



**COMPETITION COMMISSION OF INDIA**

**Case No. 16 of 2023**

**In Re:**

**XYZ (Confidential)**

**Informant**

**AND**

**Saint Gobain India Pvt. Ltd.**  
Achi Building, Floor No. 7 18/3,  
Rukmini Lakshimipathy Road, Egmore  
Chennai –600008 Tamil Nadu

**Opposite Party No. 1**

**Compagnie De Saint-Gobain**  
Saint-Gobain 12 place de l'Iris 92096  
La Défense Cedex France

**Opposite Party No. 2**

**CORAM**

**Ms. Ravneet Kaur**  
**Chairperson**

**Ms. Sweta Kakkad**  
**Member**

**Mr. Deepak Anurag**  
**Member**

**Order under Section 26(2) of the Competition Act, 2002**

1. An Information was filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, 'Act') alleging certain anti-competitive practices in violation of Section 3(4) and Section 4 of the Act by Saint Gobain India Pvt. Ltd. ('OP-1') and Compagnie De Saint- Gobain ('OP-2').

*Facts and allegations as stated in the Information*

2. The Informant is stated to be a public-spirited person.



3. As stated in the Information, Saint Gobain Group comprises of OP-2 (a France-based parent entity) and companies/ entities affiliated to it. OP-1 is engaged in the business of designing, manufacturing and distributing materials and services for construction and industrial markets. It is stated to have a pan-India presence with 26 manufacturing sites, sales offices in all cities & major industrial towns, and an extensive dealer network. On its website, OP-1 has listed names of over 90 establishments as its processors and over 200 establishments as its fabricators. The Informant has stated that OP- 2, directly or indirectly, owns 99.03 percent shares of OP-1.
4. The Informant has averred that the conduct of OP-1 has previously been examined by the Commission in case no. 51 of 2011 [*HNG Float Glass Ltd. vs Saint Gobain Glass India Ltd.*] wherein, the Commission had passed an order under Section 26(1) of the Act directing investigation into the alleged anti-competitive conduct by OP-1 in the clear float glass market in India during the period 2010-11. Eventually, the Commission, based on the report by the DG, had passed an order under Section 26(6) of the Act on finding that OP-1 had not contravened the provisions of the Act.
5. In the present Information, it is alleged that the OP-1 has entered into agreements with the processors/ fabricators/ distributors, through which certain conditions have been imposed upon these players in the distribution network of glass products. These conditions are stated to be resulting into violations of Section 3(4) and 4 of the Act.
6. The Informant has stated that he has found an agreement which is allegedly proposed to be entered between OP-1 and one of its processors. The said agreement titled 'Propel Project Participation Agreement' ('**Propel Agreement**') imposes exclusive supply and forced co-branding obligations on processors. The Informant has alleged that OP-1 has entered into similar agreements with its various, if not all, processors.
7. Based on the said Propel Agreement and oral directions/ guidance, the Informant has alleged that the following practices are contravening Section 3(4) as well as Section 4 of the Act:



- a) *Exclusive supply obligation*: Clause 3.1 and 3.3 of the Propel Agreement required the processor to obtain all its purchase of glass exclusively from OP-1. As per Clause 11.2, OP-1 may terminate the Agreement, and thus stop supplies, if the exclusive supply obligation is not fulfilled by processor. These clauses allegedly fall foul of Sections 3(4)(b) and 3(4)(d) as well as Sections 4(2)(a)(i), 4(2)(b)(i) and 4(2)(c) of the Act.
- b) *Forced co-branding*: Clause 3.3 of the Propel Agreement includes co-branding requirement whereby OP-1 has obligated the processor to undertake all its purchases of glass products from OP-1 and in consideration of the same allows the processor to use OP-1's branding. This clause allegedly falls foul of Section 3(4)(b) and 3(4)(d) as well as Sections 4(2)(a)(i), 4(2)(b)(i), 4(2)(c) and 4(2)(e) of the Act.
- c) *Refusal to deal*: Processors/ distributors are being offered significant discounts if they purchase exclusively from OP-1; however, processors who deal with competitors of OP-1 are not given the products by OP-1. This allegedly falls foul of Section 3(4)(d) as well as Sections 4(2)(a)(i), 4(2)(b)(i) and 4(2)(c) of the Act.
- d) *Resale price maintenance*: In certain cases, OP-1 directly approaches large customers (real estate companies) and negotiates prices directly with them. The processors and distributors are then forced to issue invoices at these prices. This allegedly falls foul of Section 3(4)(e) as well as Section 4(2)(a)(ii) of the Act.
8. In furtherance of the aforesaid allegations, the Informant has proposed two relevant markets: (i) Market for '*production and sale of clear float glass in India*' and (ii) Market for '*production and sale of coated glass in India*'. The Informant has requested the Commission to conduct assessment and investigation in the said relevant markets.
9. As regard the first relevant product market, *i.e.*, '*market for production and sale of clear float glass*', the Informant has submitted that the Commission has already accepted this market as a separate product market in Case No. 51 of 2011, wherein, the dominant position of OP-1 was examined. Further, the Informant has also submitted that the market for coated glass, based on factors such as physical characteristics, production



process, end-use of goods, consumer preferences and prices of goods or services, has been considered to be a separate relevant product market by competition authorities in other jurisdictions. In this regard, the Informant has cited a case of European Commission titled COMP/M.6557- AGC Glass Europe/ Interpane International Glas.

10. With regard to the relevant geographic market, the Informant has proposed it to be the 'whole of India', as trading conditions, regulations, consumer preference *etc.* do not vary significantly enough across the country, with respect to sale and distribution of coated glass and clear float glass in India.
11. The Informant, based on factors enumerated in Section 19(4) of the Act such as market share, size and resources/economic power, dependence of consumers and entry barriers *etc.* has stated that OP-1 occupies a dominant position in the 'market for production and sale of clear float glass in India'.
12. With regard to the second relevant market, the Informant has submitted that OP-1 is market leader having close to 19% market share, based on a market study report of TechSci Research of 2022. The Informant has stated that all other competitors have market shares significantly less than that of OP-1 in the coated glass market. The Informant has further stated that even if dominance of OP-1 is not established in the coated glass market, it enjoys significant market power.
13. As regards abusive conduct, the Informant has submitted that the OP-1 is exploiting its influence in the relevant markets by forcing, directly or indirectly downstream market players to deal exclusively with OP-1 and to the exclusion of other competitors. Additionally, OP-1 is using its dominant position in the market for 'production and sale of clear float glass in India' to enter into and protect its influence in the market for 'production and sale of coated glass in India'.
14. Based on the aforesaid allegations, the Informant has sought relief, praying for an investigation, under Section 26(1) of the Act, into the conduct of OP-1. Further, confidentiality over the identity of the Informant has also been requested under Section 57 of the Act read with Regulation 35 of the Competition Commission of India



(General) Regulations, 2009 (**‘General Regulations’**). The Informant has also prayed for any other order which the Commission deems fit in the facts and circumstances of the case.

*Additional submission of the Informant*

15. On 16.10.2023, the Commission considered the Information in its ordinary meeting and decided to seek responses/comments from the Informant on the following:

- a) *business model of glass manufacturers and processors and their inter-se relationship,*
- b) *copy of an actual agreement signed between manufacturers and processors in view of unsigned and undated draft agreement submitted with information,*
- c) *whether the referred agreement is an industry practice and required to be entered upon between manufacturer and processor in the clear glass market?*
- d) *a copy of a subsisting agreement, if available,*
- e) *is it mandatory for all the processors to enter into ‘Propel Project Participation Agreement’ having exclusivity conditions with any manufacturer, if they intend to deal with them?*
- f) *what kind of technical and other training are being provided by the manufacturer to the processors? whether such technical assistance is indispensable for processors to work in the glass market?*
- g) *how can processors utilize their capacity in alternative manner? Can processor tie up with more than one glass manufacturer?*
- h) *information, if available, about other major glass manufacturers who have their own processing facility?*
- i) *other relevant information, if any.*

16. After seeking extension of time, the Informant filed its responses/ comments on 07.02.2024 and a summary of the response is as under:

- i. On the aspect of business model of glass manufacturers and processors and their inter-se relationship, the Informant has submitted that the sale and distribution business model of glass manufacturer involve several key steps such as: (i) production process, (ii) product variety, (iii) assurance of quality, (iv) packaging, (v) distribution channels, (vi) marketing and branding, (vii) customer support and services. It has been submitted by the Informant that glass processors, depending on the requirements of the clients,



may work with different types of glass such as float glass, tempered glass, laminated glass, specialty glass. The services provided by processors include: (a) cutting and shaping, (b) tempering, (c) laminating, (d) insulating, (e) engraving and etching, (f) drilling and edging, (g) Sandblasting, (h) fabrication and (i) quality control. The Informant has stated that the interrelationship between glass manufacturer and processor can be understood through various aspects such as supply of raw material by glass manufacturers, customization of the product by the glass processors through cutting, shaping, tempering, laminating, coating, or other processes to meet specific design or functional needs, value addition by glass manufacturers at the time of manufacturing and by glass processors after that, which cater to specific applications and industries, enhancing the functionality, safety, or aesthetics of the glass through various processing techniques, assurance of quality, investment, innovation and technology by the glass manufacturers and leveraging of the same by the processors and management of logistic and supply chain by the manufacturers and processors.

- ii. With regard to furnishing of a valid and subsisting agreement, the Informant has stated that it does not have access/ possession of any signed agreement. The Informant has submitted a final version of the Propel Agreement which as stated is proposed to be entered between the OP-1 and one of its processors. Additionally, the Informant has provided a copy of a signed '*License Agreement*' entered into between OP-1 and one of its processors whose identity has been concealed.
- iii. On the question whether the practice referred in Propel Agreement is an industry practice, the Informant has submitted that as per its knowledge, the concerned agreement is not an industry practice. Propel Agreement is a binding agreement on processors to buy glass only from OP-1. Further, Technical Agreements between Processor and Manufacturer provide a framework for collaboration, quality assurance, and for the successful delivery of processed glass products to the market/ consumers. However, those do not impose a requirement to buy glass from only one manufacturer.
- iv. With respect to the question whether it is mandatory for all the processors to enter into the said Propel Agreement, the Informant submitted that '*Propel Agreement*' is name



of an agreement by OP-1. Other manufacturers do not have such binding agreements with exclusivity conditions.

- v. Regarding technical and other training being provided by the manufacturer to the processors and whether such technical assistance is indispensable for processors, the Informant has stated that technical training provided by glass manufacturers to processors is important to ensure that the glass products meet the required quality standards and specifications. The extent and nature of the training may vary depending on the complexity of the processing techniques involved, the type of glass being used, and the specific requirements of the customers. Some common types of technical and other training that manufacturers provide to processors include: (a) product knowledge (b) processing techniques, (c) quality control and assurance, (d) equipment operation and maintenance, (e) safety protocols, (f) environmental compliance, and (g) technical support.
- vi. In relation to the question as to how can processor utilize their capacity in alternative manner and whether they can tie up with more than one glass manufacturer, the Informant has submitted that glass processors often have the flexibility to work with and source glass from multiple glass manufacturers. This flexibility allows processors to offer a diverse range of glass products to meet the specific needs and preferences of their customers. Working with multiple manufacturers provides several advantages like diversification, supply risk mitigation, cost and quality considerations, market responsiveness, geographic considerations *etc.*
- vii. Regarding information about other glass manufactures who have their own processing facility, the Informant has stated that apart from OP-1, Asahi India Glass Limited and Gold Plus Glass Industry Limited have their own processing plants.
- viii. Further, the Informant has highlighted the role of architects as an important aspect in the glass industry. Their role involves specifying the materials, products, and standards of glass to be used in a construction project.



### *Analysis of the Commission*

17. The Commission considered the Information and response/ comments of the Informant dated 07.02.2024 in its ordinary meeting held on 01.05.2024. Having carefully perused the materials on records as well as information available in the public domain, the Commission decided to pass an appropriate order in due course.
18. At the outset, the Commission notes that the primary concern of the Informant is imposition of conditions through the Propel Agreement in the form of: (i) exclusive supply obligation, (ii) force co-branding (iii) refusal to deal, and (iv) resale price maintenance in case of bulk orders. These are alleged to have violated provisions of section 3(4) and 4 of the Act. Further, it appears that the allegation of the Informant is based on a document that is yet to be signed by OP-1.
19. The Commission notes that the Informant has primarily relied upon an undated and unsigned document titled 'Propel Agreement' to allege 'exclusive supply obligation' and 'forced co-branding'. The Commission also notes that other two allegations i.e., 'refusal to deal' and 'resale price maintenance' are stated to be imposed through oral directions. Accordingly, the Commission directed the Informant to furnish a copy of an actual agreement signed between the OP-1 and a processor. The Informant, in its response dated 07.02.2024, stated that it does not have access/ possession of a signed agreement.
20. Despite being given the opportunity, the Commission observes that the Informant has not been able to produce a valid and subsisting copy of the said Propel Agreement on the edifice of which the entire allegations rest. The Informant has submitted an unsigned and undated agreement whose authenticity could not be established. Nevertheless, keeping in view the contention of the Informant that the furnished copy of the Propel Agreement is the final version proposed to be signed between OP-1 and processor, the Commission examined the terms/ clauses of the same under the framework of competition law. A bare perusal of the said Propel Agreement reveals that it is only an agreement to meet the requirements of the end consumers through the assistance





imparted by the manufacturers to the processors by way of supply of raw materials, imparting technical and marketing training, rendering services to the customers as per the requirements, among others.

21. With regard to the allegation of exclusive supply obligation, the Commission observes that exclusive purchase obligation is said to be imposed on processors only in respect of 'High Performance Glass & Allied Products' and 'Clear Tempered Glass'. However, no such imposition of exclusivity is observed from the submitted Propel Agreement, in respect of clear float glass/other glass, thereby implying that the processor has a choice to procure clear float glass from other glass manufacturers.
  
22. The Commission notes that the Informant, in its additional submission, has acknowledged the importance of training when dealing with the specialized glass products or advanced processing techniques, as this helps in ensuring that the final product meets quality standards and delivery of the desired level of customization and performance. As discussed earlier, exclusivity imposed by the OP-1 appears to be limited only to high end performance glass, tempered clear glass and allied products to make it further suitable for the use of the end consumer. The Commission notes that OP-1 undertakes to provide necessary technical and marketing training and guidance to the processor to improve its production efficiency, technical and marketing capability and work methods so that processor would render the desired products to the end-users and as such the terms of the submitted Propel Agreement contain objective justification for imposing exclusivity. From the aforesaid, the Commission is of the view that the said exclusivity in relation to the specialized glasses has rationale of *quid pro quo* which aims at benefitting both the parties. Accordingly, exclusivity does not appear to be *prima facie* anti-competitive.
  
23. With regard to allegation of forced co-branding, the Commission has perused clause 3.3 of the said Propel Agreement which reveals that the OP-1 would facilitate the processor to use its own trademark/brand name alongside trademark/brand name of OP-1 under certain terms and conditions. Thus, the Commission is of the view that co-branding, in itself, does not raise competition issue.



24. As regards allegations of refusal to deal, it has been submitted by the Informant that processors/ distributors are being offered significant discounts on products of OP-1, if they purchase exclusively from OP-1. Additionally, the processors who are dealing with competitors of OP-1 will not be sold products of OP-1. The Commission is of the view that the Informant has merely alleged the conduct to be carried out through oral directions and has not substantiated the same with any evidence. It may be noted that offering discounts on the basis of volume of purchase may not be anti-competitive, *per se*.

25. In relation to allegation of resale price maintenance ('RPM') being practiced through oral direction, the Informant has claimed that in certain cases, OP-1 is stated to have directly approached the large bulk customers and negotiated prices directly with them. The processors and distributors are then forced to issue invoices at such prices. In this regard, the relevant clause of the submitted Propel Agreement reads as under:

*“The Processor acknowledges that SGIPL (OP-1) shall have full rights to determine its product pricing as payable by the Processor to SGIPL. Any charges for the processing etc., undertaken by the Processor shall be charged by the Processor from the end-user over and above the price of the Products. SGIPL shall not be liable for any charges for processing of the Products to the Processor. It is clarified that SGIPL has no control over the final prices charged to the end-user by the Processor.”*

26. From the above, the Commission notes that OP-1 would have no control over the price charged by the processors from the end consumers for the services provided by it. It is clear that the processors are free to charge the price from the end users for the value addition/ enhancement they carry out in the glass received from OP-1 and OP-1 does not control it. This nowhere shows that the price of end product is being controlled by the OP-1 as OP-1 only charges for the products it sells to the processor.

27. The Commission reiterates that allegation of 'refusal to deal' and 'RPM' are stated to be originating from oral directions and are not corroborated by any evidence, thus not supporting the case of the Informant. Hence, the Commission is of the view that there is no case of RPM or refusal to deal as defined under Section 3(4) of the Act.



28. The Commission notes that the Informant has submitted two relevant markets in the matter which are market for ‘*production and sale of clear float glass in India*’ and market for ‘*production and sale of coated glass in India*’. It has also been submitted by the Informant that OP-1 has significant market power in both the markets *i.e.*, 44% and 19%, respectively. The Commission, through its various orders, has categorically stated that holding of significant market power *per se* do not invite wrath of Section 4 of the Act. What draws adverse notice are acts and practices of the dominant player in a relevant market that are manifestation of abusive conduct in terms of factors listed under Section 19(4) of the Act. Given the terms of relationship between the processor and manufacturer as provided in the submitted Propel Agreement, the Commission is of the view that conditions imposed on processor, as per the said agreement, have objective justifications as dealt in preceding paragraphs. Given the facts and circumstances of the case, the Commission refrains from delineating relevant market and assessing dominance of OP-1 therein.
29. In view of the material placed on record and analysis carried out in preceding paragraphs, the Commission is of the view that no *prima facie* case is made out against OP-1 in respect of either Section 3(4) or 4 of the Act. Accordingly, the Information filed is directed to be closed forthwith under Section 26(2) of the Act.
30. Before parting with the order, the Commission deems it appropriate to deal with the request of the Informant seeking confidentiality over his identity and certain documents/ information filed by it under Regulation 35 of the General Regulations. Considering the grounds put forth by the Informant for the grant of confidential treatment, the Commission grants confidentiality to such documents/ information in terms of Regulation 35 of the General Regulations read with section 57 of the Act for a period of three years from the passing of this order. The Commission also grants confidentiality on the identity of the Informant as prayed. It is, however, made clear that nothing used in this order shall be deemed to be confidential or deemed to have been granted confidentiality as the same has been used for the purposes of the Act in terms of the provisions contained in Section 57 thereof.



31. The Secretary is directed to communicate the order of the Commission to the Informant, accordingly.

**Sd/-  
(Ravneet Kaur)  
Chairperson**

**Sd/-  
(Sweta Kakkad)  
Member**

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

**New Delhi  
Date: 22/07/2024**