

Before The  
Competition Commission of India  
Case No. 29/2010

Date of Order: 20.06.2012

Builders Association of India - through Shri O. P. Dua & Shri Rahui Goel - Informant

1. Cement Manufacturers' Association - through Shri Askok Desai & Others
2. Associated Cement Co. Ltd. - through Shri K. Venugal and Ms. Pallavi Shroff
3. Gujarat Ambuja Cement Ltd. - through Shri Ramji Srinivas & Ms. Anu Tiwari
4. Grasim Cement - through Shri Aski Chinoy & Shri Pravin Parekh
5. Ultratech Cement Ltd. - through Shri Aski Chinoy & Shri Pravin Parekh
6. Jaypee Cement - through Shri Parag Tripathi & Shri G. R. Bhatia
7. The India Cements Ltd. - through Shri Harishankar
8. J.K Cements (JK Group) - through Shri P. K. Bhalla
9. Century Textiles & Industries Ltd.(Century Cement)- Shri Pramod Agarwala & Others
10. Madras Cement Ltd. - through Shri T. Srinivas Murthy
11. Binani Cement Ltd. - through Shri Aditya Narain & Shri R. Sudhinder
12. Lafarge India Pvt. Ltd. - through Shri A. Haskar & Shri Samir Gandhi

- Opposite Parties

Order under Section 27 of the Competition Act, 2002

The present matter relates to an information filed under section 19 of the Competition Act, 2002 (herein after referred to as the Act) on 26.07.2010 by Builders' Association of India (herein after referred to as the informant) against the Cement Manufacturers' Association (herein after referred to as the Opposite Party-1 or OP-1) and 11 other cement manufacturing companies (OP-2 to 12) for alleged violation of the provisions of section 3 and 4 of the Act.



2. The facts of the case, as per the information, in brief, are as under:

2.1 The informant, a society registered under the Societies Registration Act, 1860 is an association of builders and other entities involved in the business of construction.

2.2 The OP-1 is an association of the cement manufacturers of India in which both public and private sector cement units are members. As per the informant, the total strength of the OP-1 as on March 31, 2009, comprising of most of the big cement manufacturer stands at 46 in number.

2.3 The informant has submitted that cement manufacturers, namely, Associated Cement Co Ltd. (hereinafter referred to as OP-2 or ACC), Gujarat Ambuja Cement Ltd. (herein after referred to as OP-3 or ACL), Grasim Cement (hereinafter referred to as OP-4 or Grasim), Ultratech Cement Ltd. (hereinafter referred to as OP-5 or Ultratech), Jaypee Cement (hereinafter referred to as OP-6 or Jaypee), India Cements Ltd. (hereinafter referred to as OP-7 or India Cements), J.K Cements of Group (herein after referred to as OP-8 or JK Cements), Century Cement (hereinafter referred to as OP-9 or Century), Madras Cement Ltd (hereinafter referred to as OP-10 or Madras Cement), Binani Cement Ltd (hereinafter referred to as OP-11 or Binani) and Lafarge India Pvt. Ltd. (hereinafter referred to as



OP-12 or Lafarge) are also the members of OP- 1 and are the leading manufacturers, distributors and sellers of cement in India.

2.4 As per the informant, the respondent cement manufacturers under the umbrella of OP-1 indulge directly and indirectly into monopolistic and restrictive trade practices, in an effort to control the price of cement by limiting and restricting the production and supply of cement as against the available capacity of production. The cement manufacturers in connivance with the OP- 1 have also been indulging in 'collusive price fixing'. They have divided the territory of India into five (5) zones so as to enable themselves to control the supply and determine or fix exorbitantly high price of cement by forming a cartel in contravention of provisions of section 3 of the Act.

2.5 Further, the OP-2 to OP-9, by virtue of the fact that they collectively hold more than 57.23% of market share in India, enjoy a position of dominance and arbitrarily increase the price of cement. As per the informant, the acts of these cement manufacturers, under the aegis of the OP-1, tantamount to abuse of dominance under section 4 of the Act.

2.6 The informant has further submitted that the OP-2 and OP-3 are the leading cement manufacturers having approximately 21% market share in India. It has been alleged that although with effect from November 1, 2009, OP-2 and 3 are no longer the members of the OP- 1, resignation from its membership is only to keep their activities of cartelization under a veil, since they are still actively participating in



the "benchmarking exercise" of OP-1. As per the informant, despite having resigned from the membership, OP-2 and 3 have been successful in keeping their prices per bag similar to the prices per bag of other cement manufacturers who continue to be members of the OP-1. The informant has also alleged that the reasons stated by OP-2 and 3 for discontinuing their association from the OP-1 is an admission of cartelization amongst the dominant players as is evident from the following portion of news release:-

*" There is widespread feeling in the industry that CMA indulges in cartelization and holds up cement prices artificially high. Holcim feels that being associated with CMA would get them in trouble with competition commission in the EU and therefore they have withdrawn from the body."*

2.7 As per the informant, the OP-2 and 3 by virtue of being the members of OP-1 in the past, have not only been active participants in the cartel but are also leading the acts of 'cartelization' by the cement manufacturers over the past couple of decades which is evident from various inquiries caused into the functioning of their holding company, Holcim, by various Courts and Commissions. Action has been taken against and Holcim group has been penalized and held guilty of acts of anti-competitive activities all over the world. The informant has further brought out that the OP-12, "Lafarge India", a subsidiary of the French building materials major 'Lafarge', has already been fined in 1994, 2002 and 2008 for committing



irregularities in different jurisdictions which shows that it is a habitual offender of provisions of the competition laws.

2.8 The informant has stated that due to their large market share in Indian market, OP-2 and OP-3 are in a position to fix price and also curtail competition by controlling the supply of cement in the market. Relying upon certain newspaper reports, it has been alleged by the informant that the OP-2 and OP-3 in collusion with the OP-1 has sought to cartelize, limit the production/supply of cement in the market and fix the price of cement thereby eliminating competition in the market.

2.9 The informant has further alleged that in addition to OP-2 and 3, the Opposite Parties listed as OP-4 to OP-12 have also indulged into various anti-competitive activities and have collectively sought to control the supply of cement. According to the informant, despite having large capacities, the Opposite Parties with the sole intention to control the supply, produce less cement and increase the market price of the cement deliberately.

2.10 The informant has also alleged that in addition to limiting production in order to create artificial scarcity, the Opposite Parties through their concerted actions also resort to the practice of restricting the supply of cement to the builders and consumers, causing artificial increase in the price of cement. According to the informant, irrespective of areas and regions and irrespective of



availability of cement or artificial scarcity thereof in the markets, the cement prices have been increasing continuously. The acts of cement manufactures, in the past as well as in the present, have an adverse effect on the competition in the real estate sector and affect the interest of the consumers at large.

2.11 As per the informant, the cement manufacturers under OP- 1 are continuing with their ill-intended acts of price increase through the act of cartelization, despite a 'cease and desist order' continuing under the directions of the Hon'ble Supreme Court of India. The Apex Court had only relieved the cement manufacturers held guilty of cartelization and restrictive trade practices under RTPE 99/1990 and RTPE 21/2001 from filing affidavits of compliance and therefore the 'cease and desist' notices passed there under continue in full force. The acts of omission and commission by all the Opposite Parties are, therefore, in violation of the above mentioned 'cease and desist' order of the Apex Court.

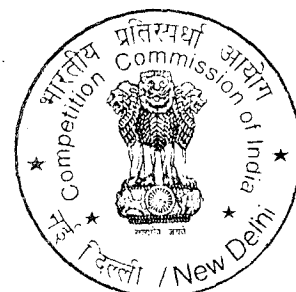
2.12 Giving details of the contravention of the provisions of the Act committed by the Opposite Parties, the informant has submitted that the cement manufacturers, including the OPs - 2 to 9 have set up their cement manufacturing units at different places in India, keeping in view the availability of raw materials, power, coal etc. and accordingly have different costs of production. As per the informant, in spite of the aforesaid and also the fact that the manufacturing units of the OPs are geographically dispersed and are having different



costs of production and transportation, the OPs have in a concerted action uniformly and simultaneously increased their prices at the same time. The price of cement has been increased in all the five zones (North, East, West, South and Central), in which they are operating, without any direct link or correlation to increase in input costs in the respective zones.

2.13 In order to put forth the acts of cartelization and undue increase in price of cement due to anti-competitive behaviour on part of the OPs, the informant has submitted the following:

2.13.1 As per the informant, the construction and housing are the sole consumers of cement. The growth in the construction sector decreased from 10.10% in 2007-08 to 7.25% in 2008-09 and was further projected at 6.5% for the year 2009-10. Similarly, the growth in real estate sector came down from 8.52% in 2007-08 to 7.77% in 2008-09 and was projected at 8.10% in 2009-10 as per data published by National Account of Statistics, 2009 and press reports for 2009-10. Due to slowdown in the growth of construction and real estate sectors, growth in cement sector witnessed a downward trend from 9.76% in 2006-07 to 8.13% in 2007-08 to 7.90% in 2008-09. As a result of this slowdown, utilization of installed capacity also came down to 85.55% in 2008-09 from 94% in 2006-08. The growth in cement sector increased to 11.68% in the year 2009-10 due to revival in housing segment of real estate sector from April 2009. In spite of



growth in production of cement, the utilization of installed capacity got reduced to 82.46% in 2009-10.

2.13.2 As per the informant, in spite of slowdown as discussed above, the cement industry during the year 2008 earned an Operating Profit Margin (OPM) of 26% on turnover of Rs. 45,717 crore, the highest OPM amongst 16 major industries save and except mining as reported by Capital Market, dated November 2, 2009 .

2.13.3 The informant has averred that the cement manufacturing units had deliberately reduced their production and produced much less than their installed capacity to create an artificial scarcity and raise the prices to earn abnormal profits.

2.13.4 According to the informant, despite various concessions and stimulus packages announced by the government in the wake of financial crisis of 2008 in form of reduction in excise duties, reduction in the price of coal, petrol and diesel, instead of reducing the price as was anticipated and expected by the government and consuming industries such as construction and real estate, the cement industry through an agreement caused an increase in the price per bag by Rs. 5/- between December, 2008 and February, 2009. In addition, the cement manufacturers increased the price from a minimum of Rs. 10/- to a maximum of Rs. 27/- per bag between January-March 2009 and April-June 2009 as reported in Business Line, dated 18<sup>th</sup> November 2009.



2.13.5 The informant has alleged that having increased the price of cement per bag by Rs. 10 to Rs. 27 in the first six months of 2009, the cement industry, further increased the price to the tune of Rs. 5 to Rs. 15 per bag between December, 2009 and January 2010 as reported by Financial Express on 8<sup>th</sup> February 2010. To make artificial and unjust profits at the cost of the consumers, after the announcement of budget of 2010-11, the Opposite Parties further increased the price between Rs. 5 to Rs. 15 per bag on a plea that excise duty on cement had increased by 2% and that the price of coking coal, being one of the raw materials had also increased by 2%.

2.13.6 The informant has also submitted that the cement manufacturers admittedly have been continuously increasing production of PPC and reaping benefits available to them by using 'fly-ash' in production which meant that the quantity of production of cement increased manifold without any increase in the cost of production or input costs. The 'fly-ash' is being provided to the cement manufactures by the thermal power plants, which are primarily owned or controlled by the government or semi government undertakings, at zero cost. The cement manufactures use around 15-20% fly-ash as raw material to produce cement, amounting to direct reduction of 15-20% in the cost of raw material used for production of cement. However, the cement manufacturers have not passed on the price benefit being enjoyed by them to the construction and real estate sectors and the consumers thereof.



2.13.7 The informant has further submitted that notwithstanding the slowdown in the real estate and construction sector, the installed capacity of the cement industry, which was 219.00 million tonnes as on March 31, 2009 increased to 246 million tonnes by March 31, 2010. In spite of increased installed capacities, the capacity utilization which was 88% in 2008-09 came down to 82.46% in March, 2010.

2.13.8 As per the informant, the cement manufacturers during April-June 2009 increased their respective installed capacity from 219.17 million tonnes (as on March 31, 2009) to 229.20 million tonnes (by June 30 2009) and produced 50.24 million tonnes. Prior to the onset of monsoon season the demand for cement increases in the first quarter of April-June of any financial year. Due to the higher consumption in this quarter, the cement manufacturers increase the production of cement.

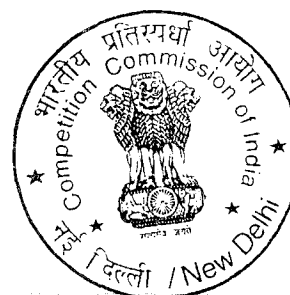
2.13.9 Due to this trend, the cement manufacturers ought to have increased the utilization of their installed capacity from 88% in 2008-09. However, the capacity utilization declined to 83.33% in April 2009 and to 72.51% by June 2009. On the contrary, the OPM which was 26% in 2008-09, increased to 33.40% i.e. 7.40% more compared to 2008-09. The average profit margin of six lead players of the cement industry also was 35.10%, about 1.70% more than average industry as reported by Capital Market, dated 19<sup>th</sup> Oct. 2009- 1<sup>st</sup> Nov. 2009.



2.13.10 As per the informant, from the aforesaid it is clear that the cement industry despite increased demand and increased capacity continuously utilized less of their capacity with the intention and motive of increasing sale price of cement through prior arrangement amongst themselves while wrongly defending the same act of increase in price due to reduced demand.

2.13.11 The informant has further brought out that the trends with respect to the installed capacity and utilization of installed capacity for the period between July–September, 2009 were different than the trend in the previous quarter. During July-September 2009, due to the monsoon period, major construction activities experienced a slowdown and as a result, the cement production went down from 50.24 million tonnes in first quarter to 48.32 million tonnes and utilization of installed capacity also came down from average 76.54% in first quarter to average of 69.69%.

2.13.12 However, according to the informant, the cement price per bag (during the lean period) instead of coming down actually climbed up from an average of Rs. 255 per bag (in April-June, 2009) to an average of Rs. 258.50 per bag (in July-September, 2009). As per the informant, despite the slowdown in construction activities and lower utilization of installed capacity, the average operating profit of six leading players (OP- 2 to 7) was higher by 6.50% compared to industry's average of 27.15% i.e. 33.65% as reported by Capital Market dated 30<sup>th</sup> November, 2009.



2.13.13 As per the informant, the construction activities gained momentum during the October-December 2009 and the cement production went up marginally to 49.55 million tonnes compared to 48.32 million tonnes in the previous quarter of July- September . The utilization of installed capacity also increased from 69.69% to 70.73%. However, the OPM reduced substantially from 27.14% to 16.69% due to the reduced turnover of Rs. 12,129 crore against the turn-over of Rs. 12,634 crore of the previous quarter as also reported in the Capital Market dated April 5, 2010. The lower OPM was due to the fall in the average price of a cement bag from Rs. 258.50 per bag in the lean period to Rs. 241 per bag in the busy quarter of October-December, 2009.Despite the industry's OPM falling to a meager 16.90%, the average profit margin of six dominant players remained at 25.18%.

2.13.14 The cement industry picked up momentum in January-March 2010 wherein the industry added 14 million tonnes to its installed capacity and produced 54.73 million tonnes compared to 49.55 million tones of Oct-Dec. 2009. With the increase in production, the capacity utilization also increased from 70.73% to 74.80%, thereby leading to an increase in the turnover to Rs. 12,609 crore in Jan-Mar, 2010 as against Rs. 12,129 crore. The OPM also increased to 17.68% compared to the 16.90% in the third quarter.

2.13.15 According to the informant, the noteworthy point in the whole matter was that the average profit margin (OPM) within the



industry of the big six dominant players was 27.33% as against the 17.68% of the industry on the whole. The fact that price increases due to cartelization becomes evident from higher price of cement per bag during the period. The price of cement per bag was made to escalate by a minimum of Rs. 5 to a maximum of Rs. 39 per bag across the entire country during January - March 2010.

2.13.16 The informant has contended that in view of aforesaid the reasons advanced by OP-1 and all other Opposite Parties that higher prices are due to higher demand do not hold good. According to the informant, the arbitrary increase in prices by the Opposite Parties is not determined by forces of demand and supply. The demand and supply economics cannot remain same for all the five zones and would vary due to climatic, territorial and various other reasons. Therefore, change in price of cement in all the zones (across India) cannot be directly attributed to increase/decrease in demand. The acts of the Opposite Parties to unreasonably increase price of cement are solely determined by their intention of profiteering by means of indulging in anti-competitive practices.

2.13.17 According to the informant, if it is assumed that there has been an increase in price of cement due to higher demand particularly from April 2008 onwards, then the decrease in capacity utilization from 94% during 2006-08 to 85% in 2008-09, and further to 82.46% in 2009-10 seems nothing but intentional act on the part

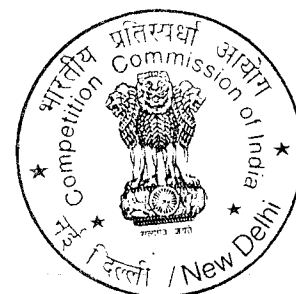


of Opposite Parties to gain by arbitrarily fixing and escalating/inflating price of cement per bag.

2.13.18 The informant has submitted that in case of higher demand, all the Opposite Parties would have worked at more than 93% of capacity. Instead, the Opposite Parties working as a cartel chose to intentionally underutilize their plants and continuously produce less than the demand for cement, as is clear from the fact that the capacity utilization shows a continuous downward trend from 83.33% in April 2009 to 79.63% in March 2010.

2.13.19 The informant has further brought out that the cement industry has added 78 million tonnes between 2006-07 and 2009-10 to its installed capacity and the fact of this capacity addition being much more than demand was also admitted by Sh. N. Srinivasan, Managing Director of India Cement Limited, the fourth largest cement producer in the country in his interview to Business Line as reported on February 13, 2010. Despite this, the price of cement rose by Rs. 10/- per bag to Rs. 27/- per bag between January-March 2009 and April-June 2009. The price of cement per bag further rose by Rs. 5/- to 15/- per bag between December 2009 and January 2010 as stated in Financial Express dated February 8, 2010.

2.13.20 In light of the above facts and circumstances, the informant has alleged that the price increase in cement was not due to higher demand but as a result of cartelization by all the Opposite Parties in collusion with and under the guidance of OP-1.



2.13.21 In order to buttress its arguments further, the informant has brought out that the OP-1 by its memorandum bearing No. 181/863/2006 dated 15<sup>th</sup> November, 2006 addressed to the Finance Minister, Union of India, had mentioned per bag cost of cement to be Rs. 160.60. The informant has brought out that by taking Rs. 160.60 as base rate including profit of cement companies; rate per bag during 2009-10 should have been Rs. 198.10. However, the cement industry and the lead players raised the price upto Rs. 350/- per bag which shows that the prices were increased by them under an agreement.

2.13.22 According to the informant, the production of cement substantially increased during 2009, in comparison to 2008 and with the increase in production, the unit cost of production had substantially reduced. Despite the fact that the cost of production had reduced, the unit sales price of the cement went up by upto 8.55%, in comparison to the last year. As a result, the gap between cost of production and sale price widened. Due to this, there had been steep rise in gross profits of the OPs. In case of ACC, while gross profit rose from 34% in 2008 to 60% in 2009, in the case of Gujarat Ambuja Cements Ltd., the gross profit increased from 58% to 80%.

2.13.23 The informant has averred that in the normal course, in an unregulated market, if the demand is constant, and the production of the goods increases, then, the price of the products should reduce;



particularly, when cost of production also reduces. However, in the present case despite the fact that the production of cement had increased and the cost of production had substantially reduced, the average sales price during the year 2009 had increased upto 8.55% in comparison to the average sales price during FY 2008. This demonstrates that the market prices were not determined by the demand and supply, but, they were regulated by the Opposite Parties and they had been able to book high profits, by regulating the price despite reduction in cost and increase in production.

2.13.24 According to the informant, another relevant, a conclusive fact evidencing the colluding nature of the Opposite Parties is the fact that all of them acting in concert collectively decide to increase the price per bag in all the zones. The advance knowledge of uniform increase in price is evident from various reports which appear in the newspapers as is seen from news item appearing in 'Economic Times' dated Nov. 28, 2009 which forecasted the increase in prices of cement in future. As was published in the said newspaper report, all cement manufacturers increased prices per bag uniformly in December 2009. This act of uniform increase in prices of cement per bag was also reported by Business Standard in its issue dated Dec. 3, 2009.

2.13.25 The informant has submitted that periodical price increase fixed in advance is unequivocal proof that all the Opposite Parties are acting in concert and are indulging in collusive price fixing.



2.13.26 The informant has averred that it has taken upon the cause of its members/affiliates and the consumers at large and have explicitly complained on several occasions before concerned authorities against the artificial control/limit on production/supply chains of cement by the manufacturing units as a means to control the markets and inflate the prices of cement to unreasonable levels only to unjustly enrich themselves. Several leaders representing the cause of consumers in the Parliament and State Legislatures have shown concerns and raised their voice in support of the cause of the builders and the end-consumers who are being victimized due to anti-competitive acts of the cement manufactures.

2.13.27 Pursuant to the persistent complaints by the builders, various comments in press by the ministers of concerned ministries as well as leaders of the opposition: a Standing Committee was appointed by the Ministry of Commerce and industry on the issue of the suspected acts of deliberate reduction in production of cement caused due to suspected cartelization. The representatives of the informant were called on Jan. 11, 2010 to make a representation before the Standing Committee wherein details were submitted by them.

2.14 According to the informant, combined with deliberate withholding of production, the OP-1 along with the Opposite Parties have been reviewing the price, production and dispatch periodically and thereby maintaining and controlling the price and maintaining



high profits. The representatives from these Opposite Parties have at one occasion or another come forward to report an expected hike in price of cement per bag in the near future. The prior knowledge of trends in price hikes only goes on to show that the prices of cement have been artificially determined amongst the OPs themselves in order to make abnormal profits.

2.15 The informant has further submitted that the OPs due to their past records of having found to be indulgent in cartelization activities have become vigilant, thereby making it difficult to establish and/or prove their acts of cartelization and price-fixing. According to the informant, however, facts of the case as above show that Opposite Parties agree on fixing prices, apart from determining total industry output, market shares and also allocating territories amongst themselves.

2.16 In light of the aforesaid, the informant prayed that the Commission may institute an inquiry against the OPs for alleged cartelization and anti-competitive trade practices under section 3 and 4 of the Act. It was prayed that the Commission might pass suitable directions so that the OPs might desist from engaging in cartelization, collusive price fixing and other anti-competitive practices as mentioned in the information.



### 3. Prima Facie Opinion

3.1 The Commission after forming an opinion that a prima-facie case exists in the matter, vide order under section 26(1) dated 15.09.2010 directed the DG to investigate the matter and submit a report.

### 4. Findings of DG

4.1 After receiving the order under section 26(1) of the Act, DG investigated the matter and submitted his report on 31.05.2011.

4.2 The findings of DG, in brief, are discussed as under;

4.2.1 Giving details of profile of cement industry, DG has submitted that in India, there are 49 companies operating with more than 173 large cement plants. In addition, there are many mini plants located around limestone clusters.

4.2.2 The position of installed and utilized capacity as regards cement production, in different years is as under;

Year	Installed capacity in MMT	Production In MMT	Capacity utilization in %
2005-06	157.35	141.81	90
2006-07	165.64	155.64	94
2007-08	179.1	168.31	94
2008-09	205.96	181.61	88
2009-10	246.75	205	83
2010-11	286.38	210.85	73



4.2.3 As regards prevailing market structure in cement industry, DG has submitted that there are two groups comprising of three companies who have pan-India presence. The Holcim group which controls ACC and Ambuja and Birla group which controls Ultratech Cements. The top three companies namely, ACC, Ambuja Cements, Ultratech have about 40% of the total market share. During the year 2010-11 their combined production was about 81 million tonnes which was about 39% of the total production of about 210 million tonnes by all the companies. The share of Holcim group alone is more than 20% and of Ultratech about 18% during 2010-11.

4.2.4 There are other big major players whose presence is not pan India but have a strong presence in one or two regions of the country. In this second category, Jaiprakash Industries has the largest capacity of about 20 MMT, whereas India Cement with about 15 MMT, Shree Cement with about 13 MMT, Madras Cement with about 12.5 MMT and JK group with about 12 MMT are the major players. This category comprises of about 18 players who control more than 50% of the market share of cement Industry.

4.2.5 DG has also reported that the above two categories comprising of 21 players controls about 90% of market of the cement Industry. ACC, ACL, Ultratech controlling about 50% and 18 others in the second category controlling about 40% of the total production capacity. The third category of the cement manufacturers is of



various small and mini cement plants with 1 to 2 MMT capacities which normally operate in a limited territory.

4.2.6 As per DG, top 12 companies, ACC Ltd., Ambuja Cement Ltd, Ultratech Cement Ltd, Jaypee Cement Ltd., India Cements Ltd., Shree Cements Ltd., Madras Cements Ltd., Century Cement Ltd., J.K. Cements, JK Lakshmi Cement Ltd., Binani Cement Ltd and Lafarge India Pvt. Ltd. control about 75% market share of cement in India. Therefore, the DG focussed his investigation primarily on the top companies to investigate whether the cement manufacturing companies have indulged in anti-competitive practices.

4.2.7 In course of investigation, DG gathered that for the purpose of marketing, the cement industry has been divided in 5 regions/zones. All the companies follow this geographical division and prepare their marketing strategies on the bases of these zones. According to DG, the five regions and the distribution of the top companies in such regions having the maximum market share are as under;

North	J&K, Himachal Pradesh, Punjab, Chandigarh, Haryana, Uttarakhand, Delhi, Rajasthan	ACC, ACL, Shree, Binani, Ultratech, Jaypee, JK, Century, JK Lakshmi
East	Chhatisgarh, Orissa, Bihar, Assam, Sikkim, Jharkhand, West Bengal, Tripura, Mizoram, Arunachal Pradesh, Manipur, Nagaland, Meghalaya	ACL, Lafarge, ACC, Ultratech, Century, Jaypee
West	Gujarat, Maharashtra	ACL, ACC, Binani, Ultratech, India Cement, JK, Century,



		JK Lakshmi, India Cement, Jaypee
South	Goa, Daman & Diu, Kerala, Karnataka, Tamil Nadu, Pondicherry, Andhra Pradesh, Andaman and Nicobar Islands	India Cement, Madras Cement, Ultratech, Dalmia, Kesoram, ACC, ACL, Chetnad
Central	Uttar Pradesh, Madhya Pradesh	ACC, Ultratech, Jaypee, Century, Birla Corp, Shree, JK Lakshmi, ACL

4.2.8 DG has also submitted that the maximum production capacity is in South followed by the Northern region. Andhra Pradesh is the biggest cement manufacturing State with a share of 20% of the total production, followed by Rajasthan with about 17%. The demand of cement is derived primarily from housing, Infrastructure, Commercial construction and Industrial segments.

4.2.9 DG has brought out that the primary ingredient for cement is Lime stone, which makes it necessary to install the plant near the mines of Lime stone only. The transportation of cement being a low value high volume product, over a long distance is uneconomical which makes the transportation of cement an important cost component. The high transportation cost has created fragmented markets, which are catered by the plants located in the vicinity, making the cement industry largely regional in nature. Accordingly,



the factors of demand and supply situation vary from region to region.

4.2.10 As regards market characteristics, DG has submitted that the cement industry in India is oligopolistic in nature. Cement as a product has only 2 or 3 categories; viz; Ordinary Portland Cement (OPC), Portland Pozzolana Cement (PPC) and Portland Blast Furnace Slag Cement (PBFSC) though white cement is also produced by some plants. The nature of product being almost homogeneous in nature facilitates oligopolistic pricing. Further the cement industry has witnessed a lot of consolidation and concentration of market in the last decade. However, in terms of market power none of the company has strength to operate independently. DG has submitted that the price of cement charged by all the companies is not at competitive levels and the cement manufacturers have been operating at a profit margin of more than 25%.

4.2.11 DG found out that after the closure of the office of Development Commissioner of Cement Industry (DCCI) in 1989, the Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Government of India had directed the Cement Manufacturers' Association (CMA) to collect and submit data which were earlier being collected by DCCI. CMA, under the instructions from DIPI, has been collecting indicative retail and wholesale prices of cement from across the country.



4.2.12 According to DG, the analysis of price data for cement has revealed that there has been a continuous positive growth in cement prices over last 5-6 years. Further, there has been a continuous divergence between the cement price index and the index price of various inputs like coal, electricity and crude petroleum and the gap has widened since 2000-01. The price of cement is rising faster than input prices.

4.2.13 It has been noted by the DG that the price of cement has been on the rise since 2004-05 from about Rs.150/- per bag to close to Rs.300/- in March 2011, whereas during the same period, the cost of sales has only increased about 30%. As such, the price of cement has been independent of the cost of sales. The price of cement is changed frequently by all the companies. Sometimes, the price changes are made twice a week.

4.2.14 For making an analysis of the reasons behind continuous rise in prices of cement, DG conducted inquiries from the cement companies including the Opposite Parties. It was gathered that prices of cement depend on its demand in the market and the decisions relating to change in price are taken on the basis of the market feedback. It was gathered that although increase in cost or taxes/levies of government and the logistics and transportation costs in a particular territory do have impact on price determination but once the basic price is set, these factors do not have any impact on the regular price movements.



4.2.15 Based upon the submissions of the Opposite Parties, it was also gathered that although their decisions of price changes are taken independently but the price of competitors are regularly monitored to respond to any price change made by them. The cost of production does not play an important role in the decision of pricing of cement except when there is substantial change in taxes or the cost of raw material. The frequency of price changes of cement by all the companies also indicate that the decisions relating to price are not based on the change in the cost of production.

4.2.16 Further, the price is also affected by the price changes made by market leaders and the price of other players is regularly observed. It was also found that the prices move in a band width due to which similar trends are observed in the price movement of the Opposite Parties in a geographical area.

4.2.17 DG has found in course of investigation that change in price is mainly effected by external factors and not by internal factors like cost, production etc. The investigation by DG revealed that although it has been claimed by almost all the parties that the price is decided on the market feedback, no formal or systematic mechanism or documentation system was found to be maintained by any of the parties to substantiate their arguments of reliance on market feedback for affecting price changes. The analysis of the procedure



adopted by cement manufactures shows that all the companies are having a centralized decisions making system. The communications between the companies and the dealers reflect merely the prices to be charged and not the reason or any data to show that there is more demand. According to DG, this shows that the prices are fixed and changed in a discretionary manner.

4.2.18 DG has further reported that since as per the submissions of the Opposite Parties, the prices move primarily on the basis of demand, it was examined whether there was some authentic and reliable data of the demand of cement in the market. However, it has been gathered that there is no formal system or mechanism of collection of data in place in case of any of the companies to ascertain demand of cement in a particular market to make decision relating to change in price. The companies were unable to explain as to how the demand of cement was measured at a particular point of time. The companies have only stated that whatever quantity they produce is sold in the market and their dispatches reflect both demand and supplies.

4.2.19 In such circumstances, when there is no evidence of companies having reliable or authentic source of data as regards demand of the cement in market and when the changes in price are made in short intervals, DG has concluded that the contention of companies that the price is solely dependent upon the assessment of market feedback is not tenable. It cannot also be concluded that the



movement of price of cement in India is solely dependent on the market forces.

4.2.20 Since it was found that the price was not determined by the market forces, DG made further investigations to examine whether there were other factors which are behind rise in the price of cement, in the light of allegations made by the informant that the Opposite Parties were manipulating prices through their anti-competitive acts and conduct.

4.2.21 DG has noted that Tariff Commission, which is working under Department of Policy and Promotion in its report submitted in September 2010 to Department related Parliamentary Standing Committee on Commerce has indicated that the prices charged by the cement companies are unreasonably high and there is a lot of scope for correction in their prices.

4.2.22 DG has submitted that the analysis of the margin of these companies including OPs also shows that they are operating with unreasonably higher profit margin. After conducting analysis of Cost Audit Report of these companies, DG has submitted that cost of sales which also includes the cost of production varies from unit to unit within a group and also between companies. However, the data show that cement industry has been able to post consistently good performance and has been able to realise good margins during last 3-4 years. On analysis of data, DG has found that on an average the margin per bag of cement is Rs.38/- to Rs.45/- which shows that the



OPs are able to charge prices which are quite high and above the competitive level.

4.2.23 On the basis of aforesaid, DG has submitted that the cement companies have enough scope to reduce price of cement. The companies have been trying to utilize the demand pull to improve the margins rather than to supply at competitive price. The companies have been taking advantage of demand to earn better margins on sales rather than meeting out the demand by producing and dispatching the cement by utilizing the capacity at optimum level.

4.2.24 In order to find out whether there is an agreement and concerted action among the cement manufacturers to raise prices in a consistent manner, in the absence of no direct evidence, circumstantial evidences including behavioural indicators were analysed by the DG.

4.2.25 In this regard, it was found by DG that the data on prices gathered during investigation show that the prices of all the companies move in the same manner, towards similar direction. The economic analysis of the data confirms that the coefficient of correlation of change in prices or the movement of prices of all the companies is positive and are very close to each other (more than 0.5%) giving a strong indication of price parallelism. Price of the cement of the Opposite Parties has moved in a particular direction in



the entire country in a given period of time. The range of price movement has also been found same for all these companies. According to DG, this price parallelism is indicative of prior consultation among the Opposite Parties.

4.2.26 DG has further found that the prices are also affected by the price changes made by market leaders. The examination of small players revealed that they simply follow the trend of major players.

4.2.27 According to DG, no specific reason for price parallelism has been given by the companies. Since the cost of production, transportation charge etc. varies from company to company, the price of individual companies must also vary. Therefore, the movement of price of all the companies in the same range and in the same direction is not possible unless there is prior consultation and discussion about the prices among them.

4.2.28 Based on analysis of correlations of absolute price, price change and percentage price change, it has been concluded by the DG that the prices of the Opposite Parties show a positive correlation in every State of operation. According to DG, price parallelism among the Opposite Parties stands established which is indicative of their collusive behavior.

4.2.29 DG has further found that the production capacity of cement has increased from 157 MMT in 2005-06 to 287 MMT by the end of



March 2011. However, the capacity utilization is on a continuous downward trend from 2008-09. During the F.Y.2010-11, the capacity utilization has come down to 73%. The Opposite Parties were not able to substantiate reasons for low capacity utilisation even during the period when the demand was high.

4.2.30 According to DG, reduction in capacity utilization is not in line with overall growth of Indian Economy. Further, as far as the consumption is concerned whatever is produced by cement manufacturers is consumed in the market. Therefore the argument of cement manufacturers that the capacity utilization has been lower in recent years on account of low demand is not tenable.

4.2.31 DG has submitted that data relating to capacity utilization of Ultratech, ACC, Ambuja Cement, Jaypee, India Cements, Shree Cements and Madras Cements reveal that utilization of capacity by them has been below the optimum level despite the fact that no major addition in the capacity was made by them during the Financial Year 2010-11.

4.2.32 DG also considered the arguments of the cement manufacturers that the reduction in demand had resulted in reduction of production as it created problem of storage and piling of stock and found that the same was not supported with any data and documents.



4.2.33 According to DG, the aforesaid facts establish that there was a conscious decision to maintain low level of capacity utilization by the Opposite Parties so that higher prices can be charged and abnormal profits may be earned.

4.2.34 The data furnished by the Opposite Parties in respect of the plant wise monthly production was analysed by DG to examine as to whether there is any correlation in change in production output among the cement manufacturers. The analysis carried out by the DG has revealed that there is a positive correlation in production output among all the leading players operating in a particular region/state. The analysis of dispatch data for the period two years from January 2009 to December 2010 shows that the changes in dispatches of cement by the top companies were identical.

4.2.35 According to DG, the correlation coefficient of the dispatch data shows a very strong correlation among the top companies. The decisions relating to increase or decrease in dispatches are so close that it is indicative of some kind of meeting of mind.

4.2.36 DG has further stated that ever since 2006-07, the capacity utilization and cement price index are moving in opposite direction. While the capacity utilization has been declining, the price index has been increasing. This, according to DG, is result of a deliberate



attempt to reduce supply by not utilizing full capacity and thereby increasing price of cement in the market.

4.2.37 According to DG, the Opposite Parties were given sufficient opportunity to justify the reason for reduced capacity utilization but except general reply no specific reason alongwith relevant records/documents could be furnished during investigation. DG has concluded that the reduction in capacity utilization during 2009-10 and 2010-11 was deliberate in order to limit the supply in a concerted manner to charge a higher price.

4.2.38 The analysis carried out by DG also confirmed that there was a production parallelism among the Opposite Parties which strongly indicates their coordinated behaviour.

4.2.39 DG has also concluded that the Opposite Parties are charging unreasonable and higher than competitive prices. The last quarter of F.Yr.2010-11 witnessed a price increase of 20-50% throughout the country in comparison to prices in 3<sup>rd</sup> quarter of 2010-11 which was a result of reduction in capacity utilization and controlling the supply in the market.

4.2.40 According to DG, the Cement Industry in India is geographically scattered and there is no single dominant company who has the market power to become a leader in all the markets.



The cement manufactures have divided the market in five regions and share of each company varies from market to market. It was noted by DG during investigation that the top companies have market leadership in one or more market. This, according to DG, allows them to coordinate their strategy to maximize the profit by charging unreasonable prices and facilitates the collusive price leadership in the market.

4.2.41 DG has submitted that the demand of cement is inelastic. In such conditions any one firm can increase its share of the total by cutting its price but this is likely to cause a counter response by other firms also. Such competition will not increase total sales but will cut profits of all the firms. Under these conditions all the firms can increase their profits by reaching a tacit agreement as to the optimal, or near optimal price level. Price leadership is one way of signaling the appropriate price level.

4.2.42 DG found from the statements recorded during the course of investigation that the prices are changed by cement manufacturers on the basis of prices of market leaders. The big players holding the maximum share normally triggers the price increase which is followed by the other manufacturers. The collusive price leadership is thus playing a great deal of role in the concerted action of cement manufacturers.



4.2.43 DG also found that the cement companies are using the press and media for signalling the price increase. The big players announce in press or TV channels that there is a probability of cement price hike in coming days which serves the purpose of price signals to the competitors.

4.2.44 According to DG, although the Opposite Parties and CMA have denied that the prices and production related issues are not discussed/exchanged or covered under the activities of CMA, there exists a system of exchange of price information among the members of CMA on weekly basis across the country. The CMA has nominated different companies in 34 different centers to collect and disseminate the retail as well as wholesale price to the CMA. This information is either collected on phone or through e-mails.

4.2.45 When asked by DG as to why this activity of collection and dissemination of price data should not be treated as a violation of the provisions of competition Act, it was stated by CMA that they were doing it under the instruction of DIPPI. DG, however, has found the practice of collecting the weekly information on prices by the member companies as raising serious concerns under the provisions of the Competition Act. According to DG, the common platform of CMA is used for collection and dissemination of the information on prices of different companies. Based on this information the different companies come to know about the prices of all the companies prevalent in the different zones of the country. This price information



helps them to take collective decisions about the future price changes.

4.2.46 During investigation it was also gathered by DG that the CMA has formed a High Power Committee of its members. The prices of cement are discussed in the meetings of this Committee. For instance, meetings of High Power Committee of Cement Management Association were held on 03.01.2011, 24.02.2011 and 04.03.2011, after which prices of cement of all the top companies who were present in these meetings had increased. The meetings dated 24.02.2011 & 04.03.2011 held in Hotel Orchid, Mumbai were also attended by ACC and ACL, although they have resigned from the membership of CMA which establishes that ACC and ACL are still working in coordination with CMA to achieve the ulterior motive of profiteering by way of fixing price and controlling the production of cement in the market.

4.2.47 DG has concluded that in the guise of the meetings of High power committee, the cement manufacturers are entering into some arrangements and understanding to manipulate the price of cement in violation of the Act. Further CMA's publications which are internal circulation meant only for members, contains the details of production in respect of each plant of the member companies. The publications in the form of 'Executive Summary – Cement Industry' and 'Cement Statistics – Inter-Regional Movement of Cement'



released every month for circulation among the members only provide the minute details of production, dispatch of each company which facilitates the member companies to exchange the production related information and decide production strategy in line with other member companies.

4.2.48 According to DG, it is clear that the CMA is providing a platform for the member cement manufacturers as well as to ACC and ACL to act in a coordinated manner to decide the pricing and production strategies in contravention of the provisions of the Competition Act.

4.3 Based upon findings of his investigation as above and after conducting analysis of factors mentioned in section 19(3) of the Act, DG has concluded that it is established that the Opposite Parties are controlling the supply of cement in the market by way of some tacit agreement. It has also been concluded that the Opposite Parties have indulged in collusive price fixing.

4.4 In light of aforesaid, DG has concluded that the allegations against the Opposite Parties that they have entered into anti-competitive agreement among themselves to manipulate the supply and price of cement are substantiated. According to DG, the act and conduct of the Opposite Parties are anti-competitive in contravention of the provisions of section 3(1), 3(3)(a), 3(3)(b) of the Competition Act, 2002.



5. The Commission considered the report of DG and decided to forward the same to the parties for their objections, if any. The parties submitted their written objections/replies in response to the findings of DG. In addition, oral arguments were also made by them in course of inquiry proceedings before the Commission. The replies/objections of different parties, in brief, are as under;

### 5.1 Reply of Cement Manufacturers Association (OP-1)

5.1.1 Cement Manufacturers Association (CMA) in its written and oral arguments submitted that it was established in 1961 under the Societies Registration Act, 1860 as an Association of Cement Manufacturers to promote common interest of its members and to communicate and represent government in relation to the affairs and grievances of its members. It also assists Planning Commission and Parliamentary Committees as and when required with data pertaining to the industry. It does not indulge in disseminating communication among the members and it has no committee on prices.

5.1.2 According to CMA, it has 42 cement companies as its members. There are a number of companies which manufacture cement and have large, medium and mini plants but are not the members of CMA. For instance, ACC and ACL who are the leaders amongst cement manufactures and collectively hold about 21% of the market



resigned from CMA in November, 2009 and are no more its members.

5.1.3 Denying that respondent cement manufacturers along with it have been indulging in 'collusive price fixing' and also that the territory of India is divided into five zones so as to control the supply and determine prices, CMA has submitted that description of cement market into five different zones is in existence since the time cement was a controlled commodity. This cannot be the basis to say that the cement manufacturers under its aegis have controlled the supplies or fixed prices.

5.1.4 CMA has also denied that the OP-2 and 3 withdrew from its membership since it indulges in cartelization. The apprehensions of OP-2 and 3 cannot form the basis for an allegation of cartelization against it.

5.1.5 According to CMA, the report of DG is based upon surmises and conjectures and ought to be rejected. DG has examined various non-members of the association without providing any opportunity of cross examination. Further, many materials have also been collected at its back.

5.1.6 It has also been submitted that cement being a bulky product with a limited shelf life, commands different prices in different



geographical markets. Further these prices vary from week to week and sometimes even twice a week. The prices don't move in one direction but they go up and down depending on the market conditions. There is a time gap in between collection of data on prevailing price at the time when supplied to it and when it sends it to the Government. The price which is collected, usually, has always a time gap of over a week or so.

5.1.7 CMA has averred further that the collection of information of price is sought for by the government itself. It does not collect prices from each of its members. It is a matter of record that after closure of the office of Development Commissioner of Cement Industry (DCCI) in 1989, it was directed by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India to collect and submit data regarding production, capacity addition, which were earlier collected by DCCI. Under instructions from DIPP it has been collecting indicative retail prices of cement on weekly basis for wholesale price index from across the Country. No adverse inference can be drawn from mere historical collection of indicative range of prices at 34 centres for the previous week.

5.1.8 In fact after the Competition Commission was established, it had also written a letter to the Under Secretary (DIPP), Ministry of Commerce and Industry on 05.06.2008 seeking clarification as to whether it should continue to furnish retail prices to the



Government. Only after getting nod from DIPP, it has been collecting and sending to the Ministry the statement of indicative weekly retail cement prices from various sources. As late as on 17<sup>th</sup> January, 2011 Under Secretary to the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion directed it to furnish information in prescribed format for a meeting of Group of Officers on infrastructure which was to be held on 31<sup>st</sup> January, 2011.

5.1.9 Further, in a meeting convened under the Chairmanship of the Economic Advisor, Ministry of Commerce and Industry on 4<sup>th</sup> February, 2009 to discuss the issue of data on cement prices from various cement companies for new series of Wholesale Price Index, the association was requested to ensure that price data for 10 cities covering all the five regions be supplied to the Economic Advisor on monthly basis for the calculation of Wholesale Price Index.

5.1.10 The Under Secretary, DIPP in another meeting earmarked the companies which should furnish data for specific centre/region allotted to them. Consequently a circular was issued to the concerned cement companies to comply with such directions issued by the government.

5.1.11 According to CMA, if the Commission considers the said collection of data which in any event are historical being violative of



any of the provisions of the Act, it would stop the said practice forthwith. However, no adverse inference for its collection of data can be drawn against it. The said data are also available in newspapers and magazines including Indian Cement Review, CMIE'S Monthly review etc.

5.1.12 CMA has also submitted that it has also taken opinion on whether their activities are in any manner violative of any of the provisions of the Act and in the opinion of legal luminaries like the Hon'ble Retd. Chief Justice, P.N. Bhagwati, none of its activities is violative of any of the provisions of the Act.

5.1.13 According to CMA, a bald allegation has been made that there exists a system of exchange of price information among its members on weekly basis without any material basis. In so far as CMA's role is concerned, the idea that it controls the price of cement or that it indulges in collusive price fixing is totally unfounded.

5.1.14 It was also submitted that CMA collects the prices not of a particular brand of cement but cement as an article/product in a given market. It does not collect price movement of each of its members or each cement manufacturing company but is informed of the average prevalent price in market for the purposes of onward transmission to DIPP.



5.1.15 CMA has also denied that price of cement increased after three meetings of the High Power Committee dated 03.01.2011, 24.02.2011 and 04.03.2011. The prices vary from week to week and sometimes twice a week. Therefore these three meetings cannot lead to an inference that they had any impact on fluctuation of prices. In any event there is not the slightest evidence that prices were discussed at these meetings nor is there any explanation as to why only these three meetings have been referred to when meetings of its High Power Committee take place periodically.

5.1.16 After each such meeting the prices of the cement have either gone up or down or have remained stagnant in natural course as the prices of cement vary from week to week or at times with more frequency depending on the market trend.

5.1.17 According to CMA, it is incorrect that ACC and ACL attended the meetings of CMA on 24.02.2011 and 04.03.2011 as alleged since after ACC and ACL ceased to be the members of the association, they have not attended any High Power Committee meeting of the association.

5.1.18 CMA has brought out in their arguments that in a homogeneous product like cement it is impossible to guide and bind all concerns to follow dictates, though such dictates were and are never issued and could not have been issued under its objects to its



members for regulating prices. It has no disciplinary powers nor has there been any instance of exercise of any such disciplinary power in an alleged activity of price fixation. The DG had examined its President and senior officials of other Opposite Parties as also others and none of them have said that CMA plays any role in price fixation of cement or has any authority to fix the same.

5.1.19 According to CMA, there is also a reference to a judgment of the MRTP Commission in the report of DG about it being guilty of violation of MRTP Act vide its order dated 20<sup>th</sup> December, 2007. However, the said order was stayed by the Supreme Court and it cannot possibly be used against it.

5.1.20 CMA has further submitted that it is a fundamental right of an industry to constitute an Association whether they are traders, manufacturers, retailers, residents, shopkeepers etc. It is an accepted fact that the Associations whether of Manufacturers, Traders, Employees, Labour etc. play a positive role in development of the society and, have collective bargain power to take up issues concerning its members with government or other authorities. Therefore, the mere fact that cement manufactures formed an Association does not imply that the said Association was formed to indulge in any activity which is against the law.

5.1.21 It is well settled that the existence of an 'agreement' which is alleged to be anti-competitive needs to be explicitly established for



finding contravention under section 3 of the Act. The DG has failed in adducing any direct and cogent evidence to satisfy this primary criterion. The threshold for establishing the existence of an agreement has not been met in the present case and therefore the accusations must stand dismissed and should not be entertained further. Even if it is conceded for the sake of argument that indirect economic evidence can be admitted for the purpose of speculating the existence of an agreement, it is indisputable that such evidence must be unimpeachable. However, in the present case, even the indirect economic evidence produced is highly vague and suffers from numerous infirmities. The DG has employed an arbitrary policy with respect to choosing the geographical market.

5.1.22 According to CMA, the DG in the present case, has sought to reveal price parallelism by aggregating the data of various regions to form five zones whereas to indicate similarity with respect to production dispatches, the DG has shifted his focus on data of individual status. The methodology of the DG to shift the geographical market as per his whims and fancies goes against the tenets of Competition law.

5.1.23 CMA has also stated that it is settled law that mere price parallelism cannot lead to an inference of cartelization since such price parallelism is bound to occur in cases where a homogenous product is sold in the same market. This doctrine which is recognized



as 'parallelism plus' by US as well as European Courts has been accepted also by the Commission in the recent case of 'In re Glass Manufacturers of India -MRTP Case No.161/2008 dated 24.01.2012.' Competition Commission of Singapore has also noted that similar prices or changes of prices at the same time does not always reveal price fixing since prices may move in tandem in a highly competitive market because of market forces.

5.1.24 CMA has contended that cartelization is a serious allegation and leads to penal consequences and therefore the same cannot be imputed against a person/association on surmises and conjectures alone. There is no evidence, either direct or circumstantial to implicate the association. Proper and fair investigation is the backbone of rule of law as held by the Apex Court in the case of Sasi Thomas vs. State [2006 12 SCC 421]. However, in the instant matter the DG has failed to conduct proper investigation and meet the standards required by the law.

## 5.2 Reply of ACC Ltd. (OP-2)

5.2.1 ACC Limited submitted its oral and written arguments before the Commission on different dates. Along with its written submissions, it also enclosed an economist report from Nathan Associates Inc. on the findings of the DG. In its replies, ACC has submitted that the DG has failed to produce any direct evidence



which suggests that ACC entered into any illegal agreement in violation of section 3(1) read with section 3(3) of the Competition Act. The DG has committed a fundamental error in failing to establish the timeframe in which the alleged cartel/anti-competitive activities took place, which is essential to many aspects of the case, including the period during which section 3 of the Competition Act was not in force.

5.2.2 According to OP-2, it is commonly understood that, for a cartel to survive there must be mechanisms in place for (a) coordinating the cartel agreement and to ensure its functioning (b) monitoring the behaviour and conduct of the members of the cartel and (c) punishing members of the cartel who do not fall in line with the decision of the cartel. The DG has failed to produce any evidence which suggests that any of the above mentioned elements are present in the Indian cement industry.

5.2.3 The OP-2 has further submitted that as admitted by the DG, price volatility is a permanent characteristic of the cement industry. Considering this volatility, no monitoring or punishment mechanism can effectively control market competitors, which is precisely the reason that no such mechanism exists. The DG has merely relied on the parallel nature of price movements, production and dispatches to suggest that there exists a cartel in the Indian cement industry, which is a baseless conclusion, in gross ignorance of the market conditions.



5.2.4 It has not engaged in limiting the supply of cement as it has been consistently running at approximately XXX (on an average between 2007 and 2010) of their available capacity, which is significantly higher than the industry average calculated by the DG and also exceeds the global benchmark for capacity utilization.

5.2.5 According to OP-2, prices of cement are not above the competitive levels as many cement producers have reported losses in some quarters, and all have reported a fall in profits and margins over many quarters. Further, the cement price rise has been far below the general Indian inflation level, and, the increase in cement prices have been the lowest within the construction materials industry. The fact that the market of cement is very competitive is apparent from the fact that HHI of the Indian cement industry is 683. In fact, the HHI index for the Indian cement industry decreased from 738 to 683 over the last five years, indicating that the industry has become even more fragmented and, therefore, more competitive, in spite of so called big-ticket mergers like merger between Ultratech and Grasim.

5.2.6 According to ACC, barriers to entry in cement industry are quite low which has led to demand fuelled expansion in the cement industry. In addition to entry of large international cement companies, Lafarge in 1998, Italcementi in 2000, CRH in 2009 and Vicat in 2010, the Indian cement industry has also witnessed significant entry and expansion (2007-2008) by small and mid-size



entrants, notwithstanding the high capital costs in setting up a cement plant. In addition to new capacity that has been added by the incumbents, many high profile large infrastructure companies and others have also entered the cement market. India's largest producer of steel (i.e. Steel Authority of India Limited) has also entered the cement market through a joint venture with Jaypee Cements with plants at Bhilai and Bokaro.

5.2.7 Further many companies like Myhome Cement, Penna Cement, Sagar Cement, Deccan Cement have increased their scale and are no longer mini cement producers. In addition, there are many new entrants at an advanced stage of setting up cement plants like Reliance ADAG, Wonder Cement, ABG Shipyard etc. New entrants like Emami Powders, Nirma Soaps, Rain Commodities, Cement Corporation of India (a wholly owned subsidiary of the Government of India, has restarted production) Meghalaya, Cement International and Saraf have announced new cement plants. It also has lost its share of the market over the years between 2005 and 2009 in all regions, which can be attributed to new entrants entering the market and creating space for themselves.

5.2.8 In light of aforesaid, in contrast to what DG has brought out Indian cement industry can only be said to be a competitive industry.

5.2.9 As regards capacity utilization and capacity additions, ACC has submitted that data used by the DG suffers from fundamental errors. Indian cement industry has been adding significant capacity and the



capacity utilization is much higher than what the DG has claimed. The capacity and capacity utilization have to be analyzed using the capacity available for production and actual production, as opposed to comparing nameplate capacity and actual production. Further, capacity utilization heavily depends on various extrinsic factors, such as, the availability of railway rakes, shortage of key inputs, labour shortages, power blackouts, political stability in a particular State, availability of trucks, late arrival of inputs etc.

5.2.10 According to ACC, DG's Report also acknowledges significant capacity additions noting that approximately 60 million tonnes of new nameplate capacity was commissioned between the first quarter of 2010 and the second quarter of 2011. Almost all the major producers in the Indian cement industry announced capacity expansion programmes from 2005-06 onwards, encouraged by improving economic outlook in India. The capacity additions were made on a quarterly basis from 2008 onwards, indicating that the industry was aggressively adding capacity. These trends are just opposite to the behaviour expected in a cartelized industry.

5.2.11 It has further been submitted that between 2008 and 2010, 85 million tonnes of new capacity was added which, means that capacity additions equal to approximately 40% of the capacity in 2008 have been bunched up in a period of two years. Further, since all the capacity additions came online on or about the same time, this had a significant downward impact on the capacity utilization



numbers. As a result of significant capacity addition and gestation period of approximately 3-4 years, the actual available capacity in 2009 and 2010 was significantly lower than the announced nameplate capacity. Contrary to the reports of DG that the capacity utilization for the Indian cement industry as a whole has dropped from 83% in 2009-2010, to 73% in 2010-2011, capacity utilization across the cement industry in 2010 was at 81%, based on available capacity (taking into consideration ramp up adjustments) instead of nameplate capacity.

5.2.12 ACC has also contended that over a twenty year period (i.e. from 1990-2010), the capacity utilization levels in the Indian cement industry have ranged between 75-85%. Out of these twenty years, it is only on four occasions that the capacity utilization has exceeded 85% which clearly indicates that the benchmark level for capacity utilization in the Indian cement industry is between 75-85%. Therefore, capacity utilization in India is in line with historic performance of the industry.

5.2.13 As per OP-2, cement is a commodity product and there is very little difference in the product across producers. Given the similarity of the product across various producers, all of the producers' prices are subject to the same demand and supply factors. The cost of producing and distributing the product and the production capacity will therefore determine the quantity that can be supplied by each



producer to the market at various price levels. DG has adopted a generalized cost benchmark without appreciating that different manufactures have different cost structures depending on factors such as plant vintage, location, distance to source of raw materials, distance from and access to market etc. Cement industry has faced steeply rising input costs and over time, these cost increase have been absorbed by it because of the inability to pass on costs through price increase due to intense competition at the market place.

5.2.14 The OP-2 has submitted that DG's report states that 90% of the market is controlled by 21 producers and there are large number of local and small producers which would consequently account for the remaining 10% of the total cement market in India. These numbers clearly indicate that the Indian cement industry is fragmented and also is highly competitive. Further, even if the Indian market is considered to be an oligopoly, the market conditions lead to a highly competitive outcome.

5.2.15 Although the DG has claimed that its actions amount to breach of sections 3(1) read with sections 3(3) (a) and 3 (3) (b) of the, he has failed to establish the required elements to make out a sustainable case. For a finding of an infringement of section 3 (1) read with 3(3) of the Competition Act to be reached, there must be evidence of an agreement being reached between competitors,



which is clearly missing in this case. There must be direct evidence to prove that an agreement existed. However, the DG has failed to demonstrate that any direct evidence exists in this case, and instead, has built its case on pure speculations.

5.2.16 While the AAEC caused by a horizontal agreement to fix prices may be presumed by the Commission, there must be proof of the agreement itself, in order for this presumption to come into play. In the instant case, the agreement has been presumed from the behaviour of prices, which is not sufficient proof of an agreement.

5.2.17 Citing the cases decided by this Commission, MRTPC, EU and US, OP-2 has submitted that mere parallel behavior is not enough. Further, where parallel behavior is prevalent as a result of the structure of the market, then such behaviour cannot be considered to be in violation of competition law provisions.

5.2.18 It has been submitted by OP-2 that in absence of direct evidence available with him to prove infringement of the provisions of the Act, DG has relied solely on economic evidence of market behaviour to try and prove that there is some kind of meeting of minds. However, as noted by DG also existence of a large number of small producers in the market can easily disrupt any alleged cartel arrangement between the other producers by pricing their cement below the price set by the alleged cartel.



5.2.19 OP-2 has further brought out that given that price might mean different things to different producers, (i.e. list price, sale price, price after discounts, freight, etc.), it is important that the prices used for comparison should have the same definition across all the producers. However, the prices given by the companies before DG are divergent and therefore no meaningful conclusions on cartelization can be drawn.

5.2.20 According to OP-2 , for the purposes of the correlation analysis the DG has selectively used price and other information only for the large producers. Given this selective sample selection, the DG has introduced a bias in its analysis by ignoring the pricing behavior of the vast majority of the industry.

5.2.21 Given the structure of the cement industry and the commoditized nature of the product, according to OP-2, it is obvious that one would observe price parallelism in this industry. Therefore, the DG has not shown anything novel with this analysis. If the aim of the DG's analysis was to prove the existence of a cartel, then more rigorous analysis was required. Further, the correlations in the percentage changes in price reported by the DG are markedly lower than the correlation in absolute prices which is indicative of the fact that a percentage change in prices across producers does not move



as closely as absolute prices, implying that parity in relative prices is not maintained.

5.2.22 According to OP-2, from analysis of the data relating to price bands prevalent in Madhya Pradesh, for year 2007 – 2010, for major manufacturers like ACC, ACL, Jaypee and Century, it can be observed that the minimum/maximum price bands of various manufacturers do not have any semblance of price parallelism or any correlation which shows that price changes are dynamic .

5.2.23 According to ACC, based on demand projections made in 2008, the industry had responded rationally by planning capacity additions to meet the demand and made significant capacity additions since 2007. Its own existing nameplate capacity is approximately XXX% higher than it was in 2007. Therefore, it is clear that if it wanted to limit cement supply, it would have not invested in new capacity. Despite the fact that it has been adding significant capacity, its revenue share has consistently fallen over the last few years clearly indicating that the market is dynamic and incumbent manufacturers face significant competitive constraints.

5.2.24 OP-2 has argued that as opposed to lower industry wide capacity utilization of approximately 81%, its own available capacity utilization was approx. XXX% as of 2010, which is much higher. However, even without considering the ramp up adjustment, in 2010-11, its capacity utilization was approximately XXX%. Since its



capacity utilization is higher than the industry average, it is clear that it is not part of any agreement with any cement producer to artificially limit its capacity utilization. It achieved a capacity utilization of approx. XXX% in 2007, XXX% in 2008, XXX% in 2009 and XXX% in 2010, which means that on an average the capacity utilization over last four years was approximately XXX%. As per industry analysis of Ernst & young global capacity utilization of cement is currently at 82% and this percentage is expected to remain stable in the near future. Therefore, even considering the global benchmark for capacity utilization, its capacity utilization is close to the global industry average.

5.2.25 It has been submitted that capacity utilization during January 2010 was lower due to the reasons of shut down and modernization of its plants at various locations like Wadi, Chandla, Bargarh, Kudithini and Thondebavi. Further, over the last two years, it has added significant cement production capacity especially in the south which was already facing capacity surplus. With specific reference to 2010 (i.e. January 2010 – December 2010), it had XXX million tonnes of capacity which was available for use, out of which its production was XXX million tonnes. As a result, its capacity utilization when compared with capacity available for production, dropped from approx. XXX% in 2008 (January to December 2008) to approximately XXX% in 2010 (January to December 2010).



5.2.26 As regards product and dispatch parallelism, OP-2 has submitted that the fact that there exists parallelism in the industry is not because of any collusive arrangement, but because of the inherent market characteristics i.e. commoditized nature of cement, cyclical nature of cement industry and ability of the competitors to intelligently respond to the actions of their competitors etc. which make such conduct inevitable.

5.2.27 It has further been submitted that current production in India has been consistent with expected demand. The year-on-year growth of demand for cement in India was roughly between 9.27% and 11.45% from 2005 to 2010. Demand is forecasted to grow at a yearly rate of about 10% in the period from 2011 to 2015. In keeping with this demand growth, production during the 2005 to 2009 period grew at an average of 9.3% per annum.

5.2.28 As regards demand assessment, it has submitted that it has a well established process of estimating the long term assessment, a medium term assessment and short term assessment of demand which is done regularly in the quarterly and monthly review meetings which was explained to the DG, which has been conveniently ignored.



5.2.29 The fact noted by DG that that as against the actual consumption of cement of 204.75 million tonnes for the year ending 31 December 2010, the production was 207.47 million tones indicate that production of cement in 2010 was actually higher than consumption and actual production was close to the forecasted demand of 212 million tonnes.

5.2.30 According to OP-2 , since 1 November 2009, it is not part of CMA. Additionally as of July 2009, ACC had stopped providing any data to CMA. It took a unilateral decision to withdraw from the activities of the CMA for various reasons which were explained to the DG during the course of the investigation. It is not involved in any data collation or submission exercise carried out by the CMA in view of the DG's own findings in this regard.

5.2.31 Further, as recently as 14 July 2011 the DIPP (cement section) has directed it to furnish detailed information about its business operations to the CMA, despite fully being aware that it was no longer member of the CMA. This clearly illustrates that, it is being compelled by the Ministry of Commerce and Industry, Government of India, through DIPP to continue to furnish its competitively sensitive data to the CMA. Such sharing of data by it under compulsion of the Government cannot under any circumstance be considered to be in violation of the Act. As has been alleged, there is no relationship between CMA meeting and price changes, and such



prices changes are purely random and not as a result of any collusive agreement.

5.2.32 It has been submitted that an analysis of prices at each of the four centres (i.e., Delhi, Maharashtra, Tamil Nadu and West Bengal) identified by the DG in its report to allege correlation between price rises after the CMA meeting on 24 February 2011, reveals that prices were already on the rise even before the CMA meeting on 24 February 2011 on account of rising cement demand and prevailing market conditions. This proves that there was no correlation between the CMA meetings and the subsequent price rise, and it is a merely a coincidence that the CMA meetings took place during a phase of rising demand and consequently rising prices.

5.2.33 Further, Coal India Limited had increased prices for certain high grade coals between 100% and 130% and overall by over 30% on 27 February 2011, which had a significant impact on the cost of cement. The Union Budget also introduced changes in the excise duty structure on 28 February 2011. As a result of the changes in the excise duty and increase in the price of coal, the price of cement increased in March 2011 to account for these significant cost increases. The CMA meeting of 4 March 2011 also happened to coincide with a period of increasing prices due to the above factors and had no correlation with the price increase which took place after 4 March 2011.



5.2.34 ACC has argued that the DG has conveniently picked up a few select meeting to draw a link between price rises and the CMA meetings. There are several examples of meetings in 2009 where the prices have remained stable or have even decreased. Hence, the DG's conclusion in this regard is illogical. In fact, the number of weeks in which the prices of cement decreased after the CMA meeting was higher than the number of weeks when the prices of cement increased. Out of 9 meetings of CMA in 2009, 7 times the prices remained same and it is only once that the prices of cement went up which clearly reveals that there exists no link between CMA meetings and price increase.

5.2.35 Arguing that prices of cement are not above competitive levels, with specific reference to the observation by the Tariff Commission, cited by the DG in his Report, OP-2 has submitted it is incorrect that the retail price of cement is second highest next to Japan. In fact, Jeffries' research indicates that price of cement in India is one of the lowest across a significant number of jurisdictions across the globe.

5.2.36 According to OP-2 , it is also incorrect that the prices of cement have registered abnormal increase, since prices have increased only by 5.1% and 5.5% CAGR since 2004 which is less than overall increase in the wholesale price index which increased by 6.2% CAGR. The CAGR of the input costs has increased more than the



cement price. Further, the price of cement has registered an increase of approx. 5.9% as against other commodities such as Copper (which increased by 19.4%) and coal (which increased by 15.2%).

5.2.37 ACC has further contended that cement prices are below optimal level to sustain reinvestment into the industry. Tariff Commission also never came to a conclusion that price of cement is very high. It has merely stated that the cement companies could have sold at higher prices. This shows that the DG has sought to selectively use the findings of the Tariff Commission and even then has misstated the findings contained therein.

5.2.38 According to OP-2, DG's own calculations clearly indicate that its net profit as percentage of sales has fallen over last few years and in 2010 its net profit as percentage of sales was one of the lowest among larger cement producers. OP-2 has further submitted that DG's conclusions that the top ten cement companies have had very high operating profit margins (between 20-48%) is fundamentally flawed because the DG has not even looked at the operating profit margins of cement companies. Considering the capital incentive nature of the cement industry, the critical focus is the net profit that is available to the company. Analysis of quarterly results of companies show that for the quarter ending 31 March 2010, many cement companies were reporting net losses due to steep rise in costs and the inability to pass on costs through price increase in the



market due to intense competition. This loss making trend continued in September 2010 quarter and December 2010 quarter also.

5.2.39 As regards charge of collusive price leadership, OP-2 has contended that the DG has not presented any evidence to suggest that it is a price leader in any of the above mentioned regions. Further, the mere fact that there are at least 3-4 producers in each of the above mentioned regions which compete head-to-head with each other, the question of leadership does not even arise. The DG has not adduced even a single piece of empirical evidence to prove that price leadership/signaling exists in this market.

5.2.40 As per OP-2, there is no territorial allocation of the market and there is no specific allegation against it with reference to territorial allocation. DG has made bare assertions that there is territorial allocation without establishing it.

5.2.41 The OP-2 has summed up its arguments by saying that there is neither a direct allegation nor even a single piece of evidence which even remotely suggests that it violated any provision of the Act. The plus factors that have been looked by the DG in the form of capacity utilization, profit margins of the cement manufacturers do not, in any way, suggest that the cement manufacturers have colluded. The DG has erroneously noted that an oligopoly is very close to cartel like situation. The DG has simply chosen to ignore the



fact that there are a large number of oligopolies around the world which are not cartels.

5.2.42 ACC has also contended that its conduct is guided by the market forces and any direction to stop intelligently responding to the market conditions would be counterproductive. It is not the purpose of the Competition Act to inhibit the intelligent conduct of business operations. Accordingly, the findings of DG must be dismissed and it may be exonerated from all the allegations.

Reply of Ambuja Cement Ltd. (OP-3)

5.3 The written and oral arguments of OP-3 have been submitted almost on the similar lines as that of ACC and therefore the contentions taken in case of ACC are not repeated herein. The replies/arguments, in brief in case of ACL (OP-3), are submitted as under;

5.3.1 According to OP-3, for a cartel to survive, there must be mechanism in place for coordinating the cartel agreement. However, DG has failed to produce any iota of evidence which even remotely suggests that any of the above mentioned elements are present in the Indian cement industry. The DG has admitted that the Indian cement market is fragmented with a large number of producers active on a national/regional basis. There is significant inter-regional



movement of cement as there are regions such as South and Central where there is surplus capacity and other regions like East where there is high demand and lower supply.

5.3.2 The OP-3 has asserted that it is not engaged in limiting the supply of cement as it has been consistently running at around 90% of its available capacity (pro rate/ramp-up), which is significantly higher than the industry average given by the DG and also exceeds the global benchmark for capacity utilization.

5.3.3 According to OP-3 , there is no relationship between CMA meetings and price changes which are purely random. Further, the mere fact that on a few occasions the prices on some instances have moved up and down around the CMA meetings does not prove, even on a balance of probabilities, that the cement producers fix prices since such variations are purely unconnected events and are in response to market dynamics.

5.3.4 According to OP-3, in the last decade, the industry witnessed a trough cycle during 2001-2005 period, since significant capacities added during the up-cycle ending in year 2000, continued to be underutilized due to the reduced growth in cement demand. The industry witnessed a recovery from 2006 with rise in dispatches and resultant capacity utilization rates which peaked during 2008-2009. Further, the year 2010 saw moderation in prices and fall in margins due to commissioning of new capacities in the country. The significant capacity additions has also been acknowledged by DG



since in his report it has been noted that approximately 60 million tones of nameplate capacity was commissioned between the first quarter of 2010 and the second quarter of 2011. Since all the capacity additions came about the same time, this had a significant downward impact on the capacity utilization.

5.3.5 It has further been argued that for the purposes of the correlation analysis the DG has selectively used price and other information for the large producers. For instance, from analysis of the data relating to price bands prevalent in Maharashtra, for years 2008-2010, for major manufacturers like ACC, ACL, Century and India Cement, it can be observed that the minimum/maximum price bands of various manufacturers do not have any semblance of price parallelism or any correlation.

5.3.6 According to OP-3, the decrease in capacity utilization leads to decrease in PAT and vice versa. Therefore, there is no incentive to artificially limit its capacity utilization, as this would reduce its PAT.

5.3.7 The OP-3 has submitted that it has added significant capacity over last few years which completely discredits any argument made by the DG that it restricted supply of cement in collusion with other producers. Its nameplate cement grinding capacity in 2005 was XXX million tones, which increased to XXX million tones by March 2010, an increase of XXX million tones or 63%, at CAGR of 10.3%. This allowed it to add capacity ahead of demand and meet future needs of its customers. Its cement dispatches in 2005 were XXX million



tonnes which increased to XXX million tonnes in 2010, i.e. an increase of 37% at CAGR of 6.5%. This clearly indicates that its capacity and dispatches have been increasing substantially from 2005 onwards, which completely disproves any allegation of supply limitation against it.

5.3.8 According to OP-3, the Indian cement industry has added capacity in double digits during the last three years, which is unprecedented in the last 20 years. High capacity additions in a few years leads to lower capacity utilization for a few years, till demand catches up with capacity, leading to a rise in capacity utilization levels. However, even with higher capacity additions; the industry maintained a capacity utilization of above 81% over the last few years. Cement Industry has been acting rationally by basing its capacity additions on forecasted demand and in a manner that is quite contrary to the behaviour of cartelists who would suppress capacity and production in order to maintain prices at an elevated level.

5.3.9 According to OP-3, as opposed to a lower industry wide capacity utilization of approximately 81%, for the same period, its capacity utilization was XXX% (without ramp-up), which is much higher. Therefore, its capacity utilization is much higher than the industry average, which clearly indicates that it is not part of any arrangement with any cement producer to artificially limit its capacity utilization.



5.3.10 The OP-3 has submitted that the year on year growth of demand for cement in India was roughly between 9.3% and 11.5% from 2005 to 2010. In keeping with this demand growth, production during the 2005 to 2009 period grew at an average of 9.3% per annum.

5.3.11 As regards role of CMA, it has been stated that in 6 out of 9 meetings of CMA in 2009, prices either decreased or were stable. The remaining 3 meetings coincide with the construction season, when prices tend to increase because of rise in demand. Out of 9 meetings in 2009, 5 times the prices remained same and 3 times decreased and it is only once that the prices of cement went up which clearly reveals that there is no linkage between the meetings of CMA and price increase in cement.

5.3.12 According to OP-3 , the average margin of cement companies has consistently fallen from 26% in 2006-2007 to 22.9% in 2008. Its margin has also fallen from XXX% in 2007-08 to XXX% in 2008-09 and its net profit was XXX% for the year 2010 representing a decrease of more than 5% when compared with its net profit of 22.4% in 2008. This shows unlike part of a cartel arrangement since cartel agreements will be to earn supernormal profits.

#### Reply of Ultratech Cements and Grasim (OP-4 and OP-5)

5.4 In its written and oral submissions Ultratech Cements has submitted that the cement division of Grasim has merged with it. As



such the present reply is filed on behalf of both the parties. The replies in brief are as under;

5.4.1 It has submitted that the report of DG is erroneous in law and in facts. DG has only on the basis of what he terms "circumstantial evidence" reached a conclusion that some kind of collusive behaviour for determination of price & supply of cement amongst the top cement companies was clearly noticeable and that there was collusive price leadership, by way of informal cartel among the top enterprises to determine the price of cement, to be followed by other small manufacturers and that there was tacit agreement and some kind of cartelization.

5.4.2 According to OP, the finding of cartelization can result in very serious penal, commercial and reputational consequences and when such harsh penal consequences are provided, the degree of proof applicable should be stringent and beyond any reasonable doubt. Mere suspicion of collusive behavior, or of a "tacit agreement", or of "collusive price leadership" cannot be the basis for taking steps under section 3 of the Act. Nor can findings of alleged "Price Parallelism" or "Dispatch Parallelism" establish the existence of an "Agreement" or "Understanding".

5.4.3 According to the OP, declining Net Profit establishes that profit margins have not been maintained as alleged and have in fact decreased. It is submitted that for ACC the Net Profit and the Net Profit Margins, increased in 2009 but went down in 2010 to below



2008 levels. For Ambuja Cement the Net profit and the Net Profit Margins in 2009 decreased sharply & then went up in 2010 but remained substantially below 2008 levels. In its own case (Ultratech), the Net Profit and Margins decreased sharply in 2009 and although the profit margins improved slightly in 2010 they were substantially below the 2008 levels (PAT 16% as compared to 18%). It further came down to 10% in the year 2010-11.

5.4.4 Even for the other companies there was no uniform trend. The Net profit and Profit margins declined in the case of India Cements and Madras Cements and increased in the case of Jaypee Cement & Lafarge Cement. Further, Pre Tax and the Post Tax margins for the period 2007-2011 show that there has been a decrease in the margins of the cement companies. The Pre Tax margins of Ultratech have reduced from 30% to 21% & the Post Tax Margins have reduced from 16% to 10%. The Pre Tax margins of Grasim have reduced from 31% to 28% & the Post Tax Margins have reduced from 17% to 13%. Moreover there is also a wide disparity in the profit margins of different cement companies. Such disparities in the profit margins and the reduction in profit margins of Ultratech/ Grasim, ACC & Ambuja Cement clearly negate the existence of any cartel agreement.

5.4.5 The OP has submitted that contrary to the allegation of the DG in the Report, prices of Cement have also risen far less than the cost of inputs/cost of sales for the period 2007-2011. DG's allegation of deliberate low Capacity utilization/reduction of supplies/dispatches



is contrary to the findings in his report since the report itself records that from 2007- 2010 installed capacity increased from 179 to 274 by 95 MMT, an increase of 55%. In fact capacity utilization of the old/ existing plants has remained high. The apparent reduction in capacity utilization is attributable to large extent of new manufacturing capacity added which takes anything from 1 to 3 years to attain optimal production levels.

5.4.6 According to OP, there are certain macro features which are inevitably present if a cartel exists. The first feature is that there would be stability in the installed capacity of cement and the same would remain near constant. During this period, according to the report itself, the installed capacity of the cement industry has increased from 179.1 MMT to 286.38 MMT which is an increase of about 50%. The second feature is that there would be stability in the players in the industry. In the present case, 10 new large players have entered the market with the total capacity of 12.3 MMT and 10 players have doubled their capacity from 20.42 MMT to 46.20 MMT and other new players are in the process of entering the market with large capacities. The third feature would be stability in prices. The fourth feature would be constant or increasing profit margins. These features taken together completely negate the possibility of cartelization in the cement industry. The DG's Report itself establishes that none of these features exist.



5.4.7 It has been further submitted that a cartelized industry would be static and not dynamic in nature. Even a cursory look at the above facts of the Indian Cement Industry would establish that there is no cartelization on this parameter. The report of the DG has also not identified when cartelization commenced and does not compare the market behaviour before and after cartelization.

5.4.8 According to OP, DG has made a fundamental and serious error by considering average monthly prices at retail level at State and National Level. In the process, the DG has missed the individual facts of individual parties and has accordingly arrived at erroneous conclusions.

5.4.9 The OP has submitted that its facts are quite to the contrary of what the DG has interpreted. Its figures do not show maintenance of profit margins, or low utilization of installed capacity. Its gross and net profit margins have decreased over the period 2007-2011. Moreover installed capacity has also been increased substantially. Capacity utilization of the old existing capacity/plants has remained high. Capacity utilization at the new plants has fluctuated from 30 to 50%. Accordingly the allegation that it was or is involved in a cartel is ex facie incorrect & unsustainable.

5.4.10 The OP has brought out that the DG in his report has relied considerably on the fact that the price of the cement in various States has moved in a particular band. The reliance by the DG on a price parallelism is wholly misplaced. Prices of all commodities in a



free market would tend to converge and move in a band and in the same direction. Prices of all goods, and in particular commodities like cement, steel, aluminum, also generally move in tandem. Price parallelism by itself does not sufficient to indicate existence of a cartel, a fact which has been accepted by the DG himself.

5.4.11 Further, for the purposes of determining price parallelism, the DG has considered the facts of 13 States and 2 Union Territory. Out of the 15 States/Union Territory, its prices have not even been shown in 7 States/Union Territories such as Bihar, Chandigarh, Rajasthan, Gujarat, Maharashtra, Assam, Madhya Pradesh and Kerala. Further the prices mentioned and the charts do not deal with the price data submitted/provided by it.

5.4.12 The report of DG also does not indicate whether the prices considered in the report are at the factory gate, at the wholesale level or at the retail level. The DG further proceeds on the basis that a correlation and coefficient of 0.5 shows close correlation. In fact, in commonly accepted statistical terms this is not the case. It is submitted that the Pearson's correlation coefficient should be close to (+) 1 or (-) 1 or certainly greater than 0.8 to show significant relationship. The analysis shows that there is vast variation (between 0% and 60%) between the prices being charged by various manufacturers in the same month.

5.4.13 According to the OP, production and dispatch parallelism much like price parallelism is natural in any industry and does not



indicate any cartelization. When demand is more, production and dispatch will correspondingly be more and similarly, when demand is less, production & dispatch would be lower. Similarly, as demand increases, capacity utilization increases.

5.4.14 It has also been argued that the report of DG relies on alleged low capacity utilization. However, factually there is no general reduction in capacity utilization. The capacity utilization depends on various factors such as monsoon, weather condition, festive season, seasons of cultivation and harvesting of various crops, availability of railwagons/trucks, labour, coal, power availability, plant shutdown, storage capacity etc. Most important among the factors influencing capacity utilization is the gestation period required (one to three years) to achieve full/optimal capacity utilization when new plant and capacities are added. Thus, where there has been 50% increase in installed production capacity in the last four years, total capacity utilization is bound to decrease.

5.4.15 According to OP, the capacity utilization of its old / existing plants in its case has been rising from XXX% to XXX% (and had even reached XXX-XXX%) while the capacity utilization of new plants has increased from XXX% to XXX%. Similarly for Grasim the capacity utilization of its old existing plants has ranged from XXX% to XXX% (and had reached XXX% - XXX%) while the capacity utilization of new plants has increased from XXX % to the current XXX%. Moreover year-on-year its (Ultratech) production has been increasing and from



2007-08 to 2010-11 it has increased 7.78 MMT which is about 25.56%. Four plants of Ultra Tech, namely, HCW (XXX%), JCW (XXX%), Hotgi (XXX%) and Magdalla (XXX%) are all operating over XXX% capacity even in the year 2010-11.

5.4.16 The OP has argued that all industries whether it is the informant, Steel Manufacturers, Hotels, Cotton Manufacturers etc. have their own Associations. CMA is relevant for the cement industry since it deals with various problems commonly faced by the industry. Further, by order of government, price and supply data has to be supplied to Department of Industrial Policy and Promotion (DIPP) which is done by the cement manufacturers through CMA. The prices which are supplied by the CMA to DIPP are not Ex-Factory Prices, but, retail prices of various locations which are not brand specific, and are historical prices. These prices would not help in fixing future prices.

5.4.17 The OP has brought out that the allegation that prices have gone up immediately after the meetings of CMA are not borne out by the facts. DG has not even considered the actual price movement of the various Opposite Parties before and after the CMA meetings but has only considered average monthly price, which is clearly erroneous.

5.4.18 The OP has contended that the DG has relied on oral testimony of some of the consumers of cement. It is submitted that the said testimony, in fact, does not support the finding of



cartelization. Further, it has also not been given opportunity to cross examine the said witnesses.

5.4.19 It has further been submitted that the report of the DG arises inter alia from lack of understanding of how the cement industry functions. Marketing of cement has its own unique structure. Generally cement companies divide their production into non-trade and trade segment. The non-trade segment involves direct sales to large construction companies and to government entities while the trade sale is through normal distribution channels involving wholesalers and retailers. Non-trade sale involves sales to government projects through competitive tendering process and can also include directly negotiated contracts with large consumers of cement e.g builders, infra sector companies and players in government and private sector.

5.4.20 According to OP-5, split between trade and non trade in its case is around 30% for non-trade and 70% for trade segment during 2010-11. Cement is mostly sold through dealers in the trade segment. It has over 15,000 independent dealers, who are not exclusive and stock and sell competing brands of cement. There is a difference in the price at which the cement is sold by the manufacturers to the dealers and the price at which the wholesale dealers sells the cement to the retailer. Cement is actually sold through dealers who sells and price their products to their customers based on the demand and supply and prevailing price at the time of



purchase by the customers who have wide choice to make from different dealers of the same or other companies selling different brands of cement up to the limit of the MRP. As demand picks up the dealers purchase more cement and in turn the manufacturer increases the price and vice-versa.

5.4.21 Apart from the demand and supply, various other facts including cost of production, seasonality of demand, variation in demand due to various factors e.g. weather condition local government spending, agriculture crops logistics (availability of trucks and railway rakes), taxes, etc determine the price of cement. Whenever the cost increases, depending upon demand scenario, the cost increase is passed on to customers and if demand is weak, the cost is absorbed by manufacturer and recovered later when demand picks up depending upon the prevailing market prices at that time.

5.4.22 The OP has submitted that DG has based his findings on various presumptions and assumptions without any analysis or basis for reaching such conclusions. The DG, for example, has asserted that the cement market is an oligopoly. Even if one were to consider the cement industry to be an oligopoly in terms of number of producers and their respective market shares in an academic sense, the cement market is in reality highly competitive in nature given the degree of inter-firm rivalry, the variation in prices and production between firms, large number of dealers, new entry and expansion by existing producers.



5.4.23 As against the assertion of the DG that there are entry barriers in the market, the OP has submitted that the data of the last three years shows that 10 small cement manufacturers have more than doubled their capacity from 20.42 Mn. Tons to 46.20 Mn. Tons., while 10 new players have entered the market with a total capacity of 12.3 MMT. Further, 12 Cement manufacturers have increased their capacity from 38.92 Mn. Tons in two years up to 2010 – 11 to 79.05 Mn. Tons. The documents relied on by the DG do not in any manner demonstrate entry barriers.

5.4.24 The OP has also contended that the findings of DG based on parallelism is fundamentally erroneous. As has been noted/recorded by the DG himself in the Report, Commission and Courts in various jurisdictions have held that price parallelism is in itself not sufficient to reach a conclusion that there exists a collusive agreement between the parties. Cement is a homogenous commodity, the product is standardized with BIS markings, and the companies operate in the same industry/markets, using same or similar raw material inputs, electricity, technology, among other factors. According prices would be broadly similar and would broadly move in the same direction. Such correlation in prices also exists in intensively competitive industries or markets. On the basis of this only, cartelisation cannot be proved.

5.4.25 According to OP, the correlations presented by DG are erroneous. He has relied on wholly irrelevant materials like findings



of Competition Commission of Poland, Pakistan, Romania, Germany, Europe and Taiwan. The DG has also relied on an earlier decision of MRTPC. All these facts are wholly irrelevant for a finding of an agreement prohibited under the Act.

5.4.26 According to OP, there was erroneous assumptions that cement prices are unreasonable and is beyond the competitive level. There is no model or analysis built by the DG to show what prices would prevail in a competitive market and how these differ from those in the cement market. Further although the DG indicates that since profit margin is greater than 25%, cement companies are earning supra-competitive profits, the profit margins are not benchmarked against other industries or what cement companies may earn elsewhere/in other jurisdictions.

5.4.27 The OP has also submitted that one of the major flaws in the DGs report is the failure to define the relevant market for the purposes of analysis. The relevant market has to be considered in this case with reference to the geographical market since cost of transportation of cement is very high and accordingly cement is not transported long distance unless the price differential is very substantial. It may be pertinent to note that DG states that the cement industry is divided into five zones: North, South, Central, East and West. However no concentration measures or market share statistics are presented to establish these zones as being the relevant geographic market. These zones have been in existence historically



for other reasons during the control regime. Besides, relevant geographic market, the DG has also not considered the relevant product market in terms of the different grades and categories of cement.

5.4.28 According to OP, the DG also failed to note that the prices of Cement Corporation of India, a Public Sector Undertaking also move along with the prices of all other manufactures. However, DG has not alleged the Cement Corporation of India to be part of any alleged illegal cartel.

5.4.29 The OP has also argued that the DG's Report is Liable to be Set Aside for Non-Supply of various documents relied upon in his report, in view of which the Opposite Parties are handicapped in dealing with the findings of the Director General. The OP has also submitted that the substantive/relevant provisions of Competition Act (i.e. Section 3 and Section 4) have been notified on 15.05.2009 with effect from 20.05.2009. As such, the DG has erred in considering a period from 2007 to 2011 for the purposes of his analysis.

5.4.30 According to OP-5, an Agreement or Understanding under sec 3 read with sec 2 (b) is a sine qua non for initiating action or even for requiring cause to be shown before taking action. In order to buttress its point on the issue, the OP has also relied upon the case of Consumer Online Foundation versus Tata Sky Limited (decision dated 24<sup>th</sup> March, 2011) and the case of "Neeraj Malhotra Vs Deutsche Post



Bank & Ors" (decision dated 2.12.2010 in Case 5 of 2009) decided by the Commission.

5.4.31 The OP-5 has also filed an affidavit of a Senior Economist, Dr. Shyam Khemani to the effect that there are no evidences, no sound analysis carried out by DG to support existence of any cartelization in India. In the years in question namely 2007-2011, price of cement have been extremely volatile (as found by the Ld. DG himself) changing on an average twice a week. Such high volatility in price negates any possible cartelization. Analysis of Dr. A Ranade and Dr. D. Singh have also been submitted bringing out that for the period of question, there have been rapid changes in the market shares of all the leading players and such a situation demonstrates or negates any possibility of cartelization.

#### Reply of Jaiprakash Associates Ltd. (OP-6)

5.5 The OP-6 submitted its written and oral replies and objections to the report of DG along with a report prepared by G:ENESIS. The submissions made by OP-6, in brief, are as under;

5.5.1 The OP has submitted that the DG has "cherry-picked" only those documents/submission that support the pre-determined conclusion of the report. Instead of substantiating on the parameters that corroborate the allegations of the informant, the report of DG is primarily based on the presumption that the various cement manufacturers along with CMA are engaged in per se anti-competitive activities.



5.5.2 According to OP, as per the report of DG, the Southern region has the maximum production capacity of about 40% of the total production. Since it has no presence in the South as admitted by the DG in his Report, thereby it cannot be charged with the allegation of cartelization.

5.5.3 OP-6 has submitted that DG has not calculated market shares based on sales. Further, it is untenable in law that while some cement manufacturers have been charged with the allegation of collusion whereas the others have been left out for no reason.

5.5.4 DG while conducting his investigation in the matter has incorrectly delineated the 'relevant market', which is the first and most critical element in any Competition assessment. In the instant case, the DG has defined the 'relevant geographic market' as being a scattered market which is to say that the market of cement is divided into five regions/zones. The DG has further classified the market of cement industry into three categories viz., Major Players having Pan India Presence, Major players having regional Presence, Local and small Players. These classifications do not provide any explanation as to why cement manufacturers with scattered regional presence and varied commercial objectives would engage in concerted practices.

5.5.5 Further, it is misleading to conclude market shares of the cement manufacturers based on production capacities without analyzing the actual production patterns and the reasons for not producing to the extent of the installed capacity of each such cement



manufacturer. DG has failed to take into account the market shares provided by JAL (approximately 5.23%), calculated on the basis of actual sales and calculated market shares on the basis of production capacities without providing any source for arriving at such erroneous findings.

5.5.6 According to OP-6, DG has alleged that the Cement Manufactures Association provides a platform to its members to cartelize. However, it is impossible to identify and establish that eleven out of the forty four members of the association cartelize and the rest have no role to play. This analysis has no foundation and as such cannot be relied upon. The DG has taken into account only a few cement manufacturers even though all the manufacturers have the power to influence the market. Therefore, until the correct analysis is carried out by the DG, the analysis and the subsequent findings arrived at by the DG cannot be relied upon.

5.5.7 The OP has further submitted that an oligopolistic market structure does not always lead to a cooperative outcome as alleged as it needs to be carefully examine whether a firm's conduct can also be described as unilateral action in self-interest absent an agreement to act jointly through an agreement.

5.5.8 According to OP-6, the DG has 'cherry-picked' the instance of price rise without providing any reference to periods wherein the price of cement was reduced in spite of constant increase in the cost of raw materials. DG has stated that the cost of sales has only



increased about 30% from 2004-2005 to March 2011 without providing any source of such information.

5.5.9 The OP-6 has submitted that cost of raw materials required for the production of cement is one of the important factors that impact the prices of cement. The prices of cement have shown an upward trend due to substantial increase in the cost of transportation and other raw materials used in the production of cement. Every cement manufacturer has its own set of parameters to determine the price of cement and there is no single factor which is the sole reason for all the cement manufacturers to determine their pricing strategy as portrayed by the DG.

5.5.10 The OP has also contended that the trends followed by it in the process of pricing decision is generally governed by the market forces which is determined by market feedback received from the marketing offices. The prices keep varying from season to season; during monsoons the demand for cement would go down resulting in a downward moment in prices. When the demand is more the prices would automatically rise adding to the ever increasing costs of inputs which tend to increase the prices of cement further upwards.

5.5.11 It has further been argued that the DG has failed to take into account the fact that upto 35% of its total sales during the financial year 2010-2011 was through contracts to the non-trade segment. The prices for such contracts do not fluctuate as frequently as that of trade segment. The substantial non-trade segment comprises of



construction companies, builders, infrastructure companies, institutions, government departments, etc., who purchases the cement directly from cement manufacturers for their own use/consumption and the same is not intended for resale. The prices in the non-trade segment are lower than the trade prices.

5.5.12 Thus, as per OP-6, there is no conceivable explanation which can be attributed to the allegation of concerted practices between producers catering to different categories of buyers.

5.5.13 According to OP-6, DG has missed the pertinent aspect that price transparency, a key requirement for the ability to maintain a cartel is not met in instant case. JAL does not publish its prices on its website or maintain any records of its list prices. Furthermore, for a cartel to be maintained members should be accurately able to monitor the prices charged by the participating firms. This requires that the firms known the true prices being charged by all the alleged cartel members. Keeping in mind that the prices gathered and shared by CMA are indicative and not real prices, the alleged price fixing cartel is not sustainable in the absence of appropriate sharing of relevant pricing information. Further, every cement manufacturer caters to its own customers and is differentiated on account of its branding, networking, regional presence and customer service etc.

5.5.14 The OP-6 has submitted that reliance on a few selective extracts of the Tariff Commission to come to its conclusion without providing it with the complete report of the Tariff Commission is



contrary to the established principles of natural justice. The claim of the DG that the pricing mechanism adopted by various cement manufacturers is on the same lines is baseless since a mere perusal of the statements of the representatives of the various cement manufacturers reveal that each company has its own set parameters for determining the pricing of its product.

5.5.15 DG has admitted to fact that there is no evidence to substantiate whether the respondents had decided about the price increase in concert with each other. According to established and recognized Competition jurisprudence, to prove a violation of Competition law by way of a cartel, it must be shown that there has been "meeting of minds" towards achieving a common goal or outcome. Further to prove a violation of section 3 under the Act, there must be an agreement, which includes an arrangement or an understanding, amongst the enterprises engaged in identical or similar trade of goods or provision of services.

5.5.16 According to OP, the correlation analysis conducted by the DG suffers from numerous lapses. The DG's correlation analysis has examined whether the prices have moved in the same direction, but not whether any such trend is due to coordinated action of the named cement producers. The DG's failure to investigate the causation issue has rendered his correlation analysis irrelevant for this investigation. Further, it is illogical to infer price parallelism from the correlation figures and more importantly, to use them as



evidence of collusive behaviour without investigating the factors responsible for the rising prices. DG has also arbitrarily chosen 0.5 as the benchmark correlation coefficient and does not find any mention in the Act or any other international Competition jurisprudence. Furthermore, the use of the benchmark is quite unusual and there is no benchmark like this in empirical economics.

5.5.17 DG's analysis on price parallelism does not shed any light on the allegation of cartelization and there are gross inconsistencies between the monthly price data used by the DG for his analysis and the actual data submitted by the different cement manufacturers to the DG.

5.5.18 According to OP-6, there is no apparent justification for the DG to restrict its pricing analysis to a shorter period. There is also no reason behind arbitrarily dropping a few months' prices for certain manufacturers despite the same data being available. DG has claimed to compare prices for different manufacturers across states which in reality reflect city prices. Even if one chooses to consider the price in a city to be representative of the price prevailing in the state, it is necessary to consider the price in the same city for each manufacturer. By using these different types of prices the DG's analysis compares apples with oranges making the exercise meaningless.

5.5.19 The OP has further submitted that assuming that even if the DG has found characteristics of price parallelism, it does not in itself



establish that the various cement manufacturers have been acting in concert or is resultant of an agreement between them. It is widely recognized in Competition law that evidence of price parallelism alone is not a sufficient proof of a cartel agreement. "Facilitating" or "Plus" factors are needed in addition to parallel pricing evidence to conclude about any possibility of a cartel.

5.5.20 The OP also denied that the cement manufacturers are trying to limit the supply of cement in the market by under utilizing their installed capacities. It has argued that certain factors which have been hindering the full utilization of the plants, such as availability of the key raw material, erratic power supply, break down of machinery or stoppage of plant, for up-graduation, high inventory level of clinker, logistic constraints, demand growth, labour disturbance were ignored by the DG while analyzing capacity utilization.

5.5.21 According to OP, it has increased its installed capacity from 7 million tons in 2007-08 to 19.10 million tons by the end of 2009-10. The DG has not taken into account the fact that whenever a new plant is installed, the ramp up of the capacity utilization to optimum level takes considerable time due to the teething problems encountered in the initial period. DG has calculated its capacity utilisation in 2010-11 as 75.27%. The DG instead of using pro-rated capacity, has taken the figures for the installed capacity of the whole year. Calculated correctly the actual capacity utilisation for 2009-2010 is xxx%, which is much higher than the DG's calculation.



5.5.22 According to DG the growth rate of production has been slowing down and that the growth rate of production during financial year 2010-11 was less than 3% whereas during 2009-10 it was above 12%. Such blanket statement of surmises of the DG cannot be relied upon as the increase in its production in 2010-11 over 2009-10 has been xxx%.

5.5.23 The OP has contended that it is incorrect as reported by DG that the prices charged in 2010-11 were above the prices charged in 2009-10. In some of the months of the year, the average price actually came down. For instance, the prices charged by JAL for a bag of cement Lucknow in Jan 2010 was Rs. 224, however, the price charged in Jan 2011 was Rs. 199. Similarly, the price charged in Ghaziabad in October 2009 was Rs. 232, whereas in October 2010, it was 215. Thus, DG's analysis cannot be relied upon.

5.5.24 Denying that its dispatch showed a positive correlation with other manufacturers, it has been stated that it had the largest increase in dispatches more than any other cement manufacturer during January 2009 to December 2009. DG has not revealed the correlation coefficient that has been considered to arrive at the alleged conclusion. The true and correct analysis of dispatch parallelism as conducted by G:ENESIS in its Report states that the correlations for JAL with other cement manufacturers' ranges between 0.03 and 0.68 in 2009 and 2010. Therefore, there is no



evidence to demonstrate that its dispatches are "very strongly correlated" with the others.

5.5.25 According to OP-6, it is not a market leader in any of the regions in which it has presence and hence, cannot possibly pose as the market leader in determining the price of cement as alleged by the DG. In the absence of any express or implied agreement between the cement manufacturers to fix prices, any change brought about by following any player in the market cannot be construed as violating the Act. It is settled jurisprudence in Competition law that changing prices by following the leader to meet Competition should not be treated against the fabric of the anti-trust law in India.

5.5.26 DG has given incorrect findings it is one of the dominant players in the west region comprising of Gujarat and Maharashtra. DG himself while conducting economic analysis on price parallelism, has not included it for comparison of prices in the state of Maharashtra. In the case of Gujarat, it entered the market in September 2009 and since then shows a price range lower to other players in the said region. This amplifies the submissions that it is merely a price follower and not a dominant player in west or any other region as stated in the Report. As stated by the DG, the south region constitutes the highest capacity of cement production, where it has no presence. It cannot be conceived that JAL is a top cement manufacturer when there is no presence of JAL in the biggest region in India.



5.5.27 According to OP-6, DG has stated that the big players announce in press or TV channels that there is a probability of cement price hike in coming days. It has never made such an announcement, which also goes to show that it is not a dominant or big player in any of the market for the reasons stated above.

5.5.28 The OP-6 has also stated that it is incorrect that the cement manufacturers have been operating at a very high profit margin of about 22.9% in 2008-2009 since the profit margin of several companies are much higher like TCS, Wipro and Infosys, which have over 30% profit margins on average, and companies dealing in copper, nickel, and zinc mining, whose profit margins are said to be above 50%. Thus, it cannot be said that since cement manufacturers have a high profit margin of about 23%, they are part of a cartel.

5.5.29 According to OP-6, DG has also used inappropriate tools to measure profitability. The gross or operating margins by itself do not reveal anything about the excessiveness of prices. The Office of Fair Trade (OFT) discussion document on profitability argues that internal rate of return ("IRR"), net present value ("NPV") and rate of return on capital employed ("ROCE") are appropriate profit measures to use.

5.5.30 The OP-6 has also contended that CMA's basic objective is to develop and promote the cement industry in India and also represents the concerns of the industry before the appropriate departments of the Governments. Since it has been a member of the



CMA, it has never indulged in any activity through CMA (or otherwise) that could be construed as a violation of the Act. Furthermore, in all meetings of the CMA that have been attended by it, no Competition sensitive information has been discussed. CMA under the instruction of DIPP has been collecting indicative retail and wholesale prices which are historical. Further, data collected by CMA is not company specific and CMA also does not maintain any records of the same. Hence the whole allegation by the DG in its Report that CMA is providing a common platform for collection and dissemination of the Information of the prices of the different companies is baseless and devoid of merit.

5.5.31 As regards High Power Committee meetings, DG has not taken into consideration other such meeting of the CMA where the prices of cement remained stable or, in fact, saw a decrease. For instance, DG has not taken into consideration the High Power Committee Meeting which was held on 28.02.2011. Pursuant to this meeting, in Lucknow, there was no immediate change in prices. Further, even post the meeting on which the DG has placed reliance held on 04.03.2011, there was a decline in prices in Lucknow which seems to have been conveniently ignored. Moreover, there was no effect on its prices in Delhi after the meeting of 28.02.2011. The DG for the purpose of submitting the Report has 'cherry-picked' those meetings which demonstrate a remote co-relation between the High Power Committee meetings of CMA and change of price.



5.5.32 The OP has also argued that DG in his report has relied upon statements of various third parties alleging the coordinated behavior of the cement manufacturers regarding the price and sale of cement to the different segments of the consumers without even analyzing them, without any evidence to show the alleged coordinated behavior amongst the cement manufacturers.

#### **5.6 Reply by India Cements (OP-7)**

5.6.1 India Cements (OP-7) in its replies has submitted that the Report of DG being premised on the retrospectivity of section 3 of the Act, which is not authorized by any provisions of the Act, is illegal and ultra vires. The report of DG is accordingly liable to be rejected.

5.6.2 According to OP-7, the report of DG is not valid as the report has evidently considered extraneous matters such as acts prior to May, 2009. Further, the materials relied upon in DG report are not provided to the parties. This act is in violation of principles of natural justice.

5.6.3 The Opposite Party has further submitted that even the facts mentioned in the report of DG taken as a whole, fail to establish the existence of an agreement or understanding between the Opposite Parties in contravention of section 3 of the Act as alleged. It is settled law that in the absence of an agreement being conclusively established on the facts of the case, the question of inferring an anti-competitive practice within the meaning of section 3 of the Act does not arise. In the present case, there is absolutely no shred of



evidence to indicate such an agreement between enterprises or association or persons in the cement industry.

5.6.4 According to OP-7, in the present proceedings, what is sought to be inferred is that the rise in prices of cement by various manufacturers in tandem should lead to the presumption of an agreement between the manufacturers to raise prices. Such an inference sought to be drawn is not only against the provision of the Act, but also factually incorrect and baseless.

5.6.5 The OP-7 has argued that the DG has sought to rely primarily upon five economic factors, namely (i) high profit margin, (ii) absence of co-relation between increase in price and increase in input costs of production, (iii) price and production/dispatch parallelism and (iv) under utilization of production capacity to infer the existence of an agreement between the Opposite Parties with a view to fix/control price and obtain unreasonable profits. These actions can very legitimately be justified as independent decisions taken by a prudent businessman with a view to maximize profits. The aforesaid factors taken together, as such, cannot be said to conclusively establish the existence of an agreement actionable under the provision of the Act.

5.6.6 According to OP-7, it is settled law, and in fact admitted in the DG's Report itself that Parallelism is at best, only indicative of the existence of a practice of following/imitating the price changes of competitors. Such actions, in the context of the cement market, being oligopolistic in nature and characterized by inelastic demand



and standardized and undifferentiated products, would be justifiable as a prudent business decision.

5.6.7 Further, the recognition of the alleged cartels in the cement industry as being regional in nature in the report of DG, renders a finding pertaining to the existence of a national cartel implausible and amounts to a rebuttal of any presumption as to the existence of a cartel having an adverse effect on Competition within India. There is no case regarding the existence of a nation-wide cartel which causes or is likely to cause an appreciable adverse effect on Competition within India in terms of section 3 of the Act.

5.6.8 The OP-7 has submitted that there are no specific allegations as to how it has violated the provision of the Act. The allegations are too general in nature and the information submitted by the Informant viz., Builders Association of India also is not based on any evidence produced by the informant before the DG or before the Commission.

5.6.9 According to the OP, in the year 2009-2010, its market share was only 6.55% of the Indian Cement Market which would indicate that it does not have the market share to adversely affect the Competition in the market.

5.6.10 It has been submitted that in the present proceedings, what is sought to be inferred by the informant is that the rise of prices of cement by various manufacturers should lead to a presumption of their existing an agreement between the manufacturers to rise



prices. If an inference as sought to be drawn in the present proceedings is allowed, then the rise in prices by the members of the informant's association without corresponding rise in prices of raw materials or other factors should also lead to an inference of anti-competitive agreement being entered into by them in concert.

5.6.11 According to OP, the findings of the DG are based on suspicion of parallel pricing by the cement manufacturers. However, such suspicions are not backed by any evidence or proof of the same. DG's report also contains several general statements that are not true with respect to individual manufacturers. The allegation with respect to capacity utilization cannot be made on a general basis against the entire industry as the individual manufacturers, including it have increased their capacity utilization and not decreased the same as projected in the report.

5.6.12 The OP- 7 has in nutshell argued that the price of cement in its case is determined by the market factors and there is intense competition among the various cement manufacturers. In such circumstances to suggest that it has acted in concert would not be correct. Further, various allegations in the report made on the basis of inferences drawn about profitability of cement manufacturers are erroneous. All manufacturers have not always made profits. The entire findings against the Cement Manufacturers Association are based on general observation and without any material evidence. The reliance has been placed upon the earlier enquiry in RTPE No. 99/1990 which is not permissible in Law, as an appeal against the



said enquiry is pending before the Apex Court and interim stay has also been granted in the said appeal.

#### 5.7 Reply of JK Cement Limited (OP-8)

5.7.1 In its replies/arguments, OP-8 has submitted that it is not even named as a respondent in the information. It has been submitted that respondent No. 8 in the information is some 'JK Group', which is different than JK Cement, which is a duly constituted legal entity.

5.7.2 A grave error has been made by combining the capacity, production and market share data of another independent and unrelated company operating under the name and style of 'JK Lakshmi Cements Ltd' with it to make the so called 'JK Group'. As a result of this grave error, the entire report of the DG is vitiated and deserves to be rejected.

5.7.3 It has been submitted that its installed capacity, production and market share data should be considered independently from JK Lakshmi Cements. Its installed capacity is 7.47 million tons per annum which is about 2.6% of the total installed capacity of 286.38 million tons in the country. It is, thus, relatively a small player in the cement industry which, even by the criteria adopted by the DG does not figure even in top ten players in the cement industry in the country. This position stands acknowledged by the DG also in his own report and that is why it does not figure in any of the charts or reports submitted by DG in his report, which essentially relates to top ten cement manufacturers in the country. Further, given the



comparatively small size of its installed capacity and its dispatches in the Northern India (less than 10%) and Western India (less than 3%), it is not even a significant Regional Player.

5.7.4 According to OP-8, due to the sheer size, resources, and economic advantage of competitors, it is sufficiently constrained and does not have any significant position of strength by virtue of which it can operate independently of competitive forces. Given the relatively small size of its operations, it neither has, nor could it ever have, any influence on the prices of cement or regulating the capacity utilization in the industry. The report of the DG suffers from material and grave factual errors as far as it is concerned and therefore it deserves to be discharged from these proceedings being a small player not countable in top 10 cement companies or does not have capacity of more than 10 million tonnes which seems to have been the criteria adopted by DG to array the opposite parties.

5.7.5 The OP-8 has submitted that there is not even a whisper of any allegation nor has any relief been sought by the informant against it. In fact the prayer clause of the Information by Builders Association does not anywhere mention its name at all. The information provided by the Builders Association of India (BAI) is based on some newspaper gossips and sponsored stories by the vested interest. Builders Association of India itself has not come before the Commission with clean hands. The DG erred in neglecting the fact brought to its notice that while cement constitutes only 12% of the



input costs for the builders, they have raised the prices of their products many times over and thus have themselves indulged and are indulging in huge profiteering. Initiating investigation on the basis of information by a vested interest group would set a very dangerous trend for the future where unscrupulous entities will use the office of Commission in utter abuse of process of Law to settle their personal scores.

5.7.6 According to OP-8, it is not conclusively established that the opposite parties agreed to any particular price or on any change in the prices. The members of Cement Manufacturers Association also include some Govt. of India undertakings which also sold their cement at the then prevailing market price. It cannot be alleged that action of selling the cement by such GOI undertakings at the same price as others was consequent upon any concerted decision.

5.7.7 The OP-8 has submitted that in a cartel inquiry it is of critical importance for the investigation agency to establish the alleged members of such a cartel failing which any such allegation would only be theorizing. The investigation report has also not established that the actions of the opposite parties caused any AAEC in the market. Thus, there is no substance in the allegation of violation of the provisions of section 3(3) (a) of the Act. There is no conclusive evidence that the cement manufacturers have acted in concert to control or limit the supply or production or the market of cement. In fact the record of the inquiry would reveal that there has been a



consistent increase in the production of cement in the country over all these years and therefore it cannot be said that the cement manufacturers tried to limit or control the production or supply. Since there is no evidence to substantiate that any control or limit on production or supply existed or has been caused, there is no case of contravention or violation of section 3(3)(b) of the Act.

5.7.8 The entire case of DG proceeds on the suspicion of price parallelism by the opposite parties but the DG has failed to produce any evidence to link alleged price parallelism with a tacit agreement or understanding amongst the parties. Unsubstantiated allegations by DG cannot be the basis of any proceedings particularly when such proceedings are penal in nature resulting into levy of penalties.

5.7.9 According to OP-8, the methodology adopted by DG in selection of the "Opposite Parties" is arbitrary and discriminatory. There is no explanation about the basis adopted by DG for selection of only 11 cement manufacturers from the entire country to be arrayed as "Opposite Parties". In a cartel enquiry the least what must be done by the investigation agency is to clearly identify the alleged members of the cartel and not leave a scope for any apprehension that there has been a pick and choose of members of the alleged cartel.

5.7.10 The OP-8 has submitted that it is not a leader but a follower. It is not a dominant player and therefore certainly not in a position to influence or control or regulate either the price or the production/supply of cement in the country.



5.7.11 It has also been submitted by OP-8 that DG in his report has mentioned that in the year 2010-11 the capacity utilization of industry has come down to 73%. This is not a correct statement so far its own capacity utilization is concerned since its capacity utilization at its plant in Northern India has been around xxx% or more except in the year 2010-11 when it was xxx% because of major maintenance activity and also due to change in blending ratio from PPC to OPC. Additionally, its Southern Plant is a new facility and therefore is taking time for stabilization. However despite teething troubles for a green field project, the capacity utilization at this plant has also has gone up from xxx% to xxx%. These facts clearly prove that it has been operating its plant at optimal level and has never indulged in any practices which limits or control the production of cement in the country as alleged or at all.

5.7.12 According to OP-8, installed capacities are declared by the manufacturers on the assumption of cent percent perfection in operation and are indicative of the maximum but in reality the capacity utilization is a function of so many factors like availability of raw material, power, labour situation, demand and the like. It has to be appreciated that in today's world and age it is unthinkable that any prudent business enterprise would purposely let its capacity remain unutilized or underutilized and allow its investment in such capacity go down under.



5.7.13 The OP-8 has submitted that cement being a cyclic industry, its price like any other commodity is governed by the demand pull and differs from Zone to Zone and place to place. It is a matter of record that while the wholesale price index of the period 2005-10 for general commodities increased from 188 to 254, the cement price index increased from 162 to 209. This goes to show that there has been no abnormal increase in the prices of cement as is being projected in the report of DG

5.7.14 The Opposite Party has argued that no inference of cartelization could be drawn on the basis of price movement in a particular direction. By way of an example the OP-8 has submitted that in the very recent past, the prices of certain vegetables and cereals increased significantly all over the country. However, it would not be prudent to infer that the producers and/or traders of such goods formed themselves into a cartel to increase the prices. Such an inference would be absurd. Equally absurd is the suggestion that every time CMA held a meeting, the prices of cement increased within few hours or days.

5.7.15 According to the Opposite Party, there are 10 major players and other not so large players in the cement market and they all compete with each other. There is no chance or possibility at all for all these competing manufacturers to come together to form any cartel as alleged or at all.



5.7.16 The OP-8 has submitted that price of its products are fixed on the basis of feedback and input received by it from its marketing team and channel of marketing. There is nothing unlawful about this practice which is universally followed by most manufacturers of various other goods . The DG erred in relying upon the statement of one small local dealer to drive home the point that it is part of some alleged cartel. The DG further erred in placing un-due reliance on the fact that prices of cement moved in the same direction for all the manufactures during a particular period and thus all cement manufacturers made huge profits or indulged in profiteering. The scope of the present inquiry is only limited to the price fixing and not profiteering. If the Commission starts looking at profiteering, it would amount to importing a new concept in the Competition Law as it does not exist there.

5.7.17 Further, the allegation of profiteering, even though beyond the scope of Competition Law, is particularly rejected being contrary to the facts. It is pertinent to note that DG, while showing the net profits of all the top companies, has not included its results. This could be because its net profits from grey cement operation have actually been declining over the years. The inferences drawn by DG about profitability of cement manufacturers are on totally wrong premise and misdirected. If the profitability is projected on parameter of Return on Capital Employed, it will be observed that the profitability is not as rosy as projected by the DG and is in fact



comparable or lower than many other industries operating in the country.

5.7.18 The OP has further contended that there is also no finding against Cement Manufacturers Association (CMA) except that DG has made certain sweeping observation on the basis of "circumstantial and oral evidence". There has been no independent application of mind by DG in this matter and he seems to have proceeded with a preconceived notion that cement manufacturers are working in a Cartel. A comparison with cases in other countries is completely misplaced in as much as the findings in those cases are based on cogent evidence collected by the respective authorities and not on so called circumstantial and oral evidence as in the present case. In his entire report, DG has not brought on record even one instance or any document which would suggest that CMA is promoting or facilitating cartelization amongst its members.

5.7.19 As regards collection of cement prices by CMA, it has been submitted by OP-8 that CMA has been collecting indicative retail price range from 34 centers across the country on weekly basis under instructions of Department of Industrial Policy and Promotion (DIPP), a department of Govt. of India. Such price data collected by CMA is made available to DIPP only and is not circulated to the members of CMA. It is equally important that CMA only collects historic data of previous period which cannot be of any consequence for further price fixation by cement manufacturers.



5.7.20 The OP-8 has summed up its arguments by saying that the finding by the DG that there is "some kind of cartelization among the cement manufacturers" is too tentative to be the basis for any proceedings against CMA or its constituents. There is not even an iota of evidence of any kind against it or CMA anywhere in the report of DG except the completely unsubstantiated "circumstantial evidence" and some very vague statements / observations by DG to support his conclusions arrived at in the report. The DG failed to realize that provision of section 3(3) of the Act is based on presumption relating to appreciable adverse effect on competition. These presumptions are rebuttable in nature. There is no discussion in the DG's report that there has been 'appreciable adverse effect on competition' due to the alleged action of the opposite parties in terms of Section 19(3) of the Act which is a prerequisite and touch stone to attract section 3 of the Act. It is therefore inevitable to conclude that there was no appreciable adverse effect on competition.

#### 5.8 Reply of Century Cements (OP-9)

5.8.1 The OP-9 in its reply/arguments has submitted that although it has been described as Century Cement Ltd., its correct name is Century Textiles & Industries Ltd.

5.8.2 According to OP-9, DG has taken into consideration incorrect facts and has accordingly arrived at incorrect conclusions regarding it which renders the investigation report untenable and bad in law. The



DG has alleged that there has been a uniform increase in price of cement of all manufacturers simultaneously in various markets. However, no documents have been placed on records which corroborate the same. It has fixed its own prices and, its prices do not rise or fall simultaneously with the prices of other manufacturers as alleged.

5.8.3 It has been contended that the presumption against the Opposite Parties in the case is based on the allegation that CMA provides platform for cartelization/discussion of prices. Refuting the said allegation, OP-9 has submitted that it is not aware of any of the alleged meetings conducted by CMA where manufacturers have discussed the prices or modes or means to regulate production, supply etc. to make undue profits.

5.8.4 The DG has presumed that CMA is providing a platform for exchange of information because it has been collecting weekly retail prices of cement in 34 centres across the country. However, in arriving at said conclusion, the DG has conveniently omitted to appreciate that the said prices which are historical are not collected by CMA on its own or, at the instance of its members, but were collected under the directions of Department of Industrial Policy and Promotion (DIPP) of the Govt. of India.

5.8.5 According to OP-9, DG has examined various witnesses to come to the alleged findings of violation of the Act by the Opposite Parties. However, the findings arrived at in the report, based on the



evidence/statements of the said witnesses, cannot be adopted unless due opportunity of cross examination is afforded to it.

5.8.6 The OP-9 has contended that DG has made blanket statement of increase in cement price from 20% to 50% i.e. Rs. 50 to Rs. 89 per bag. In doing so DG has picked up and chosen figures and prices which were lowest in a particular period of a year and has compared the same with highest in the next quoted period. The said methodology adopted by the DG is totally contrary to the settled principle as one cannot compare the difference between the highest and lowest by ignoring the average which ruled throughout the relevant period. Further, the DG has placed undue emphasis on the alleged inability of the manufacturers to explain how they assess the market demand. In doing so, DG has completely ignored the fact that the manufacturers have explained that increase in price was due to demand and supply position as also market forces.

5.8.7 It has been further submitted that the DG has incorrectly alleged that though there were large additions of capacity of cement, capacity utilization of the plant has gone down since production as well as capacity utilization of its plants has increased continuously in the last four years.

5.8.8 Denying that it is indulged in any arrangement to control the price by limiting and restricting the production and supply of cement as against the available capacity of production, OP-9 has submitted that it has supplied its entire production to the market. While for the



year 2008-09, its capacity utilization was xxx%, for the year 2009-10, capacity utilization was xxx% and for the year 2010-11, the same was xxx%.

5.8.9 The OP-9 has also contended that it is also incorrect that cement manufacturers in connivance with CMA have been indulging in 'collusive price fixing'. It is also incorrect that in collusion with other manufacturers or otherwise, the OPs have divided the territory of India into the five zones so as to enable the cement manufacturers to control the supply and determine or fix exorbitantly inflated price of cement. It has been submitted that in a large country like India, it is not uncommon to refer to a particular area by virtue of its geographical location viz. North India, South India, East India, West India and Central India. Moreover, this nomenclature was prevalent even in cement control era.

5.8.10 According to OP-9, even if it is assumed that OPs- 2 to 9 collectively hold a total market share of more than xxx%, the same does not place them in a dominant position. DG has also included its name to determine the aforesaid market share. However, it denies that it ever joined hands with any of the OPs- 2 to 8 or any of the other companies to arbitrarily inflate the prices as alleged.

5.8.11 It has further been submitted that DG has reported incorrectly that its operating Profit margin in the 2008-09 was xxx% since it was only xxx% and not xxx% as alleged.



5.8.12 The OP-9 has contended that its all India production is only 3.65%. Therefore, it cannot be a market leader or cannot have maximum market share in four (4) regions out of 5 (five) as alleged. Further, increase in capacity of a plant does not necessarily mean that there has to be a proportionate increase in the production also or the plant is liable to utilize 100% increase capacity the moment capacity is available for use. The capacity of plant is increased with future requirement in mind and production is increased depending on growth in demand. The DG has placed no evidence on record to show that demand of cement had increased in market and despite the same industry had not increased the production by utilizing additional available capacities with them.

5.8.13 It has also been argued that cement being a commodity and being of uniform quality, is sold in a narrow price band. The records produced would disclose that prices of cement at times have risen and have also come down from time to time. In fact in the year 2010-11, the average all India price of cement had varied by only Re. xxx as compared to the price in 2009-10. Had, the Oligopolistic market in cement industry existed as alleged, average price of cement would have increased by much more. Consequently the theory of Oligopolistic pricing cannot be applied to the facts of the present case. The fact that the cement is a homogenous product and, being a low cross elasticity product, does not necessarily lead to the inference that the industry could increase the price without facing any significant decrease in demand for the product in market as



alleged. On the contrary because of the said nature of the product, the manufacturers have to follow the leader and sell the cement at prevailing market price.

5.8.14 The OP-9 has submitted that nowhere the DG has been able to establish that the prices were not determined by the market forces but had been dictated by the cement industry. In the event, cement industry was in a position to dictate the prices, the prices would always rise and would not come down even in lean season because the manufacturers in the said season could also have regulated the production, supply and market.

5.8.15 The OP has further contended that a comparison of the prices of the year 2010-11 with 2009-10, would disclose that average price have in fact decreased by 2%. The DG has alleged that the economic analysis of price data shows that there is a very strong positive correlation in the prices of all the companies and the correlation coefficient of absolute prices of cement of all the companies confirm the price parallelism. However, cement being a homogeneous commodity is sold and can be sold only in a very close price width band. The prices in the market move upward or downward almost together depending on the market forces at the relevant time. Consequently to assess and to infer cartelization based on price parallelism in the cement industry is unfounded. In almost all the markets the prices of commodity which has the same quality move in the same pattern. Adoption of coefficient ratio of more than



0.5% to allege price parallelism also does not hold good in a product like cement where the price admittedly move in close range.

5.8.16 According to OP-9, the conclusion regarding capacity expansion and utilization is totally erroneous since capacities in an industry are not increased to be utilized immediately. If there is a higher than required increase in capacity, utilization of the capacity would naturally be proportionally less if the demand growth of product has not increased proportionately. It is not the case that the cement market grew proportionately to the increase in capacity or that if 100% capacity was utilized, still there was a market for cement and production would have been consumed or that because of only 73% utilization of the increased capacity, cement was in short supply in the market.

5.8.17 The OP-9 has contended that DG has observed that there was no reason for slowing down the growth rate of cement production. However, no industry is expected to produce more than what market can consume/ absorb. If the DG intends to make out a case on low growth rate of the production of the cement in the year 2010-11, it is obligatory for DG to place on record figures which disclose that in 2010-11 demand of cement was more than production.

5.8.18 As regards abnormal price rise, OP-9 has submitted that allegations are misleading. In fact average price increase from the year 2009-10 to 2010-11 was even less than Re. 1. The DG has purposely not calculated all India average since if the all India



average is compared; there is a negligible increase of less than Re. 1 in price of cement.

5.8.19 According to OP-9, findings of DG are based on the facts which are wrong and are based on lack of understanding of the functionality of the cement industry in a holistic way. In no way, it has infringed section 3 of the Act. The alleged increase in price of cement does not affect competition adversely, as the manufacturers are free to sell their product in market of and, at a price of their choice. It cannot be said that a large number of producers in Public and Private Sector, their dealers, retailers etc. which form cement industry would form part of a cartel. It is a matter of record that capacity utilization of different companies has continued to vary between 56% and 98%. In case of cartelization, such a situation will not be possible. It has also used its capacity to maximum and has marketed its entire production. Denying vehemently its involvement in any alleged cartelization, OP-9 submitted that inquiry against it must be dropped.

#### **Reply of M/s Madras Cements Limited (OP-10)**

5.9 Reply/arguments of Madras Cements advanced in course of hearings, in brief, are as under;

5.9.1 It has been submitted by Madras Cements that the report of DG is vitiated by irregularities in methodology and procedure of investigation. There are incomplete, incongruent and fragmented



facts and figures that have been referred and relied upon to arrive at illogical conclusions regarding priced parallelism and cartelization.

5.9.2 It has been further submitted that the market share of the five large cement companies is 50.58% and the concentration ratio of the top eight manufacturer amount to 62.97%. Since it has a market share of 3.38% only, there is no incentive for the large manufacturers to join hands with it form a cartel. Hence, there is no basis for alleging that it is part of the national cartel, even if such a national cartel were to exist.

5.9.3 The stance of the DG is inconsistent in the report wherein, the analysis of the industry is done on a national level but certain parts of the nation such as Tamil Nadu are ignored for regional analysis which clearly vitiates the entire report. Moreover, the definition of the market has been constantly shifted by the DG in his report and therefore there is no consistent case made out in it.

5.9.4 According to OP-10, the statements of third parties, sought to be relied upon to support the alleged coordinated behavior between the cement manufacturers, is wholly immaterial in as much as none of the said third parties have even professed, to be privy to the price fixation policies of the cement manufacturers or the CMA. Furthermore, the said third parties are builders, cement dealers and highway contractors, whose motives, as that of the BAI, are highly questionable.



5.9.5 The OP-10 has submitted that the first and foremost step in an acceptable methodology towards investigating allegations of cartelization would be to identify the period during which the cartelization was alleged to be in operation. There cannot be a general allegation that throughout all the years and all the time, uninterruptedly cartelization was under operation. In the present case, the failure on the part of the informant, and furthermore the DG in its methodology, in defining the period for investigation for cartelization, being a necessary pre-requisite for formulation of the methodology, has rendered the procedure for investigation unsustainable.

5.9.6 It has further been contended that the DG has totally failed to analyze the role of financial institutions who are the major stake holders and nothing has been brought on record as to any understanding so arrived between manor shareholders of each manufacturer to act in the same direction for fixing the priced or controlling the output.

5.9.7 According to OP-10, the prices of cement quoted for comparison and analysis in the DG report do not show nor confirm that the said prices refer to the same quality and grade of cement. The methodology adopted by the DG on the premise that the cement is only of one quality is factually incorrect. Further the cement is sold in different forms like Bulk Cement (without package), Bagged



Cement. In bulk cement there is no package cost. In the report it is not known as to whether the prices pertain to bulk cement or bagged cement. Moreover, in the bagged cement, the bags are of different types, like Paper Bags, high density polyethylene bags, etc. The cost of bags between paper bags and polyethylene bags vary about from Rs. 5 to 7 per bag. The lack of uniformity in standard and character of pricing adopted for comparison and analysis has resulted in erroneous conclusions in the matter.

5.9.8 DG has deliberately neither examined the capacity utilization nor the prices of cement companies belonging to the public sector such as Cement Corporation of India. The reply of Cement Corporation of India has showed that Cement Corporation of India has also been conducting weekly market survey to fix their prices. Furthermore, their total installed capacity is 3.90 MMT and the production for the year 2007-08, 2008-09 and 2009-10 is 0.90MMT, 0.95MMT, 0.96 MMT respectively. That being so, the capacity utilization of Cement Corporation of India is 23%, 24.35%, 24.61% only for the year 2007-08, 2008-09 and 2009-10 respectively. DG has not given any consideration to this important fact and evidence.

5.9.9 The OP-10 has argued that to undertake an effective analysis and arrive at a conclusion on the issue of existence or otherwise of a cement cartel, the DG ought to have studied the dynamics of the market vis-à-vis the experience and disclosures so made by government companies, which he has wholly failed to do. DG has not



mentioned Cement Corporation of India and other government cement companies because on highlighting the production, dispatch and price trend of such companies in their analysis, DG would not be able to bring such a report to fix private players at the behest of the influential builders association which is trying hard to pressurize the cement companies to supply them cement at a price which is not economically feasible.

5.9.10 Further, according to OP-10, behavior of dealers of cement has not been analysed who are the most important as they constitute a crucial link in the chain to fill the gap between the demand and supply and they reap the cash benefit immediately. The stock movements by the retailers are also crucial in realizing process by the retailers. No study has been conducted by DG at the retailer's level as regards prices and stock levels with them at different points of time..

5.9.11 According to OP-10, the criteria for choosing top companies based on installed capacity by DG is debatable and questionable. Further, analysis of price and production figures for each state will vary as price varies from state to state. Therefore, different investigations ought to have been undertaken for different markets and zones. DG has failed to adopt proper tools to identify cartelization and has adopted proper structural and behavioural methodology. DG has simply computed capacity utilization in



percentage over installed capacity, including new added capacity and capacity of grinding units. It is pertinent to note that added capacity is at the end of year and yields into negligible production. Further such capacity addition has gestation period to stabilize the plant and for small increase in expected demand, the cement company has to install a minimum capacity of 2 million tonnes per annum, subject to various parameters. Thus, the capacity utilization so calculated would be a misleading yardstick to map production trends, particularly when in last three concerned years many of the players have added substantial capacity. No prudent industry would cut the production in collusion and run into loss.

5.9.12 The OP-10 has submitted that the DG has sought to rely primarily upon five economic factors, namely, (i) high profit margin, (ii) absence of co-relation between increase in price and increase in demand, (iii) absence of co-relation between increase in price and increase in input costs of production, (iv) price and production/dispatch parallelism and (v) under utilization of production capacity, to infer the existence of an agreement among the Opposite Parties with a view to fix/control price and obtain unreasonable profits. Such actions in terms of each of the aforesaid factors can very legitimately be justified as independent decisions taken by a prudent businessman with a view to maximize his or her profits and they cannot be said to conclusively establish the existence of an agreement actionable under the provisions of the Act.



5.9.13 According to OP-10, it is settled law, and in fact admitted in the DG's Report itself that Parallelism, even in the absence of any correlation of the same with change in demand and input costs, as alleged, is, at best, only indicative of the existence of a practice of following/imitating the price changes of competitors. Such actions, in the context of the cement market, being oligopolistic in nature and characterized by inelastic demand and standardized and undifferentiated products, would be justifiable as a prudent business decision. A conclusive inference of the existence of an agreement based on such factors is therefore wholly unsustainable.

5.9.14 It has also been argued that the allegations of earning super normal profits by the Opposite Parties is baseless. The DG has given the finding that over the five years the cement price has been doubled from Rs. 150 in 2005 to Rs. 300 in 2011. However, its prices have been showing substantial downward trend since May 2009 upto December 2009 and also from May 2010 to August 2010 and again in November and December 2010. These figures are contrary to the purported trend of increasing prices and profits as sought to be portrayed by the DG in his report.

5.9.15 Further, the cement industry being a capital intensive industry, a realistic measure of profitability would only be in terms of return on capital. The adoption of the margin of sales criteria by the DG for evaluation of profitability is therefore itself misleading. While



its own sales has continuously increased from Rs. 2011 crore in the FY 2007-08 to Rs. 2456 crore in FY 2008-09 and then to Rs. 2800 crore in FY 2009-10, the net profit in % has been going down from xxx% in 2007-08 to xxx in 2008-09 and then to xxx% in 2009-10. Further the net profit % over investment figures has come down from xxx% in FY 2007-08 to a mere xxx% in the FY 2010-11. In fact, in the present market, where the rate of interest is around 12%, the average returns ranging between xxx to xxx% is itself not abnormal. The contention, therefore, that it is maintaining very high margins and earning super profits is wholly baseless and false.

5.9.16 According to OP-10, all its plants in Tamil Nadu are operating much above the optimum level and there is no restriction in production and supply. By quoting wrong and higher installed capacity and lesser production figures and also by aggregating the production of the plants in Karnataka and Andhra Pradesh along with the plants in Tamil Nadu, which had consistently very high capacity utilization, the DG has distorted the overall capacity utilization, instead of looking at specifics. Further, the capacity utilization is a multi-stage process. But the DG has considered the capacity utilization only when the cement is finally produced. A stage prior to cement is "clinker" which is 70% processed product towards the capacity utilization, but DG has failed to take the same into its consideration for capacity utilization analysis.



5.9.17 It has been further submitted that the DG while placing reliance upon data with regard to capacity additions and low capacity utilization by it in the year 2010-11, fails to take into account the fact that such capacity additions have taken place during different points in the year. Accordingly the said capacity additions may not have been available for utilization by the company for a substantial portion of the year. Furthermore, such capacity addition in the form of a new plant takes a certain period of time to stabilize, as a result of which the effective production capacity of the additions would be very low. Accordingly, DG has wrongly analyzed the fact that the production has not gone up in proportion to the installed capacity and has drawn a conclusion on the restriction of the output.

5.9.18 According to OP-10, the conclusion regarding capacity utilization is unwarranted because of erroneous presumption that the day the capacity is increased, it must yield production. Technically there is gestation period for stabilizing the operations and it takes two to three years to stabilize the plant from the date of installation. Therefore, the date of capacity utilization in comparison to installed capacity in the year of the installation is not a yardstick at all to measure as to whether and how much restriction in output has been there as far as cement industries are concerned.



5.9.19 The OP has brought out that there have been reasons why it has underutilized its production capacity from time to time stating that stock of around 13,000 tonnes had gone waste in the year 2010-11 for being unable to be sold in the market in time. Further, limited storage capacity of the each cement company and limited godown capacity of the retailers, shortages in availability of key raw material, power scarcity, break down of the machinery or stoppage of plant for up-gradation, high inventory level of clinker, logistic constraints, labour disturbances and seasons of low demand also were legitimate and genuine business considerations for lower capacity utilization.

5.9.20 The OP has submitted that DG has not worked out as to what should be the reasonable capacity utilization due to the aforesaid factors before accusing the cement companies for indulging into cartelization by restricting the output for not operating their plants at optimum level. There has been no allegation by the complainant and no finding by the DG that OP has not supplied its product to any buyer who had wanted its product.

5.9.21 The OP-10 has also argued that the DG has also arrived at a wholly erroneous conclusion that the cement manufacturers regularly monitor and respond to price changes by competitors as part of their policy on price fixation. Far from being influenced or guided by price changes introduced by competitors, its pricing policy



is aimed at covering fluctuations in input cost as also taking the benefit of production efficiencies and demand. The price also factors in the premium that customers would be prepared to pay for the reputed 'RAMCO' brand. DG has made a mistake by not conducting any study at what price the cement has been sold by retailers to customers. Had he done so, the study would have shown the extent of absorption of increase in price in the market which would have justified the increase or decrease of price of the cement affected by the manufacturer.

5.9.22 According to OP-10, adverse inference drawn by DG regarding process of decision making on price is unjustified. DG has raised an adverse inference on account of the price decision making process not being formal, methodical and documented. However, the price decision process has never been a practice in cement industry. Merely because the price decision process is not documented, the DG has inferred cartelization, which is misconceived. Moreover, the decision about prices in its case are communicated verbally and also through its Enterprise Resources Planning (ERP) system. Its ERP system at any point of time shows at what price cement is invoiced to the dealers.

5.9.23 In its submissions, OP-10 also argued that the analysis pertaining to price parallelism is faulty and misleading. For instance,



while mapping the data on price levels between the competitors in the State of A.P. the DG has consciously excluded data pertaining to it, even though it is recognized by the report itself as a leading player in the said market. The DG report itself, only concludes that there is parallelism in terms of the direction of movement of prices. In fact, a reading of the data as produced and relied upon by the DG itself shows that the prices between the various competitors operate within a bandwidth and do not lend themselves to identity in price levels. In the context of a commodity like cement, which is a low value commodity, the absence of identity in price levels even amongst the market leaders defies any conclusion regarding the existence of parallelism, more so a conscious one.

5.9.24 According to OP-10, analysis of co-relation of production is also selective and faulty. In Karnataka state, it has been included among four companies, but in the coefficient study, its name has been dropped. Further, no study has been made at all for Kerala market. DG has selected the company, figures and players that suit his objective to map co-relation in production. In Andhra Pradesh, the state where maximum cement is produced being about 20% of the total cement in India, only 4 companies namely India Cements, Kesoram, Ultra Tech and Madras Cements have been considered but remaining players have been left out. The DG has not provided any reason for dropping the companies like ACC, ACL, Chettinad and Dalmia in particular when DG had the facts and figures of these



companies and these players had been shown in the DG report as having maximum market share in the Southern Region.

5.9.25 The OP has further submitted that there is no demonstrable dispatch parallelism in its respect. The DG has mapped dispatch patterns of cement in 2009 & 2010 in an attempt to demonstrate dispatch parallelism. However, the summary of the increase and decrease in dispatch in its respect that out of 24 months selected by DG, its dispatch trend shows a different trend in 17 months as compared to the 11 other companies proceeded against by the DG for investigation. Out of the aforesaid 17 months, it is only five times that all the industries/players increased their dispatch and it is only for two months that the players have decreased the dispatch showing the fluctuations in demand. Out of these two months showing decrease in dispatch, price was also reduced in one month (November 2010). This shows that there is no correlation in its dispatch patterns with other players.

5.9.26 On the lines of the other Opposite Parties, OP-10 has also denied existence of a cartel under the auspices of the CMA stating that the Report of DG contains no proof whatever to show that prices/price changes from part of the discussion of members of the CMA at its meetings. It has also been submitted that while it remains a member of the CMA, it has not attended meetings of the CMA over the last two years. Further, it does not receive price information of



competitors through the CMA. Therefore, the question of it being involved in any price fixation negotiations/decisions allegedly being conducted under the auspices of the CMA does not arise.

5.9.27 Even assuming without admitting that there exists an agreement between any/all of the Opposite Parties, the facts and materials relied upon by the DG fail to establish that the same has caused or is likely to cause an appreciable adverse effect on competition within the meaning of Section 3 read with Section 19(3) of the Act.

5.9.28 In view of the arguments as above, the OP-10 has prayed that the Commission may declare that it is not guilty of violation of section 3 of the Act and accordingly the Commission may decide to close the instant proceedings against it.

#### 5.10 Reply of Binani Cements (OP-11)

5.10.1 The OP-11 has submitted that since it has not been named in most parts of the investigation report, its name should be deleted as a respondent from the investigation report. Further it is settled law as held by the Supreme Court in several cases that no cognizance can be taken of newspaper reports and therefore inquiries should be dropped in the case.

5.10.2 It has also been submitted that the information filed by the Builders Association of India was directed against the multinational cement companies and major players in the market. The limited



ambit and scope of the investigation has been wrongly extended in a manner so as to include several cement companies including the OP. This action is clearly without jurisdiction and contrary to law.

5.10.3 According to OP-11, the DG does not have the jurisdiction to extend the period of investigation, which was confined, if at all, to the period 2005 to 2006. The DG, CCI can only act under the supervision of and directions of the CCI and consequently does not have any power to extend the period of investigation from 2005 to 2011. The unilateral, arbitrary and illegal extension of period of investigation by the DG, CCI is clearly contrary to the provisions of section 41 of the Competition Act.

5.10.4 According to the OP, the report has ignored the fact that there was an entry of multinational companies in the domestic cement industry and consequently there was intense competition in the cement market amongst the different players. Further, it does not attend meetings of the Cement Manufacturers Association in general and is not a member of the high powered committee of the Cement Manufacturers Association. Any suggestion made of meeting of mind between it and other cement manufacturers is, therefore, wholly misconceived and baseless.

5.10.5 It has also been submitted that there is no clear and specific allegation made against the OP to show contravention of the Act. An allegation of improper conduct has to be set out with particularity. In the present case it has not even been named in most of the parts of



the investigation report. Further, merely because the information (Case No. 29/2010) has been filed does not empower the DG to extend the period of the investigation which was earlier limited to the period 2005-2006 in the case before MRTTP.

5.10.6 According to the OP, the contents of the investigation report are misconceived, incorrect and therefore denied. It sells cement on a principal to principal basis to the dealers and retailers, who are supplied cement against order booked through the market organizer for the territory. The OP does not have any dealings with the members of the Builders Association of India and consequently no grievance can be made by any of the members against it. There is no privity of contract between the OP and any of the members of the Builders Association of India. It sells cement on a principal to principal basis to the dealers and retailers who in turn sell the same to the customers included the members of the Builders Association of India.

5.10.7 The OP has further submitted that it has an All India market share of only 2% and there are several Cement Companies with higher market share who have not been impleaded in the present report. The principal allegation against the Cement Manufacturing Companies is that they have resorted to unfair trade practices by under production or choking up supply in the market thereby raising the sale price. It has also been alleged that the cement manufacturers are indulging in profiteering. The allegations on the



face of it are self-contradictory in as much as, they can't be an under production and choking up supplies. The two are mutually exclusive and therefore the basic premise on which the investigation has been done is faulty and therefore bad in law.

5.10.8 According to the OP, the investigation as carried out by the office of the DG suffers from serious and inherent contradictions. Reliance of the DG is based on irrelevant; un-verified material and data in arriving to his conclusions. The report pre-supposes that it is a member of the cartel and proceeds thereon, leaving the inquiry a mere mechanical exercise whereas the DG is to assist the Commission into an independent inquiry as in order to determine the veracity of the information as provided by the informant. The methodology adopted by the DG, with respect, is riddled with contradiction and the basis set out by the DG himself in the methodology adopted for conducting the inquiry has not been followed.

5.10.9 It has been submitted that the DG has made fundamental error both in law and fact in his report. He has neither examined its actual market share nor has he examined or enquired about into the total installed capacity of the cement industry.

5.10.10 The OP has further argued that the DG has chosen to rely upon the report of Tariff Commission without even providing a copy of the said report to it. Moreover, the Tariff Commission itself has expressed its inability to come to any conclusive finding qua the



cement industry. Therefore, the reliance upon the same is misplaced and any finding based on the report is flawed being perverse and contrary to law.

5.10.11 According to the OP, data relied upon by DG is itself self contradictory with regard to its market share. According to DG's report, market share of about 21 players control about 90% of the market whereas later on in the same report wherein extracts of the Tariff Commission has been relied upon by the DG in his report, it states that 23 companies command about 70% of the market share.

5.10.12 DG has admitted that there are 49 large cement industries in India but has chosen to examine only 11 without giving any reason as to why selectively it has been included in the report. It is pertinent to mention that in spite of noticing that there are 49 large cement industries in India, the DG has neither analyzed their market shares nor their market behavior but has arbitrarily and whimsically chosen the 11 companies.

5.10.13 It has further been contended by the OP that the DG has chosen to make assumptions and presumptions without actually relying upon any authentic verified data nor examining the cement industry. It is admitted case that it operates in the territory of Rajasthan and Gujarat. If demand is so high in these areas of Rajasthan and Gujarat then what was needed to be examined by the DG and same had not been examined was how many other players are there in the said region. In spite of the fact that it operates only



in regional territory of Rajasthan and Gujarat, DG has chosen to find it as a member of alleged National cartel. It is quite surprising as to how it can be operating as a member of the cartel in the areas where it is not even operating a business.

5.10.14 According to OP-11, the DG has issued summons to certain manufacturers in order to examine them as witness in the light of allegations levelled in the case. However, the DG has not examined these statements in the context of allegations and finding in the report and has merely recorded the statements in grave violation of the principle of natural justice.

5.10.15 According to the OP, DG has relied upon the judgment of the MRTP Commission wherein 44 cement industries have been alleged to be members of a cartel. It is not a party as one of the 44 companies where MRTP Commission has found to be a case of cartel. The OP has submitted that the report of the DG proceeds on an erroneous assumption that there is a deliberate attempt to under utilize the installed capacity to control production and withhold supplies. For the said purpose the cement produced has been compared with the installed capacity of the grinding mill to allege that the production has reduced over a period of time, although there was no corresponding reduction in the demand.

5.10.16 The OP-11 has submitted that DG has completely overlooked the most important factor in the production of cement, i.e., the clinker manufacturing capacity of the cement plants. The clinker



capacity is the determining factor for the production of cement. Clinker is the "the limiting factor" as well. Unless a cement company has a proportionate clinker production capacity vis-à-vis its grinding capacity, the installed capacity to produce cement by crushing clinker is irrelevant and cannot be looked into.

5.10.17 According to the OP, its capacity at the relevant time to produce clinker was 4 lac MMT. However, its cement production capacity by crushing the clinker along with gypsum and other additives was 6.25 lac MMT. The cement as noticed in the report is of various grades like OPC, PPC etc. Therefore, the total quantity of cement produced will depend upon the grade of cement that is manufactured during the year.

5.10.18 The OP has averred that the maximum cement that could have been produced by it on an assumption that it had utilized 100% (i.e. 4 lac MMT) of its clinker capacity could have been only 5,25,000 MMT, although its capacity was 6.25 lacs MMT. Merely because it has produced 5.25 lacs MMT tonnes as against its capacity of 6.25 lacs MMT tones it cannot be alleged that it has underutilized its capacity, in as much as the clinker, which is the limiting factor has been fully utilized to its installed capacity in the production of cement.

5.10.19 The OP has also submitted that the market share data referred to in the report is not consistent. The DG has not denied that its market share is hardly 2%. With such insignificant market



share it cannot control the market and there can be no impact on competition. The allegation that it has been operating at a profit margin of more than 25%, is also incorrect.

5.10.20 According to OP-11, it had suffered net loss on cement sales for years 1991-1999, 1999-2000, 2000-2001 and 2002-2003. A statement for the years 1997-1999 to 2010-2011 shows that its financial position over a period of 14 years was extremely poor. It would be therefore wrong on the part of the DG to examine the profit for a few years without taking into account the financial position for the entire period as mentioned in the statement.

5.10.21 With reference to the finding that average retail price of cement had increased in Delhi to Rs. 280 per bag in March 2011 and the whole sale price increased from Rs. 149 in Jan 2005 to Rs. 161 in Feb. 2005, the OP has denied stating the same to be incorrect.

5.10.22 The OP has further submitted that the finding of DG that price changes are due to external factors like cost, production and efficiency, does not apply to it as is clear from the statement of Mr. P. Acharya where he has clearly stated that increase in price has a direct correlation with the cost of production, volume data/stock available from the marketing network and freight charges. The inference made by the DG that it was reluctant to produce documents relating to price increase decision is totally unwarranted and baseless since the documents asked for were produced by it.

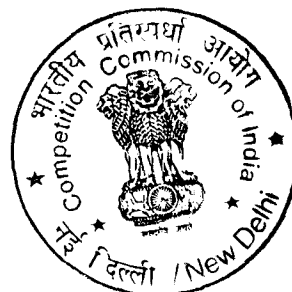


5.10.23 The OP-11 has submitted that the statements of other respondents have been extracted to arrive at conclusions as regards price parallelism which would be clearly inapplicable to it. The economic analysis of price parallelism, charts and graphs used in the report of DG do not even refer to it and therefore conclusions drawn would not apply to it.

5.10.24 According to OP, the conclusions regarding non-utilisation of full capacity is not applicable to it since its production has increased from 2.96 million ton in 2008 to 4.29 million ton in 2009 and 5.28 million ton in 2010. There is absolutely no dispatch parallelism in its case since its dispatch is almost in a straight line.

5.10.25 The OP-11 has contended that it has not been named as leader in different markets. The allegations viv-a-vis the purported price increase pre and post the High Powered Committee meetings of the CMA are incorrect since it was not a member of the High Powered Committee and did not attend any of its meetings.

5.10.26 The OP summed up its arguments by stating that the report of the DG does not establish any violation of law and the investigation, analysis and conclusions are contradictory, inconsistent, incomplete and do not leave any no doubt that it is not in violation of any provisions of the Act. Hence the information vis-a-vis against it must be dismissed.

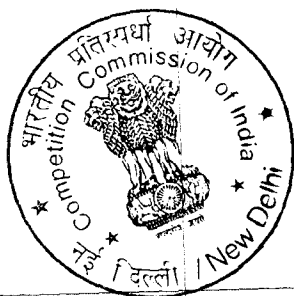


### 5.11 Reply of Lafarge India Pvt. Ltd.(OP-12)

5.11.1 Lafarge India Pvt. Ltd. (OP-12) in its replies has contended that it is neither a party to any agreement under section 3(3) of the Act nor has it indulged in any other form of anti-competitive practices recognized under the Act. It has also submitted findings of RBB Economics along with its reply.

5.11.2 The OP-12 has stated that the DG has selectively relied on the oral and written evidence submitted by witnesses, including cement distributors and buyers without providing it with an opportunity to cross-examine such witnesses. The DG has placed significant reliance on the oral and documentary evidence submitted by the informant and other parties and much of the DG's case against it and other "top cement manufacturers", rests on the averments made during such oral testimony. The Commission has not however, provided it with an opportunity to cross-examine the informant or the other parties that were interviewed to test the veracity of their claims and assertions.

5.11.3 As per OP-12, in order to show an infringement of section 3(3) of the Act, it was incumbent on the DG to show that the participants have entered into an "agreement", as defined in Section 2(b) of the Act, which has not been done. Consistent with antitrust laws around the world, the Commission has to show at the very least, that the



competitors discussed competitively sensitive matters and arrived at a common understanding about their future conduct.

5.11.4 It has been submitted by OP-12 that it conducted its competitive behaviour independently and has not discussed competitively sensitive information with competitors. Potentially as a consequence, the DG has failed to explain, in unequivocal terms, the parameters of any agreement and has supported his assertions by illegitimately adducing economic speculation and allegations from other jurisdictions. These attempts are improper and also not factually accurate.

5.11.5 According to OP-12, it conducts its commercial and competitive behavior autonomously and independently and does not rely on competitors or trade associations for competitive intelligence. DG has failed to show that the major cement suppliers discussed competitively sensitive information. The only example of contact between competitors referenced by the DG's Report is in the context of the Cement Manufacturers Association of India ("CMAI"). The DG in his report has alleged that the "CMA has been collecting weekly retail prices of cement in 34 centers across the country to submit indicative prices to the Department of Industrial Policy and Promotion (DIPP)" and that the CMA "through its high power committee meetings provides a common opportunity for discussion for top cement companies". This statement is not sufficient to show that the top cement companies discussed competitively sensitive



information. Moreover, it has no involvement whatsoever in the collection of retail prices and does not discuss or exchange these with competitors. It neither reviews nor verifies the pricing data. It never discussed competitively sensitive information at any meetings of the CMA. As per OP-12, its employees are trained not to discuss competitively sensitive matters with competitors and they do not do so.

5.11.6 As per Op-12, the DG has not cited a single incident or minute of a CMAI meeting where there is evidence of a discussion on prices or competitive conduct. The CMA's collection of retail price information is not a platform for anti-competitive information exchange but rather a legitimate Government mandated system that the CMA is duty bound to follow. The CMA has an active competition compliance policy and has sought legal opinions from three eminent lawyers to ensure that its practices do not breach the provisions of the Competition Act.

5.11.7 It has also been submitted that DG's Report refers to a breach of the provisions of the Competition Act by the "top Cement manufacturers" but fails to demarcate clearly the terms of any alleged agreement, identify the alleged cartel participants, the duration of the agreement, when competitively sensitive information was discussed, and what the terms of the agreement were. This is particularly noticeable since even when it has a share of around 3%, it is nevertheless regarded as a "top cement manufacturer while



many other cement manufacturers that have a comparable share have not been listed as a "top cement manufacturer.

5.11.8 It has further been submitted by OP-12 that DG's economic speculation is flawed and does not apply to it. The DG has sought to support his allegation that the Indian cement industry is cartelized by suggesting that certain economic factors are present in terms of price parallelism, super normal profit, low capacity utilization, and production/dispatch parallelism. However, it is a settled principle of law in India, Europe, the United States, and elsewhere that economic factors such as price parallelism are not, in themselves, sufficient to establish the existence of a cartel agreement.

5.11.9 Further, DG's economic findings are not based on accepted legal and economic theory and suffer from basic flaws. Accordingly, the results are inaccurate and unreliable. Even if all the features identified by the DG i.e., price parallelism, super normal profits, low capacity utilization, production and dispatch parallelism were to exist, they would nevertheless be the result of and consistent with, dynamic effective and strong competition.

5.11.10 According to OP-12, DG has sought to argue that certain economic factors (e.g., price parallelism) are circumstantial evidence that clearly indicate the meeting of the mind and coordinated activities. However, accepted legal and economic theory prescribes



that price parallelism is entirely consistent with competitive behaviour and is not sufficient to show an infringement. DG's approach finds no basis in legal or economic theory. Where firms are competing intensely, an increase in demand will induce them to increase their prices at the same time. Likewise, as demand falls, suppliers reduce their prices. Prices, therefore, may move together in a competitive market simply due to the cyclical nature of demand.

5.11.11 OP-12 has also denied existence of any dispatch or production parallelism. To the extent that parallelism exists, it arises from external market forces and not due to collusion.

5.11.12 It has also been stated that it has not underutilized its capacity. The DG has sought to assert that Indian cement companies have regulated the capacity utilization in the last 3 years. This allegation simply does not apply to it, whose capacity utilization rate in the last 3 years has been: xxx% (2008), xxx% (2009), and xxx% (2010).

5.11.13 The OP has also contended that it has not made super normal profits, contrary to the assertions of DG that cement companies have made "very good profit since last 4-5 years." Industries characterized by high fixed cost investments such as cement require a reasonable return on capital employed so as to enable further investment in capacity expansions. It has increased its capacity in India from xxx million tonnes in 2007 to xxx million tonnes in 2010, is in the process of commissioning a 1 million tonne plant in



Jamshedpur, and a xxx million tonne plant is under construction in Rajasthan in Karnataka, Himachal Pradesh and Meghalaya. Once these investments are accounted for, it is clear that it has not made super-normal profit.

5.11.14 Further, DG has sought to advance a theory of price leadership but has failed to set out a coherent model and, moreover, failed to substantiate that such a situation exists. DG has simply ignored case law from European and US courts suggesting that forms of price leadership are legal and credible forms of competition.

5.11.15 OP-12 has argued that a cartel agreement may not be inferred from practice elsewhere. The DG is charged with investigating an alleged infringement of section 3 of the Competition Act in India and must, therefore, look at the situation prevailing in India at the time of his investigation. It is improper to place reliance on the baseless and incorrect assumption that cartelization in cement industry has been detected and established all over the world.

5.11.16 Further, DG has failed to evidence that any appreciable adverse effects have occurred in India since cement prices have increased at a rate slower than inflation and output has increased dramatically industry wide. Further, customers have also benefited from improved product innovations and technology in cement and from increased reliability from suppliers such as Lafarge.



5.11.17 The OP-12, in view of its aforesaid submissions, has requested that the DG's Report be disregarded in its entirety, and investigation against it must be closed. It has submitted that there is no merit in the findings of DG and Commission must set aside the Report completely as the same is based on an erroneous interpretation of the Act.

#### Reply of the Informant

5.12 Builders Association of India (the informant) in its reply reiterated its allegations stating that being among the largest group of consumers of cement in India; its members would bear the biggest setback due to the acts of cartelization leading to increased prices and stalled supply and production of cement. Its submissions, in brief, are as under;

5.12.1 The informant has brought out that it is clear from the report of DG that the OPs have been involved in anti-competitive practices including cartelization and have been found guilty by the Monopolies and Restrictive Trade Practices ("MRTP") Commission under RTPE 99/1990 and RTPE21/2001. The cement manufacturers have been found in violation of Competition laws (cartelization, resale price maintenance, controlling production etc.) across the globe. The cement manufactures are habitual offenders and have been penalized in several jurisdictions.

5.12.2 It has further submitted that some of these international cement manufacturing companies owing to high demand and heavy



profits have also acquired controlling stake in several Indian cement companies. Holcim group has acquired stake in ACC and Ambuja Cements Limited (ACL). Lafarge has acquired cement business of Tata's and Raymonds. Other notable entrants in India are Italcementi, Heidelberg, Cimpor, CRH plc and Vicat. Holcim, Lafarge, italcementi and Heidelberg among other have been involved in anti-competitive activities including cartelization and price fixing; and have been penalized millions of dollars on several occasions.

5.12.3 Most OPs (whether members of CMA or not) have admitted to participate in CMA's meetings and /or exchange commercially sensitive information (including prices) over phones. Therefore, there is no refusal towards participation in meetings or exchange of commercially sensitive information. The meetings organized by CMA influence the market behaviour of the competitors and in fact they act in concert to increase the prices, regulate production and supply of cement in the market. Apart from identity of prices, OPs have also participated in curtailing production in order to demand higher prices.

5.12.4 ACC and ACL have claimed that they were non-members of CMA and therefore cannot be part of any agreement for fixing of prices, resale price maintenance, cartelization and abuse of dominant position. However, both ACC and ACL have admitted participation in several meetings of CMA including February and March 2011 meetings. Further, both ACC and ACL have been exchanging



commercially sensitive data/information with CMA, without raising confidentiality concerns, which have been raised before the Commission.

5.12.5 The informant has contended that the findings of DG establish that the Opposite Parties are acting like cartel and therefore they must be proceeded as per the provisions of the Competition Act, 2002.

#### **Decision of the Commission**

6. The Commission has carefully gone through information, report of the DG and averments of various parties in the instant case. The Commission notes that in addition to substantive issues involved in the matter, the Opposite Parties have also raised certain preliminary objections.

6.1 Before determination of the substantive issues, therefore, the Commission deems it proper to deal first with the preliminary objections raised by the Opposite Parties in the matter.

#### **Issue of jurisdiction**

6.1.1 An objection has been raised by the Opposite Parties challenging the jurisdiction of the Commission on the ground that the DG could not have investigated into allegations and considered, looked into data pertaining to a period prior to May 20, 2009 i.e. the date from which the provisions of section 3 of the Act were brought into force. The Commission, in this regard, observes that it is true that the DG has referred to the data of the cement industry relating



to the installed capacity, production, utilization, dispatch, prices and profit margins for period prior to May 20, 2009, the date with effect from which the provisions of section 3 of the Act have been made effective. However, the DG has not only relied upon the data pertaining to a period prior to May 20, 2009, but also upon the data after that date. Moreover, the DG has relied upon data of earlier period only to relate them to dynamics of the industry as a whole and conduct of the parties in general. Mere examination of data belonging to period prior to May 20, 2009 cannot be construed to mean that the provisions of the Act have been applied retrospectively.

6.1.2 Moreover, if the effects of an act/conduct, prior to May 20, 2009, continue post notification of the provisions relating to anti-competitive agreements, the Commission has the necessary jurisdiction to look into such conduct as also been affirmed by the Hon'ble High Court of Bombay in Kingfisher Airlines Limited v. Competition Commission of India, W.P. No. 1785 of 2010.

6.1.3 The Commission observes that it is not a case that DG has only used data pertaining to a period prior to May 20, 2009. The findings of DG place reliance upon data after May 20, 2009 also and data prior to that have been used only to conduct analysis which appears to be necessary for delineating the market construct and conducting competitive analysis of cement industry in a holistic perspective. It is not a case where data belonging to period prior to May 20, 2009



have been used and based on that infringements of the Act have been established relatable to that period.

6.1.4 The Commission observes that while determining contraventions of the provisions of section 3 of the Act, the Commission has the jurisdiction to rely on material, data and conduct of the parties and the industry under investigation relatable to a period anterior to the said date and no infirmity can be alleged on this basis either in the investigation conducted by the DG or to the proceedings before the Commission on this ground. The Commission, accordingly, holds that the plea raised by the parties on this count is misconceived and not tenable.

Failure to provide opportunity of cross examination

6.1.5 The Opposite Parties have also argued that DG, in his report, has selectively relied on the oral and written evidence submitted by witnesses including cement distributors and buyers without providing them with an opportunity to cross-examine. It has also been contended that the DG appears to have conveniently ignored several parts of their depositions.

6.1.6 On a careful consideration of the contentions of the Opposite Parties, the Commission observes that it is not a case that the report of DG has not been made available to them by the Commission for their objections. In accordance with the provisions of the Act, the parties have been given copies of the investigation reports of DG.



The parties were given opportunity to lay their own evidences – both written and oral in order to controvert the findings of DG. Therefore, the arguments of Opposite Parties on this count also do not have any merit since in accordance with the principles of natural justice they have been afforded full opportunity to explain their position.

Reliance on reports not supplied

6.1.7 One argument that has been taken by the parties is that certain reports relied upon by the DG like Report of the Tariff Commission on the Performance of Cement Industry, Report of the Department Related Parliamentary Standing Committee on the performance of Cement Industry, International and domestic case laws cited by DG in his report have not been supplied. In this regard, the Commission observes that the relevant portions of these documents relied upon by the DG form part of the report of DG which has been made available to the Opposite Parties. The excerpts of the report of Tariff Commission have extensively been quoted by the Parliamentary Standing Committee whose report is available on the website and is in knowledge of CMA since representatives of CMA also had appeared before the Standing Committee. Moreover, the reports and case laws cited by the DG are available in public domain and could have been easily accessed by the Opposite parties. Further, it is not a



case that DG has relied only upon these reports for his investigation. DG has used them only to supplement his findings.

6.1.8 Therefore, the Commission holds there is no merit in the contention of the Opposite Parties that they have been denied due opportunity to present their position, more so, when on substantive issues, they were given due and ample opportunity to rebut the findings of DG.

Incorrect facts in the Information

6.1.9 The Commission notes that some parties have raised objections that their names have not been correctly reported and used. For instance, OP-9 has argued that though it has been described as Century Cement Ltd., the correct name of the company is Century Textiles and Industries Limited. JK Cements Limited (OP-8) has raised a contention that in the information it has not even been named as an Opposite Party since the information mentions of some 'JK Group' only. It has also been stated that the informant made a grave error by combining its capacity, production and market share data of another independent and unrelated company operating under the name and style of 'JK Lakshmi Cements Ltd.' and DG without ascertaining the true facts, simply adopted the data and figures provided by the Informant.

6.1.10 The Commission observes that DG has issued notices to JK Cements, part of JK group and separate notice to JK Lakshmi Cement has not been issued. The informant has also mentioned JK Cements



Limited of JK group as the respondent party. The Commission has also sought replies from JK Cements Limited only. Therefore, at the time of determining the infringements in the instant case, case of JK Cements Limited only have been taken into account. As regards objections of Century Textiles and Industries Limited, the information relates to its cement division, therefore, due consideration has been given to consider the cement division of Century Textiles and Industries only.

6.1.11 The Commission also observes that while examining the infringements on part of the entities named in the information as regards anti-competitive agreement what is important is analysis of their conduct. Therefore, these objections do not come in the way of determination of substantive issues involved in the case. Moreover, in the final analysis, all the concerns of the Opposite Parties have duly been considered.

#### Incorrect reliance on motivated information and Press Reports

6.1.12 The Opposite Parties have also raised an objection that the information filed by Builders Association of India is motivated. Moreover, reliance has been placed on some news reports which have not been made part of the report.

6.1.13 In this regard, the Commission observes that under the scheme of the Competition Act, 2002, while deciding any case, the Commission is required to examine information(s) filed before it, make an independent assessment through a process of investigation by DG and through its own inquiry subsequent to the investigation by



DG after following due procedure and take/suggest such appropriate remedial measures as per provisions of the Act which may usher more competition in the market. Thus, even if an information, is motivated, it shall not influence the final outcome in any manner since what is to be finally determined through a process of inquiry by the Commission as per the mandate of the Act is whether enough competition is prevailing in the market or the competitive forces are inhibited due to certain anti-competitive acts and conduct in the market.

6.1.14 Further, the press reports relied upon by the DG in his report are also in public domain and cannot vitiate the proceedings. Moreover, such reports are not the sole basis for either findings of DG or final determination of issues in the instant matter.

6.1.15 In view of foregoing, the Commission holds that the objections of the Opposite Parties in the matter are also not tenable.

6.1.16 Having dealt with the objections of the Opposite Parties on procedural issues, we now turn to the substantive issues before us for determination.

6.2 The Commission notes that the following substantive issues arise for determination in the case.

Issue1: Whether the Opposite Parties have violated the provisions of section 4 of the Competition Act, 2002 as has been alleged by the informant?

Issue 2: Whether the acts and conduct of the Opposite Parties are subject matter of examination under section 3 of the Act?



Issue 3: Whether there exists an agreement or arrangement among the cement companies named as the Opposite Parties under which they share details of cement prices, production and capacities among each other using the platform of CMA? If yes ;

Issue 4: Whether they have indulged in directly or indirectly determining the prices of cement?

Issue 5: Whether they have indulged in limiting and controlling the production and supply of cement in the market?

Issue 6: Whether there is a case of production and dispatch parallelism among the Opposite Parties?

Issue 7: Whether the aforesaid acts of the Opposite Parties have caused increase in the prices of cement?

Issue 8: If so, whether the Opposite Parties have contravened the provisions of section 3 (3) of the Competition Act, 2002?

#### Determination of Issues

##### Issue1

6.3 Whether the Opposite Parties have violated the provisions of section 4 of the Competition Act, 2002 as has been alleged by the informant?

6.3.1 The Commission has looked into the market structure in the cement industry in India carefully. The Commission observes that DG in his report has brought out that there are 49 companies operating with more than 173 large cement plants in India. In addition, there are many mini plants scattered around limestone clusters.



6.3.2 The Commission notes that Holcim, a global cement company acquired management control of ACL (earlier known as Gujarat Ambuja Cements Limited) in 2006. It has now more than 50% stakes in both ACC and ACL. Holdreind Investments Limited (Part of Holcim group) has about 40.46% and Ambuja Cements India Private Limited has about 9.81% of share in Ambuja Cements Limited. Further, Holdreind Investments Limited has about 0.29% and Ambuja Cements India Private Limited has about 50.01% of shares in ACC Limited. Ambuja Cements India Private Limited now stands amalgamated with Holcim India Private Limited.

6.3.3 Similarly, in Birla Group, Grasim Industries holds 60.33% in Ultratech Cement. Pilani Investments & Industries Corp holds 18% shares in Grasim Industries & 36.78% in Century Textile Industries. Pilani Investments also has stakes in Kesoram Industries which has cement division by the name of Kesoram Cements. Mangalam Cements is also a concern of Birla group. Another cement company by the name of Birla Corp. also belongs to MP Birla of Birla group.

6.3.4 Thus, both Holcim group and Birla group have crossholdings among their companies engaged in production of cement.

6.3.5 ACC and Ambuja Cements Limited have about 20% of the market share in terms of total capacity and production and Ultratech which belongs to Birla group has about 18% of the market share in India. Thus, Birla and Holcim groups command a major portion of the cement market in India.



6.3.6 The Commission notes that there are other firms like Jaiprakash Associated Limited, Shree Cement, Lafarge, Binani group, India Cements, JK group, Madras Cement, Chettinad Cement, Dalmia Cement who are having market presence in one or two regions of the country. In addition, there are various small and mini cement plants with 1 to 2 MMT capacities.

6.3.7 The Commission notes that as per the report of DG, ACC Ltd., Ambuja Cement Ltd, Ultratech Cement Ltd, Jaypee Cement Ltd., India Cements Ltd., Shree Cements Ltd., Madras Cements Ltd., Century Cement Ltd., J.K. Cements, JK Lakshmi Cement Ltd., Binani Cement Ltd and Lafarge India Pvt. Ltd. control about 75% market share of cement in India. The market shares of major cement companies based on production has been computed by the DG as under;

S.No.	Name	Share in %
1.	Ultratech Cements Limited	18.12
2.	ACC	10.4
3.	Ambuja Cements	9.78
4.	Jaiprakash Associates Limited	7.41
5.	India Cements	4.89
6.	Shree Cement	4.47
7.	J.K.Group	4.29
8.	Century Textiles	3.65
9.	Madras Cement	3.39
10.	Lafarge India (P) Limited	3.22
11.	Others	30.38



6.3.8 The Commission observes that Shree Cement is not subject matter of inquiry in the present case. Similarly JK Group consists of JK Cements Limited and JK Lakshmi Cements Limited. However, in the present matter only JK Cements Limited has been made a party by the informant. Even if Shree Cements and JK Lakshmi Cements Limited are not considered, the above details as regards market share of cement manufacturing companies present a picture of market structure in which no single firm can be said to be dominant in India. In fact, the two major groups-Birla and Holcim are having more or less comparable market share. There are other firms also who are competing with each other for gaining market shares and no single firm or a group is in position to operate independent of competitive forces or affect its competitors or consumers in its favour to make it dominant within the meaning of explanation (a) to section 4 of the Act.

6.3.9 The Commission accordingly holds that no contravention of the provisions of section 4 of the Act by any single cement firm or a group is made out in the present matter.

6.3.10 Since the market construct suggests that no single firm or group is dominant, the Commission observes that a detailed determination of relevant market for the purposes of establishing any abusive conduct on the part of any Opposite Party is not necessary.



## Issue 2

6.4 Whether the acts and conduct of the Opposite Parties are subject matter of examination under section 3 of the Act?

6.4.1 The Commission observes that in order to proceed further to deliberate whether the acts and conduct of the Opposite Parties are subject matter of examination under section 3 of the Act, it would be first pertinent to bring out the provisions of section 3(1), 3(3) and 3(4) of the Act. The provisions of these two sub-sections are as under;

(1) *No enterprise or associations of enterprises or person or associations of persons shall enter into any agreement in respect of production , supply, distribution, storage, acquisition or control of goods or provision of services; which causes or is likely to cause an appreciable adverse effect on competition within India.*

(2) -----

*“(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—*

*(a) directly or indirectly determines purchase or sale prices;*



(b) limits or controls production, supply, markets, technical development, investment or provision of services;

(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(d) directly or indirectly results in bid rigging or collusive bidding shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation.—For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including —

(a) tie-in arrangement;

(b) exclusive supply agreement;



(c) exclusive distribution agreement;

(d) refusal to deal;

(e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Explanation.—For the purposes of this sub-section,—

(a) .....

(b) .....

(c) .....

(d) .....

(e) "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged."

6.4.2 The Commission further observes that in the present matter under consideration there is no allegation of vertical agreement among the Opposite Parties or between the Opposite Parties and informants in terms of provisions of section 3(4). The resale price maintenance is one of the vertical agreements mentioned in section 3(4)(e) of the Act. Therefore, the allegation with reference to resale price maintenance against the Opposite Parties is not sustainable in the present matter. The Opposite Parties are cement companies who are engaged in the similar business of manufacturing of cement and



are operating at same level of production chain. As per provisions of the Act, the allegations of agreements, decisions or practices among entities engaged in identical or similar trade of goods or provision of services are to be examined under section 3(3) of the Act.

6.4.3 The Commission accordingly holds that the allegations pertaining to the acts and conduct of the Opposite Parties in the instant case are subject matter of inquiry under section 3(3) of the Act.

### Issue 3

6.5 Whether there exists an agreement or arrangement among the cement companies named as the Opposite Parties under which they share details of cement prices, production and capacities among each other using the platform of CMA?

6.5.1 The Commission observes that the DG has found the Opposite Parties in contravention of section 3(3) (a), section 3(3)(b) read with section 3(1) of the Act as also discussed in the earlier part of this order. The Commission notes that the chief objection to the findings of the DG taken by all the Opposite Parties is that there is lack of (direct) evidence as regards existence of any agreement within the meaning of section 2(b) of the Act to allege any contravention of the provisions of section 3(3) read with section 3(1) of the Act. It has been submitted that DG has found infringement of the provisions of section 3(3) of the Act based only upon economic analysis and market behaviour to prove some kind of meeting of minds and there



is no direct evidence to support any cartelization or anti-competitive agreement among them.

6.5.2 The Commission, in this regard, observes that in order to deal with the contention of the Opposite Parties on the issue, it is pertinent to have a look at the term 'agreement' as defined in section 2(b) of the Act. The relevant provisions as mentioned in section 2(b) are as under;

*"(b) "agreement" includes any arrangement or understanding or action in concert,—*

*(i) whether or not, such arrangement, understanding or action is formal or in writing; or*

*(ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;"*

6.5.3 As is seen from the construct of the aforesaid provisions, the definition of the term 'agreement' is an inclusive definition in the Act. It *inter-alia* includes any arrangement, understanding or action in concert irrespective of whether it is written/ formal or otherwise or intended to be legally enforceable. Thus there is no need for an explicit agreement and the existence of an 'agreement' within the meaning of the Act. The same can be inferred from the intention or conduct of the parties. In the cases of conspiracy or existence of any anti-competitive agreement, proof of formal agreement may not be available and may be established by circumstantial evidence alone.

The concurrence of parties or the consensus amongst them can,



therefore, be gathered from their common motive and concerted conduct.

6.5.4 The Commission observes that existence of a written agreement is not necessary to establish common understanding, common design, common motive, common intent or commonality of approach among the parties to an anti-competitive agreement. These aspects may be established from the activities carried on by them, from the objects sought to be achieved and evidence gathered from the anterior and subsequent relevant circumstances. Circumstantial evidence concerning the market and the conduct of market participants may also establish an anti-competitive agreement and suggest concerted action. Parallel behavior in price or sales is indicative of a coordinated behavior among participants in a market.

6.5.5 No doubt the parties to such an agreement may offer their own sets of explanations behind the existence of circumstantial evidence. The firms often tend to justify the parallel behaviour in prices, production, dispatch or supplies conduct in prices, as has been done in the instant matter also, by explaining the fundamentals of the market forces such as demand, increasing cost of production and other economic factors.



6.5.6 However, it also remains a fact that parties to an anti-competitive agreement will not come out in open and reveal their identity to be punished by the competition agencies. This is also the reason that the legislature in its wisdom has made the definition of 'agreement' inclusive and wide enough and not restricted it only to documented and written agreement among the parties. Thus, the Commission is not impeded from using circumstantial evidences for making inquiries into act, conduct and behaviour of market participants.

6.5.7 The Commission in light of the provisions of section 2(b) of the Act and discussion as above, accordingly, holds that in absence of any documentary evidence of existence of an agreement, it is appropriate, correct and logical to inquire into cases of anti-competitive agreements on the basis of existence of evidences which establish that particular set of act and conduct of the market participants cannot be explained but for some sort of anti-competitive agreement and action in concert among them.

6.5.8 The Commission observes that parallel behavior in prices, dispatch, supply accompanied with some other factors indicating coordinated behaviour among the firms may become a basis for finding contravention or otherwise of the provisions relating to anti-competitive agreement of the Act. The Commission notes that the Opposite Parties have argued based on certain cases decided by the



Courts that unless direct evidences are available, anti-competitive agreement cannot be presumed.

6.5.9 However, it is not that the competition agencies in other jurisdictions have not taken cognizance of circumstantial evidences while inquiring and establishing contravention in cases involving anti-competitive agreements. While noting that the legal system/framework, market structure, firm/consumer behaviour etc. differs from jurisdiction to jurisdiction, the Commission finds that the basic competition principles are by and large applicable across jurisdictions. According, looking at the position in other jurisdictions, it is found that circumstantial evidences have been used in the News Paper Cartel Case (1999) of Brazil. Similarly in case of High Fructose Corn Syrup Antitrust Litigation of US Atlantic Sugar Case of Canada Atl. Sugar Refineries Co. v. A.G.Can., [1980], 2 S.C.R.644, circumstantial evidences were relied upon. In Latvia- Hen's eggs case also infringement has been found based upon circumstantial evidence. It is noteworthy that OECD in its paper 'Prosecuting Cartels without Direct Evidence of Agreement' (February 2006) has held as under;

*" Circumstantial evidence is of no less value than direct evidence for it is the general rule that the law makes no distinction between direct and circumstantial evidence ... ....In order to prove the conspiracy , it is not necessary for the government to present proof of verbal or written agreement."*



6.5.10 The Commission is not oblivious of the fact that the anti-competitive conspiracies are often hatched in secrecy. The firms engaged in anti-competitive activities are not likely to leave any trace evidencing the same. Therefore, in absence of any direct evidence of agreement among the conspirators, circumstantial evidence is required to be looked into.

6.5.11 The Commission notes that the Opposite Parties have cited its decisions in the case of alleged cartelization in Sugar Industry, case of Neeraj Malhotra vs Deutsche Post Bank and others –Case no. 5 of 2009 Banks and Flat Glass manufacturers to drive home the point that existence of direct evidence is must for establishing any contravention under the provisions of the Act. In this regard, the Commission observes that in both the cases the issue was decided based on a detailed market analysis and it was concluded that the competitive construct of the relevant market does not cause any concern for competition based upon existing materials on record. The issue before the Commission in any case is inquiry into prevailing competitive forces in the concerned market and evidences are evaluated accordingly to assess that. If direct evidences are not present, but circumstantial evidences do indicate harm to the competition at a market place, the Commission will certainly take cognizance of the same.

6.5.12 The Commission observes that among set of circumstantial evidences, evidences of communication among the participants to an



anti-competitive agreement may give an important clue for establishing any contravention. Communication evidences might prove that contravening parties met and communicated with each other to determine their future or present behaviour.

Evaluation of communication evidences and Role of CMA in the present matter

6.5.13 The Commission observes from the findings of DG in his report and records of the investigation of DG that it is undisputed that the Opposite Parties participate in the meetings of Cement Manufacturers' Association which provides a platform to the Opposite Parties where they interact on regular basis.

6.5.14 The Commission also observes that as on date CMA collects retail prices and wholesale prices of the cement from different centres and transmit it onwards to the government. The retails prices collected from different centres are transmitted to DIPP, while the wholesale prices are transmitted to the office of Economic Advisor of the same department.

6.5.15 The records reveal that with the closure of the office of the Development Commissioner for Cement Industry (DCCI), at a meeting taken by Secretary, Ministry of Industry, Shri Suresh Mathur, on 13.11.1991, CMA was asked to collect cement prices (Minimum and Maximum) on a weekly basis as was being done by DCCI. Accordingly, President, CMA in his letter No. 438/1304/91 dated 09.12.1991



addressed to Secretary, Ministry of Industry, referring to the decision in the aforesaid meeting, assured that CMA would collect cement prices from cement companies and give a feedback to the Ministry. CMA wrote a letter to Under Secretary (DIPP), Ministry of Commerce and Industry on 05.06.2008 seeking clarification as to whether it should continue to furnish the retail cement prices to the Government in light of enactment of Competition Act, 2002. In response, Under Secretary (DIPP) vide his letter dated 28<sup>th</sup> July, 2008 requested CMA to continue to furnish retail prices of cement in different consumption centres to DIPP. Accordingly, CMA has been collecting and sending it to DIPP a statement of weekly retail cement prices.

6.5.16 The Commission observes that CMA collects retail cement prices from 34 centres all over the country as under;

Centre	Source Cement Co.	Mode	Concerned Official
Delhi	Shree Cement Ltd.	Phone	Mr. Pawan Agarwal
Karnal, Rohtak, Jaipur, Bhatinda, Meerut	JK Lakshmi Cement	E-Mail	Mr. Ashwani Sharma
Chandigarh, Ludhiana, Jammu, Simla	UltraTech Cement Ltd.	E-mail/ Phone	Mr. Pawan Kothiyal
Mumbai, Nagpur, Pune, Ahmedabad, Baroda, Surat, Rajkot	UltraTech Cement Ltd.	E-mail	Mr. Prashant Kaduskar
Patna, Guwahati, Muzaffarpur	UltraTech Cement Ltd.	Phone	Mr. Shyam Menon
Kolkata	Century Cement	E-mail	Mr. S.K. Sultania



Bhubaneshwar	OCL	E-mail	Mr. S.K. Pradhan
Chennai, Trivendrum, Bangalore, Hyderabad, Calicut, Visakhapatnam, Goa	India Cements Ltd.	E-mail	Mr. T.S. Raghupathy
Lucknow	Birla Corporation Ltd.	E-mail	Mr. Manish Maliwal
Faizabad, Bhopal	Jaiprakash Associates Ltd.	E-mail	Mr. Niranjana Singh
Bareilly	Prism Cement	Phone	Mr. M.K. Singh

6.5.17 In addition, wholesale prices of cement are also gathered from 10 centres on monthly basis; viz; Delhi, Jaipur, Kolkata, Bhubaneshwar, Mumbai, Ahmedabad, Chennai, Hyderabad, Lucknow and Bhopal.

6.5.18 The Commission observes that it is established that CMA is engaged in collecting prices – both retail and wholesale from all over the country. The prices of all competing cement companies are being collected. In such a situation, when the cement companies nominated by CMA are collecting prices of other competing cement companies over telephones and e-mails, coordination on prices is easily facilitated. In their replies, Opposite Parties have not denied about such an institutionalized system of price collection through a platform provided by CMA. They have only stated that the prices which are collected are historical and do not give rise to any competition concern.

6.5.19 The Commission is of opinion that when competitors are interacting using the platform of CMA and they are in touch with each other over phone and e-mails as regards prices - both retail and



wholesale, it cannot be denied that there is always an opportunity of discussing the determination and fixation of prices for future, which is prohibited under the provisions of the Act. The fact that it is being done under the instruction of DIPP does not absolve CMA or the cement companies engaged in this exercise from running afoul of the provisions of the Act. Moreover, the advice of DIPP in light of the provisions of Competition Act, 2002 was obtained by CMA in June 2008, when the enforcement provisions of section 3 were not even notified. CMA did not take care to take advice after May 20, 2009, when the provisions of section 3 relating to anti-competitive agreement were notified and the prices continued to be collected on a regular basis using CMA as platform.

6.5.20 An argument has been raised that CMA is collecting prices of cement for onward transmission to the concerned authorities in the government. In this regard, the Commission observes the cement companies which are collecting prices of all others are the companies holding a major portion of the market. If the prices of all competing cement companies are collected on a regular and repeated basis, the dissemination of information and consequently coordination gets facilitated.

6.5.21 The Commission further observes that CMA has also constituted a High Power Committee which holds regular meetings. Details of the meetings of CMA High Power Committee Meetings held during the period January 2010 to March 2011 as reported by the DG are as under;



S. No.	Date of Meeting	Venue
1.	04.03.2011	Hotel Orchid Mumbai
2.	24.02.2011	Hotel Orchid Mumbai
3.	03.01.2011	Hotel Grand Hyatt Mumbai
4.	28.06.2010	Hotel Orchid Mumbai
5.	09.04.2010	Hotel Sonar Kolkata
6.	08.03.2010	Hotel Orchid Mumbai
7.	11.01.2010	Hotel Claridges, New Delhi

6.5.22 As has been gathered by the DG during investigation, prices in respect of the Opposite Parties increased immediately after the meetings in January and February 2011.

PRICES OF TOP CEMENT COMPANIES BEFORE & AFTER THE HIGH POWER COMMITTEE MEETINGS OF CMA (Rs. per bag)				
SL.No.	Name of Company	December' 2010 (Prior to the meeting)	January' 2011 (After the meeting on 3-01-11)	February' 2011 (After the meeting on 24-02-11.)
1	ACC			
	Delhi	225	227	257
	Maharashtra	238	245	260
	Tamil Nadu	243	244	245
	West Bengal	246	255	281
2	ACL			
	Ahmedabad	221	225	254
	Delhi	226	227	258
	Mumbai	254	257	267
	Howrah	246	255	283
3	UltraTech			
	Delhi	230	235	265
	Mumbai	253	256	265
	Cossipore (W.B)	242	252	279
	Chennai	254	255	257
4	Jaypee Group			
	Delhi	216	228	275
	Lucknow	207	222	270



5	Lafarge			
	West Bengal	247	260	281
	Bihar	276	289	298
6	Century Textiles			
	Allahabad	202	235	270
	Bihar	220	260	285
7	India Cement			
	Pune	240	242	265
	Hyderabad	237	235	250
8	JK Group			
	Ambala	237	250	290
	Udaipur	197	215	272
9	Madras Cements			
	TamilNadu	240	242	252
	Kerala	290	295	300
	Andhra Pradesh	215	225	240
10	Binani Cement			
	Delhi	221	249	282
	Mumbai	249	254	271

6.5.23 The Commission notes that the Opposite Parties have not disputed the above facts in toto. It has only been submitted that DG has not looked into change in prices after all other meetings when either the prices had remained the same or had gone down. The Commission observes that in on-going cartel activity where prices are being kept high over a long period of time, it is not necessary that prices would increase after every meeting, and that prices had



increased after the two meetings as brought out by DG in his investigation raising suspicion of coordinated action and discussion among the Opposite Parties as regards prices. More so in light of the fact that earlier also CMA was found to be engaged in restrictive trade practices by MRTP Commission. However, the association has continued to provide its platform to all the cement companies for interaction as regards prices- retail and wholesale.

6.5.24 The Commission also observes that CMA has several publications like 'Executive Summary-'Cement Industry', 'Cement Statistics' -Interregional movement of cement'. These publications giving details of the details of production, dispatch of each company are circulated only among the members. Therefore, the Opposite Parties not only get information about their prices, but also about the details of their production and dispatch. The sharing of such sensitive information makes coordination easier among the Opposite Parties.

6.5.25 The Commission further observes that with regards to the meetings of CMA there are glaring inconsistencies in the submission of CMA and Opposite Parties regarding meetings held under the banner of CMA. In its submissions before the Commission, CMA has submitted that ACL and ACC after having ceased to be the members of CMA in November 2009 never attended the High Power Committee meetings and they also did not attend the meetings of High Power Committee on 24.02.2011 and 04.03.2011. However, the



representatives of ACC and ACL had stated before DG that they had attended these meetings along with other cement companies. Their replies in this regard before DG are as under;

**" Statement of Shri Jayanta Datta Gupta, Chief Commercial Officer, ACC Ltd.**

*Q.59: Whether your company or the senior officers of your company has attended any meeting with other cement companies in the recent past?*

*Ans: I had attended two meetings in the recent past – one on 24<sup>th</sup> February, 2011 and the other on 4<sup>th</sup> March, 2011 in Mumbai on specific invitation to discuss our initiatives with CII on concrete road and post budget excise complexity. In these meetings, representatives of other cement companies were also present.*

**Statement of Shri B.L. Taparua, Company Secretary, ACL**

*Q.49: Whether any of your officers has attended any meeting of cement industry and where?*

*Ans: On 24<sup>th</sup> February, 2011, we made a representation for stimulating demand for cement through concrete roads and on 4<sup>th</sup> March, 2011, we requested for understanding the changes in excise law in Union budget. Both the meetings took place at Hotel Orchid in Mumbai.*

*Q.50: Who were the other participants in the above mentioned meetings?*



Ans: *We did not attend the entire meeting. Our discussions took place with representatives of Ultratech, JK Lakshmi Cement, ACC and Shree cement."*

6.5.26 The Commission observes that there is a contradiction in replies of CMA, ACC and ACL submitted in course of inquiry proceedings also regarding attendance of the representatives of ACC and ACL in the High Power Committee meetings.

**Reply of Cement Manufacturing Association dated 12<sup>th</sup> January, 2012**

*"With reference to para 6.18.6 the Answering Respondent denies that ACC and ACL have attended the meetings of CMA on 24.02.2011 and 04.03.2011 as alleged or otherwise. It is submitted that no invitations was sent to the said companies. The records of the meeting also disclose that none of the representatives/officers of either ACC or ACL had attended the meetings on 24.02.2011 and 04.03.2011 as alleged or otherwise.*

*With reference to para 6.18.9, it is submitted that the allegations and inferences drawn by the DG are wrong and contrary to records. After ACC and ACL ceased to be members of the Answering Respondent they have not attended any High Power Committee meeting of Answering Respondent as alleged or otherwise."*

**Reply of ACC Ltd. dated 11<sup>th</sup> January, 2012**

*"During the course of the DG's investigation, Mr. Jayanta Dattagupta, on behalf of ACC stated that he had attended two meetings of the*



CMA (i.e., on 24 February, 2011 and 4 March 2011.) As stated during the summons hearing, the purpose of discussion of the meeting on 24 February 2011 was to discuss the issues relating demand through promoting concrete roads and the meeting on 4 March 2011 was to discuss and understand the complexities relating to application of excise duties that would result post the Union budget. After discussions on the above mentioned topics, Mr. Jayanta Dattagupta left the meeting."

**Reply of Ambuja Cements dated 14<sup>th</sup> February, 2012**

"During the course of the DG's investigation, Mr. B.L. Taparia, on behalf of ACL stated that ACL had made a representation ahead of two meetings of the high powered committee of the CMA, i.e., on February 24, 2011 and March 4, 2011. As stated during the summons hearing, the purpose of discussion of the representation on February 24, 2011 was to discuss the issues relating to stimulation of demand through promoting concrete roads and on March 4, 2011 was to discuss and understand the complexities in relation to application of excise duties that would result post the Union budget. In this behalf, it is important to note that ACL did not attend the entire duration of the meetings."

6.5.27 The Commission further observes that while CMA has denied the participation of ACC and ACL in the meetings of CMA on 24.02.2012 and 04.03.2011, ACC and ACL have admitted of their participation. The Commission also observes that in its reply of



Jaiprakash Associates, in order to rebut the findings of DG, it has been stated that ACC and ACL had not participated in these meetings and therefore the report of DG is unreliable.

**Reply of Jaiprakash Associates Ltd. dated 14<sup>th</sup> February, 2012**

"139. The DG in the Report has reached a finding that ACC and ACL have withdrawn themselves from the membership of CMA, however, they have still attended the meetings that took place on 24.02.2011 and 04.03.2011. It is humbly submitted that this fact is not reflected in the minutes of the aforesaid meetings where the presence of all the members of CMA is marked who have attended it. It is submitted with utmost respect that the DG is misleading the Hon'ble Commission by making such statements in its report without having any evidence to prove the same. As stated above, this clearly demonstrates the DG's attempt to reach his pre-determined conclusion that the cement manufactures have cartelized even though the DG has been not been able to collect any information to prove his baseless allegations.

140. Further the DG in its report has reproduced portions of the statements by ACC Ltd. where Mr. Jayaraj Datta mentions the fact that he had attended meetings on 24.02.2011 and 04.03.2011 in Mumbai on a specific invitation for discussing the initiatives with CII



on concrete road and post budget excise complexity. It is critical to mention here that Mr. Datta has not stated that he ever attended the High Powered Committee Meeting and the DG has very conveniently presumed that the officials of ACC attended the High Powered Committee Meetings to reach his flawed and erroneous conclusions.

141. Further the DG in its report has referred to the reply submitted by ACL dated 19.04.2011 which contains information relating to the meetings attended by ACL where other cement manufactures were also present and 23 occasions where ACL interacted with other cement manufactures. On a mere perusal of the information submitted, it becomes apparent that ACL has not attended any of the said High Power Committee Meetings and instead attended meetings with Government officials, Clinker Sale or steel manufactures where other cement manufactures have been present. This shows the complete non application of mind by the DG and only making bald allegations to suggest that ACL is still attending the meetings of CMA.

142. JAL humbly submits that the DG's analysis that ACC and ACL are still attending the High Powered Committee Meetings of CMA is wrong and hence denied and the minutes of the various meetings that have been submitted by the CMA before the office of the DG are proof of the same.

143. JAL humbly submits that keeping in view the aforementioned reasons it becomes palpably clear that CMA does not provide a



*common platform for discussing the information relating to prices to its member."*

6.5.28 The Commission observes that on the basis of clear admission of ACC and ACL to have attended the two meetings of High Power Committee of CMA and denial of this by CMA and Jaiprakash Associates, another Opposite Party in the case reveal that the Opposite Parties are not quite forthright in their submissions. The inconsistencies in the statements of different Opposite Parties establish that they were keen on hiding material information to the effect that the competing cement companies are interacting among each other using the platform of CMA and discussing the prices, production, supplies of each other. On the basis of clear admission of representatives of ACC and ACL, it is clear that in spite of having resigned from the membership of CMA, they are attending the meetings of CMA. The fact that prices had increased after the High Power Committee meetings held in January and February 2011 establishes that they coordinate their decisions and fix prices after due consultations. Such an act and behaviour of Opposite Parties using the platform of CMA would be questionable under the provisions of section 3(3)(a) of the Act which prohibit any act which results directly or indirectly in fixation of ~~the~~ prices.

6.5.29 The Commission further notes that as per statements given to press, ACL and ACC while giving reasons for resigning from their memberships from CMA have admitted that they are doing it since



Holcim, their holding company wanted the same. As per the press statements, Holcim took this decision since it felt that being associated with CMA would get it in trouble with competition agency in the EU.

6.5.30 The Commission observes that although a public statement has been made with respect to resignation from the membership of CMA, ACC and ACL have been found participating in the High Power Committee meetings. The act of ACC and ACL suggests that their actions are divorced from its public postures. The public announcements have been made only to save themselves from possible action by anti-trust bodies in other jurisdictions.

6.5.31 The Commission further notes that the minutes of the meeting of CMA as is seen from the records of DG reveal that cement companies have been discussing prices of cement using the platform of CMA.

Minutes of the 84<sup>th</sup> Meeting of the Managing Committee of the Cement Manufacturers' Association held on 15<sup>th</sup> March 2007 in Mumbai

"06. The post-budget 2007-08 ten days were hectic since the President of CMA along with captains of the industry had meetings with Hon'ble Shri P. Chidambaram, Union Finance Minister and Hon'ble Shri Kamal Nath, Union Minister of Commerce and Industry as also Dr. Ajay Dua, Secretary (IPP), MOCI and others. During the discussion there has been pressure from government to reduce

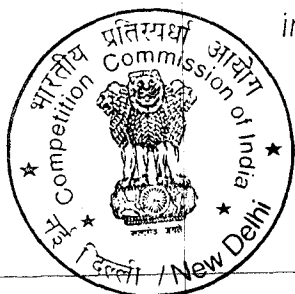


cement prices and avail of the excise duty concession. All attempts have been made to establish that pre-budget ruling cement prices (Feb.07) have been lower than the inflation adjusted prices prevailing in 1995 (Apr. 95) - lower by Rs. 12 to Rs. 48 per bag. All members would reiterate that improvement in the GDP has improved in all sectors of economy and cement is no exception. However, Cement industry has been ploughing back the profits in creation of additional capacities, which is the need of hour. The cement industry is producing at the optimal level of more than 95% and to meet the growing demand for cement in the XI Plan period (2007-08 to 2011-12), the cement companies have planned for addition of adequate capacity, which would require huge investment. Forced Price Reduction resulting in reduction on margin would adversely affect capacity materialization in time."

Minutes of the 92<sup>nd</sup> Meeting of the Managing Committee of the Cement Manufacturers' Association held on 26<sup>th</sup> March 2009 in New Delhi

“7. (a) Supply of Cement in the State of Uttar Pradesh

Secretary General, CMA mentioned that Secretary (DIPP) had called a Meeting of Chief Executives of Cement Companies supplying cement in the State of UP and also CMA on 16.03.2009, to discuss the complaint by the UP Govt. Departments, wherein Secretary (DIPP) insisted that the prices be brought down to reasonable levels within 4



weeks' time, failing which he would be obliged to resort to recommending withdrawal of CVD and SAD on Cement Imports and also reintroduction of Ban on Cement Exports.

Shri Rahul Kumar, COO (Cement), Jaiprakash Associates Ltd. informed Secretary (DIPP) that while the growth of cement supplies during the period April-Oct '08 was only 2.6% over the corresponding period of the previous year, the sudden spurt in demand during Nov.08 to Jan 09 was 24%.

Shri Rahul Kumar, further apprised CMA after attending the Meeting taken by Chief Secretary, Govt. of UP in Lucknow on 17.03.2009, where all the cement manufacturers supplying cement to UP were also present and on behalf of Jaypee Cement that it was agreed by Jaypee to supply cement to the Govt. departments during the month of March 2009 at the rate of Rs. 245/- per bag. The UP Govt. was satisfied and orders were being placed for supply of cement. The other suppliers also responded by offering similar special rates for Govt. supplies and assuring to meet the requirements."

6.5.32 The Commission observes that while prices of cement companies are collected under the aegis of CMA, company wise, factory wise data regarding capacity, production, dispatches, exports etc. are also being collected and furnished by CMA to not only Ministry of Commerce and Industry but also to the cement



companies as is evident from minutes of 91<sup>st</sup> meeting of the Managing Committee of CMA held on 18.12.2008 in Mumbai.

*"3.5 Further Company-wise, Factory-wise data regarding capacity, production, dispatches, exports etc are being collected and regularly furnished by CMA to Ministry of Commerce and Industry and also circulated to Cement Companies."*

6.5.33 The CMA also provides platform to the members for evaluation and determination of impact of incidence of tax on cost as is evident from minutes of the Meeting of the CMA High Power Committee held on 4<sup>th</sup> March 2011 in Mumbai;

*"2.1 President referred to the detailed Agenda Note on the subject. She referred to the plus points in the Budget 2011-12 such as GDP Growth, enhancement in the provision under Rural Housing Fund etc. While this will help the Cement Industry, there are certain proposals in the Budget that will have adverse impact such as increase in Minimum Alternative Tax (MAT), Excise duty on RMC without CANVET Credit. Change of Excise Duty Rates on Cement and Cement Clinker from specific to advalorem plus fixed (composite rate)- which would further add to the cost of Cement was also considered.*

2.2 As regards the new excise duty rates on cement, it was mentioned that some of the cement companies in their own capacity have already referred for /obtained legal opinion of Experts on various aspects of its applications. Shri H.M. Bangur, Shree Cement Ltd., stated that it is advisable to obtain a legal



*opinion on applicability of excise duty in different situations by CMA and circulate it to members.*

2.3 President requested Shri O.P. Puranmalka, UltraTech Cement Ltd. and Shri S. Chouskey, J.K. Lakshmi Cement Ltd. to forward to CMA the issues they have formulated in this regard for obtaining clear cut legal opinion. CMA may kindly consolidate the two and frame the issues.

2.4 Clarification/opinion may also be sought on treatment of Excise Duty on Clinker transferred by Mother Unit to its Grinding Unit – where Grinding Unit enjoys exemption from the Duty of Excise but the Mother Unit is not exempt from Excise. In such a case whether duty shall be payable by the Mother Unit on Clinker transferred to its other Unit for Grinding and in case such duty is payable then on what value the duty is to be calculated and paid as there is no Sale/Transaction by the Mother Unit.

2.5 It was decided that CMA should obtain legal opinion of Expert in the light of the discussions held and circulate the same to members.”

6.5.34 The Commission observes that the aforesaid establishes that the cement companies are interacting at the platform of CMA, sharing information about cost, prices, production and capacities. Such discussions facilitate interactions among the members for determination and fixation of both prices and production.

6.5.35 As regards collection of prices of cement companies from all over India as also brought out in the earlier part of this order, the



Commission observes that the minutes of the 95<sup>th</sup> meeting of the Managing Committee of CMA held on 30.11.2009 in New Delhi in this regard reveal as under;

***" 10.1 Weekly Retail Cement Prices to DIPP***

*10.1.2 President informed the meeting that CMA has been furnishing weekly Retail Cement Prices to DIPP every Wednesday for the period pertaining to the previous week. The information so furnished gives only the range of prices prevailing in each of the markets (Minimum and Maximum) for the relevant period. CMA, traditionally, has been collecting this information from representatives of certain Cement Companies.*

*10.1.3 In addition, CMA has also been required to furnish Wholesale Prices to Economic Adviser, Ministry of Commerce and Industry as on the last working day of each month by the 10<sup>th</sup> of the following month. For this, the companies have been designated by DIPP itself after a meeting of Cement Companies and CMA in Feb.2009. This is the information, which is used by DIPP for working out Wholesale Price Index (WPI).*

*10.1.4 President further informed that in view of the recent developments, the Stations covered by ACC Ltd. and Ambuja Cements Ltd. would have to be served by some other representatives of the Cement Companies who have a presence in each one of these places.*

*10.1.5 President requested Members to come forward and voluntarily take this up on a regular basis so that a system and*



procedure is put in place for collection of this information. The concerned Companies were also requested to send the names of their Nominated representatives to CMA, with their contact numbers, e-mail details, etc.

10.1.6 The following cement companies agreed to furnish range of the Wholesale and Retail cement prices details for the cities mentioned against their names.

<u>Co./Station</u>	<u>Retail Cement Price</u>	<u>Wholesale price</u>
<u>Grasim Inds. Ltd.</u>		
Chandigarh	Retail Cement Price	
Ludhiana	-do-	
Jammu	-do-	
Simla	-do-	
<u>UltraTech Cement Ltd.</u>		
Mumbai	Retail Cement Price	(Already being given by Grasim Inds. Ltd.)
Ahmedabad	-do-	Wholesale Price
Nagpur	-do-	
Pune	-do-	
Rajkot	-do-	
Baroda	-do-	
Surat	-do-	
<u>India Cements Ltd.</u>		
Goa	Retail Cement Price	

10.1.7 As regards the following stations, it was decided that Jaiprakash Associates Ltd. may furnish the information for Retail Cement Price and also Wholesale Cement Price.



Faizabad	Retail Cement Price	
Bhopal	-do-	Wholesale Price

10.1.8 It was also decided that other Members may also contribute in the exercise for collecting the prices giving maximum and minimum range in whichever market they are comfortable for supplying the price details."

6.5.36 The Commission further observes that in a meeting with Under Secretary DIPP on 4<sup>th</sup> February, 2009 a decision was taking that information in wholesale prices would be provided by the cement company ear marked for the regions to CMA as on the last day of the month by the 10<sup>th</sup> of the following month for 10 centers as under:

Region	Centres	Cos./Unit to provide information on wholesale price as on the last day of the month
North	Delhi	Shree Cement
	Jaipur	Lakshmi Cement
East	Kolkata	Century Cement
	Bhubneshwar	Orissa Cement Ltd.
South	Chennai	Madras Cement
	Hyderabad	India Cement
West	Mumbai	Grasim/Rajashree Cements
	Ahmedabad	Gujarat Ambuja Cement
Central	Bhopal	ACC
	Lucknow	Birla Corporation, Satna

6.5.37 The Commission notes that while for wholesale prices to be supplied to the office of Economic Adviser, DIPP has nominated the



cement companies for the designated 10 centers, for collection of retail prices, the representatives have been nominated by the CMA itself. Since CMA on its own is nominating companies for collection of retail prices from different centres, as is evident from the aforesaid minutes of the 95<sup>th</sup> meeting of the Managing Committee of CMA held on 30.11.2009 in New Delhi, there are clear possibilities and opportunities for coordination on prices. When the competing cement companies are collecting prices from different centres of the country of each other, there are enough occasions for collusion among them on the matters of price.

6.5.38 The Commission observes that the companies for collecting retail cement prices are nominated by CMA and not by the government and prices are collected over phone, e-mails. Thus, CMA has provided a platform for all the competing companies to share commercially sensitive information.

6.5.39 The Commission also notes that certain rules and regulations of CMA which had serious competition concerns remained in the rule book of CMA till a notice of inquiry was received from the Commission. The amendments in such rules were discussed in the meeting of CMA held on 30<sup>th</sup> November, 2009 and it was considered that in order to be clear off any charges of anti-competitive conduct, amendments in certain rules may be carried out. However, amendments were not given effect till notice dated 20.08.2010 was issued to CMA under section 41 (2) of the Act from the office of DG. Pursuant to receipt of notice from the office of DG, an extra ordinary



general meeting of the Association was called on 23<sup>rd</sup> September, 2010 in which it was decided to effect the changes in the rules as recommended by the Managing Committee in November, 2009. The existing provisions and the amendments carried out in the rules and regulations are as under:

	Existing provisions	Amendment as per December 2010 Memorandum of Association and Rules
3(b)	To increase co-operation and unanimity amongst cement producers.	deleted
3(d)	To collect and disseminate statistical and technical information in respect of cement trade and industry and other industries to the members of the Association	Addition: "and General Public" after the word "Association."
3(f)	To make representations to Local and Central authorities on any matter connected with the trade, commerce and manufactures of its members.	Substituted clause: "To make representations to the Local and Central Authorities on Industry specific issues prevalent from time to time."
3(g)	To take steps in the settlement of disputes arising out of commercial transactions between parties.	deleted
3(j)	For all or any of the purpose aforesaid or in the interest of all concerned, to assist individual members to commence, continue, defend or refer to arbitration any action, suit or other proceedings whatsoever in any Court of justice or before any other tribunal, authority or person whatever.	deleted
2(b)	Addition of New Clause in Rules and Regulations	Membership in the association shall be recognized as implying that the member is absolutely free to conduct his business exactly as he pleases in every respect and particular.



6.5.40 The Commission observes that the act and conduct of CMA as discussed in the preceding paras raises serious competition issues with regard to CMA as well as the Opposite Parties who are the members of CMA. The fact that the prices and production details of the competing cement companies are discussed, prices of competing companies are collected are indicative of coordinated behavior amongst the cement companies including the Opposite parties. The rules of CMA regarding collection and dissemination of statistical and technical information to the members of the Association which were in rule book till December 2010 contained and had anti-competitive ingredients. These rules were sought to be changed only when the instant inquiry proceedings commenced against CMA and member cement companies.

6.5.41 The Commission on the basis of aforesaid holds that there are evidences which are indicative of existence of agreement, arrangement and understanding among the Opposite Parties using the platform of CMA for sharing of information, communication as regards pricing and production among the competing cement companies. These evidences provide strong evidence of coordinated behaviour and existence of anti-competitive agreement among the Opposite Parties.

6.5.42 The Commission observes that in addition to communicative evidence which strongly indicate anti-competitive conduct and behaviour on part of the Opposite Parties it would also be pertinent



to evaluate economic evidences to find out and test the veracity of the Opposite Parties that they are acting unilaterally in accordance with the normal market forces and not under an agreement to collude and coordinate their behaviour. While evaluating economic evidence in the matter, the Commission finds it necessary to first assess whether there are structural factors that exist which help facilitate collusion among the Opposite Parties.

6.5.43 An argument has been taken by the Opposite Parties that the DG has not delineated the relevant market with respect to which the alleged contravention has been established. Further, the market of cement in India is fragmented and in such a market, anti-competitive agreements and cartelization cannot sustain. While discussing the structural aspects of the cement industry, therefore, the Commission also finds it pertinent to consider and deal with the aforesaid arguments of the Opposite Parties.

6.5.44 The Commission observes that there is no requirement under the provisions of section 3(1) and section 3(3) of the Act as also under section 19(3) to determine and construct a relevant market, although that remains sine-qua-non for the determination of contravention under the provisions of section 4 of the Act. Sections 3(1) and 3(3) are concerned with effect of anti-competitive agreements on markets in India. There is a distinction between 'market' as in section 3 and 'relevant market' as defined in section 4 of the Act. There is no need of determination of relevant product market or relevant geographic market for the purposes of



establishing any anti-competitive agreement since the determination of relevant market is required while inquiring into allegations of contraventions under section 4 concerning abuse of dominance to assess an area or a range of products within which a dominant player can exercise its market power profitably at the expense of the consumers or the market or the competitors.

6.5.45 As has been discussed in para 6.3 above, no player can be said to be dominant in India as per prevalent market structure. DG in his report has brought out in there are 49 companies operating with more than 173 large cement plants in India. As regards available capacity the data of CMA for the year 2010 reveals that there were 47 cement companies having 142 plants and installed capacity of 97% of total capacity. As has been discussed in the preceding paras, 12 cement companies are having about 75% of total production capacity in India. Further, DG has reported that 21 companies control about 90% of the market share in terms of capacity.

6.5.46 From the data and techno-economic characteristics of the cement industry the Commission notes that a few firms have a pan India presence with plants located all over the country. The remaining firms are confined to the regions of limestone mines and operate in regional clusters.

6.5.47 The Commission observes that given that a few large players control majority of the market for cement in India makes the market oligopolistic in nature. In an oligopoly since there are not many firms, interdependence is inevitable. Each firm's price and output decision



anticipates the probable actions of other firms at any given time. Each of the firm has to concern itself with the strategic choices of its competitor. These strategic choices can be price, quantity or quality. In this case, the choice of prices by the various firms is one of the issues for competition analysis. In its submissions, ACC Limited has referred to cement being a commoditized product with very little difference in the product across producers. It has also been stated therein that given the similarity of the product across various producers, all of the producers' prices are subject to the same demand and supply factors.

6.5.48 In their responses, the Opposite Parties have accepted the characterization of the cement industry as oligopolistic. But, posit that the oligopolistic nature of the industry does not imply collusion and deny that price parallelism was a result of coordinated action. For instance, OP-10 in its submissions has stated that price parallelism in the context of the cement market being oligopolistic in nature and characterized by inelastic demand and standardised and undifferentiated products, would be justifiable as a prudent business decision in as much as, economically, maintenance of lower prices in the wake of increase in prices by a competitor would not be conducive to optimization of profits in an oligopolistic market. The OP-7 has also given its replies along the similar lines. The OP-2 and OP-3 have also in their replies stated that given the oligopolistic market structure as stated by DG and the commoditized nature of the product, it is obvious that one would observe price parallelism in



this industry. Furthermore, an argument has generally been taken by the Opposite Parties that even if market is oligopolistic, the outcomes are competitive and therefore there cannot be a charge of cartelization or any anti-competitive agreement among the cement manufacturers.

6.5.49 The Commission agrees with DG and the OPs that in a market which is oligopolistic in nature, it is more than likely that each market player is aware of the actions of the other and influences each other's decisions. No doubt, interdependence between firms is an important characteristic of such a market which would mean that each firm in such a market takes into account the likely reactions of other firms while making decisions particularly as regards prices.

6.5.50 It has been argued and the Commission accepts that oligopolistic markets can lead to competitive outcomes. The point of departure is that the outcomes may not always be market driven but rather the result of concerted effort or collusion. The Commission observes that the interdependence between firms can lead to collusion - both implicit as well as explicit. Knowing that overt collusion is easily detected, firms often collude in a manner which leads to non-competitive outcomes resulting in higher prices than warranted by pure market outcomes.

6.5.51 A number of indices for detecting such collusion exist. DG has found that the Opposite Parties while using the platform of CMA to share prices and output are taking decisions which ultimately do not



yield competitive outcomes and establish the presence of collusion and cartelization among them. The DG has given his findings on the following parameters;

- a) Existence of Price parallelism among the Opposite Parties involved in the case.
- b) Price increase after the meetings of CMA.
- c) Low levels of capacity utilization and reduced production.
- d) Existence of dispatch parallelism.
- e) Super-normal profits earned by the Opposite Parties.

6.5.52 The Commission has analysed the aforesaid findings of DG in light of the submissions of the parties concerned to the contrary and evaluated the same on the basis of materials on record. The findings of the Commission are as under;

#### Issue 4

6.6 Whether the cement parties named as Opposite Parties in the case have indulged in directly or indirectly determining the prices of cement?

#### Price parallelism

6.6.1 After analysing the replies furnished by the Opposite Parties and other cement companies regarding the price of cement, DG has found that prices of the cement of all the companies move in a particular direction in a given period of time in different zones. The range of price movement has also been found to be the same for all the companies and in all zones of the country. DG notes that whenever the prices of cement in case of one company go up, it is



followed by other companies simultaneously in the different zones across the country.

6.6.2 DG has concluded that this price parallelism indicates the possibility of prior consultation on price movement and its range among the cement manufacturing companies. DG has also submitted that no specific reason for price parallelism has been given by the companies. According to DG, the cost of production, particularly, transportation charge varies from company to company, which may affect the prices of particular brand of cement. This being so, the price movement of all the companies in the same range and direction is not possible unless there is pre-discussion on the price movement.

6.6.3 The data relating to the price movements of all the top companies in different states were analysed by the DG to examine the degree of price parallelism and it was concluded that the economic analysis of price data clearly indicated that there was very strong positive correlation in the prices of all the companies. According to DG, the coefficient of correlation of absolute prices of cement of all the companies confirms the price parallelism.

6.6.4 The Opposite Parties in their replies have contended that DG while conducting the analysis on price parallelism has not been able to establish that it was due to any coordination action on their part. It has been argued that the correlation benchmark of 0.5 taken by DG is arbitrary and the prices taken for all the companies are not incomparable since data set taken by the DG for prices is not proper



and harmonized as different companies had submitted different prices, for example, some had submitted gross price, while others had submitted depot prices, average retail prices etc. An argument has also been taken that DG has failed to establish identity of prices and only taken a range of prices, a band to allege price parallelism.

6.6.5 It has also been contended that 'plus' or 'facilitating' factors are needed in addition to parallel pricing to conclude that there was a cartel and an anti-competitive agreement under section 3 of the Act.

6.6.6 The Commission observes that there could be variation in the way of submissions of prices by companies before DG, however, that does not corrupt data set for analysis of movement of prices in a range of price movements. What has been established in investigation is not identity but parallel movement of prices.

6.6.7 The Commission also observes that correlation results of DG show close affinity with each other. Even when the cost structure of each company is different from each other, their prices have moved in identical fashion. While furnishing their submissions, the Opposite Parties have not altogether disputed the fact that there exists parallelism in the movement of their prices. This is clear from the submissions of different Opposite Parties as under;

#### Submissions of Lafarge

".... Any parallelism in the Indian cement industry can be explained by the nature and characteristics of the Indian cement market"



" .....Any price parallelism is consistent with normal, effective and dynamic competition"

"....As explained in RBB paper , prices moving in parallel ( in the sense that when one supplier's price increases , so do the prices of its rivals) is consistent with a wide range of models of competition. The intuition is straight forward. First, as Indian demand increases for a product, its price goes up; if Indian demand falls, so does the price. The same is true for cement. In a market characterized by seasonal increases and decreases in demand, one would expect to observe prices charged by Lafarge and its competitors to rise together (when demand is strong) and fall together (when demand is weak). ...".

"...As explained in RBB paper where firms produce a similar product and have broadly similar production technologies ( as is the case for cement) , shocks to variable cost may well impact on all firms in a similar way. For example, a key variable cost of producing cement is the cost of energy rises or falls , so may the price of cement this does not reflect collusion, it simply reflects the fact that some cost changes impact on Lafarge and its competitors at similar times."

#### Submissions of Ambuja Cements

"... Price parallelism is expected in an industry like that of cement, where the product is commoditized."



".... Sporadic parallel and independent behavior of ACL and other cement producers, responding to the prevalent market conditions, cannot be demonstrative of an agreement under section 3".

"---Given that price parallelism itself is to be expected in an industry with homogeneous products like cement, this cannot be considered as evidence of cartelization."

#### **Submissions of Madras Cement Limited**

" .....The DG report itself, only concludes that there is parallelism in terms of the direction of movement of prices. In fact, a reading of the data as produced and relied upon by the DG itself shows that the prices between the various competitors operate within a bandwidth and do not lend themselves to identity in price levels. "

#### **Submissions of India Cements Limited**

"..... It is settled law , and in fact admitted in the DG's report itself that parallelism , even in the absence of any correlation of the same with changes in demand and input costs , as alleged is at best , only indicative of the existence of a practice of following/imitating the price changes of competitors. Such actions, in the context of the cement market, being oligopolistic in nature and characterized by inelastic demand and standardized and undifferentiated products , would be justifiable as a prudent business decision in as much as , economically, maintenance of lower prices in the wake of increase in prices by a competitor ( i.e. the market leader) would not be conducive to optimization of profits in an oligopolistic



market.....Price parallelism in such cases is as likely to be motivated by the self-interest of each player as it is likely to be a result of an understanding /arrangement or agreement between the parties in this respect. "

#### Submissions of Ultratech Cements Limited

" Cement is a homogeneous commodity , the product is standardized with BIS markings , and the companies operate in the same industry/markets, using same or similar raw material inputs , electricity, technology, among other factors. Accordingly, prices would be broadly similar and would broadly move in the same direction."

6.6.8 The Commission also observes from the findings of DG as regards the absolute prices of the cement of the Opposite Parties along with other cement manufacturers that there exists a cluster of prices moving in the same direction at each point of time. In other words, there exists price parallelism in the cement industry in each state analysed by DG in terms of high and positive correlation in prices of Opposite Parties together with other cement manufacturers. The correlation results as found by the DG are under;

#### Andhra Pradesh -April 2008 to February 2011

Absolute Price							
	Kesoram	Rain	ACL	UTCL	GIL	India C	ACC
Kesoram	1						
Rain	0.964316	1					
ACL	0.989023	0.954636	1				
UTCL	0.983491	0.92902	0.965239	1			



GIL	0.980667	0.928726	0.964329	0.992554	1		
India C	0.957398	0.941362	0.941607	0.94331	0.936523	1	
ACC	0.960398	0.93021	0.957844	0.952676	0.94826	0.970058	1

#### Kerala - April 2008 to February 2011

	Madras	India C	ACL	Dalmia
Madras	1			
India C	0.91871	1		
ACL	0.580648	0.730303	1	
Dalmia	0.98221	0.911184	0.593414	1

6.6.9 The Commission observes that in Uttar Pradesh, Haryana, Bihar, Delhi, Punjab, Chandigarh, Rajasthan, West Bengal, Orissa and Madhya Pradesh also in terms of absolute prices, all the considered companies have shown high positive correlations with each other prices.

#### Uttar Pradesh - March 2008- September 2010

Price s	ACC	ACL	Shree	Century	UTCL	JP	India c	JK	Birla
ACC	1								
ACL	0.91 2879	1							
Shree	0.88 7711	0.94 9671	1						
Century	0.97 1348	0.88 4849	0.91 4251	1					
UTCL	0.79 3003	0.83 2613	0.76 0742	0.74 1339	1				
JP	0.84 5788	0.92 5053	0.94 5671	0.85 369	0.82 682	1			
India c	0.77 3319	0.82 4163	0.87 1433	0.79 146 9	0.66 916	0.85 0831	1		
JK	0.97 1171	0.94 3548	0.92 0477	0.9511	0.80 4604	0.90 502	0.79 7981	1	
Birla	0.9607 14	0.85 6287	0.88 308	0.98 4963	0.75 7948	0.83 1577	0.76 1198	0.93 2374	1

#### Haryana - April 2008 June 2010

Prices	ACC	ACL	Shree	UTCL	JP	India c	JK	Birla
ACC	1							
ACL	0.96	1						



	0768							
Shree	0.90 7272	0.95 8479	1					
UTCL	0.94 5853	0.97 5601	0.93 8609	1				
JP	0.93 3102	0.96 1189	0.94 4037	0.92 4325	1			
India c	0.88 7939	0.93 6759	0.92 3587	0.90 9569	0.94 4077	1		
JK	0.88 5348	0.91 9743	0.89 7118	0.91 1937	0.87 4799	0.85 2046	1	
Birla	0.89 0205	0.92 1076	0.94 6632	0.88 6668	0.90 6738	0.86 1746	0.86 5683	1

Bihar – January 2008- February 2011

Prices	India C	JP	Birla	Lafarge
India C	1			
JP	0.792783	1		
Birla	0.749723	0.93123	1	
Lafarge	0.860328	0.852125	0.80026	1

Delhi – April 2008-August 2010

Prices	ACC	ACL	Shree	UTCL	India Cement	Birla
ACC	1					
ACL	0.977984	1				
Shree	0.913046	0.901211	1			
UTCL	0.883099	0.887902	0.826966	1		
India Cement	0.829278	0.804768	0.930655	0.716964	1	
Birla	0.911061	0.884534	0.867349	0.715982	0.801589	1

Punjab April 2008-August 2010

Prices	ACC	ACL	Shree	UTCL	JP	India C
ACC	1					
ACL	0.966156	1				
Shree	0.93429	0.968923	1			
UTCL	0.971017	0.991426	0.951263	1		
JP	0.769903	0.814648	0.833246	0.783957	1	
India C	0.870276	0.908326	0.927362	0.900343	0.765996	1

Chandigarh April 2008-June 2010

Prices	ACC	ACL	Shree	India C	JK
ACC	1				



ACL	0.958859	1			
Shree	0.966345	0.924327	1		
India C	0.915417	0.875399	0.93283	1	
JK	0.916699	0.845631	0.877482	0.829813	1

Rajasthan - April 2008-June 2010

Prices	ACC	ACL	Shree	UTCL	India c	JK	Birla
ACC	1						
ACL	0.720995	1					
Shree	0.675365	0.93 4529	1				
UTCL	0.729528	0.982991	0.895475	1			
India cement	0.686274	0.92631	0.919718	0.883049	1		
JK	0.752857	0.919831	0.825251	0.941018	0.807251	1	
Birla	0.66443	0.898871	0.958862	0.837687	0.901974	0.80703	1

West Bengal- March 2008- February 2011

	ACC	ACL	Century	JP	India C	Birla	UTCL	Lafar ge
ACC	1							
ACL	0.98 431	1						
Century	0.96 1657	0.96 1945	1					
JP	0.96 0755	0.95 8235	0.95 0428	1				
India C	0.89 8394	0.90 2056	0.88 8901	0.89 0607	1			
Birla	0.83 89	0.83 757	0.85 4225	0.86 0972	0.88 7083	1		
UTCL	0.94 2044	0.96 4485	0.94 4394	0.91 6694	0.82 1825	0.79 7429	1	
Lafarge	0.97 2615	0.98 8729	0.97 1237	0.95 0146	0.89 9963	0.83 947	0.96 0929	1

Orissa - March 2008- February 2011

Prices	ACC	ACL	Century	India C	UTCL
ACC	1				
ACL	0.983731	1			
Century	0.961498	0.933139	1		
India C	0.916653	0.911202	0.83018	1	
UTCL	0.978123	0.971407	0.930394	0.918547	1



Madhya Pradesh (MP) April 2008- July 2010

Prices	ACC	ACL	Century	UTCL	JP	India C	JK	Birla
ACC	1							
ACL	0.66 1583	1						
Century	0.71 322	0.83 0941	1					
UTCL	0.74 5851	0.96 5754	0.87 9976	1				
JP	0.80 3028	0.76 9198	0.95 4389	0.84 7271	1			
India C	0.70 1555	0.83 5128	0.73 3503	0.86 8578	0.74 6644	1		
JK	0.66 7962	0.87 7043	0.88 9456	0.92 0343	0.85 5561	0.76 4143	1	
Birla	0.77 1339	0.95 9653	0.88 366	0.96 8033	0.84 0428	0.87 4248	0.86 2696	1

6.6.10 The Commission further observes from the findings of DG that in Gujarat and Maharashtra too all the considered companies have shown high positive correlations with each other.

Gujarat -April 2008- June 2010

	India c	JK	Birla	ACL
India c	1			
JK	0.472913	1		
Birla	0.680905	0.81913	1	
ACL	0.681065	0.861186	0.812779	1

Maharashtra -April 2008- September 2010

	ACC	ACL	Century	India c
ACC	1			
ACL	0.568086	1		
Century	0.792725	0.574761	1	
India c	0.526125	0.502294	0.708049	1

6.6.11 The Commission holds that from the correlation data above as analysed and concluded by the DG, it is evident that there is a case



for existence of price parallelism among the players considered in their respective states of operations.

6.6.12 The Commission also observes that there is no documented system of effecting change in price for dealers as is clear from the statement of Sushil Jain of M/s Noida Cements before DG, who has stated that change in price is communicated verbally over telephone. Thus, simultaneous change in price by any cement company following others consequent to mutual consultations is easily affected.

6.6.13 The Commission holds that evidences as above are indicative of the fact that the Opposite Parties meet frequently in various meetings organized by CMA and collect retail and whole sale prices using the platform of CMA. It is also evident that the details of actual production, available capacities of competing cement companies are also circulated by CMA. In view of these facts, price parallelism does not remain a mere reflection of non-collusive oligopolistic market as has been argued by certain Opposite Parties but mirrors a condition of coordinated behaviour and existence of an anti-competitive agreement in violation of provisions of section 3(3)(a) of the Act which prohibits any agreement or arrangement among the Opposite Parties which directly or indirectly determine the prices in the market.



Issue 5: Whether the cement parties named as Opposite Parties in the case have indulged in limiting and controlling the production and supply of cement in the market?

6.7.1 The Commission observes that in addition to the exchange of information on prices and production using CMA as platform, there are other 'plus' or 'facilitating' factors over and above the existence of price parallelism which indicate collusive behavior among the Opposite Parties. One of the 'plus' factors that suggest a concerted action among the cement companies including the Opposite Parties is finding by the DG as regards overall low capacity utilization and lower supply of cement by them during 2010-11.

6.7.2 According to DG, the overall capacity utilization of the cement companies came down to 73% during 2010-11 from 83% in 2009-10. The companies were not able to substantiate their low capacity utilization even during the period when as per their version the demand was high. DG has submitted that while the capacity utilization has been increased continuously during the last 4 years, the production has not been increased commensurately during this period, which seems to suggest that there is an understanding among the cement companies to keep the production lower than the demand in order to create artificial scarcity for the purpose of charging higher profit.



6.7.3 The Commission notes that the Opposite Parties have in their submissions contested the findings of DG that there was low level of capacity utilization on their part. Ultratech, for instance, has stated that capacity utilization of its old existing plants has risen from xxx % to xxx % and had even reached xxx - xxx %. It has also been stated that in 2010-11, four plants had achieved capacity utilization of xxx %, xxx %, xxx % and xxx %. Further, Ultratech's new plants capacity utilization had ranged from xxx to xxx%. For Grasim also, capacity utilization of its old existing plants has ranged from xxx % to xxx % while the capacity utilization of new plants has increased from xxx % to xxx %. It has also been submitted that Ultratech's production from 2007-08 to 2010-11 has increased year on year basis by xxx MMT i.e. an increase of xxx %.

6.7.4 Jaiprakash Associates Limited in its replies has argued that there are certain factors which have been hindering the full utilization of the cements plants, such as, availability of the key raw materials, erratic power supply, break down of machinery or stoppage of plants for upgradation, high inventory of clinker, logistic constraints , demand growth and labour disturbance. It has been argued that whenever a new plant is installed, the ramp up of the capacity utilization to optimum level takes considerable time due to the teething problems encountered in the initial period and therefore DG should have taken pro-rate capacity instead of the installed capacity for the whole year. According to JAL, calculated



correctly, the actual capacity utilisation for 2009-10 is xxx % which is much higher than the DG's calculation.

6.7.5 The Commission further notes that Madras Cements arguing along the lines of other Opposite Parties has submitted that the right working of capacity utilization in its case works out above 90% and not as worked out by the DG. ACC and ACL in its replies have also submitted that DG has not considered the capacity available for production and actual production and instead has considered nameplate capacity which does not account for ramp-up time, maintenance, age of plants etc. They have also submitted that capacity utilization across the industry in 2010 averaged at 81% based on available capacity instead of name plate capacity. Further, over a twenty year period till 2010, the capacity utilization levels have ranged between 75-85% and only on four occasions it has exceeded 85%. Thus, the performance of the industry during 2010 was comparable to any other normal year.

6.7.6 According to Lafarge, its capacity utilization in the last three years has been xxx % in 2008, xxx % in 2009 and xxx % in 2010. It has submitted that installed capacity has outpaced demand and therefore the findings of DG that the cement manufacturers are withholding or limiting the output are erroneous. India Cements Limited in its reply has contended that it is incorrect to make general assumptions based on the installed capacity, as production depends upon various factors and lower utilization of capacity is possible in period of lack of demand for the product. In its replies, Century



Cements Limited has submitted that it has utilized xxx % of capacity in 2010-11, while it was xxx % in 2009-10.

6.7.7 The Commission notes that JK Cements in its submissions has submitted that its capacity utilization in Northern Indian plant is around xxx % or more except in the year 2010-11 when it was xxx % because of major maintenance activity. Its southern plant also is producing at around xxx % despite the fact that it is taking time for stabilization and facing teething troubles being a green field project.

6.7.8 Binani Cements in its defence has brought out that while alleging that cement industry has underutilized capacity and withheld supplies, DG has compared production with the installed capacity of the grinding mill rather than clinker manufacturing capacity of the cement plants. It has argued that the maximum cement that could have been produced by it on an assumption that it had utilized 100% (4 Lac MMT), of its clinker capacity could have been 5.25 MMT and it has utilized almost 100% of its installed clinker production capacity.

6.7.9 The Commission has carefully considered the aforesaid submissions of the Opposite Parties. The Commission observes that as per the findings of DG the capacity utilization in 2010-11, was the lowest in last few years as can be seen from the figures given below;

Installed Capacity and Production of Cement

Year	Installed capacity in MMT	Growth in %	Production in MMT	Growth in %	Capacity utilization in %
2005-06	157.35	--	141.81	--	90
2006-07	165.64	5.26	155.64	9.75	94



2007-08	179.1	8.12	168.31	8.14	94
2008-09	205.96	14.99	181.61	7.90	88
2009-10	246.75	19.80	205	12.87	83
2010-11	286.38	16.06	210.85	2.85	73

6.7.10 The Commission notes that during 2010-11 the capacity utilization was around 73%, much below the capacity utilization in earlier years. The capacity utilization as reported by the DG is on the basis of capacity available for production as is evident from the data reported in publication of CMA titled 'Cement Statistics -2010' and 'Executive Summary –Cement Industry, March 2011'. Therefore, the contention of the Opposite Parties that if nameplate additions and capacity additions for the current year are taken out from the calculations of capacity utilization vis-a-vis the available capacity, then the capacity utilization would be higher than assessed and calculated by DG, does not hold good. Further, the growth rate in production lagged substantially in 2010-11 as against the growth rate of capacity additions. As reported by DG, in the year 2009-10, the growth rate in capacity additions was 19.80% and growth rate in production was 12.87%. However, in the year 2010-11, while the installed capacity witnessed increase in growth rate by 16.06%, the production grew marginally by 2.85% only. The rate of growth in production was far below than rate of growth in capacity in 2010-11.

6.7.11 Details as gathered from the publications of CMA (Executive Summary- Cement Industry) reveal that the installed



capacity till 31.03.2010 excluding the data pertaining to ACC and ACL Limited was 222.60 MMT which increased upto 234.30 MMT on 31.03.2011. The capacity expansion included new capacity addition of 12.65 MMT and expansion of 1.50 MMT. With deration of 2.45 MMT, the net addition in capacity was to the tune of 11.70 MMT. As against that the figures of capacity utilization, the production and dispatches is given in the aforesaid report of CMA as under;

Capacity as on 31<sup>st</sup> March 2011-234.30 MMT

	March 2011	Feb.2011	Mar.2010	(MMT)	
				April-March	
(a) Production	16.82	14.78	15.97	168.29	160.75
(b) Dispatches (including Export)	16.72	14.73	16.00	167.15	159.84
(c) Export	0.13	0.11	0.13	1.52	1.59
(d) Closing Stocks	1.58	1.54	1.29		
(e) Cap.Uti.(%)	87	78	88	76	83

6.7.12 The Commission observes from the aforesaid that the capacity utilization of cement industry in 2010-11 has gone down drastically as compared to capacity utilization in 2009-10. The capacity utilization of 76% excluding the data pertaining to ACC and ACL has been considered by CMA in its report on the basis of available capacity of remaining cement companies as on 31.03.2011. Thus, the position of capacity utilization as per the figures reported by CMA is



not very different from the capacity utilization of 73% computed by DG on the basis of installed capacity as brought out in 6.7.9 above.

6.7.13 Further, if the capacity and production of ACC and ACL is also considered, then the position would be as under as on 31.03.2011;

Total Installed capacity excluding ACC and ACL as on 31.03.2011	234.30 MMT
Total Installed Capacity including ACC and ACL as on 31.03.2011	286.38 MMT
Actual available Capacity excluding ACC and ACL as on 31.03.2011	224.41 MMT
Capacity utilization excluding ACC and ACL on 31.03.2011	168.29 MMT
% Capacity utilization excluding ACC and ACL on reported installed capacity of 222.60 MMT as on 31.03.2010	76%
% Capacity utilization excluding ACC and ACL on actual available capacity of 224.41 MMT as on 31.03.2011	75%
% Capacity utilization including ACC and ACL on reported installed capacity of 286.38 MMT as on 31.03.2011	73%

6.7.14 The Commission observes that even if the installed capacity of previous year i.e. 31.03.2010 is taken to calculate the utilization of capacity in percentage terms in the current year, it is clear that the utilization has been only around 76%, well below 80%. Therefore, the arguments of the Opposite Parties that if the nameplate capacity, capacity addition of the current year is taken out and capacity additions are considered on pro-rate basis, then their capacity utilization would be much more than what has been computed by the DG does not hold good.



6.7.15 The Commission also observes from the findings of DG that in case of large companies, during 2010-11, the capacity utilization has remained below 83%, the figure of utilization of capacity for the previous year 2009-10.

Sl.No.	Name of Cement	Capacity in MMT	Cement Production	% of Capacity Utilization	New additions in capacity during the year
1	Ultra Tech Cement	48.75	38.21	78.37	Nil
2	ACC	27.08	21.93	80.98	1
3	Amnruja Cement	25.00	20.63	82.52	Nil

6.7.16 The Commission also observes from the details collected out of the publications of CMA that in case of many plants of Ultratech, capacity utilization was very low. For example, the grinding units of Aligarh, Kotputli, Panipat, Ginigera had capacity utilization of xxx %, xxx %, xxx % and xxx % respectively. In case of other companies also, the capacity utilization has been quite low as per the figures obtained from the reports of CMA during 2010-11 even when the available capacity is taken as on 31.03.2010 and capacity additions for the current year are not considered;

Name of Company	Capacity in MMT as on 31.03.2010	Cement Production during 2010-11	% of Capacity Utilization	New Additions during 2010-11	Capacity as on 31.03.11 considering new additions in capacity during 10-11	% of Capacity Utilization after considering new capacity additions during 10-11
India Cements	14.05	10.3	73.3%	1.8	15.85	64.98%
Madras Cements	12.72	7.13	56.05%	2	-	56.05%

6.7.17 The Commission observes that in case of Madras Cements, for 2010-11, the capacity utilization was as low as xxx % in Kolaghat



grinding unit, xxx % in Uthiramerur and xxx % in Salem grinding unit. The capacity utilization in case of some of the cement plants of India Cements was also very low like xxx % in Parli Plant, xxx % in Sankaridurg, xxx % in Yerraguntla Plant, xxx % in Vallur Plants. In case of Binani Cements, its Sikar grinding unit utilized only xxx % of capacity during 2010-11.

6.7.18 Further, in case of JK Cements Limited too, its Nimbahera Plant, the capacity utilization was only about xxx %. Similarly, in case of Jaypee group also, its Roorke Plant produced at the capacity of xxx % and Wanakbori unit produced at xxx % of its capacity.

6.7.19 The fact of low capacity utilization is also substantiated from the details of total capacity utilization reported by the aforesaid companies in their annual reports. The Commission notes from the annual reports of Madras Cements and India Cement that the total capacity utilization had been quite low during 2009-10 and 2010-11;

Name of Company	2009-10			2010-11		
	Capacity	Utilisation	% of utilization	Capacity	Utilisation	% of utilisation
Madras Cements	10.49	8.3	79.1%	10.49	7.3	69.59%
India Cements	14.05	10.4	74.02%	15.55	10.15	65.27%

6.7.20 In case of other companies also, the capacity utilisation as per their own annual reports have gone down during 2009-10 and 2010-11. For instance, while capacity utilization in case of ACC Limited was xxx %, xxx % and xxx % respectively during the year 2007, 2008 and 2009, it has fallen to about 78% in 2009-10 and to xxx % in the 2010-11. In case of JK Cements also, the total capacity



utilization has come down to about xxx % from xxx % as per its own admission.

6.7.21 The Commission observes that details of capacity utilization as per data collected from the reports of CMA suggest that there has been decline in capacity utilization in almost all the months of 2009-10 and 2010-11 as compared to previous year. During 2010-11, the decline in capacity utilization has been the most in the months of November and December when the capacity utilization has gone down upto xxx % and xxx % respectively, the lowest in all the years under reference.

MONTH-WISE CAPACITY UTILISATION (2005-06 TO 2010-11)

Month	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
April	90	96	98	90	88	81
May	93	95	99	89	87	80
June	89	94	94	87	85	76
July	82	89	92	87	84	73
August	82	80	88	77	79	71
September	80	88	87	81	73	70
October	90	94	94	86	76	81
November	85	91	89	83	77	65
December	94	98	95	92	86	74
January	98	102	97	93	87	78
February	92	94	95	91	82	78
March	106	107	99	98	88	87
During the year	90	94	94	88	83	76

6.7.22 The Commission observes that from data collected, collated and corroborated from different sources it is undisputed that there



has been reduced capacity utilization during the years 2009-10 and 2010-11 as compared to previous years. The Commission has also considered the monthwise data on actual available capacity and production along with details of consumption in respect of cement companies excluding ACC and ACL for the year 2009-10 and 2010-11 as gathered from the records of CMA. The Commission observes that the pattern that emerges from the aforesaid figures show that during 2010-11 there has been lower capacity utilization and production as compared to 2009-10.

Months	Capacity in MMT		Production in MMT		% of capacity utilization	
	2009-10	2010-11	2009-10	2010-11	2009-10	2010-11
April	15.66	18.55	13.40	14.70	88	81
May	15.66	18.55	13.28	14.47	87	80
June	15.86	18.55	13.19	13.77	85	76
July	15.92	18.55	13.01	13.23	84	73
August	16.12	18.55	12.51	12.85	79	71
September	16.60	18.37	11.83	12.67	73	70
October	16.69	18.52	12.39	14.87	76	81
November	16.69	18.52	12.52	11.84	77	65
December	16.75	18.52	14.07	13.59	86	74
January	17.31	19.04	14.65	14.70	87	78
February	17.40	19.16	13.93	14.78	82	78
March	18.55	19.53	15.97	16.82	88	87
Total	199.21	224.41	160.75	168.29	83	76

6.7.23 The Commission observes that the aforesaid figures of production vis-a-vis actual available capacity shows that the utilization of capacity in 2010-11 has been lower in all months except for October. Even in the months of November – February, in which the utilization and production was quite high in 2009-10, the utilization of capacity has been quite low in 2010-11. In fact, during November 2010, the utilization could only be around xxx % as against



xxx % during November 2009. In December 2010 also, the utilization was xxx % as against xxx % of the previous year. For the month of January –February also, the utilization had gone down from xxx % and xxx % respectively to dismal xxx %. It is significant that production during November and December 2010 witnessed a negative trend as compared to the corresponding months in the year 2009.

6.7.24 The Commission also notes that dispatch in 2010-11 was not on the lines of pattern of consumption of cement during 2009-10 which normally should be the case since the dispatch by the cement companies during a year would like to follow the pattern of consumption observed in previous year. Data on dispatch and consumption as gathered from the records of CMA for its member cement companies is as under;

	Dispatch in MMT		Consumption in MMT	
	2009-10	2010-11	2009-10	2010-11
April	13.26	14.44	13.03	14.30
May	13.06	14.18	12.93	14.07
June	13.32	13.81	13.23	13.66
July	12.73	13.30	12.69	13.23
August	12.39	12.81	12.27	12.66
September	11.74	12.68	11.61	12.56
October	12.22	14.58	12.06	14.45



November	12.48	11.69	12.37	11.55
December	14.30	13.60	14.17	13.47
January	14.59	14.61	14.41	14.47
February	13.75	14.73	13.61	14.62
March	16.00	16.72	15.87	16.59

6.7.25 The Commission observes that as per forces of demand and supply, dispatch in different months of 2010-11 should have been more than or equal to consumption of cement in the corresponding months of the year previous year (2009-10), since demand of cement being inelastic there was no reason for decline of its demand or its consumption in 2010-11 compared to the previous year. Accordingly, in all the months of 2010-11, dispatch exceeded the actual consumption observed in 2009-10. However, in the two months of November and December 2010, as is seen from the figures in table above, the dispatch was lower than the actual consumption of cement in November --December 2009.

6.7.26 The Commission observes that it is not that the market was not in a position to absorb the supplies since in all other months the quantity produced and supplied was almost wholly consumed. The lower dispatch in the month of November- December 2010-11 than the actual consumption in the corresponding months of 2009-10, coupled with lower capacity utilization in these months as discussed above establishes that the cement companies indulged in controlling and limiting the supply of cement in the market.



6.7.27 The statements recorded by DG in course of proceedings also corroborate that the cement companies indulge in controlling the supply of cement in the market.

Statement of Shri B. Seenaiah, Managing Director, BSCPL Infrastructure, Ltd. recorded by DG on 18<sup>th</sup> March, 2011.

*"Q.5: Can you give details of problems faced by you relating to cement prices in each State separately?"*

*Ans: In general, in every State the cement companies create shortage during working seasons. When we enquire about short supply it is informed that there is power cuts and increase in coal prices etc. The trend of price rise is similar in all the states.*

*Q.6: What is your observation about the increasing price of cement?"*

*Ans: I can't see any logic behind price increase by the cement manufacturers. If you see their capacity of production and actual production you will find that they are not utilizing the full capacity and create shortage to hike the prices."*

6.7.28 The Commission in view of discussion in the foregoing paragraphs holds that the cement companies have indulged in limiting and controlling the production and supplies in the market in violation of provisions of section 3(3)(b) of the Act which prohibit any agreement or arrangement among the enterprises which limits or controls the production or supplies in the market.



## Issue 6

6.8 Whether there is a case of production and dispatch parallelism among the Opposite Parties?

### Production Parallelism

6.8.1 The Commission observes from the data reported by DG as furnished by all the companies in respect of the plant wise monthly production that there is a positive correlation in change in production output among the cement manufacturers operating in a particular region/state.

6.8.2 The data collated by DG in respect of trends in production show that during November 2010, all the companies had reduced the production drastically as compared to October 2010, although this was not the case for the corresponding months in 2009.

#### Tamil Nadu

in Tonnes

Company	2009		Remarks	2010		Remarks
	October	November		October	November	
ACC	79212	78652	Decrease	79452	68483	Decrease
Ultra	169795	153401	Decrease	184430	121582	Decrease
India Cements	365833	334334	Decrease	343304	239878	Decrease

#### Rajasthan

Company	2009		Remarks	2010		Remarks
	October	November		October	November	
ACC	103427	88425	Decrease	120695	115481	Decrease
Shree	701611	708686	Increase	869064	655290	Decrease
Ultra	275423	249253	Decrease	490792	348675	Decrease



India Cements	316365	300175	Decrease	305757	261469	Decrease
ACL	149654	152995	Increase	173758	132051	Decrease
BIRLA	206659	185529	Decrease	234887	200098	Decrease

#### Madhya Pradesh

Company	2009		Remarks	2010		Remarks
	October	November		October	November	
ACC	196936	180052	Decrease	211029	170027	Decrease
Century	270295	323544	Increase	383555	320774	Decrease
Jaypee	445236	539645	Increase	549274	383390	Decrease
Ultra	294250	286842	Decrease	322006	216861	Decrease

#### Karnataka

Company	2009		Remarks	2010		Remarks
	October	November		October	November	
ACC	329822	356502	Increase	411030	393274	Decrease
Kesoram	284200	316660	Increase	322620	296410	Decrease
Madras	17132	14727	Decrease	11802	11701	Decrease
Ultra	253456	275136	Increase	273023	202847	Decrease

#### Chhattisgarh

Company	2009		Remarks	2010		Remarks
	October	November		October	November	
ACL	120011	111012	Decrease	124043	115123	Decrease
Century	162780	163880	Increase	180980	160400	Decrease
Lafarge	337981	294215	Decrease	366239	316538	Decrease

#### Gujarat

Company	2009		Remarks	2010		Remarks
	October	November		October	November	



ACL	565768	615864	Increase	721665	576275	Decrease
Jaypee	2,888	9,322	Increase	121,584	103,533	Decrease
Ultra	430472	412498	Decrease	466749	397585	Decrease

#### Andhra Pradesh

Company	2009		Remarks	2010		Remarks
	October	November		October	November	
India	425797	465583	Decrease	449985	317488	Decrease
Kesoram	113183	111888	Decrease	91706	73354	Decrease
Ultra	250027	276440	Increase	347702	287377	Decrease
Madras	147632	148362	Increase	112957	104343	Decrease

6.8.3 The Commission observes that in November–December 2010 the cement companies including the Opposite Parties had reduced the production together, although in 2009 while in some cases there was drop in production, in many cases there was increase also. This establishes that there was a coordinated effort on part of the cement companies including the Opposite Parties to reduce supplies by curtailing production.

#### Dispatch Parallelism

6.8.4 Further, on the basis of the analysis of dispatch data for the period two years from Jan 2009 to Dec.2010 by the DG, the Commission observes that changes in dispatch of cement by the top companies were almost identical.

#### Dispatch during January 2009- December 2009 (in '000 tonnes)

Company	Jan' 09	Feb' 09	Mar' 09	Apr' 09	May' 09	Jun' 09	Jul' 09	Aug' 09	Sep' 09	Oct' 09	Nov' 09	Dec' 09
J.K. Group	666	655	743	644	642	707	656	644	604	648	644	789
Century Textiles	690	652	732	679	638	617	629	558	559	584	612	639
India Cement	710	754	828	784	804	823	896	835	785	837	837	995



Grasim Indus.	1499	1461	1713	1581	1617	1691	1539	1544	1471	1436	1476	1656
Madras Cements	502	502	581	607	598	624	704	683	647	603	553	653
UltraTech Cement	1484	1436	1628	1580	1534	1422	1135	1317	1270	1351	1411	1590
Jaypee Group	727	688	782	791	807	781	743	695	695	780	954	1000
Shree Cement	749	742	837	788	735	779	830	689	680	702	709	858
Lafarge India	471	470	546	505	485	516	478	525	425	560	511	629
Binani Cement	414	414	471	439	451	455	426	404	406	361	418	472
ACC Ltd.	1864	1720	1979	1769	1789	1788	1753	1634	1612	1668	1646	1861
Ambuja Cement	1626	1649	1724	1639	1638	1588	1438	1429	1359	1464	1550	1729

**Cement Dispatches (Jan'2010 to Dec'2010) (in '000 tonnes)**

Company	Jan' 10	Feb' 10	Mar' 10	Apr' 10	May' 10	Jun' 10	Jul' 10	Aug' 10	Sep' 10	Oct' 10	Nov' 10	Dec' 10
J.K. Group	840	736	858	812	789	687	620	639	667	834	645	705
Century Textiles	723	633	679	641	595	601	592	617	627	711	611	639
India Cement	922	929	1045	918	895	911	971	864	819	840	615	711
Grasim Indus.	1692	1555	1903									
Madras Cements	636	639	792	663	625	670	744	665	542	557	433	462
UltraTech Cement	1672	1550	1779	*3363	3333	3141	2897	2942	2831	3403	2643	3252
Jaypee Group	1037	1078	1233	1197	1240	1279	1162	1021	1054	1330	1000	1242
Shree Cement	882	771	939	753	846	790	665	706	697	869	655	829
Lafarge India	601	494	628	548	478	604	572	484	526	615	547	601
Binani Cement	498	463	495	442	459	430	380	384	377	516	402	468
ACC	1885	1688	1900	1765	1733	1756	1532	1541	1550	1872	1691	1863
Ambuja Cement	1748	1690	1916	1895	1863	1686	1407	1413	1481	1752	1416	1826

6.8.5 The Commission observes that the Opposite Parties have disputed the aforesaid data. JAL has argued that during January-December 2009 it had the largest increase in dispatches as compared to other cement manufacturer. It has also been contended that Ultratech, Ambuja Cements have increased their dispatches for the



period January 2010-December 2010 while the rest have shown a decline which rebuts the claim of positive correlation put forth by the DG. Madras Cements has in its arguments contended that there is no obvious trend of similarity in dispatch in all the months among all the players to establish any meeting of mind among the cement manufacturers.

6.8.6 The Commission further observes that some of the Opposite Parties, for example, ACC and ACL have accepted parallelism in cement industry. However, it has been argued that parallelism in production and dispatch is not because of any collusive arrangement, but because of the inherent market characteristics i.e. commoditized nature of cement, cyclical nature of cement industry and ability of competitors to intelligently respond to the actions of their competitors.

6.8.7 The Commission has carefully considered the aforesaid contention of the Opposite Parties and has found that the contention of the Opposite Parties is not correct that there is no obvious trend of parallel behaviour in the dispatch of the cement companies since if the data for dispatch of cement during October-November 2010 is seen, it becomes clear that in the month of November 2010 the growth in dispatch was negative in case of all the cement companies including the Opposite Parties. The Commission observes from the data forming part of the report of DG as in para 6.8.1 and 6.8.4 that production and dispatch had gone down in case of all the companies in the month of November 2010. This trend was unusual, since in



November 2009, the production and dispatch both had witnessed a mixed trend.

Cement Dispatches (Oct- to Dec-2009 and 2010) (in '000 tonnes)

Company	Oct'09	Nov'09	Remarks	Oct'10	Nov'10	
J.K. Group	648	644	Decrease	834	645	Decrease
Century Textiles	584	612	Increase	711	611	Decrease
India Cement	837	837	Same	840	615	Decrease
Grasim Indus.	1436	1476	Grasim merged with Ultratech			
Madras Cements	603	553	Decrease	557	433	Decrease
UltraTech Cement	1351	1411	Increase	3403	2643	Decrease
Jaypee Group	780	954	Increase	1330	1000	Decrease
Shree Cement	702	709	Increase	869	655	Decrease
Lafarge India	560	511	Decrease	615	547	Decrease
Binani Cement	361	418	Increase	516	402	Decrease
ACC Ltd.	1668	1646	Decrease	1872	1691	Decrease
Ambuja Cement	1464	1550	Increase	1752	1416	Decrease

6.8.8 The Commission observes that from the analysis of data on production, dispatch and supplies in the market it becomes clear that the cement companies coordinate their actions as is apparent from the data of dispatch in November 2010 which shows identical and similar behavioural pattern. In any cartelized behavior, the parties to the arrangement may not always coordinate their actions; periodically their conduct may also reflect a competitive market structure. However, there will be periods when coordination rather than ~~competition~~ competition will be found more gainful. This is reflective in the similar pattern of dispatch observed among the cement companies during November 2010. The coordination among them gets facilitated since CMA circulates the production and dispatch details



of all the member cement companies on regular basis. Further, the companies are also exchanging information through CMA as regards retail and wholesale prices.

#### Issue 7

6.9 Whether the aforesaid acts of the Opposite Parties have caused increase in the prices of cement?

6.9.1 The Commission observes that the aforesaid act of limit and control of production and supplies in the market caused upward movement in the price of the cement. The deliberate act of shortage in production and supplies by the cement companies and almost inelastic nature of demand of cement in the market resulted into higher prices in the cement. As per the trend of the price of cement per bag charged by some cement companies including the Opposite Parties during 2010-11 submitted by the DG in his report, the price witnessed an increase in the month of November 2010 as compared to September 2010 and there was a distinct upward movement in the price during January 2011 and February 2011.

#### Cement Prices In various States (in Rs.per Bag)

##### Uttar Pradesh

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
ACC	227	242	234	269
Shree	222	225	209	250
Century	209	237	242	282
Birla	191	225	196	250



### Haryana

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
ACC	241	241	242	273
Shree	228	230	221	255
Birla	228.5	220.5	204.5	243.5

### Bihar

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
Birla	210	240	200	255
Lafarge	296	294	289	298

### Delhi

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
ACC	224	233	227	257
Shree	228.5	235.5	219.5	247.5
Birla	218.5	226.5	204.5	241.5

### Punjab

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
ACC	255	259	259	287
Shree	243	248	239	275

### Chandigarh

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
ACC	251	254	256	285
Shree	241	246	237	270

### Rajasthan

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
ACC	209	213	217	251
Shree	220	223	211	238
Birla	213	217	206	234



### Gujarat

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
JP	170	190	205	230
Birla	161.75	174.75	184.75	208

### Maharashtra

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
ACC	219	246	245	260
Century	191	214	206	236

### West Bengal

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
ACC	272	278	255	281
Century	261	271	265	275
Birla	236	254	191	242
Lafarge	267	267	260	281

### Assam

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
ACC	211	217	218	264
Century	319	316	310	316

### Odisha

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
ACC	231	238	216	247
Century	196	206	211	230
Lafarge	215	224	214	241



### Madhya Pradesh

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
ACC	197	206	199	235
Century	196.5	201	215	245
Birla	172	193	171	219

### Andhra pradesh

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
Kesoram	167.32	237.26	230.81	246.85
Rain	180	233	234	248

### Kerala

Name of Company	Sept. 2010	Nov. 2010	Jan 2011	Feb.11
Madras	250	290	295	300

6.9.2 The Commission observes from the data above that the price of cement had gone up in case of cement manufacturing companies during November, 2010 and January and February 2011.

6.9.3 The Commission also observes that the increase in price corresponds to reduced dispatch and production during November-December 2010 vis-a-vis pattern of consumption observed in the corresponding months of the previous year which shows coordinated action on the part of the cement companies to limit supplies and raise prices subsequently which is reflected in the fact that the prices of all the companies have moved together in January-February 2011.

6.9.4 The Opposite Parties have raised an argument that the rise in price in 2011 must be seen in the context of change in excise duty.



However, the change in excise duty was effected after the budget was presented on 28.02.2011 and therefore any change in the price could have been only from 1.3.2011. However, the prices witnessed an increase since January 2011 itself. Thus, the contention of the Opposite Parties that the change in prices was due to change in excise duty structure is not correct. Similarly coal price also increased only after February 2011, while the prices started rising since January 2011, thus, negating the argument of the Opposite Parties that coal prices had an impact on the price of cement:

6.9.5 The Commission notes that the Opposite Parties have argued that the rise in cement prices must be seen in the backdrop of the prices of other commodities. In this regard, the Commission observes that after September 2010 the cement prices have increased more than other commodities as may be seen from data extracted from the publication of CIMA – Executive Industry –Cement Industry 2011.

Index numbers of wholesale prices(Monthly Average)

Year /Month	2009-2010 Ratio between other commodities and cement prices	2010-2011 Ratio between other commodities and cement prices
September	1.07	0.94
October	1.07	0.94
November	1.09	0.96
December	1.17	0.98
January	1.21	0.99
February	1.18	0.96

6.9.6 Another argument of the Opposite Parties has been that production and dispatch corresponds to the demand in the economy which is assessed by the internal teams. Before DG, however, they could not furnish the documentary details as to how the demand is



monitored and assessed by them. The Commission notes that cement is mainly consumed by the construction industry. Therefore, for justification of lower production and capacity utilization in the years 2008-09 and 2009-10, it is necessary to assess whether there was any slowdown in the construction industry during these years. Details collected from publications of CMAI and website of Ministry of Statistics and Programme Implementation, however, shows that there was a positive growth in the construction industry during these years. However, the growth in cement production was not commensurate to the growth observed in the construction industry.

Revised Estimates of GDP at Factor Cost by Economic Activity (At 2004-05 prices)

Industry				<u>%age change over previous year</u>	
	<u>2008-09</u>	<u>2009-10 (QE)</u>	<u>2010-11 (QE)</u>	<u>2009-10</u>	<u>2010-11</u>
Construction	332,557	355,918	384,629	7.0	8.1
GDP	4,162,509	4,493,743	4,877,842	8.0	8.5

Revised Estimates of GDP at Factor Cost by Economic Activity (At current prices)

Industry				<u>%age change over previous year</u>	
	<u>2008-09</u>	<u>2009-10 (QE)</u>	<u>2010-11 (QE)</u>	<u>2009-10</u>	<u>2010-11</u>
Construction	451,414	501,706	591,864	11.1	18.0
GDP	5,282,086	6,133,230	7,306,990	16.1	19.1

Quarterly Estimates of GDP for 2010-11 (at 2004-05 prices)

Industry	<u>%Age change over previous year</u>							
	<u>2009-10</u>				<u>2010-11</u>			
	<u>Q1</u>	<u>Q2</u>	<u>Q3</u>	<u>Q4</u>	<u>Q1</u>	<u>Q2</u>	<u>Q3</u>	<u>Q4</u>
Construction	5.4	5.1	8.3	9.2	7.7	6.7	9.7	8.2
GDP	6.3	8.6	7.3	8.9	9.3	8.9	8.3	7.8

Quarterly Estimates of GDP for 2010 – (at current prices)



Indus try	%Age change over previous year							
	2009-10				2010-11			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Const ructi on	6.0	5.5	13.0	19.7	18.9	16.3	19.2	17.6
GDP	10.5	13.0	16.8	23.3	21.6	19.2	19.0	17.2

### Cement Production and Dispatches

Month	Cement Production			Cement Dispatches		
	In Absolute		%age change in 10-11 over 09-10	In Absolute		%age change in 10-11 over 09-10
	2010-11	2009- 10		2010-11	2009-10	
April	14.70	13.40	9.70	14.44	13.26	8.90
May	14.47	13.28	8.96	14.18	13.06	8.58
June	13.77	13.19	4.40	13.81	13.32	3.68
July	13.23	13.01	1.69	13.30	12.73	4.48
August	12.85	12.51	2.72	12.81	12.39	3.39
September	12.67	11.83	7.10	12.68	11.74	8.01
October	14.87	12.39	20.02	14.58	12.22	19.31
November	11.84	12.52	-5.43	11.69	12.48	-6.33
December	13.59	14.07	-3.41	13.60	14.30	-4.90
January	14.70	14.65	0.34	14.61	14.59	0.14
February	14.78	13.93	6.10	14.73	13.75	7.13
March	16.82	15.97	5.32	16.72	16.00	4.50
Overall			4.74%			4.75%

6.9.7 From the data above, the Commission observes while construction industry grew at 8.1% in 2010-11, the cement industry grew at 4.74% in production and 4.57% in dispatches. The construction industry has grown at a much faster rate than the growth in capacity utilization in the years 2009-10 and 2010-11 and in both the years, the capacity utilization had fallen down considerably as compared to the previous years. While the capacity utilization had fallen from 94% in 2008-09 and 88% in 2008-09 to

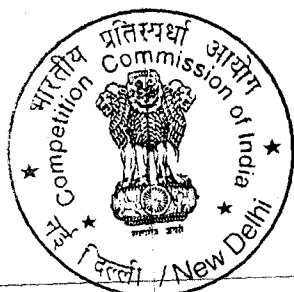


83% in 2009-10 and 76% in 2010-11, the construction industry grew at a rate of 7% in 2009-10 and 8.1% in 2010-11 at factor cost and at rate of 11.1% in 2009-10 and 18% in 2010-11 at current prices.

6.9.8 The Commission further observes that in the third quarter (October-December) of 2010-11, the construction industry witnessed a growth rate of 9.7% at factor cost and 11.7% at market prices over the corresponding period of the previous year. However, during November and December 2010, the cement industry had registered a negative growth in production and dispatches over the previous year. During the year 2008-09 and 2009-10, the economy would have absorbed all the cement produced since not only construction industry had a positive growth but other sectors of economy had also fared well.

6.9.9 It is not a case that the cement produced had remained unsold in any year or in any month. In fact whatever was produced was consumed in the market. The capacity additions by the cement companies over the years show that they had anticipated a higher demand. In fact, as per the statement of ACC, even in South which was a surplus state, capacity additions were made. This shows that the company had a positive outlook about the demand of cement since capacity additions without expectations of its optimal utilization would not have been made.

6.9.10 On the basis of above, the Commission is of considered view that there was no apparent constraint on demand for the cement manufacturers which would justify lower capacity utilization during



2009-10 and 2010-11 over the previous years. Further, in the wake of positive growth of construction industry in the third quarter of 2010-11, there was no constraint which would have resulted in negative growth in production and dispatches in the month of November and December 2010 either. The argument that low capacity utilization during 2009-10 and 2010-11 was due to lower demand seems specious in light of the fact that many cement companies in their own submissions like Lafarge and Century Cements have contended that some of their plants utilized close to xxx%-xxx% of the capacity. The arguments of Lafarge and Century Cements that their plants could utilize close to xxx% of capacity repudiate the contention of the other Opposite Parties that there was a demand constraint in the market which caused lower capacity utilization in their case. Significant fall in the capacity utilization in the cement industry on the whole as compared to earlier years rather establishes that the cement companies deliberately utilized lower than the available capacity in order to manipulate and control supplies in the market. The capacities are under-utilised to keep the prices high.

6.9.11 The Commission observes that the act of limiting and controlling supplies on the part of the cement companies over the years has been aimed at first creating shortages leading to built up demand and thereafter raise prices in wake of high demand of the product in the market. Since in some seasons, the demand is more, the cement companies restrict the supplies just before the peak demand and thereafter sell cement at a higher price. This is evident



from the details brought out above. The cement companies reduced production and dispatch of cement even when demand was positive during November and December 2010 and thereafter raised prices in the month of January and February 2011 in times of high demand as outlined in discussion above. It is also significant that the price increased in the month of January and February 2011 after the meetings of High Power Committee of CMA. The statements of third parties recorded by DG establish that the cement companies curtailed supplies in the month and sold at a higher price in the month of January –February 2011.

**Statement of Shri Ankit Gupta, M/s Key Stone Developers Pvt. Ltd., Noida recorded by DG on 8<sup>th</sup> March, 2011.**

*"Q.4: What are the problems faced by your company regarding purchase of cement?"*

*Ans: Recently in the month of January 2011, companies like Ultra Tech, JK Cement, Jaypee Cement and Mangalam Cement, who were supplying cement to us in non-trade segment, increase their prices gradually from Rs. 180/- to Rs. 220/- per bag. Therefore, from February 2011 onwards the booking in the non-trade segment was completely stopped by almost all the companies. Also the supplies for earlier booking was not delivered in time and delayed, despite advance payment. For example, we placed order to Ultra Tech Cement in the month of January, 2011 was completed in March, 2011. Normally, the supplies are completed within the time given in*



our schedule, but after January, 2011 onwards, the companies were delaying the supplies. The copies of purchase invoice indicating the increase in price is hereby furnished to you. The copy of the purchase order relating to delayed supplies shall be furnished to you by 14<sup>th</sup> March, 2011.

Q.5: Did you discuss the reason for delayed supply with the representatives of the companies? What was their response? Have you made any correspondence in this regard?

Ans: It was replied by the representative of the Ultra Tech Cement that there is shortage of supply of cement by the company. Mostly there was verbal communication through telephone/mobile and no written correspondence was made in this regard. After the said purchase order they have stopped the booking in non-trade segment and it is told that as per the company policy non-trade bookings are not being made with the result were are now purchasing cement through dealers."

Statement of Shri Ravi Mohan Sethi, Chairman & Managing Director of Stellar Ventures (P) Ltd. recorded by DG.

" The Cement prices of OPC 43 grade offered by leading manufacturers of cement such as Ultratech Cement Ltd., Jai Prakash Associates Ltd., J.K. Cement Works, Mangalam Cement Ltd. etc. in the non-trade segment for projects used to be below Rs. 180/- per bag inclusive of all taxes, delivered at site upto the month of December, 2010.



*In January, 2011, not only were the prices of OPC 43 grade increased from Rs. 180/- per bag to Rs. 220/- per bag, but also booking of cement was restricted in non-trade segment for projects by most of the companies to create artificial shortage of cement. In spite of taking 100% advance at the time of booking, supplies were made partially by the cement manufacturers to create artificial shortage.*

*From 1<sup>st</sup> February onwards the booking of OPC 43 grade as well as PPC grade in the non-trade segment for projects has totally been stopped by the cement manufacturers. Since the OPC 43 grade is generally not available in the open market, the projects of construction companies using OPC 43 grade as come to a standstill due to non-availability of cement.*

*From market feedback we learn that cement companies are presently allocating their entire supplies through trade to get higher sales realization. Artificial shortage has also been created even in the trade segment to increase the prices. The sale price of PPC cement in the trade segment which used to be around Rs. 200/- per bag about a month back has been increased to around Rs.265/- to Rs. 270/- per bag. The OPC 43 grade cement is being sold in the trade between Rs. 280/- to Rs. 290/- per bag."*

6.9.12 The Commission also observes that statements of representatives of cement companies also confirm that they resort to curtailment of supplies and production in order to get better prices from the market and protect market share as is evident from the statement of T.S Raghupathy of India Cements before DG;



*" As regards curtailment of production due to prices, the same depends upon short term and long term business strategy, need to protect market share at any cost etc. It is not always that we cut production, whenever prices were dropped. Decision is taken based on prevailing situation at that point in time."*

#### Price Trend over the Years

6.9.13 The Commission notes that DG in his investigation has found consistent increase in the price of cement over last few years. It has been submitted by the DG that the prices of cement have been on the rise since 2004-05 from about Rs.150/- per bag to close to Rs.300/- in March 2011, whereas the cost of sales has only increased about 30%. According to DG, prices of cement are above competitive levels and increase in price by the cement companies is result of anti-competitive act on their part.

6.9.14 The Opposite Parties have contested the findings of DG stating that the rise in cement prices has been less than the overall increase wholesale price index and therefore rise in prices of cement was not unusual. It has also been argued that DG has failed to appreciate that the CAGR of the input costs has increased more than the cement price, which caused upward pressure on cement.

6.9.15 The Commission observes that a look at the production and price indices of cement for ~~period~~ period between 1995-96 and 2009-10 as below would show that while till 2001-02 the CAGR of cement price index was 2.3% as against the CAGR of 7.4% in production index, it grew upto 6.3% between 2001-02 and 2009-10 registering a high increase.



### Cement Price & Production Indices

Year	Cement Prod. Index	CAGR	Cement Price Index	CAGR
1995-1996	121.3		129.9	
1996-1997	133.0		133.5	
1997-1998	145.1		128.9	
1998-1999	153.4		130.9	
1999-2000	175.2		128.4	
2000-2001	173.6	7.4%	136.6	
2001-2002	186.5		148.7	2.3%
2002-2003	203.0		145.3	
2003-2004	215.3		147.1	
2004-2005	229.5		152.8	
2005-2006	257.8		166.7	
2006-2007	281.4		197.2	
2007-2008	304.1		217.5	
2008-2009	326.9	8.4%	223.3	
2009-2010			223.4	6.3%

6.9.16 The Commission in this regard also observes that tariff Commission in its report on "Performance of Cement Industry" to the Department related Parliamentary Standing Committee on Commerce" has also observed that the average price of cement was



Rs. 244 per bag in the year 2009-10 as against the normated average fair price of Rs.192 ( at maximum rate of tax).

6.9.17 The Commission on the basis of data and discussion above observes that there has been inverse relation between the prices and the capacity utilization. The Commission holds that coordinated act of the cement companies including the Opposite Parties to limit and control their production, dispatch and capacity is reflected on rising price of cement over the last few years.

#### Price Leadership

6.9.18 As has been discussed in para 4.2.7 of this order, the market of cement is broadly divided into five regions. The Commission notes from the findings of DG that the share of each company varies in these regions. However, in each region top companies enjoy position of market leadership. Lafarge, ACC, ACL are market leaders in the Eastern region, controlling majority of the market share. While in the Northern region, ACC, ACL, Ultratech, Shree are the major players controlling more than half of the market share, ACC, Jaypee and Ultratech are the market leaders in the Central Region. Further, ACL, Ultratech, India, Jaypee are the market leaders in Western region and Ultratech, ACC, India Cement and Madras Cement are the leaders in the Southern region.

6.9.19 Since the number of major cement manufacturing companies is not many in all the five regions, it becomes easier to coordinate their strategies giving rise to a situation of collusive price



leadership in the market. Price leaders give price signals through advanced media reporting about impending price rise which is followed by all cement manufacturers in the market. The statements recorded by DG establish existence of price leadership in the cement market;

Statement of Shri Rahul Kumar, Director & Chief Financial Officer, Jaiprakash Associates Ltd. recorded by DG

*"Q.31: Please explain as to whether the changes in prices of your company are also dependent upon the prices of competitor cement companies?"*

*Ans.: The final pricing decisions of JAL are taken independently however, the prices of the perceived market leaders are kept in mind.*

*Q.32: Who are the perceived market leaders in the states where your company is operating? Is your company also a market leader in any the operational markets?"*

*Ans.: In different states the perceived market leaders are different but, ACC, Ambuja, Ultratech & Lafarge are the perceived market leaders in most of the states in which we operate. We do not perceive ourselves to be a market leader in any of our operational markets."*

Statement of Shri A.V. Dharmakrishnan, Executive Director – Finance, Madras Cements Ltd.

*"Q.26: Who are the perceived market leaders in the states where your company is operating? Is your company also a market leader in any the operational markets?"*

*Ans: Tamil Nadu - India Cement, Ultratech & Madras Cement are perceived market leaders.*

*Kerala – India Cement, Madras Cement & ACC are perceived market leaders.*



Andhra Pradesh - There is no perceived market leader  
 Karnataka - Ultratech & ACC  
 West Bengal - Ambuja Cement, Ultratech & Lafarge"  
 Shri K. Ravi, Managing Director, NCL Industries Ltd., Hyderabad

"Q.9: Who are the big cement companies in your area who can decide the market trend?

Ans: The big companies in different markets decide the trend of prices, though they may vary from time to time and from market to market.

Q.10: Are your prices dependant on the prices of big cement companies?

Ans: Yes, to a certain extent, our prices depend upon the prices of the big cement companies. We follow the market trend to ensure the availability of our brand in the market, even if we may sell at a loss."

Statement of Dr. S. Anand Reddy, Joint Managing Director in M/s Sagar Cements Ltd. recorded by DG on 25<sup>th</sup> March, 2011.

"Q.8: What are the reasons for such a frequent price change by your company?

Ans: We have been following the market leaders and we follow the price according to the market conditions.

Q.9: You have stated that you follow the prices of market leaders. Do you mean say that the prices of cement are decided by leading cement manufacturers? Who are such market leaders?

Ans: Every district and every major town, there are brands which are popular. So we follow the prices of popular brands. We cannot



name one or two market leaders, as such, in every area, there are different market leaders."

6.9.20 The Commission observes that in course of proceedings before DG it has been admitted that the big companies set the price trend which is followed by smaller players.

Statement of Shri P.R. Raju, Director, Anjani Portland Cement, Hyderabad

"Q.8: What are the reasons for such a frequent price change by your company?

Ans: The change in price is because of change in the pattern of consumption or the orders. Cement is sold through dealers except for the bulk project buyers. We are the small manufacturer and our quantum of sale in the market is insignificant. There are very big companies like Ultratech, India Cement, Birla Group, Ambuja and ACC with whom we have to compete. So far as the prices are concerned, these big companies come in different categories. There is another price range for middle level companies and ours come in the third category. Thus we have to keep prices below the prices of top and middle level companies.

Q.9: Are your prices dependant on the prices of big cement companies?

Ans: We follow the big companies for the purpose of market trend only. The prices are not dependent, but they are competitive"

Shri S.R.B. Ramesh Chandra, Managing Director, Bheema Cement, Hyderabad

"Q.8: What are the reasons for such a frequent price change by your company?

Ans: We only follow the market trends.



Q.9: Are your prices dependant on the prices of big cement companies?

Ans: Yes, because market trends are decided by them."

6.9.21 Jaiprakash Associates in their oral submissions have also before the Commission stated that they follow the prices of Ultratech, ACC and ACL. It was also submitted that if it does not follow the prices of leaders it will not survive in the market. JK Cements Limited in their submissions before the Commission has also stated that it is a follower and not leader implying that price leadership exists in the market.

6.9.22 From the statements and submissions as above, the Commission observes that the agreements and concerted action as regards price among the cement companies are led by the top cement companies (also the Opposite Parties in the case) who are the market leaders in their respective regions. The statements recorded during the course of investigation as above indicate that the price is changed by cement manufacturers on the basis of price of market leaders. The big players holding the maximum share plays a role of leaders in facilitating concerted action among the cement manufacturers.

#### High Profit Margins

6.9.23 The Commission observes that the informant in his information and DG in his report of investigation have submitted that by restricting and controlling supplies in the market and by charging



higher than competitive prices, the cement companies including the Opposite Parties have earned huge profit over the years. According to DG, the action of cement manufacturers suggests maximization of profit by eliminating competition on prices. The Opposite Parties in their replies have rebutted the findings of DG by stating that their profit margins have not been abnormal and are falling over the years. It has also been stated that DG has incorrectly considered cost of sales to measure profit margins. Further, in other sectors, commodities the margins are much more than the cement industry. A concern has also been raised that the mandate of the Commission is not to look into whether correct prices of a commodity are being charged as long as prices are governed by the market forces.

6.9.24 The Commission has carefully considered the information, findings of DG and the contention of the Opposite Parties on the issue. The Commission observes that the profitability of businesses and commodities traded in the market may vary depending upon efficiency and manner of utilization of factors of production apart from cost and demand pull factors. The duty cast upon the Commission as per provisions of the Act is not to look into and determine the measure and degree of profitability of a sector or a commodity or a firm, if it is the outcome of interplay of normal market forces ~~of~~ price, supply and demand. However, in case competitive forces are impeded and are constrained in any manner through agreements, practices, decisions, abuse of dominant position of a dominant player and anti-competitive combinations,



then it is the duty of the Commission to take suitable actions and suggest measures to promote competition and unshackle competitive forces in favour of economic development of the country.

6.9.25 The Commission observes that profit margin of all the Opposite Parties on all parameters has been quite high. It is not that they are running into losses. In fact some of the big companies have posted a high Return on Capital Employed (ROCE) in earlier years as high as 26% and has returned a higher earnings before Depreciation, Interest, Tax and Amortisation (EBDITA) in 2010-11 as compared to the previous year 2009-10 as may be seen from the data given below;

#### Earnings Before Depreciation, Interest, Tax and Amortization

Company Name	2008-2009	2009-2010	2010-2011
A C C Ltd.	2644.00	1822.00	1921.00
Ambuja Cements Ltd.	1971.00	1951.00	1994.00
Jaiprakash Associates		2891.00	3242.00
Ultratech Cement	1810.00	2094.00	2829.00

#### Return on Capital Employed

Company Name	2008-2009	2009-2010	2010-2011
A C C Ltd.	20	23	19
Ambuja Cements Ltd.	27	23	21
India Cements Ltd.	24.33	16.52	8.96
Jaiprakash Associates ( jaypee Group)	9.53	8.61	8.96
Madras Cements Ltd.	17.64	16.53	9.62
J K Cement Ltd.	19.95	17.80	7.25
Binani Cement Ltd.	19.83	29.69	10.05
Ultratech Cement	26	25	19



6.9.26 The Commission observes that high profit margin of the companies is indicative of the fact that these companies are earning high profits. During the year 2010-11, the operating profit of ACC, ACL and Ultratech has also gone up as compared to the previous year. ROCE of these companies is also pretty high and hovers around 20% over the last three years. The other companies are also showing a good profit. Companies like Binani and Madras Cements also have returned high ROCE. The Commission observes that in cases of some Opposite Parties the profitability has also reduced. However, they are also having reasonably higher ROCE.

6.9.27 The Commission notes from the analysis conducted by the DG for PPC for the years 2007,2008 and 2009 that the Opposite Parties have earned huge margin over the cost of sales.

#### ACC Limited

Name of company	Year	Cost of sales in Rs.	Sales Realization in Rs.	Margin in Rs	Margin per bag of cement (in Rs)	Margin as % of Sales Realisation
ACC	2009	xxx	xxx	xxx	xxx	xxx
ACC	2008	xxx	xxx	xxx	xxx	xxx
ACC	2007	xxx	xxx	xxx	xxx	xxx

#### Ambuja cements limited -2009

Unit	Year	Cost of Sales Rs	Sales Realisation Rs	Margin Rs	Margin per bag of cement (in Rs)	Margin as % to Sales realisation
Ambuja	2009	xxx	xxx	xxx	xxx	xxx
Gaj AMBUJA	2009	xxx	xxx	xxx	xxx	xxx
Darla ghat	2009	xxx	xxx	xxx	xxx	xxx
Bhatinda	2009	xxx	xxx	xxx	xxx	xxx



Rabriyawas	2009	xxx	xxx	xxx	xxx	xxx
Sankrail	2009	xxx	xxx	xxx	xxx	xxx
Farrakka	2009	xxx	xxx	xxx	xxx	xxx
Roorkee	2009	xxx	xxx	xxx	xxx	xxx
		xxx	xxx	xxx	xxx	xxx
Average						

#### Ambuja Cements limited - 2008

Unit	Year	Cost of Sales	PPC Sales Realisation	Margin	Margin per bag of cement(in Rs)	Margin as % to Sales realisation
Ambuja	2008	xxx	xxx	xxx	xxx	xxx
Gaj Ambuja	2008	xxx	xxx	xxx	xxx	xxx
Darla ghat	2008	xxx	xxx	xxx	xxx	xxx
Bhatinda	2008	xxx	xxx	xxx	xxx	xxx
Rabriyawas	2008	xxx	xxx	xxx	xxx	xxx
Sankrail	2008	xxx	xxx	xxx	xxx	xxx
Farrakka	2008	xxx	xxx	xxx	xxx	xxx
Roorkee	2008	xxx	xxx	xxx	xxx	xxx
Maratha	2008	xxx	xxx	xxx	xxx	xxx
Bhatpara	2008	xxx	xxx	xxx	xxx	xxx
Avg		xxx	xxx	xxx	xxx	xxx

#### Ambuja Cements limited - 2007

Unit	Year	Cost of Sales	Sales Realisation	Margin	Margin per bag of cement (in Rs)	Margin as % to Sales Realisation
Ambuja	2007	xxx	xxx	xxx	xxx	xxx
Gaj ambuja	2007	xxx	xxx	xxx	xxx	xxx



Darla ghat	2007	xxx	xxx	xxx	xxx	xxx
Bhatinda	2007	xxx	xxx	xxx	xxx	xxx
Rabriyawas	2007	xxx	xxx	xxx	xxx	xxx
Sankrail	2007	xxx	xxx	xxx	xxx	xxx
Farrakka	2007	xxx	xxx	xxx	xxx	xxx
Roorkee	2007	xxx	xxx	xxx	xxx	xxx
Average		xxx	xxx	xxx	xxx	xxx

Ultra tech (Grasim) Average for 2009

Unit	Year	Cost of sales	Sales realisatiOn	Margin	Margin as % of sales realisation
South	2009	xxx	xxx	xxx	xxx
Aditya	2009	xxx	xxx	xxx	xxx
Panipat	2009	xxx	xxx	xxx	xxx
Rajshree	2009	xxx	xxx	xxx	xxx
Dadri	2009	xxx	xxx	xxx	xxx
Samruddi(dadri)	2009	xxx	xxx	xxx	xxx
Bhatinda	2009	xxx	xxx	xxx	xxx
Rawan(raipur)	2009	xxx	xxx	xxx	xxx
		xxx	xxx	xxx	xxx
		xxx	xxx	xxx	xxx

Ultra tech (Grasim) Average for 2008

Unit	Year	Cost of sales	Sales realisatiOn	Margin	Margin as % of sales realisation
South	2008	xxx	xxx	xxx	xxx
South unit-ii	2008	xxx	xxx	xxx	xxx
Aditya	2008	xxx	xxx	xxx	xxx
Rajshree	2008	xxx	xxx	xxx	xxx
Bhatinda	2008	xxx	xxx	xxx	xxx
Rawan(raipur)	2008	xxx	xxx	xxx	xxx
		xxx	xxx	xxx	xxx



Ultra tech (Grasim) Average for 2007

Unit	Year	Cost of sales	Sales realisation	Margin	Margin as % of sales realization
South	2007	xxx	xxx	xxx	xxx
Aditya	2007	xxx	xxx	xxx	xxx
Rajshree	2007	xxx	xxx	xxx	xxx
Bhatinda	2007	xxx	xxx	xxx	xxx
Rawan	2007	xxx	xxx	xxx	xxx
		xxx	xxx	xxx	xxx

India Cements- 2009.

Unit	Year	Cost of Sales	Sales realisation	Margin	Margin per bag of cement (in rs)	Margin as % to sales realisation
Dalavoi	2008-09	xxx	xxx	xxx	xxx	xxx
Malkapur	2008-09	xxx	xxx	xxx	xxx	xxx
Vishupuram	2008-09	xxx	xxx	xxx	xxx	xxx
Yemagentha	2008-09	xxx	xxx	xxx	xxx	xxx
Shankar nagar	2008-09	xxx	xxx	xxx	xxx	xxx
Sankaridurg	2008-09	xxx	xxx	xxx	xxx	xxx
Chilamkur	2008-09	xxx	xxx	xxx	xxx	xxx
AVG	2008-09	xxx	xxx	xxx	xxx	xxx

India Cements-2008

Units	Year	Cost of sales	Sales realisation	Margin	Margin per bag of cement (in rs)	Margin as % to sales realisation
Dalavoi	2007-08	xxx	xxx	xxx	xxx	xxx



Malkapur	2007-08	xxx	xxx	xxx	xxx	xxx
Vishupuram	2007-08	xxx	xxx	xxx	xxx	xxx
Yemagentha	2007-08	xxx	xxx	xxx	xxx	xxx
Shankar nagar	2007-08	xxx	xxx	xxx	xxx	xxx
Sankaridurg	2007-08	xxx	xxx	xxx	xxx	xxx
Chilamkur	2007-08	xxx	xxx	xxx	xxx	xxx
		xxx	xxx	xxx	xxx	xxx

#### India Cements-2007

Units	Year	Cost of sales	Sales realisation	Margin	Margin per bag of cement (in Rs)	Margin as % to sales realisation
Dalavoi	2006-07	xxx	xxx	xxx	xxx	xxx
Malkapur	2006-07	xxx	xxx	xxx	xxx	xxx
Vishupuram	2006-07	xxx	xxx	xxx	xxx	xxx
Yemagentha	2006-07	xxx	xxx	xxx	xxx	xxx
Shankar nagar	2006-07	xxx	xxx	xxx	xxx	xxx
Sankaridurg	2006-07	xxx	xxx	xxx	xxx	xxx
AVG	2006-07	xxx	xxx	xxx	xxx	xxx

#### Jaypee cements

Units	Year	Cost of sales	Sales Realisation	Margin	Margin as % to sales realisation
Bela plant	2008-09	xxx	xxx	xxx	xxx
Rewa plant	2008-09	xxx	xxx	xxx	xxx
Chunar	2008-09	xxx	xxx	xxx	xxx
		xxx	xxx	xxx	xxx



Units	Year	Cost of sales	Sales realisation	margin	Margin as % to sales realisation
Bela plant	2007-08	xxx	xxx	xxx	xxx
Rewa plant	2007-08	xxx	xxx	xxx	xxx
Blending unit	2007-08	xxx	xxx	xxx	xxx
		xxx	xxx	xxx	xxx

#### Binani cements

UNIT	YEAR	Cost Of Sales	Sales Realization	Margin	Margin as % of Sales realization
Binanigram	2008-09	xxx	xxx	xxx	xxx
Neem ka thana	2008-09	xxx	xxx	xxx	xxx
Binanigram	2007-08	xxx	xxx	xxx	xxx
Binanigram	2006-07	xxx	xxx	xxx	xxx
AVG		xxx	xxx	xxx	xxx

#### Lafarge Cements

Unit	Year	Cost of sales	Sales realization	Margin	Margin as % of sales realisation
Sonadih	2008	xxx	xxx	xxx	xxx
Arsmeta	2008	xxx	xxx	xxx	xxx
Jojera	2008	xxx	xxx	xxx	xxx
		xxx	xxx	xxx	xxx

Unit	Year	Cost of sales	Sales realization	Margin	Margin as % of sales realisation
Sonadih		xxx	xxx	xxx	xxx



	2007				
Arsmeta	2007	xxx	xxx	xxx	xxx
Jojobera	2007	xxx	xxx	xxx	xxx
	2007	xxx	xxx	xxx	xxx

6.9.28 The Commission from the details of cost and sales realizations as above observes that margins earned by the Opposite Parties named in the information have been quite impressive. The Opposite Parties have been able to maintain a good profit margin in spite of capacity additions over the years which repudiates their stand that they have been earning even below re-investment levels and that they are incurring losses.

#### Issue 8

6.10 Whether the Opposite Parties have contravened the provisions of section 3 (3) of the Competition Act, 2002?

6.10.1 On the basis of foregoing, the Commission holds that the economic evidences put together with the fact that the cement companies including the Opposite Parties regularly meet at the platform of CMA and CMA collects both retail and wholesale prices and circulate details of capacity utilization, production and dispatch among all its members establish coordinated act on the part of the cement companies to restrict production and supplies in the market in contravention of provisions of section 3(3)(b) of the Act. Further, the prices of all the cement companies including the Opposite Parties



move together which in existence of other factors as above not only suggest mere price parallelism but establish that the Opposite Parties are in agreement and acting in concert to fix prices of cement in contravention of provisions of section 3(3)(a) of the Act.

6.10.2 The Commission observes that in the present case, price parallelism among the cement manufacturers supported and corroborated by factors such as limiting and controlling supply by underutilizing capacity, maintaining similar and parallel behaviour in production and dispatch of cements with a view to maintain high prices in the market as discussed in the preceding paras establish that the cement companies and Opposite Parties named in the instant matter have acted in concert under an agreement.

6.10.3 The Commission also observes that the companies have sought to argue that in the absence of direct evidence, no anti-competitive agreement can be inferred. However, the fact that the cement companies including Opposite Parties meet frequently at the platform of CMA give them an ample opportunity to discuss production and prices. CMA collects retail prices and wholesale prices through the competing companies on weekly and monthly basis which further provide them opportunity to discuss and exchange information ~~on~~ prices. The production and dispatch details of each company are circulated to all the members by CMA. The association is also engaged in benchmarking exercise in respect of its members. Therefore, it is evident that the competing cement



companies exchange information and get to know each other's production, dispatch and prices.

6.10.4 The Commission further observes that the fact that such institutionalised interactions facilitate exchange of sensitive information is demonstrated by the parallel behaviour of prices, production and dispatch among the competing cement companies as brought out in the preceding paras of this order. Under this arrangement, the CMA collects prices through a network of cement companies and the companies get an opportunity to know about the prices of each other. The CMA not only collects prices but also circulates and disseminates information on capacities and production of competing cement companies. The companies who have resigned from the membership still attend the meetings of CMA. Thus, all the cement companies even if they are not the members of CMA are the part of the whole arrangement. Even if there could be difference in the cost structure of cement companies, the parallel behavior in movement of prices reflects some arrangement and understanding among them.

6.10.5 As has been discussed in this order, the companies who are the leaders in different zones are followed by the other companies. The cement companies also keep supplies under control through lesser than optimal utilization of capacities and raise prices when the demand in the market goes up.



6.10.6 The way the production and supplies together with prices move in the market establish coordinated behaviour, action in concert and agreement on the part of the cement companies.

6.10.7 As per the provisions of section 3(3) of the Act, if due to an agreement within the meaning of section 2(b) of the Act, the parties operating at the same level of production or supply chain are found indulged in the acts of limiting the production and supplies and directly or indirectly determining the price of cement in the market, adverse effect on competition is presumed. In the backdrop of the rebuttals by the Opposite Parties that competition has not been impacted, however, the Commission has also considered the factors mentioned in 19(3) carefully in light of all the material facts on record.

6.10.8 The Commission finds that the coordinated act on the part of the cement companies has neither caused any improvement in production or distribution of goods or provision of services nor any promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services. On the contrary, the capacity utilisation has gone down in 2009-10 and 2010-11 over the last few years. Thus, there is no efficiency defence brought in by the Opposite Parties as mentioned in section 19(3)(e) and (f) of the Act.



6.10.9 Further, it cannot be said that there is any accrual of benefit to the consumers since the prices of cement have gone up considerably in recent years. In addition, artificial shortages are also created in form of reduced capacity utilization and thereby reduced supply of cement in the market to the detriment of the consumers as has been discussed in the preceding paras of this order.

6.10.10 The Commission finds that while there was no accrual of benefit to the consumers, the Opposite Parties have earned huge profit margins by acting together on prices, production and supplies. Considerably high profit margin in the backdrop of parallel behavior in movement of prices, dispatch, and production of cement and reduced capacity utilization over the years indicate that the Cement companies have acted in their own self interest to maximize the profit depriving both the consumers and economy from the possible benefits out of optimal capacity utilization and reduced prices.

6.10.11 The Commission holds that in view of analysis of factors mentioned in section 19(d), 19(e) and 19(f) of the Act, it is established that the cement companies have contravened the provisions of section 3(3)(a) and 3(3)(b) read with section 3(1) of the Act by fixing the prices and limiting and controlling the production and supplies in the market.



6.10.12 The Commission also observes that as per the provisions of section 2 (c) of the Act, cartels have been defined as under;

*(c) "cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;*

6.10.13 The act and conduct of the cement companies establish that they are a cartel. The Commission holds that the cement companies acting together have limited, controlled and also attempted to control the production and price of cement in the market in India and the allegations of the informant on these issues are substantiated. The Commission while holding so also notes as has been brought out by the informant that cement companies have been penalized in other jurisdictions also for their anti-competitive acts and CMA and some of Opposite Parties in coordination have also been found to be engaged in restrictive trade practices in the past by the erstwhile MRTP Commission in case No. RTPE 21 of 2001 and RTPE No. 99 of 1990. Holcim which has a majority stake in ACC and ACL and Lafarge have been penalized in European Union.

#### Parties to agreement

6.11 The Commission notes that the Opposite Parties have in their arguments along with other points also contended that the report of DG does not specify the names of the contravening parties and also the period of alleged cartel. In this regard, the Commission observes that the Opposite Parties mentioned in the case are the prominent



players in the market in respective regions and are the key players in the whole arrangement. The other cement companies have followed them. Moreover, the present inquiry is limited to the Opposite Parties named in the information.

6.12 The act of the Opposite Parties in limiting and controlling supplies in the market and determining prices through an anti-competitive agreement is not only detrimental to the cause of the consumers but also to the whole economy since cement is a crucial input in construction and infrastructure industry vital for economic development of the country. Therefore, in the instant matter the Opposite Parties named in the information together with CMA who has been found providing platform for exchange of sensitive information on production and price of the competing parties are held guilty of contravention of the provisions of section 3(3)(a) and 3(3)(b) read with section 3(1) of the Act.

#### Period of Contravention

6.13 As regards period of contravention, for the purposes of this order, the Commission finds that the Opposite Parties have institutionalized the system of sharing the prices, capacities and production among each other using the platform of CMA in order to limit and control the production and supplies and determine the prices of cement in the market. Since the DG has examined the conduct of the parties involved in the cartel only upto March 2011, this order captures the period from the date of enforcement of the relevant provisions of the Act i.e. 20.05.2009 to 31.03.2011.



6.14 The Commission, however, observes that decision as regards the involvement of the parties in anti-competitive agreement and the period of contravention in the instant case is limited to this case only and is independent of any other information which may be filed subsequently and also independent of decision in case no. 52 of 2006 pending before the Commission.

## 7. Order under Section 27 of the Act

7.1 The Commission has found the Opposite Parties in contravention of section 3(3) (a) and 3(3)(b) read with section 3(1) of the Act.

### Determination of Penalty

7.2 The Commission observes that since the cement companies in the present case have been found to be in cartel, determination of amount of penalty is to be done in terms of proviso to section 27(b) of the Act, which reads as under;

*“ 27. Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:—*

*(a) .....*

*(b) impose such penalty, as it may deem fit which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:*



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 per cent of its turnover for each year of the continuance of such agreement, whichever is higher."

7.3 The calculation of penalty limit based on turnover in terms of section 27(b) is as under;

Name	Gross turnover for 2009-10 (in Rs. crore) taking into account period of contravention Post Notification i.e. 20.05.2009 on pro-rata basis (in Rs.crore)	10% of Turnover as calculated in column 2 (in Rs.crore)	Gross Turnover for 2010-11 (in Rs. Crore)	10% of Turnover as calculated in column 4 (in Rs.crore)	Total (in Rs.crore)
A C C Ltd.	7416.17	741.61	10478.39	1047.83	1789.44
Ambuja Cements Ltd.	7150.58	715.05	9588.33	958.33	1673.38
Binani Cement Ltd.	1790.10	179.01	1978.93	197.89	376.90
Century Textiles Limited	4213.46	421.34	5158.80	515.88	937.22
India Cements Ltd.	3551.20	355.12	3888.07	388.80	743.92
J K Cement Ltd.	1605.44	160.54	2130.21	213.02	373.56
Lafarge India Pvt. Ltd.	2945.36	294.53	2970.07	297.00	591.53
Madras Cements Ltd.	2573.59	257.35	2835.17	283.51	540.86



Ultratech Cement Ltd.	6693.42	669.34	14858.6	1485.86	2155.20
Jaiprakash Associates Limited	10107.76	1010.77	13831.87	1383.18	2393.95

7.4 The calculation of penalty limit based on net profit in terms of section 27(b) is as under;

Name	Net Profit 2009-10 taking into account period of contravention Post Notification i.e. 20.05.2009 on pro-rata basis (in Rs. crore)	3 Times of Net Profit as calculated in column 2 (in Rs. crore)	Net Profit 2010-11 (in Rs. crore)	3 Times of Net Profit as calculated in column 4 (in Rs. crore)	Total (in Rs. crore)
A C C Ltd.	969.92	2909.76	1,325.26	3975.78	6885.54
Ambuja Cements Ltd.	1064.19	3192.57	1,263.61	3790.83	6983.40
Binani Cement Ltd.	244.13	732.39	90.50	271.50	1003.89
Century Textiles Limited	308.43	925.29	239.60	718.80	1644.09
India Cements Ltd.	306.85	920.55	68.10	204.30	1124.85
J K Cement Ltd.	194.46	583.38	62.62	187.86	771.24
Lafarge India Pvt. Ltd.	566.61	1699.83	413.40	1240.20	2940.03
Madras Cements Ltd.	306.27	918.81	210.97	632.91	1551.72
Ultratech Cement Ltd.	946.74	2840.22	1404.23	4212.69	7052.91
Jaiprakash Associates Limited	1479.43	4438.29	1167.78	3503.34	7941.63



7.5 It would be seen from the above that the amount of three times of net profit calculated as above is higher than 10% of the turnover. Since as per the provisions of Proviso to Section 27(b) the penalty has to be determined on the basis of net profit or turnover whichever is higher, in this case the net profit has been taken into account by the Commission. Therefore, considering the totality of the facts and circumstances of the instant case, the Commission decides to impose a penalty of 0.5 times of net profit for 2009-10 (from 20.05.2009) and 2010-11 in case of each cement manufacturer named as Opposite Parties in this case. Accordingly, the penalty amount is determined as under;

Name	Net Profit 2009-10 taking into account period of contravention Post Notification i.e. 20.05.2009 on pro-rata basis (in Rs.crore)	0.5 Times of Net Profit as calculated in column 2 (in Rs.crore)	Net Profit 2010-11 (in Rs. crore)	0.5 Times of Net Profit as calculated in column 4 (in Rs.crore)	Total (in Rs. crore)
A C C Ltd.	969.92	484.96	1,325.26	662.63	1147.59
Ambuja Cements Ltd.	1064.19	532.10	1,263.61	631.81	1163.91
Binani Cement Ltd.	244.13	122.07	90.50	45.25	167.32
Century Textiles Limited	308.43	154.22	239.60	119.80	274.02
India Cements Ltd.	205.85	153.43	68.10	34.05	187.48
J K Cement Ltd.	194.46	97.23	62.62	31.31	128.54
Lafarge India Pvt. Ltd.	566.61	283.31	413.40	206.70	490.01



Madras Cements Ltd.	306.27	153.14	210.97	105.49	258.63
Ultratech Cement Ltd.	946.74	473.37	1404.23	702.12	1175.49
Jaiprakash Associates Limited	1479.43	739.71	1167.78	583.89	1323.60

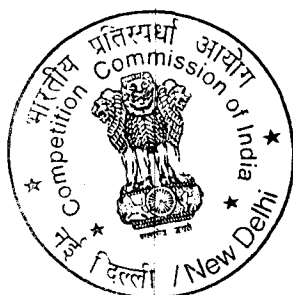
7.6 As regards CMA since it has provided platform to the cement companies and facilitated cartelization, for the purposes of this case, the Commission decides to impose a penalty of 10% of its total receipts for two years in terms of section 27(b) as under;

Name	Gross turnover for 2008-09 (in Rs. Crore)	Gross turnover for 2009-10 (in Rs. Crore)	Gross turnover for 2010-11 (in Rs. Crore)	Average Turnover for three years	Penalty at rate of 10% on average turnover in Rs.crore
Cement Manufactures Association	9.27	6.65	5.99	7.30	0.73

7.7 While imposing penalty, since Grasim is now merged with Ultratech, profit of only Ultratech Cements has been considered. In case of Century and Jaiprakash Associates Limited, their total profit has been considered in accordance with the provisions of the section 27 of the Act.

7.8 Since the enforcement provisions of the Act have come into effect from 20.05.2009, for the calculation of penalty on cement companies in the present case, the period from 1.4.2009 to 19.05.2009 has not been considered and amount of penalty has been calculated accordingly for the period 2009-10.

7.9 The Commission also decides to issue following directions;



- i) The Opposite Parties should 'cease and desist' from indulging in any activity relating to agreement, understanding or arrangement on prices, production and supply of cement in the market.
- ii) CMA should disengage and disassociate itself from collecting wholesale and retail prices through the member cement companies and also from circulating the details on production and dispatches of cement companies to its members.

8. The Commission decides accordingly. The directions in para 7.9 above must be complied within 90 days of receipt of this order. The amount of penalty determined in case of different entities must also be deposited within a period of 90 days from the date of receipt of this order.

9. Secretary is directed to communicate this order as per regulations to all the parties.

Sd/-  
Member (G)

Sd/-  
Member (GG)

Sd/-  
Member (R)

Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Member (D)

Sd/-  
Chairperson

Certified True Copy



S. P. GAHLAUT  
Assistant Director  
Competition Commission of India  
New Delhi