG has recommended individual liability against Mr. Steven Bosch.

15.4.2 The DG has erroneously relied on the factors relevant under Section 48(1) of the Act to recommend individual liability under Section 48(2) of the Act, even though the threshold for imposition of individual liability is materially different from



Section 48(1) of the Act. Under Section 48(2), the burden was on the DG to demonstrate the *de-facto* or active involvement of Mr. Steven Bosch in the alleged anti-competitive conduct. However, given the aforesaid admitted positions, there is no evidence on record which even faintly establishes the *de-facto* or active involvement of Mr. Steven Bosch in the alleged anti-competitive activities of OP-1. The DG has not been able to prove any consent, or connivance, or neglect on part of Mr. Steven Bosch to recommend individual liability against him under Section 48(2) of the Act. Rather, instead of proving consent, or connivance, or neglect on part of Mr. Steven Bosch, the DG has wrongly relied on the “*in-charge of and responsible to*” test under Section 48(1) of the Act to hold Mr. Bosch liable.

15.4.3 There is also no evidence on record to even justify recommendation of individual liability against Mr. Steven Bosch under Section 48(1) of the Act. Mr. Steven Bosch was the Chief Financial Officer (‘**CFO**’) and Executive Director (‘**ED**’) of OP-1 from 01.09.2016 to 31.12.2018. In his capacity as the CFO and ED, Mr. Steven Bosch had the responsibility of financial performance of OP-1; his primary responsibility being to manage the profit and loss account and monitor the performance of OP-1 against the agreed budget. As such, Mr. Steven Bosch only had broad and high-level knowledge of pricing, pricing strategy, sales data and targets, as well as volume data of OP-1. The role and profile of Mr. Steven Bosch did not entail any contact with OP-1’s competitors or decision making in relation to OP-1’s sales or prices.

15.4.4 It was only in June 2018 that Mr. Steven Bosch for the first time was made aware that there might be certain competitor contacts between certain employees of OP-1 with third parties (which could have included OP-1’s competitors), and which could potentially be considered as anti-competitive under the Act. From June 2018 until the Dawn Raid, Mr. Steven Bosch exercised all due diligence and took all possible steps to: (a) include competition law policies and trainings at OP-1; (b) carry out an internal competition audit of OP-1’s internal servers bearing e-mail correspondence and update Heineken about it; (c) persist and escalate with the internal competition audit; (d) push for conclusion of the internal competition audit so that possible next steps, including approaching the Commission, could be



planned and implemented; (e) create awareness of the situation amongst other Board members and sought guidance from the legal team; and (f) consider independent legal advice in the face of internal resistance. All the above steps were taken between June 2018 and October 2018, *i.e.*, immediately after Mr. Steven Bosch for the first time got to know about the possibility of an anti-trust violation by OP-1 until the Dawn Raid on 10.10.2018.

15.4.5 Further, it was due to the reason of internal audit that was going on that a “*few e-mails*” were seized by the DG during the Dawn Raid from Mr. Bosch’s cabin. These e-mails relate to other persons and were dated before Mr. Steven Bosch joined in at OP-1. This was explained by Mr. Bosch during recording of his deposition before the DG at the time of search and seizure operation. However, despite the above context been provided by Mr. Bosch, the DG completely disregarded these submissions and simply assumed that the knowledge of these e-mails by Mr. Bosch (from an inconclusive, ongoing internal competition audit, about a possible violation of the Act, subject to further evaluation) amounts to consent or connivance of Mr. Bosch to the alleged cartel.

15.4.6 The single WhatsApp exchange of November 2017 between Mr. Steven Bosch and Mr. Ben Verhaert, Head of India Operations, at AB InBev, recovered from Mr. Steven Bosch’s iPhone, has been misconstrued by the DG. The industry matter referred to in the said communication was around issues regarding the applicability of GST on contract production units. To explain, the introduction of GST in the second half of calendar year 2017 led to significant uncertainty for the entire brewing industry, with varying interpretations around the applicability of GST on service charge payable to contract production units v. GST payable on brand owners’ profit realised by the brewers from these contracts. Hence, the (extent of) GST to be levied on the contract units was a relevant topic for OP-1 and AB InBev as both made use of contract production units for their respective Beer production in India. Mr. Steven Bosch has clearly explained that apart from this intent/purpose, there was no other intended motive/intention to discuss any other topic with Mr. Ben Verhaert. Further, no actual meeting ever took place between Mr. Steven Bosch and Mr. Ben Verhaert in furtherance of such communication, as



such there could also have been no AAEC anyhow. Yet, the DG has misconstrued the above WhatsApp exchange as being an attempt on part of Mr. Steven Bosch to “coordinate with him on an industry related matter” and “an attempt to have contacts with Mr. Ben Verhaert”. The DG could have sought clarification from Mr. Ben Verhaert in explaining the context of the concerned WhatsApp message; however, it failed to do so.

15.4.7 Without prejudice to the submissions made above, in the event that the Commission differs from such submissions, as a lesser penalty applicant, Mr. Steven Bosch deserves 100% reduction in penalty. Through his lesser penalty application, Mr. Steven Bosch intended to ensure (on a *bona fide* basis) that the Commission has complete information, background and context of (i) internal competition audit (which was ongoing as on the date of the Dawn Raid), (ii) documents which were seized by the DG (in addition to the context provided in the DG deposition), and (iii) diligence and steps taken by Mr. Bosch to bring the issue of a possible competition law violation to the attention of the Board of OP-1 in September 2018. Mr. Steven Bosch has fully, continuously and consistently cooperated with Commission; provided vital disclosures/evidence in an expeditious manner; and taken all diligence measures in OP-1.

15.5 Mr. Kiran Kumar, Chief Sales Officer of United Breweries Limited

15.5.1 An officer can only be held liable under Section 48(2) of the Act once the company is found to be in contravention of the provisions of the Act.

15.5.2 Relying on submissions made on behalf of OP-1, it was submitted that the DG has proposed liability on Mr. Kumar under Section 48(2) of the Act, disregarding the factual scenario and market realities which have been presented and explained in detail by Mr. Kumar and by OP-1 and its other employees. The DG has relied upon the statements of Mr. Kumar without considering the context provided by Mr. Kumar while making the statements. The DG has not tried to understand the context in which the information exchange amongst the OPs took place. Mr. Kumar had categorically explained that discussions amongst competitors took place only to represent industry specific matters before the State Governments and



State Corporations. There was no AAEC in the present case. The DG concluded each act of information exchange/discussion to be illegitimate in complete disregard of the evidence brought on record.

15.6 Mr. Perry Goes, Head of Strategic Planning & Analytics at United Breweries Limited

15.6.1 An officer can only be held liable under Section 48(2) of the Act once the company is found to be in contravention of the provisions of the Act.

15.6.2 The DG Report is in violation of the principles of natural justice in relation to the findings against Mr. Goes under Section 48(2) of the Act. The DG did not grant Mr. Goes an opportunity to present his defense during investigation.

15.6.3 Mr. Goes was marked in all the communications related to industry issues which OP-5 was representing before the Government Authorities, as he was tasked with representing OP-1 at OP-5. All communications wherein Mr. Goes is marked as well as communications of Mr. Goes with Mr. Sovan Roy of OP-5 must be seen in this light.

15.7 Anheuser Busch InBev SA/NV (Includes Crown Beers India Private Limited and SABMiller India Limited) (AB InBev/OP-2 and OP-3)

15.7.1 AB InBev provided full, true and vital disclosures in compliance with Section 46 of the Act leading to formation of *prima facie* view by the Commission and therefore, it deserves 100% reduction in penalty being the first lesser penalty applicant. It provided irrefutable evidentiary proof of existence of cartel conduct in various territories of India including internal documents stating overall alignment with competitors, e-mail communication with competitors and internally within SABMiller employees showing clear exchange of commercially sensitive information, communications relating to Government/Statutory Authorities on change of prices/duties imposed on Beer, communication showing WhatsApp group of members of Karnataka Brewers' and Distillers' Association, exchange of e-mails with Excise Authorities, and Affidavits of employees of AB InBev and SABMiller admitting to the cartel conduct. This helped not only the Commission in forming the *prima facie* view but also the DG in conducting search and seizure



operations. A lot of major conclusions drawn by the DG are based on the evidences provided by AB InBev. The assistance provided by AB InBev helped the DG find contravention of the provisions of the Act against all the OPs.

15.7.2 As a lesser penalty applicant, AB InBev also provided the names of cartelising individuals to the DG which helped the DG in finding targeted evidence from the premises of the OPs during its search and seizure operation. Further, the information provided in lesser penalty application by AB InBev also enabled the DG to confront deponents with smoking gun evidence to obtain their confessions despite initial evasive replies. Also, though OP-5 denied having a role in the cartel conduct, the DG has been able to demonstrate its involvement through various documentary evidences, as AB InBev, as part of its lesser penalty application, had described the role of OP-5 as a platform of sensitive commercial information exchange.

15.7.3 As a lesser penalty applicant, AB InBev fulfilled all conditions prescribed under law for grant of lesser penalty including ceasing to participate in cartel conduct pursuant to filing of lesser penalty application, providing vital disclosures, providing all relevant information, documents and evidence as required by the Commission, co-operating genuinely, fully, continuously and expeditiously throughout the investigation and other proceedings before the Commission and not concealing, destroying, manipulating or removing any relevant documents.

15.7.4 Besides filing lesser penalty application, AB InBev also initiated internal definitive corrective administrative and HR measures like seeking resignations of certain employees and initiating re-assignment of roles of remaining employees. AB InBev also initiated widespread compliance programs for its employees.

15.8 Mr. Shalabh Seth, Chief Supply Officer of United Breweries Limited, former Managing Director of SABMiller India Limited and former Chairman of All India Brewers' Association

15.8.1 Mr. Shalabh Seth, currently an employee of OP-1, was employed at OP-3 during the time he participated in the alleged co-ordination and when Mr. Seth approached



the Commission as a lesser penalty applicant, the Commission granted to him, the same priority status as granted to OP-3.

15.8.2 As part of its lesser penalty application and depositions before the DG, Mr. Shalabh Seth has provided certain vital additional evidence which added significant value to the DG's investigation and to the evidence that was already in possession of the Commission/DG. Such significant additional value is evident from the fact that during the depositions of the representatives of other players involved in the co-ordination, the DG has extensively referred to/relied upon the documentary evidence submitted by Mr. Shalabh Seth as part of his lesser penalty application as well as the statements made during his depositions before the DG.

15.8.3 Other submissions made by Mr. Shalabh Seth were common with OP-1, *i.e.* (i) highly regulated nature of Beer industry, (ii) vigorous competition on other aspects except joint efforts to persuade or lobby with the State Governments on the regulatory issue of prices, (iii) non-implementation and no/limited impact on market, and (iv) no AAEC.

15.8.4 For penalty purposes, if any, to be imposed, the Commission may take into consideration the income details of Mr. Shalabh Seth for three FYs prior to the last FY in which Mr. Shalabh Seth participated in the contravention on behalf of OP-3, *i.e.*, FY 2013–14, FY 2014–15 and FY 2015–16 and not FY 2016–17, FY 2017–18 and FY 2018–19. Reliance on current year's financial figures could lead to an inequitable treatment. Mr. Shalabh Seth has left OP-3 in October 2016 and joined OP-1 in July 2018; as such, in fact, he was not working in the Beer industry from October 2016 to June 2018.

15.9 Mr. Nilojit Guha, Former Director (Sales) at SABMiller India Limited

15.9.1 Mr. Nilojit Guha is not contesting the DG's finding of contravention of the provisions of Section 3 of the Act or the DG's finding against him under Section 48(2) of the Act. However, he ought to be exonerated and be granted full benefit of the co-operation extended by him to the DG. He provided detailed description of the cartel including the *modus operandi*, aim of the cartel, role of parties, and



further explained/corroborated all the e-mails and evidence put against him, in his deposition recorded before the DG, thereby providing full, true and vital disclosures. His statement with regard to the e-mails and evidence put to him has added significant value to the DG's investigation. Mr. Guha co-operated genuinely, fully, continuously and expeditiously in the investigation. The DG, while arriving at findings in the DG Report, has extensively relied upon the statement of Mr. Nilojit Guha.

15.9.2 Mr. Guha ceased to have any participation in the cartel with effect from 16.11.2016 since he had left OP-3 on 15.11.2016. He is a one-time offender and was not acting for any personal gain.

15.10 Mr. Suryanarayana Diwakaran, Former Vice-President (Sales) at SABMiller India Limited

15.10.1 Mr. Diwakaran does not dispute any finding of the DG and Mr. Diwakaran, being an ex-employee of OP-3, seeks to adopt and obtain the benefit of all co-operation extended by OP-3 to the DG and the Commission.

15.10.2 Mr. Diwakaran was not summoned by the DG for recording of his statement. This establishes that the role of Mr. Diwakaran was not pivotal in the alleged anti-competitive agreement.

15.10.3 Mr. Diwakaran ceased to have any participation in the cartel with effect from 15.11.2016 since he had left OP-3 on 15.11.2016. Further, throughout his employment, Mr. Diwakaran never held any position of influence at OP-3 and was only acting upon the instructions of his seniors. He is a onetime offender and was not acting for any personal gain.

15.10.4 Mr. Diwakaran has not received any remuneration from OP-3 after his resignation on 15.11.2016 and as such, the income earned by him post such date ought not to be considered by the Commission in case penalty, if any, is imposed.



15.11 Mr. Anil Arya, Former Director (Solutions) at SABMiller India Limited

15.11.1 Mr. Anil Arya agrees with the finding of the DG that there was an agreement to fix prices between the Beer manufactures. He was aware of such conduct and co-operated during the internal fact-finding exercise conducted by AB InBev. However, Mr. Arya was not the decision-making Authority or pivotal in the functioning of this cartel arrangement. The same is evident from the fact that the DG has not found many e-mails which involved Mr. Arya. In the e-mails dated 22.12.2011 and 09.08.2013, Mr. Anil Arya is only CC'd while with respect to e-mails exchanged in September, 2011, though the same do suggest exchange of 'price card', however, at the relevant time, it was considered an industry practice in the interest of consumers to ensure that the prices of products are not prejudicially determined by the Government on any issue that concerns the consumers as well as the interest of the Excise Revenue. Mr. Anil Arya has not deliberately or intentionally participated in the cartel arrangement which violated the law.

15.11.2 Any immunity granted to AB InBev for co-operation accorded to the investigation process may also be extended to Mr. Anil Arya.

15.12 Carlsberg India Private Limited (OP-4)

15.12.1 Arbitrary and unpredictable actions of the State Excise Authorities – Prices of Beer are fixed by State Excise Authorities from time to time. No Beer company can freely change the price of Beer in any State without obtaining prior approval from the respective State Excise Authority. This requirement of obtaining approval applies to every State, irrespective of the route-to-market models. In the Free Market States, price increase proposals are made by the Beer companies, which must be accepted by the State Excise Authorities before they can be implemented in the market. In other markets, seeking a price increase is a significant challenge given that the Beer manufacturers are dealing with a monopsonist, *i.e.*, the State Government (dealing directly or through State Corporations). Therefore, there is hardly any pricing power with the OPs, and the price revisions are mostly triggered by the revision in Excise duty by the State Excise Authorities, and not pursuant to price increase requests made by the brewers. In other words, the ultimate and true



driver of revisions in Beer prices is the State Excise Authority and not the brewers, and thus, it is virtually impossible for the OPs to restrict price competition in this market. Accordingly, any possible adverse impact on the market is not on account of the conduct of the OPs, but it is because of the actions of the State Excise Authorities.

15.12.2 No AAEC – The OPs are forced to come together through OP-5, because the State Excise Authorities would not interact with the companies individually. The OPs’ actions have been purely to survive and in fact have resulted in benefit for the consumer at large. As such, the conduct of OP-4 was only with a view to sustain its operations in the market and had no AAEC in any manner, whatsoever. In fact, its conduct led to consumer benefit in terms of lower prices. If OP-4 (and other Beer companies) had not approached OP-5 and made unified representations to the State Excise Authorities to voice their concerns, it would have had serious negative consequences for the already financially pressurised Beer industry in India, and may also have had an overall impact on employment, income and foreign investments in India. As such, OP-4’s conduct was not aimed at affecting the market but was to merely represent genuine concerns before the State Governments and/or the State Excise Authorities to amend policies for the benefit of the overall Beer market and the consumers.

15.12.3 Price Fixing – The DG has concluded that OP-1, OP-3 and OP-4 had indulged in price fixing. In particular, the DG finds that the anti-competitive conduct took place primarily in 13 States/UTs out of the total 36 States/UTs in India. However, with respect to OP-4, the DG Report does not disclose any credible evidence for 7 States/UTs and the evidence relied upon by the DG in relation to the State of Rajasthan and the UT of Delhi also does not demonstrate OP-4’s involvement in the illegal price fixing. The DG Report hence, contains evidence of OP-4’s involvement in illegal price fixing in only 4 States/UTs. Further, the actual implementation of pricing discussions took place only for a short time period and only at 8 instances in these 4 States/UTs: (i) Maharashtra (one instance in 2016), (ii) West Bengal (four instances – one each in 2012, 2015, 2016 and 2017), (iii)



Karnataka (two instances – one each in 2015 and 2017), and (iv) Puducherry (one instance in 2017).

15.12.4 Limiting/Restricting supplies – The DG has found that OP-1, OP-3 and OP-4 had collectively decided upon the strategy to oppose certain Government policies (including fixation of prices). The DG has stated that in a few cases, whenever the State Governments hiked the Excise duty, the Beer companies collectively decided to limit production and supplies in contravention of Section 3(3)(b) of the Act. Whilst the findings of the DG are in line with OP-4's lesser penalty submissions, its conduct should be viewed in light of the following events, which were implemented with immediate effect:

- (i) Maharashtra: The arbitrary increase in the Excise duty (because of a calculation error) which would have resulted in an exorbitant increase in the Beer price in Maharashtra by 30%, *i.e.*, from ₹145 for the TBS 650ml bottle to over ₹190 per bottle; and
- (ii) West Bengal: The arbitrary increase in Excise duty in West Bengal which would have resulted in an exorbitant increase in the Beer price by over 80%, *i.e.*, from ₹110 per bottle to over ₹200 per bottle

It is with this background that the OPs took the decision to jointly approach the respective State Governments to convince them to revise the Excise policies, absent which the industry would have otherwise collapsed. In fact, any representation made individually by any party would not have been entertained by the Authorities. Such arbitrary and overnight price increases implemented by the State Excise Authorities impaired the ability of the Beer companies to supply Beer. In addition to rendering the selling price economically unviable, such sudden exorbitant prices would have resulted in wastage/destruction of the entire stock carrying labels with higher MRP, leading to huge losses for the Beer companies if the State Excise Authorities were to subsequently roll back the duty/rectify the error resulting in a lower MRP. It is only because of these joint representations that the State Governments agreed to fix or revise the Excise calculations, which ultimately resulted in lower prices for the consumers. As such, the pro-competitive effects of such conduct on the Beer market in the longer run (*i.e.*, lower prices of



Beer) outweighed any effects of a limited and temporary curtailment of supply in the market.

15.12.5 Sharing of Stock and Sales Data – The DG has concluded that OP-1, OP-3 and OP-4 were sharing their periodical sales and stock data with each other in order to calculate and monitor each other’s market shares, in violation of the provisions of Section 3 of the Act. The evidence primarily relates to the city of Aurangabad. However, the DG has failed to address how this finding is a contravention of the provisions of the Act. OP-4 was never questioned about this evidence or asked to explain the context thereof. The DG has failed to appreciate that the evidence relied on by it pertains only to collecting such data pursuant to/at the instance of the Excise Authorities’ directions, and was not with any intent to monitor market shares. In the Corporation Market States, the Corporation itself publishes the market information which can be accessed on their portals. Thus, the DG has arrived at a conclusion without putting the evidence to the company/persons allegedly involved and has not discharged the burden of proof in establishing how this conduct amounts to a contravention of the provisions of the Act.

15.12.6 Cartel in the purchase of second-hand bottles – The DG has concluded that OP-1 and OP-3 had: (i) exchanged information regarding the volume and prices of the second-hand bottles each would procure from bottle collectors; and (ii) reached an understanding to share their off-take of old Beer bottles from the market, for re-use in their breweries. The evidence relied on by the DG does not involve or implicate OP-4 in any way for the said violation. However, the DG casually makes OP-4 also liable for such conduct based on the statement of Mr. Shekhar Ramamurthy of OP-1 that such co-ordination took place between OP-1, OP-3 “*and perhaps CIPL*” which is not corroborated by any evidence.

15.12.7 OP-4 hence, played a very limited role in the illegal conduct described in the DG Report. Its involvement in the price fixing conduct was limited to only 4 States (*viz.*, Maharashtra, West Bengal, Karnataka and Puducherry) and limiting supply conduct was limited only to 3 States (Maharashtra, West Bengal and Odisha), thereby making a total of 5 States/UTs where anti-competitive conduct may have



taken place. Further, the finding in the DG Report that the illegal conduct took place in the domestic Beer market in India during the period from 20.05.2009 to 10.10.2018, does not specify that OP-4's participation was much more limited and started only from 2012 onwards.

15.12.8 Penalty and relevant turnover/profit – In the event the Commission deems it necessary to impose a penalty on OP-4 based on its turnover/profit, such penalty should be only on the relevant turnover/profit of OP-4, *i.e.*, the turnover/profit derived from the sale of the relevant product, in the relevant time period/duration, and in the relevant States/UTs in India. The relevant turnover (or profit) under Section 27 of the Act should be limited to the States where there is evidence of an infringement, which in the present case would be the 5 States/UTs of Odisha, Karnataka, West Bengal, Maharashtra and Puducherry. If pan India turnover/profit is used when calculating penalties, it would lead to disproportionate and inequitable results. Further, the Commission should impose penalties, if any, based on the relevant duration, *i.e.*, the duration of OP-4's participation in the infringement (*i.e.*, wherein discussions/conduct resulted into implementation) in each of the relevant states. The date of the first anti-competitive contact/conduct for which there is evidence concerning OP-4 should be taken as the commencement date of OP-4's participation in the infringement. Further, the Commission should take the date of the last anti-competitive contact by OP-4 for which there is evidence as the end date of OP-4's participation in the infringement in each of the relevant states. The DG has incorrectly concluded that OP-4's conduct started in 2009. It is clear from the evidence that OP-4's conduct only began from 2012 and was limited to specific time periods, that too in limited states.

15.12.9 Mitigating Factors – In the event the Commission deems it necessary to impose a penalty, it ought to apply the lowest percentage/factor to the relevant turnover/profit, in arriving at the penalty to be imposed on OP-4, taking the following circumstances into account:

- (i) The true driver of price revisions was the State Governments/Corporations and not the brewers. The requirement of the State Governments to not entertain individual representations by a specific Beer company on industry issues



rendered it necessary for the Beer companies to make representations collectively and/or through OP-5. Co-ordination by OP-4 was not undertaken with any intent to capitalise on consumers but with a limited purpose to preserve its already marginalised profits, and in some instances, to merely recover its costs.

- (ii) The scope of OP-4's participation in the anti-competitive behaviour was limited. Not all pricing discussions for which evidence has been submitted by OP-4 were actually implemented by OP-4. The actual implementation of pricing discussions was only in the States of: (i) Maharashtra (one instance in 2016), (ii) West Bengal (four instances – one each in 2012, 2015, 2016 and 2017), (iii) Karnataka (two instances – one each in 2015 and 2017), and (iv) Puducherry (one instance in 2017).
- (iii) OP-4 is a first-time offender of competition law. It is also not a major market player in the Beer industry. OP-4's management has tried to ensure an environment of strict compliance of competition law and general regulatory compliance and will continue to make such efforts to strengthen compliance amongst its employees.
- (iv) Beer industry in India has been severely impacted by the global COVID-19 pandemic, and the subsequent lockdown announcements and social distancing norms. Sales reduced and duties increased. During January 2020 to October 2020, OP-4's sales in volume have declined by 41%, and its net sales revenue have declined by 35.8%, from the previous year. Further, OP-4 has a net loss-making business with a loss in terms of Earnings before interest and taxes ('EBIT') of approximately ₹175 million. To stay afloat, OP-4 had to undertake a major restructuring which has resulted in job loss of 315 employees by the end of this year. Further, Beer has a limited shelf life, and in anticipation of the peak demand months (which also co-incided with lockdowns in India), OP-4 had manufactured large volumes of Beer. These had to be destroyed, which in turn led to heavy losses for OP-4, to the tune of ₹450–470 million in 2020. In light of the serious repercussions that the pandemic has had on OP-4 so far and is expected to continue to have over the



coming months, any level of penalty will put an additional significant financial burden on the company.

15.12.10 Reduction under LPR – OP-4 has fully complied with the conditions stipulated in Regulation 3 of the LPR. It has made all possible efforts to not only determine and understand the nature of the conduct but also ensured that the conduct is stopped immediately. Furthermore, OP-4 has provided all relevant information, documents and evidence and has co-operated genuinely, fully, continuously and expeditiously throughout the process. Not only did OP-4 promptly file lesser penalty application and provide all necessary details but it also provided significant added value evidence that has enhanced the ability of the DG to establish the existence of anti-competitive behaviour. This is clear from the fact that more than half of the evidence relied on by the DG in the DG Report has been provided by OP-4. Several additional evidences provided by OP-4 have not been used or relied upon by the DG in reaching to its findings; nevertheless, they constitute value addition on part of OP-4.

15.13 Mr. Michael Jensen, Former Managing Director of Carlsberg India Private Limited

15.13.1 All submissions to the extent they relate to evidence involving Mr. Michael Jensen and submissions on penalty and mitigation made by OP-4 in its response to the DG Report are adopted by Mr. Jensen.

15.13.2 Mr. Jensen agrees with the findings of the DG against him. However, in relation to the co-ordination on pricing in West Bengal in 2012, Mr. Jensen submits that he was merely a consultant at OP-4 during this period, and had no Authority to make any key decisions at OP-4.

15.13.3 With respect to the involvement of Mr. Jensen found in the alleged anti-competitive conduct in Rajasthan, it may be noted that there has been no AAEC. The entire e-mail evidence relied on by the DG to find a violation in Rajasthan relates to a period between 2015 and 2016. However, since 2015 till recently in 2019, the Beer companies did not get any price increase based on a price increase



request made by them. All price increases have been a result of changes in the tax structure in Rajasthan only.

15.13.4 With respect to Delhi also, Mr. Jensen had no role in the discussions and did not participate in any interactions with competitors. He was only CC'd in the e-mails exchanged. In any event, there was no implementation in Delhi as the Delhi Government did not accept the price increase request.

15.13.5 Mr. Jensen extended full and continuous cooperation throughout the course of the investigation. He is a part of OP-4's lesser penalty application. The DG has extensively relied on the deposition of Mr. Jensen throughout the DG Report, which shows his value addition to the DG's investigation process.

15.14 Mr. Nilesh Patel, Managing Director of Carlsberg India Private Limited

15.14.1 All submissions to the extent they relate to evidence involving Mr. Nilesh Patel and submissions on penalty and mitigation made by OP-4 in its response to the DG Report are adopted by Mr. Patel.

15.14.2 Mr. Patel was appointed as the Managing Director of OP-4 only from 26.04.2018, and therefore, had no executive decision-making role/responsibility at OP-4 prior to this date. Prior to this, Mr. Patel was not involved in handling the day-to-day affairs of OP-4 and was not taking any key decisions. On 05.05.2017, Mr. Patel was nominated by Carlsberg Breweries A/S as a Director at OP-4 Board. Therefore, his involvement in the functioning of OP-4 (until 26.04.2018) was as Asia region support and very limited, and he did not have any executive Authority. Mr. Patel was a nominee Director from Carlsberg Breweries A/S as part of the joint venture arrangement at the Carlsberg South Asia Pte. Ltd. level and was involved in OP-4's affairs in a non-executive capacity.

15.14.3 The evidence relied upon by the DG to find Mr. Patel liable pertains to the period prior to him being appointed as the Managing Director of OP-4, *i.e.*, before 26.04.2018. Post this date, OP-4 has not engaged in any anti-competitive conduct. It was only out of abundant caution that Mr. Patel was named as one of the persons for whom OP-4 sought lesser penalty under the lesser penalty application filed by



it. However, no penalty should be imposed on Mr. Patel, given that during the period of anti-competitive conduct by OP-4, Mr. Patel was not the Managing Director of OP-4, and accordingly, did not have the Authority to take any key decisions at OP-4.

15.14.4 Mr. Patel had no decisive role to play in relation to curtailing the supply of Beer in West Bengal, Also, he had simply made suggestions to address the issue of increase in Excise duty in West Bengal.

15.14.5 There is also no evidence to show that Mr. Patel took any decision to co-ordinate with OP-1 to curtail the supply of Beer in Maharashtra.

15.14.6 Mr. Patel has never met and does not know Mr. Shalabh Seth of OP-3 (now of OP-1). Mr. Patel had never interacted with Mr. Seth, and there is no evidence indicating that there was any communication between them. Therefore, Mr. Seth's deposition against Mr. Patel should not be considered.

15.14.7 Mr. Patel was one of the key personnel at OP-4 who drove the process of internal investigation at OP-4, pursuant to the Dawn Raid, which made it possible for OP-4 to participate in the lesser penalty process and provide evidence to the DG. He even initiated competition compliance programs at OP-4.

15.14.8 Mr. Shekhar Ramamurthy of OP-1 stepped down as the Chairman of OP-5 on 27.07.2018 and Mr. Patel was selected as the Chairman on 27.07.2018. Mr. Patel stepped down as the Chairperson of OP-5 on 29.10.2018 after the Dawn Raid.

15.14.9 Computation of penalty, if any imposed, on Mr. Patel, should be based on the income derived by him from his association with OP-4 rather than his total income or his income derived from previous employments.

15.15 Mr. Pawan Jagetia, Former Deputy Managing Director of Carlsberg India Private Limited

15.15.1 Mr. Pawan Jagetia has no objections to the DG's findings in relation to the anti-competitive agreement amongst the OPs.



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- 15.15.2 However, with respect to Mr. Jagetia, the DG Report provides no evidence to support the conclusion that Mr. Jagetia was involved in the pricing decisions of OP-4. The DG has relied on the statements of only two interested witnesses *viz.*, Mr. Nilesh Patel and Mr. Michael Jensen, whose credibility is in question, to reach such conclusion. While placing reliance on the statements of such interested witnesses, the DG has ignored the statements given by Pawan Jagetia that as Deputy Managing Director of OP-4, he was only in-charge of supply chain and business development. This is also evident from the employment contract and organisational structure of OP-4. Moreover, the evidence on record clearly shows that Mr. Michael Jensen, Managing Director was the sole Authority taking all decisions relating to pricing. Most significantly, the DG has completely failed to consider that the evidence proving price fixation by OP-4 does not include Mr. Pawan Jagetia (either as sender, recipient or even CC'd in e-mails).
- 15.15.3 It may be noted that Mr. Pawan Jagetia's ability to reply to the DG Report and defend himself is seriously limited by the lack of information in his professional e-mail account, which OP-4, citing false reasons, has refused to supply to him. The same, if available, would show that no pricing related decisions were taken by Mr. Jagetia. Absent the same, the evidence which would have corroborated Mr. Jagetia's claims cannot be provided to the Commission.
- 15.15.4 Mr. Nilesh Patel's credibility is under challenge as he has also made intentional misrepresentation before the DG stating that he was the Managing Director of OP-4 since April/May 2018, though he was the *de facto* Managing Director of OP-4 without OP-4's Board approval, from May 2017.
- 15.15.5 The DG Report fails to establish any impermissible communication between Mr. Pawan Jagetia and OP-4's competitors. The evidence on record does not establish that Mr. Pawan Jagetia was involved in any activity including discussion of prices that was in furtherance of the alleged cartel. The DG has concluded Mr. Pawan Jagetia's role in exchanging commercially sensitive information based on certain e-mail communications. However, these e-mails either pertain to i) permissible communication between competitors regarding change of State policy; or ii)



internal decisions taken by OP-4 in response to the market conditions which included no pricing information. The counterparts of the competing entities involved in the conduct also do not name Mr. Pawan Jagetia as a person with whom they had interactions in relation to price.

15.15.6 Without prejudice to the above and even assuming that the evidence indicated exchange of information pertaining to price by Mr. Jagetia, the same did not lead to any fixation of price. Since the communications were not ‘acted upon’, it cannot amount to a violation of the provisions of Section 3 of the Act. Consequently, Mr. Jagetia’s conduct does not render him liable under Section 48(2) of the Act.

15.15.7 The DG Report fails to establish either consent, connivance or neglect on part of Mr. Pawan Jagetia to establish his liability under Section 48(2) of the Act. In fact, the evidence on record demonstrates that Mr. Pawan Jagetia was unaware of the cartel activity, and his role in supply and business development implied that he wasn’t involved in the pricing decisions of OP-4.

15.15.8 Without prejudice, in case the Commission were to find Mr. Jagetia guilty and impose penalty on him, the following mitigating factors ought to be considered before determining the quantum of penalty:

- (a) Mr. Jagetia had a limited role in OP-4 as Deputy Managing Director of the company. He was not involved in the key decisions of the company – decisions regarding products of OP-4, including their price did not require the involvement of Mr. Pawan Jagetia.
- (b) Mr. Jagetia has extended full and complete co-operation during the investigation in the matter.
- (c) OP-4 has filed an application under Section 46 of the Act read with the LPR seeking reduction in penalty imposed on it as well as its individuals. In line with the Commission’s decisional practice, benefit, if any, extended to OP-4, must also be extended to the individuals employed by OP-4 in the said duration, including to Mr. Pawan Jagetia.



15.15.9 Computation of penalty, if any imposed, on Mr. Jagetia, should be based on the income derived by him from his association with OP-4 rather than his total income.

15.16 Mr. Dhiraj Kapur, Vice-President (Corporate Affairs) of Carlsberg India Private Limited

15.16.1 All submissions to the extent they relate to evidence involving Mr. Dhiraj Kapur and submissions on penalty and mitigation made by OP-4 in its response to the DG Report are adopted by Mr. Kapur.

15.16.2 With respect to the involvement of Mr. Kapur found in the alleged anti-competitive conduct in Rajasthan, it may be noted that there has been no AAEC. The entire e-mail evidence relied upon by the DG to find a violation in Rajasthan relates to a period between 2015 and 2016. However, since 2015 till recently in 2019, the Beer companies did not get any price increase based on a price increase request made by them. All price increases have been a result of changes in the tax structure in Rajasthan only.

15.16.3 With respect to State of West Bengal, Mr. Kapur had no role in the discussions and did not participate in any interactions with competitors. He was only CC'd in the e-mails exchanged.

15.16.4 With respect to Delhi also, Mr. Kapur had no role in the discussions and did not participate in any interactions with competitors. He was only CC'd in the e-mails exchanged. In any event, there was no implementation in Delhi as the Delhi Government did not accept the price increase request.

15.16.5 With respect to fixation of EBP and MRP, Mr. Kapur's role, as the Vice-President-Corporate Affairs, was limited to co-ordinating with OP-5 and Government agencies for seeking price revisions and favourable policy decisions, and Mr. Kapur was not responsible for fixation of EBP or MRP for OP-4's Beer products.

15.16.6 Mr. Kapur provided continuous and full co-operation throughout the investigation. He also forms part of the lesser penalty application filed by OP-4.



15.16.7 Computation of penalty, if any imposed, on Mr. Kapur, should be based on the income derived by him from his association with OP-4 rather than his total income.

15.17 Mr. Anil Bahl, Vice-President (Mont and Premium Business) and Former Sales Director of Carlsberg India Private Limited

15.17.1 All submissions to the extent they relate to evidence involving Mr. Anil Bahl and submissions on penalty and mitigation made by OP-4 in its response to the DG Report are adopted by Mr. Bahl.

15.17.2 Mr. Bahl agrees with the findings of the DG against him. However, he was one of the key persons at OP-4 who provided majority of the evidence, which enabled OP-4 to file a complete lesser penalty application before the Commission. Mr. Bahl provided continuous and full co-operation throughout the investigation. He also forms part of the lesser penalty application filed by OP-4.

15.17.3 Computation of penalty, if any imposed, on Mr. Bahl, should be based on the income derived by him from his association with OP-4 rather than his total income.

15.18 Mr. Mahesh Kanchan, Vice-President (Marketing) of Carlsberg India Private Limited

15.18.1 All submissions to the extent they relate to evidence involving Mr. Mahesh Kanchan and submissions on penalty and mitigation made by OP-4 in its response to the DG Report are adopted by Mr. Kanchan.

15.18.2 During his employment at OP-4, Mr. Kanchan did not participate in any meetings with his counterparts in any manner to fix prices or curtail supplies and he did not attend any OP-5 meetings. The evidence relied upon by the DG does not show his involvement in the cartel in any manner.

15.18.3 Mr. Kanchan had no decisive role in either the decision of OP-4 to curtail or resume supplies in the States of West Bengal or Maharashtra.

15.18.4 With respect to sharing of information regarding market shares by Mr. Kanchan, the DG has erred in concluding that OP-4 was privy to sales volumes of its competitors for it to be able to ascertain their market shares. Market share



information is (i) estimated market share, (ii) available in the industry through market intelligence, and (iii) not indicative of collusion by any means. For Corporation States, the respective State Beverage Corporation owned by the Government itself publishes the market shares of all players. As such, e-mail exchange in this regard is not in violation of the provisions of the Act.

15.18.5 Computation of penalty, if any imposed, on Mr. Kanchan, should be based on the income derived by him from his association with OP-4 rather than his total income.

15.19 All India Brewers' Association (OP-5)

15.19.1 OP-5 denies each and every allegation levelled against it in the investigation report. OP-5 has never facilitated any alleged cartel conduct amongst its members. Its platform has never been used for exchange of any commercially sensitive information amongst the Beer manufacturing companies or to indulge in any other anti-competitive conduct.

15.19.2 The DG has not found any evidence of cartel conduct in Auction markets, despite having conducted extensive raids at the premises of all the OPs and seizing their laptops, other documents *etc.*, and carrying out in depth investigation. Cartel conduct/conspiracy is more likely and feasible in Auction markets than in Corporation and Hybrid markets. Markets such as Corporation and Hybrid markets, which are tightly regulated, controlled and monitored by the Government are not the kind of anti-trust markets wherein a price fixing/supply restricting cartel conduct can typically be found. It is strange, surprising and unsustainable for the simple reason that the feasibility of success of any conspiracy to get *supra*-competitive prices are much higher, easier and probable in Auction markets than in Corporation and Hybrid markets, as the prices and supplies are totally controlled in such markets by the State Governments. The DG has not offered any explanation regarding this incongruity, as to why would the OPs conduct be anti-competitive in Corporation and Hybrid markets but not in Auction markets.



- 15.19.3 It appears that the DG has neither recorded any statement of any respective Excise officials nor has it collected any document from the offices of the State Governments, while investigating into the alleged cartel conduct of the OPs in Corporation and Hybrid markets. Instead, the DG has interpreted the documents/e-mails collected from the OPs as per its own will in an arbitrary and unilateral fashion. In doing so, the DG has ignored the explanations given by OP-5 and other OPs as regards the conduct of OP-5. Accordingly, the observations of the DG are not based on any rigorous analysis of facts and are impressionistic/untrue in nature. The allegations made against OP-5/other OPs, without any corroboration of the same from the concerned Excise officials, is unsustainable on ground of incompleteness as all the relevant parties have not been examined.
- 15.19.4 Though OP-5 was registered in 1977, it remained largely inactive till 2013. OP-5 started functioning only from the year 2013. There is no record available of its meetings or minutes for the period before 2013 and its registration also lapsed sometime during the intervening period. OP-5 was revived only on 31.12.2013, when a Certificate of Registration was issued to it by the District Registrar of Societies, Bengaluru. Thus, OP-5 is in no position to comment about the developments during the preceding years. In light of such facts, OP-5 cannot be alleged to have indulged into any anti-competitive during the period 20.05.2009 to 10.10.2018, as has been alleged by the DG.
- 15.19.5 OP-5 has acted to protect the collective interest of the Beer industry, contribute to the economic growth of the country, protect Beer over spirits category, increase shareholders' value and to ensure that the businesses of its members remain viable. As an industry association of 14 members (10 of whom are brewers, 2 malsters and 2 can suppliers), OP-5 has never acted in the self-interest of only OP-1, OP-3 and OP-4 and its role has been truly representational of the collective interest of the industry, including all its members as well as several other non-members belonging to the Beer industry.



15.19.6 OP-5 was neither involved in any discussion relating to 'prospective quotes' by the Beer manufacturers nor was it party to any discussions regarding the way forward with State Excise departments on such 'prospective quotes'. A large number of individuals whose depositions have been recorded by the DG including Mr. Shekhar Ramamurthy of OP-1, Mr. Manish Shyam of OP-3, Mr. Debashish Dasgupta of OP-3, Mr. Ben Verhaert of AB InBev and Mr. Kiran Kumar of OP-1, have clearly stated that the forum of OP-5 was not used for price fixation. The statement of Ms. Ritika Verma of OP-5 recorded by the DG has been misconstrued.

15.19.7 With respect to the State of Rajasthan, it is a matter of record that EBP changes in Rajasthan were allowed only during the year 2014, upon release of the new Liquor Sourcing Policy, and the EBPs granted in 2014 continued to remain the same during the entire period of investigation by the DG. The State Government did not take any action on EBP increase thereafter despite the fact that the Beer manufacturers were individually submitting their cost increase justification in accordance with the prescribed format under the Liquor Sourcing Policy of the Government. The last rate increase (*i.e.*, EBP increase) granted to the industry in Rajasthan in the year 2013-14, was also eroded in the subsequent year by way of levy of Bottling Fee which had to be absorbed by the breweries from the EBPs approved. Thus, during 2016-17, OP-5 represented before the concerned officials of the State Government, alongwith few of its member companies, to canvass for implementation of the Liquor Sourcing Policy of the Government and thereby to grant increase in EBP to the industry, as submitted individually by its member companies. Three years had passed and three liquor sourcing policies were announced to submit fresh rates but neither approval nor denial was conveyed. On the contrary, the Government, while keeping basic EBP same, levied Bottling fee which the Breweries were forced to absorb from the EBP approved. This Bottling fee went up from ₹7.80/case to ₹11.80/case to ₹19.50/case in three years. In meeting with the Principal Secretary Excise, the industry made the point that the Bottling Fee be re-imbursed as it is over and above the approved price. In fact, reimbursement of Bottling Fee was being discussed for many months. In this context, the DG has completely misconstrued the facts in alleging that OP-5 recommended



increase in duty from 146% to 150% with a view to increase the retail prices of Beer. The fact of the matter is that the aforesaid remark was made by OP-5 in the context of the revenue loss that the State Government was likely to have faced upon re-imbursement of Bottling fees. In the meeting with the Beer manufacturers, a suggestion was given to the State Government to raise Excise duty and allow the MRP to go up. There would be no change in EBP. There is nothing anti-competitive in putting forward a suggestion for consideration to the State to recoup its losses, while putting forward a legitimate demand on behalf of the entire industry. Therefore, evidently, the DG has inferred price parallelism and 'acting in tandem' on part of the OPs merely on the basis of identical changes in the MRPs, and has not examined whether there were any changes in the EBPs. Changes in MRPs were exclusively on account of changes in Excise duties over the said period, without any change in the EBPs. Further, EBPs of all Beer manufacturers were identical at ₹265.43 simply on account of the fact that the State of Rajasthan grants identical EBPs to the competing brands, based on the lowest rates approved in any of the neighbouring states or any other State in the country, as per its Liquor Sourcing Policy. This also explains as to why the competing brands of the spirits industry also have identical MRPs. The aforesaid fact is easily verifiable from the website of Rajasthan State Beverages Corporation Ltd. ('**RSBCL**').

15.19.8 With respect to the State of West Bengal, the role of OP-5 was merely to work towards rationalisation of duty structure, as the duty on Beer alone (but not for other spirits category) had been increased by the State Government from 30.1% of EBP to 45.5% of EBP. Further, since the Beer industry was treated in isolation, as there were no changes in duty on any other alcoholic beverages, the aforesaid step of tax increase by the State Government was very harsh for the Beer industry. In other words, in so far as West Bengal is concerned, OP-5 was simply representing for tax rationalisation and not for achieving any increase in the EBP prices.

15.19.9 In case of Delhi, the role of OP-5 was merely to seek re-imbursement of costs involved in 2D scanning bar codes on Beer bottles that was imposed by the Government in its Excise policy. Further, when the State Government agreed to grant some re-imbursement in the form of rate increase, OP-5 agitated against



discriminatory grant of 3% to Beer industry and 5% to spirits category. Thus, there was no attempt to get any rate increase, which continued to be based on the lowest price anywhere in the country as had been approved by the State Government.

15.19.10 In so far as the State of Odisha is concerned, the State Government had arbitrarily lowered the EBP for Beer manufacturers by 20% compared to the previous year's purchase prices and had increased Excise duties by upwards of 30%, as per its policy for 2015–16 which was announced during early March 2015. With reduction in EBP by 20% and increase in Excise duty by upwards of 30%, it was impossible to conduct business in a viable manner in the State. Further, the changes applied even to the existing stocks lying in the Odisha State Beverages Corporation Limited ('OSBCL') depots. The existing supply contracts of the Beer manufacturers with OSBCL were only till 31.03.2015 and the Beer manufacturers were under no contractual obligation to make supplies unless the terms of the new contract to be executed was mutually acceptable to the parties. Pertinently, OP-5 was not even in the loop regarding the discussions amongst its members to stop supplies to OSBCL. The State Government had mandated every supplier to execute the contract with OSBCL by 16.04.2015, failing which the State Government would initiate action for de-registration. On their part, OP-1, OP-3 and OP-4 wrote to OSBCL on 16.04.2015 and 17.04.2015 that they would be willing to make supplies of Beer at last years' price (*i.e.*, 2014–15) and with increased levies as proposed in the current Excise policy for 2015–16. Simultaneously, the action of State was also challenged in various writ petitions by the aforesaid OPs and few other spirits manufacturers and retailers. Thus, from 17.04.2015 till 30.04.2015, the parties were before the Hon'ble High Court of Odisha, which then passed an interim order to which all parties including the State complied. There was merit in the case of the manufacturers as the Hon'ble High Court restored the prices. In any case, OP-5 was not involved in the legal case/petition at any time. Apparently, the parties did not want to weaken their case before the Hon'ble High Court by making supplies in the meanwhile in terms of the new policy under challenge. Thus, it is absolutely incorrect to view the refusal to make supplies by OP-1, OP-3 and OP-4 as being in violation of the provisions of Section 3(3)(b) of the Act, as the conduct was not motivated with any view to fix prices/increase EBPs. Thus, no meaningful



anti-trust sense can be attributed to the conduct of the OPs, as the decision not to make supplies was a direct fallout of the arbitrary nature of State action which made their businesses unviable, lapse of contract with OSBCL and pendency of writ petition before the Hon'ble High Court.

15.19.11 The Act does not prohibit collective representations before the appropriate State Government Authorities, more so in a market that is completely regulated, for grant of fair prices as provided in the policy/tax rationalisation *etc.*

15.19.12 The DG has not found that the basic price (*i.e.*, EBP) being demanded by the OPs, let alone achieved, on account of their alleged co-ordination, were unfair or *supra-competitive* prices. It is a matter of record that the EBPs granted by the States did not change for years together, despite inflationary and other increases in costs for the Beer manufacturers, which the DG ought to have verified from the records of the State Government. In the absence of any fact on record that basic prices being demanded collectively were unfair or *supra-competitive*, or were granted, it cannot be assumed that the OPs indulged in any conduct that violated the provisions of the Act.

15.19.13 The DG has also failed to bring out the fact that OP-5's role as an industry body has always been *ex-post* rather than *ex-ante* of the submissions made by the Beer manufacturers to the State Government. OP-5 has neither been privy to the determination of EBP of its respective members nor to the submissions made directly and individually by the respective Beer manufacturers for approval to the State Governments.

15.19.14 The DG has also completely ignored and overlooked the fact that examination of relevant facts by the State Governments is very prolonged and protracted. It would be preposterous to assume that by their collective action through OP-5, the OPs could hoodwink/cajole/dominate the State Governments into granting them higher prices. Thus, the allegation that the likelihood of getting uniform price increase collectively was much higher than applying individually for different prices is a mischaracterisation of facts. The same does not amount to violation of the provisions of Section 3(3)(a) of the Act.



15.19.15 The DG has also overlooked the fact that the officials of the State Governments preferred to interact with the Beer manufacturers through the forum of OP-5, so as not only to get industry perspective as a whole but, more importantly, for not being seen as favouring any company in their individual demand for revision of prices.

15.19.16 The DG has also failed to observe that notwithstanding similar MRPs, the effective transaction prices for the Beer manufacturers have not been same. This is on account of fierce competition amongst the Beer manufacturers/brands. Different brands offer different levels of retail trade discounts/schemes, such as happy hours, other consumer promotion schemes *etc.* which result in effective transaction prices or the prices at which trade buys competing brands, being different for the Beer manufacturers. The DG has also not examined the fact that the brands/OPs compete fiercely in sale of their volumes by adopting innovative measures to bring in production and distribution efficiencies and pursuing other innovative ways to promote sale of their brands. Thus, it is evident that the DG has looked at facts selectively and with a prosecution bias. The DG has not looked at the entire mosaic of facts before it in a holistic manner to ascertain whether the alleged anti-competitive conduct of the OPs fitted in well with their overall conduct. In the absence of the same, the conclusions drawn by the DG against the OPs cannot be treated as consistent, credible or reliable. Thus, the observations of the DG regarding allegation of anti-competitive conduct against OP-5, and its members, are liable to be rejected *in toto*.

15.20 Mr. Sovan Roy, Director General of All India Brewers' Association

15.20.1 Reply filed by OP-5 is adopted.

15.20.2 OP-5 has always emphasised highest respect for the law, and discussions have taken place on the belief that conduct of collective representation does not violate the provisions of the Act, in as much as the data being shared is not competitively business sensitive information and the same is publicly available on the websites of the State Corporations and that there was a pressing need to impress upon the State Government Authorities to implement their own Excise policies and to rationalise duty structures so that the Beer industry does not suffer or is discriminated against.



15.20.3 Mr. Sovan Roy is a paid employee of OP-5 and does not stand to gain by any direct or indirect violation of the law. Thus, he has no vested and/or any personal interest in the matter. He merely executed responsibilities under the directions of the Board of OP-5, which it verily believed to be legal and dutiful.

15.20.4 If the Commission still decides to impose any monetary penalty upon Mr. Roy, such penalty should only be calculated and be based on the income attributable to him from OP-5, and not upon Mr. Roy's total income.

Analysis:

16. The Commission has perused the applications seeking lesser penalty filed by AB InBev, OP-1, OP-4, Mr. Steven Bosch and Mr. Shalabh Seth under Section 46 of the Act, the investigation report submitted by the DG and the evidences collected by the DG, the suggestions/objections to the DG Report, convenience compilations and written arguments filed by the parties, and also heard the oral arguments made by the respective learned counsel/senior counsel representing the parties in the matter.
17. The Commission notes that the DG, in the present matter, has established cartelisation amongst the OPs in 10 States/UTs out of total 36 States/UTs (28 states and 8 UTs) in India. As such, the Commission shall, in the succeeding paragraphs, do State-wise analysis of the conduct of the OPs based upon the evidences gathered by the DG, and the submissions made by the parties.

Andhra Pradesh

18. With respect to the State of Andhra Pradesh in which Corporation Model exists, the DG has relied upon the following evidences to give a finding of cartelisation against the OPs:
 - (i) E-mail communications dated 09.06.2009 exchanged between Mr. Kiran Kumar and Mr. Nirmal Rajani of OP-1 and Mr. S. Diwakaran of OP-3, which were recovered during search and seizure operation from the premises of OP-1:



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E-mail 1

From: "Diwakaran S,BANGALORE,CUSTOMER DEVELOPMENT"
Date: Tue, 9 Jun 2009 15:08:39 +0530
To: Kiran Kumar<kiran@ubmail.com>; Nirmal Rajani<nrajani@ubmail.com>
Subject: Book1.xls
Hi Kiran/Nirmal,

PFA a tentative MRP list for AP. Please let me have your list and also for KF draught

As I am writing this, there could be many more confabulations on the subject and hence dynamic

On Pondy - Understand Pondy is going the Karnataka way on AED on may be we can have some more surprises (like MRP), suggest we log in by today 2mrow on the Rs.3/- on quarts basis.

Please revert

Cheers
Diwa

E-mail 2

From: Kiran Kumar [mailto:kiran@ubmail.com]
Sent: Tuesday, June 09, 2009 3:18 PM
To: Diwakaran S,BANGALORE,CUSTOMER DEVELOPMENT; Nirmal Rajani
Subject: Re: Book1.xls

How is MRP relevant?

We shall apply for a particular basic price, which should be in line with the data / information provided in the court case.

Let us work that out and exchange notes, maybe latest by the day after tomorrow.

Regards,

Email 3

From: Diwakaran S,BANGALORE,CUSTOMER DEVELOPMENT [mailto:Diwakaran.S@in.sabmiller.com]
Sent: 09 June 2009 16:47
To: Kiran Kumar; Nirmal Rajani
Subject: RE: Book1.xls

The court case data/information is factored in the basic price to arrive at the MRP. If you notice the head line note in the excel – it is Rs.36/- +/- (to ensure rounding off) per case on basic price,

Cheers
Diwa



Email 4

From:	Kiran Kumar
To:	Diwakaran S. BANGALORE CUSTOMER DEVELOPMENT Nirmal Rajani
Date:	09-06-2009 16:52:14
Subject:	RE: Book1.xls

Then it is perfect, I guess. We shall share our workings most likely tomorrow.

Regards,

(ii) Statement of Mr. Kiran Kumar of OP-1 regarding the e-mails dated 09.06.2009:

“To the best of my knowledge, in order to ensure speedy completion of the tender process, as explained in Q. No. 3 above, we had exchanged pricing proposals with SAB Miller prior to price fixation. Mr. Diwakaran had forwarded SAB Miller’s proposed price list for AP to me and we would have submitted similar pricing for UBL brands.”

(iii) E-mail communication dated 15.11.2013 sent by Mr. Shalabh Seth of OP-3 to Mr. Kiran Kumar of OP-1, which was recovered during search and seizure operation from the premises of OP-1:

AP- Pls see

Shalabh Seth <shalabh.seth@gmail.com>
Fri 11/15/2013, 9:56 AM
To: Kiran Kumar <kiran_kumar31@hotmail.com>

1 attachments (38 KB)
AP_15thNov.png;

Please find attached
We can discuss this by afternoon or meet briefly in the evening....

Brand	Pack	Type	Source	MRP INR per unit	
				Current	Tender
Haywards 5000 Super Strong Beer	650	B	CBL	95	110
Haywards 5000 Super Strong Beer	330	B	CBL	50	60
Haywards 5000 Super Strong Beer	330	C	CBL	65	70
Haywards 5000 Super Strong Beer	500	C	CBL	80	95
Knock Out High Punch Strong Beer	650	B	CBL	95	110
Knock Out High Punch Strong Beer	330	B	CBL	50	60
Knock Out High Punch Strong Beer	330	C	CBL	65	70
Knock Out High Punch Strong Beer	500	C	CBL	80	95

Foster's Export Premium Lager Beer	650	B	CBL	100	115
Foster's Export Premium Lager Beer	330	B	CBL	55	65
Foster's Export Premium Lager Beer	330	C	CBL	70	75
Foster's Export Premium Lager Beer	500	C	CBL	80	95
Royal Challenge Premium Lager Beer	650	B	CBL	85	100
Royal Challenge Premium Lager Beer	330	B	CBL	45	55
Royal Challenge Premium Lager Beer	330	C	CBL	60	65
Royal Challenge Premium Lager Beer	500	C	CBL	70	85

(iv) Statement of Mr. Kiran Kumar of OP-1 regarding the e-mail dated 15.11.2013:

“This e-mail pertains to a discussion between SAB Miller and UBL agreeing on prospective price quotations made in Andhra Pradesh. It is likely that UBL would have also applied for similar pricing, though it is pertinent to note that Andhra Pradesh and Telangana award identical price increases to all existing brands, irrespective of actual price applied for, subject to it being higher than the percentage increase awarded by the Government ...”.

(v) Messages exchanged between Mr. Shalabh Seth of OP-3 and Mr. Kiran Kumar of OP-1 in 2013:

Messages with +919880244000 (UB-Kiran-extn 5005)
308 Messages / 30.10.2018 / Extracted at 04:40:16 AM

2013-09-30 02:28:13 PM

Boss - shall we speak say at 5pm?

From +919880244000 (UB-Kiran-extn 5005):
Perfect Saar

2013-09-30 06:26:16 PM

Sir- Naraaz HO?

2013-10-03 02:55:47 PM

Two minutes boss

2013-11-02 10:17:11 AM

From +919880244000 (UB-Kiran-extn 5005):
Happy Diwali to you and your Family Mr Seth

Thanks. Sirji.Wish you and your family a very happy Diwali as well. Let's lock AP on Mon/tue..

2013-11-08 08:07:48 PM

Your friend spoken to on AP. He was planning to quote 10/. He will do as we discussed. Pls arrange msg to other friends.

Messages with +919880244000 (UB-Kiran-extn 5005)
308 Messages / 30.10.2018 / Extracted at 04:40:16 AM

2013-11-15 10:02:12 AM

Sent email on your hotmail account

2013-11-15 06:11:36 PM

From +919880244000 (UB-Kiran-extn 5005):
You showed me yours. I showed you mine. :-) Check your mail Saar

Thanks. Can u send pints and cans and we can close Monday?

From +919880244000 (UB-Kiran-extn 5005):
Same 60 increase we will ask for. MRP Jo bhi ho!

2013-11-26 01:32:08 PM

From +919880244000 (UB-Kiran-extn 5005):
Will call in a bit Saar

Kitna bit sir? Thanks

2013-11-27 05:53:06 PM

I am in town now. Pls let me know when you leave office. Will see you at BLR club CCDS



19. From the e-mail communications dated 09.06.2009 exchanged between OP-1 and OP-3 extracted at point (i) above, which have been explained by Mr. Kiran Kumar of OP-1 at point (ii) above, it is evident that in 2009, price proposals to be quoted to the State Corporation were exchanged between OP-1 and OP-3 with respect to the State of Andhra Pradesh. Similarly, from the e-mail dated 15.11.2013 extracted at point (iii) above which has been explained by Mr. Kiran Kumar of OP-1 at point (iv) above, it is evident that in 2013 also, OP-3 sent its price proposals to be quoted to the State Corporation to OP-1. Even the messages exchanged between Mr. Kiran Kumar of OP-1 and Mr. Shalabh Seth of OP-3 in 2013 extracted at point (v) above, evidence co-ordination amongst OP-1 and OP-3 with respect to the pricing proposals to be quoted in the State of Andhra Pradesh.
20. Thus, from such evidences, exchange of commercially sensitive information regarding MRP and Basic Prices to be quoted to the Andhra Pradesh State Corporation between OP-1 and OP-3 in the years 2009 and 2013 is apparent. This has not even been denied by Mr. Kiran Kumar of OP-1, the sender/recipient of the information, in his deposition recorded before the DG.
21. Before the Commission, neither OP-1 nor OP-3 has denied such exchange of information amongst themselves. OP-1 has however, explained that the Andhra Pradesh State Beverages Corporation Limited ('**APSBCL**') granted price approval through a tender process, which may not be an annual exercise. As such, the opportunity with the OPs to apply for a price increase arose only once every four to five years. Hence, given that the opportunities to seek price approvals were provided by APSBCL only once in three to five years and seeking price increase is a time-consuming process, OP-1 intended that there be no untoward delay in the tender process. Therefore, it exchanged notes on the quotations to be made to APSBCL with OP-3 to expedite the process.
22. OP-1 further submitted that the DG has failed to establish actual price co-ordination amongst OP-1 and OP-3 at the time of quotation of bids to APSBCL. The actual bids quoted by OP-1 and OP-3 have not been analysed by the DG. As such, as per OP-1, even if exchange of pricing information took place between OP-1 and OP-3, there is no evidence that actual co-ordination of prices between OP-1 and OP-3 took place in the State of Andhra Pradesh.



23. A bare reading of the provisions of Section 3 (1) of the Act shows that these provisions not only proscribe the agreements which cause AAEC within India, but the same also forbid agreements which are likely to cause AAEC. In the view of the Commission, even mere exchange of commercially sensitive pricing information amongst OP-1 and OP-3 in 2009 and 2013, compromised the integrity of independent bidding process, and was likely to stifle competition amongst them in the tenders floated by APSBCL. As such, since such conduct of OP-1 and OP-3 was likely to cause AAEC in India, the same amounts to contravention of the provisions of Section 3(3)(a) and 3(3)(d) read with Section 3(1) of the Act.

Daman and Diu

24. In respect of the UT of Daman and Diu having Free Market Model, the DG has relied upon the following evidences to give a finding of cartelisation amongst the OPs:

- (i) E-mail communications dated 01.10.2008 exchanged between and Mr. Percy Driver and Mr. Kiran Kumar of OP-1 and Mr. Jaypal Thapa and Mr. Nilojit Guha of OP-3, which were recovered during search and seizure operation from the premises of OP-1:

E-mail 1

From: jaypal thapa <jaypal_thapa@yahoo.co.in>
Subject:
To: "nilojit guha" <nilojit.guha@in.sabmiller.com>
Cc: nitin.singla@in.sabmiller.com
Date: Wednesday, 1 October, 2008, 1:05 PM

Dear sir,

Plz find attached wholesale rate of Daman as u require.

Regards,

Jaypal Thapa



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DAMAN COST CARD		Wholesale Rate	
Brands		Current Price With Exiting Duty	Proposing additional Increase @ 20/- With New Duty
MILD			
FOSTER	650ml	405.42	434.52
Kingfisher Lager	650ml	372.00	401.27
FOSTER CAN	500ml	761.32	795.39
Kingfisher Draught	500ml	750.00	784.26
STRONG			
HAYWARDS 2000	650ml	449.92	484.28
HAYWARDS 5000	650ml	468.21	502.56
Kingfisher Strong	650ml	413.00	447.61
Zingaro	650ml	418.00	452.61
HAYWARDS 5000 CAN	500ml	850.39	892.47
Kingfisher Strong Can	500ml	845.00	887.49

E-mail 2

From: jaypal thapa [mailto:jaypal_thapa@yahoo.co.in]
Sent: Wednesday, October 01, 2008 1:17 PM
To: Percy Driver
Subject: Fw: Daman CC

Dear Sir,

Plz find attached wholesale price of Daman as u require.

Regards,

E-mail 3

From: Percy Driver
Sent: 01 October 2008 13:22
To: Kiran Kumar
Cc: schadha@ubmail.com
Subject: FW: Daman CC
Attachments: Daman CC.xls

Importance: High

Sir,

As desired, FYI

Regards,

Percy Driver.



(ii) Statement of Mr. Kiran Kumar of OP-1 regarding the e-mails dated 01.10.2008:

“As far as I can remember, Mr. Jaypal Thapa was the Sales Executive of SAB Miller in the territory of Daman and Diu. The matter being very old, I can make out from the mail that on account of the increase in Excise duty, the local employees of both companies would have agreed to take a small price increase along with the duty increase. It is likely that I might have approved the said price increase.”

25. From the aforesaid e-mail communications extracted at point (i) above, the Commission notes that on 01.10.2008, Mr. Jaypal Thapa of OP-3, upon taking approval from Mr. Nilojit Guha of OP-3, sent OP-3's calculation of wholesale prices of OP-3's and OP-1's Beer in Daman market to Mr. Percy Driver of OP-1, who forwarded the said e-mail to Mr. Kiran Kumar of OP-1 for information. Before the DG, Mr. Kiran Kumar, in his statement extracted at point (ii) above, did not deny having received the cost card prepared by OP-3; rather he admitted that he might have approved the price increase agreed upon by the local employees of OP-1 and OP-3.
26. As such, on the basis of such evidence, price co-ordination between OP-1 and OP-3 in 2008 is clearly established. However, there is no evidence in the DG Report which may show that such co-ordination amongst OP-1 and OP-3 continued even beyond 20.05.2009 or that supply of Beer took place in the UT of Daman post 20.05.2009 (when the provisions of Section 3 of the Act came into force), pursuant to the aforesaid co-ordination between OP-1 and OP-3 in 2008.
27. As such, in the view of the Commission, no case of contravention of the provisions of Section 3 of the Act in the UT of Daman and Diu amongst the OPs, is made out.

Delhi

28. The DG has noted that in the Hybrid Market of Delhi, Beer is sold through Corporation as well as privately. The State Government has formed its own corporation to procure and distribute liquor products in the territory, besides also giving open licenses to wholesalers and retailers to sell the product within the State. The mode of procurement through Corporation is that a tender is generally floated for the State of Delhi and each company is called for price negotiations. Prices are fixed by the Delhi Government for



supply to Corporations, based on lowest price in the neighbouring states. 60% of the distribution and retail outlets are controlled by 4 Corporations created by the State Government, and remaining 40% of the distribution and retail outlets are held by private entities.

29. In regard to NCT of Delhi, the DG has relied upon the following evidences to give a finding of cartelisation amongst the OPs:

- (i) Internal e-mail communications dated 11.05.2012 exchanged between Mr. Anil Bahl, Mr. Soren Lauridsen, Mr. Michael Jensen, Mr. Subodh Marwah, Mr. Manas K. Nijhawan, Mr. Dheeraj Mishra, Mr. Gaurav Vir and Mr. Nimish Gupta of OP-4, which were submitted by OP-4 before the DG:

E-mail 1

From: Anil Bahl
Sent: 11 May 2012 12:35
To: Soren Lauridsen; Michael Norgaard Jensen; Subodh Marwah; Manas K Nijhawan; Dheeraj Mishra; Gaurav Vir; Nimish Gupta
Subject: Delhi price Increase update

Dear all

A quick update on the Delhi price increase .

We are planning to increase price of Tbs strong /green to 80 (from 70) , carlsberg to 120 from 100 . Earlier both my counterparts in Ub and Sab had called up and agreed to raise price of Kfs/H5k to 75 from 70.

Accordingly , Sameer and Nimish had met the commissioner yesterday evening but he has clearly indicated that there would be no price increase , given the sluggish industry growth. Even the Ub guys have met him and have been given the same message.

Thereafter , I called up my Ub counterpart again late evening , who confirmed the development that the commissioner is acting tough on price increase. I checked whether sticking to our stance to a point where we reach a face-off with the commissioner , was an option which Ub was willing to explore but very clearly my counter part, Kiran, has ruled that out. He is more inclined to again reason with the commissioner and as a last option give in to the demand of no increase .

Now the pressure point here and more so for us is that after 15th (tue) , we cannot sell unless we have an approval. Given the size of Ub, even if Ub agrees at the last minute on 15th , the commissioner will give them an ok and hence they will not loose sale . However for us , if we give an ok on 15th at the last moment , there is a possibility that the commissioner might get angry (that we agreed so late despite his insistence) or even otherwise may delay our file , in which case every day there is a potential sale loss of 17k cases.

Hence here is my recommendation and Nimish you are free to voice your opinion on this.

The commissioner has called a meeting of key retailers today .The Ub team is also meeting him .Nimish is also there today to watch developments. Kiran of Ub will also call me today evening .However in case we see no positive development , then I think we should agree to the commissioner's demand and give an acceptance letter of old prices by EOD or latest tomorrow ...because it will take a day to process the papers after the commissioner signs and we can't afford to loose sale.

Trust everyone is ok with this ...Bad news but the team has really tried hard .We will try our best to redeem the situation by selling more/ cutting discount ...the swing in var contribution per case between a 70 and 80 is roughly Rs 60 a case , which means that we have to sell roughly 60 % more volume than E1 in tbs or cut discounts .

Rgds

Anil

Sent from my iPhone



E-mail 2

From: Gaurav Vir
Sent: 11 May 2012 12:51
To: Anil Bahl; Soren Lauridsen; Michael Norgaard Jensen; Subodh Marwah; Manas K Nijhawan; Dheeraj Mishra; Nimish Gupta
Subject: RE: Delhi price increase update

Dear All,

I would urge you all to discuss this highly sensitive subject matter over con-call or in person.

Gaurav Vir
Legal & Corporate Affairs Director
Carlsberg India Pvt. Ltd.

E-mail 3

To: Gaurav Vir[Gauravv@carlsberg.in]; Anil Bahl[anilb@carlsberg.in]; Michael Norgaard Jensen[MichaelJ@carlsberg.in]; Subodh Marwah[subodhm@carlsberg.in]; Manas K Nijhawan[Manasn@carlsberg.in]; Dheeraj Mishra[dheeraj@carlsberg.in]; Nimish Gupta[nimishg@carlsberg.in]
From: Soren Lauridsen
Sent: Fri 11/05/2012 8:09:33 AM
Subject: RE: Delhi price increase update

Fully endorsed. No more emails of that sort - whatsoever !

Soren

- (ii) Statement of Mr. Michael Jensen of OP-4 regarding e-mails dated 11.05.2012 asking him to comment on the fact that OP-4 was actively co-ordinating with its competitors on pricing issues, and taking utmost care so as not to leave any documentary evidence of the same:

“Yes, I completely agree.”

- (iii) E-mails exchanged in July and August 2013 between officials of the OPs including Mr. Shekhar Ramamurthy and Mr. Perry Goes of OP-1, Mr. Chris White, Mr. Mayank Bhatia and Mr. Ajit Jha of OP-3, Mr. Dhiraj Kapur and Mr. Soren Lauridsen of OP-4, and Mr. Sovan Roy of OP-5, which were recovered during search and seizure operation from the premises of OP-5:



सत्यमेव जयते



E-mail 1

Subject: Delhi
From: Shekhar Ramamurthy
Date: Mon, 29-07-13 3:45 PM
To: "shobhan roy (royconsulting@gmail.com)" <royconsulting@gmail.com>
CC: "PAOLO.LANZAROTTI@IN.SABMILLER.COM" <PAOLO.LANZAROTTI@IN.SABMILLER.COM>, "chris.white@rjcorp.in" <chris.white@rjcorp.in>, Soren Lauridsen <sorenl@carlsberg.in>

Dear Shobhan

I would recommend that ahead of our meeting with the Delhi CM we prepare a few workings at our recommended price increase levels. I note that for a variety of reasons, most of us have not been able to take or receive even the 3% price increase that has been currently approved. (The reasons are : since the MRP is capped at multiples of 5, if the MRP does not go up at an increased price to manufacturers, Govt duty comes down, hence they have rejected a price increase; or an increase in price would take the price higher than the minimum price anywhere else in the country.)

I would suggest that we work out 2 scenarios for key brands – a 5% increase + Rs10 towards additional costs and a plain 5% increase.

Regards

Shekhar

E-mail 2

Subject: Re: Delhi
From: Perry G
Date: Mon, 29-07-13 5:07 PM
To: Shobhan Roy

Dear Shobhan,

I suggest that you get the following data from each of the member companies for their brands in Delhi:

1. Brand-SKU
2. Erstwhile Price
3. Erstwhile MRP
4. Est. price at 3% increase
5. Est. MRP at 3% increase
6. Lowest comparative price outside Delhi
7. Whether price increase applied for
8. If applied for, what price
9. If price increase granted
10. If increase granted, what price
11. Est price at 5% increase
12. Est MRP at 5% increase
13. Est price at 5% increase + Rs 10
14. Est MRP at 5% increase + Rs10

E-mail 3

----- Forwarded message -----
From: Perry G <perry@ubmail.com>
Date: Thu, Aug 1, 2013 at 10:42 AM
Subject: DELHI COST CARDS AIBA.xlsx
To: Shobhan Roy <royconsulting@gmail.com>



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DELHI COST CARDS - MILD BEER								
	Kingfisher Lager 650 ml							
	12-13	13-14			Option 1	Option 2	Option 3	Option 4
	Approved	Applied	Govt.	Approved	5%	5% + Rs.12	7.50%	Rs. 24
Ex-Brewery Price	266.00	292.00	273.00	273.00	279.00	291.00	285.00	290.00
Export Pass Fee	0.78	0.78	0.78	0.78	0.78	0.78	0.78	0.78
Freight	6.80	7.10	7.10	7.10	7.10	7.10	7.10	7.10
Insurance	0.80	0.88	0.82	0.82	0.84	0.87	0.86	0.87
Handling	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Landed Price	275.38	301.76	282.70	282.70	288.72	300.75	294.74	299.75
Distribution Margin @ 5%	13.77	15.09	14.13	14.13	14.44	15.04	14.74	14.99
Local Transportation Charges	2.50	3.00	3.00	3.00	3.00	3.00	3.00	3.00
Wholesale Price	291.65	319.84	299.83	299.83	306.15	318.79	312.47	317.74
Wholesale Price per Unit	24.30	26.65	24.99	24.99	25.51	26.57	26.04	26.48
Excise Duty @ 110% of WSP	26.73	29.32	27.48	27.48	28.06	29.22	28.64	29.13
Excise Duty - Rounding off	1.19	0.23	3.86	3.86	2.72	0.42	1.57	0.61
Retail Margin	1.94	2.13	2.00	2.00	2.04	2.13	2.08	2.12
Sale Price	54.17	58.33	58.33	58.33	58.33	58.33	58.33	58.33
Sales Tax @ 20%	10.83	11.67	11.67	11.67	11.67	11.67	11.67	11.67
MRP / Unit	65.00	70.00						
Company Realisation		28.20	8.19	8.19	14.51	27.14	20.82	26.09
Basic Price		26.00	7.00	7.00	13.00	25.00	19.00	24.00
Reimbursements		2.20	1.19	1.19	1.51	2.14	1.82	2.09
Govt. Revenue		29.54	51.16	51.16	44.33	30.68	37.51	31.82
Excise Duty		31.02	9.01	9.01	15.96	29.86	22.91	28.70
Rounding Off		-11.47	32.15	32.15	18.38	-9.17	4.60	-6.88
Sales Tax		10.00	10.00	10.00	10.00	10.00	10.00	10.00
Retail Margin		2.26	0.65	0.65	1.16	2.17	1.67	2.09
Consumer Price		60.00	60.00	60.00	60.00	60.00	60.00	60.00

E-mail 4

From: [Shobhan Roy](#)
To: [Ajit Jha](#); [Dhiraj Kapur](#); [Mayank Bhartia](#)
Cc: [Roopali Singh](#); perry@ubmail.com
Subject: Fwd: DELHI COST CARDS AIBA.xlsx
Date: 01 August 2013 11:25:05 AM
Attachments: [DELHI COST CARDS AIBA.xlsx](#)

Dear Ajit Dhiraj and Mayank

To make matters easy ,Perry has sent the costcards as per the options in my mail earlier.

We need to be clear when we meet the CM , that if granted the wish list,we are able to convert it

to our advantage. Please feel free to make your comments

Please discuss with the members of your team and revert today itself.

I propose a concall at 4.30 pm today

Regards

shobhan

E-mail 5

From: Shobhan Roy [mailto:royconsulting@gmail.com]
Sent: 02 August 2013 15:39
To: Shekhar Ramamurthy
Cc: Chris White; Soren Lauridsen; grant.liversage@in.sabmiller.com; Perry G; Ajit Jha; Dhiraj Kapur; Mayank Bhartia
Subject: Delhi Excise note

Dear Shekhar

I am enclosing a discussion note.

I can covert this also into a letter format.

Look forward to the comments

Regards

Shobhan



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E-mail 6

Subject: RE: Delhi Excise note
From: Shekhar Ramamurthy
Date: Fri, 02-08-13 5:28 PM
To: Shobhan Roy
CC: Chris White <chris.white@rjcorp.in>, Soren Lauridsen <sorenl@carlsberg.in>, "grant.liversage@in.sabmiller.com" <grant.liversage@in.sabmiller.com>, Perry G <perry@ubmail.com>, Ajit Jha <ajit.jha@in.sabmiller.com>, Dhiraj Kapur <dhirajk@carlsberg.in>, Mayank Bhartia <mayank.bhartia@rjcorp.in>

Dear Shobhan

This looks OK to me. If there are no other comments, I would suggest that you prepare a letter that could be submitted. I would recommend that we prepare cost cards of current vav proposed, to show the benefit to the Govt too.

Regards

Shekhar

E-mail 7

From: Shobhan Roy <royconsulting@gmail.com>
Date: Wed, Aug 7, 2013 at 5:32 PM
Subject: Tommorrow's meeting Delhi CM
To: Shekhar Ramamurthy <shr@ubmail.com>, Chris White <chris.white@rjcorp.in>, Soren Lauridsen <sorenl@carlsberg.in>
Cc: perry@ubmail.com, Ajit Jha <ajit.jha@in.sabmiller.com>, Dhiraj Kapur <dhirajk@carlsberg.in>, "Roopali Singh (RoopaliS@Carlsberg.in)" <roopalis@carlsberg.in>, Mayank Bhartia <mayank.bhartia@rjcorp.in>, Jindal R K <rkjindal@ubmail.com>

Dear All

This is to confirm that tomorrow meeting on Delhi pricing is at 4 pm at room 301 Sachivalaya A wing.

Entry is from Gate number 3

I am carrying the hard copies of the representation with the following options

5% plus Rs 12 per case reimbursible bar coding charges or 10 % over last year prices(Rs 12 per case that we are claiming amounts to 5% by it self)
5% plus Rs 12 per case reimbursible bar coding charges or 7.5% over last year prices

SHR flight gets in around 1 pm and thus was suggesting a quick meet at TAJ MAHAL, Mansigh Road around 2 15 pm.

Since the meeting is at 4 pm we need to leave by 3 pm

Trust this is fine with all.

Regards

Roy



E-mail 8

From: Shobhan Roy [<mailto:royconsulting@gmail.com>]
Sent: 07 August 2013 17:46
To: Shekhar Ramamurthy; Soren Lauridsen; Chris White
Cc: Perry G; Ajit Jha; Mayank Bhartia; Dhiraj Kapur; Roopali Singh (RoopaliS@Carlsberg.in)
Subject: Fwd: Tommorrow's meeting Delhi CM

My Apologies. missed the 10% draft and attached now.

E-mail 9

From: Shekhar Ramamurthy <shr@ubmail.com>
Date: 7 August 2013 19:19:54 GMT+07:00
To: Shobhan Roy <royconsulting@gmail.com>, Soren Lauridsen <SorenL@Carlsberg.in>, Chris White <chris.white@rjcorp.in>
Cc: Perry G <perry@ubmail.com>, Ajit Jha <ajit.jha@in.sabmiller.com>, Mayank Bhartia <mayank.bhartia@rjcorp.in>, Dhiraj Kapur <DhirajK@carlsberg.in>, Roopali Singh <RoopaliS@Carlsberg.in>
Subject: RE: Tommorrow's meeting Delhi CM

I would recommend that we go with "letter 2" – 5%+12 or 7.5%.

Shekhar

E-mail 10

From: Soren Lauridsen
Sent: Thursday, 8 August 2013 7:42 AM
To: Dhiraj Kapur
Cc: Michael Norgaard Jensen
Subject: Fwd: Tommorrow's meeting Delhi CM

Dhiraj,

Are u joining ?
We should go for max price increase.7,5 %.

Best Regards
Soren

- (iv) Internal e-mails exchanged in August 2013 between Mr. Shalabh Seth, Mr. Ajit Jha, Mr. Rakshat Chopra, Mr. Nilojit Guha and Mr. Anil Arya of OP-3 which were submitted by OP-3:



E-mail 1

From: Shalabh Seth
Sent: Friday, August 09, 2013 12:57 PM
To: Ajit Jha; Rakshat Chopra; Nilojit Guha; Anil Arya
Cc: Paul Dsilva; Tejvir Singh; Shalabh Seth
Subject: RE: Delhi excise

Hi Ajit,

The only point to let Shobhan Roy know that we have to get a bit more for UB to get increase OR alternatively they will have to ease the condition of revenue loss on rounding off MRP...

It shouldn't be the case that govt. approves increase- but we are unable to take price.

Regards,
Shalabh

E-mail 2

From: Ajit Jha
Sent: 09 August 2013 13:45
To: Shalabh Seth; Rakshat Chopra; Nilojit Guha; Anil Arya
Cc: Paul Dsilva; Tejvir Singh
Subject: Re: Delhi excise

Agree, Shalabh.

This, amongst other concerns, were factored in our discussions.

In fact, we also proposed to the Chief Minister, if we were given a free hand, especially for price points above Rs 100/- as per rules, the State could also earn more revenue. (The CM expressed 'surprised' that price in Delhi was controlled by Excise).

Another point we took up was for the State to reimburse the expense on the 2D Bar Code, which will to some extent get mitigated if the increase was by 7.5%.

She maintained silence on the reimbursement of 2D Bar code part, but was quite forthcoming in affirmatively responding to the 5% part for parity with spirit. We will now fight the battle for the reimbursement part another day.

Meanwhile, the rounding off part is indeed a valid point, and will reiterate this with Mr Roy for our further discussions with Excise.

Sorry, Tejvir, missed copying it to you earlier.

Warm regards,
ajit



- (v) Statement of Mr. Shekhar Ramamurthy of OP-1 regarding the e-mails exchanged in July and August 2013:

“... the context is that the Delhi Government had allowed in their policy a basic price increase of 3% to Beer manufacturers, irrespective of what their basic price at that time was. However, even this price increase that had been approved by the Delhi Government was denied to manufacturers on account of the fact that the State would have lost some of its revenue due to an element called “rounding-off” which the Government enjoyed. In this background, the Beer manufacturers felt the need to petition the Government for a fair price increase to cover their costs. The 5% figure was taken since at the same time the Delhi Government had allowed hard liquor manufacturers to take a 5% increase. The ‘+12’ component referred to the additional reimbursement towards other incidental expenses which had also gone up.”

- (vi) Statement of Mr. Sovan Roy of OP-5 regarding the e-mails exchanged in July and August 2013:

“.....the prices in Delhi are fixed by the Delhi Govt. to supply to the Corporations, based on lowest price in the neighbouring states. For quite some time there was no major increase inspite of increase in the cost of the inputs. It was decided by the Board that representation be made to the powers including the CM, to plead the case for the Beer industry. In this connection, based on the mail shown, member companies forwarded emails showing cost computations as per the discussion note. Subsequently, AIBA only followed up the issue of discrimination by the department of granting 5% increase to the spirits industry and only 3% to the Beer industry. This representation to the CM was subsequently replied by the department that the 3% increase only is valid ... The platform of AIBA was used for pursuing increase of rates of the Beer industry”

- (vii) Statement of Mr. Nilojit Guha of OP-3 regarding e-mails exchanged by him:

“I do not deny having discussions with mainly Mr. Kiran Kumar on a few occasions on the pricing issues. I recollect having contacted Mr. Kiran Kumar at times on pricing issues. For example, states like Delhi, Orissa, Maharashtra, Karnataka, West Bengal mainly. In these pricing discussions, I played the role of a co-ordinator as per instruction of my superior (Mr. Shalabh Seth) ...”



(viii) Statement of Mr. Michael Jensen of OP-4 regarding the e-mails exchanged in July and August 2013:

“... However, free States like WB, Maharashtra, Karnataka (also Delhi which is having hybrid model), pricing could be recommended to a higher degree from the brewers, than in other States. Therefore, to the best of my knowledge, those particular States motivated a higher degree of pricing discussions among brewers ...”

(ix) Submission dated 24.12.2018 of OP-4 before the DG wherein OP-4 acknowledged that prior to 2016 (when it appointed Mohan Gold-Water Breweries Ltd as its licensee in Delhi), there were discussions between itself and OP-1 and OP-3 on co-ordinated price increase in Delhi. OP-4 stated that it had been primarily interacting with OP-1 and occasionally with OP-3 to discuss pricing of Beer in Maharashtra, West Bengal, Delhi, Karnataka, Puducherry, Odisha and Bihar. The pricing discussions took place with a view to seek increase in Beer prices and to co-ordinate the proposed actions in response to extraordinary Excise duty increases or Bottle Bar Codes by various State Authorities. The discussions on prices were primarily focused on the mainstream brand (*i.e.*, Tuborg) in the Free Market States such as Maharashtra, West Bengal and Puducherry, the Hybrid State of Delhi as well as certain Corporation States such as Odisha, Karnataka and Bihar.

30. From the internal e-mails trail dated 11.05.2012 extracted at point (i) above, the Commission notes that given the sensitivity of the e-mail sent by Mr. Anil Bahl of OP-4 to his superiors and colleagues intimating them about the planned price increase in Delhi by competing companies and giving an update of the status of talks held with the Excise Commissioner, Delhi and the strategy ahead, OP-4's Legal and Corporate Affairs Director Mr. Gaurav Vir asked everyone to discuss such sensitive issues over conference calls or in person only. Subsequently, knowing the anti-competitive contents of such e-mail communication and likely infringements of competition law, company's then Managing Director, Mr. Soren Lauridsen, also directed his subordinates to desist from sending such emails. Such co-ordination has even been accepted by Mr. Michael Jensen of OP-4 in this statement, as extracted above at point (ii).



31. Further, from the e-mails exchanged in July and August 2013 between officials of OP-1, OP-3, OP-4 and Director General of OP-5 extracted at point (iii) above, the Commission observes that while approaching the Government of Delhi for price revision of Beer in 2013, Mr. Shekhar Ramamurthy of OP-1 suggested to OP-3 and OP-4 to ask for a 5% increase with or without ₹10 towards additional costs for barcoding for its key brands. After deliberating with the Government and its members, Mr. Sovan Roy of OP-5 and Mr. Perry Goes of OP-1 also suggested preparation of cost cards presenting different scenarios for key brands by the OPs. The detailed cost cards prepared by Mr. Perry Goes of OP-1 were forwarded by Mr. Sovan Roy of OP-5 to the officials of OP-4 for discussion with their team members. In his e-mail sent on 07.08.2013, Mr. Shekhar Ramamurthy of OP-1 had suggested an option to ask for increase of 5% + ₹12 towards barcoding or 7.5%. Subsequently, Mr. Soren Lauridsen of OP-4, in his internal e-mail to Mr. Dhiraj Kapur of OP-4 with Cc to Mr. Michael Jensen of OP-4, had suggested to go for the maximum, *i.e.*, 7.5% increase.
32. The internal e-mails exchanged in August 2013 between officials of OP-3 extracted at point (iv) above also show that there was some sort of understanding amongst the OPs that OP-1's price would be the highest so that the other OPs also gain even in case the Government resorts to rounding off the MRP to nearest multiple of ₹5.
33. In its objections/suggestions to the DG Report, OP-1 has argued that such discussions were a result of legitimate increase required by the OPs to cover their costs and not incur losses as their transportation and incidental costs had gone up which were not covered by the increase granted by the Delhi Government and there was also a policy of rounding-off in Delhi. Further, OP-1 has stated that the OPs were forced to make such joint representation for a 5% increase through OP-5 as the same had been discriminately awarded to the spirits industry. All the more, the increase in MRP was historically due to the increase in Excise duty or increase in retail margin or revision of the methodology for calculation of EBP and MRP *etc.* and the price increase sought jointly by the OPs was never implemented; thus, causing no AAEC in the market.



34. OP-4 has also argued in its objections/suggestions to the DG Report that there was no implementation of the pricing discussions in Delhi, and therefore, there was no contravention of the provisions of the Act caused by the OPs. OP-4 has explained that in 2013, the Delhi Government had unilaterally implemented a specific individual Bottle Bar Code for the Beer industry, which was a costly proposition for the Beer companies (as compared to Indian-Made Foreign Liquor ('IMFL')). The Beer companies had agreed to implement this, but had communicated to the Excise Department that they would look for costs to be compensated. However, in June 2013, the Delhi Government, while increasing the price of IMFL by 5%, increased the price of Beer by only 3%. Further, by way of notification dated 18.07.2013, the Delhi Excise Department asked the Beer companies to absorb an additional amount of 18 paise per label. Bearing in mind these costs, the total impact of Bar Code affixation was an average of ₹12 per case of Beer. At this point and in light of the circumstances affecting the industry at large (*i.e.*, the unilateral imposition of Bar Code cost by Delhi Government coupled with only a 3% price increase for Beer, as against 5% increase given to IMFL), the Beer companies communicated with each other through OP-5, on preferences of the Beer companies for maximum price increase, *i.e.*, whether they should ask for 10% price increase over last year prices or 7.5% increase over last year prices. They also discussed the reimbursement to be sought for Bar-Coding charges. The e-mails exchanged on 07.08.2013 indicate that the Beer companies, through OP-5, had agreed to a 7.5% increase in price. Following this, the Beer companies, through OP-5, made a representation to the Chief Minister of Delhi on 08.08.2013. However, the Delhi Government did not agree to the increase of 7.5% and this was consequently, not implemented. Further, the Bar-Coding cost was not reimbursed to the Beer companies and therefore, had to be ultimately borne entirely by the Beer companies themselves. As such, there was no impact of the alignment between the Beer companies on this occasion.
35. In the view of the Commission, from the above trail of e-mails (extracted at points (iii) and (iv) above) and the statements made by senders/recipients of such e-mails extracted at points (v), (vi), (vii) and (viii) above, it is evident that OP-1, OP-3 and OP-4 had coordinated their price revision requests in the NCT of Delhi in 2013, through the platform of OP-5, taking advantage of the free pricing policy in Delhi. This has not even been refuted by the OPs in their response to the DG Report. Further, from the e-mails



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extracted at point (i) above, it is evident that the officials of OP-4 were aware of the anti-competitive nature of their discussions with the competitors and as such, they decided not to discuss such sensitive issues over e-mails.

36. Though OP-1 and OP-4 have submitted that they had been forced to indulge into such co-ordination to mitigate their losses, in the view of the Commission, while the OPs were well within their rights to take up their grievances and issues with the concerned authorities, from competition law perspective, it does not justify the OPs exchanging commercially sensitive information and acting in furtherance thereof. Further, though OP-4 has submitted that implementation of the price alignment amongst the OPs did not take place, the Commission notes that the same was only because price revision request was not accepted by the State Government. In any event, the plea is thoroughly misconceived. Once an anti-competitive agreement is reached, the integrity of the competitive process stands compromised. Be that as it may, in the facts of the present case, it is evident that since price revision quotations were submitted to the government in furtherance of the discussions amongst the OPs, implementation of the agreement also stood completed.
37. OP-5 has submitted in its objections/suggestions to the DG Report that its role in Delhi was merely to seek re-imburement of costs involved in 2D scanning Bar Codes on Beer bottles that was imposed by the Government in its Excise Policy. Further, it has submitted when the State Government agreed to grant some re-imburement in the form of rate increase, OP-5 agitated against discriminatory grant of 3% to Beer industry and 5% to spirits category. Thus, it argued that there was no attempt to get any rate increase, which continued to be based on the lowest price anywhere in the country as had been approved by the State Government. As such, there was no anti-competitive discussion on its platform.
38. With respect to such submission made by OP-5, the Commission observes that OP-5, being an association of Beer companies, should have limited its role to raising common issues affecting the industry and its members before the State government. However, it went beyond and indulged in collection and dissemination of commercially sensitive data like cost cards of its members. The e-mails extracted at point (iii) above show that the



data collected by OP-5 from one member, was shared with other members, for comment. As such, it is clear that the platform of OP-5 was used by the members for exchange of commercially sensitive data, and OP-5 has no explanation for the same. The impugned conduct of the OPs including of OP-5, if examined in the backdrop of permissible boundaries of legitimate conduct of trade associations, appear to *ex facie* transgress the perimeter within which trade associations can legitimately espouse the cause of their respective members.

39. It may be noted that Section 3(1) of the Act not only proscribes agreements which cause AAEC within India, but also forbids agreements which are likely to cause AAEC. Hence, in the view of the Commission, once the OPs are found to have agreed to co-ordinate their price revision requests, it cannot be ruled out that such 'agreement' was likely to stifle competition amongst them and was likely to cause AAEC in India. Hence, the conduct of OP-1, OP-3, OP-4 and OP-5 in the NCT of Delhi in 2013, amounts to contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act.

Karnataka

40. In respect of the State of Karnataka having Corporation Market Model, the DG has relied upon the following evidences to give a finding of price co-ordination amongst the OPs:

- (i) E-mail dated 25.01.2011 sent by Mr. S. Diwakaran of OP-3 to Mr. Kiran Kumar of OP-1, which was recovered during search and seizure operation from the premises of OP-1:

From: Diwakaran S,BANGALORE,CUSTOMER DEVELOPMENT
<Diwakaran.S@in.sabmiller.com>
Sent: Tuesday, January 25, 2011 2:40 PM
To: Kiran Kumar
Subject: Book1 (9).xls
Attachments: Book1 (9).xls

Hi Kiran,

Enclosed, current and proposed MRP in Karnataka. Please let know your prices and as to when you would be applying to excise?

Cheers
Diwa



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Brands	MRP/ECP In Rs.		Corresponding UB brands
	Current MRP	Proposed	
650 ML Bottle			
Strong			
H5	76.00	78.00	KFS
KO	76.00	78.00	KFS
Haywards 2000		64.00	UBS
Mild			
Foster's	77.00	80.00	KFBlue
Royal Challenge	71.00	73.00	KFPL
330 ML Bottle			
Strong			
H5	40.00	42.00	KFS
KO	40.00	42.00	KFS
Haywards 2000		32.00	UBS
Mild			
Foster's	45.00	50.00	KFBlue
Royal Challenge	27.00	30.00	UB ELP

Landing to outlet	Draught			
RC 50 Ltr	3,250.00	3,650.00	KF Draught	
Foster's 50 Ltr	3,750.00	4,200.00		
KO 50 Ltr	3,250.00	3,950.00		
Sourcing		Cans		
330 ML CAN				
Strong				
H5	42.00	45.00	KFS	
KO	42.00	45.00	KFS	
Mild				
Foster's	45.00	50.00	KF Blue	
Royal Challenge	40.00	45.00	KF Can	
500 ML CAN				
Strong				
H5	63.00	65.00	KFS	
KO	63.00	65.00	KFS	
Mild				
Foster's	65.00	68.00	KF blue	
Royal Challenge				

(ii) Statement of Mr. Kiran Kumar of OP-1 on the e-mail dated 25.01.2011 received by him:

“... In some markets like Karnataka, price changes are allowed on only three specified dates in the year. I am submitting a copy of the relevant



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provision of Karnataka Excise Rules in this regard. In order to ensure that we do not suffer huge losses as a result of this policy, competitors would exchange notes and price main products similarly.

... For the reasons explained ... above, UBL and SAB Miller might have exchanged prospective pricing plans. It is most likely that these would have been implemented in the market.”

(iii) MRP of SKUs of OP-1 and OP-3 in 2011 in the State of Karnataka, submitted by OP-1 and OP-3 before the DG and tabulated by the DG:

SABMILLER ¹⁹				UBL ²⁰		
Brands	Proposed	Actual	Date of increase	Brands	Actual	Date of increase
Haywards 5000 650 ml Bottle	78.00	78.00	16.2.2011	Kingfisher Strong 650 ml	78.00	4.2.2011
Knock Out 650ml Bottle	78.00	78.00	14.2.2011			
Foster's Mild 650 ml Bottle	80.00	80.00	14.2.2011	Kingfisher Blue	N.A.	N.A.
Royal Challenge Mild 650 ml bottle	73.00	75.00	14.2.2011	Kingfisher Premium Lager	75.00	4.2.2011
Haywards 5000 330 ml Bottle	42.00	43.00	16.2.2011	Kingfisher Strong 330 ml Bottle	43.00	4.2.2011
Knock Out 330 ml Bottle	42.00	43.00	16.2.2011			
Foster's Mild 330 ml Bottle	50.00	50.00	14.2.2011	Kingfisher Blue	N.A.	N.A.
Royal Challenge 330 ml Bottle	30.00	28.00	14.2.2011	UB Export Lager Beer	28.00	4.2.2011
Haywards 5000 330 ml Can	45.00	45.00	14.2.2011	Kingfisher Strong	N.A.	N.A.
Knock Out 330 ml Can	45.00	45.00	16.2.2011			
Foster's Mild 330 ml Can	50.00	50.00	14.2.2011	Kingfisher Blue 330 ml Can Blue	N.A.	N.A.
Royal Challenge Mild 330 ml Can	45.00	N.A.	N.A.	Kingfisher Can	N.A.	N.A.
Haywards 5000 500ml Can	65.00	65.00	14.2.2011	Kingfisher Strong 500 ml Can	N.A.	N.A.
Knock Out 500 ml Can	65.00	65.00	16.2.2011			
Foster's Mild 500 ml Can	68.00	N.A.	N.A.	Kingfisher Blue 500 ml Can	N.A.	N.A.
Royal Challenge Mild 500 ml Can	-	N.A.	N.A.	-	-	-



(iv) E-mail dated 22.12.2011 sent by Mr. Kiran Kumar of OP-1 to Mr. Shalabh Seth and Mr. Anil Arya of OP-3, which was submitted by OP-1 before the DG:

(No subject)

Kiran Kumar

Thu 12/22/2011, 2:44 PM

To: shalabh.seth@gmail.com <shalabh.seth@gmail.com>; anilarya8@gmail.com <anilarya8@gmail.com>

1 attachments (11 KB)

KTKA PRICES.xlsx;

Please find enclosed the price increase working.

We need to sync Blue mild with F mild for the next tranche.

Regards,

Brand / Pack	MRP		
	Current	Proposed	
		Jan '12	Feb '12
Kingfisher Strong 650 ml	78	80	83
Kingfisher Strong 330 ml	43	45	46
Kingfisher Strong 330 ml Can	45	47	48
Kingfisher Strong 500 ml Can	65	68	70
UB Export Lager Beer 650 ml	55	58	
UB Export Lager Beer 330 ml	28	30	
Kingfisher Premium Lager Beer 650 ml	75	77	80
Kingfisher Premium Lager Beer 330 ml	45	48	50
Kingfisher Premium Lager Beer 330 ml Can	45	47	49
Kingfisher Premium Lager Beer 500 ml Can		65	
Kingfisher Draught 50 Litre			
Kingfisher Draught 30 Litre			
UB Export Strong 650 ml	60		65
UB Export Strong 330 ml	31		35
Kingfisher Blue 650 ml	80	82	
Kingfisher Blue 330 ml	50	52	
Kingfisher Blue 330 ml Can	50	52	
Kingfisher Blue 500 ml Can	60	68	



- (v) Price changes effected by OP-1 in 2011 for the State of Karnataka in its SKUs, and prices of comparable brands of OP-3, submitted by OP-1 and OP-3 before the DG and tabulated by the DG:

UBL				SABMiller	
Brand	Price as on 22.12.2011 (date of email)	Price revised on 29.12.2011	Price revised on 02.04.2012	Comparable brand	Price revised after 22.12.2011 (with date of revision)
Kingfisher Strong Premium Beer 650 ML.	78	80	85	Haywards 5000 650 ml	80 (23.01.2012) 85 (01.04.2012)
Kingfisher Premium Lager beer 650 ML.	75	77	80	-	-
UB Export Lager Beer 330 ML.	28	30	31	-	-
Kingfisher Strong Premium Beer 330 ML.	43	45	47	Haywards 5000 330 ml	45 (23.01.2012) 47 (01.04.2012)
UB Export Lager Beer 650 ML.	55	58	62	-	-

- (vi) E-mail communications exchanged in January 2015 between Mr. Nitin Sharma of OP-3 and Mr. Anil Bahl, Ms. Sukanta Banerjee and Mr. Jagannath Prasad of OP-4, which were submitted by OP-4 before the DG:

E-mail 1

From: nitin sharma <nitin_1234sharma@yahoo.co.in>
Date: 20 January 2015 6:38:01 pm IST
To: "abahl65@gmail.com" <abahl65@gmail.com>
Cc: "nilojit@gmail.com" <nilojit@gmail.com>
Subject: Pricing Karnataka and West Bengal
Reply-To: nitin sharma <nitin_1234sharma@yahoo.co.in>

Hi Sir,

Post your discussion with Nilojit Sir, please find the prices which are being applied.

Regards
Nitin Sharma



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**SABMiller India Limited
Karnataka Price Review**

Brand	Pack	SABMI MRP(Rs.)				UB MRP(Rs.)		
		Existing	Proposed	Increase		Existing	Proposed	Increase
Knock Out	650B	100	105	5	KFS	100	105	5
Knock Out	330B	55	60	5		55	60	5
Knock Out	500C	80	85	5		80	85	5
Knock Out	330C	57	60	3		57	60	3
Haywards 5000	650B	100	105	5	KFS	100	105	5
Haywards 5000	330B	55	58	3		55	60	5
Haywards 5000	500C	80	85	5		80	85	5
Haywards 5000	330C	57	60	3		57	60	3
Fosters Gold	650B	105	110	5	KFS	100	105	5
Fosters Gold	500C	90	95	5		80	85	5
Fosters Gold	330B	60	63	3		55	60	5
Fosters Lager	650B	100	105	5	KFM	95	100	5
Fosters Lager	330B	60	65	5		60	65	5
Fosters Lager	500C	80	85	5		77	82	5
Fosters Lager	330C	60	63	3		55	58	3
Fosters Lager	650D	62	62	-				
Royal Challenge Lager	650B	75	80	5	UBI	75	80	5
Royal Challenge Lager	330B	37	40	3		38	40	2
Royal Challenge Strong	650B	80	85	5	UBS	80	85	5
Royal Challenge Strong	330B	40	45	5		40	45	5

E-mail 2

From: Anil Bahl [mailto:abahl65@gmail.com]
Sent: Tuesday, January 20, 2015 11:34 PM
To: Sukanta Banerjee; Jagannath Prasad K
Cc: Nitesh Karnawat; Bibek Singh
Subject: Fwd: Pricing Karnataka and West Bengal

Please plan your price increase in line with this file .
 Rgds
 Anil

Sent from my iPhone

(vii) Submission dated 24.12.2018 of OP-4 before the DG wherein OP-4 stated that “for UB, Karnataka is the most profitable market in terms of absolute profitability. Therefore, it is in UB’s interest to ask for price increase. Few weeks



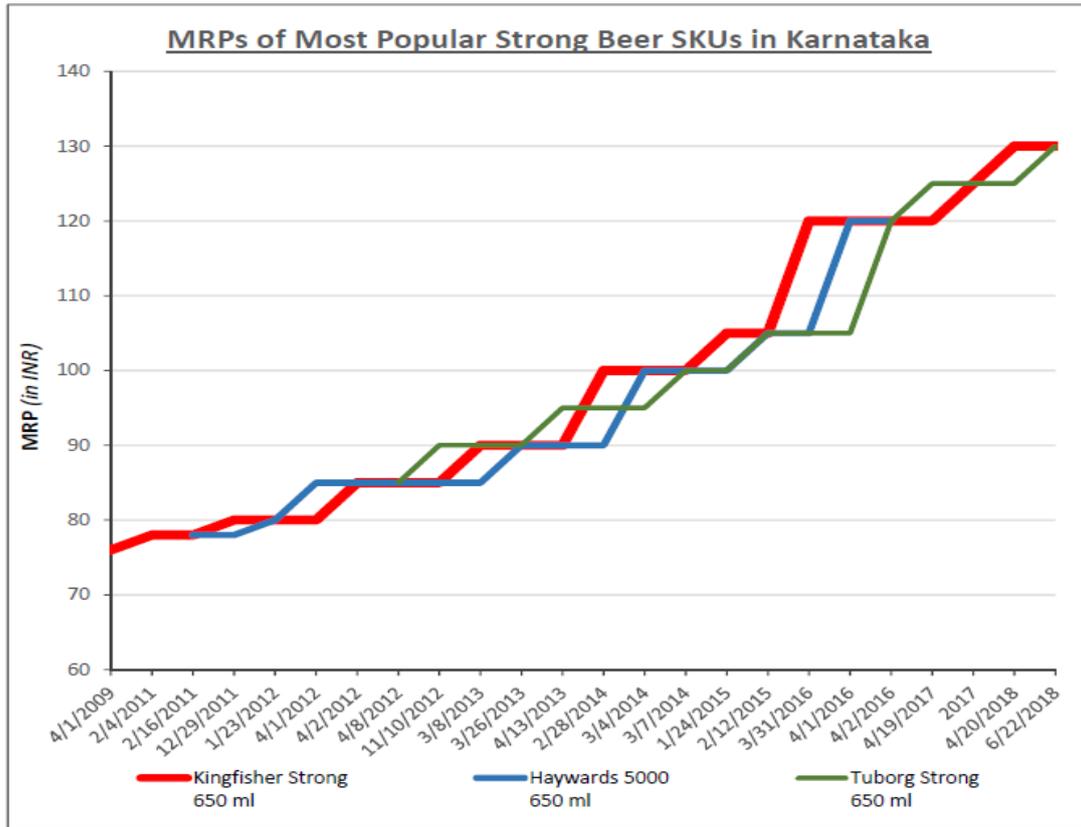
before the annual price increase (June or July), CIPL and UB would talk to confirm their understanding on seeking an INR 5 per bottle (excluding taxes) increase. Any implementation of local issues such as excess stock etc. would be communicated in advance between the companies so as to not cause any misunderstanding among themselves.”

- (viii) Comparison of MRPs of highest selling SKU, i.e., Strong Beer 650ml bottle – KFS of OP-1, Haywards 5000 (‘H5K’) of OP-3/AB InBev and Tuborg Strong (‘TBS’) of OP-4, in the State of Karnataka over the period 2009-2018, as culled out from their replies submitted to the DG, tabulated and graphically demonstrated by the DG:

(in INR)

Date of MRP revision	Kingfisher Strong 650 ml	Haywards 5000 650 ml	Tuborg Strong 650 ml
01-04-2009	76	N.A.	N.A.
04-02-2011	78		
16-02-2011		78	
29-12-2011	80		
23-01-2012		80	
01-04-2012		85	
02-04-2012	85		
08-04-2012			85
10-11-2012			90
08-03-2013	90		
26-03-2013		90	
13-04-2013			95
28-02-2014	100		
04-03-2014		100	
07-03-2014			100
24-01-2015	105		
12-02-2015		105	105
31-03-2016	120		
01-04-2016		120	
02-04-2016			120
19-04-2017			125
2017*	125	N.A.	
20-04-2018	130	N.A.	
22-06-2018		N.A.	130

* No specific date furnished



41. From the e-mail dated 25.01.2011 extracted at point (i) above, it is noted that OP-3 sent to OP-1, its proposed MRPs for various brands, to be applied to the Excise authorities in the State of Karnataka. Mr. Kiran Kumar of OP-1, the recipient of the said e-mail, in his statement extracted at point (ii) above, explained the reason behind such exchange of proposed prices stating that as price increase was allowed only thrice a year, prospective pricing plans might have been exchanged between OP-1 and OP-3.
42. When the actual price movement of MRPs of SKUs of OP-1 and OP-3's products in 2011 as extracted at point (iii) above are compared with the proposals sent via e-mail dated 25.01.2011, it is noted that the prices of H5K, Knock Out and KFS in the 650ml Strong Bottle category were revised by OP-1 in accordance with the proposals sent by OP-3 to OP-1. OP-3 had intimated the proposed MRP on 25.01.2011 of ₹78/- for H5K and Knock Out 650ml bottle; and OP-1 had increased its price of KFS to ₹78/- on 04.02.2011, with OP-3 following suit on 16.02.2011 raising the MRP of its above two brands to ₹78/-. Further, as proposed, OP-3 also increased the prices of its Foster's Mild



650ml bottle, 330ml bottle and 330ml can, and H5K and Knock Out 500ml can and 330ml can, to the figures intimated to OP-1.

43. It is noted that though OP-3 had also sent proposed MRPs of Royal Challenge 650ml Bottle, H5K 330ml bottle, Knock Out 330ml bottle and Royal Challenge 330ml bottle, price revisions made for these brands and for corresponding Beer brands of OP-1 were not in accordance with proposals sent. However, in this regard, it is noted that nonetheless, the revisions made were to identical figures, which were a little higher/lower than the proposed ones. It is axiomatic that cartelists would seek to break the pattern of symmetry of revisions through minor variations here and there and as such, nothing significant turns upon such deviations from the exchanged or agreed prices. Also, it cannot be ruled out that OP-1 and OP-3 may have had subsequent communications after 25.01.2011 before deciding the new MRPs of these brands.
44. Thus, the said e-mail communication and corresponding revisions in MRPs of OP-1 and OP-3, clearly shows that in January 2011, OP-1 and OP-3 co-ordinated their price revisions so as to avoid any price war between themselves.
45. Similarly, from the e-mail dated 22.12.2011 extracted at point (iv) above, it is noted that OP-1 sent to OP-3, its price increase working for various brands.
46. When the actual price movement of MRPs of SKUs of OP-1 and OP-3's products as extracted at point (v) above are compared with the price increase intimated *via* e-mail dated 22.12.2011, it is noted that the prices of OP-1's KFS Premium 650ml and 330ml, Kingfisher Premium Lager 650ml, and UB Export Lager 650ml and 330ml, were revised by OP-1 in accordance with the prices communicated by it to OP-3. It can be observed from the rates intimated by OP-1 to OP-3, and the actual price revisions made by OP-1 in the 5 SKUs, that OP-1 preponed its first price revision to 29.12.2011 to the rates as intimated in the said e-mail. Further, as indicated in the e-mail, OP-1 again went ahead with another price revision on 02.04.2012 with the MRPs of KFS Premium Beer 650ml and Kingfisher Premium Lager Beer 650ml identical to the rates communicated in the e-mail. OP-3 also increased the MRPs of its H5K 650ml SKU (competing brand to KFS Premium Beer 650ml) to ₹80/- and further to ₹85/- on 23.01.2012 and 01.04.2012, respectively. Similarly, for its H5K 330ml SKU (competing brand to KFS Premium



330ml), OP-3 increased the prices to ₹45/- and ₹47/- on 23.01.2012 and 01.04.2012. The fact that both these MRP revisions were identical to the rates conveyed by OP-1 and corresponding to the schedule of price revisions by OP-1, makes it evident that December 2011 onwards, both OP-3 and OP-1 acted upon the price revision proposals exchanged amongst them.

47. Further, the e-mail communications of January 2015 extracted at point (vi) above also indicate that subsequent to talks between Mr. Anil Bahl of OP-4 and Mr. Nilojit Guha of OP-3, Mr. Nitin Sharma of OP-3 forwarded OP-3's proposed prices in the State of Karnataka to Mr. Anil Bahl of OP-4. Upon receipt of the same, Mr. Anil Bahl asked his subordinates at OP-4 to plan OP-4's price increase in line with the file received from OP-3. These e-mails show that OP-3 and OP-4 also exchanged and aligned their prices in the State of Karnataka in 2015.
48. In fact, when one analyses the revision in prices of highest selling SKU, *i.e.*, strong Beer 650ml bottle – KFS of OP-1, H5K of OP-3/AB InBev and TBS of OP-4, in the State of Karnataka over the period 2009-2018, as tabulated and graphically demonstrated at point (viii) above, it is noted that the dates of price revisions by all OP-1, OP-3 and OP-4, were very close to each other with a few instances in which all three OPs increased their prices within 1-2 days of each other. The first instance of identical price revisions by OP-1 and OP-3 had been in February, 2011 when OP-1 fixed MRP of its KFS 650ml to ₹78 on 04.02.2011 with OP-3 also raising MRPs of its H5K 650ml to ₹78 on 16.02.2011. This identical pricing by OP-1 and OP-3 was pursuant to communication of proposed price hike by OP-3 on 25.01.2011 to OP-1. Further, after OP-1 raised MRP of its KFS on 29.12.2011 from ₹78 to ₹80, OP-3 also revised its prices on 23.01.2012 to the same level. Subsequently, on 01.04.2012, OP-3 raised its price to ₹85, with OP-1 increasing its price to identical figure on the very next day, *i.e.*, 02.04.2012, and OP-4 following suit on 08.04.2012. This price hike by all the OPs was also pursuant to communication of OP-1's prices to OP-3 on 22.12.2011. Thereafter, all the three OPs staggered their price raise to ₹90 over the period of November 2012 to March 2013, with OP-4 raising it further to ₹95 in April 2013. Then, after a gap of around a year, OP-1 further raised its prices on 28.02.2014 to ₹100, and OP-3 and OP-4 also revised their prices to identical figure on 04.03.2014 and 07.03.2014, respectively. After keeping the prices stable for



over nine months, OP-1 again took the lead in revising its price to ₹105 on 24.01.2015, and thereafter both OP-3 and OP-4 also increased their prices to ₹105 on 12.02.2015. In the next year, OP-1 again took the lead in raising its price to ₹120 on 31.03.2016, with OP-3 following suit on 01.04.2016 and OP-4 on 02.04.2016. The prices were further raised to ₹125 in 2017, with OP-4 increasing its price on 19.04.2017 and OP-1 also raising its price to the identical figure in the same year, though the specific date of the said revision has not been furnished. Subsequently, on 20.04.2018, the price of OP-1's KFS was raised further to ₹130 and on 22.06.2018, OP-4 also increased its price of TBS to ₹130, indicating coordination.

49. Though OP-1 has argued that an increase in MRP is not solely the function of the price revisions sought by the OPs but is mainly influenced by an increase in taxes/levies/excise duties imposed by the State Corporation and the DG ought to have approached the Karnataka State Beverages Corporation Limited to understand the reasons behind approving similar price increases, in the view of the Commission, there is evidence on record showing that identical MRP increase by OP-1 and OP-3, particularly in 2011, was a result of their co-ordination in seeking similar price increase from the State Corporation. Further, OP-4 has also admitted to have co-ordinated with OP-1 and OP-3 in 2015 and 2017 regarding its MRP increases. As such, such submission made by OP-1 seems to have no merit.
50. OP-4 has argued that it did not form part of co-ordination in the State of Karnataka before 2015 and the DG has wrongly concluded its price parallelism since 2012 onwards. However, in the view of the Commission, the price parallelism graph at point (viii) above clearly shows that the MRP of OP-4 also moved in tandem with MRPs of OP-1 and OP-3 since 2012 onwards. OP-4 raising the MRP of its TBS to ₹85 on 08.04.2012, within a week of OP-3 increasing the MRP of its KFS to ₹85 on 01.04.2012 and OP-1 increasing the MRP of its H5K to ₹85 on 02.04.2012, cannot be a mere co-incidence.
51. Thus, in light of regular communications amongst the OPs as extracted above, just prior to price revisions, such pricing behaviour on part of the OPs cannot be termed as '*following the leader*' reaction. Moreover, as the prices were decided/approved by the State regulator, it is not possible for a competitor to raise its prices in similar lines within



two days of revision by another, unless it had sought similar price increase from the State Authority in advance which was approved. Therefore, from the afore-extracted e-mail communications and the price revision evidence exhibiting strong price parallelism in the Beer market in the State of Karnataka, cartelisation amongst OP-1, OP-3 and OP-4 in the State of Karnataka in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act is clearly evidenced from 2011 to 2018 with OP-4 joining in from 2012 onwards.

52. Though the parties have argued that they were forced to indulge into such co-ordination because of the policies of the Karnataka State Corporation, it is noted that the policy of the government explained is simply that the beer manufacturers could ask for price rise from the government only three times a year. The Commission is of the view that such policy cannot be taken as an excuse for entering into price co-ordination by the parties.
53. Besides the above, the DG has also relied upon the following evidences to give a finding of co-ordination amongst OP-1 and OP-3 with respect to supply of Beer to premium institutions in the city of Bengaluru:
- (i) E-mail communications dated 30.10.2010 exchanged between Mr. Nirmal Rajani of OP-1 and Mr. S. Diwakaran of OP-3, which were recovered during search and seizure operation from the premises of OP-1:

E-mail 1

From: Nirmal Rajani [mailto:nrajani@ubmail.com]
Sent: Tuesday, March 30, 2010 3:41 PM
To: Diwakaran S,BANGALORE,CUSTOMER DEVELOPMENT
Cc: Chandrika Kalia; Vivek Agnihotri; Kiran Kumar
Subject: FW: minutes of the meeting between SAB on Premium Institutions

Dear Diwakaran,

It was a pleasure to meet you.
As discussed, please find below the extracts of our discussions.
I need to have your consent so that I can disseminate this to my team. I Look forward to hear from you.



Objective(s):-

Ensure minimal market share of Carlsberg , Tuborg and Budweiser in Bangalore 'Premium Institutions'.
Rationalize spends.

Areas of engagement:-

-

UB and SAB will share the commitments (cash and kind) equally. (this was proposed by UB but not accepted by SAB)
No market share commitment to be agreed.
UB and SAB will have equal opportunities to promote and activate the account. Marketing calendar to be prepared by respective teams.
Branding opportunities to be shared equally.
Draught beer opportunities be shared equally. Outlet to decide if provision for only one machine is available.
Outlets currently under agreement will not be approached.
No discounts on product to be offered by either whatsoever.
Above terms will apply to outlets which are 1 year or above in operations.
Outlets under no agreement with either will continue to be serviced under current / regular norms viz; relationship, promotions, activations etc.

As there has not been an agreement on first point of revenue sharing, none of the above will be in operation till such time an agreement is arrived at.

Above agreement terms do not apply to National Accounts OR Accounts which have presence in more than one city.

Way forward:-

Outlets that need to be approached under agreed terms are-

13 th Floor	Proposed by SAB, UB to evaluate.
Zero G	Proposed by SAB, UB to evaluate.
Zeus	Proposed by SAB, UB to evaluate.
E Zone	Proposed by UB, SAB to evaluate.
Urban Edge	Proposed by UB, SAB to evaluate.

Outlets where SAB and UB need to rationalize their spends and still do not allow Competition to enter:

FUGA	currently with SAB
Hint	currently with SAB
Indi and Bull and Bush	Currently with UB
Club Nero	Currently with UB
Unwind IVY	Currently with UB

Regards,

Nirmal Rajani
GM-Sales, South India
Level-15, Canberra Towers,
UB City
24, Vittal Mallya Road,
Bangalore – 560001



E-mail 2

From: Diwakaran S,BANGALORE,CUSTOMER DEVELOPMENT
<Diwakaran.S@in.sabmiller.com>
Sent: Tuesday, March 30, 2010 7:36 PM
To: Nirmal Rajani
Cc: Chandrika Kalia; Vivek Agnihotri; Kiran Kumar; T.J.
Venkateshwaran,BANGALORE,CUSTOMER DEVELOPMENT
Subject: RE: minutes of the meeting between SAB on Premium Institutions

Thanks Nirmal, Chandrika and Vivek.

It was a pleasure meeting you all

On the sidelines of other discussions I have spoken with Kiran and TJ on the matter. We have agreed to meet and resolve this as well, particularly on the sharing of cost and benefits. I will keep in touch with you

In the meantime, there is no mention of our discussion and way forward regarding accounts like INDI, IVY, Miller s 46 etc. It would be appropriate to do so.

Hope to close this by this week end.

Cheers
Diwa

54. Premium institutions (bulk buyers) being a significant platform for Beer manufacturers to promote their products, the Beer companies offer marketing support in the form of financial incentives to premium institutions for special offers/events around their brands. From the above extracted e-mails, it is observed that Mr. Kiran Kumar, Mr. Nirmal Rajani, Mr. Vivek Agnihotri and Ms. Chandrika Kalia of OP-1 had a meeting with Mr. S. Diwakaran of OP-3 in March 2010 wherein they decided to optimise their spend and have equal opportunities to promote their brands in Bengaluru's 'Premium Institutions', while ensuring minimal market share of OP-4's Tuborg and Budweiser (earlier a product sold by OP-2). The two OPs decided not to offer any discount on their products sold to premium institutions. Though in the said meeting they not could agree upon their individual market share, they agreed to meet again and resolve the issue, particularly on the sharing of cost and benefits.
55. In fact, in his statement on oath recorded before the DG, Mr. Shalabh Seth of OP-3 admitted that "...Other than pricing, there were discussions on patent bottle pricing, discounts in a few States, and Institutional Sales (where I was not privy to discussions). ...".
56. As such, on analyses of the aforesaid evidences, the Commission finds that OP-1 and OP-3 had in 2010 'agreed' to co-ordinate in respect of supplies to premium



institutions/bulk buyers in the city of Bengaluru in the State of Karnataka and share costs and benefits, to keep competition out. Though OP-1 has argued that such discussions were never implemented by OP-1, and as such, no AAEC in India has been caused, the Commission is of the considered view that any 'agreement' which is even likely to cause AAEC in India, also amounts to contravention of the provisions of Section 3(3) of the Act. A bare reading of the provisions of Section 3 (1) of the Act shows that these provisions not only proscribe the agreements which cause AAEC within India, but the same also forbid agreements which are likely to cause AAEC. Thus, in the view of the Commission, OP-1 and OP-3 agreeing to co-ordinate in respect of supplies to premium institutions/ bulk buyers in the city of Bengaluru in the State of Karnataka was likely to stifle competition amongst them and was likely to cause AAEC in the market. Implementation of such anti-competitive agreement is not a *sine qua non* for establishing contravention. Thus, such 'agreement' between OP-1 and OP-3 is found by the Commission to be in contravention of the provisions of Section 3(3)(c) read with Section 3(1) of the Act.

Maharashtra

57. In regard to the State of Maharashtra having Free Market model, the DG has relied upon the following evidences to give a finding of price co-ordination amongst the OPs:

- (i) E-mails exchanged in September 2011 between Mr. Kiran Kumar of OP-1 and Mr. Anil Arya of OP-3, which were recovered during search and seizure operation from the premises of OP-1:

E-mail 1

From: Kiran Kumar [mailto:kiran@ubmail.com]
Sent: Wednesday, September 07, 2011 5:35 PM
To: anilarya8@gmail.com
Subject: Book1.xls



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	UB				SAB				SAB
	Current System	Empty Bottle Deposit Extra			Current System	Empty Bottle Deposit Extra			SAB Proposal MRP @ Rs. 85/-
		Current MRP	MRP @ Rs. 90/-	MRP @ Rs. 85/-		Current MRP	MRP @ Rs. 90/-	MRP @ Rs. 85/-	
Company Realisation	355.24	355.24	336.56	317.88	364.50	364.50	345.21	325.92	325.92
Octroi	45.45	45.45	42.99	40.53	48.84	48.84	46.27	43.70	43.70
Other Expenses	10.20	10.20	10.20	10.20					
Net Realisation	299.59	299.59	283.37	267.15	315.66	315.66	298.94	282.23	282.23
Discount	40.00	40.00	40.00	40.00	71.00	71.00	71.00	71.00	71.00
Cost Of Production	145.00	105.00	105.00	105.00	134.25	77.09	77.09	77.09	70.09
Net Contribution	114.59	154.59	138.37	122.15	110.41	167.58	150.86	134.14	141.14
Increase		40.00	23.78	7.55		57.17	40.45	23.73	30.73
Gap UB/SAB						17.17	16.67	16.18	

E-mail 2

From: Anil Arya,BANGALORE,FINANCE <Anil.Arya@in.sabmiller.com>
Sent: Monday, September 12, 2011 6:08 PM
To: Kiran Kumar Gurpur
Subject: RE: Book1.xls
Attachments: UB.xls

Hi Kiran,

I have reconciled the price card with the one sent by you. I need to spend sometime with the finance guy who has made the same . If you can give me some time, that will be excellent...

Regards,

Anil Arya

- (ii) Statements of Mr. Kiran Kumar of OP-1 regarding the aforesaid e-mails exchanged by him, on two separate occasions:

“... the above emails were communicated between Anil Arya of SABMiller and myself I had sent an excel sheet containing basic price, bottle deposit, distributor’s margin and our indicative cost of production ... The purpose of the communication was to give joint representation to Maharashtra Government regarding a returnable bottle deposit system like prevalent in the soft drink industry.”

“This was a project undertaken between SAB Miller and UBL to attempt to convince the Maharashtra Government to introduce a deposit based returnable bottle system so that the consumers would benefit fully from the full cost of the returnable bottle. Representations to the Excise department as well as the VAT department were rejected by the then Commissioners, and the project was dropped.”



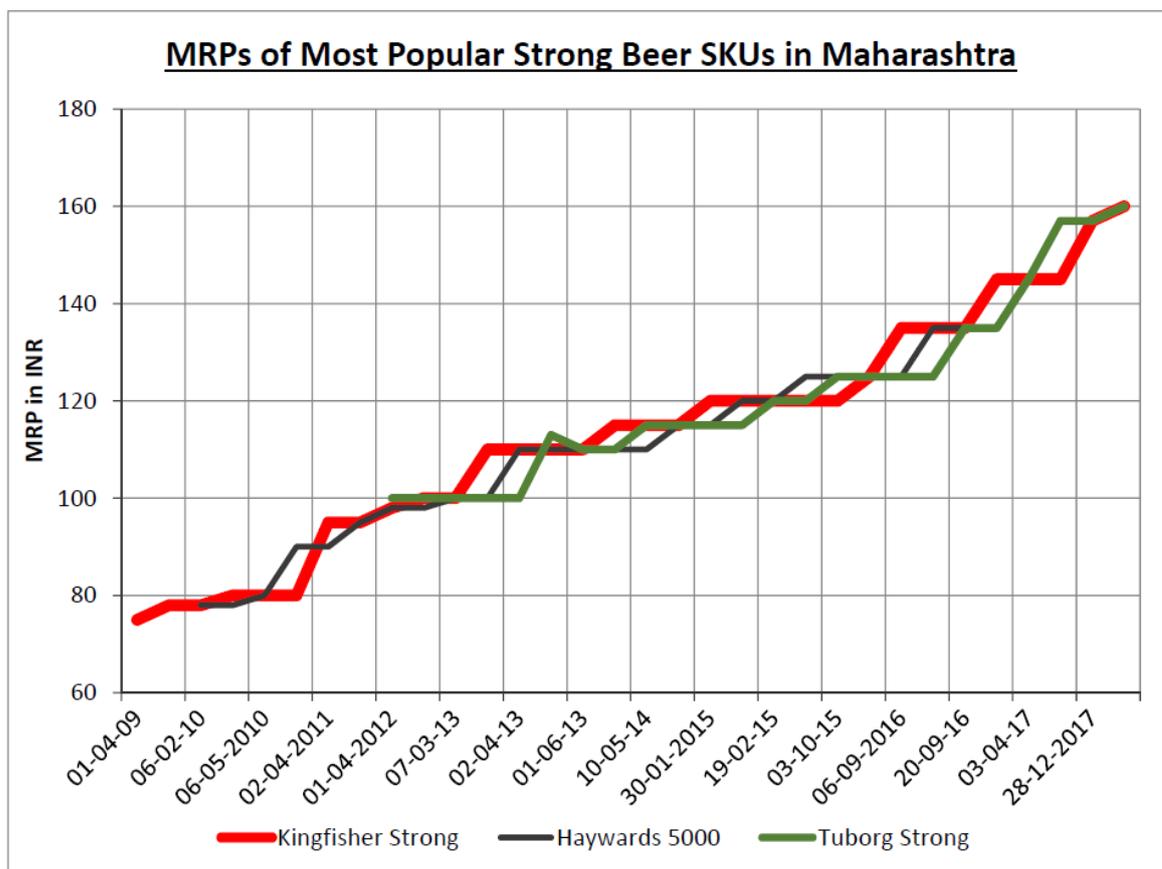
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(iii) Comparison of MRPs of highest selling SKU, *i.e.*, strong Beer 650ml bottle – KFS of OP-1, H5K of OP-3/AB InBev and TBS of OP-4, in the State of Maharashtra over the period 2009–2018, as culled out from the replies of the parties submitted before the DG, tabulated and graphically demonstrated by the DG:

(in INR)

Date	Kingfisher Strong 650 ml	Haywards 5000 650 ml	Tuborg Strong 650 ml
	MRP	MRP	MRP
01-04-2009	75		
02-07-2009	78		
06-02-2010		78	
25-03-2010	80		
06-05-2010		80	
14-03-2011		90	
02-04-2011	95		
13-04-2011		95	
01-04-2012	98	98	100
26-02-2013	100		
07-03-2013		100	
01-04-2013	110		
02-04-2013		110	
04-04-2013			113
01-06-2013			110
29-04-2014	115		
10-05-2014			115
14-05-2014		115	
30-01-2015	120		
12-02-2015		120	
19-02-2015			120
01-10-2015		125	
03-10-2015			125
06-10-2015	125		
06-09-2016	135		
17-09-2016		135	
20-09-2016			135
01-04-2017	145	N.A.	
03-04-2017		N.A.	145
26-12-2017		N.A.	157
28-12-2017	157	N.A.	
05-04-2018	160	N.A.	160



58. The Commission notes from the e-mails extracted at point (i) above that OP-1 and OP-3 had exchanged their price cards to be submitted to the Maharashtra Government for getting a co-ordinated price increase in the years 2011. Mr. Kiran Kumar of OP-1 and Mr. Anil Arya of OP-3 had exchanged their respective companies' break-up of cost of production for different MRP levels. The attachment to the e-mail sent by Mr. Kiran Kumar also indicates that OP-1 and OP-3 co-ordinated for the difference between the increased contribution at different price levels. Though Mr. Kiran Kumar, in his statement extracted at point (ii) above, admitted to having shared an excel sheet containing basic price, bottle deposit, distributor's margin and indicative cost of production, he tried to link the said exchange of information to the issue of deposit-based returnable bottles. In the view of the Commission, this does not seem to be a plausible explanation for exchange of basic prices, distributor's margin and indicative cost of production. Further, even though it has been asserted by Mr. Kiran Kumar that the said proposal/project was dropped, the Commission is of the view that the very fact of exchange of commercially sensitive information between two competitors is anti-



competitive in nature as the same is likely to stifle competition amongst players and likely to cause AAEC in the market.

59. Further, when one analyses the revision in prices of highest selling SKU, *i.e.*, strong Beer 650ml bottle – KFS of OP-1, H5K of OP-3/AB InBev and TBS of OP-4 in the State of Maharashtra over the period 2009–18, as tabulated above and graphically demonstrated at point (iii), it can be seen that before the year 2011, the price revisions were made by OP-1 and OP-3 on different dates. However, since 2011, the dates of price revisions by OP-1 and OP-3 show uncanny closeness. Further, from April 2014 onwards, OP-4 also joined OP-1 and OP-3 in making price revisions around the same time. On 02.04.2011, OP-1 raised the price of its KFS from ₹80/- to ₹95/-; OP-3 followed it with identical price revision of its H5K brand on 13.04.2011. Then in the next year, both OP-1 and OP-3 increased the prices of their respective brands to ₹98/- on the same date on 01.04.2012. Indifferent to the two, OP-4's price of its TBS brand was ₹100/- in 2012. Subsequently, on 26.02.2013, the MRP of KFS was increased to ₹100/- while it was raised to the identical level for H5K on 07.03.2013. Thereafter, after a gap of only a month, OP-1 hiked the MRP of KFS to ₹110/- on 01.04.2013, with OP-4 following it the very next day. However, OP-4 raised the price of its TBS brand to ₹113/- on 04.04.2013 which it brought down to ₹110/- on 01.06.2013. OP-1 took the lead to increase its price further to ₹115/- on 29.04.2014, and OP-4 and OP-3 followed it with similar pricing on 10.05.2014 and 14.05.2014 respectively. The next year again, OP-1 was the first to further increase its price to ₹120/- on 30.01.2015, and it was followed by OP-3 and OP-4 on 12.02.2015 and 19.02.2015 respectively. However, within 8 months, OP-3 took the initiative to go up to ₹125/- on 01.10.2015, and OP-4 and OP-1 then adopted the same pricing on 03.10.2015 and 06.10.2015 respectively. Similar pattern has been also seen in the years 2016 and 2017 also, with OP-1 and OP-4 revising their prices to ₹160/- on the same date, *i.e.*, 05.04.2018. However, the MRP data for H5K 2017 onwards for the State of Maharashtra is not available.
60. Thus, as can be seen from the line graph at point (iii) above, 2014 onwards, the price-line of KFS, H5K and TBS in the State of Maharashtra moved parallelly. It is therefore, apparent that OP-1, OP-3 and OP-4 took advantage of the State Excise Policy to allow free pricing of Beer in the State of Maharashtra with the only requirement of obtaining



Government approval of the manufacturer-determined prices, to fix identical prices of their top-selling SKUs.

61. In fact, OP-4 submitted before the DG that:

“... CIPL only got involved in pricing discussions after it became a reasonable meaningful player in Maharashtra, which was around 2012. CIPL was keen to know the position that its competitors (particularly UB; UB mainly coordinated with SAB) would be likely to adopt on price increases. Whilst CIPL wanted to take an aggressive pricing position in Maharashtra, it did not wish to risk taking a unilateral stand on price increase, which could have had negative impact on volumes and revenues and its competitors would have gained at CIPL’s expense. Therefore, in the usual course, the respective national sales head of CIPL (Mr. Anil Bahl) and UB (Mr. Kiran Kumar Kumar) discussed the proposed price increases before the beginning of ‘season’ (i.e., the summer months, when Beer consumption is higher), typically in January or February. The common understanding was that a price increase of INR 5 per bottle (excluding taxes) almost every year would be sought ... The meetings and discussions were to seek a confirmation on such price increase from the competitors, primarily, UB... there were discussions among Mr. Anil Bahl, Mr. Kiran Kumar, Mr. Shalabh Seth and later with Mr. Nilojit Guha (who replaced Mr. Shalabh Seth at SAB) from 2012 till about 2017 ...”

62. In its objections/suggestions to the DG Report also, OP-4 did not dispute to having co-ordinated for price increase with OP-1 and OP-3 in the State of Maharashtra since 2012 onwards. It submitted that it had given many more evidences to the DG with respect to price co-ordination in the State of Maharashtra, which the DG does not seem to have relied upon.

63. Mr. Kiran Kumar and Mr. Shekhar Ramamurthy of OP-1, in their statements recorded before the DG, also admitted to having discussions with competitors before filing for price revision notices with the State Authority in Maharashtra.

64. OP-1 submitted in its objections/suggestions to the DG Report that discussions with competitors by sharing price cards containing information relating to basic price, bottle deposit, distributor’s margin and indicative cost of production were only in order to incentivise consumers to purchase Beer in light of the difficulty faced by the Beer industry due to policies of the State. With respect to this, the Commission notes that the explanation offered by OP-1 is thoroughly misconceived and illogical. The policy of the



government seems to be to not re-imburse the returnable bottle deposit system. However, to get the same from the government, the parties could not have illegally resorted to sharing such commercially sensitive data with each other to allegedly approach the government together. As such, it is not clear as to how is the policy of the government responsible for the co-ordinated behaviour of the parties, much less any incentive for consumer welfare, as pleaded.

65. Therefore, from the aforesaid evidences and admissions, price discussions and price co-ordination amongst OP-1, OP-3 and OP-4 in the State of Maharashtra from at least 2011 to 2018 (OP-4 joining in in 2012) is seen, which the Commission finds to be in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act as the same were likely to cause an AAEC in the market.
66. Besides evidence regarding price co-ordination amongst OP-1, OP-3 and OP-4 in the State of Maharashtra, the DG has also collected evidence that in the State of Maharashtra, at least on one occasion in 2017, OP-1 and OP-4 even collectively decided amongst themselves the strategy to oppose Government policy regarding hike in Excise duty by deciding to stop production and supply of Beer in the State.
67. In this regard, the internal e-mails dated 17.01.2018 exchanged between Mr. Mahesh Kanchan, Mr. Nilesh Patel and Mr. Anil Bahl of OP-4, which were submitted by OP-4 before the DG, may be referred to:

E-mail 1

On 17-Jan-2018, at 6:21 PM, Mahesh Kanchan <Mahesh.Kanchan@carlsberg.asia> wrote:

Hi Nilesh,

As discussed pls find a table below that that the Maharashtra state industry volumes over the last 4 years and the Q2 MRP of mainstream strong beer like TBS or KFS. The industry has been flattish due to price increases of Rs 10 happening every year.

Maharashtra	2014	2015	2016	2017
Industry Volume (KHL)	2906	2993	2892	2517
MRP KFS/TBS (650)	115	125	135	145

Regards,
Mahesh



E-mail 2

On 17-Jan-2018, at 7:44 PM, Nilesh Patel <Nilesh.Patel@carlsberg.asia> wrote:

Mahesh

One conclusion that can be drawn from this is that Rs 10/- increase has not had much impact on volume and 2017 was primarily driven by conscious decision by UB and CIPL to starve the market post Excise hike. So there should be a good case to say volume could get back to 2015/16 level in 2018 once supply returns.

This means that we had 824 KHL in Oct bottom up submission but we are reducing this by 77KHL in the numbers Naveen is working on.

We should then go back to 824 KHL minus whatever is lost through capacity issue

Nilesh

E-mail 3

On 17-Jan-2018, at 8:02 PM, Anil Bahl <anil.bahl@carlsberg.asia> wrote:

Nilesh

Two things have changed in the data given which will impact industry adversely .

1) Number of outlets have reduced . In Q1 2017, we had 13k outlets vs 13k currently . In Q2 onwards , outlets were 11k till Q3 and in q4 it increased to 13k which is what we have currently. So if you see quarter wise growths for 2018, there will be a decline in q1 and a big jump in Q4 where the base was low.

2) The difference between IMFL and beer is now much higher than what it was in the past .

In summary, 750khl , is itself a stretched number . Taking a number of 824khl will be putting ourselves to a big risk given the high profitability of the state . We need to have some cushion to help us mitigate risks .

Thanks

Anil

Sent from my iPhone

E-mail 4

To: Nilesh Patel(Nilesh.Patel@carlsberg.asia)
Cc: Mahesh Kanhan(Mahesh.Kanhan@carlsberg.asia); Naveen Begwani(Naveen.Begwani@carlsberg.asia)
From: anil.bahl@carlsberg.asia
Sent: Wed 17/01/2018 2:36:31 PM
Subject: Re: Maharashtra Industry volumes and Mainstream Strong Beer Pricing

Slight correction .Point 1) was known when we presented our bottom up budget.
So the big difference is the IMFL and beer pricing gap which Mahesh has alluded .
Anil

Sent from my iPhone

68. The Commission notes that, *vide* the first e-mail extracted above, Mr. Mahesh Kanhan sent the industry sales volume of strong Beer in Maharashtra during for the preceding four years to Mr. Nilesh Patel. From the table in his message, it is observed that the MRP



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of strong Beer SKU has been increasing by ₹10/- every year in Maharashtra, and has risen from ₹115/- in 2014 to ₹145/- in 2017. In his reply to such e-mail, i.e., e-mail 2, Mr. Nilesh Patel commented that the yearly price increase did not have much impact of the sales volume. However, the fall in sales volume in 2017 was “*primarily driven by conscious decision by UB and CIPL to starve the market ...*”

69. In regard to the aforesaid e-mails, OP-4 submitted before the DG that “*the conduct of UB and CIPL in respect of limiting supply has to be viewed in the context of the arbitrary decision of the State Excise Authority to revise the Excise policy overnight. This would have resulted in the price of Beer increasing from INR 145 to INR 190 (approximately) ... In response to this increase in the Excise duty and until the time the Government decided to implement the necessary change, the Beer companies (CIPL and UB) decided to short-supply certain major SKUs in the market. The rationale for collectively deciding to short-supply was to put pressure on the State Government to fix the Excise tax calculation. CIPL limited its production in Maharashtra on 24 October, 2017 ...*”
70. Though OP-1 has contended that the above e-mails are internal e-mails of OP-4 and the DG has not collected any evidence to show that OP-1 was privy to this information exchange or OP-1’s involvement in this communication, it has, in its objections/suggestions to the DG Report, acknowledged that it did disrupt the supply of Beer in Maharashtra for a while in 2017 as a protest against the arbitrary increase in Excise Duty by the State government.
71. Thus, in the view of the Commission, post hike in Excise duty in the State of Maharashtra in 2017, it seems that OP-1 and OP-4 had decided to lower their production in the State to create an artificial scarcity of Beer to put pressure on the Excise Authorities to lower the Excise duty on Beer in the State. Such decision seems to have been taken collectively by OP-1 and OP-4. This is evident from a holistic reading to the communications exchanged between their officials. Such agreement between OP-1 and OP-4 in 2017 to limit the supply of Beer in the State of Maharashtra, is presumed to have an AAEC in the market, which the OPs have been unable to rebut in terms of the factors stated under Section 19(3) of the Act. Hence, such conduct of OP-1 and OP-4, is found



by the Commission to be in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act.

72. In addition to the above, the DG has also found the following evidences with respect to OP-1, OP-3 and OP-4 sharing their periodical sales and sales data with each other, for the State of Maharashtra:

- (i) E-mail dated 22.12.2013 sent by Mr. Ganesh Shivaji Kedar of OP-1 to Mr. Babasaheb Ramnath Dome of OP-4, which was submitted by OP-1 before the DG:

From: Ganesh Shivaji Kedar <gskedar@ubmail.com>
Sent: Sunday, December 22, 2013 3:48 PM
To: Dome@carlsberg.in
Subject: Emailing: Revenue Details 2013-2014
Attachments: Revenue Details 2013-2014.xlsx

Your message is ready to be sent with the following file or link attachments:

Revenue Details 2013-2014

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

M/S UNITED BREWERIES LIMITED

Unit: MBIL. L 10, MIDC AREA WALUJ, DIST. AURANGABAD

Revenue Opening Balance on 1/04/2013 is Rs. 522264364.82

Details of Revenue Deposited Against Target

Month	Revenue Deposited & Target for Apr'2013 to March'2014.			
	Deposited	Target	Diff	%
April-13	181633	319100000	-318918367	-99.9%
May-13	381187736	367000000	14187736	3.9%
June-13	380219689	291300000	88919689	30.5%
July-13	271901476	207700000	64201476	30.9%
August-13	274298324	202900000	71398324	35.2%
September-13	401993734	294400000	107593734	36.5%
October-13	450023800	290600000	159423800	54.9%
November-13	540787989	309200000	231587989	74.9%
December-13		358500000	-358500000	-100.0%
January-14		300900000	-300900000	-100.0%
February-14		336700000	-336700000	-100.0%
March-14		353200000	-353200000	-100.0%
Total :	2700594381	3631500000	-930905619	-25.63%
Crores :	270.06	363.15	-93.09	

Month	Revenue Deposited in November'13 v/s Target			
	Deposited	Target	Diff	%
November-13	540787989	309200000	231587989	74.9%
Crores	54.08	30.92	23.16	

Month	Total Revenue Deposited & Target for Apr'2013 to 30 Nov'2013.			
	Deposited	Target	Diff	%
Apr'13 to Nov'13	2700594381	2282200000	418394381	18.33%
Crores	270.06	228.22	41.84	

**M/S UNITED BREWERIES LIMITED**

Unit: Millenium L 10 & UB-Ajanta H8 TO H-11, MIDC AREA WALUJ, DIST. AURANGABAD

Revenue Chart

Unit Name	Total Revenue Deposited & Target for Apr'2013 to Nov'2013.			
	Target	Deposited	Diff	%
UBL- L-10 (Millenium)	2282200000	2700594381	418394381	18.33%
UBL- H-8 (Ajanta)	1670300000	415314773	-1254985227	-75.14%
Total :	3952500000	3115909154	-836590846	-56.80%

Unit Name	Total Revenue Deposited & Target for Apr'2013 to Mar'2014.			
	Target	Deposited	Diff	%
UBL- L-10 (Millenium)	3631500000	2700594381	-930905619	-25.63%
UBL- H-8 (Ajanta)	2673900000	415314773	-2258585227	-84.47%
Total :	6305400000	3115909154	-3189490846	-110.10%

Millenium Beer Ind. (UBL-L-10)				
Revenue Opening Balance on 1/04/2013 is Rs. 522264364/-				
Details of Revenue Deposited Against Target				
Month	Revenue Target & Deposited for Apr'2013 to March'2014.			
	Target	Deposited	Diff	%
April-13	319100000	181633	-318918367	-99.94%
May-13	367000000	381187736	14187736	3.87%
June-13	291300000	380219689	88919689	30.53%
July-13	207700000	271901476	64201476	30.91%
August-13	202900000	274298324	71398324	35.19%
September-13	294400000	401993734	107593734	36.55%
October-13	290600000	450023800	159423800	54.86%
November-13	309200000	540787989	231587989	74.90%
December-13	358500000		-358500000	0.00%
January-14	300900000		-300900000	0.00%
February-14	336700000		-336700000	0.00%
March-14	353200000		-353200000	0.00%
Total :	3631500000	2700594381	-930905619	-25.63%
Crores :	363.15	270.06	-93.09	

UB-Ajanta (UBL- H-8)				
Revenue Opening Balance on 1/04/2013 is Rs. 289490153/-				
Details of Revenue Deposited Against Target				
Month	Revenue Target & Deposited for Apr'2013 to March'2014.			
	Target	Deposited	Diff	%
April-13	281900000	100869	-281799131	-99.96%
May-13	236700000	148283413	-88416587	-37.35%
June-13	237400000	198225011	-39174989	-16.50%
July-13	152300000	16559234	-135740766	-89.13%
August-13	152300000	16501067	-135798933	-89.17%
September-13	195400000	30439628	-164960372	-84.42%
October-13	217000000	5192861	-211807139	-97.61%
November-13	197300000	12690	-197287310	-99.99%
December-13	269900000		-269900000	0.00%
January-14	247600000		-247600000	0.00%
February-14	237200000		-237200000	0.00%
March-14	248900000		-248900000	0.00%
Total :	2673900000	415314773	-2258585227	-84.47%
Crores :	267.39	41.53	-225.86	

Month	Total Revenue Deposited & Target for Apr'2013 to 30 Nov'2013.			
	Target	Deposited	Diff	%
Apr'13 to Nov'13	2282200000	2700594381	418394381	18.33%
Crores	228.22	270.06	41.84	

Month	Total Revenue Deposited & Target for Apr'2013 to 30 Nov'2013.			
	Target	Deposited	Diff	%
Apr'13 to Nov'13	1670300000	415314773	-1254985227	-75.14%
Crores	167.03	41.53	-125.50	

(ii) E-mail dated 16.10.2014 sent by Mr. Ganesh Shivaji Kedar of OP-1 to Mr. Abhijit R. Mahagaonkar of OP-4, which was submitted by OP-1 before the DG:

From: Ganesh Shivaji Kedar <gskedar@ubmail.com>
Sent: Thursday, October 16, 2014 4:52 PM
To: abhijit.r.mahagaonkar@carlsberg.asia
Subject: Emailing: REVENUE CHART-2014.xls
Attachments: REVENUE CHART-2014.xls

Your message is ready to be sent with the following file or link attachments:

REVENUE CHART-2014.xls

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



M/S UNITED BREWERIES LIMITED

Unit: Millenium L 10 & UB-Ajanta H8 TO H-11, MIDC AREA WALUJ, DIST. AURANGABAD

Revenue Chart

Unit Name	Total Revenue Deposited & Target for Apr'2014 to March'2015.			
	Target	Deposited	Diff	%
UBL- L-10 (Millenium)	6096500000	2837342508	-3259157492	-53.46%
UBL- H-8 (Ajanta)	1256000000	967476487	-288523513	-22.97%
Total :	7352500000	3804818995	-3547681005	-48.25%

Unit Name	Total Revenue Deposited & Target for Apr'2014 to Sep'2014.			
	Target	Deposited	Diff	%
UBL- L-10 (Millenium)	2085800000	2837342508	751542508	36.03%
UBL- H-8 (Ajanta)	5011000000	967476487	466376487	93.07%
Total :	2586900000	3804818995	1217918995	47.08%

Millenium Beer Ind. (UBL-L-10)				
Revenue Opening Balance on 1/04/2014 is Rs. 319910379/-				
Details of Revenue Deposited Against Target				
Month	Revenue Target & Deposited for Apr'2014 to March'2015.			
	Target	Deposited	Diff	%
April-14	200000	345523076	345323076	172661.54%
May-14	465000000	755702175	290702175	62.52%
June-14	463900000	502899358	38999358	8.41%
July-14	331700000	235142925	-96557075	-29.11%
August-14	334600000	490547926	155947926	46.61%
September-14	490400000	507527048	17127048	3.49%
Total :-	2085800000	2837342508	751542508	36.03%
October-14	549000000		-549000000	-100.00%
November-14	659800000		-659800000	-100.00%
December-14	719800000		-719800000	-100.00%
January-15	491300000		-491300000	-100.00%
February-15	512700000		-512700000	-100.00%
March-15	1078100000		-1078100000	-100.00%
Total :	6096500000	2837342508	-3259157492	-53.46%

UB-Ajanta (UBL- H-8)				
Revenue Opening Balance on 1/04/2014 is Rs. 13707360/-				
Details of Revenue Deposited Against Target				
Month	Revenue Target & Deposited for Apr'2014 to March'2015.			
	Target	Deposited	Diff	%
April-14	1000000	236812131	235812131	23581.21%
May-14	180900000	245269859	64369859	35.58%
June-14	241800000	240366134	-1433866	-0.59%
July-14	202000000	6320826	-13879174	-68.71%
August-14	201000000	86045072	65945072	328.08%
September-14	371000000	152662465	115562465	311.49%
Total :-	5011000000	967476487	466376487	93.07%
October-14	6300000		-6300000	-100.00%
November-14	0		0	#DIV/0!
December-14	131700000		-131700000	-100.00%
January-15	92000000		-92000000	-100.00%
February-15	229100000		-229100000	-100.00%
March-15	295800000		-295800000	-100.00%
Total :	1256000000	967476487	-288523513	-22.97%

Month	Revenue Deposited in August'14 v/s Target			
	Target	Deposited	Diff	%
September-14	490400000	507527048	17127048	3.5%
Crores	49.04	50.75	1.71	

Month	Revenue Deposited in August'14 v/s Target			
	Target	Deposited	Diff	%
September-14	371000000	152662465	115562465	311.5%
Crores	3.71	15.27	11.56	

Month	Total Revenue Deposited & Target for Apr'2014 to March'2015.			
	Target	Deposited	Diff	%
Apr'14 to March'15	6096500000	2837342508	-3259157492	-53.46%
Crores	609.65	283.73	-325.92	

Month	Total Revenue Deposited & Target for Apr'2014 to March'2015.			
	Target	Deposited	Diff	%
Apr'14 to March'15	1256000000	967476487	-288523513	-22.97%
Crores	125.60	96.75	-28.85	

(iii) E-mail dated 11.08.2015 sent by Mr. Babasaheb Ramnath Dome of OP-4 to Mr. Mahesh M. Mundhe of OP-1, which was submitted by OP-1 before the DG:

From: Babasaheb Ramnath Dome <babasaheb.ramnath.dome@carlsberg.asia>
Sent: Tuesday, August 11, 2015 5:12 PM
To: mmmundhe@ubmail.com
Subject: Dispatch %
Attachments: Dispatch %.xlsx

M/s. Carlsberg India Pvt. Ltd.,
 Plot No. H-17/1/1, M.I.D.C. Waluj, Aurangabad - 431 136

Sub : Details of Issues in Bulk Liters

MONTH	2015-16							2014-15						
	WITHIN STATE		OUTSIDE STATE		OVERSEAS		TOTAL	WITHIN STATE		OUTSIDE STATE		OVERSEAS		TOTAL
	Bulk Ltrs	%	Bulk Ltrs	%	Bulk Ltrs	%		Bulk Ltrs	%	Bulk Ltrs	%	Bulk Ltrs	%	
APR	5,413,798	70	2,303,844	30	-	-	7,717,642	3,156,829	51	3,007,807	49	-	-	6,164,636
MAY	4,797,558	72	1,848,420	28	-	-	6,645,978	3,114,530	54	2,651,596	46	9,504	0	5,775,630
JUNE	3,094,257	69	1,394,065	31	9,504	0.2	4,497,826	2,635,273	59	1,848,651	41	18,485	0	4,502,410
JULY	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!	-	1,823,246	49	1,881,946	51	8,047	0	3,713,238
AUG	-		-		-		-							
SEPT	-		-		-		-							
OCT	-		-		-		-							
NOV	-		-		-		-							
DEC	-		-		-		-							
JAN	-		-		-		-							
FEB	-		-		-		-							
MAR	18,149,213		6,894,514		9,504		25,053,231							
TOTAL	31,454,825	71.63	12,440,843	28.33	19,008		43,914,676	10,729,878	53.23	9,389,999	46.59	36,036	0.18	20,155,914



- (iv) E-mail communications exchanged on 16.12.2017 between Mr. Mahesh M. Mundhe of OP-1, Ms. Nivrutti Ugale of OP-3 and Mr. Babasaheb Ramnath Dome of OP-4, which was submitted by OP-1 before the DG:

From: Mahesh M. Mundhe [mailto:mmmundhe@ubmail.com]
Sent: 16 December 2017 10:37
To: Nivrutti Ugale; Babasaheb Ramnath Dome
Subject: Plz fill below format

Stock Position of Beer (December'17)

Sr. No	Name of BRL	Total MH Stock in Manufactory (as on today in Cases)	Total Production of MH (December'17)	Total Dispatch of MH (December'17)	Total Stock at Distributors (as on today in cases)
1		0	0	0	0
2		0	0	0	0

1

From: Babasaheb Ramnath Dome <Babasaheb.Ramnath.Dome@carlsberg.asia>
Sent: Saturday, December 16, 2017 10:57 AM
To: Mahesh M. Mundhe; Nivrutti Ugale
Subject: RE: Plz fill below format
Attachments: Carlsberg 15.12.17.xlsx

PFA, the required information as of 15th Dec'17.

Stock Position of Beer (December'17)

Date : 15.12.2017

Sr. No.	Name of BRL	Total MH Stock in Manufactory	Total Production of MH	Total Dispatch of MH	Total Stock at Distributors
		(as on today in Cases)	(December'17)	(December'17)	(as on today in cases)
1	Carlsberg India Pvt. Ltd.	28801	43341	14540	5697



73. From the e-mail communications extracted above, it is noted that *vide* e-mail dated 22.12.2013, OP-1 shared the company's revenue details and targets in the State of Maharashtra for the year 2013–14 with OP-4. The said details provided month-wise break-up of the revenue earned by OP-1 from April 2013 till November 2013 as against the targeted figures. Similarly, *vide* e-mail dated 16.10.2014, OP-1 forwarded OP-1's revenue chart in the State of Maharashtra for the year 2014 to OP-4. The same showed OP-1's revenue earned *vis-à-vis* the targets fixed for the year 2014–15. Thereafter, *vide* another e-mail dated 11.08.2015, OP-4 also forwarded the company's stock dispatches in the State of Maharashtra to OP-1. Further, from the e-mail trail dated 16.12.2017, it is noted that on being asked by OP-1, OP-4 forwarded the company's stock position to OP-1 and OP-3. The details furnished by OP-4 provided the figures of total production, stock dispatches made and stock with distributors of the company.
74. From the afore-extracted e-mails, it is evident that OP-1, OP-3 and OP-4 were exchanging their actual Beer production, revenue details, targets, stock sold and stock held by the companies besides sharing details of their stocks lying with the distributors. The DG has concluded that the aforesaid e-mails indicate that OP-1, OP-3 and OP-4 were monitoring the actual stock movements of each other within the distribution channels so that the volume of Beer sold by individual companies is in conformity with the 'understanding/agreement' reached between them and they can keep a track of each other's market share. Such conduct of OP-1, OP-3 and OP-4 has been found by the DG to be in contravention of the provisions of Section 3(3)(c) read with 3(1) of the Act.
75. However, OP-1 has argued that such discussions were at the behest of the State Excise Department who required the OPs to submit data jointly, through WhatsApp groups that were administrated by officials from State Excise Departments. The State Government of Maharashtra itself had suggested that the OPs exchange information on WhatsApp groups, namely 'Export from Aurangabad', 'Daily Production Dispatch Report' and 'Dispatch in Maharashtra'. The administrators of such WhatsApp groups were either the Plant Excise Inspectors or representatives of the Excise Commissioner's Office. Thus, on such WhatsApp groups, supply and dispatch information was required to be shared and the State officials themselves mandated each brewery to compile and share commercially sensitive data with other breweries in a prescribed format on regular/periodical basis.



76. OP-4 has also argued that during 2013–14, the Office of the Superintendent of Excise, Aurangabad, had required all Beer companies to provide the above data, in a specific format. The format was also provided by the Excise Department. However, the Office of the Superintendent did not have any skilled staff members who could collect such data, and accordingly, the Superintendent had deputed a person from OP-1 with the task of collection of such data/information. As such, OP-1 would request all the Beer companies to provide their data to OP-1 in the format specified by the Excise Department. Once this data was collated by OP-1, it would be provided to the Excise Department. In certain instances, OP-1 would provide its data in the format provided by the Excise department, to aid OP-4 in submitting its data in the correct format.
77. With respect to the above arguments taken by OP-1 and OP-4, the Commission notes that there is no explanation put forth by either OP-1 or OP-4 for OP-1, OP-3 and OP-4 sharing their revenue and target details with each other, which was not only historical data, but also their prospective data. Further, it is also noted that though OP-1 has argued that it was tasked with the collection of stock and supply data and submitting the same to government, it was also sending its such data to the other OPs, for which there is no explanation.
78. Thus, in the view of the Commission, the only rationale behind sharing of such commercially sensitive data between OP-1, OP-3 and OP-4, is to help them keep track of each other's market share and distribution, which amounts to allocation of market between them. Under the provisions of Section 3 of the Act, since conduct of the OPs is presumed to cause an AAEC in the market, which the OPs have been unable to refute in terms of the factors stated under Section 19(3) of the Act, hence, amounting to contravention of the provisions of Section 3(3)(c) read with 3(1) of the Act by OP-1, OP-3 and OP-4.

Odisha

79. In respect of the State of Odisha having Corporation Market model, the DG has relied upon the following evidences, to give a finding of price co-ordination amongst the OPs:



- (i) E-mail communications dated 14–15.09.2009 exchanged between Mr. Kiran Kumar of OP-1 and Mr. Nilojit Guha of OP-3, which were recovered during search and seizure operation from the premises of OP-1:

E-mail 1

From: Nilojit Guha,MUMBAI,SALES [mailto:Nilojit.Guha@in.sabmiller.com]
Sent: 14 September 2009 17:22
To: Kiran Kumar
Subject: FW: Please review 'OFFER_Price_Letter (2)'

As discussed please find attached the content of our price increase letter to OSBC.

September 15, 2009

The Managing Director
 Orissa State Beverages Corporation Limited
 IDCO Tower, 9th Floor
 Bhubaneswar

Dear Sir,

Subject : Increase in the offer prices of our beer brands

We would like to bring to your kind attention the following:

1. In the last year, the Beer industry has faced a great deal of cost push, particularly in the cost of raw material like barley malt and sugar, as well as new and re-used bottles.
2. Our freight costs too have increased substantially in the last year.
3. We have also faced significant increases in labour costs, and other overhead expenses.
4. We have made substantial investments in brewing capacity in the state of Orissa. It would be pertinent to note that our brewery in Orissa is being used exclusively to cater to the demand of the State of Orissa, and we do not export Beer from our Brewery in Orissa to other states. We are now in the process of investing further to expand the production as well as storage capacity in order to fully meet the requirement of our popular brands of beer in the State of Orissa.

In order to enable us to recover the increased costs of production and operation, as well as provide for a reasonable return on investment, we would like to revise the offer price on our beer brands as detailed below:

Brand Name	Pack Size	Offer Price to OSBC (Rs per case)
Kingfisher Premium Lager Beer	650 ml Bottle	296.20
	330 ml Bottle	323.35
	500 ml Can	500.00
Kingfisher Strong Premium Beer	650 ml Bottle	313.30
	330 ml Bottle	331.90
	500 ml Can	508.10
Kalyani Black Label	650 ml Bottle	289.35

Brand Name	Pack Size	Offer Price to OSBC (Rs per case)
Kalyani Black Label Strong	650 ml Bottle	300.60
	500 ml Can	481.75



We request that OSBC may please favourably consider our request, and revise our Offer Prices with immediate effect.

Thanking you,

Yours Sincerely,
For **UNITED BREWERIES LIMITED**

Authorised Signatory

cc : Principal Secretary, Excise
cc : Principal Secretary, Finance
cc : Commissioner of Excise, Orissa

E-mail 2

From:	Kiran Kumal
To:	'Nilojit Guha.MUMBAI.SALES
Date:	15-09-2009 17:08:45
Subject:	RE: Please review 'OFFER_Price_Letter (2)'
Attachments:	OSBC.doc

Our letter.

I have taken the following price increases:

Mild Beer	Rs. 30/-
Strong Beer	Rs. 35/-
500 ml Cans	Rs. 68/-

If all okay, application shall be docketed tomorrow.

Regards,

(ii) Statement of Mr. Kiran Kumar of OP-1 regarding the e-mails dated 14-15.09.2009:

“We might have discussed the proposed prices for Orissa, and submitted the price revision requests accordingly. To the best of my knowledge, this was necessitated by the fact that we did not get any price increase for almost 2 years.”

(iii) Statement of Mr. Nilojit Guha of OP-3 regarding the e-mails dated 14–15.09.2009:

“Even though it appears that I have replied to the said email, I do not remember the context of the email, since it is an email from 2009.”



Subsequently, when confronted with other e-mails and WhatsApp communications made by him containing anti-competitive discussions with competitors, Mr. Nilojit Guha stated that:

“I do not deny having discussions with mainly Mr. Kiran Kumar on a few occasions on the pricing issues. I recollect having contacted, Mr. Kiran Kumar at times on pricing issues. For example, states like Delhi, Orissa, Maharashtra, Karnataka, West Bengal mainly. In these pricing discussions I played the role of a coordinator as per instruction of my superior (Mr. Shalabh Seth) ... Whatever discussion I had with Mr. Kiran Kumar was mainly with the intention that the industry gets the price increase to recover the rising cost of raw materials. I never knew that this comes under the purview of the Competition Commission of India...

...I now admit that at times I had coordinated with the competitor (mainly with Mr. Kiran Kumar of UB) for application of our price requests in certain States. This coordination role I had played mainly on the instructions of my superiors who would fix the price and advise me to go for the application for price revision in different States... These interactions with the competitors did not benefit me personally, and this has been done mainly with the intention to recover the increasing cost of production.”

- (iv) E-mails dated 04-08.03.2010 exchanged between Mr. Sourav R. of OP-1 and Mr. Kalyan Pattanaik and Mr. Nilojit Guha of OP-3 which were recovered during search and seizure from the premises of OP-1:

E-mail 1

From: Kalyan Pattanaik,MUMBAI,SALES
Sent: Thursday, March 04, 2010 11:53 AM
To: souravr@ubmail.com
Cc: kiran@ubmail.com; Nilojit Guha,MUMBAI,SALES
Subject: Orissa ECP as per New Duty structure

Hi Sourav,

As discussed, pl. find attached our proposed ECP for Orissa considering the new duty structure. Pl. let me know your views on this .

	H5 650ml	H5 330ml Can	H5 500ml Can	KO 650ml	KO 330ml Can	KO 500ml Can	RC 650ml
Present ECP	62	42	55	60	42	54	57
New ECP with Duty Hike	63	41	54	61	41	53	59
Proposed ECP	65	42	57	65	42	57	62

Regards,

*Kalyan Pattanaik
Regional Sales Head - ROC
Mob - 9920442803*



E-mail 2

From: Nilojit Guha, MUMBAI, SALES [mailto:Nilojit.Guha@in.sabmiller.com]
Sent: 08 March 2010 10:31
To: Kiran Kumar
Cc: T.J. Venkateshwaran, BANGALORE, CUSTOMER DEVELOPMENT
Subject: FW: Orissa price increase

Hi Kiran,

Please find below our proposal of new ECP in Orissa after we take price increase.

Just to clarify the ECP on Cans have come down in spite of duty increase on Cans due to reduced retail margin on Cans from current 33% to 25%.

Please give us your views on our new ECP proposal so that we can apply for the price increase immediately.

Thanks

nilojit

E-mail 3

From:	Kiran Kumar
To:	Nilojit Guha.MUMBAI.SALES
Date:	08-03-2010 10:37:56
Subject:	RE: Orissa price increase

I would like the current differential between KFS and KBLS going forward.

Regards,

(v) Statement of Mr. Kiran Kumar of OP-1 regarding the e-mails dated 04-08.03.2010:

“As answered by me in the previous answer, Mr. Nilojit Guha and I might have discussed our respective company’s prices and aligned our prices accordingly. The Kalyani Black Label is priced lower than other mainstream Beers, and UBL’s interest was to provide cost conscious consumers the option of another brand at a lower price.”

(vi) Statements of Mr. Nilojit Guha of OP-3 regarding the e-mails dated 04-08.03.2010:

“Having seen the email communication shown to me, I do not deny having sent the email to Mr. Kiran Kumar, to which he replied back to me. Mr. Kalyan Pattanaik was the Regional Sales Head of Rest of Central region based in Mumbai. He had sent the proposed prices to Mr. Sourav of UB, and on my calling for views from Mr. Kiran Kumar, Mr. Kiran Kumar commented that he would like the differential between Kingfisher Strong and Kalyani Black Label Strong to go forward.”



(vii) MRP details of OP-3's brands in the State of Odisha furnished by OP-3 showing changes in pricing of its comparable brands:

Proposal	H5 650 ml		KO 650ml		RC 650ml	
	As commu-nicated	Actual price with effective date*	As commu-nicated	Actual price with effective date*	As commu-nicated	Actual price with effective date*
Present ECP	62	62 (18.11.2009)	60	60 (18.11.2009)	57	57 (18.11.2009)
New ECP with Duty Hike	63	63 (01.04.2010)	61	61 (01.04.2010)	59	59 (01.04.2010)
Proposed ECP	65	68 (24.06.2011)	65	66 (24.06.2011)	62	63 (24.06.2011)

* Ex-Paradeep dispatch (Source : SABMiller's reply dated 02.04.2018)

(viii) MRP details of OP-1's brands in the State of Odisha furnished by OP-1 showing changes in pricing of its comparable brands:

	Kingfisher Strong 650 ml	Kingfisher Strong 500 ml Can	Kalyani Black Label Premium Strong 650 ml	Kingfisher Premium Lager 650 ml
Price last revised on 12.11.2009	62	55	60	57
Price revised w.e.f. 01.04.2010	63	54	61	59

80. From the e-mail trail dated 14–15.09.2009 extracted at point (i) above exchanged between OP-1 and OP-3, the Commission notes that the top managerial level officers of the two competing companies had exchanged their respective company's letters to OSBCL for revision in their offer prices for supply to OSBCL, thereby exchanging their offer prices in the State. Discussion on proposed prices for the State of Odisha has even been admitted by the respective officials of OP-1 and OP-3 in their statements before the DG extracted at points (ii) and (iii) above.

81. Further, from the e-mail communications dated 04-08.03.2010 extracted at point (iv) above regarding communication of OP-3's proposed End Consumer Price ('ECP') after new Excise Duty structure to OP-1, when seen and analysed in light of the data relating



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to price increases submitted by OP-3 extracted at point (vi) above, it is noted that in consonance with the pricing details communicated by OP-3 to OP-1, OP-3's MRPs of its 650ml bottles of Beer did increase to the figures conveyed in the e-mail. Thus, it is evident that OP-3 exchanged its proposed prices with OP-1 for concurrence in March 2010 before approaching the Odisha State Government for approval, and after obtaining the said approval, increased the prices of its Beer with effect from 01.04.2010, identical to the figures communicated as 'New ECP with Duty Hike'.

82. Furthermore, upon analysis of the data relating to price increases submitted by OP-1 extracted at point (vii) above, it is noted that in consonance with the proposals sent by OP-3 on 08.03.2010, OP-1 also raised the prices of its comparable Beer brands to figures identical to that of OP-3 with effect from the same date, *i.e.*, 01.04.2010.
83. As regards the insistence of Mr. Kiran Kumar of OP-1 *vide* e-mail dated 08.03.2010 to keep 'current differential between KFS and KBLs going forward', it is observed from the table extracted at point (viii) above that the MRPs of both KFS 650ml and KBLs 650ml were raised by ₹1 each, maintaining the price differential of ₹2 between their prices.
84. Therefore, from the above trail of e-mails and pricing data of OP-1 and OP-3 for the State of Odisha, price co-ordination between OP-1 and OP-3 is evident.
85. However, in this regard, OP-1 has submitted that its discussion as above was never implemented in the market and there was no co-ordination in the EBPs on which the OPs seek an increase. Further, it submitted that the OP's share of consumer prices in the State have decreased over the last ten years evidencing that increase in MRP for consumers was mostly due to increase in duties levied by the State Government. Therefore, the communication evidence as aforesaid, relied upon by the DG, has not resulted in any AAEC in India.
86. In the view of the Commission, any 'agreement' between competitors, which may or may not have actually been implemented, if was even likely to cause an AAEC in India, amounts to contravention of the provisions of Section 3(3) of the Act. Implementation of



such anti-competitive agreement or actual causing of AAEC is not a *sine qua non* for establishing contravention.

87. Further, the Commission notes that OP-4 in its lesser penalty application, has acknowledged that it was also a part of price co-ordination in the State of Odisha in 2015 and 2016.
88. As such, the Commission finds OP-1 and OP-3 guilty of price co-ordination in the State of Odisha in 2009 and 2010 and OP-4 guilty of price co-ordination in the State of Odisha in 2015 and 2016. As such price co-ordination was likely to stifle competition amongst them and may cause AAEC in India, the same amounts to contravention of the provisions of Section 3(3)(a) read with 3(1) of the Act.
89. In addition to the above, in the State of Odisha, the DG has also collected the following evidences and reached a conclusion that in 2015-16, OP-1, OP-3 and OP-4, under the umbrella of OP-5, had agreed to stop supply of Beer till there was a roll-back of 20% reduction in EBP in the Excise Policy for 2015-16:
- (i) E-mail communications dated 05-06.03.2015 exchanged between Mr. Shekhar Ramamurthy of OP-1, Mr. Shalabh Seth of OP-3, Mr. Michel Jensen of OP-4 and Mr. Sovan Roy of OP-5, which were recovered during search and seizure operation from the premises of OP-5:

E-mail 1

On Thu, Mar 5, 2015 at 5:44 PM, Shobhan Roy <royconsulting@gmail.com> wrote:

Dear All
The new policy for Orissa. 2014.15
The pricing computation clause is the main issue
Regards
shobhan



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E-mail 2

From: Shalabh Seth <Shalabh.Seth@in.sabmiller.com>
Date: Fri, 6 Mar 2015 09:35:31 +0000
To: Shekhar Ramamurthy <shr@ubmail.com>; Michael N Jensen <michael.n.jensen@carlsberg.asia>
Cc: Shobhan Roy <royconsulting@gmail.com>; Dhiraj Kapur <dhiraj.kapur@carlsberg.asia>; Manish Shyam <manish.shyam@in.sabmiller.com>; Perry G <perry@ubmail.com>; Chris White <chris.white@rjcorp.in>; Amit Khemani <akhemani@yahoo.com>; (MCC) Kaza, RaviShankar <ravi.kaza@molsoncoorscobra.com>; venkat subramanyan <vs1289@gmail.com>; Shalabh Seth <Shalabh.Seth@in.sabmiller.com>
Subject: RE: Orissa policy

Thanks for you quick feedback.

Shobhan – Can you please arrange a half an hour call on Mon/Tue based on everyone’s availability?

Regards
Shalabh

E-mail 3

From: Michael N Jensen <michael.n.jensen@carlsberg.asia>
Date: Fri, 6 Mar 2015 13:11:26 +0000
To: Shalabh Seth <Shalabh.Seth@in.sabmiller.com>
Cc: Shekhar Ramamurthy <shr@ubmail.com>; royconsulting@gmail.com <royconsulting@gmail.com>; Dhiraj Kapur <dhiraj.kapur@carlsberg.asia>; Manish Shyam <manish.shyam@in.sabmiller.com>; Perry G <perry@ubmail.com>; Chris White <chris.white@rjcorp.in>; Amit Khemani <akhemani@yahoo.com>; (MCC) Kaza, RaviShankar <ravi.kaza@molsoncoorscobra.com>; venkat subramanyan <vs1289@gmail.com>
Subject: Re: Orissa policy

Ok Tuesday

Michael N Jensen
Managing Director
Carlsberg India

E-mail 4

On 06-Mar-2015, at 14:39, Shalabh Seth <Shalabh.Seth@in.sabmiller.com> wrote:

Dear All,

I am sure you all would have heard about the Orissa policy which is untenable. (EBP reduction by 20%)

I understand that state heads of various alco-bev companies met up yesterday and have agreed some points forward.

For me more than the state policy itself – it is a dangerous precedent wherein states can just cut your prices at any time (i.e. other states copying the same model). This too in an environment where price increases are difficult to get, despite inflation in the country. Therefore, in my view we should not let this work.

In addition, I am given to understand that the state is wanting to “recover” additional prices paid to all alcohol companies for the last three years.

So if we agree to supply by 16th Mar’15- we accept that we can supply at lower prices and then also get a bill for past supplies.

I would propose that we get on a call Mon/Tue and also align ISWAI etc (the spirits community) in this matter.

Please send through your comments/views so that Shobhan can initiate action.

Regards,
Shalabh



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E-mail 5

From: Michael N Jensen [<mailto:michael.n.jensen@carlsberg.asia>]
Sent: 06 March 2015 14:58
To: Shalabh Seth
Cc: Shobhan Roy; Dhiraj Kapur; Manish Shyam; Perry G; Chris White; Shekhar Ramamurthy; Amit Khemani; (MCC) Kaza, RaviShankar; venkat subramanyan
Subject: Re: Orissa policy

I completely agree and we must react in a fashion which makes it visible and understandable that such practices can't be tolerated and that reductions etc. should be a result of negotiations instead of dictate. Carlsberg is ready for a joint demonstration of our dissatisfaction and I hope others are equally ready to jointly act.

Michael N Jensen
Managing Director
Carlsberg India

E-mail 6

From: Shekhar Ramamurthy [<mailto:shr@ubmail.com>]
Sent: Friday, March 06, 2015 3:01 PM
To: Michael N Jensen; Shalabh Seth
Cc: Shobhan Roy; Dhiraj Kapur; Manish Shyam; Perry G; Chris White; Amit Khemani; (MCC) Kaza, RaviShankar; venkat subramanyan
Subject: RE: Orissa policy

I am in complete agreement.
We cannot agree to dropping our prices.

Shekhar

E-mail 7

From: royconsulting@gmail.com [<mailto:royconsulting@gmail.com>]
Sent: 06 March 2015 16:12
To: Shalabh Seth; Shekhar Ramamurthy; Michael N Jensen
Cc: Dhiraj Kapur; Manish Shyam; Perry G; Chris White; Amit Khemani; (MCC) Kaza, RaviShankar; venkat subramanyan
Subject: Re: Orissa policy

Will do. Is monday 4pm or Tuesday 11 am convenient to all
Regards
Shobhan
Sent on my BlackBerry® from Vodafone



E-mail 8

From: Shekhar Ramamurthy [mailto:shr@ubmail.com]
Sent: Friday, March 06, 2015 4:17 PM
To: royconsulting@gmail.com; Shalabh Seth; Michael N Jensen
Cc: Dhiraj Kapur; Manish Shyam; Perry G; Chris White; Amit Khemani; (MCC) Kaza, RaviShankar; venkat subramanyan
Subject: RE: Orissa policy

Tuesday pm would work for me – 3pm or after.

Shekhar

E-mail 9

On 06-Mar-2015, at 18:02, Shalabh Seth <Shalabh.Seth@in.sabmiller.com> wrote:

I can make Tuesday 3pm work as well.

Regards
Shalabh

E-mail 10

From: royconsulting@gmail.com [mailto:royconsulting@gmail.com]
Sent: Friday, March 06, 2015 8:06 PM
To: Michael N Jensen; Shalabh Seth
Cc: Shekhar Ramamurthy; Dhiraj Kapur; Manish Shyam; Perry G; Chris White; Amit Khemani; (MCC) Kaza, RaviShankar; venkat subramanyan
Subject: Re: Orissa policy

Will now fix for tuesday 3 30 pm
. Regards
Shobhan
Sent on my BlackBerry® from Vodafone

E-mail 11

Subject: RE: Orissa policy
From: Shalabh Seth
Date: Fri, 06-03-15 9:25 PM
To: "royconsulting@gmail.com" <royconsulting@gmail.com>, Michael N Jensen <michael.n.jensen@carlsberg.asia>
CC: Shekhar Ramamurthy <shr@ubmail.com>, Dhiraj Kapur <dhiraj.kapur@carlsberg.asia>, Manish Shyam <manish.shyam@in.sabmiller.com>, Perry G <perry@ubmail.com>, Chris White <chris.white@rjcorp.in>, Amit Khemani <akhemani@yahoo.com>, "(MCC) Kaza, RaviShankar" <ravi.kaza@molsoncoorscobra.com>, venkat subramanyan <vs1289@gmail.com>, Anuradha B.R <BR.Anuradha@in.sabmiller.com>

Please fix at 3pm...I have to leave for airport at 4pm.....Thanks



- (ii) Internal e-mails communications of 23–27.03.2015 exchanged between Mr. Anil Bahl, Ms. Sukanta Banerjee, Mr. Michael Jensen, Mr. Dhiraj Kapur and Mr. Nayan Nanda Bal of OP-4:

E-mail 1

To: Anil Bahl[anil.bahl@carlsberg.asia]
Cc: Nayan Nanda Bal[nayan.nanda.bal@carlsberg.asia]
From: Sukanta Banerjee
Sent: Mon 23/03/2015 10:52:31 AM
Subject: RE: What is the latest update on Odhisa ?
Last Modified: Mon 23/03/2015 10:52:32 AM

Pri 109 so as sec 109. Secondary will increase in next nine days

Sent from my Windows Phone

E-mail 2

> **From:** Anil Bahl
> **Sent:** Monday, March 23, 2015 3:54 PM
> **To:** Sukanta Banerjee
> **Cc:** Nayan Nanda Bal
> **Subject:** What is the latest update on Odhisa ?
>
> Sukanta
> Have we applied for the price increase like others as agreed ?
> How many permits have been cleared mtd ? Hope we have done 65k as agreed ?
> What is the latest stand of the Corporation ?
> Rgds
> Anil
>
> Sent from my iPhone

E-mail 3

From: Anil Bahl
Sent: 23-03-2015 16:20
To: Sukanta Banerjee
Cc: Nayan Nanda Bal
Subject: Re: What is the latest update on Odhisa ?

What is MTD primary and secondary in Odhisa ?

Sent from my iPhone

E-mail 4

> On 23-Mar-2015, at 11:37 pm, Sukanta Banerjee <sukanta.banerjee@carlsberg.asia> wrote:
>
> As of today it's the same - yes all have stopped supplies and UB SAB and CIPL have applied for price hike. 24th is the PFC meeting. All applied to extend the agreement signing date to 31st but they have approved till 27th.
> Spoken to Dhiraj in the morning also. As on date all the Cos are with same decision of not signing the agreement.
> From Corporation side NO RESPONSE as yet.
> Thanks
> SB
>



E-mail 5

To: Anil Bahl[anil.bahl@carlsberg.asia]
Cc: Nayan Nanda Bal[nayan.nanda.bal@carlsberg.asia]; Dhiraj Kapur[dhiraj.kapur@carlsberg.asia]; Sukanta Banerjee[sukanta.banerjee@carlsberg.asia]; Roopali Singh[roopali.singh@carlsberg.asia]; Shalabh Kumar[shalabh.kumar@carlsberg.asia]; Bibek Singh[bibek.singh@carlsberg.asia]
From: Michael N Jensen
Sent: Fri 27/03/2015 5:27:51 PM
Subject: Re: Agreement

Ask Shalub

Michael N Jensen
Managing Director
Carlsberg India

E-mail 6

> On 27-Mar-2015, at 19:54, Anil Bahl <anil.bahl@carlsberg.asia> wrote:
>
>
> Dheeraj
> How come SAB and UB are still supplying when we had agreed to stop after 16th March .
> We had stopped permits accordingly after 16th.
> Please take it up with concerned people .
> Nayan : Please be sure about your facts otherwise we will get embarrassed .
> Rgds
> Anil
> Sent from my iPhone

E-mail 7

>
>> On 27-Mar-2015, at 8:49 pm, Nayan Nanda Bal <nayan.nanda.bal@carlsberg.asia> wrote:
>>
>> Dear Sir
>> Please find attached the draft copy of Suppliers agreement which has been sent by OSBCL .
>> Just to update you that UB has supplied the stock till 25th Mar and SAB is still continuing their supply till date.
>> Best Regards
>> Nayan
>>

(iii) E-mail communications of March-April 2015 exchanged between Mr. Shekhar Ramamurthy of OP-1, Mr. Shalabh Seth and Mr. Manish Shyam of OP-3, Mr. Michel Jensen and Mr. Dhiraj Kapur of OP-4 and Mr. Sovan Roy of OP-5, which were recovered during search and seizure operation from the premises of OP-5:



E-mail 1

From: Shobhan Roy [mailto:royconsulting@gmail.com]
Sent: Tuesday, March 31, 2015 8:17 AM
To: Shalabh Seth; Shekhar Ramamurthy; Michael N Jensen; Chris White
Cc: Dhiraj Kapur; perry@ubmail.com; Manish Shyam; Ritika Verma; Pooja, Bedi
Subject: Orissa and jharkhand

Dear All

In Orissa a cost card with 20% reduction in EBP and 10% reduction in EDPs over last year with new levies have been mailed to all Breweries and Distilleries to accept within the next couple of days.

None of the breweries or distilleries have accepted.
But late last night I have unconfirmed news that Diageo-USL have signed.

Regards Jharkand, progress if at all will happen once Member Board of Revenue joins on 1st of April.

Regards
Shobhan

E-mail 2

Subject: RE: Orissa and jharkhand
From: Michael N Jensen
Date: Tue, 31-03-15 10:11 AM
To: Shobhan Roy <royconsulting@gmail.com>, Shalabh Seth <shalabh.seth@in.sabmiller.com>, Shekhar Ramamurthy <shr@ubmail.com>, "Chris White" <chris.white@rjcorp.in>
CC: Dhiraj Kapur <dhiraj.kapur@carlsberg.asia>, "perry@ubmail.com" <perry@ubmail.com>, Manish Shyam <manish.shyam@in.sabmiller.com>, "Ritika Verma" <ritika.aiba@gmail.com>, "Pooja, Bedi" <Bedi.Pooja@cn.ab-inbev.com>

Dear all,

Lets have a call to today for alignment or latest tomorrow to discuss and align further way forward

Thanks and Regards

Michael Norgaard Jensen

Managing Director
Michael.N.Jensen@carlsberg.asia

E-mail 3

From: Shobhan Roy [mailto:royconsulting@gmail.com]
Sent: Thursday, April 9, 2015 11:21 AM
To: Shalabh Seth; Shekhar Ramamurthy; Michael N Jensen
Subject: Urgent View .. Orissa

Dear All

AIBA letter to the Chief Secretary was acted upon. The Principal Secretary (Excise) has been asked to resolve this issue.
Mr Thakur called Vishesh Arora (yuksons representative) to say I need to talk to AIBA.

As per him the local team of UB /SAB/and Carlsberg can meet Mr Thakur(on behalf of AIBA) and get a date/time for tom or next week Monday after judging the atmosphere

Alternatively, I can talk to Mr Thakur directly which may weaken our case.

Regards
Shobhan



E-mail 4

On 09-Apr-2015, at 11:24, "Michael N Jensen" <michael.n.jensen@carlsberg.asia<mailto:michael.n.jensen@carlsberg.asia>> wrote:

Hi all,

I think we should send you and representatives from CB, SAB and UB at a high level personally. Not locally and not by phone

Thanks and Regards

Michael Norgaard Jensen

Managing Director

Michael.N.Jensen@carlsberg.asia<mailto:Michael.N.Jensen@carlsberg.asia>

E-mail 5

From: Shalabh Seth [<mailto:Shalabh.Seth@in.sabmiller.com>]

Sent: Thursday, April 9, 2015 11:40 AM

To: Michael N Jensen

Cc: Shobhan Roy; Shekhar Ramamurthy; Shalabh Seth

Subject: Re: Urgent View .. Orissa

Both MD OSBCL and Thakur have been reaching out to various companies (including us)saying:

1. Follow the policy
2. Give us time
3. We will find a solution in 15-20 days

I think we should stick to last year's rates and duty increases.

On AIBA and company representatives - agree with Michael.

Let us try and get appointment tomorrow or Monday with Thakur.

Shekhar - what do you think?

Regards

Shalabh

E-mail 6

> On 09-Apr-2015, at 13:03, "Michael N Jensen" <michael.n.jensen@carlsberg.asia> wrote:

>

> I am not too keen to accept give us time - let's wait and see. We have now the long end of the robe don't be too keen to be accommodating. Having a temporary solution of old prices plus new duties is not an advantage since they could be interested in just getting by the high season and then revert back. I think we should insist on old prices new duties for this policy period before we engage in discussions.

>

> Thanks and Regards

>

> Michael Norgaard Jensen

>

> Managing Director

> Michael.N.Jensen@carlsberg.asia



E-mail 7

From: Shalabh Seth
Date: 09/04/2015 13:29 (GMT+05:30)
To: Michael N Jensen
Cc: Shobhan Roy ,Shekhar Ramamurthy
Subject: Re: Urgent View .. Orissa

Am saying the same thing. Existing rates and new duties.

First part of the email is their view.

Regards
Shalabh

Sent from my iPad

E-mail 8

Subject: Re: Urgent View .. Orissa
From: Shekhar Ramamurthy
Date: Thu, 09-04-15 2:40 PM
To: Shalabh Seth <Shalabh.Seth@in.sabmiller.com>, Michael N Jensen <michael.n.jensen@carlsberg.asia>
CC: Shobhan Roy <royconsulting@gmail.com>

I am in agreement with both of you. Let us not seem too keen to compromise. We should get old prices plus new duties at the minimum.

Shobhan along with senior company representatives should meet with them and reiterate our position.

Shekhar

E-mail 9

> **From:** Shobhan Roy [<mailto:royconsulting@gmail.com>]
> **Sent:** Friday, April 17, 2015 11:19 AM
> **To:** Shalabh Seth; Shekhar Ramamurthy; Michael N Jensen; Dhiraj Kapur;
perry@ubmail.com <<mailto:perry@ubmail.com>>; Manish Shyam; Pooja, Bedi; Ritika Verma
> **Subject:** Orissa News

• Dear All
• The latest news on Orissa.
• Regards
• Shobhan



• [Attachments-1119/Draft letter to OSBCL.docx](#)



सत्यमेव जयते



To

Managing Director
OSBCL, Bhubhaneshwar

Agreement to supply beer 2015-16

Dear Sirs

Further to our letter dated 16th April 2015, we wish to inform you, that we are willing to supply the beer at last years(2014-15) prices with new increased levies as proposed in the excise policy of 2015-16.

Without prejudice to our rights and contentions, we will endeavour to meet the requirements of the Corporation fully till the pricing issue is resolved expeditiously

Thanking you

Yours Sincerely

XYZ and Company

E-mail 10

> On 17-Apr-2015, at 12:34, Dhiraj Kapur <dhiraj.kapur@carlsberg.asia<mailto:dhiraj.kapur@carlsberg.asia>>
> wrote:
>
>
> Hi All,
>
> Following are the latest update till yesterday evening
>
> · Denzong Breweries (Local) submitted the Agreement till yesterday with the Annexure -2 (New Offer price reduction of 20%) to OSBCL and applied 13200 cases permits today.
>
> · UB ,SAB along with us submitted the letter today.
>
> · Fortune Sprit a local company has filed a case challenging the Policy which hearing is expected by tomorrow.
>
> · All the major liquor companies like USL,Pernod,ABD,Radico,Jagatjit,Tilaknagar etc. have submitted their , Annexure-2 today (new Offer price reduction of 10%) after the meeting with Liquor Association (ISWA) and Principal Secretary of Excise yesterday.
>
> Note
> This committee is a eye wash. They cannot do reversal of 20% clause because it was passed in assembly. (It has to pass again in assembly for removal of this clause which will take lot of time and embarrassment for Gov)
> Looking into the Article which shoban da had sent, government is clearly taking certain stand against beer companies in Media.
> My suggestion is we should have call with All three MD's today or they can call each other over the cell for next course of action though AIBA – We should not delay
> Another suggestion we should go in Media immediately to clear our stand
>
> Thanks and Regards
>
> Dhiraj Kapur
> Director Corporate Affairs
> Dhiraj.kapur@carlsberg.asia<mailto:Dhiraj.kapur@carlsberg.asia>



E-mail 11

> On 17-Apr-2015, at 12:42 pm, Michael N Jensen
<michael.n.jensen@carlsberg.asia> wrote:
>
> I completely agree we should do two things first file a petition in court of abuse of power by controlling
distribution and fixing pricing this must be double role and illegal in India. Second we should tell our story in the
media from our point of view and even consider ads telling publicly why we are oppose. Now it's time to fight back
and don't get any misconception that they are willing to listen they aren't and they can't because they have to go
back to assembly which they won't do. So the committee is worthless
>
> Michael N Jensen
> Managing Director
> Carlsberg India

E-mail 12

> On 17-Apr-2015, at 20:10, Shalabh Seth <Shalabh.Seth@in.sabmiller.com> wrote:
>
> Given that Michael and I are not available on Monday, Shekhar and I had a quick chat and suggest the following
steps:
>
> 1. File a letter on Monday saying we are willing to supply at last year's rates plus increased duties. Also happy to
discuss to find a solution
>
> 2. Keep a writ ready to move courts and move on Tue/Wed if we see no progress
>
> Please let us know if someone not comfortable.
>
> If all ok then Monday's call not required.
>
> Regards
> Shalabh
> Sent from my iPhone

E-mail 13

Subject: Re: Orissa News
From: Michael N Jensen
Date: Fri, 17-04-15 8:43 PM
To: Shalabh Seth
CC: Dhiraj Kapur <dhiraj.kapur@carlsberg.asia>, Shobhan Roy <royconsulting@gmail.com>, Shekhar Ramamurthy
<shr@ubmail.com>, "perry@ubmail.com" <perry@ubmail.com>, Manish Shyam
<manish.shyam@in.sabmiller.com>, "Pooja, Bedi" <Bedi.Pooja@cn.ab-inbev.com>, Ritika Verma
<ritikaiba@gmail.com>

Agree

Michael N Jensen
Managing Director
Carlsberg India



E-mail 14

On Sun, Apr 19, 2015 at 5:33 PM, Shobhan Roy <royconsulting@gmail.com> wrote:

As per mail from Shalabh and consent of Michael, each of the companies will file a letter agreeing to supply at last year prices with new levies.

Also the companies, in the event this is not agreed by OSBCL, will file a writ in the Orissa High Court.

Thus there will be no concall on Monday 20th april

Regards

Shobhan

To: Shalabh Seth <Shalabh.Seth@in.sabmiller.com>

Cc: Dhiraj Kapur <dhiraj.kapur@carlsberg.asia>, Shobhan Roy <royconsulting@gmail.com>, Shekhar Ramamurthy <shr@ubmail.com>, "perry@ubmail.com" <perry@ubmail.com>, Manish Shyam <manish.shyam@in.sabmiller.com>, "Pooja, Bedi" <Bedi.Pooja@cn.ab-inbev.com>, Ritika Verma <ritika.aiba@gmail.com>

Agree

Michael N Jensen
Managing Director
Carlsberg India

E-mail 15

Subject: Re: Orissa News

From: Shobhan Roy

Date: Mon, 20-04-15 10:55 AM

To: Dhiraj Kapur <dhiraj.kapur@carlsberg.asia>, Manish Shyam <manish.shyam@in.sabmiller.com>, perry@ubmail.com

CC: Shalabh Seth <shalabh.seth@in.sabmiller.com>, Shekhar Ramamurthy <shr@ubmail.com>, Michael N Jensen <michael.n.jensen@carlsberg.asia>, "Pooja, Bedi" <Bedi.Pooja@cn.ab-inbev.com>, Ritika Verma <ritika.aiba@gmail.com>, Prem Dewan <premdewan@devans.co.in>, Roopali Singh <roopali.singh@carlsberg.asia>

Dear All

Just to facilitate the individual companies to file the letter to OSBCL, to create the grounds of our defense, I am enclosing a draft letter that may be submitted to OSBCL today as per mail of Shalabh.

Please have this draft, if necessary vetted by your legal/superiors.

Regards

Shobhan

E-mail 16

From: Shobhan Roy [mailto:royconsulting@gmail.com<mailto:royconsulting@gmail.com>]

Sent: Wednesday, April 22, 2015 1:00 PM

To: Shekhar Ramamurthy; Michael N Jensen; Shalabh Seth

Cc: Dhiraj Kapur; perry@ubmail.com<mailto:perry@ubmail.com>; Manish Shyam; Ritika Verma; Cecilia Chandrashekar; Sheetal Judge; Anuradha B.R

Subject: URGENT Manish Shyam on ORISSA Latest

Dear all

Manish requests for a quick concall at 2 pm for updates and action plan

Regards



E-mail 17

On Wed, Apr 22, 2015 at 1:03 PM, Michael N Jensen
<michael.n.jensen@carlsberg.asia<<mailto:michael.n.jensen@carlsberg.asia>>> wrote:
ok

Thanks and Regards

Michael Norgaard Jensen

Managing Director

Michael.N.Jensen@carlsberg.asia<<mailto:Michael.N.Jensen@carlsberg.asia>>

E-mail 18

From: Ritika Verma <ritika@ibba.org<<mailto:ritika@ibba.org>>>
Date: 22/04/2015 13:16 (GMT+05:30)
To: Michael N Jensen <michael.n.jensen@carlsberg.asia<<mailto:michael.n.jensen@carlsberg.asia>>>, Shekhar Ramamurthy <shr@ubmail.com<<mailto:shr@ubmail.com>>>, Shalabh Seth <shalabh.seth@in.sabmiller.com<<mailto:shalabh.seth@in.sabmiller.com>>>, Manish Shyam <manish.shyam@in.sabmiller.com<<mailto:manish.shyam@in.sabmiller.com>>>, Dhiraj Kapur <dhiraj.kapur@carlsberg.asia<<mailto:dhiraj.kapur@carlsberg.asia>>>, Perry G <perry@ubmail.com<<mailto:perry@ubmail.com>>>
Cc: Shobhan Roy <royconsulting@gmail.com<<mailto:royconsulting@gmail.com>>>, Cecilia Chandrashekar <cecilia@ubmail.com<<mailto:cecilia@ubmail.com>>>, Sheetal Judge <Sheetal.Judge@carlsberg.asia<<mailto:Sheetal.Judge@carlsberg.asia>>>, "Anuradha B.R" <BR.Anuradha@in.sabmiller.com<<mailto:BR.Anuradha@in.sabmiller.com>>>
Subject: Re: URGENT Manish Shyam on ORISSA Latest Concall today at 2:00 PM

Dear All,

Please find below the dial-in details for the today's Concall :

Airtel Conference Confirmation No. : 315953
Date : 22nd April, 2015 Start Time : 2:00 PM
No. of Participants :7
Chairperson Name : Mr. Sovan Roy
Participant Code : 5305677#
Dial-in Numbers:
Please Select the nearest location to Participate in the conference-

44442222 - (079) Ahmedabad, (080) Bangalore, (044) Chennai, (040) Hyderabad, (033) Kolkata, (022) Mumbai, (011) New Delhi, (020) Pune

4442222 - (0562) Agra, (0755) Bhopal, (0172) Chandigarh, (0484) Cochin, (0422) Coimbatore, (0124) Gurgaon (0731), Indore, (0141) Jaipur, (0522) Lucknow, (0452) Madurai, (0120) Noida

442222 - (04344) Hosur

+91 11 44442222 - International Participants (Please Check the escape code to be prefixed from your local Service Provider)

Calling Instructions:

Please Press the # (Hash) Key after entering your ~~Chairperson~~ or Participant Code.

For Assistance from the conference coordinator during the conference, Press * and 0 followed by * and 0 again.

Please use * and 6 to Mute/unmute your phone line. Mobile callers are advised to keep their mobile phone on mute mode when not speaking to avoid background noise.

* In case the line is bad / voice is unclear, please disconnect and call back or ask the coordinator to dial-out the line(dial *0 for coordinator).

Call Customer Care at: 1800 102 2200 - National Toll free

Thanks & Regards

Ritika Verma | Sr. Executive Assistant | All India Brewers' Association(AIBA)
Tel : 91-124-4234381 | Telefax : 91-124-4065053
442, 4th Floor, Vipul Trade Centre, Sec - 48, Sohna Road, Gurgaon - 122018



E-mail 19

On 22-Apr-2015, at 1:31 pm, Shekhar Ramamurthy <shr@ubmail.com<<mailto:shr@ubmail.com>>> wrote:

Could we make this 2
30?

Shekhar

E-mail 20

Subject: Re: URGENT Manish Shyam on ORISSA Latest_Concall today at 2:00 PM

From: Manish Shyam

Date: Wed, 22-04-15 2:14 PM

To: Shekhar Ramamurthy

CC: "ritikaiba@gmail.com" <ritikaiba@gmail.com>, Michael N Jensen <michael.n.jensen@carlsberg.asia>, Shalabh Seth <Shalabh.Seth@in.sabmiller.com>, Dhiraj Kapur <dhiraj.kapur@carlsberg.asia>, Perry G <perry@ubmail.com>, Shobhan Roy <royconsulting@gmail.com>, "Cecilia Chandrashekar" <cecilia@ubmail.com>, Sheetal Judge <Sheetal.Judge@carlsberg.asia>, Anuradha B.R <BR.Anuradha@in.sabmiller.com>

Dear All,

2.30 is fine with me. Regards

E-mail 21

Subject: Orissa Urgent con call Tomorrow 23rd April

From: Shobhan Roy

Date: Wed, 22-04-15 8:09 PM

To: Shalabh Seth <shalabh.seth@in.sabmiller.com>, Shekhar Ramamurthy <shr@ubmail.com>, Michael N Jensen <michael.n.jensen@carlsberg.asia>

CC: perry@ubmail.com, Dhiraj Kapur <dhiraj.kapur@carlsberg.asia>, Manish Shyam <manish.shyam@in.sabmiller.com>, "Pooja, Bedi" <Bedi.Pooja@cn.ab-inbev.com>, Cecilia Chandrashekar <cecilia@ubmail.com>, Sheetal Judge <sheetal.judge@carlsberg.asia>, "Anuradha B.R" <BR.Anuradha@in.sabmiller.com>, Ritika Verma <ritikaiba@gmail.com>

Dear All

Based on discussions that happened today with Mr Thakur and Mr Behera

Manish Shyam has some points to share.

- 1) Mr Thakur wanted still the cost cards with cost buildup
- 2) Mr Behera is supposed to have agreed to the Industry standpoint of last year rates with new duties. He is supposed to have said that so long our revenue is protected, increase in MRP and volumes will be industry's outlook.
- 3) He has asked Industry to sign and give cost details by Friday to Mr Thakur.

There are grey areas and members wish to discuss this tomorrow in a concall at 10.30am before moving forward

The dial in details are the same for AIBA Concalls

Regards
Shobhan



E-mail 22

From: Shobhan Roy [mailto:royconsulting@gmail.com]
Sent: Tuesday, April 28, 2015 3:12 PM
To: Shalabh Seth; Michael N Jensen; Shekhar Ramamurthy; kiran@ubmail.com
Cc: Dhiraj Kapur; Manish Shyam; perry@ubmail.com; Pooja, Bedi; Ritika Verma
Subject: Concall discussion points

The following points were discussed:

Orissa - The reply to the show cause notices were submitted by the respective companies on 25th April after the pricing discussions previous day. The State government is holding discussions and yet to revert on further course of action or revert. Therefore it was felt by all, that at the moment we use media judiciously to convey the industry viewpoint and the loss of revenue to the state. We can further add that the courts have now been approached by the companies for a hearing now to take place on Friday 1st May, 2015. **Shobhan will have the media messaging done through Ogilvy.**

ELP - The Writ petition on contract bottling service tax is now estimated at Rs. 57 lacs against Rs 50 lacs estimated earlier was approved.

Ogilvy fees - It was decided we will go through the OGILVY plan and fees and will review at the Board meeting on 1st June, 2015.

E&Y Mr satya poddar of E&Y has agreed to take up this advocacy assignment but needs a brief etc . It was decided that we have the meeting on the board meeting day in June

Regards

Shobhan

E-mail 23

On Wed, Apr 29, 2015 at 5:16 PM, Michael N Jensen <michael.n.jensen@carlsberg.asia> wrote:

Good news they are moving today – then they can keep moving if we stick to our point

Thanks and Regards

Michael Norgaard Jensen

Managing Director

Michael.N.Jensen@carlsberg.asia



E-mail 24

From: **Shalabh Seth** <Shalabh.Seth@in.sabmiller.com>
Date: Wed, Apr 29, 2015 at 5:24 PM
Subject: RE: Concall discussion points
To: Michael N Jensen <michael.n.jensen@carlsberg.asia>, Shobhan Roy <royconsulting@gmail.com>, Shekhar Ramamurthy <shr@ubmail.com>, "kiran@ubmail.com" <kiran@ubmail.com>
Cc: Dhiraj Kapur <dhiraj.kapur@carlsberg.asia>, Manish Shyam <manish.shyam@in.sabmiller.com>, "perry@ubmail.com" <perry@ubmail.com>, "Pooja, Bedi" <Bedi.Pooja@cn.ab-inbev.com>, Ritika Verma <ritikaariba@gmail.com>, Devashish Dasgupta <Devashish.Dasgupta@in.sabmiller.com>, Shalabh Seth <Shalabh.Seth@in.sabmiller.com>

Yup...

Orissa - We are going to say a clear "No" to their offer this afternoon and stick to our request- apparently deadline is 5.30pm today

On Rajasthan,

Give another letter of extension for one month

Also, Shobhan to now seek AIBA appointment with Principle Secy in the state.

Regards,
Shalabh

90. From the e-mail trails extracted at points (i), (ii) and (iii) above, the Commission notes that the OPs had both e-mail communications as well as conference calls to discuss their strategy to oppose Odisha Government's Liquor Excise Policy for 2015-16 wherein the EBP and Ex-Distributor Prices ('EDP') were reduced by 20% and 10% respectively, over the previous year's rates. The Managing Directors and other senior officers of OP-1, OP-3 and OP-4 and the Director General of OP-5 collectively decided to file a writ petition before the Hon'ble Odisha High Court against the so called 'abuse of power' by the Odisha Government. The aforesaid e-mails make it evident that there was close coordination amongst the OPs to collectively oppose the executive decision of the State Government by stopping supplies to the State Corporation in protest. OP-5 also, on its part, facilitated such anti-competitive contacts between its members by routing the e-mail



communications to other members and arranging conference calls between the Managing Directors of its member companies, wherein they discussed and aligned their future business strategies.

91. In its submission before the DG in this regard, OP-4 has admitted that consequent to the 20% EBP reduction by Odisha Government, *“all Beer companies decided to limit supply of Beer in Orissa and refused to sign the agreement. The curtailment of supply took place through AIBA and Mr. Shekhar Ramamurthy. Mr. Michael Jensen, Mr. Shalabh Seth, Mr. Sovan Roy, Mr. Dhiraj Kapur, Mr. Manish Shyam, Mr. Perry Goes and Mr. Chris White had discussions on this issue ... As a result of the stand-off, there was no Beer supply in May 2015 in Orissa.”*
92. Further, in his statement recorded on oath before the DG, Mr. Michael Jensen of OP-4 stated that:

“The earlier Excise policy had expired, and CIPL was under no obligation to make supplies. There was an offer from Orissa Government to effectively reduce EBP by 20% in its new policy, resulting in loss making sales in the State. Based on this unprecedented, one-sided policy suggestions from the Orissa State Government, the breweries jointly decided not to entertain, and participate in the new policy ... The breweries jointly decided to move this case to the High Court of Orissa and ... the Court decided upon an interim solution where part of the decrease in EBP amounting to 7.5% would be put in an escrow account until further agreement was settlement between the parties within a year. Under these guidelines, the parties decided to resupply in Orissa within a month ... This contentious point is still unsolved four years later, and the situation led to CIPL stopping the sale of non-premium products, like Tuborg, reducing our Orissa market share from previously +20% to less than 8%.”

93. Similarly, Mr. Shekhar Ramamurthy of OP-1 also stated before the DG in his statement that:

“The background to this is that the State Excise unilaterally decided to drop our basic price by 20% and increase duties. There was no opportunity provided to companies to discuss. The Beer manufacturers viewed this action by the Orissa State Excise as a very dangerous policy precedent wherein States would have the ability not just to prevent price increases but also be able to reduce our prices. In our view, this was coordinated activity by Beer manufacturers to petition the Government against this unjust decision. In fact, we moved the High Court and the High Court decision was to place the difference between the old



offer price and the reduced offer price in an escrow account till the matter would be legally resolved. After a year, the High Court ruled in favour of manufacturers and we were allowed to reinstate our old prices. To the best of my knowledge, the companies filed separate petitions before the High Court but all these were heard and decided jointly ...”

94. Mr. Kiran Kumar of OP-1 also stated before the DG, as under:

“... In Odisha, 2–3 years ago when the Government increased duty and reduced manufacturers prices, through AIBA we had discussions wherein we discussed pricing and the way forward to work with the Government to rationalise the pricing.”

95. When Mr. Sovan Roy, Director General of OP-5 was questioned about the aforesaid e-mail trails during his deposition before the DG, he stated that:

“In the new Excise policy framed by the Orissa Government, there was a suggestion from the Government to enforce the bottling fee of around Rs. 40/- within the ex-brewery price supplied to the Corporation. This being a substantial sum, the members got agitated and wanted AIBA to represent the case to the Authorities concerned. AIBA failed to get reprieve from the Excise Commissioner and subsequently representations were drafted and presented to the Chief Secretary. The conclusion was that till the decision of the Price Negotiating Committee (PNC) the breweries will have to absorb the additional cost. Some of the member breweries seemed agitated on this. Meanwhile, a retailer approached the high court but no permanent order was granted by the court. Subsequently, the breweries continued to make supplies.”

96. Thus, evidently, in 2015–16, post reduction of EBP and EDP by the State of Odisha through its Excise Policy, OP-1, OP-3 and OP-4 stopped supply of Beer in the State of Odisha to force the State Corporation to roll-back the Excise Policy, apart from filing a writ petition in this regard before the Hon’ble Odisha High Court. Discussions in this regard, to take concerted actions against the decision of OSBCL, was taken through the platform of OP-5.

97. Though OP-1 has argued that disruption of supplies had lasted less than two months, with the OPs restricting supplies at different times even though the broad range of the timing of such stoppage was the same, in the view of the Commission, the very fact of co-ordinated disruption of supply amounts to an anti-competitive agreement amongst the OPs.



98. Further, OP-1 has argued that (i) the OPs had implemented supply restrictions only as a means to present their countervailing power in response to monopsony power of the State Government; (ii) that the DG did not acknowledge the effects of such regulation by the State Government which resulted in an increase of MRP by ₹16 per bottle on KFS 650ml, which would have to be ultimately borne by the end consumers and would potentially lead to decrease in the sale of Beer in the State; (iii) that the Hon'ble High Court of Odisha also ruled in favour of the Beer manufacturers which validated the stand of the Beer manufacturers; and (iv) that the OPs resumed supply once the Hon'ble Odisha High Court placated the Beer manufacturers by offering them interim remedy.
99. However, the Commission is of the view that stoppage of supply by OP-1, OP-3 and OP-4 of Beer to OSBCL around the same time in 2015, even if in response to reduction in EBP rates by the State, violated the law being a concerted action amongst the OP-1, OP-3 and OP-4 to limit supplies. In fact, though OP-1 has tried to blame OSBCL for the likely loss which would be caused to the consumers as a result of increase in MRP of Beer, the Commission notes from the e-mails extracted at point (iii) above that such concerted action amongst OP-1, OP-3 and OP-4, through the platform of OP-5, had led to OSBCL proposing to increase MRP of Beer for the consumers, which was a consequence of the co-ordinated action of the OPs only.
100. OP-5 has also argued that (i) it was not in the loop regarding discussions amongst its members to stop supplies to OSBCL; (ii) it was not involved in the legal case/petition filed before Hon'ble Odisha High Court at any time; (iii) parties stopped supplies because they did not want to weaken their case before the Hon'ble High Court by making supplies in the meanwhile in terms of the new policy under challenge; and (iv) as the conduct of the OPs was not motivated with any view to fix prices/increase EBPs, no meaningful anti-trust sense can be attributed to the conduct of the OPs.
101. The Commission however, notes that all discussions pointed towards taking some concerted action against the OSBCL policy, took place through the platform of OP-5 only. In fact, OP-4, in its submission to the DG, has stated that "*all Beer companies decided to limit supply of Beer in Orissa and refused to sign the agreement. The curtailment of supply took place through AIBA and ...*".



102. Thus, the agreement between the OPs in 2015–16, to limit the supply of Beer in the State of Odisha, in terms of Section 3 of the Act, is presumed to have an AAEC within India, which effect the OPs, have been unable to rebut in terms of the factors stated under Section 19(3) of the Act. Therefore, such limiting of supply by the OPs is held by the Commission to be in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act.

Puducherry

103. In respect of the UT of Puducherry having Free Market model, the DG has relied upon the following evidences to give a finding of cartelisation amongst the OPs:

- (i) Internal e-mail communications exchanged in February 2017 between Mr. Probal Dutta, Mr. Justin Raj, Mr. Arvind Sharma and Mr. Anil Bahl of OP-4, which were submitted by OP-4 before the DG:

E-mail 1

To: Probal Dutta[probal.dutta@carlsberg.asia]; Arvind Sharma[arvind.sharma@carlsberg.asia]
Cc: Anantha Krishna[anantha.krishna@carlsberg.asia]
From: Justin Raj
Sent: Tue 14/02/2017 7:50:14 AM
Subject: RE: Revision in Additional Excise Duty - Pondy State

Yes Sir.

As discussed with you Okay.

Regards

- Justin

E-mail 2

From: Justin Raj
Sent: Tuesday, February 14, 2017 12:19 PM
To: Probal Dutta
Subject: RE: Revision in Additional Excise Duty - Pondy State

Dear Sir,



Below are the tentative/proposed plan from Competition :

1. Sab Miller – No price change planned for 5000 and Knockout as the duty is well within the earlier Excise Duty
2. Budweiser – Not able to get any info (but we think the prices would not change as they had increased it recently only)
3. Miller – Prices may increase
4. Kingfisher – Spoke to the ASM, he was telling that they are looking at competition and then deciding the price. Discussions on to increase by Re.1.50 of Re.2/- per bottle.

(However they currently hold close to 80000 cases with the distributor (OLD MRP Stocks), so it is that they would wait till competition comes out and then they would decide on the final pricing.)

Below are the suggested changes :

Brand	SKU	Current		New MRP
		MRP	EBP	
CBM	500	80.00	1,047.20	85.00
CBE	500	85.00	1,135.44	90.00
TBM	500	55.00	605.98	57.00
TBS	500	62.00	727.62	65.00
TBS	650	75.00	424.47	75.00
TBM	650	65.00	336.53	70.00
CBM	650	100.00	645.38	105.00
CBE	650	105.00	689.50	110.00

- CBM / CBE / TBM / TBS 500 as suggested by HO
- TBS 650 No change in Pricing as suggested by HO
- TBM 650 – change in pricing mooted from Rs.65 to Rs.70 (increase of Rs.5/-, Competition Lager brands are already at Rs.70/-, with current pricing there is no big gain, but increase of Rs.5 with increased focus would definitely help in growing brand (will help our VC and NSR)
- CBM and CBE 650 – Price increase, however rounded of to Rs.105 for CBM and Rs.110 for CBE. (we can look at ploughing back some money in the form of increased CPC)

Sir, this is our thoughts. However request your valuable suggestions on the same.

Regards

Justin

E-mail 3

From: Probal Dutta
Sent: Tuesday, February 14, 2017 1:04 PM
To: Arvind Sharma <arvind.sharma@carlsberg.asia>
Cc: Anantha Krishna <anantha.krishna@carlsberg.asia>; Justin Raj <Justin.Raj@carlsberg.asia>
Subject: RE: Revision In Additional Excise Duty - Pandy State
Importance: High

Hi Arvind,

Below mail from Justin shows no price change by competition for major brands.

But with rounding up and price hikes in other sku's we can increase the VC & NSR although the negative impact on volume would be low. Thus, below cost card summary being shared and attached is the workings too.

Justin – Hope the same is okay with you. Only for Yanam distributor we need to add the Cash Discount amount of 1.50%. Balance for others this would be the proposed cost card if approved by finance and Anil.



Brand	SKU	Current		Proposed	
		MRP	EBP	NEW MRP	EBP
CBM	500	80.00	1,047.20	85.00	1,059.53
CBE	500	85.00	1,135.44	90.00	1,147.85
TBM	500	55.00	605.98	60.00	664.55
TBS	500	62.00	727.82	65.00	729.55
TBS	650	75.00	424.47	75.00	422.20
TBM	650	65.00	336.53	70.00	378.04
CBM	650	100.00	645.38	105.00	672.02
CBE	650	105.00	689.50	110.00	716.18

Pls confirm,

Regards,

Probal

E-mail 4

On 20-Feb-2017, at 9:06 PM, Probal Dutta <probal.dutta@carlsberg.asia> wrote:

Dear Sir,

Pls approve the revised cost card wherein we r increasing certain mrp's due to AED increase.

Rgds,
Probal

E-mail 5

From : Anil Bahl<anil.bahl@carlsberg.asia>

Date : 20/02/2017 21:26 (GMT+05:30)

To : Probal Dutta<probal.dutta@carlsberg.asia>

Cc : Arvind Sharma<arvind.sharma@carlsberg.asia>, Bibek Singh <bibek.singh@carlsberg.asia>, Anantha Krishna <anantha.krishna@carlsberg.asia>

Subject : Re : Revision in Additional Excise Duty – Pondy State

Are we not increasing in TBS 650? I thought we had agreed that we will increase in line with industry by Rs.5.

Anil.



E-mail 6

On 21-Feb-2017 at 12:16 AM, Probal Dutta<probal.dutta@carlsberg.asia> wrote:

Sir,

U r correct, but what we last discussed was that a final confirmation would be taken from industry and then we take up TBS650.

If you advise us to go ahead immediately, we can change the same and take TBS650 from Rs.75/- to Rs.80/.

Pls. advise.

Rgds,
Probal

E-mail 7

To : Probal Dutta<probal.dutta@carlsberg.asia>
CC : Arvind Sharma<arvind.sharma@carlsberg.asia>, Bibek Singh <bibek.singh@carlsberg.asia>, Anantha Krishna <anantha.krishna@carlsberg.asia>
From : Anil Bahl
Sent : Tue, 21/02/2017 2:10:51 AM
Subject : Re : Revision in Additional Excise Duty-Pondy State

I think industry is taking to 80. Ask Justin to check.

E-mail 8

From: Probal Dutta <probal.dutta@carlsberg.asia>
Date: 21/02/2017 09:22 (GMT+05:30)
To: Justin Raj <Justin.Raj@carlsberg.asia>
Subject: TBS650 MRP Inc

Dear Justin,

Pls check with competition and revert as to whether they r taking up KFS and Haywards to Rs 80/ or not.

As for us we r okay to take TBS to Rs 80/.

Pls revert.

Rgds,

Probal



E-mail 9

From: Justin Raj <Justin.Raj@carlsberg.asia>
Date: 21/02/2017 10:33 (GMT+05:30)
To: Probal Dutta <probal.dutta@carlsberg.asia>
Subject: Re: TBS650 MRP Inc

Sir

As confirmed by ub team 99% chances of increasing mrp to rs.80.

SAB no changes.

Regards

Justin

E-mail 10

On 21-Feb-2017, at 11:46 AM, Probal Dutta <probal.dutta@carlsberg.asia> wrote:

Sir,

As was asked pls find the below update on industry pricing.

Pls advise. ..

Rgds,

Probal

Sent from my Samsung device

E-mail 11

From: Anil Bahl <anil.bahl@carlsberg.asia>
Date: 21/02/2017 19:45 (GMT+05:30)
To: Probal Dutta <probal.dutta@carlsberg.asia>
Cc: Arvind Sharma <arvind.sharma@carlsberg.asia>, Bibek Singh <bibek.singh@carlsberg.asia>, Anantha Krishna <anantha.krishna@carlsberg.asia>
Subject: Re: TBS650 MRP Inc

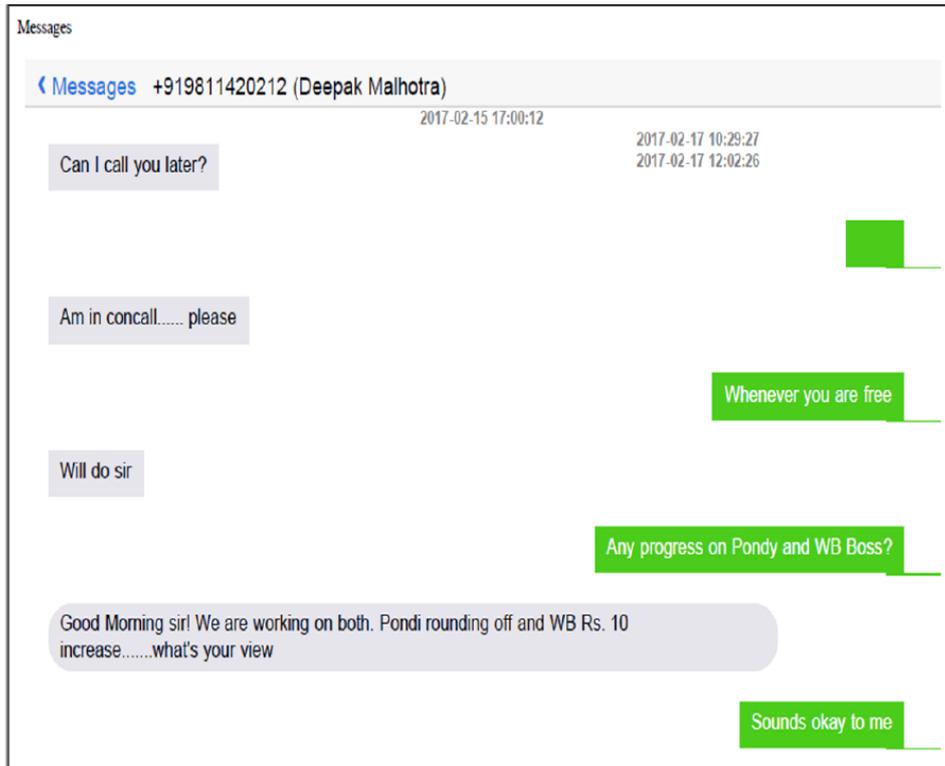
Go for 80.

Sent from my iPhone

- (ii) Messages exchanged between Mr. Kiran Kumar of OP-1 and Mr. Deepak Malhotra of OP-3, which were recovered during search and seizure operation from the iPhone of Mr. Kiran Kumar of OP-1:



सत्यमेव जयते



Messages exchanged **between** Mr. Anil Bahl of OP-4 and Mr. Nilojit Guha of OP-3, which were recovered during search and seizure operation from the iPhone of Mr. Kiran Kumar of OP-1 as he was CC'd in the message:



- (iii) Comparative prices of strong Beer SKUs of OP-1, OP-3 and OP-4 in the UT of Puducherry, as tabulated by the DG from the replies of OP-1 and OP-3:



सत्यमेव जयते



Particulars	CIPL	UBL	SABMiller
Brand	Tuborg Strong 650 ml	Kingfisher Strong 650ml	Haywards 5000 650ml
Prevailing Price as on 20.02.2017	75	75	N.A.
Proposed price revision	80	80	N.A.
Price revised on 27.02.2017	-	80	N.A.
Price revised on 14.03.2017	80	-	-

104. From the February 2017 trail of e-mails extracted at point (i) above, the Commission notes that Mr. Anil Bahl had been keeping track of discussions of OP-4 with competitors about the price revisions made by the company in the UT of Puducherry (earlier called Pondicherry). On 14.02.2017, Mr. Justin Raj (Sales Manager – Puducherry and Kerala) reported about competitors' plan about their price changes. On a proposal to increase the price of OP-4's TBS 650ml bottle from ₹75/- to ₹80/-, Mr. Bahl asked Mr. Justin Raj to check with the competitors about the decision taken in the industry. Mr. Justin Raj reported back that *"as confirmed by UB team, 99% chance of increasing MRP to Rs. 80 ... SAB no changes"*.

105. Further, from the messages exchanged between Mr. Kiran Kumar of OP-1 and Mr. Deepak Malhotra of OP-3 extracted at point (ii) above, the Commission notes that, in his message conversation with Mr. Deepak Malhotra, Mr. Kiran Kumar asks about the progress in Puducherry and West Bengal. Mr. Deepak Malhotra replies that OP-3 is working on rounding off the MRP in Puducherry and going for a ₹10/- increase in West Bengal.

106. Similarly, it is noted from the messages exchanged between Mr. Nilojit Guha of OP-3 and Mr. Anil Bahl of OP-4 extracted at point (iii) above that, in his message conversation with Mr. Anil Bahl of OP-4, Mr. Nilojit Guha asks Mr. Bahl for confirmation about OP-4's implementation of the understanding reached between them. Such message was also CC'd to Mr. Kiran Kumar of OP-1. In response, Mr. Bahl intimated about OP-4's



agreement on Puducherry proposal and OP-4's plan to increase prices of Carlsberg Elephant and Carlsberg Mild Beer to ₹110/- and ₹105/- respectively.

107. When the price increases in the UT of Puducherry in 2017 as tabulated at point (iv) above are seen in light of the aforesaid message communications exchanged and OP-4's afore-extracted internal e-mails, it is apparent that both OP-1 and OP-4 increased their MRPs of Strong Beer SKUs to identical figures of ₹80/- as proposed. However, price revisions, if any, made by OP-3 in the MRP of its H5K 650ml bottle and by OP-4 for its Elephant and Mild Beer variants in February-March 2017 in the UT of Puducherry, are not available.

108. Though OP-1 has argued that the internal e-mails exchanged among officials of OP-4 cannot be relied upon as evidence against it, as it was neither confronted with these e-mails during the course of the investigation nor allowed to offer any explanation/clarification regarding its lack of involvement/knowledge of the referred communications, which highlights serious flaws in the DG's investigation process, the Commission is of the view that the messages to which Mr. Kiran Kumar of OP-1 was privy to, and the identical increase in prices at the same time as competitors in line with the discussions being made in the internal e-mails of OP-4, are sufficient evidence of involvement of OP-1 in price co-ordination in the UT of Puducherry in 2017.

109. Hence, the above communications and actual price revisions made by OP-1 and OP-4 in conformity with their discussions, are clear indication of the fact that OP-1, OP-3 and OP-4 were in close touch with each other in 2017 regarding their price revision proposals in the UT of Puducherry. OP-4 has also not denied its such conduct, in its objections/suggestions to the DG Report. Thus, since such price co-ordination between OP-1, OP-3 and OP-4 is presumed to have an AAEC within India under the provisions of Section 3(3) of the Act, which effect the OPs have been unable to rebut, the same is held by the Commission to be in contravention of the provisions of Section 3(3)(a) read with 3(1) of the Act.



Rajasthan

110. In respect of the State of Rajasthan having the Corporation Market model, the DG has relied upon the following evidences to give a finding of price co-ordination amongst the OPs:

- (i) E-mail communications dated 05.06.2015 exchanged between OP-1, Mr. Shalabh Seth of OP-3, Mr. Michael Jensen of OP-4 and Mr. Sovan Roy of OP-5, which were recovered during search and seizure operation from the premises of OP-1 and OP-5:

E-mail 1

> On 05-Jun-2015, at 11:04, Shobhan Roy <royconsulting@gmail.com> wrote:
>
> Dear all
> We did get to meet Mr P S Mehra Principal Secretary Finance and requested that the rate increase issue be resolved. He received our representation.
> He was aware and confirmed that he will by this weekend he will discuss with Mr Pravin Gupta Secretary Finance.
>
> We then met Mr Gupta too and he was updated. In fact he felt that a formula was worked out last time which could be implemented. He then said that he will come back soon and sort the matter .
>
> There was a school of thought that AIBA should put in a mail and confirm the formula 1) additional Duty to go from 146% to 150% 2) we could take the retail price to Rs 98 in the category where currently the EBP is Rs 265 and MRP is Rs 90. This will then bind the department to some extent to go by this .
> But then there was a view from UB representative that he will consult and revert and why commit to Rs 98 and not Rs100 MRP..
> Await instructions
> Regards
> Shobhan

E-mail 2

From: Michael N Jensen [mailto:michael.n.jensen@carlsberg.asia]
Sent: Friday, June 05, 2015 11:21 AM
To: Shobhan Roy
Cc: Shalabh Seth; Shekhar Ramamurthy; Dhiraj Kapur; perry@ubmail.com; Manish Shyam; Devashish Dasgupta; kiran@ubmail.com; Amit Sahni; prabal.dutta@carlsbeg.asia
Subject: Re: Rajasthan meet

Agree lets go to 100 instead it's more logical and right pricing

Michael N Jensen
Managing Director
Carlsberg India



E-mail 3

From: Shalabh Seth <Shalabh.Seth@in.sabmiller.com>
Sent: 05 June 2015 13:49
Subject: RE: Rajasthan meet

In no letter we should say that increase duty from x% to y% as illustrated below please.

We should stick to speaking about reimbursement of bottling fees and inflation led price increase for which all companies have submitted their papers.

Regards,
Shalabh

- (ii) Letter dated 23.11.2016 sent by OP-5 to the Secretary, Finance and Revenue, Government of Rajasthan, requesting a price increase on behalf of its member companies:

All India Brewers' Association

Corporate Office: 442, 4th Floor, Vipul Trade Centre, Sector - 48
Sohna Road Gurgaon - 122018, Haryana
Tel: +91 124 4234381, Telefax: +91 124 4065053, E-mail: info@aiba.co.in ; shobhan.roy@aiba.co.in



To

23rd November, 2016

Shri Praveen Gupta
Secretary Finance and Revenue
Govt. of Rajasthan

Sub: Rate Increase for Beer Industry – Our Members pending request

Dear Sir,

We refer to our letter dated 04th May, 2016 and subsequent discussions with you on the above subject. We enclosing the Ex-brewery Prices of popular Beer brands in the other States desired by you in our meeting on 6th August, 2016. The rates mentioned are for the most popular brands of respective companies United Breweries/SAB Miller/Carlsberg.

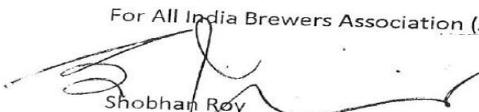
These are the current prevalent Ex-brewery rates and you will notice that the rates for Rajasthan are the lowest in fact the rates for Rajasthan also includes rupees 19.50 per case the bottling fee. Nowhere the bottling fee or govt. levies are included in Ex-brewery prices.

In view of the above, we shall be grateful if our long standing request for Price Increase is considered favorably.

Thanking you

Yours Sincerely

For All India Brewers Association (AIBA)


Shobhan Roy
Director General



States Comparative Beer Prices

UNITED BREWERIES

KFS-650 ml Ex-Brewery Realisation and MRP	Haryana	UP	MP	Raj	Telangana	AP	Karnataka	Orissa	WB	Mah
Ex Brewery Price	330.00	614.76	376.60	265.43	271.03	271.03	511.43	350.00	381.33	412.17
MRP/Bottle	110.00	135.00	150.00	94.00	105.00	105.00	120.00	110.00	100.00	125.00

* - Above is for KFS and the variants being sold in respective states

** - EPB is net of Bottling fee in all states except Rajasthan

SABMILLER

HS 650ml Bottle (SOLD AT Rs 265 RAJ)	Haryana	UP	MP	Raj	Telangana	AP	Karnataka	Orissa	WB	Mah
Ex Brewery Price to Dealer Corporation (This is the price brewery realises)	323.00	615.96	376.60	265.43	271.03	271.03	475.43	443.41	320.37	271.56
MRP/Bottle	110.00	135.00	150.00	94.00	105.00	105.00	120.00	115.00	85.00	125.00

CARLSBERG

Brand Name (650 ml bottle)	Haryana	UP	MP	Raj	Telangana	AP	Karnataka	Orissa	WB	Mah
Ex Brewery Price	NA	622.56	301.20	265.43	NA	NA	422.70	346.07	381.70	271.56
MRP/Bottle	NA	135.00	160.00	94.00	NA	NA	120.00	115.00	85.00	125.00

* Only Rajasthan ex-brewery price includes the Bottling fee of Rs. 19.50 per case

* N/A means same brand not available as in Rajasthan

- (iii) Statement of Mr. Sovan Roy, Director General of OP-5, regarding the e-mail trail dated 05.06.2015 and the letter dated 23.11.2016:

“Individual breweries supplying to RSBCL had submitted rates for price increase directly to the Excise Commissioner who was the MD of the RSBCL Corporation. AIBA was following up with the department the issue of not having granted rate increase to the breweries over a considerable period of time. The department continued to increase the Excise duty during this period from 146% to 150%. The suggestion was that since the MRP was going up because of the department having changed the duty structure from 90 to 98, there was a suggestion if this could be taken up to 100. Ultimately, no change in pricing was granted or sanctioned by the Government.”

When asked as to how the EBP of exactly ₹265.43 for the State of Rajasthan was arrived at by all three competitors as mentioned in the attachment in the letter dated 23.11.2016 sent by OP-5 to the Secretary Finance and Revenue, Government of Rajasthan, Mr. Sovan Roy replied that:

“As per the liquor sourcing policy of the Rajasthan Govt., individual brewers who wish to supply to RSBCL need to fill the details of the cost with justification sheet in the format prescribed by RSBCL. The RSBCL reviews and conveys the pricing to the brewers directly. In this determination of price by the department, AIBA is not involved or present.



... The prices referred above as an example was conveyed to illustrate the point for making grounds for increase in prices. The arrival of the price of Rs. 265 and the mode by which it was arrived at, was not to my knowledge. To that extent, I was privy to the price.”

On being asked to explain the communication of Mr. Shalabh Seth regarding increasing duty from x% to y%, and for inflation-led price increases, Mr. Roy stated that:

“Since there was no rate increase coming for years and the department’s revenue in terms of percentage was fixed at 146%, he recommended to make an offer to the department to increase to 150% in which case the MRP would go from Rs. 90 to Rs.98. The ground to be explained to the department is that with the increase in MRP, the revenue to the department would improve, and at the same time the bottling fees, which was imposed on the brewers in their EBP, be allowed to be passed on.”

(iv) Statement of Mr. Shalabh Seth of OP-3 regarding e-mail trail dated 05.06.2015:

“This response was written in my capacity as Chairman of All India Brewers Association (AIBA). The advice was that Excise duty is a prerogative of the respective State Governments and the respective companies should focus on bottling fees reimbursement and increase in input costs while requesting the State Govt for price increase.

The email ID used by me as Managing Director of SABMiller India and Chairman of AIBA was the same. As stated earlier, as AIBA Chairman and Member, I have advised to stick to escalation in costs and reimbursement of bottling fees as representation to the State Government.”

When confronted with the fact that, as Managing Director of OP-3 and also as Chairman of OP-5, he used to have discussions of prospective pricing quotes with his counterparts in competitor companies and had also been privy to prospective pricing quotes of the competitors, he stated that:

“I have tried to stick to only discussions around industry issues and specific State policy related issues without getting into any price discussion. ... I am not denying the contents and the receipt of the email.”

And during his subsequent deposition, he stated that:

“RSBCL had last provided price increase in 2014 which was a minor increase. In 2015 policy, the State Government assured of price increase



but it never materialised. Similarly, the issue was raised along with 2016 policy, as well. In April 2016, the supplies were not made for about one week to RSBCL. Thereafter, the companies individually accepted the orders after assurances by the State Govt. In my mail, I had agreed to go in with the approach suggested by Mr. Shobhan Roy to go in for cost pushes by individual companies.”

- (v) Statement of Mr. Shekhar Ramamurthy of OP-1 regarding e-mail trail dated 05.06.2015:

“The context is that despite the policy in 2014 stating that manufacturers would be allowed free pricing, State Excise did not permit it. We jointly, as an industry body, represented to the Government that we should be allowed a reasonable increase to cover our inflationary costs. We also represented to the State that additional levies that they had imposed on us should be reimbursed to us, else our effective basic price was coming down. ... I do not recollect the computation of the details of the pricing, but I do recollect that it was to cover inflation. The Government would allow uniform prices for all competitors and not allow us separate prices. In this light, we decided to go for a round-off figure of Rs. 100 for the benefit of the consumers (who otherwise would have been overcharged by trade).”

- (vi) Statement of Mr. Kiran Kumar of OP-1 regarding e-mail trail dated 05.06.2015:

“In Feb-Mar 2015, the Rajasthan govt. announced the Liquor Sourcing Policy for the year, and all companies submitted their prices. Subsequently, the bottling fee was increased in the State, and when the pricing was fixed, neither the bottling fee reimbursed to companies nor was the price increase applied for allowed. The Principal Secretary and Secretary, Finance, upon their request, were met by AIBA to request them to reimburse the increase in bottling fee to companies, as well as to allow the price increase sought by companies in accordance with the LSP for the year. From the email it appears that there was also an apprehension that Excise duty would also be increased in the course of 2015, and it appears from the mail that there were some discussions with Principal Secretary and Secretary, Finance on the quantum of increase and its impact on the MRP. For the record, neither was the price increase granted nor the increase in bottling fee reimbursed. I was not part of the discussions that took place in the emails, and I do not actually know about their contents.



The said emails were marked to me to keep me in the loop, being the Head of Sales.”

- (vii) Statement of Mr. Michael Jensen of OP-4 about his suggestion to ask for price increase of ₹100 in the e-mail dated 05.06.2015:

“The rationale for advising the price increase to Rs. 100 is that in reality a price point of Rs. 98 would have led retailers to ask for Rs. 100 from the consumers. Since the MRP of Rs. 98 would have been an absurdity in the absence of ready availability of small coins, so in all instances we always recommended pricing point in multiple of either Rs. 5 or Rs. 10, and ideally only Rs. 10 pricing multiple. Since small change is not readily available in the market, therefore such pricing points would have led to price inflation at retailers.”

- (viii) Comparative MRPs of strong Beer SKUs of OP-1, OP-3 and OP-4 in the State of Rajasthan, as tabulated by the DG from the replies of OP-1, OP-3 and OP-4:

Date	Kingfisher Strong Premium 650 ml bottle	Haywards 5000 Super strong 650 ml bottle	Tuborg Strong 650 ml bottle
01.04.2016	94		94
07.04.2016		94	
2017 (date unspecified)		97	
01.04.2017	97		97
2018 (date unspecified)		100	
22.06.2018	100		
23.06.2018			100

- (ix) E-mail dated 19.04.2016 sent by Mr. Amit Sahni of OP-1 to Mr. Manish Shyam of OP-3, which was recovered during search and seizure operation from the premises of AB InBev:



E-mail 1

From: Amit Sahni <asahni@ubmail.com>
"manishshym@yahoo.com" <manishshym@yahoo.com>
Sent: Tuesday, 19 April 2016 11:58 AM
Subject: Fw: Cost Justification Letter Rev

18th April, 2016

The General Manager (Operation)
Rajasthan State Beverages Corporation Ltd,
Jaipur.

Dear Sir,

Sub: Submission of Justification for increase in EBP and Cost Sheet
Ref: Your Letter RSBCL/Operation/2016-17/321 dated 13-04-2016

With reference to your above letter, we would like to bring to your kind notice that we were last given a price increase on our brands in August 2014. Since then there has been considerable increase in all input costs of our brands as well as Govt. levies.

The increase in input costs have been captured in the table provided below:

1. Raw Materials and Packaging:

Brand/Pack	Input Material	2014 Sep	2016 Apr	Incr.
Kingfisher Strong Premium Beer-650 ml	Malt	28.81	31.92	11%
	Maize/Rice Flakes	9.90	10.38	5%
	Sugar	5.41	5.66	5%
	Hops	2.49	2.69	8%
	Pkg. Materials (Labels/Crowns /Cartons/Foils)	18.39	19.67	7%
	Power and Fuel	9.17	10.43	14%
	Total	74.17	80.75	9%
Kingfisher Premium Lager Beer- 650 ml	Malt	16.77	18.09	8%
	Maize/Rice Flakes	5.88	6.01	2%
	Sugar	2.99	3.03	1%
	Hops	2.45	2.62	7%
	Pkg. Materials (Labels /Crowns /Cartons/Foils)	17.73	19.34	9%
	Power and Fuel	8.89	10.43	17%
	Total	54.71	59.52	9%



2. Govt. Levies :

With respect to Government Levies borne by the manufacturers, the increase has been as under:

Govt. Levies	2014 September	2016 April	Incr. %
Brewery Licence/Warehouse Fee - Rs. lacs	23.0	40.0	74%
Bottling Fee – Rs. per Bulk Litre	1.5	2.5	67%
Franchise Fee - Rs. per Bulk Litre	2.3	3.3	43%

3. Factory Overheads:

We bring to your kind attention that high inflation rate has significantly affected our operating costs, details of which are given below:

Factory Overheads	2014 September	2016 April	Incr. %
Direct Labour and Personnel Cost	11.94	16.01	34%
Operating Costs	13.73	19.87	45%

4. Other Cost:

United Breweries is committed to producing best quality Beers with state of the art manufacturing facilities. Keeping in mind the same, we continue to invest in new Breweries and upgrade the existing facilities to deliver the most accepted beer brands in India. We have recently acquired another manufacturing facility near Alwar to cater to the needs of Rajasthan consumers. Due to above investments our other financial costs like Interest, Depreciation and other Corporate Overheads have gone up considerably as given below:

Corporate Overheads	2014 September	2016 April	Incr. %
Depreciation	8.72	9.82	13%
Cost of Finance	5.11	6.86	34%
Administrative Overheads	6.00	8.00	33%

United Breweries Limited is committed to take all necessary steps to ensure that the interests of all the stakeholders in the brewing business in Rajasthan are met, provided RSBCL grants us fair prices for our products and support us to generate more revenue for the Government.

Thanking you,

Yours faithfully,
For United Breweries Ltd.,

(Authorised Signatory)



- (x) Internal e-mail communications dated 18–19.04.2016 exchanged between Mr. Manish Shyam, Mr. Amit Taneja, Mr. Tejvir Singh and Mr. Suyog Karajgi of OP-3, which were recovered during the search and seizure operation from the premises of AB InBev:

E-mail 1

From: Manish Shyam
Sent: Monday, April 18, 2016 2:20 PM
To: Tejvir Singh
Subject: Fwd: CIPL_ Justification letter

For your information

Regards

E-mail 2

From: Tejvir Singh
Sent: Monday, April 18, 2016 2:31 PM
To: Suyog Karajgi;
Subject: FW: CIPL_ Justification letter

E-mail 3

From: Suyog Karajgi
Sent: 18 April 2016 15:03
To: Denis Gohel
Subject: FW: CIPL_ Justification letter
Attachments: imagefe16c0.JPG; ATT00001.htm; mime-attachment; ATT00002.htm

Hi Denis,

Please check if our costs are in line with CIPL.....there should not be major variation.

Regards

Suyog

E-mail 4

From: Amit Taneja
Sent: 18 April 2016 13:19
To: Manish Shyam
Subject: CIPL_ Justification letter
Attachments: _msg; _msg; _msg

Importance: High

Regards



E-mail 5

From: Manish Shyam
Sent: 19 April 2016 12:15
To: Suyog Karajgi
Subject: FW: Cost Justification Letter Rev
Attachments: Cost Justification Letter Rev.docx
Importance: High

Attached UB letter. Can we do ours on similar lines. Need this urgently as we have to submit in the next 45 min.

(xi) Statement of Mr. Manish Shyam of OP-3 regarding exchange of e-mails by him:

“... In most of the States, even though individually the companies would request for price increase, they would also collectively approach the Government, primarily to show that the request for price increase is by everyone, and in some way to put pressure on the State Government for a price increase. In particular, Rajasthan Principal Secretary-Revenue had requested all companies to submit justification for a price increase in a specified format which he would then use to convince the Govt. for a price increase. He had requested that the input costs of specific items to be shared with him in the prescribed format. The main intention behind it was to keep the Beer prices in Rajasthan lower than the neighbouring States, so as to avoid bootlegging and lowering of the Government revenue. He asked for Malt, sugar, maize, fuel, bottle cost, labour, electricity costs from each company. For this purpose, Mr. Amit Sahni of UBL (Sales Head in Rajasthan), shared UB’s input costs with me, and I forwarded it to our Finance Team for perusal and preparation of SABMiller’s input cost figures.”

On being specifically asked about the e-mails dated 18–19.04.2016 (erroneously typed as 2015 in the statement), Mr. Manish Shyam stated that:

“Mr. Suyog Karajgi and Mr. Denis Gohel are from Finance department of SABMiller. On being asked by PSF Rajasthan to submit individual price break up of the input cost, SABMiller got the justification letters submitted by Carlsberg and UBL, which were forwarded to our Finance guys so that SABMiller’s cost justification letter was prepared in ‘similar lines’ without any major variation. By the term ‘similar lines’, I meant that the components/line items of the input costs should be on identical pattern, so as to facilitate the PSF to compare the figures of respective companies.”



- (xii) Internal e-mail communications dated 27.04.2016 exchanged between Mr. Suyog Karajgi, Mr. Amit Taneja, Mr. Manish Shyam and Mr. Manoj Srivastava of OP-3:

E-mail 1

From: Suyog Karajgi
Sent: Wednesday, April 27, 2016 12:32 PM
To: Manish Shyam; Manoj Srivastava; Amit Taneja
Cc: Nilojit Guha; Devashish Dasgupta; Tejvir Singh
Subject: Rajasthan Details

Manish,

As discussed, please find attached required details asked by RSBCL. This is in line with our earlier submission. We have only added increase in Brewery Licence fees in line with UB's submission.

Regards

Suyog

E-mail 2

From: Manish Shyam
Sent: 27 April 2016 12:42
To: Suyog Karajgi; Manoj Srivastava; Amit Taneja
Cc: Nilojit Guha; Devashish Dasgupta; Tejvir Singh; Rakshat Chopra
Subject: RE: Rajasthan Details

Thanks Suyog. Going ahead and submitting.

Regards
manish

- (xiii) Statement of Mr. Manish Shyam of OP-3 regarding OP-3's internal e-mails dated 27.04.2016:

"I was given this proposal to be submitted by Mr. Suyog Karajgi which was decided by the top management. I further went ahead and submitted the proposal to the Government for price increase. I am aware of the said emails, only in so far I was directed to submit the proposals flowing from the decision of the top management. I was not part of the decision making process."

- (xiv) Comparison of MRPs of highest selling SKU, i.e., strong Beer 650ml bottle – KFS of OP-1, H5K of OP-3/AB InBev and TBS of OP-4, in the State of Rajasthan over the period 2011–18, as culled out from their replies submitted to the DG, tabulated and graphically demonstrated by the DG:

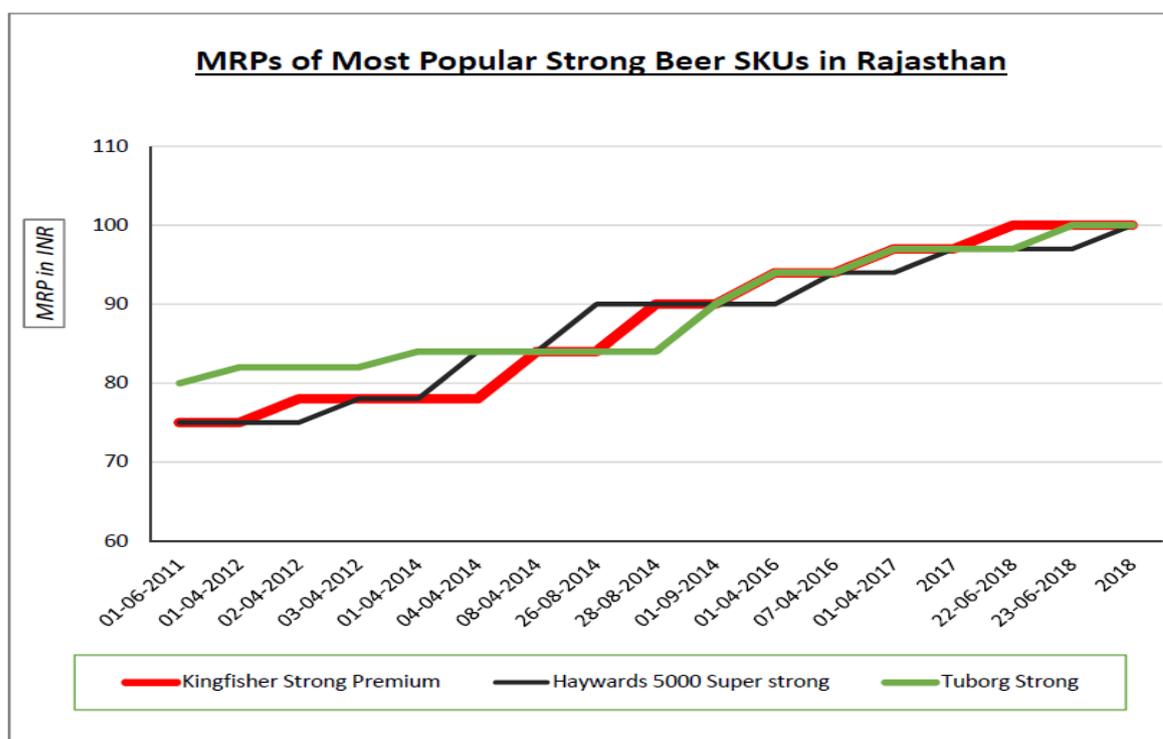


सत्यमेव जयते



(in INR)

Date	Kingfisher Strong Premium 650 ml bottle	Haywards 5000 Super strong 650j ml bottle	Tuborg Strong 650 ml bottle
01.06.2011	75	75	80
01.04.2012			82
02.04.2012	78		
03.04.2012		78	
01.04.2014			84
04.04.2014		84	
08.04.2014	84		
26.08.2014		90	
28.08.2014	90		
01.09.2014			90
01.04.2016	94		94
07.04.2016		94	
2017 (date unspecified)		97	
01.04.2017	97		97
2018 (date unspecified)		100	
22.06.2018	100		
23.06.2018			100





(xv) Statement of Mr. Shekhar Ramamurthy of OP-1:

“... the Rajasthan Government controls every aspect of pricing. However, in the policy of 2014 they had allowed free pricing. Nevertheless, they were pressurising the industry to continue supplies at old prices. It is in this context that the AIBA members asked the DG of AIBA to seek a meeting with the Excise Commissioner to seek clarity on the policy. Thereafter, as per the policy, the Excise allowed the price increase we were seeking...”

“... In Rajasthan, since 2014 the State has denied us a price revision and the AIBA platform was used to discuss with the Excise department, often at the behest of the State ... In Rajasthan specifically, since the Government had not given a price revision of the basic price since 2014, there have been discussions largely over telephone between CEOs/Presidents of CIPL, SAB Miller and UBL, and may be ABI as well, regarding petitions to be made to the Excise department for a basic price increase.”

(xvi) Statement of Mr. Manish Shyam of OP-3:

“... On being asked by PSF, Rajasthan to submit individual price break up of the input cost, SABMiller got the justification letters submitted by Carlsberg and UBL, which were forwarded to our Finance guys so that SABMiller's cost justification letter was prepared in 'similar lines' without any major variation ...”

(xvii) E-mail communications exchanged between Mr. Kiran Kumar and Perry Goes of OP-1, Mr. Manish Shyam and Mr. Devashish Dasgupta of OP-3, Mr. Dhiraj Kapur of OP-4 and Mr. Sovan Roy of OP-5 in October 2016:

E-mail 1

From: shobhan.roy@aiba.co.in [mailto:shobhan.roy@aiba.co.in]
Sent: Friday, October 28, 2016 11:30 AM
To: 'Dhiraj Kapur'; Manish Shyam; Devashish Dasgupta; 'Perry G'; 'Kiran Kumar'
Cc: ritika@aiba@gmail.com
Subject: RAJASTHAN Submissions

Dear All
As per the caution mentioned at the Board Meeting, I suggest each company submits the comparative data of their respective Brands in that category of Rs 265 individually. Mark the mail to Praveen Gupta, mentioning the 8th August meeting and apologize for reverting back late.
Request for resolving the matter now.
His mail id is secyfinr@rajasthan.gov.in

Also have a hard copy delivered addressed to him
Mark me a BCC for AIBA to then Step in .
Regards
shobhan



E-mail 2

On 28-Oct-2016, at 15:48, Manish Shyam <manish.shyam@in.sabmiller.com> wrote:

Dear Shobhan Da,

As per the last discussion with Praveen Gupta, he had asked you to submit comparative rates of the states mentioned. Suggest that the data on prices be submitted by AIBA. In my opinion it would have more of an impact coming from the association, than coming individually.

Post submission, you could seek an appointment to follow up.

Warm regards,
manish

E-mail 3

On 29 Oct 2016 7:08 p.m., Shobhan Roy <shobhan.roy@alba.co.in> wrote:

Point raised at alba meeting was on cartelization and we should avoid getting caught

Like you individually submit rate files it may be submitted individually and then alba takes over Trust i have clarified the point

Regards

Shobhan

Sent from my iPhone

E-mail 4

From: Perry G [<mailto:perry@ubmail.com>]
Sent: Monday, October 31, 2016 11:42 AM
To: Shobhan Roy; Manish Shyam
Cc: Dhiraaj Kapur; Devashish Dasgupta; Kiran Kumar; ritikaalba@gmail.com
Subject: Re: RAJASTHAN Submissions

(MHO.

ates already granted to companies are in the public domain and as such available to AIBA and anyone else. AIBA taking that data to Govt to seek in principle approval of a price increase for the industry cannot be viewed as cartelization. It is fair trade representation. The Govt as a practice takes a decision to give (or not) a price increase decision for the industry.

Individual company price quotations have to be submitted independently : If the submissions are clubbed that would be cartelization.

For those interested in pursuing the line of thinking around cartelization, I would suggest that some line of thought be also developed around monopoly and unfair trade practice.

Regards

Perry



E-mail 5

From: shobhan.roy@aiba.co.in [mailto:shobhan.roy@aiba.co.in]
Sent: Monday, November 07, 2016 11:27 AM
To: 'Perry G'
Cc: 'Dhiraj Kapur'; Devashish Dasgupta; Manish Shyam
Subject: FW: RAJASTHAN Sumissions

Perry

I donnot have the rates from UB on UP/MP/ WB/ MAH/ orissa/ Haryana and not in the public domain from where AIBA can access

etc.

Can somebody help in submitting the rates as per format given .

Regards

Roy

E-mail 6

From: Devashish Dasgupta
Sent: 17 November 2016 11:12
To: shobhan.roy@aiba.co.in; Perry G
Cc: Dhiraj Kapur
Subject: RE: RAJASTHAN Sumissions

Follow Up Flag: Follow up
Flag Status: Flagged

Please let us know the plan/ way forward on the Rajasthan matter and also on the proposed Working Committee meeting?

Thanks

Devashish

(xviii) Statement of Mr. Shekhar Ramamurthy of OP-1 who was the former President/Chairman of OP-5, on the role of OP-5:

“... we have used AIBA to represent to State Governments, specifically Rajasthan and Odisha with respect to an industry grievance on pricing ... In Rajasthan specifically, since the Government had not given a price revision of the basic price since 2014, there have been discussions largely over telephone between CEOs/Presidents of CIPL, SAB Miller and UBL, and may be ABI as well, regarding petitions to be made to the Excise department for a basic price increase. The platform for these discussions was AIBA and the DG of AIBA was meant to coordinate the petitions and discussions between the companies and the State Excise department.”



(xix) Statement of Mr. Manish Shyam of OP-3:

“I did attend the meeting in December 2015 with Mr Pravin Gupta, PSF, Rajasthan requesting him for a price increase to which he again said that he would follow it up with the Government. The meeting was also attended by Carlsberg and UB. After individual companies had submitted their respective proposals, they followed it up with the Excise Commissioner and the PSF, Rajasthan under umbrella of AIBA, so that collectively there would be better chances of getting a price increase. The decision to go through AIBA was taken by the top management.”

(xx) Statement of Mr. Sovan Roy of OP-5 on role of OP-5:

“... AIBA in good faith was pursuing with Rajasthan govt. to increase the price in view of the cost increase. Thereafter, the matter was put up in the aforesaid Board meeting and it was decided not to pursue the case for Rajasthan. I recollect that AB InBev suggested that AIBA should not pursue the Rajasthan price hike as it may be violative of CCI rules. But other members were not sure that there is a violation.”

“We were aware on the issues of CCI with regard to cartel formation. However, subsequently one of our member companies in our Board meeting in November 2016 also mentioned the issue. In subsequent Board meeting in January 2017, it was recorded that AIBA would desist from pursuing the rate increase issues especially in Rajasthan. This was, however, objected to by the minor market share holder/members, who strongly felt that the Corporation who are monopolistic and control every aspect of the business, can be approached for discussions.”

111. From the e-mail communications of 05.06.2015 extracted at point (i) above, it is noted that there was close interaction between the top management of OP-1, OP-3 and OP-4 and the Director General of OP-5, regarding co-ordination of price increase to be asked for from Rajasthan Excise Department for Strong category Beers. In his e-mail, Mr. Sovan Roy of OP-5 proposed strategies for raising Excise Duty from 146% to 150% and going in for price increase requests. Mr. Sovan Roy categorically suggested that the companies could increase retail price to ₹98 in the category where current EBP was ₹265 per case and MRP ₹90 per bottle. On further suggestion by OP-1 to ask for raise of MRP to ₹100, Mr. Michael N. Jensen of OP-4 conveyed his agreement.



112. While in his statement recorded on oath before the DG extracted at point (vii) above, Mr. Jensen tried to justify the request for raising MRP to a round-off figure of ₹100, Mr. Shekhar Ramamurthy of OP-1 admitted in his statement extracted at point (v) above that OP-1, OP-3 and OP-4 had jointly represented to the Rajasthan Government for a price increase. On his part, Mr. Shalabh Seth of OP-3, in his statement extracted at point (iv) above, also suggested to his counterparts in competing companies to ask for inflation led price increase.
113. Thus, the e-mails dated 05.06.2015 and statements of key managerial personnel of the OPs regarding the same clearly show that OP-1, OP-3, OP-4 and OP-5 were hands in glove while making price increase requests in the State of Rajasthan.
114. OP-5, in its objections/suggestions to the DG Report has tried to explain the context behind such communications by stating that since the OPs were seeking re-imburement of Bottling Fees imposed upon them in the State of Rajasthan, it was suggested by OP-5 that to recoup the losses, RSBCL may increase the excise duty on Beer and thereby let MRP go up without any EBP increase. As per OP-5, there is nothing wrong in making of such suggestion to RSBCL.
115. In the view of the Commission, the above argument put forth by OP-5, does not explain the entire picture regarding the conduct of OP-5. From the e-mails extracted at point (i) above, the Commission notes that OP-5, apart from suggesting increase in excise duty to the government, also suggested the likely future MRP, which may be fixed by the parties.
116. Further, from the letter dated 23.11.2016 extracted at point (ii) above, which was sent by Mr. Sovan Roy of OP-5 to the Secretary-Finance and Revenue, Government of Rajasthan, it is noted that the industry association OP-5 had been taking up the task of making representations and making suggestions for price increase for OP-1, OP-3 and OP-4 to the Government. The attachment to the said letter shows that the EBP of OP-1's KFS 650ml, OP-3's H5K 650ml and OP-4's TBS 650ml were identical for Rajasthan at exactly ₹265.43. Besides, the MRP per bottle of these SKUs in the State were also identical at ₹90. From the said attachment, it is also observed that the EBP of KFS and



H5 in the States of Madhya Pradesh, Telangana and Andhra Pradesh were also identical down to the last paisa.

117. It is noted from the DG Report that the brewery plants of these manufacturers in the State of Rajasthan are situated at different locations at a distance of approximately 60 to 80 kms from each other. Thus, despite the manufacturing cost per unit of Beer for these OPs, having different manufacturing locations, production capacities and different efficiency levels, it is surprising that their prices of beer were identical down to the last paisa. The only reasonable explanation for the same seems to be explicit understanding and collusion amongst them.

118. In fact, in the e-mails extracted at point (xvii) above, OP-5 itself suggested that such collective data being submitted to the government by OP-5 may amount to cartelisation and as such, individual representation to the government may be given. Hence, evidently, OP-5's role was not limited to making some suggestion to RSBCL about increase in excise duty, but exceeded far more than that; and OP-5 was also well aware that its such activities may amount to infringement of competition law, yet it continued to indulge in such conduct.

119. Further, from the analysis of the pricing data of Strong Beer 650ml SKUs in the State of Rajasthan extracted at point (viii) above, it is observed that the prices of the top-selling Beer SKUs of the OPs (KFS of OP-1, H5K of OP-3 and TBS of OP-4 in 650 bottle category) were revised in close tandem. OP-1 and OP-4 together raised the MRP of their brands on 01.04.2016, and OP-3 followed closely on 07.04.2016 to identical price level. Again on 01.04.2017, OP-1 and OP-4 together hiked their prices further to ₹97. The MRP of OP-3's H5K 650ml bottle also went up to the same level in 2017, though the actual date of such revision is not known. In the next year, OP-1 and OP-4 increased their MRPs further to ₹100 on 22.06.2018 and 23.06.2018 respectively, and OP-3 also had its price of ₹100 (actual date of price revision is not known).

120. Not only the above, from the e-mail communications dated 18-19.04.2019 extracted at point (ix) above, it is noted that Mr. Manish Shyam of OP-3 had received from Mr. Amit Sahni of OP-1, the letter submitted by OP-1 to RSBCL for justification of OP-1's price revision requests. From the internal e-mails of OP-3 dated 18-19.04.2019 extracted at



point (x) above, it is noted that Mr. Manish Shyam forwarded the said e-mail of OP-1 and similar justification letter received from OP-4, to Mr. Tejvir Singh and Mr. Suyog Karajgi of OP-3. In accordance with the same, OP-3 also gave its justification to RSBCL, which is evidenced from the e-mails dated 27.04.2016 extracted at point (xii) above.

121. Thus, from such e-mail communications, it is apparent that even when the OPs got individual notices from the Excise Authorities asking for justification for seeking price increase, they co-ordinated amongst themselves and exchanged their replies to be submitted to the Excise Authorities. This seems to have been done primarily to align their replies giving identical reasons for seeking the price increase, and putting up a united stand before the Excise Authorities.

122. Furthermore, from analysis of the pricing data from 2011 to 2018 of Strong Beer 650ml Beer SKUs in the State of Rajasthan furnished by the OPs before the DG, which the DG has tabulated as extracted at point (xiv) above, it is observed that the prices of the top-selling Beer SKUs of the OPs (KFS of OP-1, H5K of OP-3 and TBS of OP-4 in 650 bottle category) were revised in tandem. The MRPs of OP-1 and OP-3 were initially identically priced at ₹75/- on 01.06.2011, with OP-4 being priced higher at ₹80/-. On 01.04.2012, OP-4 upped the price of TBS to ₹82/-, while OP-1 and OP-3 raised the prices of their brands to ₹78/- on 02.04.2012 and 03.04.2012 respectively. Thereafter, however, the prices of the flagship brands of all the three OPs moved together in Rajasthan. On 01.04.2014, OP-4 increased its price to ₹84/- with OP-3 and OP-1 following suit on 04.04.2014 and 08.04.2014 respectively. After a gap of four months, OP-3 took the lead to hike its price of H5k to ₹90/- on 26.08.2014, and OP-1 and OP-4 also raised their prices to identical level on 28.08.2014 and 01.09.2014 respectively. Then, after a gap of almost a year and a half, on 01.04.2016, both OP-4 and OP-1 increased the MRPs of their strong Beer flagship brands to ₹94/-. Following this, OP-3 also hiked its MRP of H5k to ₹94/- to bring its prices at par with that of OP-1 and OP-4. In the year 2017, again OP-1 and OP-4 together increased the rates of KFS and TBS on 01.04.2017. Though the price of H5k was also raised its price to ₹97/- in the year 2017, actual date of such revision has not been provided by OP-3. In the next year, OP-1 raised the MRP of KFS to ₹100/- on 22.06.2018, with OP-4 following to the same level the



very next day. OP-3 also increased MRP of its H5k in the year 2018 to ₹100/-, but again the actual date of such increase is not available.

123. The graphical representation of such price revisions effected by OP-1, OP-3 and OP-4 in the State of Rajasthan, as extracted at point (xiv) above, clearly shows that the MRPs of KFS, H5k and TBS 650ml bottle in the State of Rajasthan moved parallelly. Especially after July 2014, the price lines of KFS and TBS overlap, with that of H5k also merging with them immediately thereafter.

124. OP-1 and OP-4, in this regard, have contended that price increase by the OPs in the State of Rajasthan is sought only on the EBP and similar revisions in MRP are a result of increase in taxes/levies/excise duties which are applicable uniformly across all brands. OP-1 has contended that the DG ought to have approached the State Corporation to record if the OPs had submitted similar requests for a price increase in EBP. Further, OP-1 and OP-4 have submitted that in Rajasthan, no price increase had been granted since 2014. While the Beer manufacturers were promised a price increase in 2015, the same did not materialise. In fact, the State Government of Rajasthan did not offer a price increase till July 2019. As such, all increases in MRP have been a result of increment in taxes/duties *etc.*

125. In this regard, the Commission notes that the taxes/excise duties *etc.* being levied on Beer in the State of Rajasthan would be the same for all the OPs. As such, if they have identical/similar MRPs at any given point of time, by reverse calculation, their EBPs on the basis of which respective MRPs are determined by the State government, would also be identical/similar only at the time.

126. Apart from the above, from the e-mail communications exchanged between the OPs in October 2016 extracted at point (xvii) above, the Commission notes that the representatives of the Beer companies preferred OP-5 to approach the State Governments on behalf of its members, as it would have put more pressure on the Government. However, Mr. Sovan Roy of OP-5 voiced his concern and suggested that “*we should avoid getting caught*”. This issue was discussed in OP-5’s Board meeting held on 24.01.2017. The agenda of the said meeting held at *Le Meridian* Hotel in Bengaluru, listed “*Rajasthan rate increase ... Risk of CCI violations*” as one of the issues to be taken



up for discussion by the Board. The minutes of the said meeting dated 24.01.2017 record the following:

10. Excise Policy

- With GST implementation on the cards and Highway liquor shops to be removed, State Excise will be fully engaged to stabilise the operations in the current year.
- Once clarity emerges we can start “Co-Creating” Excise Policy once again
- Because of Competition Commission of India AIBA to avoid rate increase matters collectively.
- AIBA can however represent common industry issues Example - why Bottling fee included in Ex-brewery price which is not the practice elsewhere etc. /In Maharashtra to avoid use of holograms on Beer/ new Just Beer outlets in Delhi.

Such minutes, when read with the replies given by Mr. Sovan Roy of OP-5 upon the same during recording of his depositions on oath before the DG as extracted at point (xx) above, evidence that the OPs were well aware that their collective approach through OP-5 was violating the provisions of the Competition Act; however, they continued to use the aegis of the association to petition the State Governments (including in Rajasthan) for price revisions. This, as per the DG, shows the audacity of the OPs to openly discuss their pricing information amongst themselves and use their association to collectively approach the State Governments for revision of MRPs and EBPs, despite noting that *“because of Competition Commission of India, AIBA to avoid rate increase matters collectively.”*

127.OP-1 and OP-4 have argued that in analysis of the communications between the OPs, the DG has disregarded the role of the State Corporation in facilitating such communication. Against this background where the State almost never provides any price increase, the OPs were left with no option but to make joint representations to the State Corporation through OP-5 to, at the very least, recover their costs and not incur significant losses.

128.In this regard, the Commission observes that though the OPs have tried to justify their cartel conduct by blaming the State government, they have not been able to explain as to how is the State government responsible for their co-ordinated action. It seems that only to have a strengthened bargaining power against the State, the OPs came hand-in-gloves with each other and shared their commercially sensitive information such as cost data *etc.* with each other. As such, in the view of the Commission, the State cannot be held responsible for OPs’ co-ordinated conduct.



129. Further, with respect to OP-5, it is observed that OP-5, being an association of Beer companies, should have limited its role to raising common issues affecting the industry and its members before the State government. However, it went beyond and indulged in proposing strategies for raising Excise Duties by the government and also suggested the likely future MRP, which may be fixed by the OPs. Further, the e-mails exchanged extracted above also make it evident that OP-5 was aware of the anti-competitive nature of the information exchange being made. As such, it is clear that the platform of OP-5 was used by the members for indulging into anti-competitive information exchange, and OP-5 has no explanation for the same. The impugned conduct of the OPs including of OP-5, if examined in the backdrop of permissible boundaries of legitimate conduct of trade associations, appear to *ex facie* transgress the perimeter within which trade associations can legitimately espouse the cause of their respective members.

130. Further, the OP-1 and OP-4 have argued that the price increase in EBPs sought by the OPs were not actually awarded by the State Corporation in Rajasthan, thereby leading to no AAEC. In the view of the Commission, under Section 3(1) of the Act, any agreement which 'causes' or is even 'likely to cause' AAEC within India, is anti-competitive in nature and hence, prohibited. Further, price parallelism amongst the OPs is categorically established; hence, the plea of non-implementation holds no merit.

131. Thus, in the opinion of the Commission, identical pricing, coupled with evidences of multiple communications amongst the OPs, and admission by representatives of OP-1 and OP-3 to have shared their price revision petitions and justification letters amongst OP-1, OP-3 and OP-4, clearly establishes that in the State of Rajasthan, the OPs, with active assistance of OP-5, had indulged into cartelisation which stifled/was likely to stifle competition amongst them and may cause AAEC, from 2011 to 2018 (with OP-4 joining in 2014), by fixing of prices of their product, which is in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act. The OPs have not rebutted such AAEC in terms of the factors stated under Section 19(3) of the Act.



West Bengal

132. In the State of West Bengal where Corporation Model prevailed till November 2017 and from December 2017 Free Market Model was followed, the DG has relied upon the following evidences, to give a finding of price co-ordination amongst the OPs:

- (i) Internal e-mail communications exchanged in April-May 2012 between Mr. Anil Bahl, Mr. Subodh Marwah, Mr. Soren Lauridsen, Mr. Michael Jensen and Ms. Sukanta Banerjee of OP-4, which were submitted by OP-4 during investigation:

E-mail 1

From: Anil Bahi
Sent: 13 April 2012 15:54
To: Subodh Marwah; Soren Lauridsen; Michael Norgaard Jensen
Cc: Sukanta Banerjee (Kolkatta); Nimish Gupta; Saurabh Swarup; Pankaj M Joshi; Amrita Bharadwaj; Pankaj Bedi
Subject: Visit to East and minutes of our concall with Reg heads

Dear All

Please find the minutes of the concall that we had with Reg heads and some of the actions that are planned thereon. Also given in the mail below is some of the salient points of my meeting yesterday with the East team on Pricing. I am also attaching the current, budget and proposed MRP for East.

• Pricing related.

◦ West Bengal

Palone

1. The team is aligned to take price of Palone 650 ml from current 50 to 60 (budget 50) provided UB kalyani also takes it up from current 55 to 60. I have spoken to the UB Sales director on this who has promised to get back by Mon. The team feels that Rs 55/ would be an odd pricing and hence it is better to increase to 60. This will give us an additional variable contribution of about Rs 10MM (exact workings by brand- forecast versus budget - will be available by Saturday)
2. In the meantime, the team has re-engineered the cost card in Palone to arrive at the budgeted EBP at Rs 55 mvp equivalent. ie they have cut retail margin by Rs 9, distributor margin by Rs 2.11 and discount by Rs 3, to generate an incremental per case revenue of Rs 14.22 at the current MRP of Rs 50. In short, in case the price does not increase to 60, the recommendation is to stay at 50 but with above cuts which will still make us hit our budgeted EBP and also generate incremental volumes from July-Dec. The above change is being implemented wef 16th April.
3. However the first option is to increase price to Rs 60.

Carlsberg Green and Elephant

4. We had a long debate on Carlsberg pricing. The recommendation is as under.

- We stay with current Green and Elephant pricing at Rs 100 till June end, given the pressure in the brand. However, we will increase price in pint (from current 60 to 70 which is in line with budget) and in cans (from current 80 to 90, which is higher than budget of 80).
- The first cut working indicates that despite holding price, there will be no change in



variable contribution in Rs MM in the period April –June as the team is still hopeful of delivering higher volumes in brand.

Tuborg

5. On Tuborg Strong , the recommendation is that we stay at 70 , as UB and SAB are not changing price till June. Also , the team feels that Tuborg as a brand still needs to be established and hence would like to increase after June. However , can price would move from 60 to 65.

• Other States

6. From an MRP perspective , we are taking a price increase more than budgets in Orissa /Bihar/ Jharkhand so as to pass on the duty hikes . The details are given in the attached sheet . The picture will get clearer in a week or so especially in North East . Hence from an EBP perspective , we should be in line with budgets by and large .

• Sales and production related.

- The plant team is really doing their best to support the sales and this was acknowledged by Sukanta. Parag has agreed to give extra 20000 cases over forecast for Palone. The sales team will rationalize the indents so as to include TB Strong.
- Stock out in Elephant ...next production coming up on 20th April. The sales team is still hopeful of meeting the Carlsberg Contest.
- Given the buoyancy of Palone , there is no way that we will be able to meet demand for April and may as we don't have capacity . Hence one of the reasons why Team recommended a price of Rs 60 for palone.
- UB have increase capacity in WBHence will now be able to produce 900K cases ...hence their reluctance to raise price in KFS.
- UB has drooped can price in Orissa in KFS from 59 to 54 as they have started local production there . Nonetheless , we will have to raise price from Rs 63 to 64 to absorb the increase in duty.
- We have also exploring the option of registering Palone 650 ml from Parag from July onwards to supply to Orissa . Currently we have stopped selling Palone 650ml in Orissa as it is unviable to supply from Aurangabad.
- The WB team have done a fantastic job to drive a 360 activation for Fungama night scheduled in Kolkatta on 28th. They have tied up with a local FM radio station for spots which will come on air every hour from 8 am till midnight ...dailyalso have managed to get a voice over of the singer ...asking the consumer to come and watch the event ...AND ALL THIS FOR VIRTUALLY FREE OF COST.
- Corrective action already taken to arrest share loss in Carlsberg and Tuborg Greenhave targeted the select accounts where there is a lossIn off trade also started the ticket promotion for Fungama night.

Rgds
Anil

E-mail 2

To: Anil Bahi[anilb@carlsberg.in]; Subodh Marwah[subodhm@carlsberg.in]; Michael Norgaard Jensen[Michael.J@carlsberg.in]
Cc: Sukanta Banerjee (Kolkatta)[Sukanta@carlsberg.in]; Nimish Gupta[nimishg@carlsberg.in]; Saurabh Swarup[Saurabhsw@carlsberg.in]; Pankaj M Joshi[Pankaj@carlsberg.in]; Amrita Bharadwaj[Amrita@carlsberg.in]; Pankaj Bedi[pankajb@carlsberg.in]; Sanjib Tiwari[Sanjib@carlsberg.in]
From: Soren Lauridsen
Sent: Sun 15/04/2012 3:18:53 PM
Subject: RE: Visit to East and minutes of our concall with Reg heads
Last Modified: Sun 15/04/2012 3:19:08 PM

Dear Anil,

Before approving on final pricing I would like to understand volume respective contribution at various price points on P8.

Soren



E-mail 3

To: Michael Norgaard Jensen (MichaelJ@carlsberg.in)
From: Soren Lauridsen
Sent: Wed 02/05/2012 3:08:06 PM
Subject: Re: Kalyani have agreed to raise price to Rs 60 in WB
Last Modified: Wed 02/05/2012 3:11:35 PM

Great news.

Soren

E-mail 4

From: Anil Bahl <anilb@carlsberg.in>
Date: 2 May 2012 19:17:24 GMT+05:30
To: "Sukanta Banerjee (Kolkatta)" <Sukanta@carlsberg.in>
Cc: Joydeb Banerjee <joydebb@carlsberg.in>, "Michael Norgaard Jensen" <MichaelJ@carlsberg.in>, Manas K Nijhawan <Manasn@carlsberg.in>, Sanjib Tiwari <Sanjib@carlsberg.in>
Subject: Kalyani have agreed to raise price to Rs 60 in WB

Sukanta

Just spoke to Kiran of UB ...they have agreed to take up price of Kalyant to Rs 60 with effect 1st june.

Also he is thinking of increasing price of KFS from 70 to 75 in line with HSK...earlier plan was to move to 73 .

Accordingly we should also move TBS to 75 ...

Kiran will confirm about Kfs move to 75 shortly.

Rgds

Anil

Sent from my iPhone

E-mail 5

On 02-May-2012, at 19:35, "Michael Norgaard Jensen" <MichaelJ@carlsberg.in> wrote:

Regards,

Michael

Sent from my iPhone

- (ii) Statement of Mr. Michael Jensen of OP-4 regarding the e-mail trail of April–May 2012:

“This was early 2012, and I was marked and interacting in the email which pertained to West Bengal market. However, I had been in the country and was with the company for only about 2 months at that time in a capacity as a consultant, and this had been an oversight on my part ...”



- (iii) Comparative MRPs of strong Beer SKUs of OP-1 and OP-4 in the State of West Bengal, as tabulated by the DG from the replies of OP-1 and OP-4:

Particulars	CIPL*	UBL#	
	Brand	Brand	
	Tuborg Strong 650 ml	Kalyani Black Label Strong 650ml	Kingfisher Strong 650 ml
Prevailing Price as on 02.05.2012	70	55	70
Proposed price revision	75	60	75
Price revised on 11.06.2012	-	60	73
Price revised on 20.06.2012	75	-	-
* Source : CIPL reply dated 03.05.2019			
# Source : UBL reply dated 07.05.2019			

- (iv) E-mail communications exchanged in January 2015 between Mr. Nitin Sharma of OP-3 and Mr. Anil Bahl of OP-4 and thereafter internally between Mr. Anil Bahl, Ms. Sukanta Banerjee, Mr. Biswamoy Bose, Mr. Gautam Mukhopadhyay and Mr. Avijit Mitra of OP-4, which were submitted by OP-4 before the DG:

E-mail 1

From: nitin sharma <nitin_1234sharma@yahoo.co.in>
Date: 20 January 2015 6:38:01 pm IST
To: "abahl65@gmail.com" <abahl65@gmail.com>
Cc: "nilojit@gmail.com" <nilojit@gmail.com>
Subject: Pricing Karnataka and West Bengal
Reply-To: nitin sharma <nitin_1234sharma@yahoo.co.in>

Hi Sir,

Post your discussion with Nilojit Sir, please find the prices which are being applied.

Regards
Nitin Sharma



SABMiller India Limited
West Bengal Price Review

Brand	Pack	MRP(Rs.)SABMI				MRP(Rs.)UB		
		Existing	Proposed	Increase		Existing	Proposed	Increase
Haywards 5000	650B	85	85	-	KFS	80	85	5
Haywards 5000	330B	55	55	-		50	55	5
Haywards 5000	500C	75	75	-		70	70	0
Haywards 5000	330C	48	48	-				
Fosters Lager	650B	90	90	-	KFPL	85	90	
Fosters Lager	330B	55	65	10		60	65	
Fosters Lager	500C	75	75	-		70	75	
Fosters Gold	650B	95	95	-	KFS	80	85	5
Fosters Gold	330B	55	55	-		50	55	5
Fosters Gold	500C	80	80	-		70	70	0

E-mail 2

From: Anil Bahl [mailto:abahl65@gmail.com]
Sent: Tuesday, January 20, 2015 11:34 PM
To: Sukanta Banerjee; Jagannath Prasad K
Cc: Nitesh Karnawat; Bibek Singh
Subject: Fwd: Pricing Karnataka and West Bengal

Please plan your price increase in line with this file .
Rgds
Anil

Sent from my iPhone

E-mail 3

To: Biswamoy Bose[biswamoy.bose@carlsberg.asia]; Gautam Mukhopadhyay[gautam.mukhopadhyay@carlsberg.asia]; Avijit Mitra[avijit.mitra@carlsberg.asia]
Cc: DEBABRATA MUNSHI[DEBABRATA.MUNSHI@carlsberg.asia]; Suman Kumar Saha[suman.kumar.saha@carlsberg.asia]; Ujjwal Kumar Mukherjee[ujjwal.kumar.mukherjee@carlsberg.asia]; Shovon Ghosh[shovon.ghosh@carlsberg.asia]; Saurav Ritolia[saurav.ritolia@carlsberg.asia]; Mritunjoy Bose[mritunjoy.bose@carlsberg.asia]
From: Sukanta Banerjee
Sent: Wed 21/01/2015 5:39:03 AM
Subject: FW: Pricing Karnataka and West Bengal
Last Modified: Wed 28/01/2015 6:01:29 AM
[Pricing Decision- F16.xlsx](#)
[ATT00001.htm](#)

Dear all

You may find the attached sheet it has happened after the meeting between SAB UB and CIPL.. UB is going for a price hike wef 1st Feb .. so as we are also applying for same. Please take maximum advantage of pushinf primary and secondary..Haywards 5000 is not increasing but Fosters strong is going from 90/- to 95/-.

King fisher Lager is 5/- more than us going from 85/- to 95/-... suggest what shall we do for TB Mild 85/- or 90/-.

This is confirmed now you may confirm to all your parties and in market.

Thanks

SB



- (v) E-mail communications dated 11.01.2018 exchanged between Mr. Kiran Kumar of OP-1, Mr. Raviraj Gupta of OP-4 and Mr. Sovan Roy of OP-5, which were submitted by OP-1 before the DG:

E-mail 1

From: Shobhan Roy [mailto:shobhan.roy@aiba.co.in]
Sent: Thursday, January 11, 2018 3:30 PM
To: exdtecon@gmail.com; ec.wb-excise@nic.in
Subject: Suggestions for Excise Policy 2018-19 - BEER_Seeking Urgent Appointment

To

Shri Randhir Kumar
Excise Commissioner
32, Bipin Bihari Ganguly Street
Kolkata - 700012
West Bengal

Sub: Suggestions for Excise Policy 2018-19 - Beer

Dear Sir

We All India Brewers' Association (AIBA), the apex body representing the Brewing/Beer industry in India and our members are United Breweries, Carlsberg, AB-InBev (Budweiser)/SAB Miller, SOM Breweries, Molson & Coors, Devan Modern Breweries etc. and meet ninety percent of the beer demand in the country.

We would like to petition that Beer is a low alcoholic beverage. As is known all alcohol have inherent risks when it comes to excessive consumption, yet it is widely recognized that the consequences of over consumption are far greater from hard liquor products than from low alcoholic beverages.

Beer with Rational taxes, liberal positioning can help the state wean away people (youth) away from hard liquor and also achieve a reasonable social objective – world over its beer is the choice of consumption when it comes to alcoholic beverages. Even in the state of West Bengal, because of low taxation on hard spirits (on absolute alcohol content basis, beer is taxed more even though it has 5-8% alcohol. We would also like to add, that beer and country liquor consumers have a very different profile.

We now draw your attention to the Circulars issued recently dated 10/01/2018. Sir, there has been a mistake as with this notification and gazettes, the retail prices of beer will move to Rs. 200 per bottle. This is absolutely unaffordable for youth in this state – we will be moving youth to hard spirits!!

We seek an urgent appointment to share the comparative computation between current and after the new circulars come into effect the change in retail prices.

We shall be extremely grateful for an urgent appointment with you early next week from **16th January onwards.**

Yours Faithfully

For All India Brewers Association

Shobhan Roy
Director General
09811066462/0124-4234381



E-mail 2

From: Raviraj gupta <Raviraj.gupta@carlsberg.asia>
Date: 11 January 2018 at 15:57:59 IST
To: "shobhan.roy@aiba.co.in" <shobhan.roy@aiba.co.in>
Cc: Dhiraj Kapur <dhiraj.kapur@carlsberg.asia>, Bibek Singh <bibek.singh@carlsberg.asia>, Arvind sharma <arvind.sharma@carlsberg.asia>
Subject: WB Price Card

Dear Shobhan,

Pls find attached WB Price card (with current duty & new duty)

	Current	Revised
MRP	110.00	211.11
ED Times	0.86	1.30
Corp. Margin	on Landed cost	4.5% of MRP
Retail Margin	on Landed cost	6.1% of MRP
Duty Per Case	753.72	1,836.70

WB	Current	Rev: Same EBP
Brand	Beer	Beer
Unit Size	650	650
SKU Type	Bottle	Bottle
Units per case	12	12
Company Billing Price	428.14	428.14
Excise Duty @ 30.1%/45.5% on MRP	397.32	1,152.69
AED @ 27%	358.40	884.01
Landed To Distributor	1,181.86	2,264.84
Distributor Margin	58.94	114.00
Whole sale Price	1,240.80	2,378.84
Retail Margin	76.20	154.54
Retail Price Per Case	1,320.00	2,533.37
MRP (Round off)	110.00	211.11

Regards,

Raviraj

E-mail 3

From: Shobhan Roy <shobhan.roy@aiba.co.in>
Sent: Thursday, January 11, 2018 4:21 PM
To: Kiran Kumar Gурpur
Cc: Shekhar Ramamurthy; Perry G
Subject: Fwd: WB Price Card
Attachments: WB Current Price Card.xlsx

Pl confirm you are in agreement . Can forward today itself !

Regards

Sent from my iPhone



E-mail 4

From : Kiran Kumar Gurpur <kiran@ubmail.com>
Sent : 11 January 2018 16:54
To : Shobhan Roy
Cc : Shekhar Ramamurthy; Perry G
Subject : Re: WB Price Card

This looks okay
Regards,
Kiran”

E-mail 5

From:	Shobhan Roy <shobhan.roy@aiba.co.in>
To:	exdtecon@gmail.com ec.wb-excise@nic.in
Date:	11-01-2018 4.38.32 PM
Subject:	FW: Suggestions for Excise Policy 2018-19 - BEER_ Seeking Urgent Appointment
Attachments:	Rep. to EC WB_Excise Policy 2018-19_Jan.18.pdf WB Current Price Card_Jan.18.xlsx

Dear Sir

Further to our below email, please find attached West Bengal current Price card (with current duty & new duty) for your kind reference.

We can discuss this during our meeting. Shall be grateful if the meeting date and time is conveyed to us.

Thanks & Regards

Shobhan

- (vi) When Mr. Sovan Roy, Director General of OP-5, was asked to offer his comments on him forwarding the ‘approved’ price cards to the Excise Commissioner, West Bengal, he replied that:

“On 10.01.2018, the Govt. of West Bengal issued a circular in isolation, raising the Excise duty on Beer from Rs. 753.72 per case currently to Rs. 1836.72 per case. The details of the changes in the MRP because of the single change was forwarded by Mr. Raviraj Gupta to me. The impact of this in the current MRP of Rs. 110 would go up to Rs. 211.11 because of this one change. The MRPs are on the West Bengal Corporation’s website. On account of this, since United Breweries is the other player in West Bengal, a confirmation was taken on this topic and accordingly the representation dated 11.01.2018 was submitted to the Excise Commissioner....”.



(vii) Statement of Mr. Shekhar Ramamurthy of OP-1 on e-mails dated 11.01.2018:

“The Government of West Bengal, in January 2018 notified a very steep increase in Excise duty on Beer. The consumer price of Beer would have gone from around Rs. 110 to Rs. 210. We represented to the State Excise, also to the Chief Minister, the Finance Minister of the State to moderate this increase, so as to not kill the Beer industry. The cost cards that you are seeing in this mail are recommendations to the Government on lower duties than proposed to moderate the price increase and with a healthy duty increase for the Government. We see this as a policy matter and not a price fixation matter. The final resolution was such that our basic prices remained the same or came down a little bit. The Government duties went up steeply and consumer prices went from Rs. 110 to Rs. 145. In fact, our petitions to the Government were to argue for the benefit of the consumer.”

(viii) Internal e-mail dated 19.01.2018 sent by Mr. Nilesh Patel to Mr. Mahesh Kanchan, Mr. Dhiraj Kapur and Mr. Naveen Begwani of OP-4, which was submitted by OP-4 during investigation:

To: Mahesh Kanchan[Mahesh.Kanchan@carlsberg.asia]; Dhiraj Kapur[dhiraj.kapur@carlsberg.asia]; Naveen Begwani[Naveen.Begwani@carlsberg.asia]
Cc: Pawan Jagetia[Pawan.Jagetia@carlsberg.asia]; Abhishek Arora[Abhishek.Arora@carlsberg.asia]; Sudip Gupta[Sudip.Gupta@carlsberg.asia]
From: Nilesh Patel
Sent: Fri 19/01/2018 5:08:52 AM
Subject: WB Excise and Trade Margin Hikes - Update

Dhiraj / Mahesh

It now looks with some certainty that WB State has made a similar blunder as MAH on the steep increases in Excise and Trade Margins from Jan 20. Next steps

1. The Industry meeting with Excise Officer yesterday clearly revealed that it has taken even the State Officials by surprise at the size of the increase and some are concerned about potential big adverse impact on the industry volume. The Excise Officer has suggested that he is willing to reduce the trade margins but not Excise. This means MRP will move from ~₹220 to ~₹165-₹170/ for us to recover the full impact. This is still a huge jump for consumers from current ₹110/- in one of the most price-sensitive markets.

2. As an industry it looks like we are all aligned that the retailer margins should not be reduced since their costs vs past distributor model will increase because retailers will get no credit and will have to collect goods vs delivered in the past. If retailer costs increases, there is a risk that smaller players will collapse and there is a risk of retail consolidation. This will not be good for the industry. Who knows with these Govts, they could even consider one big player like in UPI We must resist reduction in retailer margins that could lead to consolidation.

3. The only step left now is to prepare a case like we did for MAH with industry price/volume risk chart and through AIBA lobby as an industry, and go meet the state ministers above this Excise Officer (Finance Minister and Chief Minister???)

The big issue is that we must conclude this fast because after Jan 20, like in MAH, industry could end up deciding not to produce if the decision on pricing drags on. This time it will impact volume massively due to the impending season.

Like MAH, it would good if we in CIPL go collectively as one force (Mahesh, Dhiraj, Bibek) along with UB and if possible with ABI.

Nilesh



- (ix) Internal e-mail communications dated 15.02.2018 exchanged between Mr. Nilesh Patel, Mr. Pawan Jagetia, Mr. Mahesh Kanchan, Mr. Anil Bahl, Mr. Naveen Begwani and Mr. Sudip Gupta of OP-4, which was submitted by OP-4 during investigation and partially recovered during search and seizure operation from the premises of OP-4:

E-mail 1

On 15-Feb-2018, at 15:34, Nilesh Patel <Nilesh.Patel@carlsberg.asia> wrote:

Pawan

Looks like WB decision may drag on and may not even change unless you have any further insights. What if we register CBE at Rs 150/- (vs 120 now) and the Excise guys is pushing industry to register I believe?

- If TBS moves to Rs 130/- the price differential between TBS and CBE will move from Rs 10/- to Rs 20/-
- Vs no stock in the market, at least we'll be selling
- Naveen is getting VC worked out and even if it is a loss vs past with new excise regime, we'll gain vs no sale. And even have stocks in the market if season comes under pressure on strong
- SAB has already registered Rs 150/- and if UB responds with Rs150/- with one of their Ultra, we should be on a level playing field
- We should take the plunge

What do you think?

Nilesh

E-mail 2

From: Pawan Jagetia
Sent: 15 February 2018 16:28
To: Nilesh Patel <Nilesh.Patel@carlsberg.asia>
Subject: Re: Production of CBE in WB

Hi Nilesh, thanks. UB is holding firm and we are in constant touch. If they do register Ultra then we will react with CBE. I think we should keep CBE proposal and product (i.e. beer in tank) ready but not register until UB makes a similar move or we get clear indication of excise changing their stance (similar timing to what we did in Maharashtra).

While the outcome of this stand off is yet uncertain, we moving first with CBE will significantly weaken our case (and industry's position). SAB has been an outcast in all similar issues, which we will address separately with other players. I believe we have managed to build sufficient pressure and as we intensify engagement with government and media coverage, we should get another adjustment from excise. Current situation is an issue for our target delivery but we giving up on this one will create issues in multiple states of similar proportion. We should reassess our position in a week's time. Thx

Sent from my iPhone

E-mail 3

From: Nilesh Patel
Sent: 15 February 2018 16:36
To: Mahesh Kanchan <Mahesh.Kanchan@carlsberg.asia>; Anil Bahl <anil.bahl@carlsberg.asia>; Naveen Begwani <Naveen.Begwani@carlsberg.asia>; Sudip Gupta <Sudip.Gupta@carlsberg.asia>
Subject: FW: Production of CBE in WB

Gentlemen – Pawan's response based on his insights. Make sense to hold off and reassess! Nilesh



- (x) WhatsApp communication dated 19.01.2018 between Mr. Shekhar Ramamurthy and Mr. Kiran Kumar of OP-1:

From Shekhar Ramamurthy:
Ok

2018-01-19 08:31:29 AM

From Shekhar Ramamurthy:
Please have a chat with Mahesh Kanchar to check their view. I will call you after land in Chennai.

2018-01-19 10:09:28 AM

Spoke to Mahesh. Lemme know when we can speak.

From Shekhar Ramamurthy:
Will all you in 10 mins. Just landed.

2018-01-23 05:04:38 PM

From Shekhar Ramamurthy:
I had a chat with Pawan. They are on the same page in WB.

- (xi) When Mr. Shekhar Ramamurthy of OP-1 was confronted regarding the identity of 'Mr. Pawan' in the WhatsApp message sent by him to Mr. Kiran Kumar of OP-1 on 19.01.2018, he stated that:

“It refers to Mr. Pawan Jagetia from Carlsberg. This refers to the earlier point that I have made on steep duty increase in West Bengal in January, 2018. I have already given my observations earlier that we had recommended to the West Bengal Excise for a lower increase in duty, and Carlsberg was also agreeable to the recommendation on duty.”

- (xii) When Mr. Pawan Jagetia of OP-4 was confronted with the WhatsApp communication dated 19.01.2018 during his statement, he stated that:

“There was a significant tax increase in West Bengal and we were trying to clarify the new price card and the impact on MRP. In our process, until the new price card has been submitted and approved, CIPL cannot even produce. Given the confusion in the new tax structure in West Bengal, our production was stopped, and therefore I reached out to Mr. Shekhar



Ramamurthy to understand their view on the new tax policy, and the impact on final consumer prices. CIPL calculation of price card following the new tax structure was showing doubling of MRP. So we were trying to clarify with the State Excise as well as with competitors if they had the same understanding of tax/price increase. My discussion with Mr. Shekhar was to understand the impact of tax increase without sharing of our cost/price cards. I conveyed to him that as per our calculations, the MRPs would simply double on account of the tax changes, and he agreed with my views.”

(xiii) Statement of Mr. Kiran Kumar of OP-1 regarding the WhatsApp communication dated 19.01.2018:

“In Rajasthan it was through AIBA and in Delhi I had spoken to Mr. Mahesh Kanchan of Carlsberg India Ltd. The discussions were typically held either through conference calls or through phone calls. For West Bengal during last year I had discussions with Carlsberg (Mahesh Kanchan) wherein price restructuring was discussed which included sharing of calculations of basic price to MRP.”

Mr. Kiran Kumar was asked to comment on the e-mail communications dated 15.02.2018, to which he replied that:

“..., the West Bengal Excise Duty increase notification which was released around the time period of the mails was complex, and was open to varying interpretations. Since the Excise Commissioner of West Bengal wanted to meet AIBA as an industry body to discuss the impact of the said duty increase, it was necessary to gain a common understanding of the price build-up, post the duty increase. To the best of my knowledge, the emails represent an effort to ensure that the two main companies in West Bengal – UBL and Carlsberg – have a common understanding of the impact prior to meeting the Excise Commissioner. Subsequent to the meeting, the Excise Commissioner issued fresh notifications reducing the intended increase in Excise Duty as well as revising downwards the retail margin, resulting in an MRP increase from Rs. 110 to Rs. 145 per bottle. It is pertinent to add here that the industry of Beer in West Bengal has declined almost 50% as a result of the increase in MRP from Rs. 110 to Rs. 145.”

133. From the e-mail communications exchanged in April-May 2012 between individuals of OP-4 extracted at point (i) above, it is noted that in the State of West Bengal in 2012, OP-1 and OP-4 were co-ordinating their prices of Beer through conference calls and e-mails. Though Mr. Michael Jensen, in his statement extracted at point (ii) above



regarding the said e-mails gave a very evasive reply, it is noted that Mr. Michael Jensen, in answer to another question, admitted that *“there had been cases where part of the management had been exchanging price information with competitors, for example in 2012 and 2015 in West Bengal. ... Mr. Anil Bahl would be one such person who would himself contact or approve such contacts with the competitors.”* Further, OP-4, in its submission before the DG, had also stated that *“CIPL and UB, and potentially UB and SAB would discuss among themselves to confirm the proposed price increases. These discussions would take place over the phone and sometimes in person between Mr. Anil Bahl and Mr. Kiran Kumar. Initially, Mr. Anil Bahl did not have a direct contact with SAB for West Bengal ... coordination with SAB was done by UB. Later on, in 2015, Mr. Anil Bahl also had contact with Mr. Shalabh Seth from SAB”*.

134. Further, from the comparative table of prices extracted at point (iii) above, it is noted that the prices of both TBS and Kalyani Black Label Strong 650ml bottles were revised by OP-4 and OP-1 respectively, in consonance with the ‘understanding’ between them, within a few days of each other in 2012. Though OP-1 also increased the MRP of its KFS 650ml bottle to ₹73, it was as per ‘earlier plan’ as indicated by Mr. Anil Bahl in his e-mail dated 02.05.2012. This makes it clear that the two OPs had exchanged their prospective price revision plans with each other, and thereafter increased prices accordingly.

135. Also, the e-mails exchanged in January 2015 extracted at point (iv) above indicate that subsequent to talks between Mr. Anil Bahl of OP-4 and Mr. Nilojit Guha of OP-3, Mr. Nitin Sharma of OP-3 forwarded the proposed prices of OP-3 in the State of West Bengal to Mr. Anil Bahl of OP-4. On receipt of the same, Mr. Anil Bahl asked his subordinates to plan OP-4’s price increase also in line with the file received from OP-3. Accordingly, OP-4’s employees in West Bengal worked out their calculations, and planned to go for price hike for their SKUs, as OP-1 and OP-3 had also planned hike in their brands.

136. Furthermore, from the e-mails dated 11.01.2018, 19.01.2018 and 15.02.2018 extracted at points (v), (viii) and (ix) above, and the WhatsApp communication dated 19.01.2018 extracted at point (x) above, it is noted that OP-5 was facilitating the co-ordination



between OP-1 and OP-4 in the State of West Bengal for seeking MRP price increase from the Government.

137. Such co-ordination has also been admitted by the representatives of the OPs in their statements on oath recorded before the DG.

138. From the prices submitted by OP-1 before the DG, it is observed that the MRPs of both KFS Premium Beer 650ml Bottle and Kingfisher Premium Lager Beer 650ml increased in the State of West Bengal from ₹110 (earlier revised on 01.07.2017) to ₹145 and ₹140 respectively, on 16.03.2018. Similarly, from the prices submitted by OP-4 to the DG, it is seen that the MRP of its TBS 650ml bottle was revised in the State of West Bengal from ₹110 to ₹145 on the same day, *i.e.*, 16.03.2018.

139. Thus, sharing of and getting confirmation of one company's pricing figures with/from its competing company, and actual reflection of such co-ordination in the price revisions made subsequently, shows close co-ordination between OP-1 and OP-4 while approaching the State Government for seeking price increase. Such conduct of OP-1 and OP-4 through OP-5, from 2012 to 2018, is presumed to cause an AAEC within Indian market, which AAEC, the OPs have been unable to rebut in terms of the factors stated under Section 19 (3) of the Act. As such, the Commission finds such conduct of OP-1, OP-4 and OP-5, to be in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act.

140. Though OP-4 has argued that post November 2017 when the State of West Bengal became a Free Market state, there was no price co-ordination amongst the OPs and sharing of cost cards by it is not price sensitive information aimed at co-ordinating price increase, the Commission does not find such argument of OP-4 to be tenable. Cost cards is commercially sensitive information.

141. Further, from the e-mails dated 15.02.2018 extracted at point (ix) above, it is noted that Mr. Shekhar Ramamurthy of OP-1 also had discussions with Mr. Pawan Jagetia of OP-4 about the repercussions of the new West Bengal Liquor Policy on their respective companies' Beer prices. In his internal e-mail dated 15.02.2018 sent to Mr. Nilesh Patel, Mr. Pawan Jagetia confirmed that he was in constant touch with OP-1 and also suggested



registering their Carlsberg Elephant SKU with the Excise Authorities only if OP-1 registered their own Kingfisher Ultra. This makes it apparent that the two OPs (OP-1 and OP-4) even co-ordinated registration and supply of their Beer brands in the State of West Bengal. As stated by Mr. Jagetia in his e-mail dated 15.02.2018, OP-4's moving first with registration of their brand would significantly weaken their case as well as industry's position. Therefore, it is clear that the decision of OP-4 to register its brand in the State of West Bengal was not an independent business decision, but was taken in consultation with OP-1. This had the effect of restricting supply of Beer in the State as well.

142. From the internal e-mail dated 19.01.2018 exchanged between officials of OP-4, extracted at point (viii) above, it also appears that OP-1 and OP-4 had joined hands for a while in stopping the supply of Beer in the State of West Bengal. In this regard, both OP-1 and OP-4, in their respective objections/suggestions to the DG Report, have acknowledged the disruption of supply of Beer in the State of West Bengal in January-March 2018. However, they have contended that such disruption was prompted due to steep increase in excise duty resulting in Beer becoming unaffordable to the consumers. The supply was resumed immediately after excise duty was reduced to acceptable levels. The Commission is of the view that stoppage of supply in 2018 by OP-1 and OP-4, through OP-5, even if to protest against increase in Excise Duty by the State government, amounted to limiting the supply of beer in the State of West of West Bengal. Under the provisions of Section 3(3) of the Act, such limiting of supply is presumed to have an AAEC in the market, which effect the OPs have been unable to rebut in the present case in terms of the factors stated under Section 19(3) of the Act. Therefore, the Commission finds stoppage of supplies by OP-1 and OP-4, to amounting to contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act.

143. Hence, from the aforementioned evidences collected by the DG which have been analysed by the Commission in detail, at least in the following States/UTs, cartelisation amongst the OPs as follows, stands established:



- (1) Andhra Pradesh – Price co-ordination between OP-1 and OP-3 in 2009 and 2013, in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act;
- (2) Delhi – Price co-ordination between OP-1, OP-3 and OP-4 through OP-5 in 2013, in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act;
- (3) Karnataka – Price-co-ordination between OP-1 and OP-3 from 2011 to 2018 with OP-4 joining in from 2012, in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act; and cartelisation between OP-1 and OP-3 with respect to supply of Beer to premium institutions in the city of Bengaluru in 2010, in contravention of the provisions of Section 3(3)(c) read with Section 3(1) of the Act;
- (4) Maharashtra – Price co-ordination between OP-1 and OP-3 from 2011 to 2018 with OP-4 joining in from 2012, in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act; cartelisation between OP-1 and OP-4 to restrict/limit the supply of Beer in 2017, in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act; and sharing of market between OP-1, OP-3 and OP-4 from 2013 to 2017, in contravention of the provisions of Section 3(3)(c) read with Section 3(1) of the Act;
- (5) Odisha – Price co-ordination between OP-1 and OP-3 in 2009 and 2010, in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act; price co-ordination by OP-4 in 2015 and 2016, in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act; and cartelisation between OP-1, OP-3 and OP-4, through OP-5, to restrict/limit the supply of Beer in 2015–16, in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act;
- (6) Puducherry – Price co-ordination between OP-1, OP-3 and OP-4 in 2017, in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act;



- (7) Rajasthan – Price co-ordination between OP-1, OP-3 and OP-4 through OP-5 from 2011 to 2018 with OP-4 joining in from 2014, in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act; and
- (8) West Bengal – Price co-ordination between OP-1 and OP-4 through OP-5, from 2012 to 2018, in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act; and cartelisation between OP-1 and OP-4, through OP-5, to restrict/limit the supply of Beer in 2018, in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act.

Other States

144. Apart from the above, with respect to the State of **Bihar**, though the DG has not given any categorical finding regarding contravention of the provisions of the Act by the OPs, it has found the following evidences of communication amongst the OPs:

- (i) Internal e-mails dated 18.05.2011 exchanged between Mr. Kiran Kumar, Mr. Kalyan Ganguly and Mr. Shekhar Ramamurthy of OP-1, which were recovered during search and seizure operation from the premises of OP-1:

E-mail 1

From: Kiran Kumar <kiran@ubmail.com>
Date: Wed, 18 May 2011 10:55:36 +0530
To: Kalyan Ganguly - kganguly@ubmail.com<kganguly@ubmail.com>; ShekharRamamurthy<shr@ubmail.com>
Subject: BIHAR

I had a series of meetings in Bihar on the matter of pricing of Beer.

I am providing below the people met, and a brief note on the discussions:

...

In view of the above, I would recommend the following:

Immediately resume full supply of Cans since our prices and contributions are healthy.
Resume controlled supply of KF and KFS (primary source Kalyani where we make a modest positive NC, supplemented by Daruhera, where we make a modest negative NC)
Consider supply of KF Red, which has a better price.
Write to Excise Secy today saying that we are resuming supplies in a manner that we balance future business with current losses, on the assurance that he will address our grievance in a time-bound manner.

Kindly advise.

Regards,



E-mail 2

From: shr@ubmail.com [mailto:shr@ubmail.com]
Sent: 18 May 2011 11:17
To: Kiran Kumar; Kalyan Ganguly - kganguly@ubmail.com
Subject: Re: BIHAR

In my opinion

We should resume controlled supplies as suggested by you.

We should keep SAB informed of the discussions you had regarding pricing and check if they have any contrarian views.

Go back after 3-4 weeks and follow up on the status of the decision making process.

SR

E-mail 3

From: Kiran Kumar
Sent: 18 May 2011 15:08
To: Shekhar Ramamurthy; Kalyan Ganguly - kganguly@ubmail.com
Subject: RE: BIHAR

SAB is in agreement with the strategy, except that they will not resume bottle beer supply since their price is lower than ours, and represents a significant cash loss.

Based on this we shall resume supplies, I will work out the quantities with CV, and revert.

Regards,

145. From the aforesaid e-mails, all that can be deciphered is that OP-1 had restricted supply of its Beer in the State of Bihar in 2011, which it resumed after having a meeting with the Excise Authorities in May 2011. OP-3 also seems to have restricted its supply of Beer in the State of Bihar in 2011; however, there is no evidence in the DG Report which suggests that the same was done pursuant to an agreement with OP-1.

146. Regarding OP-4, the DG has noted that it had submitted that it had been primarily interacting with OP-1 and occasionally with OP-3 to discuss pricing of Beer in Maharashtra, West Bengal, Delhi, Karnataka, Puducherry, Odisha and Bihar. The pricing discussions took place with a view to seek increase in Beer prices and co-ordinate proposed actions in response to extraordinary Excise duty increase or Bottle Bar Codes by various State Authorities. The discussions on prices were primarily focused on the mainstream brand (*i.e.*, Tuborg) in Free Market States such as Maharashtra, West Bengal and Puducherry, the Hybrid State of Delhi as well as certain Corporation States such as Odisha, Karnataka and Bihar. However, in furtherance to such submission, the DG has not put forth any evidence in the investigation report substantiating cartel arrangement in



the State of Bihar involving OP-4. Anyhow, since April 2016, Bihar imposed complete prohibition on all forms of alcohol.

147. As such, in the view of the Commission, no case of cartelisation amongst the OPs in the State of Bihar is made out from the DG Report.

148. With respect to the remaining States/UTs in India, no specific finding of cartelisation has been given by the DG against the OPs by collection of explicit evidences. It is however, noted from the DG Report that a few instances here and there pointing out to meeting of minds between the OPs in other states also like in the State of **Madhya Pradesh** and **Telangana**, can be seen. In the letter dated 23.11.2016 written by OP-5 to the Secretary-Finance and Revenue Government of Rajasthan, an attachment was enclosed depicting EBP prices of popular Beer brands of OPs in other States:

States Comparative Beer Prices

UNITED BREWERIES

KFS-650 ml Ex-Brewery Realisation and MRP	Haryana	UP	MP	Raj	Telangana	AP	Karnataka	Orissa	WB	Mah
Ex Brewery Price	330.00	614.76	376.60	265.43	271.03	271.03	511.43	350.00	381.33	412.17
MRP/Bottle	110.00	135.00	150.00	94.00	105.00	105.00	120.00	110.00	100.00	125.00

* - Above is for KFS and the variants being sold in respective states

** - EPB is net of Bottling fee in all states except Rajasthan

SABMILLER

H5 650ml Bottle (SOLD AT Rs 265 RAJ)	Haryana	UP	MP	Raj	Telangana	AP	Karnataka	Orissa	WB	Mah
Ex Brewery Price to Dealer Corporation (This is the price brewery realises)	323.00	615.96	376.60	265.43	271.03	271.03	475.43	443.41	320.37	271.56
MRP/Bottle	110.00	135.00	150.00	94.00	105.00	105.00	120.00	115.00	85.00	125.00

CARLSBERG

Brand Name (650 ml bottle)	Haryana	UP	MP	Raj	Telangana	AP	Karnataka	Orissa	WB	Mah
Ex Brewery Price	NA	622.56	301.20	265.43	NA	NA	422.70	346.07	381.70	271.56
MRP/Bottle	NA	135.00	160.00	94.00	NA	NA	120.00	115.00	85.00	125.00

* Only Rajasthan ex-brewery price includes the Bottling fee of Rs. 19.50 per case

* N/A means same brand not available as in Rajasthan

149. As can be seen from the aforesaid, the EBP of OP-1 and OP-3 in the States of Madhya Pradesh and Telangana, along with State of Andhra Pradesh, are identical to the last paisa. This is despite the fact that the brewery plants of these manufacturers are situated at different locations and as such, the manufacturing cost per unit of Beer for the OPs having different manufacturing locations, production capacities and different efficiency levels, would not be identical down to the last paisa.



150. Furthermore, in their respective lesser penalty applications also, the OPs had made admissions with respect to cartelisation in certain other states also, however, no evidence in this regard has been put forth by the DG in its investigation report.

Second-hand Bottles

151. Apart from price co-ordination and limiting/restricting supply of Beer in various States/UTs, the DG has also reached to a finding of co-ordination amongst OP-1 and OP-3 with respect to purchase of second-hand bottles, by relying upon the following evidences:

- (i) E-mail communications exchanged between Mr. Santosh Kumar of OP-1 and Mr. Shalabh Seth of OP-3 in October 2009, which were submitted by OP-1 before the DG:

E-mail 1

From: Santosh Kumar R [mailto:santosh@ubmail.com]
Sent: Monday, October 12, 2009 9:37 AM

To: Shalabh Seth, BANGALORE, SUPPLY CHAIN
Cc: Shirish Wakchaure, BANGALORE, SUPPLY CHAIN; Jindal R K; Sudesh Ganapathy Shenoy; Cedric Vaz; Shekhar Ramamurthy
Subject: Old bottle - North

Shalab,

The prices quoted in the North are in the range of 4.7 / bottle and we decided to stay put at 4.2/ bottle and stay away from the market. Although market indications are that SAB is picking up at higher prices, you have confirmed that you are in line with the Industry decision.

In order that we succeed, it is important that you share your bottles (you have close to 1 Cr + bottles in stock) in 50:50 ration since we have negligible stocks of old bottles. this will help us to ensure we succeed in our efforts to hold on to prices and curtail any further increase in prices

Request your help in this regard,

santosh



E-mail 2

From: Shalabh Seth,BANGALORE,SUPPLY CHAIN <Shalabh.Seth@in.sabmiller.com>
Sent: Tuesday, October 13, 2009 11:32 AM
To: Santosh Kumar R
Cc: Shirish Wakchaure,BANGALORE,SUPPLY CHAIN; Jindal R K; Sudesh Ganapathy Shenoy; Cedric Vaz; Shekhar Ramamurthy; Shalabh Seth,BANGALORE,SUPPLY CHAIN
Subject: RE: Old bottle - North

Hi Santosh,

I agree with you that markets are delicately placed.

I have also been hearing these rumours on the other side – and I believe suppliers are together in this and well networked.

Our old bottle stocks are in the region of 75 lakhs across all North breweries and godowns (as verified during mutual stock take).

I am of the firm view that splitting these stocks between us will lead to all breweries across North on very low stocks . This will lead to even higher speculation and potential exponential rise in prices which will hurt the industry harder.

Also, as you are aware out of the last 10 weeks, we have stayed out of the market for about 4 to 5 weeks to help you build stock. We will continue to not put pressure from our side for pulling stock and also continuously inject new glass (as we have been doing for the last 8 months).

I am happy to meet this week to review and discuss way forward All India – as we are suffering in AP, MP and Maharashtra as well.

Regards,
Shalabh

- (ii) E-mail communications exchanged between Mr. Santosh Kumar, Mr. Sudesh Ganapathy Shenoy, Mr. Cedric Vaz, Mr. Kalyan Ganguly and Mr. Shekhar Ramamurthy of OP-1 and Mr. Shalabh Seth, Mr. Shirish Wakchaure and Mr. Paolo Lanzarotti of OP-3 in June 2010, which were recovered during search and seizure operation from the premises of OP-1:



सत्यमेव जयते



E-mail 1

From: A K Das
Sent: 01 June 2010 16:26
To: Santosh Kumar R; Sudesh Ganapathy Shenoy
Cc: Cedric Vaz
Subject: FW: kvdeshmukh_20070713_050042.pdf - Adobe Reader

Skol and Forster together have received 115 loads in just 2 days – 31st May and 1st June

Persons standing at their gates have noted these nos. for all trucks going inside.

Right from 16th May onward till today they kept buying at 4.55 to 4.70 whereas the declared rate is 4.10

Regards

A K D

E-mail 2

From: Santosh Kumar R
Sent: 01 June 2010 17:27
To: Shalabh Seth,BANGALORE,SUPPLY CHAIN; 'Shirish Wakchaure,BANGALORE,SUPPLY CHAIN'
Cc: Cedric Vaz; Sudesh Ganapathy Shenoy
Subject: FW: kvdeshmukh_20070713_050042.pdf - Adobe Reader

Shalabh,

This is alarming, you have 115 trucks received in 2 days where as we have received not more than 25 loads, you have been deliberately moving bottles from Karnataka and the price drop of 4.15 effective 15th May has not been implemented. You are continuing to pay 4.55 per bottle

This will completely jeopardize our efforts ,

If you don't act now , we will be forced to retaliate , pl find enclosed details

Santosh

Cedric – this is continuing in spite of our best efforts, I think this needs to be addressed at the highest level



सत्यमेव जयते



E-mail 3

From: Santosh Kumar R <santosh@ubmail.com>
To: Shalabh Seth,BANGALORE,SUPPLY CHAIN
Cc: Cedric Vaz <cedric@ubmail.com>; Shekhar Ramamurthy <shr@ubmail.com>; Shirish Wakchaure,BANGALORE,SUPPLY CHAIN; Sudesh Ganapathy Shenoy <sgshenoy@ubmail.com>
Sent: Tue Jun 01 17:39:28 2010
Subject: FW: kvdeshmukh_20070713_050042.pdf - Adobe Reader

Shalabh,

I request you to put an end to this , this will completely jeopardize the entire good efforts taken during the last 2.5 months

santosh

E-mail 4

From: Shalabh Seth,BANGALORE,SUPPLY CHAIN <Shalabh.Seth@in.sabmiller.com>
Sent: Tuesday, June 01, 2010 6:37 PM
To: Santosh Kumar R
Cc: Cedric Vaz; Shekhar Ramamurthy; Shirish Wakchaure,BANGALORE,SUPPLY CHAIN; Sudesh Ganapathy Shenoy
Subject: Re: kvdeshmukh_20070713_050042.pdf - Adobe Reader

Hi Santosh,

Sorry, the first email left incomplete.

As discussed today morning, I am away today and we are meeting tomorrow.

Firstly, the note below is not factual and also paints only one side of the story(and ignores my several pleas earlier for months on the same location).

Also our supplier joined you.

As agreed we will share all facts with you tomorrow. For example- The total number is grossly wrong, this includes trucks not unloaded because of internal issue-26 trucks, new glass -16 trucks etc

Neither are we paying higher prices, nor have we moved any bottles from Karnataka.

Let us sort this tomorrow.

Regards
Shalabh



E-mail 5

From: Cedric Vaz <cedric@ubmail.com>

To: Paolo Lanzarotti,BANGALORE,MD OFFICE; Kalyan Ganguly - kganguly@ubmail.com <kganguly@ubmail.com>; Shekhar Ramamurthy <shr@ubmail.com>
Cc: Santosh Kumar R <santosh@ubmail.com>; Shalabh Seth,BANGALORE,SUPPLY CHAIN
Sent: Wed Jun 02 20:03:46 2010
Subject: Serious differences

Dear KG/Paolo/Shekhar

There seem to be some serious issues in the last few days, on old bottles that have gone against the recent basic agreement of our two companies, vis-à-vis inter-state transfer of bottles, preferential treatment to some vendors etc , , and UB is understandably upset.

I have requested Santosh and Shirish to meet immediately and prevent a further escalation of issues, while I am traveling out of the country. They will report back to us.

I thought you should know

Cedric

E-mail 6

From: Shalabh Seth,BANGALORE,SUPPLY CHAIN [mailto:Shalabh.Seth@in.sabmiller.com]
Sent: Wednesday, June 02, 2010 8:11 PM
To: Cedric Vaz; Paolo Lanzarotti,BANGALORE,MD OFFICE; Kalyan Ganguly - kganguly@ubmail.com; Shekhar Ramamurthy
Cc: Santosh Kumar R
Subject: Re: Serious differences

Dear Cedric,

We have met today evening and clarified facts.

Verification of facts at perennially contentious Aurangabad(which I raise as well every time) is planned tomorrow.

Next price drops for AIBA and patent are agreed as well.

Regards,
Shalabh



E-mail 7

From: Cedric Vaz
Sent: Wednesday, June 02, 2010 8:16 PM
To: Shalabh Seth,BANGALORE,SUPPLY CHAIN; Paolo Lanzarotti,BANGALORE,MD OFFICE; Kalyan Ganguly - kganguly@ubmail.com; Shekhar Ramamurthy
Cc: Santosh Kumar R
Subject: RE: Serious differences

Santosh/Shalabh

Pls send us all a point-wise description of those issues and actions for resolution, so that this can be also clarified to the line managers at breweries

Thanks

Cedric

(iii) E-mail dated 24.05.2011 sent by Mr. Shirish Wakchaure of OP-3 to Mr. Santosh Kumar and Mr. Sudesh Ganapathy Shenoy of OP-1, which was submitted by OP-1 before the DG:

From: Shirish Wakchaure,BANGALORE,SUPPLY CHAIN <Shirish.Wakchaure@in.sabmiller.com>
Sent: Tuesday, May 24, 2011 2:52 PM
To: Santosh Kumar R; Sudesh Ganapathy Shenoy
Cc: Shalabh Seth,BANGALORE,SUPPLY CHAIN
Subject: Old Bottles Price Revision

Dear Santosh,

As discussed during our yesterday's meeting revised price basis as mentioned below are agreed for implementation in 2 slabs i.e. 1st drop WEF 1st June '11 & 2nd drop WEF 15th June

Old Bottles Price Revision-June'11						
Sr No	Location/Market/State	Pack	Current Prevailing *Basic Per Bottle	Revised *Basic Price Per Bottle	Revised *Basic Price Per Bottle	Remarks
				WEF 1st June'11	WEF 15th June'11	
AIBA						
1	North	650 MI	Rs 5.50	No Change	Rs 5.00	To be implemented as per plan
2	MP	650 MI	Rs 5.50	No Change	Rs 5.00	To be implemented as per plan
3	Madhya Pradesh - A'bad	650 MI	Rs 5.00	No Change	Rs 4.50	To be implemented as per plan
		330 MI	Rs 3.20	Rs 3.00	No Change	To be implemented as per plan
4	AP	650 MI	Rs 4.50	No Change	Rs 4.00	To be implemented as per plan
		330 MI	Rs 3.20	Rs 3.00	No Change	To be implemented as per plan
5	Karnataka	650 MI	Rs 4.50	Rs 4.00	Rs 3.75	To be implemented as per plan
		330 MI	Rs 3.20	Rs 3.00	No Change	To be implemented as per plan
6	Kerala	650 MI	Rs 4.50	Rs 4.00	Rs 3.75	To be implemented as per plan
7	West Bengal	650 MI	Rs 4.50	No Change	Rs 4.00	To be implemented as per plan
8	Orissa	650 MI	Rs 4.50	No Change	Rs 4.00	To be implemented as per plan
PATENT : All India Price to be Rs. 3.50 + Taxes						
* VAT/Taxes Extra wherever applicable.						

Other terms and conditions remain unchanged. Next price drop for PATENT & AIBA to be agreed in 2nd week of June'11 (7th or 8th June) for implementation WEF 1st July (for AIBA) & 15th July (for PATENT)



(iv) E-mail communication dated 31.01.2012 sent by Mr. Shirish Wakchaure of OP-3 to Mr. Santosh Kumar and Mr. Sudesh Ganapathy Shenoy of OP-1, which was submitted by OP-1 before the DG:

From: Shirish Wakchaure <Shirish.Wakchaure@in.sabmiller.com>
Sent: Tuesday, January 31, 2012 6:22 PM
To: Santosh Kumar R; Sudesh Ganapathy Shenoy
Cc: Shalabh Seth
Subject: Old Patent bottles- Price revision WEF 2nd April'12

Dear Sudesh/Santosh,

Further to our meeting on 17th Jan'12, Sudesh & myself spoke with Old Patent bottle collectors across India and intimated price revision as mentioned below

Price Effective Date : 2nd April'2012
650 MI Patent Bottle Price : Rs 3.10 + Taxes (Less - Standard Deduction of 3%)
330 MI Patent Bottle Price : Rs 2.50 + Taxes (Less - Standard Deduction of 3%) NO CHANGE IN PREVAILING PRICE

Remarks

- a) Bottle receipts across all breweries from 2nd April morning will be with above mentioned price basis without any deviation
- b) Validity of above price structure is for minimum period of 1 year (Apr'12 to Mar'13) and same to be reviewed in Mar'13
- c) In case of UB & SAB Patent bottles hoarded by few bottle suppliers in Delhi- way forward agreed is to collect these stocks thru our nominated bottle collectors at prevailing prices on receipt date. No direct discussion/negotiations to be entertained by UB/SAB representatives. With declaration of above price drop situation should improve closer to 2nd April'2012.
- d) 330 MI AIBA price drop to be agreed by Feb'12 end with implementation WEF 15th March/2nd April'12

regards-Shirish

152. From the e-mail communications of October 2009 extracted at point (i) above, it is noted that OP-3 informed OP-1 to stay put at fixed decided prices for purchase of old bottles and also requested that OP-1 shares its stock of bottles with OP-3 so as to “*ensure we succeed in our efforts to hold on to prices and curtail any further increase in prices.*” In reply thereto, OP-3 showed apprehension about sharing of bottle stock as that may lead to “*even higher speculation and potential exponential rise in prices which will hurt the industry harder.*”

153. Further, from the e-mail communications of June 2010 extracted at point (ii) above, and e-mails dated 24.05.2011 and 31.01.2012 extracted at points (iii) and (iv) above respectively, it is noted that OP-1 and OP-3 also discussed amongst themselves the number of truckloads of second-hand bottles each has been purchasing for re-use in their bottling plants. As OP-1 and OP-3 had decided upon the rate at which each would buy such bottles from the market, on receiving information regarding OP-3 picking up more



truckloads of second-hand bottles at rates higher than those agreed upon, Mr. Santosh Kumar of OP-1 is seen complaining about it to Mr. Shalabh Seth of OP-3.

154. In fact, in his statement on oath recorded by the DG, Mr. Shekhar Ramamurthy of OP-1 confirmed that “... *The bottle collectors were holding companies to ransom by either not making bottles available or artificially increasing their prices. So, indeed coordination happened between UB, SAB and perhaps Carlsberg in this matter. Such coordination existed in respect of both, volume as well as prices of the second-hand bottles.*” Even Mr. Shalabh Seth of OP-3, in his statement on oath recorded by the DG, affirmed that “... *On patent bottles, my discussions were with Mr. Santosh Kumar and Mr. Sudesh Shenoy both from UB).* ...”

155. OP-1 has argued that discussions regarding second-hand bottles also did not lead to any AAEC as the same were undertaken to: (i) avoid significant increase in retail prices for consumers; (ii) implement optimal cost management in procurement of old bottles; and (iii) improve efficiency in such procurement. It submitted that hoarding of old bottles by bottle collectors and no injection of new bottles by smaller beer manufacturers in the industry resulted in significant increase in buy-back price of old bottles for OP-1 and its competitors, and it drove them to launch their own patent bottles in 2010. Though OP-1 and OP-3 discussed amongst themselves the prices at which they would buy-back old Industry Bottles from collectors to safeguard themselves from increasing costs of old bottles, the prices that the OPs agreed to for buying back their own Patent Bottles could not be met.

156. The Commission notes that the provisions of the Act do not just pertain to the end-consumers of goods/services. No distinction in the Act, for the purposes of assessment of anti-competitive conduct, is made between the end-consumers, and intermediaries falling in the supply chain. As such, the argument of OP-1, that co-ordination in the purchase of second-hand bottles was done with OP-3 in order to benefit end-consumers, may not grant it much defence, as such conduct, even if assumed to be beneficial to end-consumers, would have led to harm being caused to bottle collectors, who are also one of the functionaries/levels in the overall Beer supply chain. Anyhow, the Commission believes that given the sheer magnitude and size of the OP companies, their



countervailing buying power over small time bottle collectors, would have been substantial. Hence, the argument taken by OP-1 regarding their discussions being a counter-action to the alleged hoarding action of the bottle collectors, does not seem to hold much water.

157. Thus, from the aforesaid evidence of communications amongst OP-1 and OP-3, cartelisation amongst them from at least 2009 to 2012 in the purchase of second-hand bottles is clearly established. OP-1 and OP-3 had an ‘understanding’ to share their off-take of old bottles from the market for re-use in their breweries. They had also agreed upon the rate at which they would procure such bottles from the bottle collectors. They closely monitored each other’s purchase of old bottles. Such conduct of OP-1 and OP-3 may have resulted in limiting and controlling the supply of second-hand Beer bottles in the market, amounting to contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act.

158. Though the DG has also found that OP-4 also formed a part of this collusion, the Commission notes that with respect to OP-4, apart from the statement of Mr. Shekhar Ramamurthy of OP-1 that “*coordination happened between UB, SAB and perhaps Carlsberg in this matter*”, there is no other evidence of involvement of OP-4 in such collusion. As such, the Commission does not find OP-4 guilty of cartelisation with respect to second-hand Beer bottles.

Role of All India Brewers’ Association (OP-5)

159. It is noted that all the three Beer companies, *i.e.*, OP-1, OP-3 and OP-4, were lesser penalty applicants before the Commission. The only contesting OP was OP-5, the All India Brewers’ Association. As such, the role of OP-5 in the cartelisation amongst Beer manufacturers has been analysed by the DG separately.

160. The DG has noted that OP-5 was formed as a registered society in 1977 under the Karnataka Societies Registration Act, 1960, with brewers as well as co-packers as its members. Its registration however, lapsed on account of inactivity. After its revival in 2013 with framing of a new Memorandum of Association (‘**MoA**’), the Beer brand owners became its prime members and the maltsters, equipment suppliers *etc.* became its



associate members. The concept of patron membership in OP-5 was abolished in 2016, and as in July 2018, the association had all major (both national and local level) Beer manufacturers as its members including OP-1, OP-3 and OP-4.

161.OP-5 is governed by a Board consisting of a chairman and members from amongst its member companies. OP-5 appointed Mr. Sovan Roy as its Director General in its Annual General Meeting held on 07.02.2013.

162.OP-5 is stated to have been formed for the purposes of advising its member companies and co-ordinating with the State Excise Authorities regarding framing of Excise policies regarding Beer and fixation and periodical revision of EBP and MRP of Beer products in the territories of respective States/UTs. However, as can be seen from multiple e-mails extracted above, OP-5 provided its platform to OP-1, OP-3 and OP-4 for price co-ordination and other forms of cartelisation in various States including Delhi, Odisha, Rajasthan and West Bengal.

163.Further, the DG has relied upon the following e-mail communications dated 10.02.2013 exchanged between the OPs, which were submitted by OP-1 before the DG, and concluded that OP-5 as well as OP-1, OP-3 and OP-4, were well aware that their joint representations on pricing to Government Authorities, and discussions with competitors on restraint of trade, pricing *etc.*, were in violation of the provisions of Competition Law.

E-mail 1

From: "Paolo Lanzarotti"
<Paolo.Lanzarotti@in.sabmiller.com>
Date: Sun, 10 Feb 2013 11:09:04 +0530
To: <shr@ubmail.com>; <royconsulting@gmail.com>
Cc: <chris.white@rjcorp.in>; <soren@carlsberg.in>
Subject: FW: AIBA competition statement

Hi Gents

It dawned on me after our first meeting that we should ensure that our AIBA meetings cannot be construed as being a platform for collusion in shape or form. Clearly that is the case and we have no intention to collude however discussions need to be mindful of potential misinterpretation. Furthermore, as we will be minuting meetings more completely, I suggest we include the following statement in all our meetings minutes and therefore each meeting should start with the DG reminding everyone of the intent by reading it out.

AIBA is committed to compliance with competition law. Under no circumstances shall the members use AIBA meetings to reach any understanding, expressed or implied, which restricts competition. Meeting chairmen and the association staff have been instructed to stop any conversation or discussion related to restraint of trade, price fixing, marketing strategies and any other topics that could be considered anti-competitive. It is also the duty of any person attending the meeting to apply the same standards. This statement shall be printed in the association meeting agendas and read at the opening of meetings. AIBA would appreciate its members, speakers and guests to conduct themselves accordingly.



E-mail 2

On 10-Feb-2013, at 13:23, "royconsulting@gmail.com" <royconsulting@gmail.com> wrote:

Its true that competition law prohibits even joint representation for prices and trade terms. We need to be careful. We will follow the views expressed by you.

Regards

Roy

Sent on my BlackBerry® from Vodafone

E-mail 3

On Feb 10, 2013, at 11:48, "Soren Lauridsen" <SorenL@Carlsberg.in> wrote:

I am ok.

Best Regards

Soren

E-mail 4

Chris White <chris.white@rjcorp.in> wrote:

Ok with me

Sent from my iPhone5

E-mail 5

Subject: Re: AIBA competition statement
From: Shekhar Ramamurthy <shr@ubmail.com>
To: chris.white@rjcorp.in, sorenl@carlsberg.in
CC: royconsulting@gmail.com, paolo.lanzarotti@in.sabmiller.com

I too agree with this recommendation. What I would suggest is that we incorporate this thought into the MOA of the association.

Shobhan could work on this aspect.

Shekhar

E-mail 6

On Feb 10, 2013, at 6:43 PM, "Shekhar Ramamurthy" <shr@ubmail.com> wrote:

FYI - I would recommend caution in your discussions with competition and we should avoid joint representations on pricing etc to Govt authorities.

Shekhar



E-mail 7

From: Kiran Kumar
Sent: Sunday, February 10, 2013 18:45
To: Shekhar Ramamurthy
Subject: Re: AIBA competition statement

Noted!

Regards,
Kiran

Sent from my iPhone4

164. In the above e-mails, the top managerial personnel of the OPs can be seen warning/advising each other from making discussions at the platform of OP-5. However, as is evident from the e-mail and other communications discussed earlier, the OPs continued to indulge in such discussions with each other, including Mr. Sovan Roy of OP-5, while making joint representations to the State Government Authorities on pricing issues, even after February 2013.

165. Though OP-5 has denied having any role in any anti-competitive activity, Mr. Sovan Roy, the Director General of OP-5 had admitted before the DG that “*the platform of AIBA was used for pursuing increase of rates of the Beer industry.*”

166. Further, in his statement, Mr. Shekhar Ramamurthy of OP-1, former President/Chairman, on the role of OP-5, has stated that:

“... we have used AIBA to represent to State Governments, specifically Rajasthan and Odisha with respect to an industry grievance on pricing. ... In Rajasthan specifically, since the Government had not given a price revision of the basic price since 2014, there have been discussions largely over telephone between CEOs/Presidents of CIPL, SAB Miller and UBL, and may be ABI as well, regarding petitions to be made to the Excise department for a basic price increase. The platform for these discussions was AIBA and the DG of AIBA was meant to coordinate the petitions and discussions between the companies and the State Excise department.”

167. In this regard, Mr. Manish Shyam of OP-3, in his statement, has also stated that:

“I did attend the meeting in December 2015 with Mr Pravin Gupta, PSF, Rajasthan requesting him for a price increase to which he again said that he would follow it up with the Government. The meeting was also attended by



Carlsberg and UB. After individual companies had submitted their respective proposals, they followed it up with the Excise Commissioner and the PSF, Rajasthan under umbrella of AIBA, so that collectively there would be better chances of getting a price increase. The decision to go through AIBA was taken by the top management.”

168.Mr. Shalabh Seth of OP-3, has also deposed that:

“Yes, we used to meet at least four times a year at AIBA meetings and also at other places to discuss prospective quotes and also other industry issues like State Excise policy etc. so that we collectively get a better bargain from the Government.”

169.Further, Ms. Ritika Verma, Senior Executive Assistant of OP-5, stated in her statement that:

“... I generally receive emails from United Breweries, Carlsberg, AB InBev, Molson & Coors, Devan Modern Breweries, Mohou India and other members of AIBA. Particularly emails are received from UB & Carlsberg. These companies occasionally send emails sharing their cost card of Beers in case there is a requirement of increase in landed price/ex-brewery price or need for lowering the Excise duty in a particular State. After getting the cost card, our DG seeks appointment with respective State official to discuss the said issues. The companies UB, Carlsberg, AB InBev also send their proposals to revise the ex-brewery price/landed price for different States to AIBA. The prices with proposals and cost cards are shared by AIBA with other manufacturers also, and after agreeing on a particular price revision by members especially UB, Carlsberg, and AB InBev, AIBA takes up the matter with respective State Governments for revision in ex-brewery price. So far as I remember, I started receiving/exchanging the cost card of Beer manufacturers (particularly UB, Carlsberg and AB InBev) since 2014. All the price increase related decisions, i.e., to increase ex-brewery price of Beer/landed price of Beer are taken with the concurrence of AIBA members and Chairman of AIBA. The background work, calculations, arrangement of meetings with members etc. are being done by our DG, Sh. Sovan Roy. The discussions relating to price increase of Beer, i.e., ex-brewery price/landed price are held over phone/mobile by Sh. Sovan Roy with the members of AIBA and Chairman of AIBA. Emails are also sent by members of AIBA to AIBA in relation to price increase of Beer in respective States.”

170.Thus, as deposed by Mr. Shekhar Ramamurthy of OP-1, and Mr. Shalabh Seth and Mr. Manish Shyam of OP-3, and as confirmed by Ms. Ritika Verma of OP-5 herself, the Beer manufacturing companies used to exchange discussions amongst themselves on their



prospective quotes and the way forward with State Excise departments. The representatives of the member companies used to meet the Excise Authorities under the umbrella of OP-5 so that collectively there would be better chances of getting price increase. On its part, OP-5 also proposed the rates/quantum of price revisions to be applied for before the State Governments, as evidenced from the e-mails discussed in detail earlier. Besides, to facilitate one-to-one discussions amongst its member companies on various issues, including pricing, OP-5 also arranged conference calls amongst the top managerial personnel of the companies.

171. Hence, OP-1 and OP-3 indulged into nation-wide cartelisation from 2009 to at least 10.10.2018 (till the DG conducted search and seizure operation at the premises of the OPs), with OP-4 joining in from 2012 and with OP-5, since 2013, serving as a platform for facilitating such cartelisation, which is in contravention of the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) read with Section 3(1) of the Act. Though OP-1 and OP-4 have raised several arguments against the analysis and findings of the DG, all three cartelising companies, *i.e.*, OP-1, OP-3 and OP-4, by filing lesser penalty applications before the Commission, have in a way, acknowledged and accepted their guilty anti-competitive conduct.

172. The major argument which has been raised by OP-1 and OP-4 is that such co-ordinated conduct amongst the OPs was necessary because of the highly regulated nature of the Beer industry and the high-handedness of the State Authorities. The Commission notes that such plea taken by the OPs cannot exempt them from the consequences of their deliberate unlawful conduct. However, the same may be considered as a mitigating factor in their favour.

Liability under Section 48:

173. Now that contravention of the provisions of the Act by the OPs has been established, the Commission proceeds to determine in the subsequent paragraphs, role and liability of the respective individuals of the OPs, in terms of Section 48 of the Act.



174. The DG has found 5 individuals of OP-1, 6 individuals of OP-3, 7 individuals of OP-4 and 1 individual of OP-5 liable in terms of Section 48 of the Act, for the anti-competitive conduct of their respective company. The role and liability of each of them is discussed as follows:

United Breweries Limited

175. The first individual of OP-1 found liable by the DG under Section 48(1) of the Act is Mr. Kalyan Ganguly, Former Managing Director of OP-1 from 2009 till July 2015. Being the Managing Director during the period of contravention by OP-1, Mr. Kalyan Ganguly was in-charge of, and was responsible to OP-1 for the conduct of its business. Further, he was in receipt of a few e-mails dated 02.06.2010 extracted above with respect to cartelisation in the purchase of second-hand bottles by OP-1. As such, being in-charge of and responsible to OP-1 for the conduct of its business during the relevant period of contravention by OP-1, Mr. Kalyan Ganguly has been found liable by the DG for the conduct of OP-1 in terms of Section 48(1) of the Act.

176. Before the Commission, Mr. Ganguly has submitted that being the Managing Director, he was not involved in day-to-day operations of OP-1 and was involved only in relation to key and strategic discussions and decisions in relation to the operations and management of OP-1. However, he has not been able to prove that contravention by OP-1 was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention by OP-1.

177. Further, Mr. Ganguly has submitted before the Commission that he was not given an opportunity by the DG to present his case before giving a finding of contravention against him; as such principles of natural justice have been violated against him. In this regard, the Commission notes that as full opportunity to respond to the DG Report has been afforded to Mr. Kalyan Ganguly by the Commission, no principles of natural justice against him have been violated.

178. Being in-charge of and responsible to OP-1 for the conduct of its business from 2009 to 2015, the Commission holds Mr. Kalyan Ganguly liable for the anti-competitive conduct of OP-1 in terms of Section 48(1) of the Act.



179. The next individual of OP-1 found liable by the DG under Section 48(1) of the Act is Mr. Shekhar Ramamurthy, Managing Director of OP-1 since 01.08.2015, former Joint President of OP-1 from September 2012 till July 2015 and former Deputy President of OP-1 from October 2007 till August 2012.

180. Mr. Shekhar Ramamurthy has been the sender and recipient of several e-mail communications exchanged between the competitors including e-mails dated 02.06.2010, 10.02.2013, 29.07.2013, 02.08.2013, 07.08.2013, 06.03.2015, 31.03.2015, 09.04.2015, 17.04.2015, 22.04.2015 and 28.04.2015 extracted above, in which discussions with respect to co-ordination in the States of Delhi and Odisha and with respect to purchase of second-hand bottles took place, besides being CC'd in several other e-mails. Further, Mr. Ramamurthy also had a WhatsApp chat dated 19.01.2018 with Mr. Kiran Kumar of OP-1 in respect of MRP increase being sought in the State of West Bengal. All these evidences have been used by the DG to reach a finding of cartelisation against OP-1. Also, in its lesser penalty application, OP-1 has named Mr. Shekhar Ramamurthy as one of the individuals involved on its behalf in cartelisation conduct.

181. In fact, in his deposition on oath before the DG, Mr. Shekhar Ramamurthy has himself admitted as follows:

“... the alcohol industry is very tightly controlled by respective State governments making the business an imperfect market. In this context, to mitigate the pain for the industry, we have indeed coordinated and discussed with our competitors on basic prices that we could get from respective State governments..... it is also a fact that we have discussed prices in States of Karnataka, Maharashtra...”

182. Further, Mr. Ramamurthy has admitted to have had personal interactions with Mr. Paolo Lanzarotti and Mr. Shalabh Seth of OP-3, as well as with Mr. Michael Jensen and Mr. Pawan Jagetia of OP-4 on pricing issues. He has admitted to have communicated with the top managerial personnel of the competitor companies through telephone calls, e-mails and text messages. In their statements recorded during the course of investigation, Mr. Michael Norgaard Jensen and Mr. Shalabh Seth of OP-4, have also admitted to have had anti-competitive contacts with Mr. Shekhar Ramamurthy.



183. Though Mr. Ramamurthy has submitted that being the Managing Director, he was not involved in day-to-day operations of OP-1 and there is no reason for him to be aware of the alleged conduct as his role involved only key and strategic discussions and decisions in relation to operations and management of OP-1, the Commission observes that before becoming the Managing Director of OP-1 in 2015, he held other positions in OP-1 and at that time, he was a part of several e-mail communications (sender and/or recipient) and other competitor contacts, in respect of cartelisation by OP-1. Further, even as Managing Director of OP-1, he has not been able to prove that contravention by OP-1 was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention by OP-1.

184. As such, being a clear part of and being aware of the anti-competitive activities of OP-1, Mr. Shekhar Ramamurthy is liable for the conduct of OP-1 in terms of Section 48(1) as well as 48 (2) of the Act.

185. The third individual found liable by the DG under Section 48(2) of the Act is Mr. Steven Bosch, former ED and CFO of OP-1 from 01.09.2016 to 01.01.2019. The DG has noted that during the search and seizure operation, certain e-mails exchanged between key personnel of OP-1 and their counterparts in competing companies, were recovered from the cabin of Mr. Steven Bosch. Further, one WhatsApp communication of November 2017 with Mr. Ben Abi of AB InBev, was recovered from his iPhone, contents of which are as below:

2017-11-09 05:46:32 PM

From Ben Abi :

Hi Ben this is Steven Bosch here (UBL). Hope all is well! Wondering if we could have a short chat, wanted to ask you something. Perhaps you have a moment when we bring the kids to school in the morning? Regards, Steven



सत्यमेव जयते



2017-11-09 07:54:38 PM

From Ben Abi :

Hi Steven, I'm doing well. If short chat is a professional chat, unfortunately I can not meet your request without knowing the topic and without the presence of my legal director. It's part of our internal policy. I'm sure you understand. Kind Regards. Ben

Ok sure, I appreciate the policy. Would it be an idea to set up a more formal meeting then? I can introduce you to our MD; question is related to industry related matter, plus it may be good to get acquainted in any event, I would think same happened with your predecessor. All the best, Steven

From Ben Abi :

I believe later this month we will have the opportunity to connect in AIBA meeting. I'm sure your MD will attend, right? Rgds Ben

I will check that with him, normally our strategy officer Perry attends those.

186. The DG has observed that such WhatsApp communication indicates that in November, 2017, Mr. Steven Bosch made an attempt to get Mr. Ben Verhaert, Managing Director of AB InBev, to co-ordinate with him on 'industry related matter', but was rebuffed by Mr. Ben Verhaert. The DG observed that though there is no e-mail communication to-and-fro Mr. Steven Bosch, nonetheless, being a whole-time Director and CFO of OP-1 involved in handling day-to-day affairs of the company, Mr. Steven Bosch is responsible for anti-competitive activities of the company in terms of Section 48(2) of the Act.

187. In this regard, Mr. Steven Bosch has submitted that the DG has erroneously relied on the factors relevant under Section 48(1) of the Act to recommend individual liability against him under Section 48(2) of the Act. There is no evidence on record which even faintly establishes *de facto* or active involvement of Mr. Steven Bosch in the alleged anti-competitive activities of OP-1. The DG has not been able to prove any consent, or connivance, or neglect on part of Mr. Steven Bosch to recommend individual liability under Section 48(2) of the Act. Rather, instead of proving consent or connivance or neglect on part of Mr. Steven Bosch, the DG has wrongly relied on the "in-charge of and



responsible to” test under Section 48(1) of the Act to hold Mr. Bosch liable. Further, Mr. Bosch has submitted that there is also no evidence on record to justify recommendation of individual liability against Mr. Steven Bosch under Section 48(1) of the Act. In his capacity as the CFO and ED, Mr. Steven Bosch had the responsibility of the financial performance of OP-1; his primary responsibility being to manage the profit and loss account and monitor the performance of OP-1 against the agreed budget. As such, Mr. Steven Bosch only had broad and high-level knowledge of pricing, pricing strategy, sales data and targets, as well as volume data. The role and profile of Mr. Steven Bosch did not entail any contact with OP-1’s competitors or decision making in relation to OP-1’s sales or prices.

188. Mr. Steven Bosch has submitted that it was only in June 2018 that for the first time, he was made aware that there might be certain competitor contact between certain employees of OP-1 with third parties (which could have included OP-1’s competitors), which could potentially be considered as anti-competitive under the Act. From June 2018 until the Dawn Raid, Mr. Steven Bosch exercised all due diligence and took all possible steps to make OP-1 competition compliant. It was due to the reason of internal audit that was going on during that period that a “few e-mails” were seized by the DG during Dawn Raid from Mr. Bosch’s cabin. These e-mails relate to other persons and were dated before Mr. Steven Bosch joined in at OP-1.

189. Regarding the WhatsApp exchange of November 2017 with Mr. Ben Verhaert of AB InBev, Mr. Bosch has submitted that the same has been misconstrued by the DG. The industry matter referred to in the said communication was around issues regarding the applicability of GST on contract production units. There was no other intended motive/intention to discuss any other topic with Mr. Ben Verhaert. Further, no actual meeting ever took place between Mr. Steven Bosch and Mr. Ben Verhaert in furtherance of such communication, as such there could also have been no AAEC anyhow. Yet, the DG has misconstrued the above WhatsApp exchange as being an attempt on part of Mr. Steven Bosch to “coordinate with him on an industry related matter” and “an attempt to have contacts with Mr. Ben Verhaert”. The DG could have sought clarification from Mr. Ben Verhaert to explain the context of the concerned WhatsApp message; however, it failed to do so.



190. At the outset, the Commission notes that Mr. Steven Bosch is a lesser penalty applicant before the Commission. In his lesser penalty application, Mr. Bosch has clearly stated that he became aware of the anti-competitive activities of OP-1 only in June 2018 pursuant to which, he promptly brought the possible violation to the notice of Heineken, the major shareholder in OP-1, and internal audit by external counsels was started in OP-1. Mr. Bosch has demonstrated through WhatsApp communications and e-mail exchanges annexed to his lesser penalty application that though internal resistance from certain officers of OP-1 was being faced, he ensured that such competitor contacts of OP-1 were tabled at OP-1's Board Meetings. Further, Mr. Bosch has also annexed multiple WhatsApp communications to his lesser penalty application including a WhatsApp communication dated 18.06.2018 sent to Mr. Ernst Vd Weert – Heineken, Legal Head, which shows that he was discussing filing for leniency with the CCI.

191. Noting the above facts, the Commission is of the view that the same explains the DG recovering certain incriminating e-mails from the cabin of Mr. Steven Bosch during the search and seizure operations at OP-1 in which e-mails, it is noted that Mr. Steven Bosch was neither a sender nor recipient nor CC'd in any of such e-mails.

192. There is also no other evidence available on record of Mr. Steven Bosch having any competitor contacts like e-mail communications/messages/phone calls/attending OP-5 meetings, which may incriminate Mr. Bosch in the anti-competitive activities of OP-1. The sole contact found by the DG is the WhatsApp communication dated 09.11.2017 which simply shows that Mr. Bosch wanted to discuss an 'industry-related' matter with Mr. Ben Abi of AB InBev. Mr. Bosch has explained that such 'industry-related' matter pertained to GST and it can be seen from the WhatsApp communication that Mr. Ben Abi had stated that such matter may be discussed in a more formal meeting to which Mr. Bosch agreed. There is no evidence on record which may show that the industry-related matter had to be some sort of anti-competitive discussion.

193. As such, in the opinion of the Commission, without there being any evidence of active involvement of Mr. Steven Bosch in the anti-competitive activities of OP-1, he cannot be held liable in terms of Section 48(2) of the Act for the anti-competitive activities of OP-1.



194. As far as his liability under Section 48(1) of the Act is concerned, Mr. Steven Bosch was the ED and CFO of OP-1. He has submitted that had the responsibility of the financial performance of OP-1; his primary responsibility being to manage the profit and loss account and monitor the performance of OP-1 against the agreed budget. As such, he had only broad and high-level knowledge of pricing, pricing strategy, sales data and targets, as well as volume data. His role and profile did not entail any contact with OP-1's competitors or decision making in relation to OP-1's sales or prices. Further, Mr. Bosch has clearly stated in his lesser penalty application that till June 2018, he had no knowledge of OP-1 indulging into any anti-competitive activity.

195. In the opinion of the Commission, given the role and profile of Mr. Steven Bosch in OP-1, he cannot be said to be 'in-charge of' or 'responsible to' OP-1, for the conduct of its business. Further, Mr. Bosch's submission that he had no knowledge of anti-competitive activities of OP-1 till June 2018 seems plausible as after June 2018, it can be seen that Mr. Bosch did initiate external audit in OP-1 and brought the alleged violations by OP-1 to the notice of people at Heineken.

196. Therefore, in the opinion of the Commission, Mr. Steven Bosch also cannot be held to be liable in terms of Section 48(1) of the Act for the anti-competitive activities of OP-1.

197. The fourth individual found liable by the DG under Section 48(2) of the Act is Mr. Kiran Kumar, Chief Sales Officer of OP-1 since 28.08.2017, former Executive Vice President Sales of OP-1 from July 2014 till June 2017 and former Senior Vice President Sales from July 2009 till June 2014.

198. At the outset, it is noted that Mr. Kiran Kumar has submitted before the Commission that an officer of a company can only be liable in terms of Section 48(2) of the Act once the company is found to be in contravention of the provisions of Act. In this regard, since the Commission has already found OP-1 to be in contravention of the provisions of the Act above, the role and liability of its individuals in terms of Section 48 of the Act can now be examined.



199. The DG has found that Mr. Kiran Kumar was directly reporting to the Managing Director of OP-1, and that he is the one responsible for the sales volume, revenue and market share of the company.

200. The Commission notes that Mr. Kiran Kumar was the sender and recipient of multiple e-mails including e-mails dated 09.06.2009, 15.09.2009, 08.03.2010, 07.09.2011, 12.09.2011, 25.01.2011, 22.12.2011, 15.11.2013, 28.04.2015, 30.04.2015, 28.10.2016 and 11.01.2018 extracted above with respect to cartelisation in the States/UTs of Andhra, Karnataka, Maharashtra, Odisha, Puducherry, Rajasthan and West Bengal. Further, he exchanged WhatsApp messages with Mr. Shalabh Seth of OP-3 in 2013 and with Mr. Shekhar Ramamurthy of OP-1 on 19.01.2018, which have also been extracted above and used to establish cartelisation against OP-1. His message exchanges with Mr. Deepak Malhotra of OP-3 and Mr. Anil Bahl of OP-4 have also been extracted above and used for the purpose of establishing cartelisation in the UT of Puducherry.

201. In his deposition on oath before the DG, Mr. Kiran Kumar made the following admissions:

“Yes, on certain occasions we discuss prices with our competitors. For instance, in Rajasthan in order to pursue price increase, we shared and discussed price data under the umbrella of All India Brewers Association (AIBA).we tried to push the prices up in Delhi and regarding this I had discussion with Mr. Mahesh Kanchan, Marketing Head of Carlsberg India Ltd. The discussions didn't materialise. In Rajasthan it was through AIBA and in Delhi I had spoken to Mr. Mahesh Kanchan of Carlsberg India Ltd. The discussions were typically held either through conference calls or through phone calls. For West Bengal during last year I had discussions with Carlsberg (Mahesh Kanchan) wherein price restructuring was discussed which included sharing of calculations of basic price to MRP. In Odisha, 2-3 years ago when the government increased duty and reduced manufacturers prices, through AIBA we had discussions wherein we discussed pricing and the way forward to work with the government to rationalise the pricing.”

202. Further, in his subsequent deposition on oath before the DG, Mr. Kiran Kumar admitted to have talked to the Managing Directors and other key persons of OP-3 and OP-4:

“As far as I can recall, I have interacted with the following persons in various companies:



S. No.	Company Name	Name of the person(s)
1.	SAB Miller India	<p>Mr. Anand Shukla, Profit Center Head—South</p> <p>Mr. T.J. Venketashwaran, Profit Center Head—Central</p> <p>Mr. Shalabh Seth, Head of Sales and later MD</p> <p>Mr. Diwakaran S., Regional Head—South</p> <p>Mr. Sundeep Kumar, Corporate Affairs Head</p> <p>Mr. Nilojit Guha, Sales Head</p> <p>Mr. Deepak Malhotra, Sales Head (after Mr. Nilojit Guha)</p> <p>Mr. Anil Arya, Finance Head</p> <p>Mr. Sheshu Kumar, handling MIS</p>
2.	Carlsberg India	<p>Mr. Michael Jensen, MD</p> <p>Mr. Anil Bahl, Head of Sales</p> <p>Mr. Mahesh Kanchan, Head of Marketing</p> <p>Mr. Manoj, Regional Head—North</p>

... Bulk of the discussions would have been over telephone. Some email exchanges have also happened on pricing details, as well as some text and WhatsApp messages. There were a few personal meetings as well.”

203.Mr. Shekhar Ramamurthy of OP-1 has also named Mr. Kiran Kumar as one of the employees of OP-1 who had interactions with competitors. Mr. Shalabh Seth of OP-3 has also stated that his discussions on pricing, EBP and discounts were mostly with Mr. Kiran Kumar of OP-1 and Mr. Anil Bahl of OP-4.

204.As such, the active involvement of Mr. Kiran Kumar in the anti-competitive activities of OP-1 is evident. Also, in its lesser penalty application, OP-1 has named Mr. Kiran Kumar as one of the individuals involved on its behalf in cartelisation conduct. Hence, the Commission holds Mr. Kiran Kumar liable in terms of Section 48(2) of the Act for the anti-competitive conduct of OP-1.

205.The last individual found liable by the DG under Section 48(2) of the Act is Mr. Perry Goes, Head of Strategic Planning & Analytics of OP-1 till 28.08.2017.

206.At the outset, it is noted that Mr. Perry Goes has also submitted before the Commission that an officer of a company can only be liable in terms of Section 48(2) of the Act once the company is found to be in contravention of the provisions of Act. In this regard, since the Commission has already found OP-1 to be in contravention of the provisions of the



Act above, the role and liability of its individuals in terms of Section 48 of the Act can now be examined.

207. The DG has noted that Mr. Goes was one of the key persons who attended the various meetings of OP-5 on behalf of OP-1 where the OPs had close interactions with each other. Further, the Commission notes that Mr. Perry Goes was the sender and recipient of multiple e-mails including e-mails dated 29.07.2013, 01.08.2013, 17.04.2015, 20.04.2015, 22.01.2015, 31.10.2016 and 07.11.2016 extracted above with respect to cartelisation in the States of Delhi, Odisha and Rajasthan.

208. Mr. Kiran Kumar, in his statement before the DG, has named Mr. Perry Goes as one of the persons who had interacted with OP-1's counterparts in competition companies. In its reply to the DG, OP-4 has also stated that the decision to curtail supply in the State of Odisha in 2015 took place through OP-5 and discussions between Mr. Shekhar Ramamurthy, Mr. Michael Jensen, Mr. Shalabh Seth, Mr. Sovan Roy, Mr. Dhiraj Kapur, Mr. Manish Shyam, Mr. Perry Goes and Mr. Chris White.

209. As such, the active involvement of Mr. Perry Goes in the anti-competitive activities of OP-1 is evident.

210. Though Mr. Goes has alleged before the Commission that principles of natural justice against him have been violated as the DG did not grant Mr. Goes an opportunity to present his defense during investigation, the Commission notes in this regard that Mr. Goes has been given full opportunity by the Commission to file his objections/suggestions, if any, against the DG Report including against the evidences collected by the DG against Mr. Goes and the analysis made by the DG in regards thereto. Yet, Mr. Goes has not refuted any of the e-mails sent/received by him. He has only stated that he was marked in the communications related to industry issues which OP-5 was representing before the Government Authorities, as he was tasked with representing OP-1 at OP-5. Therefore, all communications wherein Mr. Goes is marked as well as communications of Mr. Goes with Mr. Sovan Roy of OP-5 must be seen in this light.



211. In the opinion of the Commission, the industry issues which OP-5 was taking up with the Government Authorities collectively on behalf of the other OPs, included seeking similar price increase as well as stoppage of supplies, which conduct of OP-5 has already been held above to be in violation of the provisions of the Act. Further, OP-1, in its lesser penalty application, has categorically named Mr. Perry Goes as one of the individuals involved on its behalf in cartelisation conduct. As such, Mr. Perry Goes, representing OP-1 at OP-5 for such anti-competitive conduct, is liable in terms of Section 48(2) of the Act, for OP-1's conduct.

SABMiller India Limited (now renamed as Anheuser Busch InBev India Ltd.)

212. The first individual found liable by the DG under Section 48(1) of the Act is Mr. Paolo Alberto Francesco Lanzarotti, Former Managing Director from June 2009 till 2012. The next individual found liable by the DG under Section 48(1) of the Act is Mr. Grant Murray Liversage, Former Managing Director from August 2013 till December 2014.

213. In regard to these two individuals, the Commission notes that *vide* its order dated 07.01.2020, the Commission had noted that the DG's investigation report could not be served upon these two individuals as the last known addresses of these two individuals submitted by AB InBev were of Slovakia and Mozambique. As such, the Commission decides to drop the proceedings against these two individuals.

214. The third individual found liable by the DG under Section 48(1) of the Act is Mr. Shalabh Seth, Former Managing Director from January 2015 till 31.10.2016, Former Sales Director from April 2012 till 2014 and Former Director Supply Chain from 2009 till March 2012.

215. The Commission notes that Mr. Shalabh Seth was the sender and recipient of multiple e-mails including e-mails dated 12.10.2009, 13.10.2009, 01.06.2010, 02.06.2010, 22.12.2011, 09.08.2013, 15.11.2013, 06.03.2015, 31.03.2015, 09.04.2015, 17.04.2015, 19.04.2015, 22.04.2015, 28.04.2015, 29.04.2015 and 05.06.2015 extracted above with respect to cartelisation in the States of Andhra Pradesh, Delhi, Karnataka, Odisha, Rajasthan, and with respect to cartelisation in the sale and purchase of second-hand bottles. Further, he exchanged WhatsApp messages with Mr. Kiran Kumar of OP-1 in



2013, which have also been extracted above and used to establish cartelisation against OP-3. OP-3 has also categorically named Mr. Shalabh Seth as one of the individuals involved on its behalf in the cartelisation conduct, in its lesser penalty application.

216. When asked about his meetings with competitors during his deposition on oath before the DG, Mr. Shalabh Seth, while admitting to have had anti-competitive talks with the competitors, stated that:

“Yes, we used to meet at least four times a year at AIBA meetings and also at other places to discuss prospective quotes and also other industry issues like state excise policy etc. so that we collectively get a better bargain from the government...”

217. In his subsequent deposition, he stated as under:

“There were discussions with competitors on beer pricing and EBP between 2008 to 2016 in various capacities held by me during the said period (Director-Supply Chain from January-2009 to Sept-2011, Director Sales from Oct 2011 to Dec 2014, and Managing Director from January 2015 till October 2016). However, I was specifically involved from October 2011 to October 2016. Other than pricing, there were discussions on patent bottle pricing, discounts in a few States, and Institutional Sales (where I was not privy to discussions). My discussions on pricing, EBP and discounts were mostly with Mr. Kiran Kumar (from UB) and Mr. Anil Bahl (from Carlsberg). On patent bottles, my discussions were with Mr. Santosh Kumar and Mr. Sudesh Shenoy (both from UB) ...”

218. In his statement, Mr. Shekhar Ramamurthy of OP-1, specifically named Mr. Shalabh Seth as one of the persons from competitor companies with whom he had personal interactions on the issue of pricing in Rajasthan, Odisha, Andhra Pradesh/Telangana largely over telephone, e-mails and sometimes over text SMSs. Mr. Kiran Kumar of OP-1 also, in his statement, named Mr. Shalabh Seth as one of the persons who had interacted with their counterparts in competition companies. In his statement, Mr. Michael Jensen of OP-4 also stated to have had interactions with Mr. Shalabh Seth on generalised policy terms and directional interactions and lobby activities with the government. Mr. Nilojit Guha of OP-3 also stated that it was Mr. Shalabh Seth who introduced him to Mr. Kiran Kumar of OP-1.



219. Thus, evidently, Mr. Shalabh Seth was a part of the anti-competitive activities by OP-3 ever since he was employed in OP-3, in various roles. In his objections/suggestions to the DG Report as well as during the oral hearing, Mr. Shalabh Seth did not refute his role in cartelisation on behalf of OP-3. Further, he is also a lesser penalty applicant before the Commission. As part of his submissions, Mr. Seth has simply submitted that he has provided certain vital additional evidence which has added significant value to the DG's investigation and to the evidence that was already in the possession of the Commission/DG. Such significant additional value is evident from the fact that during the depositions of the representatives of other players involved in the co-ordination, the DG has extensively referred to/relied on the documentary evidence submitted by Mr. Shalabh Seth as part of his lesser penalty application as well as the statements made during his depositions before the DG.

220. Thus, the Commission holds Mr. Shalabh Seth guilty in terms of Section 48(1) of the Act being the former Managing Director of OP-3 and as such, in-charge of and responsible to OP-3 for the conduct of its business, as well as under Section 48(2) of the Act having played an active role in the cartel conduct.

221. The fourth individual found liable by the DG under Section 48(2) of the Act is Mr. Nilojit Guha, Former Sales Director from January 2015 till 15.11.2016 and Former Vice President Sales Control from May 2011 till December 2014.

222. The Commission notes that Mr. Nilojit Guha was the sender and recipient of multiple e-mails including e-mails dated 15.09.2009, 08.03.2010 and 09.08.2013 extracted above with respect to cartelisation in the States of Delhi and Odisha.

223. In his deposition on oath, Mr. Nilojit Guha stated as under:

“I do not deny having discussions with mainly Mr. Kiran Kumar on a few occasions on the pricing issues. I recollect having contacted, Mr. Kiran Kumar at times on pricing issues. For example, states like Delhi, Orissa, Maharashtra, Karnataka, West Bengal mainly. In these pricing discussions I played the role of a coordinator as per instruction of my superior (Mr. Shalabh Seth). I didn't have the authority to decide about the pricing for any State. Whatever discussion I had with Mr. Kiran Kumar was mainly with the intention that the industry gets the price increase to recover the rising cost of raw materials ...”



“After seeing the old mails which I do not remember, the mails being very old, I now admit that at times I had coordinated with the competitor (mainly with Mr. Kiran Kumar of UB) for application of our price requests in certain States. This coordination role I had played mainly on the instructions of my superiors who would fix the price and advise me to go for the application for price revision in different States...”

224. Further, in his statement, Mr. Kiran Kumar of OP-1 has also named Mr. Nilojit Guha as one of the persons from OP-3 with whom he had anti-competitive contacts. Moreover, in regard to the e-mail exchanges of September 2009 and March 2010 between them, Mr. Kiran Kumar stated that “... Mr. Nilojit Guha and I might have discussed our respective company’s prices and aligned our prices accordingly ...”.

225. Mr. Shekhar Ramamurthy of OP-1, in his statement, also named Mr. Nilojit Guha as one of the persons from competitor companies with whom his colleagues had anti-competitive interactions.

226. OP-3 has also categorically named Mr. Nilojit Guha as one of the individuals involved on its behalf in the cartelisation conduct, in its lesser penalty application. In his objections/suggestions to the DG Report as well as during the oral hearing, Mr. Nilojit Guha has also not disputed the findings of the DG against him.

227. As such, the Commission holds Mr. Nilojit Guha guilty in terms of Section 48(2) of the Act on behalf of OP-3.

228. The fourth individual found liable by the DG under Section 48(2) of the Act is Mr. Suryanarayana Diwakaran, Former Vice President Sales till 15.11.2016, Former Vice President Sales South from May 2011 till 2016 and Former General Manager Sales South from 2009 till April 2011.

229. The Commission notes that Mr. Suryanarayana Diwakaran was the sender and recipient of multiple e-mails including e-mails dated 09.06.2009, 30.10.2010 and 25.01.2011 extracted above with respect to cartelisation in the States of Andhra Pradesh and Karnataka.

230. Mr. Shalabh Seth of OP-3 has also stated that Mr. S. Diwakaran was one of the employees of OP-3 who had discussions with company’s competitors. Mr. Kiran Kumar



of OP-1 also admitted to having anti-competitive contacts with Mr. S. Diwakaran of OP-3.

231.OP-3 itself has also categorically named Mr. Suryanarayana Diwakaran as one of the individuals involved on its behalf in the cartelisation conduct, in its lesser penalty application. In his objections/suggestions to the DG Report as well as during the oral hearing, Mr. Suryanarayana Diwakaran has also not disputed the findings of the DG against him. He has only stated that he was not summoned by the DG for recording of his statement which shows that his role was not pivotal in the anti-competitive agreement. Further, he ceased to have any participation in the cartel with effect from 15.11.2016 since he had left OP-3 on 15.11.2016. Also, throughout his employment, Mr. Diwakaran never held any position of influence at OP-3 and was only acting upon the instructions of his seniors. As such, a lenient view ought to be adopted by the Commission *qua* Mr. Diwakaran.

232.On the basis of the undisputed evidences against him found by the DG, the Commission holds Mr. Suryanarayana Diwakaran guilty in terms of Section 48(2) of the Act on behalf of OP-3.

233.The last individual found liable by the DG under Section 48(2) of the Act is Mr. Anil Arya, Former Director Solutions Business Unit India from June 2017 till 15.10.2018, Former Vice President Financial Control from October 2014 till May 2017, Former General Manager Operations Finance from August 2012 till September 2014, Former General Manager Decision Support Sales from May 2011 till July 2012 and Former Head Decision Support Sales from 2009 till April 2011.

234.The Commission notes that Mr. Anil Arya was the sender and recipient of multiple e-mails including e-mails dated 07.09.2011, 12.09.2011, 22.12.2011 and 09.08.2013 extracted above with respect to cartelisation in the States of Delhi, Karnataka and Maharashtra.

235.Further, Mr. Shalabh Seth of OP-3 has also stated that Mr. Anil Arya was one of the employees of OP-3 who had discussions with company's competitors. Mr. Kiran Kumar



of OP-1 also admitted to having anti-competitive contacts with Mr. Anil Arya, Finance Head of SABMiller.

236.OP-3 has also categorically named Mr. Anil Arya as one of the individuals involved on its behalf in the cartelisation conduct, in its lesser penalty application. In his objections/suggestions to the DG Report as well as during the oral hearing, Mr. Anil Arya has also not disputed the findings of the DG against him. He has only submitted that he was not the decision-making Authority or pivotal in the functioning of this cartel arrangement.

237.As such, the Commission holds Mr. Anil Arya guilty in terms of Section 48(2) of the Act on behalf of OP-3.

Carlsberg India Private Limited

238.The first individual found liable by the DG under Section 48(1) of the Act is Mr. Soren Lauridsen, Former Managing Director from 2010-11 till March 2014. The Commission notes that *vide* its order dated 05.02.2020, the Commission had noted that the DG's investigation report could not be served upon Mr. Soren Lauridsen as his last known address submitted by OP-4 was of Malaysia. As such, the Commission decides to drop the proceedings against Mr. Soren Lauridsen.

239.The next individual found liable by the DG under Section 48 of the Act is Mr. Michael Norgaard Jensen, Former Managing Director from April 2014 till April 2017 and Former Deputy Managing Director from June 2013 till March 2014.

240.The Commission notes that Mr. Michael Jensen was the sender and recipient of multiple e-mails including e-mails dated 13.04.2012, 15.04.2012, 02.05.2012, 11.05.2012, 06.03.2015, 27.03.2015, 31.03.2015, 09.04.2015, 17.04.2015, 22.04.2015, 28.04.2015, 29.04.2015, 30.04.2015 and 05.06.2015 extracted above with respect to cartelisation in the States of Delhi, Odisha, Rajasthan, West Bengal.

241.In his deposition on oath before the DG, Mr. Jensen admitted to contacts between the competitors, stating as under:



“At local levels in select cases, there had been exchange of MRPs between competition. While making requests for price revisions, especially in free market States, sometimes the Local Heads would exchange pricing targets with their counterparts. Even the timing of the price revision requests in free states would be shared with the competitors ... There had been cases where part of the management had been exchanging price information with competitors, for example in 2012 and 2015 in West Bengal ... In few instances, I was also personally involved in interacting with Mr. Shalabh Seth (SABMiller) and Mr. Shekhar Ramamurthy (UB), both through AIBA and otherwise, for example in the context of the extraordinary events in Orissa in 2015 ...”

“My interactions were primarily with the other CEOs, mainly via AIBA meetings, on calls or emails. The nature of these interactions were primarily in the generalised policy terms and directional interactions and lobby activities with the government. I had these interactions with Mr. Shekhar Ramamurthy (of UB) and Mr. Shalabh Seth (of SABMiller).”

242. In his statement, Mr. Shekhar Ramamurthy of OP-1 stated that *“Some of the names from competitor companies with whom I personally interacted - Mr. Paolo Lanzarotti, Mr. Chris White, Mr. Michael Jensen, Mr. Shalabh Seth and Mr. Pawan Jagetia ...”*

243. OP-4 has also categorically named Mr. Michael Jensen as one of the individuals involved on its behalf in the cartelisation conduct, in its lesser penalty application. In his objections/suggestions to the DG Report as well as during the oral hearing, Mr. Michael Jensen has also not disputed the findings of the DG against him. However, he has submitted that (i) in relation to co-ordination on pricing in West Bengal in 2012, he was merely a consultant at OP-4 during this period, and had no Authority to make any key decisions at OP-4; (ii) with respect to anti-competitive conduct in the State of Rajasthan, there has been no AAEC as the entire e-mail evidence relied on by the DG to find a violation in Rajasthan relates to a period between 2015 and 2016; however, since 2015 till recently in 2019, the Beer companies did not get any price increase based on a price increase request made by them. All price increases have been a result of changes in the tax structure in Rajasthan only; and (iii) with respect to Delhi, Mr. Jensen had no role in the discussions and he did not participate in any interactions with competitors. He was only CC'd in the e-mails exchanged. In any event, there was no implementation in Delhi as the Delhi Government did not accept the price increase request.



244. The Commission notes that the objections taken by Mr. Jensen with respect to the State of West Bengal do not hold good as his designation in OP-4 while being a part of the anti-competitive activity is not relevant for the purposes of Section 48(2) of the Act. Regarding the objections taken *qua* State of Rajasthan, it is noted that the Commission has already dealt with the AAEC aspect in the State of Rajasthan above where analysis for the said State has been made. As far as objections in respect of Delhi are concerned, it is noted that Mr. Jensen was not merely CC'd but rather the addressee/recipient of multiple e-mails dated 11.05.2012. Further, the implementation aspect with respect to Delhi also has already dealt with above where analysis for the said State has been made.
245. As such, the Commission holds Mr. Michael Jensen guilty in terms of Section 48(1) of the Act being the former Managing Director of OP-4 and as such, in-charge of and responsible to OP-4 for the conduct of its business, as well as under Section 48(2) of the Act having played an active role in the cartel conduct.
246. The third individual found liable by the DG under Section 48(1) of the Act is Mr. Nilesh Patel, Managing Director (*de facto*) since May 2017.
247. The Commission notes that Mr. Nilesh Patel was the sender and recipient of multiple e-mails including e-mails dated 17.01.2018, 19.01.2018 and 15.02.2018 extracted above with respect to cartelisation in the States of Maharashtra and West Bengal. Though such e-mails were mostly internal e-mails of OP-4, nonetheless, the same show the knowledge of Mr. Nilesh Patel about the anti-competitive conduct of OP-4.
248. In his statement, Mr. Shalabh Seth of OP-3, has named Mr. Nilesh Patel as one of the persons of OP-4 who had anti-competitive contacts with his counterparts from OP-1 and OP-3.
249. OP-4 has also categorically named Mr. Nilesh Patel as one of the individuals involved on its behalf in the cartelisation conduct, in its lesser penalty application.
250. In his objections/suggestions to the DG Report, Mr. Patel has submitted that he was appointed as the Managing Director of OP-4 only from 26.04.2018, and therefore, had no executive decision-making role/responsibility at OP-4 prior to this date. Prior to this, Mr. Patel was not involved in handling the day-to-day affairs of OP-4 and was not taking any



key decisions. On 05.05.2017, Mr. Patel was nominated by Carlsberg Breweries A/S as a Director at OP-4 Board. Therefore, his involvement in the functioning of OP-4 (until 26.04.2018) was as Asia region support and very limited, and he did not have any executive authority. As such, the evidence relied upon by the DG to find Mr. Patel liable, which pertains to the period prior to him being appointed as the Managing Director of OP-4, *i.e.*, before 26.04.2018, cannot be relied upon and post this date, OP-4 has not engaged in any anti-competitive conduct. It was only out of abundant caution that Mr. Patel was named as one of the persons for whom OP-4 sought lesser penalty under the lesser penalty application filed by it.

251. In this regard, the Commission notes the submission of Mr. Pawan Jagetia of OP-4, who has submitted that Mr. Nilesh Patel was, in fact, the *de facto* Managing Director of OP-4 from May 2017 onwards, without OP-4's Board approval. Such submission of Mr. Jagetia, coupled with the e-mail communications sent/received by Mr. Nilesh Patel, categorically show Mr. Patel's knowledge, if not involvement, of the anti-competitive conduct of OP-4 prior to 26.04.2018.

252. With regard to the deposition of Mr. Shalabh Seth of OP-3, Mr. Patel has submitted that he has never met and does not know Mr. Shalabh Seth. He had never interacted with Mr. Seth, and there is no evidence indicating that there was any communication between them. Therefore, Mr. Seth's deposition against Mr. Patel should not be considered.

253. In this regard, the Commission notes that even if the statement of Mr. Shalabh Seth of OP-3 of having anti-competitive contacts with Mr. Nilesh Patel is disregarded by the Commission, yet the fact of Mr. Nilesh Patel being the *de facto*, if not *de jure*, Managing Director of OP-4 since 2017, coupled with the e-mail communications sent/received by him, show his knowledge of the anti-competitive conduct of OP-4. His submission that his name was mentioned in the lesser penalty application filed by OP-4 only by way of abundant caution, cannot be accepted.

254. As such, being the *de facto* Managing Director of OP-4, and thereby in-charge of and responsible to OP-4 for the conduct of its business since May 2017, the Commission holds Mr. Nilesh Patel liable in terms of Section 48(1) of the Act for the anti-competitive conduct of OP-4.



255. The fourth individual found liable by the DG under Section 48(2) of the Act is Mr. Pawan Jagetia, Former Deputy Managing Director from September 2014 till March 2018.

256. The Commission notes that with respect to Mr. Pawan Jagetia, the only evidence placed on record by the DG is the internal e-mail dated 15.02.2018 of OP-4 extracted above with respect to cartelisation in the State of West Bengal in which Mr. Jagetia was the sender. In this e-mail, Mr. Pawan Jagetia advises Mr. Nilesh Patel of OP-4 to hold off registration of brands of OP-4 for sometime. Apart from the above, there is no other evidence which may show the involvement of Mr. Pawan Jagetia in the anti-competitive conduct of OP-4. As such, in the opinion of the Commission, for lack of evidences, Mr. Pawan Jagetia cannot be held liable in terms of Section 48(2) of the Act for the anti-competitive conduct of OP-4.

257. However, the Commission notes that Mr. Nilesh Patel of OP-4 has stated that though he has no knowledge of division of responsibility or interaction between Mr. Michael Jensen, the Managing Director at the time and Mr. Pawan Jagetia, the deputy Managing Director, the *“day to day pricing issues are discussed with Director Marketing & Director Sales with key inputs from partner representative Shri Pawan Jagetia.”*

258. Further, Mr. Shekhar Ramamurthy of OP-1 also admitted to have had personal interactions, *inter alia*, with Mr. Pawan Jagetia including a WhatsApp chat in January 2018 about the repercussions of new West Bengal Liquor Policy on their respective companies' beer prices. Mr. Pawan Jagetia, though denied having any discussion on cost cards for price revision issues with MR. Ramamurthy, has admitted to have had communications with Mr. Shekhar Ramamurthy on tax changes which impacted production and supply, besides few communications about litigation against prohibition in Bihar. The denial of Mr. Pawan Jagetia to have exchanged any price related information with Mr. Shekhar Ramamurthy has not been found by the DG to be tenable, as he had admitted to have received the 'Wish List' for West Bengal Excise Policy which included some discussion on pricing issues. OP-4 also, in its reply before the DG, stated that Mr. Pawan Jagetia shared the overall responsibility of management and affairs of the company on day-to-day basis with Mr. Michael Jensen during his tenure in the company.



259. In his objections/suggestions to the DG Report, Mr. Pawan Jagetia has stated that he was not involved in the pricing decisions of OP-4. Rather, as Deputy Managing Director of OP-4, he was only in-charge of supply chain and business development. This is also evident from the employment contract and organisational structure of OP-4.
260. Mr. Jagetia has submitted that his ability to reply to the DG Report and defend himself is seriously limited by the lack of information in his professional e-mail account, which OP-4, citing false reasons, has refused to supply to him. The same, if available, would show that no pricing related decisions were taken by Mr. Jagetia.
261. Further, Mr. Jagetia has stated that the statements relied upon by the DG against him are of two interested witnesses *viz.*, Mr. Nilesh Patel and Mr. Michael Jensen. On the contrary, the evidence on record shows that Mr. Michael Jensen, Managing Director was the sole Authority taking all decisions relating to pricing.
262. In the view of the Commission, even if the above submission of Mr. Jagetia of him not being involved in price fixing is accepted, in the present matter, OP-4 was involved in cartelisation not only by means of price fixing, but also by way of limiting supplies, specifically in the State of West Bengal, with respect to which, internal e-mail dated 15.02.2018 was CC'd to Mr. Jagetia. Further, the Commission notes that though Mr. Jagetia refers to Mr. Nilesh Patel and Mr. Michael Jensen as interested witnesses, it is not clear as to what interest would they have in pointing fingers at Mr. Jagetia if he was not involved.
263. As such, the Commission finds Mr. Pawan Jagetia guilty in terms of Section 48(1) of the Act on behalf of OP-4.
264. The fifth individual found liable by the DG under Section 48(2) of the Act is Mr. Dhiraj Kapur, Vice President Corporate Affairs.
265. The Commission notes that Mr. Dhiraj Kapur was the sender and recipient of multiple e-mails including e-mails dated 01.08.2013, 07.08.2013, 17.04.2015, 20.04.2015, 22.04.2015 and 28.10.2016 extracted above with respect to cartelisation in the States/UTs of Delhi, Odisha, Rajasthan, West Bengal.



266.OP-4 has also categorically named Mr. Dhiraj Kapur as one of the individuals involved on its behalf in the cartelisation conduct, in its lesser penalty application. In his objections/suggestions to the DG Report as well as during the oral hearing, Mr. Dhiraj Kapur has not disputed the findings of the DG against him. He has rather submitted with respect to fixation of EBP and MRP, that his role, as the Vice-President-Corporate Affairs, was limited to co-ordinating with OP-5 and Government agencies for seeking price revisions and favourable policy decisions. However, he has made submissions similar to those made by Mr. Michael Jensen, with respect to cartelisation in the States of West Bengal, Rajasthan and Delhi.

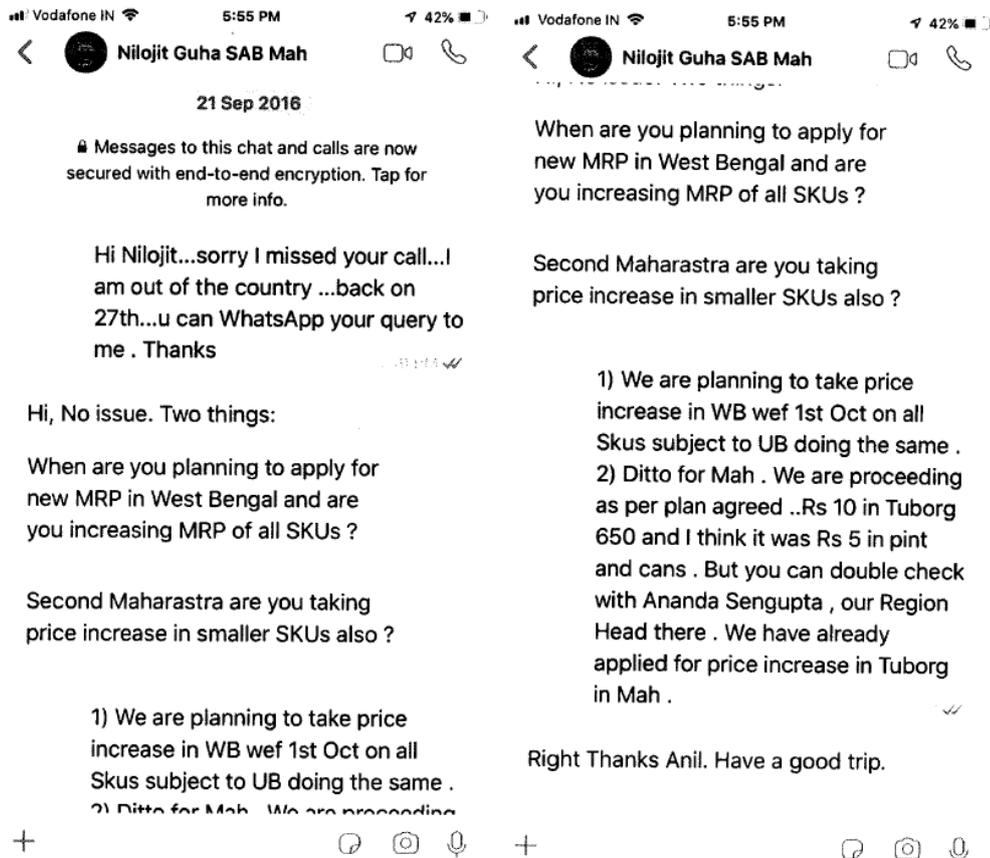
267.The Commission has already addressed such submissions above while fixing liability of Mr. Michael Jensen. Further, the communications between Mr. Dhiraj Kapur and Mr. Sovan Roy of OP-5 are self-explanatory.

268.As such, the Commission holds Mr. Dhiraj Kapur guilty in terms of Section 48(2) of the Act on behalf of OP-4.

269.The sixth individual found liable by the DG under Section 48 of the Act is Mr. Anil Bahl, Vice President Mont and Premium Business since 2018 and Former Sales Director/Sales Head/Vice President Sales from 2009-10 till 2017-18.

270.The Commission notes that Mr. Anil Bahl was the sender and recipient of multiple e-mails including e-mails dated 13.04.2012, 15.04.2012, 02.05.2012, 11.05.2012, 20.01.2015, 23.03.2015, 20.02.2017, 21.02.2017, 17.01.2018 and 15.02.2018 extracted above with respect to cartelisation in the States/UTs of Delhi, Karnataka, West Bengal, Maharashtra, Odisha and Puducherry.

271.In September, 2016, Mr. Anil Bahl also had a WhatsApp chat with Mr. Nilojit Guha of OP-3, exchanging business sensitive information, as extracted below:



272. In his deposition on oath before the DG, Mr. Michael Jensen of OP-4 stated as under:

“There had been cases where part of the management had been exchanging price information with competitors, for example in 2012 and 2015 in West Bengal. Mr. Anil Bahl would be one such person who would himself contact or approve such contacts with the competitors.”

“... There had been cases where part of the management had been exchanging price information with competitors, for example in 2012 and 2015 in West Bengal. I understand that Mr. Anil Bahl would be one such person who would himself contact or approve such contacts with the competition. Mr. Anil Bahl had interactions with his counterparts in primarily UB and SABMiller. Corporate Affairs personnel from these competitor companies were regularly in contact on these issues ...”

273. Further, Mr. Kiran Kumar of OP-1 also admitted to have had interactions regarding pricing and other issues, *inter alia*, with Mr. Anil Bahl and Mr. Shalabh Seth of OP-3 also stated that his “... discussions on pricing, EBP and discounts were mostly with Mr. Kiran Kumar (from UB) and Mr. Anil Bahl (from Carlsberg).”



- 274.OP-4 has also categorically named Mr. Anil Bahl as one of the individuals involved on its behalf in the cartelisation conduct, in its lesser penalty application. Additionally, OP-4, in its response to a DG notice, also stated that “*CIPL and UB, and potentially UB and SAB would discuss among themselves to confirm the proposed price increases. These discussions would take place over the phone and sometimes in person between Mr. Anil Bahl and Mr. Kiran Kumar. Initially, Mr. Anil Bahl did not have a direct contact with SAB for West Bengal ... coordination was SAB was done by UB. Later on, in 2015, Mr. Anil Bahl also had contact with Mr. Shalabh Seth from SAB*”.
- 275.In his objections/suggestions to the DG Report as well as during the oral hearing, Mr. Anil Bahl has not disputed the findings of the DG against him.
- 276.As such, the Commission holds Mr. Anil Bahl guilty in terms of Section 48(2) of the Act on behalf of OP-4.
- 277.The last individual found liable by the DG under Section 48 of the Act is Mr. Mahesh Kanchan, Former Vice President Marketing (Head Marketing) from 2014-15 till 2018-19.
- 278.The Commission notes that Mr. Mahesh Kanchan was the sender and recipient of multiple e-mails including internal e-mails dated 17.01.2018, 19.01.2018 and 05.02.2018 extracted above with respect to cartelisation in the States of Maharashtra and West Bengal.
- 279.Further, Mr. Kiran Kumar of OP-1 had also admitted to have had discussions with Mr. Mahesh Kanchan regarding basic price and MRP in Delhi and Rajasthan.
- 280.In his objections/suggestions to the DG Report as well as during the oral hearing, Mr. Kanchan has not disputed the findings of the DG against him. He has only submitted that during his employment at OP-4, he did not participate in any meetings with his counterparts in any manner to fix prices or curtailing supplies and he did not attend any OP-5 meetings. As such, the evidence relied on by the DG does not show his involvement in the cartel in any manner. He has also submitted that he had no decisive role in either the decision of OP-4 to curtail or resume supplies in the States of West Bengal or Maharashtra. With respect to sharing of information regarding market share,



the DG has erred in concluding that OP-4 was privy to sales volumes of its competitors for it to be able to ascertain their market shares. Market share information is (i) estimated market share, (ii) available in the industry through market intelligence, and (iii) not indicative of collusion by any means. For Corporation States, the respective State Beverage Corporation owned by the Government itself publishes the market shares of all players. As such, e-mail exchange in this regard is not in violation of the provisions of the Act.

281. In this regard, the Commission notes that even if direct participation of Mr. Kanchan in exchange of information by OP-4 is not evidenced by the DG, the statement of Mr. Kiran Kumar of OP-1 clearly implicates Mr. Mahesh Kanchan in the anti-competitive activities of OP-4 in the States of Delhi, Rajasthan and West Bengal.

282. As such, the Commission holds Mr. Mahesh Kanchan guilty in terms of Section 48(2) of the Act on behalf of OP-4.

All India Brewers' Association

283. For the anti-competitive conduct of OP-5, the DG has found Mr. Sovan Roy (*alias* Mr. Shobhan Roy), Director General of OP-5 since 07.01.2013, liable in terms of Section 48 of the Act.

284. The DG has noted that Mr. Sovan Roy, as the Director General of OP-5, passed on vital information amongst the OPs regarding each other's pricing decisions. During his tenure, anti-competitive decisions were taken in the meetings of OP-5, and Mr. Roy was active in approaching the State Governments seeking price revisions on behalf of the members of OP-5. As such, he has been found liable by the DG in terms of Section 48 of the Act.

285. In this regard, the Commission notes that in the preceding paragraphs, numerous e-mails exchanged by Mr. Sovan Roy, especially with respect to the States of Delhi, Odisha, Rajasthan, West Bengal, have been extracted. From such e-mails, the active role of Mr. Roy, in allowing OP-5 to be used as a platform for promoting anti-competitive activities between OP-1, OP- and OP-4, is clearly visible. Further, being the Director General of OP-5, Mr. Roy was also in-charge of and responsible to OP-5, for the conduct of its business, since 2013.



286. The submission of Mr. Roy that discussions have taken place on the platform of OP-5 under the belief that conduct of collective representation does not violate the provisions of the Act, does not hold much water as it is *res integra* that *ignorantia juris non excusat*. Further, the submission of Mr. Roy that he is a paid employee of OP-5 and does not stand to gain by any direct or indirect violation of the law also does not hold good as personal gains need not be the sole motive of an individual to engage into an anti-competitive activity.

287. As such, the Commission finds Mr. Sovan Roy liable in terms of the provisions of Section 48(1) as well as Section 48(2) of the Act, for the anti-competitive conduct of OP-5.

Conclusion

288. The Commission, hence, holds OP-1 and OP-3 guilty of contravention of the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) read with 3(1) of the Act from 2009 to at least October 2018. Further, the Commission holds OP-4 guilty of contravention of the provisions of Section 3(3)(a), 3(3)(b) and 3(3)(c) read with 3(1) of the Act from 2012 to at least October 2018 and OP-5 guilty of contravention of the provisions of Section 3(3)(a) and 3(3)(b) read with 3(1) of the Act from 2013 to at least October 2018. However, no contravention is found against OP-2.

289. As far as individuals' liability is concerned, the Commission holds the following individuals liable for the anti-competitive conduct of their respective companies:

<u>OP-1</u>		
1.	Mr. Kalyan Ganguly, Former Managing Director from 2009 till July 2015	48 (1)
2.	Mr. Shekhar Ramamurthy, Managing Director since 01.08.2015, Former Joint President from September 2012 till July 2015 and Former Deputy President from October 2007 till August 2012	48 (1)
3.	Mr. Kiran Kumar, Chief Sales Officer since 28.08.2017, Former Executive Vice President Sales from July 2014 till June 2017 and Former Senior Vice President Sales from July 2009 till June 2014	48 (2)
4.	Mr. Perry Goes, Head of Strategic Planning & Analytics till 28.08.2017	48 (2)
<u>OP-3</u>		
5.	Mr. Shalabh Seth, Former Managing Director from January 2015 till 31.10.2016, Former Sales Director from April 2012 till 2014 and Former	48 (1)



	Director Supply Chain from 2009 till March 2012 (Is presently working as Chief Supply Chain Officer of OP-1)	
6.	Mr. Nilojit Guha, Former Sales Director from January 2015 till 15.11.2016 and Former Vice President Sales Control from May 2011 till December 2014	48 (2)
7.	Mr. Suryanarayana Diwakaran, Former Vice President Sales till 15.11.2016, Former Vice President Sales South from May 2011 till 2016 and Former General Manager Sales South from 2009 till April 2011	48 (2)
8.	Mr. Anil Arya, Former Director Solutions Business Unit India from June 2017 till 15.10.2018, Former Vice President Financial Control from October 2014 till May 2017, Former General Manager Operations Finance from August 2012 till September 2014, Former General Manager Decision Support Sales from May 2011 till July 2012 and Former Head Decision Support Sales from 2009 till April 2011	48 (2)
<u>OP-4</u>		
9.	Mr. Michael Norgaard Jensen, Former Managing Director from April 2014 till April 2017 and Former Deputy Managing Director from June 2013 till March 2014	48 (1)
10.	Mr. Nilesh Patel, Managing Director since May 2017	48 (1)
11.	Mr. Pawan Jagetia, Former Deputy Managing Director from September 2014 till March 2018	48 (1)
12.	Mr. Dhiraj Kapur, Vice President Corporate Affairs	48 (2)
13.	Mr. Anil Bahl, Vice President Mont and Premium Business since 2018 and Former Sales Director/Sales Head/Vice President Sales from 2009-10 till 2017-18	48 (2)
14.	Mr. Mahesh Kanchan, Former Vice President Marketing (Head Marketing) from 2014-15 till 2018-19	48 (2)
<u>OP-5</u>		
15.	Mr. Sovan Roy, Director General since 07.01.2013	48 (1) and 48 (2)

Penalty and lesser penalty:

290. Once contravention of the provisions of the Act has been established, the Commission now proceeds to determine the penalty, if any, to be imposed upon the contravening parties, under the provisions of Section 27(b) of the Act.

291. The parties have argued various mitigating factors with respect to imposition of penalty upon them. The same include the following:

- (a) True driver of price revisions was the State Governments/Corporations and not the brewers. The requirement of State Governments to not entertain individual



representations by a specific Beer company on industry issues rendered it necessary for Beer companies to make representations collectively and/or through OP-5. Co-ordination was not undertaken with any intent to capitalise on consumers but with a limited purpose to preserve already marginalised profits, and in some instances, to merely recover costs.

- (b) Instances of interaction were sporadic and limited only to certain states.
- (c) There has been no AAEC and no harm to consumers. Information exchange did not have any effect on the approved EBPs since the relevant State Governments decided not to allow the increase, in some instances, year after year, nor did the State Governments allow reductions in EBP.
- (d) Co-ordination in supply disruptions was only to convince State Departments to not increase Excise duties unreasonably.
- (e) Information exchange and communication regarding premium institutions and buy-back prices of second-hand bottles were never implemented.
- (f) Beer market was characterised by intense volume-based competition amongst the OPs.
- (g) OPs are first-time offenders of competition law.
- (h) Beer industry in India has been severely impacted by global COVID-19 pandemic, and subsequent lockdown announcements and social distancing norms. Sales have reduced and duties increased. As such, imposition of penalty would have far-reaching consequences on the highly constrained Beer industry.

292. Further, it has been argued by OP-1 and OP-4 that penalty, if any, ought to be imposed on the basis of principle of proportionality and relevancy of infringement to the turnover/profit from the cartel, as envisaged by the Hon'ble Supreme Court in *Excel Crop Care Limited v. Competition Commission of India and Another (2017) 8 SCC 47*. The Commission should consider turnover or profits (as applicable) from the sale of Beer only in the States affected by the OPs' conduct. The Commission should also not consider entire time period, *i.e.*, FY 2009–10 to FY 2018–19 as cartel period, and should rather consider the actual duration of discussions in relevant States as the evidence on record clearly establishes that discussions were not continuous in nature.



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293. With regard to such argument raised by the OPs, the Commission observes that the principle of proportionality envisaged in the *Excel Crop Care Ltd.* judgment by the Hon'ble Supreme Court is only in the context of taking 'relevant turnover' rather than 'total turnover' of multi-product companies. It cannot be construed from the said decision of the Hon'ble Supreme Court that if a cartel meeting takes place only for a day, or there are instances of e-mail communications only one day in a month, relevant turnover would be the turnover only from those isolated days. Further, nowhere has the Hon'ble Supreme Court expressed that relevant turnover should be limited to the turnover earned from the specific geographic regions in which the effect of the anti-competitive conduct takes place. Be that as it may, in the present case, the Commission has arrived at a finding that there existed a nation-wide cartel amongst the OPs from 2009 to at least 10–11.10.2018 (with OP-4 joining from 2012). As such, the 'relevant turnover/profit' of the OPs would be the turnover/profit earned by the OPs from the sale and purchase of Beer and ancillary products (like Beer bottles) in India during the cartel period.

294. The *proviso* to Section 27(b) of the Act, reads as under:

“Provided that in case any agreement referred to in Section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten percent. of its turnover for each year of the continuance of such agreement, whichever is higher.”

295. As such, in terms of the said *proviso*, in cases of cartelisation, the Commission is empowered to impose upon the contravening entities, penalty of up to three times of its profit for each year of the continuance of the cartel, or 10% of its turnover for each year of the continuance of the cartel, whichever is higher.

296. Based on revenue and profit details arising from the sale of beer in India certified by a Chartered Accountant as provided by OP-1 and OP-4, and based on the financial statements provided by OP-3 (as it stated that its entire turnover and profit as stated in the financial statements arises from the sale of beer in India), and considering the mitigating factors put forth by the OPs as stated above, the Commission proceeds to



determine the quantum of penalty imposed on the parties @ 0.5 times profit for each year of the continuance of the cartel or 2% of the turnover for each year of the continuance of the cartel, whichever is higher. Calculation of the same is as follows:

OP-1

(In ₹)

FINANCIAL YEAR	RELEVANT TURNOVER	RELEVANT PROFIT	2% OF RELEVANT TURNOVER	0.5 TIMES OF RELEVANT PROFIT
2009-10 ¹	15,59,22,51,452	65,89,10,959	31,18,45,029	32,94,55,479
2010-11	28,07,86,55,000	1,44,10,99,000	56,15,73,100	72,05,49,500
2011-12	33,56,19,86,000	1,22,13,03,000	67,12,39,720	61,06,51,500
2012-13	34,92,68,82,000	1,92,37,53,000	69,85,37,640	96,18,76,500
2013-14	37,26,79,83,000	2,58,63,29,000	74,53,59,660	1,29,31,64,500
2014-15	41,13,82,10,000	2,77,46,09,000	82,27,64,200	1,38,73,04,500
2015-16	44,95,98,92,000	3,53,46,63,000	89,91,97,840	1,76,73,31,500
2016-17	41,78,64,83,000	2,17,86,18,000	83,57,29,660	1,08,93,09,000
2017-18	50,35,81,19,000	4,77,54,39,000	1,00,71,62,380	2,38,77,19,500
2018-19 ²	30,98,02,49,425	3,96,63,71,770	61,96,04,988	1,98,31,85,885
Total	3,58,65,07,10,877	25,06,10,95,729	7,17,30,14,218	12,53,05,47,864

OP-3

(In ₹)

FINANCIAL YEAR	RELEVANT TURNOVER	RELEVANT PROFIT	2% OF RELEVANT TURNOVER	0.5 TIMES OF RELEVANT PROFIT
2009-10 ³	10,93,35,25,320	-1,22,75,76,970	21,86,70,506.41	-61,37,88,484.87
2010-11	14,61,53,80,778	-60,36,39,271	29,23,07,616	-30,18,19,636
2011-12	16,66,28,51,733	-1,19,25,85,323	33,32,57,035	-59,62,92,662
2012-13	19,96,52,54,036	-88,34,95,656	39,93,05,081	-44,17,47,828
2013-14	19,20,22,97,023	-99,73,11,593	38,40,45,940	-49,86,55,797
2014-15	19,39,69,87,494	-1,27,35,88,070	38,79,39,750	-63,67,94,035
2015-16	20,87,70,95,681	-47,36,52,285	41,75,41,914	-23,68,26,143

¹ For 315 out of 365 days. Relevant turnover for FY 2009-10 is ₹18,06,72,12,000 and relevant profit is ₹76,35,00,000.

² For 192 out of 365 days. Relevant turnover for FY 2018-19 is ₹58,89,47,45,000 and relevant profit is ₹7,54,02,38,000.

³ For 315 out of 365 days. Relevant turnover for FY 2009-10 is ₹ 12,66,90,05,530 and relevant profit is ₹-1,42,24,30,457.



FINANCIAL YEAR	RELEVANT TURNOVER	RELEVANT PROFIT	2% OF RELEVANT TURNOVER	0.5 TIMES OF RELEVANT PROFIT
2016-17	16,17,95,10,000	-3,72,18,70,000	32,35,90,200	-1,86,09,35,000
2017-18	13,58,46,20,000	-98,68,80,000	27,16,92,400	-49,34,40,000
2018-19 ⁴	7,15,10,32,110	-1,60,20,69,041	14,30,20,642	-80,10,34,521
Total	1,58,56,85,54,175	-12,96,26,68,209	3,17,13,71,084	-6,48,13,34,104

OP-4

(In ₹)

FINANCIAL YEAR	RELEVANT TURNOVER	RELEVANT PROFIT	2% OF RELEVANT TURNOVER	0.5 TIMES OF RELEVANT PROFIT
2009 ⁵	79,77,27,273	-73,88,18,182	1,59,54,545.45	-36,94,09,091
2010	1,91,10,00,000	-1,23,70,00,000	3,82,20,000	-61,85,00,000
2011	3,02,80,00,000	-1,86,20,00,000	6,05,60,000	-93,10,00,000
2012	4,31,60,00,000	-1,73,40,00,000	8,63,20,000	-86,70,00,000
Jan 2013 to March 14	6,98,30,00,000	-2,13,10,00,000	13,96,60,000	-1,06,55,00,000
2014-15	8,37,30,00,000	-2,32,90,00,000	16,74,60,000	-1,16,45,00,000
2015-16	11,82,70,00,000	-1,48,50,00,000	23,65,40,000	-74,25,00,000
2016-17	13,42,20,00,000	-1,67,00,00,000	26,84,40,000	-83,50,00,000
2017-18	14,84,80,00,000	1,06,60,00,000	29,69,60,000	53,30,00,000
2018-19 ⁶	9,84,72,32,877	96,36,82,192	19,69,44,658	48,18,41,096
Total	75,35,29,60,149	-11,15,71,35,990	1,50,70,59,203	-5,57,85,67,995

297. As can be seen from the above tables, for OP-1, 0.5 times profit for each year of the continuance of cartel is higher than 2% of turnover for each year of continuance of cartel; while for OP-3 and OP-4, 2% of turnover for each year of continuance of cartel is higher than 0.5 times profit for each year of continuance of cartel. As such, the Commission decides to impose upon OP-1 penalty @ 0.5 times of the profit for each year of continuance of the cartel, i.e., ₹12,53,05,47,864/- (Rupees One Thousand Two Hundred and Fifty Three Crores Five Lacs Forty Seven Thousand Eight Hundred and

⁴ For 192 out of 365 days. Relevant turnover for FY 2018-19 is ₹13,59,44,10,000 and relevant profit is ₹-3,04,56,00,000.

⁵ For 225 out of 275 days. Relevant turnover for April to December 2009 is ₹97,50,00,000 and relevant profit is ₹-90,30,00,000.

⁶ For 192 out of 365 days. Relevant turnover for FY 2018-19 is ₹18,72,00,00,000 and relevant profit is ₹1,83,20,00,000.



Sixty Four Only) and upon OP-3 and OP-4, penalty @ 2% of their turnover for each year of continuance of cartel, *i.e.*, ₹3,17,13,71,084/- (Rupees Three Hundred and Seventeen Crores Thirteen Lacs Seventy One Thousand Eighty Four Only) and ₹1,50,70,59,203/- (Rupees One Hundred and Fifty Crores Seventy Lacs Fifty Nine Thousand Two Hundred and Three Only), respectively.

298. As far as OP-5 is concerned, considering the role and conduct of OP-5 in the cartel conduct, the Commission decides to impose upon it, penalty @ 3% of the average of its turnover for the last three preceding financial years of the cartel, which is calculated on the basis of the income and expenditure accounts provided by OP-5, as follows:

OP-5

(In ₹)

FINANCIAL YEAR	INCOME
2016-17	3,62,84,983
2017-18	1,68,09,500
2018-19	94,18,155
Total	6,25,12,638
Average	2,08,37,546
Penalty @ 3%	6,25,126

299. With regard to the individuals of the OPs also, the Commission decides to impose penalty @ 3% of the average of their incomes, for the last three preceding financial years of the cartel.

300. Though certain individuals who have left the employment of the OPs have submitted that penalty, if any, should be calculated for them, on the basis of the incomes derived by them from the respective OPs at the relevant time of the cartel conduct, the Commission is of the view that the intention behind imposition of penalty is only to punish the individuals for their cartel so as to create a deterrent effect. As such, the Commission imposes penalty uniformly on the individuals by taking their income details for the preceding three financial years, rather than relating the same to their respective period of cartel.



301.Regarding lesser penalty, it is noted by the Commission that OP-3 was the first lesser penalty applicant to approach the Commission. As such, it is eligible for up to 100% reduction in the penalty amount imposed upon it. It is noted by the Commission that the order passed under Section 26(1) of the Act by the Commission was based on the disclosures made by OP-3 in its lesser penalty application. At that stage, the Commission and/or the DG had no evidence in their possession regarding cartelisation between the OPs. In its lesser penalty application, OP-3 explained the nature and *modus operandi* of the cartel and explained the market structure of Beer industry and the different models being followed in various States apart from submitting evidences with regard to exchange of e-mail communications between the key managerial personnel of the OPs. The information and co-operation extended by OP-3 enabled the DG to conduct search and seizure operation at the premises of the OPs and seize quality evidence. Full and true disclosures of information and evidence and continuous co-operation provided by OP-3 and its individuals, not only enabled the Commission to order investigation into the matter, but also helped the Commission in establishing contravention of the provisions of Section 3(3) of the Act by the OPs. OP-3 and its individuals extended genuine, full, continuous and expeditious co-operation not only during the course of investigation before the DG, but also during the subsequent proceedings before the Commission. Mr. Shalabh Seth also approached the Commission independently as a lesser penalty applicant, and was granted the same marker status as afforded to OP-3. As such, the Commission decides to grant to OP-3 and its individuals found liable in terms of Section 48 of the Act *viz.* Mr. Shalabh Seth, Mr. Nilojit Guha, Mr. Suryanarayana Diwakaran and Mr. Anil Arya, 100% reduction in the penalty amount imposed upon them.

302.The second lesser penalty applicant before the Commission was OP-1. As the second applicant, OP-1 is eligible for up to 50% reduction in the penalty amount imposed upon it. The Commission notes that OP-1 had filed the lesser penalty application on behalf of itself and its individuals *viz.* Mr. Shekhar Ramamurthy, Mr. Kiran Kumar, Mr. Shalabh Seth and Mr. Perry Goes. Being the second lesser penalty applicant in the matter, OP-1 and its 3 individuals (excluding Mr. Shalabh Seth who has been found liable for the conduct of OP-3) are eligible for reduction in penalty up to 50% of the full penalty leviable.



303. The Commission notes that OP-1 and its individuals had filed the lesser penalty application after the DG had conducted the search and seizure operations on 10-11.10.2018. By this time, from the lesser penalty application filed by OP-3, and from the Dawn Raid, the DG already had the bulk of evidence on the basis of which cartelisation in the present matter has been established. In its lesser penalty application, OP-1 made disclosures about discussions and co-ordination between OP-1 and its competitors, *inter alia*, in relation to (i) prospective price increases applied for by the OPs before various State/UTs Authorities like Madhya Pradesh, Chhattisgarh, Andhra Pradesh, Telangana, Rajasthan, Delhi, Maharashtra, Odisha, Karnataka and Puducherry; (ii) basic prices for procuring old/used patent bottles; (iii) limiting/stopping the supply of Beer for limited period in certain States like Odisha, Maharashtra, Rajasthan, West Bengal and Andhra Pradesh; and (iv) discussions on proposed financial and other incentives to premium institutions. Though much of such evidence was already in possession of the DG by the time OP-1 came forward with the same, some evidence submitted by OP-1 has been used by the Commission above to form a complete trail evidencing anti-competitive conduct of the OPs, especially in relating to co-ordination in respect of premium institutions in Bengaluru, Karnataka and with respect to purchase of old/used bottles. Further, the pricing data furnished by OP-1 during the course of investigation enabled the DG and the Commission to tabulate the MRP and EBP revisions effected by the OPs over a number of years, which has helped in mapping price parallelism in respect of Beer sold by the OPs. Moreover, from the lesser penalty application filed by Mr. Steven Bosch, it is noted that OP-1 was contemplating to file a lesser penalty application even before the Dawn Raid was conducted.

304. As such, given the stage at which OP-1 came forward with the disclosures, the quality of information provided by OP-1, the evidence already in possession of the DG at that time, and the entire facts and circumstances of the present case, the Commission decides to grant to OP-1, Mr. Shekhar Ramamurthy, Mr. Kiran Kumar and Mr. Perry Goes, reduction in penalty to the tune of 40% of the total penalty leviable.

305. The third lesser penalty applicant before the Commission was OP-4. OP-4 has requested lesser penalty for itself and its individuals *viz.* Mr. Nilesh Patel, Mr. Michael Jensen, Mr. Dhiraj Kapur and Mr. Anil Bahl. The Commission notes that OP-4 had filed the lesser



penalty application after the DG had conducted the search and seizure operations on 10-11.10.2018. By this time, from the lesser penalty applications filed by OP-3 and OP-1, and from the Dawn Raid, the DG already had most of the evidence on the basis of which cartelisation in the present matter has been established. In its lesser penalty application, OP-4, while giving details of the cartel in the domestic Beer market, *inter alia*, explained the background of the Beer market in India and the market scenario. It explained the operation of the cartel and provided a list of the key persons of the OPs who were involved in the cartel. As evidence, it submitted printouts of e-mail communications between the OPs. Thereafter, during investigation, OP-4 also gave further evidence in the form of e-mail communications and WhatsApp communications between the employees of the OPs. Though most of the evidence submitted by OP-4 was already in possession of the DG by the time OP-4 came forward with the same, some evidence submitted by OP-4 has been used by the Commission above to form a complete trail evidencing anti-competitive conduct of the OPs, as such providing value addition to the investigation of the DG. Further, the pricing data furnished by OP-4 during the course of investigation enabled the DG and the Commission to tabulate the MRP and EBP revisions effected by the OPs over a number of years, which has helped in mapping price parallelism in respect of Beer sold by the OPs.

306. As such, given the stage at which OP-4 came forward with the disclosures, the quality of information provided by OP-4, the evidence already in possession of the DG at that time, and the entire facts and circumstances of the present case, the Commission decides to grant to OP-4, Mr. Nilesh Patel, Mr. Michael Jensen, Mr. Dhiraj Kapur and Mr. Anil Bahl, reduction in penalty to the tune of 20% of the total penalty leviable.

307. Consequently, the penalty amounts imposed upon and payable by the OPs are as follows:

(In ₹)

OP	Penalty Imposed	Penalty Payable after reduction
OP-1	12,53,05,47,864	7,51,83,28,719
OP-3	3,17,13,71,084	<i>Nil</i>
OP-4	1,50,70,59,203	1,20,56,47,362
OP-5	6,25,126	6,25,126



308.As far as the individuals of the OPs are concerned, the penalty amounts calculated for them and payable by them are as follows:

OP-1

(In ₹)

S. NO.	PERSON	YEAR	INCOME
1.	Mr. Shekhar Ramamurthy	2016-17	7,94,84,516
		2017-18	8,06,32,449
		2018-19	12,32,92,801
		Total	28,34,09,766
		Average	9,44,69,922
		Penalty Imposed	28,34,098
		Penalty Payable	17,00,459
2.	Mr. Kalyan Ganguly	2016-17	61,98,067
		2017-18	1,66,25,453
		2018-19	2,67,62,253
		Total	4,95,85,773
		Average	1,65,28,591
		Penalty Imposed	4,95,858
		Penalty Payable	4,95,858
3.	Mr. Kiran Kumar	2016-17	2,27,87,868
		2017-18	2,22,19,726
		2018-19	3,48,61,518
		Total	7,98,69,112
		Average	2,66,23,037
		Penalty Imposed	7,98,691
		Penalty Payable	4,79,215
4.	Mr. Perry Goes	2016-17	1,51,89,911
		2017-18	1,40,80,765
		2018-19	2,22,93,770
		Total	5,15,64,446
		Average	1,71,88,149
		Penalty Imposed	5,15,644
		Penalty Payable	3,09,387



OP-3

(In ₹)

S. NO.	PERSON	YEAR	INCOME
1.	Mr. Shalabh Seth	2016-17	19,90,50,236
		2017-18	3,46,13,322
		2018-19	3,85,83,506
		Total	27,22,47,064
		Average	9,07,49,021
		Penalty Imposed	27,22,471
		Penalty Payable	<i>Nil</i>
2.	Mr. Anil Arya	2016-17	1,85,14,881
		2017-18	97,08,974
		2018-19	1,52,39,279
		Total	4,34,63,134
		Average	1,44,87,711
		Penalty Imposed	4,34,631
		Penalty Payable	<i>Nil</i>
3.	Mr. Nilojit Guha	2016-17	4,93,46,941
		2017-18	32,05,602
		2018-19	93,53,889
		Total	6,19,06,432
		Average	2,06,35,477
		Penalty Imposed	6,19,064
		Penalty Payable	<i>Nil</i>
4.	Mr. Suryanarayana Diwakaran	2016-17	3,57,74,586
		2017-18	15,98,017
		2018-19	36,65,596
		Total	4,10,38,199
		Average	1,36,79,400
		Penalty Imposed	4,10,382
		Penalty Payable	<i>Nil</i>

**OP-4****(In ₹)**

S. NO.	PERSON	YEAR	INCOME
1.	Mr. Anil Bahl	2016-17	1,33,90,744
		2017-18	2,36,38,489
		2018-19	2,07,04,492
		Total	5,77,33,725
		Average	1,92,44,575
		Penalty Imposed	5,77,337
		Penalty Payable	4,61,870
2.	Mr. Dhiraj Kapur	2016-17	1,53,61,813
		2017-18	1,23,78,773
		2018-19	99,51,080
		Total	3,76,91,666
		Average	1,25,63,889
		Penalty Imposed	3,76,917
		Penalty Payable	3,01,533
3.	Mr. Mahesh Kanchan	2016-17	1,74,03,961
		2017-18	2,75,81,723
		2018-19	2,26,37,907
		Total	6,76,23,591
		Average	2,25,41,197
		Penalty Imposed	6,76,236
		Penalty Payable	5,40,989
4.	Mr. Michael Jensen	2016-17	7,26,35,826
		2017-18	4,58,25,868
		2018-19	37,96,281
		Total	12,22,57,975
		Average	4,07,52,658
		Penalty Imposed	12,22,580
		Penalty Payable	9,78,064
5.	Mr. Nilesh Patel	2016 ⁷	8,38,62,952
		2017 ⁵	9,50,31,320
		2018-19	3,94,75,513
		Total	21,83,69,785
		Average	7,27,89,928
		Penalty Imposed	21,83,698
		Penalty Payable	17,46,958

⁷ Calendar Year. Converted from Singaporean \$ to INR @ 1\$ = ₹54.5.



S. NO.	PERSON	YEAR	INCOME
6	Mr. Pawan Jagetia	2016-17	2,31,15,080
		2017-18	4,06,28,798
		2018-19	14,50,906
		Total	6,51,94,784
		Average	2,17,31,595
		Penalty Imposed	6,51,948
		Penalty Payable	6,51,948

OP-5

(In ₹)

S. NO.	PERSON	YEAR	INCOME
1.	Mr. Sovan Roy	2016-17	48,28,758
		2017-18	54,89,295
		2018-19	68,15,622
		Total	1,71,33,675
		Average	57,11,225
		Penalty Imposed	1,71,337

ORDER

309. The Commission, in terms of Section 27(a) of the Act, directs the parties to cease and desist in future from indulging in any practice/conduct/activity, which has been found in the present order to be in contravention of the provisions of Section 3 of the Act, as detailed in the earlier part of the present order.

310. Further, under the provisions of Section 27(b) of the Act, the Commission directs the following parties to pay the following amounts of penalty:

(In ₹)

S. No.	Name of Party	Amount of Penalty	Amount in Words
1.	United Breweries Limited	7,51,83,28,719	Rupees Seven Hundred and Fifty One Crores Eighty Three Lacs Twenty Eight Thousand Seven Hundred and Nineteen Only
2.	SABMiller India Limited (now Anheuser Busch InBev India Ltd.)	<i>Nil</i>	<i>Nil</i>



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S. No.	Name of Party	Amount of Penalty	Amount in Words
3.	Carlsberg India Private Limited	1,20,56,47,362	Rupees One Hundred and Twenty Crores Fifty Six Lacs Forty Seven Thousand Three Hundred and Sixty Two Only
4.	All India Brewers' Association	6,25,126	Rupees Six Lacs Twenty Five Thousand One Hundred and Twenty Six Only
5.	Mr. Kalyan Ganguly	4,95,858	Rupees Four Lacs Ninety Five Thousand Eight Hundred and Fifty Eight Only
6.	Mr. Shekhar Ramamurthy	17,00,459	Rupees Seventeen Lacs Four Hundred and Fifty Nine Only
7.	Mr. Kiran Kumar	4,79,215	Rupees Four Lacs Seventy Nine Thousand Two Hundred and Fifteen Only
8.	Mr. Perry Goes	3,09,387	Rupees Three Lacs Nine Thousand Three Hundred and Eighty Seven Only
9.	Mr. Shalabh Seth	<i>Nil</i>	<i>Nil</i>
10.	Mr. Nilojit Guha	<i>Nil</i>	<i>Nil</i>
11.	Mr. Suryanarayana Diwakaran	<i>Nil</i>	<i>Nil</i>
12.	Mr. Anil Arya	<i>Nil</i>	<i>Nil</i>
13.	Mr. Michael Norgaard Jensen	9,78,064	Rupees Nine Lacs Seventy Eight Thousand Sixty Four Only
14.	Mr. Nilesh Patel	17,46,958	Rupees Seventeen Lacs Forty Six Thousand Nine Hundred and Fifty Eight Only
15.	Mr. Pawan Jagetia	6,51,948	Rupees Six Lacs Fifty One Thousand Nine Hundred and Forty Eight Only
16.	Mr. Dhiraj Kapur	3,01,533	Rupees Three Lacs One Thousand Five Hundred and Thirty Three Only
17.	Mr. Anil Bahl	4,61,870	Rupees Four Lacs Sixty One Thousand Eight Hundred and Seventy Only
18.	Mr. Mahesh Kanchan	5,40,989	Rupees Five Lacs Forty Thousand Nine Hundred and Eighty Nine Only
19.	Mr. Sovan Roy	1,71,337	Rupees One Lac Seventy One Thousand Three Hundred and Thirty Seven Only

311. The parties mentioned in the table above are directed to deposit the respective penalty amounts within 60 days of the receipt of the present order.

312. It is made clear that all information used in the present order is for the purposes of the Act and as such, in terms of Section 57 of the Act, does not qualify for grant of confidential treatment.



313.The Secretary is directed to forward certified copy of the present order to the parties through their respective legal counsel, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 24.09.2021

Sd/-
(Bhagwant Singh Bishnoi)
Member