



COMPETITION COMMISSION OF INDIA

Case No. 36 of 2019

In Re:

JSW Paints Private Limited

Jindal Mansion,
5A, Dr. G Deshmukh Marg,
Mumbai- 400026

Informant

And

Asian Paints Limited

6A, Shantinagar,
Santacruz (E),
Mumbai- 400 055

Opposite Party

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Direction under Section 26(1) of the Competition Act, 2002

1. In the present case, information has been filed by JSW Paints Private Limited (“**JSW Paints**”), under section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against Asian Paints Limited (“**Asian Paints**”), alleging contravention of the provisions of Sections 4 and 3(4) of the Competition Act, 2002 (“**the Act**”).



Brief facts and allegations

2. JSW Paints is stated to be a part of the JSW group of companies, which is involved in several sectors, including steel, energy, cement, *etc.* JSW Paints was incorporated in the year 2016 and launched its decorative paints in May 2019 in Bengaluru and Hubli in Karnataka. JSW Paints has introduced many innovative approaches in the paints industry for the first time in India.
3. Asian Paints is a listed company and is primarily engaged in manufacture and sale of decorative and industrial paints. According to its Annual Report for the FY 2018-19, it is the 3rd largest paint company in Asia and largest in India. In India, it has 8 manufacturing plants for decorative paints and 2 for industrial paints.
4. Starting from January 2019 to date, JSW Paints approached several dealers in Bengaluru, Hubli, Kochi and Kozhikode, Hyderabad, and Chennai and explained the unique nature of their paints, their proposed pricing, benefits to dealers in terms of tinting and delivering the paints, *etc.* JSW Paints also offered dealers better margins and incentives than those offered by competitors. JSW Paints had a positive response from several dealers/retailers. In order to confirm their interest, JSW Paints asked for cheque of Rs. 1 lakh as advance from the dealers to be set off against their launch orders. Based on receipt of the cheque, such dealers were invited to Retailers Launch Meet, where JSW Paints provided them with an overview of their strategy and how they would work together to promote the brand, place orders, receive stocks, billing, inventory, *etc.*
5. After three years of investing in building up the business and spending sums of money on its brand, JSW Paints launched its decorative paints in May, 2019, in Bengaluru and Hubli. The launch was covered by several mainstream media outlets. Subsequently, JSW



Paints launched its products in Kerala (Kochi and Kozhikode) in June, 2019, Telangana (Hyderabad), and Tamil Nadu (Chennai) in August, 2019.

6. The Informant has alleged that immediately after its launch of decorative paints, Asian Paints began pressurizing dealers who had agreed to stock and display decorative paints manufactured by them. Asian Paints targeted dealers/distributors/retailers partnering with JSW Paints directing them to stop dealing with JSW Paints, stopping supplies to these dealers, dropping service levels by delaying supplies and deliveries, asked dealers to remove display of JSW Paints products from their retail shelves and dealer signboards, threatened dealers by not allowing discretionary discounts, not inviting them for trips and loyalty schemes, etc. Asian Paints did this through its sale personnel in the relevant regions. Such conduct has been alleged to have created fear amongst retailers/dealers, as a result of which a number of them stopped dealing with JSW Paints, despite having provided the initial cheque of Rs. 1 lakh.
7. JSW Paints, it has been alleged, has been denied access to dealers, which infrastructure is essential for operating in the relevant market, due to punitive action taken by Asian Paints against the dealers.
8. JSW Paints is stated to have faced problems in the States of Karnataka, Tamil Nadu and Telangana, so far. JSW Paints had planned to launch its products in more states and cities in South and West India like Andhra Pradesh, Goa, Maharashtra, Gujarat, *etc.* in the ensuing months and also introduce its products to dealers in upcountry towns, supplying from its warehouses in larger towns. It, however, believed that it would be denied access to dealers even in these states in the absence of intervention by the Commission and would face the same resistance in other regions as well due to coercive action taken by Asian Paints against the dealers.



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9. In the State of Karnataka, several dealers were appointed by JSW Paints. Although JSW Paints provided necessary signage and other promotional material such as danglers, posters, *etc.* the dealers were compelled to remove all signage and other promotional material from conspicuous locations in their premises to the back side of the premises or their godowns. For the fear of losing dealership of Asian Paints, certain dealers decided to discontinue purchase JSW Paint's products. An instance of a dealer has been cited where the dealer requested Asian Paints to unblock its dealership ID and resume supplying their products. Further, a written assurance was given by this dealer that he would never purchase and sell any of the JSW Paint's products.
10. In addition to above mentioned acts against the dealers, Asian Paints allegedly also pressurised enterprises that provided infrastructure facilities like warehouses to JSW Paints to not keep products of JSW Paints. In an instance cited, the enterprise that provided warehouse facility rescinded the contract with JSW Paints on account of Asian Paints requiring it to choose between Asian Paints and JSW Paints. It has been alleged that the sheer volume of business given by Asian Paints and the potential loss in revenue resulted in the enterprise succumbing to the pressure of Asian Paints. The rescission of contract with JSW Paints led to delay in the launch of JSW's products in Hubli, which resulted in loss of revenue, reputation and credibility.
11. In Chennai, although several dealers agreed to partner with JSW Paints before the launch, many of them were directed by Asian Paints not to attend the JSW Paint's Retailers Launch Meet. After the launch of products, at least 12 dealers did not place any orders with JSW Paints fearing reprisal from Asian Paints. Dealers were allegedly prevented from undertaking any business with JSW Paints. It has been alleged that if the dealers did not comply with the demands of Asian paints, the dealers would face punitive action from Asian Paints.



12. Allegedly, Asian Paints had taken punitive action against a dealer in the past on account of its decision to stock and sell paints manufactured by Nippon Paint India Private Limited (“**Nippon**”). Asian paints is stated to have resumed its supplies only after the dealer agreed to cease business relations with Nippon. In the year 2015-16, Nippon had attempted to enter the decorative paints market in Chennai. However, Asian Paints took similar action against the dealers who entered into commercial relationship with Nippon.
13. In the state of Telengana, several dealers were appointed by JSW Paints. Due to harassment at the hand of Asian Paints, the dealers were compelled to remove danglers, boards and products relating to JSW Paints from conspicuous locations in their premises. Several instances of harassment faced by the dealers in Hyderabad have been cited. The dealers have refrained from dealing with JSW Paints due to the pressure exerted by Asian Paints.
14. Asian Paints has been alleged to be hindering the entry of JSW Paints by virtue of its dominance in the market for manufacture and sale of decorative paints by the organized, in contravention of provisions of Section 4(2)(c) of the Act. The conduct of Asian Paints is aimed at preventing JSW Paints from establishing its presence in the said market. By taking action, Asian Paints is not only denying market access to a competing entity but also restricting the freedom of contract to dealers. Such practices not only lead to an effective and efficient competitor being driven out of a market or is restricted from entering a market, but also limit consumer choice. It has been stated that the decorative paints market is dependent upon direct distributorship model. Without access to dealers, which is an essential feature of this business, there is no scope for new or existing entity in this market to survive. Asian Paint’s conduct has allegedly led to denial of access to necessary distribution channels in the relevant market which has prevented JSW Paints from entering the relevant market in contravention of the provisions of Section 4(2)(c) of the Act. Asian Paints has deliberately and maliciously sought to pressurise dealers who are mainly small and medium scale enterprises from stocking and selling JSW Paint’s products. Reliance has been placed upon the decision of erstwhile Hon’ble Competition



Appellate Tribunal in the case of *DLF Limited Vs. CCI & Others*, Appeal No. 20 of 2011. Reliance has also been placed upon various decisions of the Commission including *Matrimony.com v Google LLC*, Case No. 7 and 30 of 2012, order dated 08.09.2018; *East India Petroleum Pvt. Ltd. v South Asia LPG Pvt. Ltd.*, Case No.76 of 2011, order dated 11.07.2018, etc. in support of their contentions.

15. Based on instances highlighted in the states of Karnataka, Telengana and Tamil Nadu, it has been alleged that the conduct of Asian Paints is a case of enforcing an exclusive supply agreement in terms of Explanation (b) to Section 3(4) of the Act and refusal to deal as provided in Explanation (d) to Section 3(4) of the Act. The said conduct has caused appreciable adverse effect on competition by creating barriers to entry, driving existing competitors out of market and foreclosure of competition by hindering entry of JSW Paints into the market. All the instances of abusive conduct tantamount to perpetuating anti-competitive agreements as Asian Paints enjoys a dominant position in the relevant market. Such agreements cause appreciable adverse effect on competition and are in contravention of provisions of Section 3(4) read with Section 3(1) of the Act.
16. In light of the averments made in the instant information, JSW Paints has prayed that the Commission may be pleased to:
 - a) pass an order under section 26(1) of the Act directing the DG to cause an investigation to be made into the matter;
 - b) direct Asian Paints to cease and desist from carrying on any of the alleged anticompetitive activities;
 - c) pass an order under Section 27 of the Act penalizing Asian Paints; and
 - d) pass any other orders that the Commission may deem fit and proper in the facts and circumstances of the case



Analysis of Commission

17. The Commission considered the information in its meeting held on 24.10.2019 and decided to pass an appropriate order in due course.
18. On perusal of facts and allegations presented in the information, the Commission notes that JSW Paints appears to be aggrieved by denial of market access by Asian Paints to distribution channels/dealers in the market in abuse of the dominant position held by Asian Paints in the relevant market in contravention of provisions of Section 4 of the Act. Further, the instances of abusive conduct as highlighted in the information appear to perpetuating anti-competitive agreements, in contravention of provisions of Section 3(4) of the Act.
19. The allegations of JSW Paints need to be analysed for abuse of dominant position by Asian Paints, if any, in terms of the provisions of Section 4 of the Act and imposition of restraints in the nature of exclusive supply agreement and refusal to deal under the provisions of Section 3(4) of the Act.
20. For analysing the allegations brought out in the information under provisions of Section 4 of the Act, delineation of relevant market is required, followed by assessment of Asian Paint's position in the said relevant market and then the alleged abusive conduct.

Delineation of relevant market

21. *'Relevant market'* consists of *'relevant product market'* and *'relevant geographic market'*. The relevant product market as defined under Section 2 (t) of the Act means *"a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use."*



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22. The determining factor for defining relevant product market is demand side interchangeability/ substitutability of the product, from the point of view of factors like basic characteristics, their prices and intended end-use.
23. The relevant geographic market, on the other hand, defines the contours with regard to territory within which the conditions of competition for supply of goods or provision of services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.
24. In the present case, JSW Paints is aggrieved by alleged abusive conduct of Asian Paints whereby it has been denied access to distribution channels in the decorative paints segment which in turn prevented JSW Paints from entering the market.
25. Before delineating the relevant market, the Commission notes that it is imperative to understand the paints industry. Paints industry can be segmented into (a) decorative paints; and (b) industrial paints. Decorative paints include high end acrylic exterior and interior emulsions, interior and exterior paints, low end distemper, wall putty, wood coatings, primers, thinners, etc. These are either water based or solvent (oil) based and are generally used for painting of domestic, office and other buildings. As per the information, decorative paints constitute 74% of the market sales. Industrial paints comprise general industrial, automotive, protective powder coatings, coil coatings, etc. constitute 26% of the market sales. Generally, the chemical nature of paint and surface on which paint is used is different in case of industrial paints. Further, decorative paints is primarily a B2C business while industrial paints is a B2B business. As per information, the two segments are not substitutable and are independent of each other. To support the said submission, reliance has been placed upon Industry Reports such as SBI Capital Markets Ltd. Report on the Paints sector dated 18.07.2019 (“**SBI Caps Report**”), CARE Ratings Report on Paints industry dated 27.10.2017 (“**CARE Ratings Report**”), etc., as also Annual Reports of competitors such as Asian Paints, Akzo Nobel



India Ltd. (“**Akzo Nobel**”), Shalimar Paints Ltd. (“**Shalimar Paints**”), *etc.* It has also been submitted that there is no need to further segment the market as from supply side, producers are capable of manufacturing all types of decorative paints using same machinery and installations. As regards the pricing of decorative paints and industrial paints, decorative paints are priced between Rs. 75-500 per litre. The price of industrial paints vary widely depending upon the end use but on an average are much higher than decorative paints, because they are more performance based paints with higher technical specifications. The price of decorative paints in the organised sector players tends to be substantially higher when compared to decorative paints sold by unorganised sector. From the point of view of the consumers, decorative paints and industrial paints are not substitutable as discussed above. Further, distribution channels of decorative and industrial paints are also different. Sales of decorative paints require extensive dealer networks, especially in the rural and semi-urban markets, hence a strong supply chain and pan India distribution is essential for making products successful. Industrial paints on the other hand are sold directly. Brand also plays an important role in the decorative paints segment. Within the decorative paints segment, consumers prefer branded products in the organised sector rather than unbranded products of the unorganised sector. Further, there is a vital distinction between organized and un-organised sector. As per the CARE Ratings Report provided along with the information, the paints industry is largely dominated by organised players accounting for about 65 % of the industry value and un-organised players account for the rest 35%. As per the SBI Caps Report, India’s paint sector is highly organised. As per the CARE Ratings Report, around 80 percent of the organised market is covered by four top players, namely, Asian Paints, Berger Paints India Ltd. (“**Berger Paints**”), Kansai Nerolac Paints Ltd. (“**Kansai Nerolac**”) and Akzo Nobel. It has been stated that there are four major players discussed above and four smaller players namely, Nippon, Jotun, Indigo and Shalimar Paints in the organised decorative paints sector. There are approximately 1900 small scale manufacturers. As per the information, unorganised sector does not offer any competitive constraint on large organised player. In view of the foregoing discussion, JSW Paints has delineated the



relevant product as the “*market for manufacture and sale of decorative paints by the organised sector*”.

26. The Commission is of the view that decorative paints and industrial paints constitute separate segments as there is a clear distinction between the two segments based on basic characteristics, intended use and price. Further, players in unorganised sector do not appear to pose competitive constraint upon players in the organised sector due to various reasons such as brand image, difference in pricing, quality, *etc.* Accordingly, relevant product market for the purpose of assessment in the present case would be defined as “*market for manufacture and sale of decorative paints by the organised sector*”.

27. The ‘*relevant geographic market*’ as defined under Section 2(s) of the Act means the “*market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.*”

28. JSW Paints has delineated the relevant geographic market as “*India*”. It has been submitted that there are no regulatory trade barriers and paints can move freely across India. Further, the laws governing the paint sector are same for players and do not differ on region wise basis. The consumer preferences depend on the brand and do not vary region wise basis. The Commission is of the view that conditions of competition in the paint sector are homogeneous across India. Accordingly, the relevant geographic market could be defined as “*whole of India*”.

29. Accordingly for carrying out *prima-facie* analysis under the provisions of the Act, the relevant market could be delineated as the “*market for manufacture and sale of decorative paints by the organised sector in India*”.



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Assessment of dominance of Asian Paints

30. Having delineated the relevant market, the Commission notes that next issue is to determine whether Asian Paints holds a position of dominance, as alleged, in the said relevant market.
31. The Act defines ‘*dominant position*’ under explanation (a) to Section 4 as, “*a position of strength enjoyed by an enterprise, in the relevant market, in India, which enables it to (a) operate independently of competitive forces prevailing in the relevant market; or (b) affect its competitors or consumers or the relevant market in its favor.*”
32. The Commission notes that the underlying principle for assessing dominance of an enterprise is linked to the market power enjoyed by the enterprise. An enterprise is regarded as dominant if it enjoys/possesses a position of strength in the relevant market, which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour.
33. JSW Paints has stated that Asian Paints enjoys dominant position in the relevant market. The Commission notes that Asian Paints is the largest player in the relevant market. As per the information, Asian Paints has the highest market share based on all parameters including revenues, EBITDA, installed capacity. Based on revenue, it has a market share of 55.92%, with the second player, Berger Paints being at 18.79 % for the FY 2017-18. Even if unorganised sector is included, Asian Paints has a market share of 36.64 %, with next competitor, Berger Paints at 12.3 %. Similarly, for FY 2018-19, Asian Paints is a leader with 56.33 % market share based on revenue, with next competitor, Berger Paints, being at 19.19 %. Even if unorganised sector is included, Asian Paints would have a market share of 37.11 % with next competitor being at 12.64 %. It has also been stated that Asian Paints has 60,000 dealers and 135 depots across the length and breadth of the country. The next competitor is Berger Paints at second place with 25,000 dealers and 129 depots. Based on various reports provided along with information, the Commission



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notes that extensive dealership networks are required in decorative paints market to create a strong presence in rural and urban areas. With its large number of dealers, Asian Paints appears to have penetrated deeply in the relevant market and appears to enjoy competitive advantage over its competitors. Given that dealers are small traders with few resources, they are dependent upon Asian Paints. Further, these dealers do not have countervailing buying power.

34. The Commission notes that there are top 4 operators in this industry namely, Asian Paints, Berger Paints, Kansai Nerolac, Akzo Nobel, who have occupied around 80 % of the relevant market, with Asian Paints maintaining its highest market share consistently over the years. Based on above, the Commission notes that Asian Paints *prima-facie* appears to enjoy a dominant position in the relevant market delineated above.

Assessment of abuse of dominant position

35. Having determined dominance of Asian Paints in the relevant market, the Commission now analyses the allegations of JSW Paints within the framework of Section 4 of the Act.
36. It has been alleged that Asian Paints has indulged in exclusionary abuse by denying access to JSW Paints in contravention of provisions of Section 4(2)(c) of the Act. It has also been alleged that when JSW Paints, launched its products in the relevant market and started partnering with dealers and distributors, Asian Paints started taking coercive action and violated the provisions of Section 4(2)(c) of the Act by targeting such dealers/distributors/retailers who partnered with JSW Paints by directing them to stop dealing with JSW Paints, stopping supplies to these dealers, dropping service levels by delaying supplies and deliveries, and asking dealers to remove display of JSW Paints products from their retail shelves and dealer signboards. Dealers were also threatened by not allowing discretionary discounts, loyalty schemes, *etc.*



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37. The Commission has perused various instances of alleged abusive conduct of Asian Paints brought out by JSW Paints in the State of Karnataka, Tamil Nadu and Telengana as contained in information including a transcript of a conversation between a dealer and representatives of Asian Paints submitted with the information. Asian Paints is also alleged to have pressurised enterprises that provided infrastructure facilities like warehouses to JSW Paints. An instance in Hubli district has been cited in support of this submission.

38. The Commission notes that denial of market access is a severe form of abuse of dominant position. In the present case, it has been brought out that without access to the dealers, there is no scope for a new or existing entity to survive in the market as the dealers are interface of business with customers and help products of manufacturers reach them. In the facts of the present case, the Commission notes that the alleged conduct of Asian Paints of threatening and pressurising dealers as highlighted by JSW Paints *prima-facie* brings out that Asian Paints has attempted to prevent JSW Paints in establishing a presence in the relevant market. This conduct *prima-facie* appears to be tantamount to abuse of dominant position by Asian Paints, wherein Asian Paints has denied access to necessary distribution channels in the relevant market and has limited the availability of alternate products in the relevant market for consumers thereby reducing the competition in the market in contravention of provisions of Section 4(2)(c) of the Act. As a result of the conduct of Asian Paints, the final consumers may also be deprived of choice to purchase different kinds of paints at competitive prices.

39. Based on material available on record, the Commission is of the view that evidence provided by JSW Paints is *prima-facie* sufficient to indicate that Asian Paints has denied access to the distribution channels in the relevant market to JSW Paints by threatening and coercing such dealers through various means. In view of foregoing, Asian Paints, *prima-facie*, appears to be in contravention of provisions of Section 4(2)(c) of the Act.



Assessment of restraints under Section 3(4) of the Act

40. In regard to Section 3(4) of the Act, JSW Paints has alleged that Asian Paints has acted in contravention of provisions of Section 3(4)(b) and 3(4)(d) of the Act by imposing restraints in the nature of exclusive supply agreement and refusal to deal. JSW Paints, in light of Section 19(3) of the Act, has stated that top 4 brands in the industry namely, Asian Paints, Berger Paints, Kansai Nerolac and Akzo Nobel occupy around 50% of the larger paint industry (decorative & industrial) and 80% of the relevant market (decorative). Despite presence of global brands in India, they have hardly managed to make their presence felt in the relevant market. It has been further stated that Asian Paints has always maintained the highest market share and there have been no new players in the relevant market in the last ten years. Asian Paint's conduct of refusal to deal and of exclusive supply is alleged to have created significant trade barriers for any upcoming entrant. It has also been submitted that Asian Paint's conduct is alleged to be directly aimed at foreclosing the entry of a new entrant like JSW Paints from competing in relevant market and also driving existing competitor like Nippon out of the market.
41. The Commission notes that Explanation (b) to Section 3(4) of the Act provides that an exclusive supply agreement includes any agreement that restricts the purchaser from dealing in goods other than that of seller. Further, Explanation (d) to Section 3(4) of the Act provides that refusal to deal includes any agreement which restricts, or is likely to restrict by any method the persons or classes to whom goods are sold or from whom goods are bought. As discussed above, Asian Paints is alleged to have threatened various dealers in the States of Karnataka, Telangana and Tamil Nadu from dealing with JSW Paints. These dealers are reported to have faced punitive action at the hands of Asian Paints if they continued to deal with JSW Paints. It has also been brought out that Asian Paints threatened the dealers to discontinue their supplies, disallowed discretionary discounts, *etc.* These restraints appear to be in the nature of exclusive supply agreement and refusal to deal. As pointed out by JSW Paints, such restrictions limit the dealers from procuring same/similar products from other sources at a cheaper price. This restriction on



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the choice of dealers can limit the benefits to the consumers that would have resulted otherwise. The Commission notes that the alleged restrictions on dealers not to deal with JSW Paints or any other company manufacturing paints can create barriers for suppliers of paints, who compete with these suppliers besides not allowing the benefit of better prices to the consumers. A stipulation that appears to create barriers to entry and restricts choice of consumers is likely to result in appreciable adverse effect on competition resulting in higher prices for consumers. Thus, the Commission is *prima-facie* satisfied that imposition of said restraints amounts to contravention of Section 3(1) of the Act read with Sections 3(4) (b) and 3(4) (d) of the Act by Asian Paints which is *prima-facie* found to enjoy market power in the market.

42. In view of the foregoing, the Commission is of the opinion that there exists a *prima facie* case which requires an investigation by the DG, to determine whether the same has resulted in contravention of the provisions of Sections 4(1) of the Act and 3(1) read with Section 3(4) thereof.
43. Accordingly, the Commission directs the Director General ('DG') to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. The Commission also directs the DG to complete the investigation and submit the investigation report within a period of 60 days from the receipt of this order.
44. It is also made clear that nothing stated in this order shall be tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.
45. Since the matter is being referred to investigation, with respect to the application seeking confidentiality dated 03.10.2019 of the Informant, the Commission deems it appropriate that the DG may deal with such requests having regard to the requirements of such investigation.



46. The Secretary is directed to send a copy of this order alongwith the material available on record to the DG forthwith.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi

Date: 14/01/2020