

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI
Competition Appeal (AT) No.05 of 2022**

IN THE MATTER OF:

Ceat Ltd.

...Appellant

Versus

Competition Commission of India & Ors.

...Respondents

Present:

For Appellant : Mr. Rajshekhar Rao, Sr. Advocate, Mr. Divyansh Prasad, Ms Aanchal Tikmani, Mr. Vivek Agarwal, Advocates.

Mr Kurian Joseph, Chief Legal Officer.

For Respondents :Mr. Samar Bansal, Mr. Arjun Krishnan and Ms. Khushboo Mittal, Mr Vedant Kapur, Advocates for R1/CCI

Mr.Davinder Prasad, Dy. Director (Law)

Mr. Rohan Arora, Mr. Aakash Kumbhjat, Advocates for JK Tyre.

Mr Manas Kumar Chaudhuri, Mr Sagar Deep Rathi, Mr. Armaan Gupta, Advocates for Apollo Tyres.

**With
Competition Appeal (AT) No. 06 of 2022**

IN THE MATTER OF:

Nitish Bajaj

...Appellant

Versus

Competition Commission of India & Ors.

...Respondents

Present:

For Appellant : Mr. Rajshekhar Rao, Sr. Advocate, Mr.

**Divyansh Prasad, Ms Aanchal Tikmani, Mr
Vivek Agarwal, Advocates.**

Mr Kurian Joseph, Chief Legal Officer.

For Respondents

**:Mr. Samar Bansal, Mr. Arjun Krishnan and Ms.
Khushboo Mittal, Mr. Vedant Kapur, Advocates
for R1/CCI**

Mr. Davinder Prasad, Dy. Director (Law)

**Mr. Rohan Arora, Mr. Aakash Kumbhjat,
Advocates for JK Tyre.**

**Mr. Manas Kumar Chaudhuri, Mr. Sagar Deep
Rathi, Mr. Armaan Gupta, Advocates for Apollo
Tyres.**

**With
Competition Appeal (AT) No. 07 of 2022**

IN THE MATTER OF:

Arnab Banerjee

...Appellant

Versus

Competition Commission of India & Ors.

...Respondents

Present:

**For Appellant : Mr. Rajshekhar Rao, Sr. Advocate, Mr.
Divyansh Prasad, Ms Aanchal Tikmani, Mr
Vivek Agarwal, Advocates.**

Mr Kurian Joseph, Chief Legal Officer.

For Respondents

**:Mr. Samar Bansal, Mr. Arjun Krishnan and Ms.
Khushboo Mittal, Mr Vedant Kapur, Advocates
for R1/CCI**

Mr.Davinder Prasad, Dy. Director (Law)

Mr. Rohan Arora, Mr. Aakash Kumbhjat,

Advocates for JK Tyre.

Mr Manas Kumar Chaudhuri, Mr Sagar Deep rathi, Mr. Armaan Gupta, Advocates for Appollo Tyres.

With
Competition Appeal (AT) No. 08 of 2022

IN THE MATTER OF:
Satish Sharma

...Appellant

Versus

Competition Commission of India & Ors.

...Respondents

Present:

For Appellant : Mr Amit Sibal, Sr Advocate, Mr Manas Kumar Chaudhuri, Mr. Sagardeep Rathi, Mr. Armaan Gupta, Mr Risham Sharma, Mr S. Dhingra, Advocates

For Respondents :Mr. Samar Bansal, Mr Vedant Kapur, Ms Aakansha Kaul, Advocates for R1/CCI

Ms Srishti Vashisht, RA/CCI/

Mr.Davinder Prasad, Dy. Director (Law)

Mr Manek Singh, Mr. Dhan Sahani, Ms Divita Dutta, Advocates

Mr. Rohan Arora, Mr.Aakash Kumbhat, Mr Ishaan Chakraborty, Advocates for JK Tyre.

Mr. Rajshekhar Rao, Sr. Advocate, Mr. Divyansh Prasad, Ms Aanchal Tikmani, Mr, Vivek Agarwal, Advocates for Ceat Tyres.

Mr Kurian Joseph, Chief Legal Officer.

With
Competition Appeal (AT) No. 09 of 2022

IN THE MATTER OF:**Neeraj Kanwar****...Appellant****Versus****Competition Commission of India & Ors.****...Respondents****Present:**

For Appellant : Mr Amit Sibal, Sr Advocate, Mr Manas Kumar Chaudhuri, Mr. Sagardeep Rathi, Mr. Armaan Gupta, Mr Risham Sharma, Mr S. Dhingra, Advocates

For Respondents :Mr. Samar Bansal, Mr Vedant Kapur, aakansha Kaul, Advocates for R1/CCI

Ms Srishti Vashisht, RA/CCI/

Mr.Davinder Prasad, Dy. Director (Law)

Mr Manek Singh, Mr. Dhan Sahani, Ms Divita Dutta, Advocates

Mr. Rohan Arora, Mr.Aakash Kumbhat, Mr Ishaan Chakraborty, Advocates for JK Tyre.

Mr. Rajshekhar Rao, Sr. Advocate, Mr. Divyansh Prasad, Ms Aanchal Tikmani, Mr Vivek Agarwal, Advocates for Ceat Tyres.

Mr Kurian Joseph, Chief Legal Officer.

With**Competition Appeal (AT) No. 10 of 2022****IN THE MATTER OF:****Apollo Tyres Ltd.****...Appellant****Versus****Competition Commission of India & Ors.****...Respondents**

Present:

For Appellant : Mr Amit Sibal, Sr Advocate, Mr Manas Kumar Chaudhuri, Mr. Sagardeep Rathi, Mr. Armaan Gupta, Mr Risham Sharma, Mr S. Dhingra, Advocates

For Respondents :Mr. Samar Bansal, Mr Vedant Kapur, aakansha Kaul, Advocates for R1/CCI

Ms Srishti Vashisht, RA/CCI/

Mr.Davinder Prasad, Dy. Director (Law)

Mr Manek Singh, Mr. Dhan Sahani, Ms Divita Dutta, Advocates

Mr. Rohan Arora, Mr.Aakash Kumbhat, Advocates for JK Tyre.

Mr. Rajshekhar Rao, Sr. Advocate, Mr. Divyansh Prasad, Ms Aanchal Tikmani, Mr Vivek Agarwal, Advocates for Ceat Tyres.

Mr Kurian Joseph, Chief Legal Officer.

**With
Competition Appeal (AT) No. 13 of 2022**

IN THE MATTER OF:

JK Tyre and Industries Ltd.

...Appellant

Versus

Competition Commission of India & Ors.

...Respondents

Present:

For Appellant : Mr. Ramji Srinivasan, Sr. Advocate Mr. Rohan Arora, Mr. Aakash Kumbhat, Advocates.

For Respondents : Mr. Samar Bansal, Mr. Arjun Krishnan,

**Ms.Khushboo Mittal, Mr Vedant Kapur,
Advocates. for R-1/CCI
Mr. Devander Prasad, Dy. Director Law, Ms
Srishti Vashisht, RA/CCI.
Mr. Rajshekhar Rao, Sr. Advocate, Mr.
Divyansh Prasad, Ms Aanchal Tikmani, Mr
Vivek Agarwal, Advocates for Ceat Tyres.**

Mr Kurian Joseph, Chief Legal Officer.

**Mr Amit Sibal, Sr Advocate, Mr Manas Kumar
Chaudhuri, Mr. Sagardeep Rathi, Mr. Armaan
Gupta, Mr Risham Sharma, Mr S. Dhingra,
Advocates for Appollo Tyres.**

**With
Competition Appeal (AT) No. 14 of 2022**

IN THE MATTER OF:

Automotive Tyre Manufacturers Association

...Appellant

Versus

Competition Commission of India & Ors.

...Respondents

Present:

**For Appellant : Mr Krishnendu Dutta, Sr. Advocate, Mr. G.R.
Bhatia, Mr. Arjun Nihal Singh, Mr. Rajshree
Choudhary and Mr. Sanyam Juneja, Mr. Manav
Gupta, Mr. Rajat Sinha, Advocates.**

**For Respondents : Mr. Samar Bansal, Mr.Vedant Kapur, Ms
Aakanksha Kaul, Advocates for R-1/CCI**

**Mr Rohan Arora, Mr. Aakash Kumbhat, MR.
Ishaan Chakraborti, Advocates for JK Tyre.
Mr. Rajshekhar Rao, Sr. Advocate, Mr.
Divyansh Prasad, Ms Aanchal Tikmani, Mr
Vivek Agarwal, Advocates for Ceat Tyres.**

Mr Kurian Joseph, Chief Legal Officer.

Mr Amit Sibal, Sr Advocate, Mr Manas Kumar Chaudhuri, Mr. Sagardeep Rathi, Mr. Armaan Gupta, Mr Risham Sharma, Mr S. Dhingra, Advocates for Appollo Tyres.

**With
Competition Appeal (AT) No. 15 of 2022**

**IN THE MATTER OF:
Arun Kumar Bajoria**

...Appellant

Versus

Competition Commission of India & Ors.

...Respondents

Present:

For Appellant : Mr. Rohan Arora, Mr. Aakash Kumbhat, Advocates

**For Respondents : Mr. Samar Bansal, Mr. Arjun Krishnan, Ms.Khushboo Mittal, Mr Vedant Kapur, Advocates for R-1/CCI
Mr Davander Prasad, Dy. Director, (Law), Mrs Srishti Vashisht, RA/CCI.
Mr. Rajshekhar Rao, Sr. Advocate, Mr. Divyansh Prasad, Ms Aanchal Tikmani, Mr. Vivek Agarwal, Advocates for Ceat Tyres.**

Mr Kurian Joseph, Chief Legal Officer.

Mr Amit Sibal, Sr Advocate, Mr Manas Kumar Chaudhuri, Mr. Sagardeep Rathi, Mr. Armaan Gupta, Mr Risham Sharma, Mr S. Dhingra, Advocates for Appollo Tyres.

**With
Competition Appeal (AT) No. 16 of 2022**

**IN THE MATTER OF:
Vikram Malhotra**

...Appellant

Versus

Competition Commission of India & Ors.

...Respondents

Present:

For Appellant : Mr. Rohan Arora, Mr. Aakash Kumbhat, Advocates.

**For Respondents : Mr. Samar Bansal, Mr. Arjun Krishnan, Ms.Khushboo Mittal, Mr Vedant Kapur, Advocates for Advocates for R-1/CCI
Mr Davander Prasad, Dy. Director (Law), Mrs Srishti Vashisht, RA/CCI.
Mr. Rajshekhar Rao, Sr. Advocate, Mr. Divyansh Prasad, Ms Aanchal Tikmani, Mr Vivek Agarwal, Advocates for Ceat Tyres.**

Mr Kurian Joseph, Chief Legal Officer.

Mr Amit Sibal, Sr Advocate, Mr Manas Kumar Chaudhuri, Mr. Sagardeep Rath, Mr. Armaan Gupta, Mr Risham Sharma, Mr S. Dhingra, Advocates for Appollo Tyres.

With

Competition Appeal (AT) No. 17 of 2022

IN THE MATTER OF:

MRF Ltd.

...Appellant

Versus

Competition Commission of India & Ors.

...Respondents

Present:

For Appellant : Mr. Mukul Rohatgi, Sr. Advocate, Mr. K.Venugopal, Sr. Advocate Mr. Aditya Narain, Mr Arnav Narain, Mr Mishra Rajshekhar, Ms Anushree Narain, Mr Arjun Jain, Mr. Kaushik, Mr. Nikhil Rohatgi, Mr. Keshav Sehgal,

Advocates.

**For Respondents : Mr. Rohan Arora, Mr. Aakash Kumbhat,
Advocates for JK Tyre**

**Mr. Samar Bansal, Mr. Arjun Krishnan,
Ms.Khushboo Mittal, Mr Vedant Kapur,
Advocates for**

Advocates for R-1/CCI

**Mr Davander Prasad, Dy. Director (Law), Mrs
Srishti Vashisht, RA/CCI.**

Mr. Manek Singh, Ms Diviti Dutta, Advocates.

Mr. Rajshekhar Rao, Sr. Advocate, Mr.

Divyansh Prasad, Ms Aanchal Tikmani, Mr.

Vivek Agarwal, Advocates for Ceat Tyres.

Mr Kurian Joseph, Chief Legal Officer.

Mr Amit Sibal, Sr Advocate, Mr Manas Kumar

Chaudhuri, Mr. Sagardeep Rathi, Mr. Armaan

Gupta, Mr Risham Sharma, Mr S. Dhingra,

Advocates for Appollo Tyres.

With

Competition Appeal (AT) No. 18 of 2022

IN THE MATTER OF:

**Rajiv Budhraja,
Director General, Automotive Tyre
Manufacturers Association
Versus**

...Appellant

Competition Commission of India & Ors.

...Respondents

Present:

**For Appellant : Mr Krishnendu Dutta, Sr. Advocate, Mr. G.R.
Bhatia, Mr. Arjun Nihal Singh, Mr. Rajshree
Choudhary and Mr. Sanyam Juneja, Mr. Manav
Gupta, Mr. Rajat Sinha, Advocates.**

**For Respondents : Mr. Samar Bansal, Mr.Vedant Kapur, Ms
Aakanksha Kaul, Advocates for R-1/CCI**

**Mr. Rohan Arora, Mr. Aakash Kumbhat,
Advocates for JK Tyre.**

**Mr. Rajshekhar Rao, Sr. Advocate, Mr.
Divyansh Prasad, Ms Aanchal Tikmani, Mr.
Vivek Agarwal, Advocates for Ceat Tyres.**

Mr Kurian Joseph, Chief Legal Officer.

**Mr Amit Sibal, Sr Advocate, Mr Manas Kumar
Chaudhuri, Mr. Sagardeep Rathi, Mr. Armaan
Gupta, Mr Risham Sharma, Mr S. Dhingra,
Advocates for Appollo Tyres.**

**With
Competition Appeal (AT) No. 20 of 2022**

IN THE MATTER OF:

Birla Tyres Ltd.

...Appellant

Versus

Competition Commission of India & Ors.

...Respondents

Present:

**For Appellant : Mr. Ankit Virmani, Mr. Krishan Tewary, Ms.
Devanshi Sharma, Advocates**

**For Respondents :Mr.Samar Bansal, Mr. Arjun Krishnan and
Ms. Khushboo Mittal, Ms. Aakanksha Kaul,
Mr. Manek Singh, Mr. Aman Sahani, Ms.
Divita Dutta and Mr. Pranav Gupta Advocates
for R1/CCI**

**MR. Rohan Arora, Mr. Aakash Kumbhat,
Advocates for JK Tyre.**

**Mr. Rajshekhar Rao, Sr. Advocate, Mr.
Divyansh Prasad, Ms Aanchal Tikmani, Mr.**

Vivek Agarwal, Advocates for Ceat Tyres.

Mr Kurian Joseph, Chief Legal Officer.

Mr Amit Sibal, Sr Advocate, Mr Manas Kumar Chaudhuri, Mr. Sagardeep Rathi, Mr. Armaan Gupta, Mr Risham Sharma, Mr S. Dhingra, Advocates for Appollo Tyres.

With
Competition Appeal (AT) No. 22 of 2022
IN THE MATTER OF:
Koshy K. Varghese

...Appellant

Versus

Competition Commission of India & Ors.

...Respondents

Present:

For Appellant : Mr. Krishnan Venugopal, Sr. Advocate, Mr. Aditya Narain, Mr Arnav Narain, Ms. Anushree Narain, Mr. Arjun Jain, Mr Mishra Raj Shekhar, Mr Kaushik, Mr. Arjun Jain, Advocates

For Respondents : Ms. Srishti Vashist, Advocate for R1.

Mr. Rohan Arora, Mr. Aakash Kumbhat, Advocates for JK Tyre.

Mr. Rajshekhar Rao, Sr. Advocate, Mr. Divyansh Prasad, Ms Aanchal Tikmani, Mr. Vivek Agarwal, Advocates for Ceat Tyres.

Mr Kurian Joseph, Chief Legal Officer.

Mr Amit Sibal, Sr Advocate, Mr Manas Kumar Chaudhuri, Mr. Sagardeep Rathi, Mr. Armaan Gupta, Mr Risham Sharma, Mr S. Dhingra, Advocates for Apollo Tyres.

Mr. Samar B ansal, Mr. Vedan Kapur, Ms Aakansha Kaul, Mrs Srishti Vashisht, Mr. Dhan Singh, Ms Divita Dutta, Advocates.

Mr Kunal Kanungo, Mr Siddharth Handa, Ms Tanushree Sogani, Mr Atishey Jain, Advocates.

JUDGEMENT

(1st December, 2022)

DR. ASHOK KUMAR MISHRA, MEMBER (TECHNICAL)

1. The Appeals as enunciated above have been preferred by the Appellants under Section 53B of the Competition Act, 2002 (Act) against the impugned order dated 31.08.2018 passed by the Competition Commission of India (CCI) in the case no. 08 of 2013.

FACTS OF THE CASE

2. It has also been informed by the Appellants that the order was communicated in February, 2022. The background of this delay in communication by the CCI was due to an interim order passed by the Hon'ble Madras High Court in W.A. No. 529 of 2018 preferred by MRF Ltd. The relevant para is reproduced hereunder:

“3. Post on 26.03.2018. In the meanwhile, if the second Respondent passes final order in the subject matter in issue, then the same shall be kept in a sealed cover....”

However, the Division Bench of Hon'ble Madras High Court vide an order dated 06.01.2022 dismissed the Writ Appeal. Even the matter went in Appeal to Hon'ble Supreme Court by way of Special Leave Petition (SLP Nos. 958/2022, 931/2022 and 1049/2022) which came to be dismissed vide order dated 28.01.2022. The matter was thereafter placed in the ordinary meeting of the commission on 02.02.2022 whereupon the commission directed the Secretary to unseal the order dated 31.08.2018 and to take further steps in the matter.

3. Short fact of the case is that the All-India Tyres Dealer Federation (AITDF) approached the then MRTP Commission by way of RTP case no. 20 of 2008 alleging inter alia Pricing and Trade Malpractices. The investigation was conducted for a period from 2005-2006 to 2009-2010 and the CCI vide its order dated 30.10.2012 disposed of the RTP case no. 20 of 2008 holding that thus evidence was insufficient to sustain the contravention under Section 3 (3) (a) and Section 3 (3) (b) read with Section 3 (1) of the Act. The order passed by CCI dated 30.10.2012 is in 126 pages elaborately explaining the background of the case prima facie opinion, findings of DG Report, reply by Indian Tyre Manufacturers, Modi Tyre Pvt. Ltd, M/s. Good Year India Limited etc., apart from formulation of issues for determination like the Commissions jurisdiction to proceed with the matter as also determining contravention of the provisions of

Section 3 of the Act by the Tyre manufacturers and analysis of the entire case and finally has passed the following order vide para 366 of the order. In a nutshell, it is prudent and necessary to place a few para of the order dated 30.10.2012 passed by the CCI in RTPE No. 20 of 2008 for appreciation and the same is reproduced below:

307. 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.

308. The Commission also 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.

309. As noted earlier, for the purposes of the present investigation, the DG, considering the commercial utility of truck and bus tyre segment in transportation and public importance at large, took into consideration the truck and bus tyres both cross (or bias) and radial. However, with regard to the specific and detailed study on cost of production, *ex-factory* price, price parallelism *etc.*, the following LUG truck tyres were taken into consideration for investigation:

Company	Tyre (LUG)
Apollo	10.00-20 16 XT-7
Birla	10.00-20 16 PR Lug BT 112
MRF	10.00-20 SL 50 Plus N 16 Lug
Ceat	1000-20/16 HCL Super Lug
J. K. Tyre	1000.20 6 JTK Lug

Price Cost Trend Analysis

310. The price data for the period of 2005-2010 of the five domestic tyre manufacturing companies viz. MRF, J.K. Tyre, Birla, Ceat & Apollo was analyzed.

311. It was noted by the DG that the major cost components which affect the prices of tyres are the cost of natural rubber and the excise duty. It was noted that the excise duty over the investigation period has gone down from 16% to 10%.

312. It may be useful to note the excise duty changes as reflected in the table below:

Excise Duty Movement

Year	Excise Duty
2004	16%
2005	16%
2006	16%
2007	16%
2008	14% (reduced to 10% from Dec. 2008)
2009	8%
2010	10%

313. With respect to another component *viz.* natural rubber, it was noted that the tyre Industry is highly dependent on it which accounts for 43% of the tyre production cost. Natural Rubber is procured by domestic tyre manufacturers on daily basis and the price of natural rubber fluctuates on daily basis. The weighted average price of the natural rubber during the reference period is shown below:

Weighted Average – Natural Rubber

Year	Weight per/kg
2005	₹ 60/- per kg
2006	₹ 87/- per kg
2007	₹ 90/- per kg
2008	₹ 107/- per kg
2009	₹ 97/- per kg
2010	₹ 169/- per kg

314. On a careful examination of the above data, it appears that during the investigation period, excise duty has shown a downward trend and the natural rubber has increased in 2008 but has fallen in 2009 and then again increased in 2010. It was, however, noted by the DG, as shown below, that during the

investigation period the net dealer prices of all the domestic tyre players have continuously increased except in 2009 wherein a limited decline in prices was observed.

315. Accordingly, the DG has come to a conclusion that these tyre companies have not passed on the benefit of reduction in excise duty to the consumers. To buttress the conclusion, reliance was also placed on the Tariff Commission findings on Tyre Industry.

316. A grievance is made of the fact that the DG has made general observations that tyre manufacturers have not passed on the benefits of the decreased excise duty to the customers. It is alleged that in complete contrast to the assertions/findings by the DG, the parties have been passing on the benefits of excise duty reductions in the best interests of its customers.

317. To examine the price movement for the specific Lug Tyre segment of the five domestic tyre manufacturers under investigation, the weighted average of the net dealer price, as shown below, may be analyzed.

Net dealer price (weighted average) for the 5 specific LUG segment

	2005	2006	% change	2007	% change	2008	% change	2009	% change	2010	% change
Apollo	8717	9793	12.34	10364	5.83	10701	3.25	10309	-3.66	10640	3.21
Birla	8057	8968	11.30	9506	5.99	9789	2.97	9280	-5.19	10091	8.73
MRF	8461	8992	6.27	9465	5.26	9973	5.36	9792	-1.81	10475	6.97
CEAT	7880	8720	10.65	9180	5.27	9718	5.86	9161	-5.73	10660	16.36
J.K. Tyre	7800	8904	14.15	9156	3.13	9612	4.98	9122	-5.10	10248	12.34

318. The Commission on the price – cost analysis noted that major cost components are not only Natural rubber and Excise duty, but

also NTC Fabric and Carbon black. In the absence of detailed analysis of changes in total cost and resulting changes in prices, the Commission does not agree with findings of DG that the benefit of decline in excise duty and price of natural rubber has not been passed on to the consumers. In fact, it is observed that the fall in prices of Natural Rubber was marginal in 2009 while the rise was substantial in 2010 and no proportionality in price changes can be linked to the same in 2009 or 2010.

Price Parallelism

319. On perusal of the above data, it was deduced by the DG that the net dealer price (weighted average) of lug tyre in respect of all the companies was more or less the same with marginal difference in their price except Apollo Tyre. Further, it was noticed that the movement of net dealer price (weighted average) in terms of actual quantum as also percentage change was similar. The percentage change of net dealer price whether upward or downward was found to show close correlation amongst the five tyres manufacturing companies. Based on the above analysis, it was observed by the DG that price parallelism existed amongst the five tyre manufacturing companies which area good measure/indicator to show that some kind of information sharing in price had taken place amongst them.

320. The Commission observes that differences in range of prices of different manufacturers has been more than Rs.1000 for the period 2005-2009 and the range has come down to Rs.600 in 2010. Considering that the product is homogeneous, the 6-12% range of difference in prices imply that the prices are dissimilar and there is no parallelism at least in absolute prices. As far as parallelism of price movement in percentage terms is concerned there are wide variations amongst various manufacturers. As far as directional changes are concerned, parallelism is observable.

321. The parties have sought to justify the price parallelism in the tyre industry by pointing out the peculiar features of the tyre industry. It has been highlighted that price parallelism in the tyre industry arises on account of the fact that the products sold are homogenous which makes it difficult for businesses to charge different prices to customers. It is argued that products in the tyre industry share similar sources of inputs, which means that competitors are subject to similar cost fluctuations in setting their product prices. Lastly, it has been contended that prices of products in the tyre industry are highly visible, which allows businesses to collect real time market intelligence and monitor each other's prices closely and match competitors' price movements.

322. The Commission carefully perused the submissions made by the parties on this count. It may be observed that price parallelism *per se* may not fall foul of the provisions of the Act. However, if the same is the result of a concerted and coordinated action under the aegis of trade association, then the same stands covered within the purview of the Act. In this particular case, the parallel pricing pattern is not very sound. However, now we shall analyze if there are any plus factors to suggest that this limited price parallelism is on account of concerted action.

323. The DG, has analyzed these plus factors. The DG made elaborate analysis of data relating to production; capacity utilization; cost analysis; cost of sales/sales realization/margin; cost of production and natural price movement; net dealer price & margin and market share, the Commission also considered these factors.

Capacity Utilization Analysis

324. The DG also examined the capacity utilization of all the 5 major domestic tyre manufacturing companies and the details thereof are noted below:

Capacity Utilization Movement

Company	2005-06	2006-07	2007-08	2008-09	2009-10
	Utilization %	Utilization %	Utilization %	Utilization %	Utilization %
Apollo	89%	89%	92%	87%	80%
Birla	90.74	89.83	97.67	81.59	104.57
MRF	74.7	79.27	82.13	80.85	89.04
Ceat	90%	91%	83%	75%	81%
J.K.Tyre	101%	92.6%	86.5%	85.1%	86.7%

From the above, it was deduced by the DG that the overall capacity utilization of the tyre manufacturers have been showing a downward trend and the utilized capacity has dropped down in the case of major three companies *viz.* Apollo, Ceat and J.K.Tyre except MRF & Birla from 2005 to 2010. In the case of Birla, the variations in capacity utilization were noted as very high as it dropped from around 97% to 81% in the year 2008-09 and then drastically increased from 81% to 104% in the year 2009-10. In J.K. Tyre, a drastic decline in the capacity utilization was noted during the entire investigation period which reflects under-utilization of capacity.

325. On behalf of Apollo and some other parties, the concept of capacity available for production was introduced in the arguments by the opposite parties. It was argued that capacity utilization was relatable to the available capacity and this was the correct measure and not the installed capacity. Impugning the analysis of the DG relating to capacity utilization, it was pointed

out that the DG erred in its report by focusing on capacity utilization and concluding the existence of a cartel based on perceived low capacity utilization levels, without analyzing the key variables that drive capacity utilization *viz.* capacity, demand and production *etc.* Moreover, technical constraints relating to operation of new capacity need to be factored into the calculation of capacity utilization as also widely understood in the tyre industry 100% of the installed capacity is rarely available for production from the first year a plant is commissioned and even thereafter. This is stated to be due to various issues such as lead time (ramp-up) that is required by a plant to stabilize production, maintenance (both scheduled and un-scheduled), labour unrests *etc.* It has also been alleged that the DG has further ignored the fact that there was global economic crisis in or around 2008-2009 and the tyre industry was also adversely affected by the same because of the reduced demand by original equipment manufacturers *i.e.* automotive manufacturers and reduced demand in the replacement segment. It is alleged that the DG has drawn generalized reference to capacity utilization without considering specific aspects of each company and why there are movements in relation to the capacity utilization data. It is the case of Apollo that its capacity utilization has been consistently very high except for a short period in 2008-2009. It is alleged that the DG has completely failed to take into consideration that the lock-outs took place during the investigating period, thereby grossly mischaracterizing Apollo's capacity utilization.

326. The Commission has given thoughtful consideration to the data on capacity utilization and plea raised by the parties. On a closer examination of the data, the following observations are made:

i) The trends are mixed: It is noticed that the capacity utilization for some companies increase and others decrease on a

YoY basis. The fall in 2008-09 is in line with recession. Lack of clear trend in figures suggest that variations in CU are company specific and not necessarily due to any concerted action.

ii) The capacities have increased: The decrease in CU needs to be read along with the increase in capacities. The CESTAT order cited by Michelin ⁴ observes:

.....The capacity has increased from 26270 MTs to 37636 MTs and the production has increased from 18622 MTs to 27364 MTs and therefore the capacity utilization has also increased from 70.89% to 72.71%. However, the DA has noted that despite growth in demand growth in production has declined.

This highlights the increase in production has been muted because of increase in capacity and not due to reduction of output leading to supply suppression.

iii) The ICRA Report estimated on the basis of Company announcements that the installed capacity is likely to go up by 47% from 2009-10 to 2012-13. The investments committed by the companies negate the cartel theory as it does not seem practical for companies to maintain a high ROCE when capital is continuously increased.

327. It is also relevant to point out the observations made by the Tribunal (CESTAT) in the appeal filed against the findings of DA by Bridgestone, Michelin, Tata Motors Ltd. and two Chinese companies. The Tribunal noted that during the period 2004-2008, the sales by domestic industry increased 2.5 times. It was also noted that during the same period imports increased from 1361 MTs to 28386 MTS. Thus, the demand was very high during the said period. The turnover, profits and return of capital of the domestic industry increased but the capacity utilization was 72%. This is another testimony to the fact that

⁴As submitted and annexed in DGs Report.

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tyre manufacturers willful suppression of capacity does not make any economic sense as the only beneficiary of the same will be the importers unless it can be established that the tyre manufacturers increased prices to such an extent that they gained despite losing huge volumes to imports.

328. From the above analysis, the Commission concludes that the tyre companies were not in a position to profit from limiting the supply by willful underutilization of capacity.

Cost of Sales, Sales Realization and Margin

329. The DG made a detailed analysis of cost of sales, sales realization and margin. It was noted that sales include cost of production, selling and distribution cost, administrative overheads, advertisement *etc.* Sales realization is the amount received on sale of each unit. Margin indicates the profit or loss realized on sale of the product. The analysis was done to get an idea about the profitability or otherwise of sale of each product. The following information regarding cost of sales, sales realization and margin with respect to truck tyres was culled out from the cost audit report:

Tyre Company	UNIT	YEAR	Cost of Sales (₹/Unit)	Sales Realization (₹/Unit)	Difference between Cost of Sales and Sales Realization (Margin in ₹ /UNIT)
APOLLO TYRES	Truck	2009-10	6852	7979	1127
APOLLO TYRES	Truck	2008-09	7079	7826	747
APOLLO TYRES	Truck	2007-08	6119	7085	966
APOLLO TYRES	Truck	2006-07	6145	6790	645
APOLLO TYRES	Truck	2005-06	5488.48	6118.7	630.22
JK TYRE	Truck	2009-10	7208.2	7827.12	617.92

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JK TYRE	Truck	2007-09 (18 MONTHS)	7486.04	7562.61	76.57
JK TYRE	Truck	2006-07	6498.41	6897.82	399.41
JK TYRE	Truck	2005-06	6281.84	6319.28	37.44
JK TYRE	Truck	2004-05	5838.03	5880.08	42.04
CEAT LTD	Truck	2009-10	7509	7620	111
CEAT LTD	Truck	2008-09	8179	7908	-270
CEAT LTD	Truck	2007-08	6571	6922	351
CEAT LTD	Truck	2006-07	6522	6645	122
CEAT LTD	Truck	2005-06	5801	5903	102
MRF LIMITED	Truck	2009-10	5379.47	5751.05	371.58
MRF LIMITED	Truck	2008-09	4035.87	4346.17	310.3
MRF LIMITED	Truck	2007-08	3678	3836.41	158.41
MRF LIMITED	Truck	2006-07	3091.77	3288.16	196.39
BIRLA TYRES*	Truck	2009-10	6891	6905	14
BIRLA TYRES*	Truck	2008-09	7872	8164	292
BIRLA TYRES	Truck	2007-08	6531	7125	594
BIRLA TYRES	Truck	2006-07	6479	6928	449
BIRLA TYRES	Truck	2005-06	5668	6039	371
* Refers to Balasore unit only					

330. Based on the analysis of the above information, it was concluded by the DG that margins for Apollo tyres have been showing a very healthy trend and it has reached the highest in year 2009-10. In the case of JK Tyres, the margin has been improving and has gone up drastically. The margin, which was ₹ 76 during 2009-10, has gone up to ₹ 617 in year 2009-10 which

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is more than 8 times compared to previous year. In the case of MRF, the margins have shown significant improvement in the year 2008-09 and have further improved in 2009-10. In the case of CEAT, it may be noted that in the 2009-10 the company was able to improve its margins significantly from a negative margin of Rs. 270 in the year 2008-09 to a positive margin of Rs.111 in the year 2009-10. Birla Tyres has shown lower margin for 2009-10 compared to previous year.

331. Considering the profit margin on the sale of each tyre, it would be seen that for Apollo Tyres, the margin per tyre increased from Rs.747/- to rs.1127/- in years under consideration. Similar is the story of increase in margin of JK Tyre where the margin increased from Rs.76.56 to Rs.607.92 per tyre. However, in case of CEAT, it was selling its tyre at a loss in the year 2008-09 and in the year 2009-10, it had a margin of Rs.111/- per tyre, MRF margin in the year 2008-09 was Rs.310/- in 2009-10, it was Rs.371/-, Birla Tyre had a margin of Rs.292/- in 2008-09 and only Rs.14 in the year 2009-10. There is no uniformity in the rise of margins of different companies. Birla rather reduced its margin per tyre considerably and had been selling at the lowest margin of Rs.14/- per tyre. The cost of Birla Tyre was also lowest in the year 2009-10 being Rs.10091/-.

332. Similarly, the margin of CEAT was only Rs.111/- per tyre which cannot be considered as excessive or exorbitant. The margin of two companies was definitely higher than that of the other companies but if we look at the different margins, it would not give an impression of a concerted agreement among the enterprises of forming a cartel. It is also noteworthy that Birla had considerably reduced its margin from Rs.292/- to Rs.14/- only. While CEAT seems to have got in red in the year 2009 and started showing profit in the year 2010, JK Tyre was also working at lower margin in the years 2007-09 of Rs.76.57 per tyre. Looking at data regarding margins does not seem to suggest meeting of minds on the part of different enterprises for fixing prices.

333. In view of the above analysis, it may be noticed that the cost of sales and sales realization have shown increasing trend year after year. Different manufacturers are differently placed as far as Net Margins are concerned. The bigger the range between the margins of manufacturers, lower are the chances of sustaining a cartel. The companies with lower margins have no incentive to collude and will but deviate. It is recognized prices are a function of number of factors including but not limited to cost conditions, thus the Commission finds no merit in evaluating whether the changes in Sales Realization are proportionate to cost of sales or not. It cannot be concluded on the basis of the above data relating to cost of sales, sales realization and margins that there is any indication of concerted action.

Analysis of Net Dealer Price and Margin

NAME OF THE COMPANY	YEAR	NET DEALER PRICE (₹)	% CHANGE	MARGIN (Difference between Cost of Sales and Sales Realization) ₹ /UNIT	
APOLLO TYRES	2010	10640	3.2	1127	
APOLLO TYRES	2009	10309	-3.6	747	
APOLLO TYRES	2008	10701	3.25	966	
APOLLO TYRES	2007	10364	5.8	645	
APOLLO TYRES	2006	9793		630.22	
JK TYRE & INDUSTRIES LTD.	2010	10248	12.3	617.92	
JK TYRE & INDUSTRIES LTD	2009	9122	5	76.57	
JK TYRE & INDUSTRIES LTD	2008	9612	4.9	399.41	

JK TYRE & INDUSTRIES LTD	2007	9156	2.8	37.44	
JK TYRE & INDUSTRIES LTD	2006	8904		42.04	
CEAT LTD	2010	10660	16	111	
CEAT LTD	2009	9161	-5.7	-270	
CEAT LTD	2008	9718	5.8	351	
CEAT LTD	2007	9180	.5	122	
CEAT LTD	2006	8720		102	
MRF LIMITED	2010	10475	6.9	371.58	
MRF LIMITED	2009	9792	-1.8	310.3	
MRF LIMITED	2008	9973	5.3	158.41	
MRF LIMITED	2007	9465	5.2	196.39	
MRF LIMITED	2006	8992			
BIRLA TYRES*	2010	10091	8.7	14	
BIRLA TYRES*	2009	9280	5.1	292	
BIRLA TYRES	2008	9789	2.9	594	
BIRLA TYRES	2007	9506	5.9	449	
BIRLA TYRES	2006	8968		371	
* Refers to Balasore unit only					

334. The DG also conducted the analysis of the Net Dealer Price (Weighted average) of Lug truck tyres *vis-à-vis* the margin of each of the five domestic companies under investigation and the same may be noted below:

335. It was noted by the DG that the analysis of the Net Dealer Price (Weighted average) of Lug truck tyres *vis-à-vis* the margin of each of the five domestic companies under investigation showed a significant increase in margins from 2006-2010. Thus, it was concluded that all the companies have been operating on high margins barring some exceptions as highlighted in the table

above. It was also noted that the margins have increased from ₹ 42.04 to ₹ 617.92 in the case of J.K. Tyre which is an increase of almost 15 times in a short span of 4 years. Similarly, in the case of Apollo Tyres the margins have almost doubled in the last four years.

336. Though the Commission believes that deciding on margins being “excessive” is an inconclusive exercise, but in this case the data anyways does not support the assertion of “excessive” margins given that the margins in some cases are less than 1% and the highest margin is around 10%, which cannot be called as ‘high’. Also, as pointed out earlier also, these substantial differences in margins negate the possibility of a cartel as the investigation in such cases need to show the benefit to cartel members operating at such low margins. In view of the above analysis, the Commission disagrees with the findings of the DG on this count that these domestic tyre manufacturers have been operating on large margins which did not appear to be passed on to the consumers.

Higher Operating Profits and Return on Capital Employed (RoCE)

337. The Commission also considered the financials of the opposite parties on all parameters during the period 2008-09 to 2009-10. The best indicators of profitability are the EBDITA Margin as % of Sales and Cash Flows from Operating Activities.

PBDITA net of Prior period & Extraordinary Items & Other Income & Financial Income as % of sales						
Name of the company	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
CEAT	4.40	6.30	7.90	1.50	10.50	3.60
MRF	6.10	9.00	7.70	11.50	10.30	7.60
Apollo	7.50	8.30	10.90	7.70	14.50	8.80
JK Tyres	5.00	5.30	7.90	5.30	10.20	4.90

Source: CMIE

338. As may be noted from the above table, EBDITA Margins have ranged from a low of 1.50% of Sales to a high of 11.50% of

Sales. Though, there is a definite increase in operating profitability in 2009-10 for all the companies (MRF follows the October – September year for accounting and hence the trend is blurred) which suggests more than proportionate increase in prices as compared to cost of operations.

339. Similar observations can be made from Cash flow from Operating Activities analysis. It is noticed that all the companies (except MRF) almost doubled their cash inflows in 2009-10 over 2008-09. For MRF, the trend is reflected in 2008-09 because of difference in accounting year. These cash flows again came down to their normal levels in 2010-11. The Commission noted that there is a definite blip in profitability and cash inflows which can be read with other factors to reach some conclusions. But it is equally important to note that the blip has been very short lived, almost consistent with the period of ADD.

Net Cash Flows from Operating Activities (Rs. In Millions)						
Name of the company	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
CEAT	554.00	1067.60	1392.00	1312.20	2326.80	1363.10
MRF	2748.60	3061.40	3290.90	9372.70	1860.50	6328.70
Apollo	794.00	3574.70	4277.70	3245.80	7026.60	1523.50
JK Tyres	859.00	466.40	1950.10	2663.50	5442.20	-212.60

Source: CMIE

Market Share

340. A comparative study of the market share was undertaken for domestic tyre manufacturers. It is clear from the data that Apollo, CEAT, Goodyear and JK have lost their market share which has been gained by Birla. Birla's market share is shown as 8.9% in 2005-06 and it has grown in 4 years to reach 19.74% in 2009-10. This is inconsistent with general cartel behavior where market shares remain consistent through the years. Also, it is against the rational business behavior to lose market share to a rival in a cartel set up. Such trend in market share movement is possible only in case of competitive environment.

Conduct of ATMA

341. As noted earlier, the tyre manufacturing firms have an association under the name Automotive Tyre Manufacturers' Association (ATMA) as the representative body of automotive tyre industry in India. Eight large tyre companies including MRF, J K Tyre, Birla, CEAT and Apollo representing over 90% of production of tyres in the country are its members. The Association regularly publishes data on production and export of various categories of tyres. Besides, the Association prepares Status notes on various subjects which are of relevance to tyre industry, such as, Tyre Retreading Industry, Regional Trade Agreements & Rules of Origin, Anti-Dumping, *etc.* Thus, it may be noticed that the firms have an active trade association engaged in the above activities.

342. It was noted by the DG that ATMA which is an association of domestic tyre manufactures acted as a close knit family. On examination of the various minutes of the meetings held from 2005-2010, it was noted by the DG that the domestic tyre manufactures were facing stiff competition from the imports under the different tyre segments. On examination of the ATMA circulars and minutes of the meeting, it was noted that ATMA members have collectively adopted the various courses of action which included: i) anti-dumping petitions; ii) low cost tyres; iii) blacklisting of importers; iv) export realization and v) un-remunerative prices from the supplies made to OEMs.

Anti-Dumping Action

343. DG noted that tyre manufacturers under ATMA took various actions by agreeing to support and cooperate in filing various anti-dumping applications before the competent authority to neutralize the competition faced by them from exporters based at

China and other countries. In this connection, the DG noted from the minutes of ATMA that the ATMA Committee took serious note of the rising trend in import of passenger car tyres into India, particularly large scale import of cheaper tyres and dumping of radial passenger car tyres, and advised ATMA Secretariat to proceed with the filing of an anti-dumping petition against such imports. It was brought to the attention of the Committee that full cooperation of all ATMA member companies, which manufacture passenger car tyres, was imperative for the success of the case. All the members present assured support and cooperation in filing anti-dumping application as petitioners and by providing necessary inputs and cooperation in the said proceedings.

344. Similarly, to thwart competition from import of Truck & Bus Bias tyres, the domestic tyre manufactures filed Anti-Dumping petition. It was noted by the DG from the reply of ATMA that it retained the services of a common advocate to file an Anti-Dumping petition against import of Bias Truck & Bus tyres from China. Members were informed that one round of discussions has taken place between Cost Managers of select tyre companies and the advocate. The advocate had desired Marketing, Cost and Financial data, as per format circulated through ATMA, to be completed by three member companies *viz.* Apollo, Ceat and JK to be forwarded directly to the advocate so that the application could be processed.

345. In this connection, it is significant to note that the advocate *inter alia* advised a meeting of Cost Managers of ATMA member companies with him to ensure uniformity of data and format in which it is to be presented. Subsequently, the domestic tyre manufacturers filed an anti-dumping petition under the Bias segment.

346. With the increase in radialization of tyres under the car and trucks/ bus segment, domestic tyre manufactures again felt the

heat on account of imports of radial tyres from the global market. Accordingly, in order to evade competition and protect themselves, the domestic tyre manufactures again filed anti-dumping petition under the radial category also so as to increase the import cost to consumers as well as OEMs.

347. ATMA sought to clarify the above conduct by submitting that the Anti-Dumping petition involved furnishing extensive information/data in a prescribed format as per the anti-dumping rules and provisions. It was also stated that even the anti-dumping application performatorequired the petitioner to compile the information to the extent possible. It was also clarified that cost data being highly confidential in nature, were directly submitted by the concerned tyre companies to the advocate for onward submission to directorate of anti-dumping after aggregation, analysis etc. None of the tyre companies was privy to the confidential costing data submitted by the other tyre companies in such proceedings, submitted ATMA. The Commission considered the findings of DG and submissions of ATMA and concluded that the lobbying for welfare of tyre industry is the prime objective of ATMA and the same cannot be viewed as anti-competitive. The discussion and joint application for levy of anti-dumping duty also seem necessitated, given the procedure specified. Moreover since the costing data was confidential to each company the possibility of sharing such sensitive information is most unlikely.

Low Cost tyre strategy

348. As members of ATMA domestic tyre manufacturers adopted the collective strategy of launching the lower priced tyres to effectively compete with the Chinese truck tyre imports.

349. In this connection, ATMA stated that in view of the rising volume of dumped/low priced truck and bus tyres from China, the Indian tyre manufacturers had considered the option

of introducing lower weight and hence low priced truck and bus tyres as a pro- competitive measure to meet Chinese competition on account of the 'tyres with lower weight' being dumped into the country.

350. The Commission noted that the strategy of introducing low weight low cost tyres to meet the competition and agrees with submissions of OP's to that effect. The fact that the strategy was collective may again be used to infer meeting of minds but there is nothing anti-competitive in it.

Collectively black-listing the Importers

351. Based on the analysis conducted by the DG, it may be observed that the tyre companies under the aegis of ATMA also decided to take measures resulting in collective black-listing of the importers. It may be noted that the Committee members of ATMA took note of the discussions that had earlier taken place in a meeting of Marketing Group regarding under-valued/under invoiced import of tyres, particularly in the Truck Bias, Truck Radial and Passenger Car Radial segments. The Committee advised that, as in the past, ATMA Secretariat should take up the issue with Customs Authority for Redressal. It was also stated that the angle of revenue loss to the Government should be adequately projected.

352. It may further be noted that the Committee also advised the Marketing Group to evolve appropriate strategy so that sale of under-valued/under-invoiced tyres could be checked at the retail level with the involvement of local State sales tax authorities. It was decided at the meeting that all the tyre companies should collectively co-ordinate for initiating the line of action and the following four geographical areas and tyre companies which could take lead in this direction were notified as follows:

- a) Delhi (Apollo)
- b) Mumbai (Ceat)
- c) Vijaywada (tyre company name to be confirmed)
- d) Indore (JK Tyre)

353. The four locations were short-listed since these were understood to be focal points where sale of under-invoiced/under-valued truck & bus tyres-bias and radial-was rampant. Based on the effectiveness of action plan in these areas, it was decided that the same could be replicated at an all India level. Moreover, it was also decided that similar strategy could be adopted in the case of grey market imports of MNC brands in the passenger car tyre segment. Convener, Marketing Group was advised to have a meeting of Marketing representatives, immediately following the Managing Committee meeting, to evolve an appropriate strategy to check the malpractices, including black listing, by tyre companies, of importers indulging in such imports, particularly if they were having dealings with Indian tyre companies also.

354. ATMA sought to clarify that the whole intent was to assist the concerned custom authority to track such undervalued/under invoiced imports at major trucking centres and at ports. The intent was to ensure that importers do not find ways and means of circumventing the duty imposed and to check for undervalued and under invoiced imports.

355. The Commission noted the findings of DG and submissions of OPs. The Association's concern for undervalued/under invoiced imports is genuine and their collective decision to assist the authorities is in the direction of ensuring fair play in markets.

Export Realizations

356. ATMA member companies have undertaken discussion on the issue of export realization. The members of ATMA collectively discussed the issue about the feasibility of increasing the average realization on exports from minimum Freight on Board (FoB) value of US \$2.25/kg to a higher level. It may be noted that ATMA Export Forum has discussed the issue of export realization. However, considering the current market conditions and intense competition from China particularly in the Radial/Bias T&B tyre category, any major increase in average export realization in some categories, especially Bias T&B tyres, was not found feasible.

Unremunerative prices from the supplies made to OEMs

357. The issue of unremunerative prices realized from the supplies made to OEMs is noted as also another area of discussion among the member companies. The domestic tyre companies have discussed the issue of OEM prices *vis-à-vis* input cost. Consistent rise in input costs in recent months was a major concerns for tyre companies.

358. Thus it may be noted that the discussions centered on unremunerative prices realized from OEMs due to absence of corresponding increase in price of end product. There was a general consensus that truck and bus tyres supplied to vehicle manufacturers were at unsustainable prices, particularly in view of hike in inputs costs.

359. ATMA sought to justify the aforesaid discussion by arguing that the remarks in the meetings under reference were general observations made in the context of the increase in input costs and price for OEMs supplies. ATMA also pointed out that the DG in its report has failed to appreciate the critical fact that none of the actions viz. Anti-Dumping Petition; Low Cost Tyres Strategy; Blacklisting Importers; Export Realization; Supply of Tyres to

OEMs undertaken by ATMA was aimed at determining the individual conduct of any of its members. It has been further submitted that the abovementioned steps/ activities are in line with the roles and responsibilities of an association such as ATMA *i.e.* representing an industry group. It is argued that if the logic adopted by the DG in its report is accepted by the Commission, it would lead to an untenable situation where trade associations representing the interests of an industry group, will be barred from adopting any measure necessary to protect the interests of the concerned industry. Lastly, it is asserted that forming a trade association *per se* is not anti-competitive in any manner.

The Commission carefully examined the submissions made by ATMA. The Commission agrees with ATMA that the trade associations may adopt the measures, which are necessary to protect the interests of the members. However, the decisions should not be in contravention of the Competition Act. The Commission noted that the activities of ATMA may thus be described as lobbying as far as anti-dumping duty issue is concerned. The discussions and conduct on other allegations is general and is not in contravention of the Act. This conclusion is based after a careful perusal of the minutes of the ATMA meetings. A few of the minutes are given below.

360. The minutes of MC meeting of ATMA held in April, 2005 recorded the following items:

Item 4.2: There was a general consensus that truck and bus tyres supplied to OE's (vehicle manufacturers) were at unsustainable prices, particularly in view of hike in input costs. Marketing group was advised to address this issue in its next meeting.

Item 5: Chairman ATMA suggested that in view of the fact that since the volume of such imports had stabilized, tyre companies may like to review their earlier strategy of bringing out lower

priced tyres to effectively compete with Chinese truck tyre imports.

361. The draft minutes of MC meeting of ATMA held in July, 2005 recorded the following items:

Item 5: Members were informed that one round of discussions has taken place between cost managers of select tyre companies and the advocate. The advocate had desired marketing, cost and financial data, as per the format circulated through ATMA to be completed by three member companies (Apollo, CEAT and JK) to be forwarded..

362. The draft minutes of MC meeting of ATMA held in May, 2006 recorded as follows:

Item 3: ...MC decided that ATMA members would import 52,000 MT of natural rubber which is 12% of consumption of tyre industry between Jan and Dec 06.

.....It was felt that in view of the steep increase in the price of natural rubber and further increase anticipated, tyre companies should intensely look into the feasibility of increasing consumption of synthetic rubbers in place of natural rubbers.

Item No. 4: Tyre Export: The need to increase export realization was stressed by members of the MC. A view was expressed that tyre companies should look for minimum FOB value of US \$2.25/KG in export.

363. Action Taken Statement in the MC meeting of ATMA held in August, 2006 recorded the following issues:

Issue 1: monthly import level of NR by each tyre company be collected by ATMA secretariat and circulated to MDS.

Action taken: Latest information on NR imports compiled and circulated to MDs for information.

Issue 9: ATMA to constitute a core group to work out demand projections of tyres for the next 5 years.

Action taken: core group constituted by ATMA. Two meetings of the core group held....preliminary work has been initiated and findings brought to the attention of marketing group.

364. Action Taken Statement in the MC meeting of ATMA held in January, 2010 recorded the following issues:

Item 7: Tyre Demand Projection.....As per the decision of the ATMA marketing group, ATMA has initiated a detailed study on tyre demand projection, for major tyre categories for the next 5-6 years....

Item 9: ETRMA has suggested to ATMA to share on a reciprocal basis tyre production data of their respective member companies at the level of ETRMA and ATMA.

For consideration and decision by the committee.

365. In view of the above and taking into consideration the act and conduct of the tyre companies/ ATMA, it is safe to conclude that on a superficial basis the industry displays some characteristics of a cartel there has been no substantive evidence of the existence of a cartel. As a tradable the industry has always been open to competitive threats from imports. The Commission holds that the available evidence does not give enough proof that tyre companies/ ATMA acting together have limited and controlled the production and price of tyres in the market in India.

126**Order**

366. The Commission has found that there is not sufficient evidence to hold a violation by the tyre companies Apollo, MRF, J.K. Tyre, Birla, Ceat and ATMA of the provisions of section 3(3) (a) and 3(3)(b) read with section 3(1) of the Act.

367. The Secretary is directed to communicate this order as per regulations to all the parties.

sd/-
(H.C Gupta)
(Member)

sd/-
(Geeta Gouri)
(Member)

sd/-
(M. L. Tayal)
(Member)

sd/-
(S.N.Dhingra)
(Member)

sd/-
Ashok Chawla
(Chairperson)

4. The above order was further challenged before then Competition Appellate Tribunal bearing Appeal No. 02 /2013 under Section 53B of the Act. The order so passed by the Competition Appellate Tribunal (COMPAT) vide order dated 25.04.2013 is reproduced herein below:

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**COMPETITION APPELLATE TRIBUNAL
APPEAL NO.02/2013**

[Under Section 53B of the Competition Act, 2002 (Act 12 of 2003) against the order dated 30.10.2012 passed by the Competition Commission of India in Case No. 20/2008]

CORAM

Hon'ble Mr. Justice V.S.Sirpurkar
Chairman

Hon'ble Mrs. Pravin Tripathi
Member

In the matter of :

All India Tyre Dealer Federation ... Appellant

Versus

Competition Commission of India & Ors. ... Respondent

Appearances : None for the Appellant

Ms. Pallavi S.Shroff with Mr. Yaman Verma, Advocates
for the respondent
Mr. G.R.Bhatia with Ms. Kanika Chaudhary and Ms.
Nidhi Singh, Advocates for R-2
Mr. Aditya Narain with Mr. Shashak Bhushan,
Advocates for R-3, 4 and 7

ORDER
25th April 2013

In this Appeal originally, the DG in his investigation found that the respondents were guilty of contravention of Section 3. This was on the basis of the information laid before the Competition Commission of India (CCI) by All India Tyre Dealers Federation. This report of the DG was sent to the parties for raising objections against the same, if any. Thereafter, the issue was considered in detail by the Commission. The Commission however, came to the conclusion that the recommendation by the DG in his report could not be accepted for the reasons that it has given in the order. The Commission therefore, exonerated all the respondent companies.

Under this scenario, it is seen that since the order of the Commission cannot be said to have been passed under Section 27 of the Act, there would be no Appeal maintainable. The clear language of Section 27 suggests that that Section can be applied when the Commission finds the contravention of

the provisions of the Act on the part of the respondents. That is clearly not the situation here. The impugned orders cannot also be treated as having been passed under section 26(2) or 26(6) so as to be appealable. We have already taken this view in the earlier matters and we see no reason to take a different view on this.

Appeal is dismissed as not maintainable.

(Justice V.S.Sirpurkar)
Chairman

(Pravin Tripathi)
Member

5. The Commission vide order dated 30.10.2012 has made it amply clear that the tyre industry has always been open to competitive threats from imports and has also held that the available evidence does not give enough proof that tyre Companies/Auto-motive Tyre Manufacturers' Association (ATMA) have control over the production and price of tyres in the market in India.
6. Similarly, the Competition Appellate Tribunal in its order dated 25.04.2013 also didn't challenge/ reverse the order of the commission.

AITDF approached various ministries/departments of the Government of India raising allegations against the Tyre Manufacturers basically raising allegations of price control by domestic Tyre manufacturers. However, it was brought to the notice of the Bench by the Appellants that Respondent No.1/CCI did not initiate a Suo-moto enquiry against the allegations made by AITDF evidently due to lack of sufficient evidence.

7. The AITDF sent, thereafter a letter dated 11.09.2013 to the Hon'ble Minister of Corporate Affairs (MCA) vide its letter dated 11.09.2013 requesting for asking CCI to Suo-moto take action against domestic Tyre manufacturers as also apprising the Hon'ble Minister for depreciating Rupee made Tyre import costlier on the back of Anti-Dumping duty on truck/ bus Tyres as also, emboldened domestic Tyre majors not cutting down Tyre prices despite drop in raw material prices. Relevant Para -4 of that letter is reproduced here under:

“4.This request before your honour has been put up that small business in tyre trade represented by AITDF is unable to bear the huge legal cost to contest resourceful tyre majors, who as in past before CCI, are able to take repeated adjournments and crease technical hurdles in getting justice for hapless consumers and tyre dealers. Moreover, the Office of Director General- Investigation, CCI seems to be short of expertise to investigate deeply the business model of domestic tyre manufacturers and their trade practices, and in addition to this

the investigation team does not visit factories, offices of tyre manufacturers and does not go to tyre dealers in the market, this leads to very limited and half-hearted investigation by CCI as against the well equipped costing and technical resources of tyre makers. In the previous case No. 20/2008 against the tyre manufacturers, the AITDF in its information had mentioned about the indiscriminate, arbitrary, unwarranted, unfair and concerted price hike by tyre majors for all categories of tyres and tubes i.e. truck and bus, light and medium commercial vehicles, passenger, cars/SUVs, two wheelers/three wheelers and farm tractors but the DG-Investigation, CCI went into the limited study of truck and bus tyres only, which in ultimate analysis resulted in a week case before the CCI bench as very reference for investigation by CCI was already had room for the complaint being outweighed on the ground of technicalities. The AITDF is fully committed to assist the CCI and its investigation, in case our information is forwarded by the Government for suo moto action at CCI as tyre dealers unable to take the domestic tyre giants due to heavy legal cost and time consumed in getting complaint admitted at CCI. The mass of consumers and tyre dealers seek your compassion and protection in the regard and request for urgent intervention to discipline the belligerent domestic tyre manufacturers who are

unfairly enjoying tariff and non-tariff barriers on import of tyres and this protection is being used against the domestic replacement market particularly when the depreciation in rupee currency has further complicated the matter.”

8. It was also brought to the notice of the Bench that AITDF addressed another letter dated 28.11.2013 to the Minister of Commerce and Industry and MCA requesting a direction to R-1/CCI to initiate Suo-moto enquiry against domestic Tyre manufacturers. The same is reproduced herein below page- 183-186, APB:

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 Typed copy

Ph(O) : 23976671

23962414

Telefax: 011-25936288

ALL INDIA TYRE DEALER'S FEDERATION
 (APEX BODY OF TYRE DEALERS AFFILIATING STATE/
 REGIONAL ASSOCIATIONS)
 865/32, Guru Nanak House, S.P. Mukherjee Marg, Delhi 110006
 (INDIA)

Ref. No.: AITDF/COM-TI-04M/2013-14

Date: 28 Nov. 2013

Hon'ble Sh. Anand Sharma
 Minister of Commerce
 and Industry
 Government of India
 Udyog Bhawan
 New Delhi 110011

Hon'ble Sh. Sachin Pilot,
 Minister of Corporate Affairs
 Government of India
 5th Floor, A-Wing,
 Shastri Bhawan
 New Delhi-110001

Subject: a) Request for asking Competition Commission of India (CCI) to
 'Suo Moto take action against oligopoly of domestic tyre
 manufacturers rather than insisting on tyre dealers to file the
 complaint as contesting the tyre cartel involves huge legal cost of
 small business as against resourceful tyre manufacturers.

b) Rubber prices plunge to Rupees 151 / kg from earlier peak price
 of Rs.240/kg, which had resulted in arbitrary/ disproportionate tyre
 price increases of 15%-17% during 2011-12, the domestic tyre
 majors holding on to high tyre prices by strangulating free play of
 market forces, thus Government Intervention for Immediate tyre
 price roll back

Respected Sir/s,


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This is in continuation of our earlier communication addressed to Ministry of Corporate Affairs dated 11 Sep'2013 (copy enclosed) on the above subject. Since then the natural, rubber price has further dropped to Rs.151/kg from the previous peak of Rs.240/kg and also the prices of crude oil have also dropped leading to softening of prices of various key inputs, which go into the manufacture of tyres. The rubber prices during year 2008 went up ..illegible...peak level of Rs.140/kg in August/ Sept 2008 from Rs.75/kg in March 2008 and similarly the crude oil price internationally went up to \$ 142/a barrel from \$ 65/a barrel. Again in December 2008, the natural rubber price drop to Rs.69/kg and crude oil price plunged to previous low levels of March 2008. The domestic tyre majors in a concerted manner in year 2008 jacked up the prices by 15%-22% for various categories of tyres and tubes which included tyres for trucks/ buses, LCVs, passenger cars/ MUVs, two wheeler/ three wheelers, tractors tyres and of the road/mining tyres. After steep drop in raw material prices, none of the leading domestic tyre manufacturers rolled back the tyre prices. Same is the situation now for the last round of steep tyre price increases indulged into by Indian Tyre Majors during year 2011-12 and the major drop in price of natural rubber to Rs.151/kg from earlier peak of Rs.240/ kg has not ruffled the domestic tyre companies to reduce the tyre prices in a pro rata manner as was the argument for increase in tyre-prices.

2. Unfortunately, the steep decline in natural rubber prices has not so far augured well for the tyre trade and consumers because the domestic tyre industry is maintaining a self styled 'price control' on the pricing and their trade practices by strangulating the free and fair play of market forces leading to zooming 'declared' margins of leading tyre companies. The domestic tyre majors are exploiting a languishing auto market and poor performance of the transport sector as economy has been on a very slower growth mode. It is strange that the tyre buyers – OEMs and truck/bus owners – are suffering losses and on the contrary, the leading tyre companies are able to increase their profits have been going up and in



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several cases the revenues are being pulled out by way of unethical trade practices, which are also leading to loss of revenue to the State Exchequer. Moreover, the depreciation of Rupee against dollar has created a wall of higher tariff on import of tyres and on the contrary the export of tyres has rendered the production and sales management in the domestic market countered to the interest of end users. Therefore, there is need to dismantle the price control mechanism of domestic tyre makers, who are working in unison in regulating the price of tyres for all variety and usages.

3. The All India Tyre Dealers' Federation (AITDF), being equi-distant to the tyre makers and tyre users, once again pleads In order to safeguard the road transport industry and also to help in containing the operating cost of fleet owners to keep check on the inflationary impact of freight cost due to indiscriminate and disproportionate tyre prices:

a) The Competition Commission of India (CCI) should be requested by the Government to immediately initiate SUO MOTO action against the restrictive trade practices of domestic tyre majors so that they are stopped from indulging in strangulating free and fair play of market forces and our earlier plea for this action is already pending with the Ministry of Corporate Affairs and other Central Government Departments.

b) Since domestic tyre majors are engaged in self styled 'price control' and are not maintaining their commitment that they have increased the tyre prices due to increase in raw material prices including natural rubber and now prices are supposed to be aligned in line with drop in raw material cost, then it is the duty of Central Government to intervene and direct the domestic tyre majors to roll back tyre prices in line with drop in rubber prices. The prices of all the raw materials i.e. natural rubber, nylon tyre cord, synthetic rubber, carbon black, rubber chemicals etc. and their market movement is in the full public domain and the input prices have been coming down for last 8-10 quarters, it should not be


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difficult for the government to have the tyre prices rolled back with immediate effect.

It cannot be ignored that powerful tyres majors took undue advantage of their dominant, position and refused to reduce the tyre prices in year 2008-09 when economy was plunged into down turn and again now in 2012-13, the economy is in bad shape and same set of domestic tyre manufacturers are maintaining indiscriminately high tyre prices even when the raw material prices have slumped significantly.

Awaiting an early response, with regards,

Yours faithfully

Sd/-

..illegible..

S.P. Singh

Encl: as above

Convenor, AITDF
(Mobile) 9810604730

Copy with best compliments to:

1. The Secretary to Government of India, Cabinet Secretariat
2. The Principal Secretary to Government of India, Prime Minister's Office (PMO)
3. The Secretary to Government of India, Ministry of Road Transport and Highways
4. The Chairman, Competition Commission of India, New Delhi 110001
5. The Secretary to Government of India, Department of Consumer Affairs.

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9. Mr. Rajshekhar Rao, Ld. Sr. Counsel, thereafter, took the Bench through the letter of MCA dated 16.12.2013 forwarding merely the letter of AITDF dated 28.11.2013 to the Respondent no. 1/CCI terming it as a reference under Section 19 (1) (b) of Act & asking the CCI for enquiring into the matter and for appropriate orders.

10. The CCI in its ordinary meeting held on 07.1.2014 vide reference no. 08/2013 mentioning filed by Ministry of Corporate Affairs against

domestic Tyre manufacturers and directing the Ministry to address preliminary arguments through an authorized representative or sending written submissions one week in advance prior to next date of hearing on 18.02.2014.

11. The Commission thereafter passed an order dated 24.06.2014 under Section 26(1) of the Act in reference case no. 08 of 2013 directing the DG to conduct an investigation into contravention under Section 3 of the Act by the opposite parties- Apollo Tyres Ltd., MRF Ltd., JK Tyres and Industries Ltd. and Birla Tyres Ltd, Automotive Tyre Manufactures Associations to consider the role of the opposite party- ATMA and thereafter DG investigation started and submitted its report and finally the CCI passed the impugned order under challenge before this Tribunal.

Submissions made by the Appellants

Generic Submissions made by the Appellants: -

- a. It was submitted by the Ld. Counsel/ Ld. Sr. Counsel of the Appellants that Mr. SP Singh, convener of the AITDF is a habitual litigant and is in a practice to pursue actions against the domestic Tyre manufacturers before the various forums including the commission and Tariff commission apart from various Ministries of the Government etc. All of them in general have also made an allegation that he is acting with vested interest on behalf of the foreign tyre companies against the domestic manufacturers to take advantage in the process for reduction in

the anti- dumping duties imposed on the import of Tyres in India only benefits for the foreign Tyre companies and is negatively impacting the domestic Tyre industry.

b. It was also submitted during the course of hearing as well in the written submissions by almost all the Appellants that the commission has cherry picked the Appellants and excluded the foreign Tyre companies.

c. It was also pointed out that the CCI has investigated the Appellants earlier in relation to 2005-2006 to 2010-2011 up to July 2011 which covers the alleged cartel for the same parties with same set of facts as was there in RTP case no. 20 of 2008 which was closed without any finding of contravention. The RTP order also got affirmed in Appeal before the COMPAT by way of its order dated 25.04.2013. The allegation was also raised earlier by same Mr. SP Singh convener AITDF.

d. It was also brought to the notice of the Bench that the CCI decided to treat the MCA's forwarding letter dated 16.12.2013 (as reflected above – & under Section 19 (1) of the Act, of the impugned order). It was also brought to our notice that the CCI requested the MCA to make preliminary arguments in support of its reference but MCA refused to do so & stated that they had no further submissions to make in this regard and sought exemption from future proceedings. This reflects an invalid reference and CCI erroneously passed an order under Section 26 (1) to conduct a detailed investigation against the Appellants. Despite there being no evidence on material supplied by the MCA as a reference

material. It has only provided a covering letter._The Appellants have also alleged that the Secretary of the Commission failed to discharge its function under Regulations 14(7) (c), 14(7) (d), 15(1), 15(2) of the CCI (General) Regulations 2009 and finally such reference merely needs to be rendered void.

e. Mr. Mukul Rohatgi, the Learned Sr. Counsel submitted that the mere fact that the Hon'ble Madras High Court dismissed the writ petitions & has permitted the parties to raise the same if affected by the final order (MRF Ltd. vs. Ministry of Corporate Affairs and Ors. W.A No.529 of 2018). These observations read with Hon'ble Apex Court Judgment in CEAT Ltd. vs. Ministry of Corporate Affairs and Ors. SLP (c) NO. 958/ 2022 the observations permitting all rights and contention of the parties kept open to be perused in accordance with law and the same is reproduced herein below appearing at Page 213 of Competition Appeal No. 17 of 2022:

“1 The Division Bench of the High Court of Madras has in paragraph 47 of its judgment dated 6 January 2022, noted that the investigation which was ordered by the Competition Commission of India has completed and the report of the Investigating Officer has been submitted to the Commission. Moreover, it has been recorded that all the parties took part in the proceedings before the Commission and the final order was kept in a sealed cover in pursuance of an order dated 8 March 2018 of the High Court. In this backdrop, the High Court has left it open to the parties who are likely to be

aggrieved to work out their remedies in accordance with law.

2 Having regard both to the stage of the proceedings and the facts and circumstances of the case, we are not inclined to entertain the Special Leave Petitions under Article 136 of the Constitution. Since the High Court has clarified that the parties would be at liberty to pursue their remedies in accordance with law, all the rights and contentions of the parties have been kept open to be pursued in accordance with law.

3 The Special Leave Petitions are dismissed.

4 Pending applications, if any, stand disposed of.”

All this allow the Appellants to raise this ground before the Appellate Tribunal.

12. It was also submitted by the Learned Senior Counsel of the Appellant that the impugned order is unconstitutional as it has been signed only by the three Members while the matter was heard before a Bench of four Members which included Mr. S.L. Bunker, Member. It was also brought to the notice that Mr. Bunker was not in the role of CCI on the date on which the order was signed as his tenure ended prior to the date of signing of the order. They cited Mahindra Electric Mobility Ltd and Anr Vs. Union of India, and Other 2019 SCC Online DEL 8032 paragraph 177:

“177. Having so concluded, this Court is nevertheless of the opinion that a hearing by a larger body and decision by a smaller number (for compelling reasons or otherwise) does lead to undesirable and perhaps at times avoidable situations. To address this, the court hereby directs that when all evidence (i.e. report, its objections/affidavits etc.) are completed, the CCI should set down the case for final hearing. At the next stage, when hearing commences, the membership of the CCI should be constant (i.e. if 3 or 5 members commence hearing, they should continue to hear and participate in all proceedings on all hearing dates); the same number of members (of the CCI) should write the final order (or orders, as the case may be). This procedure should be assimilated in the form of regulations, and followed by the CCI and all its members in all the final hearings; it would impart a certain formality to the procedure. Furthermore, the court hereby directs that no member of the CCI should take a recess individually, during the course of hearing, or —take a break to rejoin the proceeding later. Such "walk out and walk in" practise is deleterious to principles of natural justice, and gravely undermines public confidence in the CCI's functioning. Once the hearing

commences, all members (who hear the case, be they in quorums of 3 or 5 or seven) should continue to be part of the proceeding, and all hearings, en banc. An analogy may also be drawn to the hearings in courts before benches of more than one member. Hearings may take place from time to time before benches of varying composition, but once the final hearing has commenced, the matter is heard and decided only by the same bench. There is no addition, deletion or substitution in the composition of the bench during the course of final hearing. If at all, it becomes impossible to continue the hearing before the same bench (for example, due to one of the judges having demitted office), the matter is heard afresh by the new bench even if the composition is partly common with the previous bench. A similar example may be given of hearings in the Supreme Court - if a matter is heard in part by a bench of two judges, further hearings are held only before that bench, and not before the bench of three judges even if both the original members of the bench are also part of the three judge bench. The invariable practice of the courts, which also ought to be followed by the CCI, is that the bench which hears the matter decides it, and that every member who

participates in the hearing, is also party to the final decision.

13. It was also submitted by the Learned Senior Counsel that the alleged agreement between the Appellant M/s Apollo Tyres Ltd Vs CCI (Competition Appeal (AT) No.10/2022) and M/s MRF Ltd in Competition Appeal (AT) No.17/2022 the data used by the DG itself is not correct. What has been computed by the DG of 10 to 11% is incorrect and the correct figure as it was presented by the Appellant is in a wide range of 11.6% to 16.5%. What it was presented by the Appellant that both DG and CCI erroneously showed the price revision in the close range of 11.18% to 11.64% as given herein under:

6.16.5 Period: From 1st March, 2011 to 29 February, 2012

Date of price revision	Apollo		MRF		CEAT		JK		Birla Tyre	
	10.00-20 16PR XT 7		10.00-20 SL 50+		NY 10.00-20/16 MILE XL		1000-20 16 JET ONE		10.00-20(16PR) BT 112	
	Rs	Changes (in Rs.) / %	Rs	Changes (in Rs.) / %	Rs	Changes (in Rs.) / %	Rs	Changes (in Rs.) / %	Rs	Changes (in Rs.) / %
Price as on 01.03.2011	12075		11620		12600		12325		12005	
05.04.2011			12069	449 (3.86%)						
06.04.2011	12437	362 (3%)								
18.04.2011							12572	247 (2%)		
23.04.2011			12500	431 (3.57%)						
26.04.2011	13,059	622 (5%)								
27.04.2011					13040	440 (3.49%)				
30.04.2011							13275	703 (5.59%)		
01.05.2011									12785	780 (6.5%)
12.05.2011			13173	673 (5.38%)						

18.05.2011					13540	500 (3.83%)				
20.05.2011	13,581	522 (4%)								
30.05.2011					13890	350 (2.58%)				
31.05.2011							13806	531 (4%)		
01.06.2011									13300	515 (4.03%)
18.06.2011			13532	359 (2.73%)						
29.06.2011					14090	200 (1.44%)				
01.07.2011	13,945	364 (2.68%)					14290	484 (3.51%)	13960	660 (4.96%)
01.10.2011							13756	-534 (-3.74%)		
Price as on 01.03.2012	13945		13532		14090		13756		13960	
Yearly inc.	1870	11.55%	1912	11.64%	1490	11.18%	1431	11.16%	1955	11.62%

	Prices as noted in DG Report	Apollo	MRF	CEAT	JK	Birla
A.	Base on 01.03.2011	12075	11620	12600	12325	12005
B.	End on 01.03.2012	13945	13532	14090	13756	13960
C.	Annual price increase ($C=B-A$)	1870	1912	1490	1431	1955
D.	Correct % increase ($D=C/A*100$)	15.5%	16.5%	11.8%	11.6%	16.3%
E.	Incorrect % from DG Report	11.55%	11.64%	11.18%	11.16%	11.62%

From the aforementioned table based on the DG's calculation, the percentage changes shown in the last row of the above table state the percentages to be Apollo (11.55%), MRF (11.64%), CEAT (11.18%), JK Tyres (11.16%) and Birla (11.62% which are very similar and therefore, appear to be in parallel.

14. If the arithmetic errors had been corrected in the DG's table, the correct percentages of the price revisions would be as set forth below:

Price	Apollo	MRF	CEAT	JK Tyres	Birla
Base at 01.03.2011	12075	11620	12600	12325	12005
End at	13945	13532	14090	13756	13960

01.03.2012					
Correct % Increase	15.5%	16.5%	11.8%	11.6%	16.3%
Incorrect % from DG Report	11.55%	11.64%	11.18%	11.16%	11.62%

15. It was further pointed out that annual revision in prices of the Appellant did not move in parallel at all. It was also pointed out by them that there was no price parallelism in between the opposite parties if we look at the revised data as stated above.

16. It was also pointed out by the Appellant that the calculation of correlation coefficient is based on the financial year 2009-10 instead of 2011-12 and it has taken wrong matrix of absolute price revision instead of percentage of price revision. It was submitted by the Learned Senior counsel of the Appellant that based on correct calculations the correlation coefficient could be much lower. Hence, there cannot be a violation of section 3(3) of the Act leading to price parallelism.

17. The Ld. Sr. Counsel/ Ld. counsels also submitted in general that high costs, low margins in Financial Year 2011-12 does not allow formation of cartel. It was also pointed out that there was no basis to limit enquiry to truck bus bias Tyre – TBB Segment when the reference itself is with respect to all tyre segment. The Ld. Sr. Counsel / Ld.

Counsels have also submitted that Net dealer price without considering discount is misplaced and erroneous. In general, they have also reiterated that re-trading market competition was totally ignored when the earlier CCI order dated 30.10.2012 has specific observation on this issue that it can only create competition. The Ld. counsels/Ld. Sr. Counsels gave a lot of thrust that there are global Tyre companies with huge capacities and the question of global competition has not been considered. In general, all have submitted that the finding of CCI is untenable both on facts and in law including imposition of penalty on the concept of relevant turnover and finally, all Ld. Counsels have prayed to allow the present appeals.

18. Mr. P.S.Raman, Ld. Sr. Counsel appearing on behalf of Appellant-M/s. CEAT Ltd in Competition Appeal (AT) No. 05 of 2022 reiterated various issues commencing from first complaints which was filed before the Erstwhile MRTP Commission RTPE No. 20 of 2008 starting from 28.12.2007 and finally the same was dismissed on 30.10.2012 observing that there is not sufficient evidence to hold violation of the tyre companies even when AITDF appeal to the COMPAT, it was dismissed on 25.04.2013.

19. The second complaint which was filed by AITDP through Mr. S.P.Singh, same convenor of AITDF who lodged compliant in the first time again started writing to multiple Ministries including CCI raising same allegations of price control by the domestic tyre companies. CCI

never initiated suo moto investigation but on getting the representation through MCA, they have initiated action.

20. The Ld. Sr. Counsel took us through various provisions of law on the subject and reiterated that it is invalid reference and the CCI has erroneously passed order under Section 26(1) of the Act. He also took us through the various details in the DG Report for the period 2011-12 to Financial Year 2013-14 and raised various issues including the incorrect computation of price increase and subsequent calculation of correlation, co-efficient. There is total gross arithmetical error by CCI. He reiterated with various data, filed in the Appeal that the CCI has made a gross error in holding the Appellant/M/s.CEAT Limited in Financial year 2011-12 as involved in the cartel when it made losses in the product (Mile XL) and the segment (TBB) instead of super normal profit which is an essential element for cartel.
21. The CCI has arbitrarily limited the scope of the investigation to the TBB Tyre (Truck, Bus Bias) segment when the allegation under reference is with respect to all tyre segments with no specific mention to the TBB Segment.
22. It was also submitted by the Ld. Sr. Counsel that the CCI has erroneously held that the Appellant/CEAT Limited controlled and limited the production and supplied thereby contravening Section 3(3)(b) of the Act as there was no allegation in AITDP representation as also by MCA

then how they have arrived at the finding of contravention of Section 3(3)(b) of the Act.

23. The Ld. Sr. Counsel has also took us through the impugned order and that it has erred in calculation of even penalty. Assumed without accepting when the CCI has found contravention in Financial year 2011-12, the preceding three Financial Years should have been considered i.e. 2009-10, 2010-11 & 2011-12 and not succeeding three Financial Years.
24. Mr. Rajshekhar Rao, Ld. Sr. Counsel appearing on behalf of Appellant- M/s. CEAT Ltd in Competition Appeal (AT) No. 05 of 2022, Appellant- Nitish Bajaj in Competition Appeal (AT) No. 06 of 2022, Appellant – Mr. Arnav Banerjee in Competition Appeal (AT) No. 07 of 2022 has submitted that impugned order has adopted a revolving door mechanism where four members have heard but three signed and cited the Hon'ble High Court of Delhi in the Mahindra Electric Mobility & Anr. v Competition Commission of India & Anr. {(2019) SCC Online Del 8032} (Mahindra Electric Case) has clearly held that when the final hearing commences, "the membership of the CCI should be constant", and the same number of members should write the final order. The Delhi High Court specifically noted that, "the invariable practice of the courts, which also ought to be followed by the CCI, is that the bench which hears the matter decides it, and that every member who participates in the hearing, is also party to the final decision" Accordingly, if a member was not available to write the final order despite hearing the matter, the CCI

must have heard the arguments afresh by a fixed set of members available to write the final order in accordance with the Mahindra Electric Case.

25. The Ld. Sr. Counsel also raised the issue regarding objection to the DG Report specifically as enumerated herein below:

“The Appellant had specifically filed detailed objections to the DG report controverting its findings with supporting facts and data which, unfortunately, have not been considered and/or dealt with by the CCI.

The CCI has completely ignored the presence of global multinational tyre companies (MNCs) such as Michelin, Bridgestone and Goodyear which together control almost half of the global market and are aggressively competing with the OPs/Appellant including the Appellant in India. The CCI also ignored the conspicuous omission of the mention of MNCs in the information filed by the AITDF.

The CCI also failed to consider the following submissions made by the Appellant:

- The Appellant had absorbed a significant portion of the increase in cost of raw materials without passing on the same to its customers.

- The overall increase in tyre prices in FY 2013-14 over FY 2005-06 was 43 % as against increase of 172% in natural rubber Prices which clearly demonstrates: (i) under absorption of cost; (ii) that the Appellant had actually passed on the benefit to its customers, despite increase in NR Prices; and (iii) the existence of intense competition in the market.
- The decline in the Appellant's market share from 11.9 % in FY2006-07 to 10.6% in FY 2009-10 and 9.9% in FY 2010-11 to 9.6% in FY 2011-12.
- The DG had only examined one tyre segment of TBB tyre while ignoring the fact that there had been a steady shift in the demand of bias tyre to radical tyre.
- The Appellant's share in TBB had been diminishing over the year owing to the shift in its focus to the non-truck segment and particularly to the two-wheeler segment. Accordingly, TBB is not a representative of the Appellant's tyre business.
- The Appellant suffered an overall loss of INR152.36 Crore in the TBB category for the profit FY 2009-10 to 2014-15. This fact belies the allegation of cartelization and/or collusion especially since the object of cartelization is to make supra-normal profits.

Most importantly, the CCI failed to address the core issue raised by the Appellant that, while the DG alleged that there

was an increase in prices by the Ops, the Appellant's prices for this Mile XL variant had reduced by about 2.17% in FY 2012-13 and FY 2013-14. Moreover, the Appellant had been unable to increase its prices to the extent of price increase of other leading tyre companies and maintained its prices at lower levels in relation to TBB and was, in fact, compelled to decrease its price even when there had been an increase in the prices of raw materials."

26. Mr. Rajshekhar Rao, Ld. Sr. Counsel also stated in Competition Appeal (AT) No. 06 of 2022 that Mr. Nitish Bajaj was not in the employment of CEAT Limited in Financial year 2011-12 when the so called alleged contravention took place and has further stated as below:

- The CCI has wrongly held Mr. Bajaj liable under Section 48 when he was not even in the employment of the Appellant in the year of the alleged contravention i.e., FY 2011- 12. He had joined CEAT only in the year 2013 and this fact was also specifically informed to the CCI via letter dated 15.06.2016 wherein it was stated that Mr. Bajaj's income tax returns (ITRs) for FYs 2011-12 and FY 2012-13 were not being submitted, "as he had joined CEAT only on July 24, 2013" (emphasis added).
- The CCI has failed to consider the order of the erstwhile Competition Appellate Tribunal (COMPAT) in the case of Swapna Kumar Karak v CCI & Ors. {(2015) Comp AT 882}, where the COMPAT held that if the Appellant therein was not associated with

the offending decision, the CCI cannot impose a penalty under Section 27 read with Section 48(1). Therefore, the CCI could not have imposed any penalty on Mr. Bajaj when he was not even associated with the Appellant (let alone any offending decision) in the FY 2011-12.

- The CCI has failed to satisfy the ingredients of Section 48 to impute any liability on Mr. Bajaj. As he was not even in the employment of CEAT in the FY 2011-12, it is impossible that he had any knowledge about CEAT's business or that he played any 'active role' in the alleged contravention. The CCI has, without application of mind, solely relied on the statement of Mr. Anant Goenka recorded on 13.07.2015 to hold Mr. Bajaj liable. Mr. Goenka had only explained the role of Mr. Bajaj in 2015 and not in FY 2011-12 which is the year of the alleged contravention. Therefore, the imposition of liability on Mr. Bajaj under Section 48 is clearly a result of complete non-application of mind by the CCI.
- **During its oral arguments, the CCI submitted that "it would not take any unreasonable position with regards to Mr. Bajaj as he was not even in the employment of the company"** and did not press any arguments on Mr. Bajaj's liability. The CCI left it to the Hon'ble Tribunal to decide on the liability of Mr. Bajaj based on the submissions put forth by him. Accordingly, the Hon'ble Tribunal may be pleased to set aside the Impugned Order qua Mr. Bajaj.

27. Mr. Rajshekhar Rao, Ld. Sr. Counsel also submitted on behalf of Mr. Arnav Banerjee in Competition Appeal (AT) No. 07 of 2022 that Section 48 cannot be attracted for Mr. Banerjee and elaborately explained why does not apply to Mr. Arnav Banerjee:

- In the Impugned Order, the CCI held Mr. Banerjee liable both under Section 48(1) and Section 48(2). However, the CCI clarified in its Reply to Mr. Banerjee's Appeal (rightly so) that the imputation of liability on Mr. Banerjee was only under Section 48(2).
- It is submitted that the CCI has erred in the computation of liability on Mr. Banerjee under Section 48(2) as it has failed to show how he played an 'active role' or 'connived' in the alleged contravention in the FY 2011-12. The CCI has completely failed to prove any 'connivance' on the part of Mr. Banerjee as there is no evidence or material on record to show that he even had the knowledge of the alleged contravention.
- As is the case with Mr. Bajaj, the sole basis for the imputation of liability on Mr. Banerjee was the statement made by Mr. Anant Goenka who was explaining Mr. Banerjee's role not in FY 2011-12 but in 2015, i.e., the year in which Mr. Goenka's statement was recorded.
- Mr. Banerjee neither attended any ATMA meeting (para. S, page 20, Mr. Banerjee's Appeal) nor was marked on any email communication relied on by the DG. The only person who was marked on the emails (relied upon by the DG) or who attended the

ATMA meetings was Mr. John M. John who was not found to have contravened any provision of the Competition Act. Mr. John did not even forward any such email to or discussed any such information with Mr. Banerjee. Yet, the CCI held Mr. Banerjee to be in contravention of Section 3 (read with Section 48(2)), when he did not have any knowledge about any alleged agreement. In the absence of any evidence or analysis by the CCI to prove Mr. Banerjee's involvement in the alleged cartel, it is inconceivable that any liability could be imputed to Mr. Banerjee.

- Therefore, in the absence of any involvement of Mr. Banerjee in the alleged agreement leave alone an 'active role' or 'connivance' as required under Section 48(2), the CCI has erroneously held Mr. Banerjee liable under Section 3 read with Section 48(2).

28. He also reiterated that the penalty computation itself is wrong although this submission is without prejudiced to his argument for the imposition of liability under Section 48.

29. Mr. Mukul Rohtagi, Ld. Sr. Counsel appearing on behalf of Appellant- M/s. MRF limited in Competition Appeal (AT) No. 17 of 2022 and Mr. Krishnan Venugopal, Ld. Sr. Counsel appearing on behalf of Appellant -Koshy K Varghese in Competition Appeal (AT) No. 22 of 2022 has submitted that the DG has erroneously restricted the investigation to the truck, bus bias tyre segment and also reiterated that the DG Report is misplaced to the extent even on the load bearing tyre and the mileage tyre being a comparison between incomparable. He also submitted that

CCI has misplaced the reliance on net dealer price without considering discounts and thereby wrong evaluation of economic evidence has been done by DG and followed by CCI. He also submitted that retreading market as competition totally ignored resulting into non-investigation of a segment having 14-15 million.

30. Mr. Krishnan Venugopal, Ld. Sr. Counsel has also submitted that the CCI has completely failed to determine existence of huge capacity of global tyre companies and thereby the global competition impact vs. indigenous production impact have not been considered. Similarly, issuing relating to competition of radial and bias tyre market has not been properly understood by DG & CCI. Radial tyres are more expensive than bias tyres. Going into the funding capacity for indigenous manufactures is not under jurisdiction of CCI as submitted by the Ld. Sr. Counsel. He also took us through various data to present to erroneous findings on stability in market share and tried to explain us that market share has somewhere increased and somewhere decreased as tabled below:

OP	Market Share	%
MRF	Increase	2.86%
CEAT	Increase	0.58%
Apollo	Decrease	(1.1%)
JK	Decrease	(1.18%)

Birla	Decrease	(3.49%)
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31. It is also stated that CCI's conclusion that 'Market share is stable' based on Bias Tyre Sales data in replacement market is also incorrect and denied. The data shows that the market share has increased for some OPs while it has decreased for other Ops in the 3 year period. The change in market share ranges from (2.76%) to 2.30%. In effect the range between the highest and lowest OP works out to be 5.03%, which is by no means an insignificant variation in a 3 year period.

OP	Market Share	%
MRF	Increase	2.30%
CEAT	Increase	1.74%
Apollo	Decrease	(0.43%)
JK	Decrease	(2.76%)
Birla	Decrease	(0.84%)

32. It is also submitted that CCI has failed to appreciate that even after the price increases were effected in 2010-11 and 2011-12, the EBITDA to Sales % has only been restored to the level it was in 2009-10, except in case of MRF & Birla. Data extracted from Table 10, Par 132 is given below:

	% EBITDA to Sales 2009-10	% EBITDA to Sales 2013-14
Apollo	14.65%	12.29%
CEAT	10.79%	10.93%
JK	10.62%	10.24%
MRF	10.62%	13.61%
Birla	2.68%	6.75%

33. Despite the fact that EBITDA margins were only restored to 2009-10 levels, the absolute profits (operating margin/ EBITDA (Rs. Crores)) shows an increase because of the sharp increase in Sales Revenue during 2010-11 and 2011-12 for most Companies. For MRF, the sales increased by 62% in aggregate for these 2 years. It is submitted that the CCI has totally ignored the observations in the Tariff Commission Report that during the period examined (2006-2011) the tyre industry has not been able to pass on the increase in the raw material cost in majority categories in 2010-11. Completely Flawed analysis of price parallelism and correlation resulting in wrong finding thereby making the impugned order non-est. The DG in the Investigation Report has failed to calculate the actual range of price increases which is 11.28% to 16.45% (Aggregate Annual Price Increase by it as Tyre Companies) for the year 2011-2012 and erroneously calculated around 11% (11.18% to 11.64%) in an attempt to link it with the Email dated 18.05.2011 and to arbitrarily

arrive at a wrong conclusion of price parallelism. There are several serious and gross errors in the prices as per the DG report for the years 2009-2010 qua MRF and Birla, 2010-2011 qua JK, 2011-2012 and 2012-2013 for all 5 Tyre Companies. After calculation, the correct range of price increase of the OPS for 2011-2012 was from 11.61% to 16.45%. This goes to show that the DG had investigated the matter in a prejudiced and predetermined manner and the CCI erroneously proceeded to hold contravention of S.3(3)(a) and S.3(3)(b) of the Competition Act, 2002 and consequently, passed a cease and desist order and to impose penalties on MRF Limited and Koshy Varghese.

Opposite party		March 09 to Feb 10	March 10 to Feb 11	March 11 to Feb 12	March 12 to Feb 13	March 13 to Feb 14
Apollo	As per DG's report	4.00%	13.49%	11.55%	10.21%	-0.87%
	Correct data	4.00%	13.49%	15.48%	2.09%	-0.87%
MRF	As per DG's report	1.90%	17.23%	11.64%	10.30%	-0.80%
	Correct data	2.80%	17.23%	16.45%	2.96%	-0.80%
CEAT	As per DG's report	7.76%	19.19%	11.18%	10.13%	-3.19%
	Correct data	7.76%	19.19%	11.82%	1.31%	-3.19%
JK	As per DG's report	9.01%	17.89%	11.36%	10.30%	1.21%
	Correct data	9.01%	18.20%	11.61%	3.00%	1.21%
BIRLA	As per DG's report	9.56%	19.69%	11.62%	-1.36%	-5.22%
	Correct data	10.5%	19.69%	16.28%	-1.44%	-5.22%

Annual Price change% after rectifying the errors

34. The finding of the CCI at para 124 is unfortunate wherein CCI having realized that the difference in the percentage price increase stretches over a large range of 11% to 16% for 2011-12, has sought to justify it and push the same under the carpet by holding that the range

is irrelevant as the prices have all been increased in the “same direction and above 11%”. Further, it is interesting to note that in the previous case i.e. RTPE 20/2008, a five member Bench of CCI, in respect of price parallelism, had observed as under:

"320. The Commission observes that differences in range of prices of different manufacturers has been more than Rs.1000 for the period 2005-2009 and the range has come down to Rs.600 in 2010. Considering that the product is homogeneous, the 6 -12% range of difference in prices imply that the prices are dissimilar and there is no parallelism at least in absolute prices. As far as parallelism of price movement in percentage terms is concerned there are wide variations amongst various manufacturers. As far as directional changes are concerned, parallelism is observable."

35. It is submitted that in the previous investigation which covered the period till July, 2011 - the Commission had observed that there was no price parallelism since the range of 6% to 12% implies that the prices are dissimilar and there is no parallelism in absolute prices. Yet, the CCI takes a contradictory stand in the present case by erroneously holding that despite the calculation error committed by the DG, the range of 11% to 16.45% would constitute price parallelism. It is therefore submitted that the allegation of price parallelism, which is the foundation of the impugned Order dated 31.08.2018 as well as the DG's Investigation Report, is admittedly erroneous and based on a calculation error. Therefore, the impugned Order dated 31.08.2018 is ought to be set aside on this ground alone, as the same goes to the root of the matter. Further

the CCI's conclusion in para 124 that the percentage change in prices show that prices have moved in a "small range" is contrary to its own conclusion drawn in the earlier order dt.30.10.2012. The price increase percentage in the earlier order is extracted below:

Net Dealer price (weighted average) for the 5 specific LUG segment											
	2005	2006	% change	2007	% change	2008	% change	2009	% change	2010	% change
Apollo	8717	9793	12.34	10364	5.83	10701	3.25	10309	-3.66	10640	3.21
Birla	8057	8968	11.30	9505	5.99	9789	2.97	9280	-5.19	10051	8.73
MRF	8461	8992	6.27	9465	5.26	9973	5.36	9792	-1.81	10475	6.97
CEAT	7880	8720	10.65	9180	5.27	9718	5.86	9161	-5.73	10660	16.36
JK Tyre	7800	8904	14.15	9156	2.83	9612	4.98	9122	-5.10	10248	12.34

36. It is also submitted that despite the above range of price increases, particularly for 2006-07, 2007-08 and 2008-09, which was in the range of 3.13%, -5.99%, 2.97%, - 5.86% and 1.81%, 5.73%, the CCI has in its earlier order in Para 320, concluded as follows "As far as parallelism of price movement in percentage terms is concerned there are wide variations amongst various manufacturers". It is ironic that while, in the earlier order, the CCI has concluded the abovementioned percentage increases as 'Wide Variations', whereas in the impugned order and during the CCI's plea during final arguments, 11.18% -16.45% is being

canvassed as being within a narrow range and CCI's suggestion that the range should be of 20% to 30% is totally contrary to the narrow range of price movement which is a normal feature in an oligopolistic market.

Year	Price increase range	Range
2009-10	2.80% to 10.5%	7.70%
2010-11	13.49% to 19.69%	6.20%
2011-12	11.18% to 16.45%	5.27%
2012-13	(1.44%) to 3.00%	4.44%
2013-14	(5.22%) to 1.21%	6.43%

37. The CCI failed to note that the correlation figures have actually come down for the 3year period 2011-14 compared to 5 year period 2009-14. As illustrations, Correlation Coefficient of MRF and CEAT are given below:

Pair	2009-2014	2011-14	Change
MRF-Birla	0.979	0.736	24.3% Decrease
MRF-JK	0.989	0.915	7.4% Decrease
MRF-CEAT	0.989	0.932	5.7% Decrease
MRF-Apollo	0.996	0.985	1.1% Decrease

CEAT

Pair	2009-2014	2011-14	Change
CEAT-JK	0.993	0.806	18.7% Decrease
CEAT -Birla	0.993	0.890	10.3% Decrease
CEAT -Apollo	0.993	0.929	6.4% Decrease
CEAT -MRF	0.989	0.932	5.7% Decrease

38. It is also stated that CCI wrongly concluded in para 124 and 147 that discussions with Koshy Varghese was followed up with price increases by the OPS. This is patently erroneous finding. Para 146 of the impugned order shows that prior to the meeting on 13.5.2011 and the email dt. 18.5.2011, there was Apollo's announcement on 10.5.2011 of tyre price increase w.e.f. 20.5.2011. Furthermore, MRF's tyre price increase was effected on 12.5.2011. The aforesaid facts demolish the finding that the discussions with Koshy Varghese led to price increase. Further, price increases effected before and after the Koshy Varghese meeting (13.5.2011) clearly demonstrate that the so called discussion was in the context of discussions pertaining to capacity expansion with the Government and in the background of letter dated 19.1.2010 from

SIAM to DIPP, the meeting of DIPP attended by SIAM, ATMA and AITDF and ATMA reply dated 30.6.2011 to DIPP:

Company	Price announced 13.05.2011	Increase before	Price announced 13.05.2011	Increase after till March 201
Apollo	12.47%		2.68%	
MRF	13.36%		2.73%	
CEAT	3.49%		8.05%	
JK	7.71%		3.62%	
Birla	6.50%		9.19%	

39. It is also stated that CCI wrongly arrived at a finding in para 147 that Apollo increased the prices on 20.5.2011 following the discussions with Koshy Varghese despite having taken note in para 146 that Apollo announced the price increase of 5% on 10.5.2011 well before the 13.5.2011 meeting. CCI failed to appreciate that the 13.5.2011 meeting with Koshy Varghese was a sequel to the meeting called on 10.5.2011 by Govt where AITDF raised the issue of Tyre price freeze / Roll back of tyre price to Jan 2011 levels. Refer Letters dt.17.5.2011 & 20.5.2011 of AITDF forwarded by DIPP. CCI failed to appreciate that the view expressed by Koshy Varghese was a 'personal view', which was explicitly

not to be shared. It is to be noted that copy of the email sent by DG ATMA to Chairman ATMA was not marked to Koshy Varghese. CCI has in para 145 concluded that the Expert Group and Sub Group Meetings were intended to facilitate "illegal activities including discussion on increase in tyre prices etc." and that Minutes was not maintained for this reason. The CCI failed to appreciate the following: -

a. Though minutes was not maintained for Expert Group and Sub Group Meetings, agenda was circulated. This is evident from the email dt.18.2.2011 (referred in para 138) - refer the subject "Additional Agenda Item Raw Material Price Trend - Compound Cost Indexation".

b. The last para of this email also states "These worksheets would be discussed as an additional agenda item in the Purchase Group meeting scheduled for 21st Feb 2011 at New Delhi".

c. Para 46 of the CCI Order also takes note of the submission of OP2, that the "four sub group meetings were held for transacting specific agenda."

d. As per deposition of Rajiv Budhiraja in response to Question No.9, DG ATMA has stated as follows:

"The recommendations of the ATMA Expert Groups are put up before the Managing Committee by way of presentations

highlighting key issues concerning the respective groups for decision and advice, if any, on the way forward. These presentations are a part of the ATMA Managing Committee Agenda / Minutes"

e. DG, CCI has been provided Minutes of all Managing Committee meetings, as such CCI wrongly drew an adverse inference based on non-maintenance of minutes.

f. CCI has in its earlier Order dt. 30.10.2012, taken note of the existence of Expert Groups and exchange of information and not drawn any adverse inference regarding this.

40. It is also submitted that the CCI has wrongly concluded in para 147 that these Small Group meeting held on 16.05.2011 was also intended to facilitate price discussions:

"The Commission observes that the said plea of OP-1 as regard the email sent from Mr. Rajiv Budhraja of OP-6 to Mr. Koshy Varghese of OP-2 on 18th May, 2011 is misconceived as the same follows after discussion on price rise with Mr. Koshy Varghese of OP-2. Moreover, as per the said email, OP-1 had announced the revised prices to prevail from 20th May, 2011 onwards. The said conduct of OP-1 indicates that it had adhered to what was discussed by OP-6 with OP-2 and the same was effected in the form

of a price increase immediately at a higher magnitude i.e. at 5% instead of 3+3+4.5 % following the decisions made in the purchase group meetings held on 16th May, 2011 and 17th May, 2011 followed by email dated 18th May, 2011. Further, it is observed that the email sent by Mr. Rajiv Budhraj of OP-6 after discussion with Mr. Koshy Varghese of OP-2 to Mr. Koshy Varghese of OP-2 on 18th May, 2011 regarding price increase stands as an indisputable testimony to the existence of a coordination amongst the OPs to increase the prices of tyres in a concerted manner"

41. It was also brought to the notice of the Bench that the CCI failed to note that the Small Group meeting (comprising only of Purchase Heads of OP1 to OP5) on 16.5.2011 was held to discuss issues related to Carbon Black. (Refer paras 53, 90, 95 of CCI Order. Therefore, the adverse inference drawn is completely erroneous:

"Para 53 - It was further submitted that the DG has wrongly sought to create a nexus between the sub groups of OP-6 and the alleged price fixing of tyres in the TBB segment which is a mere fishing and roving exercise. The DG has investigated Mr. John M. John of OP-3 who had clarified that the meeting on 16th May, 2011, which is

relied on by the DG to allege collusion, was specifically to discuss the demand of Carbon Black manufacturers to increase the price of carbon black.

Para 90 - In relation to the meeting dated 16th May, 2011, the DG has stated that it was stated by the persons who attended the meeting that it pertained to 'carbon black'. The DG has stated that holding of a separate meeting of sub group comprising representatives of only the five OPs, that too one day prior to the Purchase Group meeting at the same venue, cannot be attributed to the 'availability of the key persons and the location of the meeting of Sub Group'. It is to be noted that all the members of an association cannot be present at all meetings. As such, the presence of only a few members at the meeting does not suggest that it was a 'secret' meeting intended to discuss prices. It was submitted that the DG has ignored facts and also presented only a part of the statement of Mr. Kaushik Roy of OP-1 in order to reach another unsubstantiated finding against the OPs. It was submitted that the DG did not enquire from any of the representatives of OP-5 about the sub-group meeting whereas the executives of OP-1, OP-3 and OP-4 were enquired about the same. Therefore, the

adverse conclusions arrived at by the DG against OP-5 are unfounded and are devoid of any merit on this count.

Para 95 - According to the DG, meeting of Expert Groups/Sub-Groups or Ad-hoc Groups every quarter organised by OP-6 gives a convenient platform to the OPS to come together and share their individual price sensitive information and take collective decision. In this regard, it was submitted that OP-6, under the guidance of Managing Committee, functions through various committees set up, consisting of different disciplines, such as Marketing, Taxation, Technical, etc. and each committee has a separate and independent function. The DG has considered only those Sub Group meetings wherein only present 5 member companies of OP-6 were present and has ignored the various other meetings attended by the other members also. The DG's reference to a Sub Group meeting namely "Small Group Meeting on Carbon Black" dated 16.05.2011 to conclude cartelisation is misconstrued as the said meeting was attended by five members of OP-6 along with the counsel of OP-6 (Lakshmikumaran & Sridharan) in respect of Carbon Black Anti-Dumping Duty case due to which global players namely Bridgestone,

Continental and Goodyear did not participate in the aforesaid meeting.”

42. Ld. Sr. Counsel Mr. K. Venugopal also took us through various provision of law on excessive and disproportionate penalty levied by CCI and also explained through unsustainable error in the impugned order and calculation in penalty in contravention of settled principle of law as also that the impugned order is in violation of principle of natural justice. The decision of the Appellate Tribunal for Electricity are squarely on the issue:

- Global Energy Pvt. Ltd. Vs. Karnataka Electricity Regulatory Commission and Ors. MANU/ET/0106/2016 – decided on 04.10.2016 – Ref Para 18-19

“18. In our opinion the judgments of the Supreme Court referred to by us, make it clear that the work of the Commission which is of a quasi-judicial nature is one of joint responsibility of all Members. The Commission as a body should sit together and the order of the Commission has to be the result of the joint deliberations of all Members of the Commission acting in a joint capacity. All Members of the Commission who heard the matter should sign the

order. If the order is not signed by all Members who heard the matter it will be invalid as it will not be order of the Commission. This is in line with the fundamental proposition that a person who hears must decide and divided responsibility is destructive of the concept of judicial hearing. If a Member dissents he must give reasons for the dissent and that shall form part of the order.

19. Thus [Section 92](#) of the said Act, Regulation 31 of the said Regulations and the judgments of the Supreme Court which we have referred to, lead us to conclude that the impugned order is non est and void as the matter was heard by three Members and order was signed by two Members. This is against the basic principle that one who hears the matter should sign the order.”

- Reference may also be made to the decision in Mahangar Gas Limited Vs. Petroleum and Natural Gas Regulatory Board and ors. MANU/ET/0019/2021- decided on 16.07.2021

“.....In our opinion there may have been a possibility that during his deliberations and discussions with other Board Members, he may have influenced the decision of the other Board Members”.

(Ref: Para 6.8 & Finding on last page)

43. Mr. Amit Sibal, Ld. Sr. Counsel appearing on behalf of Appellant- in Competition Appeal (AT) No. 10 of 2022 of Apollo Tyres Limited and Competition Appeal (AT) No. 08 of 2022- Satish Sharma and Competition Appeal (AT) No. 09 of 2022 – Neeraj Kanwar, has submitted that the CCI failed to consider the steep increase in raw material costs between 2009-10 & 2011-12. He further submitted that precipitous increase in cost of key raw materials has not been appropriately considered by the CCI while computing price increase. Natural rubber accounts for 30% of the total production cost and 44% of the total costs of raw material while synthetic rubber accounts for 8% of total production costs and 16 % of total cost of raw material. He tried to prove through multiple data, some of tables are reproduced below to substantiate his claim, the tyre price has increased not commensurate with raw material cost increase:

Particulars		2009-10 (FY ended 31 March 2010)	2011-12 (FY ended 31 March 2012)	% increase
Average Cost of Natural Rubber per kg		INR 114.98	INR 208.05	~80.94%
Average Cost of Synthetic Rubber per kg		INR 103.24	INR 213.29	~106.6%
Average Cost of Crude Oil per barrel		USD 69.76	USD 111.89	~60.39%
Cost of Total Raw Materials (INR crore)	Apollo	3,057.90	6,000.27	~96.22%
	MRF Limited ("MRF")	5,145.98	8,344.27	~62.15%
	CEAT Limited ("CEAT")	1,728.25	3,258.34	~88.53%
	JK Tyre and Industries Limited ("JK Tyre")	2,258.19	4,108.59	~81.94%
	Birla Tyres Limited ("Birla")	2,127.52	3,116.56	~46.49%
Price of 10.00-20 16PR XT 7 ("XT 7") (Apollo)		INR 10,231 (start of 2009-10)	INR 14,210 (end of 2011-12)	~38.89%
Price of 10.00-20 SL 50+ (MRF)		INR 9,642 (start of 2009-10)	INR 13,784 (end of 2011-12)	~42.96%
Price of NY 10.00-20/16 MILE XL (CEAT)		INR 9,768 (start of 2009-10)	INR 14,275 (end of 2011-12)	~46.14%
Price of 1000-20 16 JET ONE (JK Tyre)		INR 9,566 (start of 2009-10)	INR 14,013 (end of 2011-12)	~46.48%
Price of 10.00-20 (16PR) BT 112 (Birla)		INR 9,075 (start of 2009-10)	INR 14,225 (end of 2011-12)	~56.75%

44. He has also submitted that the indexed data to demonstrate that between 2009-10 and 2011-12, specifically for the truck-bias segment, there was an increase of 89% in rubber costs, an increase of 67% in raw material costs and an increase of 52% in total costs, while there was only a 35% increase in net sales/ price. Apollo was not able to increase its prices to match the increase in its raw material costs even till 2013-14 for the segment. In addition to raw material costs, there was a huge increase in other costs for Apollo between 2009-10 and 2011-12, including staff costs (27%), finance costs (226%) and depreciation costs (51%). The CCI completely failed to consider these aspects.

45. He also submitted that there was steep decline in profit due to increase in raw material cost and hence price increase was natural inevitable and justified.
46. He also took us through multiple emails and finally submitted that the alleged cartel period is itself misplaced and without any basis. He further submitted that while assessing these emails, the CCI failed to correctly consider the role of Automotive Tyre Manufacturers Association (ATMA) in the tyre industry and failed to consider the multiple requests made by the Government of India to ATMA, to provide necessary data on tyres in relation to anti-dumping duty. Despite these request, ATMA rightly avoided collecting disaggregated pricing data for individual manufacturers and products. It is relevant to note that when the Ministry of Commerce and Industry (through the Tariff Commission) directed ATMA to submit pricing data for individual manufacturers and different tyre categories, ATMA responded that the individual tyre manufacturers would separately send the requisite data.
47. He also stated that no action by Mr.Kanwar (Chairman, ATMA) with respect to the email; Additionally, the 18.05.2011 email was unsolicited and there is no evidence to show that it was forwarded, discussed, acted upon, responded to, or even acknowledged by Mr. Kanwar. The email has been sent by the Director General, ATMA to Mr. Kanwar (in his capacity as the Chairman of ATMA), regarding the view of Mr. Koshy Varghese (MRF) without even marking Mr. Varghese in the

email. Based on the rule against hearsay, this email is completely unreliable, since it involves the description of someone's views by another third party, without any confirmation from the person who actually expressed such views. No connection between the email and actual price increases the CCI completely failed to consider the e-mail's contents and did not analyse whether it had any nexus at all with the actions of the tyre manufacturers. The sole mention of price in the email is set out below:

“His personal view was that tyre companies (looking at the Q1 financial results) need to go for price increase (roughly) of the same magnitude as (already) done in the current fiscal (3+3+4.5) say roughly between 10-11 pc.”.

48. He has also submitted that the email is completely unintelligible and does not have any connection whatsoever with the tyre manufacturers actions, considering all possible interpretations. If the “current fiscal” is considered to be 2011-12, implying that as already carried out in 2011-12, a price increase of approx. 10-11% should be carried out post 18.05.2011. Pertinently, the percentage increase in prices of Apollo, MRF, CEAT, JK Tyre and Birla before 19.05.2011 were ~8.15%, ~13.36%, ~7.46%, ~7.71% and 6.5%, none of which was close to the supposed 10.5%, (3+3+4.5) say roughly between 10-11pc. As mentioned in the email dated 18.05.2011. Even the percentage increase

in prices post 18.05.2011 for Apollo, MRF, CEAT, JK Tyre and Birla were ~8.81%, ~4.64%, ~5.43%, ~5.56%, ~11.26%, which also do not indicate any collusion in the 10-11-% range.

Party	Price as on 01.04.2011(INR)	Last price before 19.05.2011 (INR)	% increase before 18.05.2011 in 2011-12
Apollo	12,075	13,059	8.15
MRF	11,620	13,173	13.36
CEAT	12,600	13,540	7.46
JK Tyre	12,325	13,275	7.71
Birla	12,005	12,785	6.5

Party	Price as on 19.05.2011(INR)	Last price before 31.03.2012 (INR)	% increase before 18.05.2011 in 2011-12
Apollo	13,059	14,210	8.81
MRF	13,173	13,784	4.64
CEAT	13,540	14,275	5.43
JK Tyre	13,275	14,013	5.56
Birla	12,785	14,225	11.26

If the “current fiscal” is considered as 2010-11 implying that a total increase of Approx. 10-11% was supposed to be carried out in 2011-12 as per the email, then the percentage increases in prices of Apollo, MRF, CEAT, JK Tyre and Birla in 2010-11 also do not include any percentages remotely close to “(3+3+4.5) say roughly between 10-11 pc.” The reference to “(3+3+4.5) in the email dated 18.05.2011 therefore bears no relation to the actual price increase by any of the tyre manufacturers.

49. He has also submitted that there are blatant errors in the DG’s calculation of percentage increase in price of each tyre manufacturer which are incidentally close to the percentage figure (i.e 10-11%) mentioned in the email dated 18.05.2011. Without prejudice, mere price parallelism in an oligopolistic industry cannot lead to a conclusion of cartelization. In *Rajasthan Cylinders and Containers Limited Vs. Union of India and Ors.* (Judgment dated 01.10.2018 in Civil Appeal No. 3546 of 2014) the Hon’ble Supreme Court concluded that there was no cartelization since the Appellants had been able to discharge the onus by referring to various indicators that parallel behaviors was not the result of any concerted practice, and parallel behavior by itself did not amount to a concerted practice. Notably, the Supreme court referred to Richard Whish & David Bailey in Oxford’s Competition Law:

“In an oligopoly a reduction in price would swiftly attract the customers of the other two or three rivals, the effect

upon whom would be so devastating that they would have to react by matching the cut. Similarly an oligopolist could not increase its price unilaterally, because it would be deserted by its customers if it did so. Thus the theory runs that in an oligopolistic market rivals are interdependent: they are acutely aware of each other's presence and are bound to match one another's marketing strategy. The result is that price competition between them will be minimal or non-existent; oligopoly produces non-competitive stability.....

...Oligopolists recognize their interdependence as well as their own self-interest. By matching each other's conduct they will be able to achieve and charge a profit-maximising price which will be set at a supra-competitive level, without actually communicating with one another. There does not need to be any communication: the structure of the market is such that, through interdependence and mutual self-awareness, prices will rise towards the monopolistic level....

.....The logical conclusion of the case against oligopoly is that, since it is the market structure itself which produces the problem, structural measures should be taken to

remedy it by deconcentrating the market. Unless this is done, there will be an area of consciously parallel action in pricing strategies which is beyond the reach of laws against cartels and yet which has serious implications for consumers welfare.

50. He has also submitted that the CCI makes incorrect conclusions on the operating margins/EBITDA of the tyre manufacturers. The CCI has erroneously concluded a contravention of Section 3(3)(b) of the Act. The CCI has incorrectly placed reliance on correlation coefficient. He has also stated that without prejudice, penalty can only be restricted to Apollo's turnover from the sale of its 10.00-20 16PR XT 7 TBB variant in 2011-12. The CCI disregarded the principles established in Excel Crop by the Hon'ble Apex Court, by imposing a penalty of INR 425.53 Crore at 5% of the average of the total turnover of Apollo for FYs 2011-12, 2012-13 and 2013-14 under Section 27(b) of the Act, the CCI disregarded the Hon'ble Apex Court's decision in Excel Crop Care Limited Vs. CCI and Anr. (Civil Appeal No. 2480 of 2014) dated 08.05.2017. Per the Excel Crop case, penalty must be imposed on the 'relevant turnover', that is, turnover relating to the product in relation to which the violation took place:

“91 When the agreement leading to contravention of [Section 3](#) involves one product, there seems to be no justification for including other products of an enterprise for the purpose of imposing penalty. This is also clear from the opening words of [Section 27](#) read with [Section 3](#) which relate to one or more specified products. It also defies common sense that though penalty would be imposed in respect of the infringing product, the ‘maximum penalty’ imposed in all cases be prescribed on the basis of ‘all the products’ and the ‘total turnover’ of the enterprise. It would be more so when total turnover of an enterprise may involve activities besides production and sale of products, like rendering of services etc. It, therefore, leads to the conclusion that the turnover has to be of the infringing products and when that is the proper yardstick, it brings home the concept of ‘relevant turnover’.

92. Even the doctrine of ‘proportionality’ would suggest that the Court should lean in favour of ‘relevant turnover’. No doubt the objective contained in the Act, viz., to discourage and stop anti-competitive practices has to be achieved and those who are perpetrators of such practices need to be indicted and suitably punished. It is for this reason that the Act contains penal provisions for penalising such offenders.

At the same time, the penalty cannot be disproportionate and it should not lead to shocking results. That is the implication of the doctrine of proportionality which is based on equity and rationality. It is, in fact, a constitutionally protected right which can be traced to [Article 14](#) as well as [Article 21](#) of the Constitution. The doctrine of proportionality is aimed at bringing out ‘proportional result or proportionality stricto sensu’. It is a result oriented test as it examines the result of the law in fact the proportionality achieves balancing between two competing interests: harm caused to the society by the infringer which gives justification for penalising the infringer on the one hand and the right of the infringer in not suffering the punishment which may be disproportionate to the seriousness of the Act.”

51. Considering the different classifications of tyres i.e., radial and bias tyres, size of tyres (i.e. tyres for different types of vehicles) and tyres for the OEM market and the replacement market, there is a lack of substitutability between different types of tyres (considering all three classifications), wherein each type of tyre constitutes a distinct and separate product. The DG has acknowledged this classification and the difference in products in the DG Report. Yet the CCI has failed to consider all three classifications while imposing penalty. The CCI ought

to have imposed a penalty on the “relevant turnover” of Apollo i.e., the turnover generated from the sale of its 10.00 16 PR XT 7 variant in the TBB Replacement Market since the CCI only analysed prices and conduct exclusively for this specific variant. Without prejudice, the relevant turnover should be restricted to the TBB Replacement market.

Financial Year	Turnover from XT 7 Sales in TBB Replacement Market (INR Crore)	Turnover from TBB Replacement Market (INR Crore)	Total Turnover (INR Crore)
2011-12	521.55 (relevant product)	2,599.76 (without prejudice, relevant segment)	8,176.07 (Turnover considering by CCI)
Penalty (at 5% of turnover)	~26.08	~129.99	~425.53 (penalty imposed by CCI)

52. It is also stated that the CCI failed to consider the proviso to Section 27(b) of the Act; The CCI imposed a penalty under Section 27(b) of the Act based on the preceding 3 financial years (i.e., FY 2011-12, 2012-13, and 2013-14) as opposed to under the proviso of Section 27(b) of the Act for duration of the alleged cartel arrangement. Section 27(b) of the Act prescribes the penalty to be imposed for entities that have entered anti-competitive vertical agreements under Section 3(4) of the Act; and (ii) that have engaged in an abuse of dominant position under Section 4 of the Act. The proviso to Section 27 (b) of the Act, however,

makes a special carve out for penalties to be imposed when entities engage in cartelisation in contravention of Section 3(3) of the Act. A review of the scope and object of the Act makes it evident that the proviso must be interpreted as "mandatory" in nature since it aims to set out an exception or a carve out for a contravention of Section 3(3) of the Act from Sections 3(4) and 4 of the Act - given that cartelisation is treated differently from vertical restraints / abuse of dominant position. A contrary interpretation of Section 27(b) would render the proviso unnecessary and ineffective. Accordingly, the CCI acted in contravention of the mandatory legislative construct of the Act and the Impugned Order is liable to set aside in entirety. The CCI failed to consider several mitigating factors, including (i) nature of contravention, (ii) cooperation with the investigation, and (iii) robust compliance programmes. Therefore, the CCI has not determined an "appropriate percentage" in line with the Excel Crop case. The CCI has erroneously found Mr. Kanwar and Mr. Sharma liable under Section 48 of the Act.

53. It is also submitted that the CCI has wrongly imposed liability on Mr. Kanwar and Mr. Sharma since it has not been able to prove that Apollo contravened the Act in any manner. Given that Apollo itself did not contravene the Act in any manner, the question of Mr. Kanwar's and Mr. Sharma's liability does not arise. The CCI's lack of application of mind in imposing liability is apparent in the Impugned Order, as it seems to have used an "admission" of Mr. Kanwar that he discussed price decisions

with Mr. Sharma, however internal discussions on price within a company do not fall foul of the Act in any manner whatsoever. Notably, neither the DG nor the CCI have made any observations that Mr. Kanwar or Mr. Sharma *evasive in their response during* their respective depositions, which only further indicates lack of any wrongdoing on their part. Without prejudice, the CCI has erroneously found Mr. Kanwar and Mr. Sharma to be liable under Sections 48(1) and 48(2) of the Act as the statutory requirements for imposing liability on them have not been fulfilled. Section 48 of the Act is set out below:

“48. Contravention by companies.—

(1) Where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention was committed without his knowledge or that he

had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act, or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.”

54. The CCI has failed to show that Mr. Kanwar or Mr. Sharma had any knowledge of the purported contravention by Apollo. Considering the proviso to Section 48(1), they cannot be held liable under Section 48(1) of the Act. With respect to Section 48(2) of the Act, the CCI has relied solely on the e-mail dated 18.05.2011 to impose liability on Mr. Kanwar. Since the e-mail did not, in any manner, amount to any anti-competitive conduct, the CCI has failed to satisfy the tests provided in Section 48(2) of the Act. Moreover, the said email was neither sent nor acted upon by Mr. Kanwar in any manner. He merely received it in his capacity as Chairman, ATMA from the Director General, ATMA. The CCI has not provided any evidence against Mr. Sharma and merely imposed liability

on the sole basis that he approved pricing decisions on behalf of Apollo. These pricing decisions were based on independent considerations and recommendations of Apollo's marketing team. Hence, the CCI has not been able to prove that the purported contravention took place with the consent or connivance of or is attributable to any neglect on the part of Mr. Kanwar or Mr. Sharma.

55. Mr. Ramji Srinivasan, Ld. Sr. Counsel appearing on behalf of Appellant- in Competition Appeal (AT) No. 13 of 2022 of JK Tyre and Industries Ltd has submitted that Mr. S.P. Singh is a habitual litigant working in the interest of foreign tyre companies and to the prejudice of the domestic tyre industry. Mr. S.P. Singh, Convener of the All India Tyre Dealers Federation (AITDF) is a habitual litigant and has sought to pursue action against the domestic tyre manufacturers before various forums, including the Commission, the Ministry of Corporate Affairs (MCA) and the Tariff Commission. Mr. S.P. Singh may have been acting on behalf of vested interest of the foreign tyre companies against the domestic manufacturers as he has consistently prayed for reductions in the antidumping duties imposed on the import of tyres in India which benefits only the foreign tyre companies and negatively impacts the domestic tyre industry.

56. The Commission has cherry-picked the Appellant and Respondent Nos. 2- 5 and excluded the foreign tyre companies; The Commission has failed to appreciate that the Appellant is similarly placed to the tyre

manufacturers which have not been investigated by the Commission, including domestic tyre manufacturers (such as TVS Srichakra) as well as global players (such as Bridgestone, Continental, Goodyear etc.). It is the Commission's sole justification that the investigation was directed against the parties that "in the representation dated 28.11.2013 of AITDF as forwarded by the MCA on 16.12.2013, allegations were against the alleged oligopoly of domestic tyre manufacturers which includes even the 5 tyre manufacturers against whom investigation was ordered" is untenable as neither the MCA reference, nor the representations dated 11 September 2013.

57. The same allegations were dismissed in RTPE Case No. 20 of 2008 based on the same facts and against the same Parties; The Commission had investigated the Appellant earlier in relation to the (i) period 2005-06 to 2010-11, including up to July 2011 which partially overlaps with the period of the alleged cartel, (ii) same parties, and (iii) same set of facts in All India Tyre Dealers Federation v. Tyre Manufacturers [Order dated 30 October 2012 in RTPE Case No. 20 of 2008] (RTPE Order), which was closed without any finding of contravention. The RPTE Order stood affirmed in appeal before the COMPAT by way of its order dated 25 April 2013. Yet even before the ink of the COMPAT's order had dried, Mr. S.P. Singh issued multiple representations to different government agencies, including the CCI, to agitate the exact same baseless allegations against the Appellant.

The Reference is invalid; The Commission has given contradictory findings in the Impugned Order since it noted that the present case was instituted both based on a “reference” u/s. 19(1)(b) as well as based on an “information” u/s. 19(1)(a) of the Competition Act, 2002 (Competition Act) [Paragraph 157, Impugned. In both the scenarios, the proceedings were in complete abrogation of the Competition Commission of India (General) Regulations, 2009 (General Regulations), specifically, Regulations 10, and 11(2) thereof. Further, the Secretary, Commission failed to discharge its functions under Regulations 14(7)(c), 14(7)(d), 15(1) and 15(2) of the General Regulations. The glaring defects in the Reference/Information, which was merely forwarded by the MCA with non-application of mind, was required to be rendered void under Regulation 15(3), which provides that an information or reference, as the case may be, “shall be treated as invalid” if the defects notified in it are not removed. The fact that the Hon’ble Madras High Court (Madras HC) dismissed the writ petitions filed against the proceedings in Ref. Case No. 08/2013 does not prevent the Tribunal from determining whether the proceedings in the instant case were without jurisdiction. This submission is strengthened by the fact that while dismissing the writ petition, the single bench of the Madras HC (while exercising its extraordinary jurisdiction under Article 226) noted the nature of an order under Section 26(1) of the Competition Act, and observed that: “the question

as to how such opinion could be taken; what are the materials to be considered for arriving at such opinion; whether the 'reference', in this case, could be treated as a valid reference, are all the questions not to be raised at this stage, as the parties, if affected by the final order, can always raise the same as grounds of appeal under Section 53B.” [MRF Limited v. Ministry of Corporate Affairs and Ors., W.P.No.35255 of 2015, Paragraph 65. These observations, read with the Hon’ble Supreme Court’s (SC) ruling in CEAT Ltd. v. Ministry of Corporate Affairs and Ors. [SLP (C) No. 958/2022] that “all rights and contentions of the parties have been kept open to be pursued in accordance with law” make it clear the Appellant can raise these grounds before this Tribunal and the same can be considered and appreciated by this Tribunal.

It is also stated that Impugned Order is unconstitutional as the “revolving door policy” under Section (u/s.) 22(3) of the Competition Act is arbitrary and unconstitutional

No price parallelism between the Appellant and the Respondent Nos. 2-5

58. The Commission has incorrectly relied on an e-mail dated 18 May 2011 (sent by Mr. Rajiv Budhraja (Respondent No. 6/ATMA) to Mr. Neeraj Kanwar (Respondent No. 2 / Apollo) (18 May E-mail), to conclude that the Respondent Nos. 2-5 priced their products following a similar trend in 2011-12. The Commission’s reliance on the 18 May, 2011 E-

mail to conclude that the Appellant was part of the alleged cartel is erroneous on account of the following reasons. First, the Commission failed to show how the contents of this e-mail were known to the Appellant, when it was neither its sender, nor its recipient. The Commission nevertheless considered the “email sent by Mr. Rajiv Budhraj of OP-6 email sent by Mr. Rajiv Budhraj of OP-6 after discussion with Mr. Koshy Varghese of OP2 to Mr. Koshy Varghese of OP-2 on 18th May, 2011 regarding price increase stands as an indisputable testimony to the existence of a coordination” amongst all the opposite parties before it to increase the prices of tyres in a concerted manner. It is inconceivable that the evidence against OP-1, OP-2, and OP-6 could be attributed to all the Ops, including the Appellant. Secondly, the 18 May, 2011 E-mail mentions that the increase in prices would be in the range of ~11%. However, the Appellant and Respondent Nos. 2-5’s price increases in 2011-12 were in the range of 11.61% to 16.45% (which is a significant difference in an oligopolistic market). Further, the Commission ignored the Appellant’s submission that contrary to the said e-mail, the Appellant had reduced its prices by 3.74% (whereas Respondent Nos. 2-5 only increased their prices in 2011-12), demonstrating that the Appellant acted independently.

59. It is further submitted that Price parallelism is a natural consequence of the oligopolistic nature of the tyre industry and is not the result of an “agreement” between the Opposite Parties; The Appellant had

submitted a report prepared by Nathan Economic Consulting India Private Limited dated 6 May 2016 (Economist Report) along with its objections to the DG Report to the Commission. The Economist Report submitted by the Appellant provided detailed economic analysis of the information related to the case and concluded that the DG's assessment on the alleged cartelisation was unfounded. The Commission overlooked the Appellant's submissions on economic analysis which were backed by an Economist's Report and relied on the DG's analysis without offering any reasons for adopting the DG's recommendations.

60. It is also submitted that the Commission committed fundamental errors in undertaking price-cost analysis. The Commission, despite acknowledging that the tyre market in India is oligopolistic, failed to appreciate that the characteristic features of an oligopoly such as high price interdependence would render a correlation analysis liable to produce false positives. However, without prejudice to the foregoing, the reliance on absolute figures for undertaking correlation analysis was itself incorrect since factors such as similar cost structures, seasonality, etc. affect absolute prices charged by tyre companies similarly, and high correlation observed between such figures may in fact be capturing similar time series trends due to these factors rather than concerted action between the Respondent Nos. 2-5. The glaring errors in the DG's correlation analysis were also pointed out by the Appellant to the Commission. The Commission calculated the correlation between the

absolute prices charged by Appellant and Respondent Nos. 2-5 which showed the correlation to be more than 98%. However, the Appellant demonstrated that when the correlation between the percentage changes in prices charged by Appellant and Respondent Nos 2-5 was computed the correlation lay in the range of 71% to 76%, which was significantly lower than the range of correlation coefficients calculated by the DG using absolute prices, and relied upon by the Commission. Such low correlation between the percentage changes in tyre prices of Appellant and respondent Nos. 2-5 could not have been demonstrative of a cartel. The Commission has also erroneously relied on the 18 May E-mail, e-mails dated 4 January 2011, 12 January 2011, 18 February 2011, and 23 February 2011 to establish that the Appellant was acting in concert with Respondent Nos. 2-5. The Appellant has already dealt with the Commission's reliance on the 18 May E-mail at paragraph 9-11 above. With respect to the e-mails dated 4 January 2011, 12 January 2011, and 23 February 2011, the Appellant was neither the sender nor a recipient. As such, there was no evidence to link the Appellant to an alleged dissemination of commercially sensitive information (CSI) with respect to these e-mails. Out of all the Impugned E-mails, one employee of the Appellant was marked only on the e-mail dated 18 February 2011. However, only indexed cost data was shared vide the e-mail dated 18 February 2011 to demonstrate increase in raw material prices on an industry-wide basis. As such, any adverse finding by the Commission

based on this data is contrary to its own instance of blessing the use of indexed cost/margin data in the same way as used by ATMA and considering indexed data to be sufficiently aggregated to raise any anti-competitive concerns. [Fast Track Call Cab Pvt. Ltd. & Anr. v. ANI Technologies Pvt. Ltd. Case No. 6 and 74/2015. The Commission has also failed to appreciate that no CSI was exchanged during the Purchase Group meeting dated 21 February 2011 (Purchase Group Meeting). The Commission has failed to bring on record any evidence to the contrary, and in fact has rejected, without any basis, evidence to the contrary, in the form of deposition statements of various individuals, including Mr. Swaranjit Singh, who categorically denied this allegation. The Commission failed to appreciate that when examined on a monthly basis, the market shares of Respondent Nos. 2-5 were in fact fluctuating. Fluctuating market shares clearly establish that the domestic tyre market at the time was witnessing strong competition. Therefore, and without prejudice to Appellant's argument that there was no contravention of Section 3 of the Competition Act, any conclusion that a supposed price fixing agreement that the Appellant was a party to led to appreciable adverse effect on competition in India is not supported in terms of an assessment under Section 19(3) of the Competition Act. The Commission also did not consider that market shares may also be stable on account of shifts from TBB to TBR, i.e., a shift from an obsolete product to a newer product, in which case price cuts do not

automatically translate to more customers opting for TBB tyres, a fact which was not only recognized by independent 3rd party reports but also by the Commission itself. At the outset, the Commission itself in the Impugned Order and CCI WS has noted that: “While achieving positive operating margins is not a competition issue, but when seen in conjunction with other evidences such as the purchase group meetings and email correspondences between parties, indicates that the improvement in operating margin/EBITDA was a result of coordinated price increase.” (emphasis added) Therefore, given that the Commission neither produced any documentary evidence against the Appellant nor proved that the meetings organised by ATMA were used to exchange CSI, by its own admission, the Appellant’s profitability and all other factors are inconclusive in determining a violation of Section 3(3) of the Competition Act. In any case, the Commission could not have attributed the Appellant’s overall profitability (comprising different segments) towards the sales and the alleged cartelisation in just of one of its product segments, i.e., TBB tyres. Without prejudice, the Commission also overlooked various factors that led to the Appellant’s profitability in the concerned period, as mentioned below:

- i. Shift in sales from lower priced TBB tyres to more expensive TBR tyres;
- ii. Expansion of the Appellant’s Mysore plant and starting a new all radial plant in Chennai in 2011-12

- iii. Other measures taken by the Appellant to improve its profitability such as concentrating in developing customer service, optimizing resources and operating efficiencies and also concentrating on exports.

61. It is further stated that no contravention of Section 3(3)(b) read with Section 3(1) of the Competition Act; Given that no case is made out against the Appellant, no penalty should be imposed on it in the instant matter. Without prejudice, the Impugned Order in complete derogation of the Hon'ble SC's ruling [Excel Crop Care Limited vs. Competition Commission of India and Another (2017) 8 SCC 47, Paragraph 93, 113, that pursuant to the Hon'ble Supreme Court's ruling:

- i. Since the alleged cartel has found in connection with respect to the 1000-20 JET ONE tyre variant, the scope of the penalty should be limited this product only; and
- ii. Mitigating factors, such as: (a) the fact that no documentary evidence has been found against the Appellant, (b) no violation of the Competition Act has been proved against the Appellant since 2018, and (c) its meagre profits (after tax) of ~INR 11 crore in 2011-12, ought to have been considered by the Commission.

62. Without prejudice, the Commission has committed a fundamental error calculating the penalty based on the turnover of the Appellant for the three years preceding 2015-16, since, in terms of Section 27(b), the penalty has to be calculated based on the turnover generated in the three

years preceding the year in which the violation took place, i.e., the years 2008-11 in this matter and not for the years 2011-14 as decided by the CCI. The Appellant also sets out below the penalty calculation that ought to have been made by the Commission in accordance with settled law. In the interest of disclosure, the Appellant has provided turnover information for the 10.00-20 Jet One variant that was the only variant considered by the Commission (and should form the basis of penalty, if any), and has also provided the turnover information for the total JET Series sold by it, for the Tribunal's reference:

	2008-09 (INR Crore)	2009-10 (INR Crore)	2010-11 (INR Crore)	Average for 3 years (INR Crore)	Penalty @ 5% (INR Crore)
Jet Series(Overall)	893.63	1,045.13	1,287.96	1,075.57	53.79
10.00-20 Jet One	117.48	156.80	166.85	441.13	22.06

63. Mr. Krishnendu Dutta, Ld. Sr. Counsel appearing on behalf of Appellant- in Competition Appeal (AT) No. 14 of 2022 of Automotive Tyre Manufacturers Association & Competition Appeal (AT) No. 18 of 2022 of Rajiv Bhudhreja, Director General, Automotive Tyre Manufacturers

Association has submitted that 'Heard but did not decide' goes to the root of the matter as the prejudice caused is inherent ; It is pertinent to note that the Reference Case 8 of 2013 was heard by the CCI on 18.10.2016, 19.10.2016 and 1.12,2016 with a bench comprising of Mr. SL Bunker, Mr. Augustine Peter, Mr. UC Nahta and Mr. GP. However, the impugned order dated 31.08.2018 was signed by only three members (Mr. Augustine Peter, Mr. UC Nahta and Mr. GP Singh). Mr. SL Bunker, who was the presiding member of the bench that heard the matter, did not sign the order. In view of the aforesaid, it is most humbly submitted that the impugned order is violative of the following provisions –

- i. Section 22 (3) of the Act, which provides that 'All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote'.
- ii. Regulation 32(1) and (2) of CCI (General) Regulations, 2009 (General Regulations) which provides that - "(1) Every order of the Commission shall be signed and dated by the Members including a dissenting note by the dissenting Member, if that be the case" and "(2) Every order or decision of the Commission shall, as far as practicable, be made within twenty-one working days from the date of conclusion of final arguments."

64. It is submitted that the act of not signing the final order by Mr. SL Bunker even after being present in the hearings, has caused great prejudice to the OPs. The date of conclusion of final hearing was 01.12.2016 and the final order was passed by the nearly 14 months later on 31.08.2018, after passage of a substantially long duration of time. The violation of Section 22(3) by the CCI has prevent the OPs from deriving benefit of the opinion of Mr. SL Bunker. Further, the Regulations 32(1) and (2) of the General Regulation make it abundantly clear that the must endeavour to pass an order within 21 working days as far as practicable. The failure on part of the CCI to pass an order before Mr. SL Bunkar demitted office, is an error apparent which caused inherent prejudice to the OPs and goes to the root of the matter. In the event of an impossibility to continue with the same coram, the appropriate course of action would have been to constitute another bench to hear the matter afresh. Furthermore, it is submitted that the Hon'ble Delhi High Court in the case of Mahindra Electric Mobility Ltd v CCI (2019) sec On Line Del 8032 dated 10.04.2019 at para 2 relied upon an order dated 24.07.2013 passed by the CCI observing that "only those (of its) members who had heard the matter and were present at the time of arguments, shall decide the case in question" the Court was of the considered opinion that a hearing by a larger body and decision by a smaller number (for compelling reasons or otherwise), leads to undesirable situations and that when hearing commences, the

membership of the CCI should be constant. The Hon'ble Delhi High Court further opined that the procedure of constant coram should be assimilated in form of a Regulation. Pertinently, to cure this lacuna, on 02.03.2021, The CCI (Meeting for Transaction of Business) Amendment Regulations, 2021 was notified and Regulation 3A provided as under –

"3A. Coram for meetings of Commission-

(1) Subject to the provisions of Section 22 of the Act, the Commission shall set down cases for final hearing after completion of pleadings and during such hearings, coram of the Commission would remain constant and such coram alone would continue to hear and participate in all subsequent proceedings on all hearing dates and would write the final orders.

(2) If it becomes impossible to continue the hearings with the same coram, for any reason whatsoever, the matter would be heard afresh with new coram."

65. The CCI has miserably failed to appreciate the reasons for data collection by ATMA; It is noteworthy that ATMA plays an extremely important role in the tyre sector in India. It acts as a conduit between the Government and the tyre industry. The views of ATMA reflect the views of the tyre industry and enables the Government to formulate policies concerning the tyre industry. For this purpose, various Government authorities insistently write letters to ATMA requisitioning information/

data to understand the dynamics and formulate Government policies accordingly. At para 152 - 154 of the impugned order, the CCI has concluded that ATMA has compiled and circulated commercially sensitive data and ATMA provided a platform to the tyre companies for resorting to anti - competitive activities and not merely protecting the legitimate interests of its members. In this respect, it is submitted that the Government authorities such as DIPP, Tariff Commission etc, requisitioned sensitive data from ATMA. It is submitted that ATMA has placed on record various letters, a few of them have been extrapolated below –

- i. Letter dated 8.02.2010 from DIPP to ATMA seeking:
 - Production figures & consumption figures of Bus/ Truck tyres during 2007-08, 2008-09 & 2009-10.
 - Prices of domestic radial Bus/ Truck tyres in comparison to prices of imported radial Bus/ Truck tyres from China during previous 3 years.
- ii. DIPP letter dated 28.07.2010 to ATMA seeking:
 - Price of RM [raw material] per kg for last 2 years and current year.
 - Average prices of Bus/ Truck/ Radial car tyre for the last 2 years and for the current financial year.
 - Percentage increase of the above.

- iii. Letter dated 24.01.2011 from Tariff Commission to ATMA wherein questionnaire prepared by Commission soliciting data from Radial Tyre manufacturers sought commercially sensitive information/ data such as
- Qualitative details of Production/ Sale of Tyres/ Radial Tyres should reconcile with excise records of the Unit.
 - Cost of production and sales of all types of tyres for the year 2009-10.
 - Details of Category wise Radial and non-Radial Tyre Production.
 - Country wise and Category wise details of Tyre Export.
 - Country and Category wise details of Tyre Import with future projections.
- iv. Letter dated 18.04.2013 from DIPP to ATMA stating supply of production data for tyres and details of prices of tyres fixed by Tyre Manufacturing Companies does not fall under any secret category of information.
- v. ATMA reply dated 22.04.2013 to DIPP letter dated 18.4.13 wherein ATMA informed DIPP that in view of CCI order dated 20.06.2012 in the case of Builders Association of India v Cement Manufacturing Companies, Case No. 29/2010 dated 20.06.2012, ATMA is not collecting, compiling or circulating any tyre price related detail and is reiterated its inability to supply the same.

- vi. ATMA reply dated 19.06.2013 to DIPP letter dated 18.06.2013 whereby ATMA again expressed its inability to collect, compile and provide desired information in view of the CCI order passed in Builders Association case.

66. It is also submitted that a perusal of these letters indicates that Government authorities issued several references to ATMA, directing it to collate information for the purpose of scrutinising the increase in price of tyres, natural rubber and other raw materials during the years 2010, 2011 and 2012. The DIPP and the Tariff Commission repeatedly sought for information with respect to the production, imports, exports, tyre prices in domestic market, imports, future projections etc. Furthermore, the DIPP, which is a Central Government authority itself has observed that such information does not fall in any secret category. However, at para 143 of the impugned order has erroneously concluded that the various Government Departments and Parliament including anti-dumping proceedings did not seek any sensitive information with respect to price increase and held the OPs to be in contravention of the Act. It is submitted that to examine the nature and tenacity of the information sought by the way of the government references, it was incumbent upon the CCI to analyse the contents of the references issued. However, the CCI has failed to do so. Furthermore, it is submitted that if Government authorities seek data from ATMA, it must circle back to its members and requisition the necessary information. ATMA does not readily have

production, sales, export figures of tyres/ raw materials available with it. It has to collect this data from its members. It is submitted that the CCI's contention that it is well within ATMA's rights to refuse to provide any information to the Government is fundamentally erroneous. ATMA cannot write to the Government authorities that such data cannot be provided. This will lead to adverse sanctions from the Government. Additionally, in absence of information/ data provided by ATMA, the Government will be disabled from taking informed tariff and nontariff decisions with respect to the tyre industry. It is in this light that the data is collected to hand over the same to Government and its authorities. In view of the above, it is submitted that the CCI miserably failed to appreciate the merits of the letters furnished by ATMA and reasons for the data collection and on this ground the impugned order merits to be set aside.

67. It is further stated that the impugned emails do not qualify the test of sharing of commercially sensitive data; the bone of contention in the present case are the five emails that the CCI has relied upon to conclude that the OPs have colluded under the aegis of ATMA. It is most humbly submitted that exchange of industry wide data which is indexed, is not commercially sensitive. An analysis of data exchanged vide the said emails are as under:

- i. Email dated 12.01.2011 which forwarded the email dated 4.01.2011 was exchanged between Mr. Mayank Malhotra (Apollo) and Mr. Rajiv

- Budhraj (DG, ATMA) was alleged to have shared raw material compound index for the FY 2009-10 and 2010-11. In this regard, it is most humbly submitted that the said emails only pertain to aggregate price data of all members of ATMA. Attention is drawn to the deposition statement of Mr. Neeraj Kanwar, Chairman ATMA who stated that the data indicates industry estimated data provided to ATMA for furnishing to Government Departments.
- ii. Email dated 18.02.2011 was exchanged between Mr. Rajiv Budhiraja, DG ATMA Purchase Group and Birla, CEAT, MRF, Apollo, JK Tyres, Bridgestone, Modi Continental and TVS containing agenda items for the meeting scheduled to be held on 21.02.2011. Additionally, on the same date, another email was sent by ATMA to its purchase group members bearing agenda item 'Raw Material Price Trend - Compound Cost Indexation'. It is worth mentioning here that the data exchanged by way of these emails were aggregate data of all members of ATMA which was indexed. This is not commercially or competition sensitive and does not amount to information exchange.
 - iii. Email dated 23.02.2011 issued by ATMA to Mr. VK Modi, Chairman Modi Tyres and marked to Chairman ATMA. The CCI had alleged that the decision taken in the meeting dated 21.02.2011 was crystallised in form of a PPT slide and was forwarded as an attachment which contained the data with respect to Total RM Cost Increase. It is submitted that the data so exchanged were indicative of quarterly

price movement of natural rubber, synthetic rubber and other raw materials which is usually available in public domain. Moreover, these trends were given in context of responses to be filed to various Government agencies.

- iv. Email dated 18.05.2011 issued by Mr. Rajiv Budhraja, DG ATMA to Mr. Neeraj Kanwar, Chairman ATMA discussing the 'personal views' of Mr Koshy Varghese, MRF. The CCI has primarily relied upon this email to conclude existence of coordination amongst OPs to increase the tyre prices in a concerted manner.

68. It is pertinent to mention here that the CCI has gravely erred in observing that the email dated 18.05.2011 was sent by Mr. Rajiv Budhraja to Mr. Koshy Varghese and not Mr. Neeraj Kanwar. Furthermore, the email does not carry any incriminating evidence against ATMA or its members. It is essential to clarify herein that Mr. Neeraj Kanwar (the recipient of the email) was acting as a chairman of ATMA and not chairman of Apollo Tyres. The CCI has also failed to take into consideration the deposition statement of Mr. Rajiv Budhraja with respect to the email dated 18.05.2011 wherein he has stated that the said email was exchanged in context of making a submission to the Government on capacity expansion issue and maintenance of healthy EBITA margin. The CCI further failed to consider Mr. Koshy Varghese's deposition statement wherein he has clarified that the purpose of periodic meetings with Mr. Rajiv Budhraja 'is to get briefing on issues

relating to the industry as well as outcomes of his meetings with Govt authorities'. Furthermore, assuming without admitting that this email was an act of cartelization, it has failed to meet the standard of an 'agreement' or 'meeting of minds' between the parties. This email in no manner can be construed as an 'agreement' between MRF and Apollo to increase prices. The CCI has committed a grave error by concluding this to be an act of cartelization.

69. It is also stated that TMA is not an 'Enterprise' under the Act and no penalty under Section 27(b) could have been imposed; Additionally, ATMA as an association does not have any 'turnover' or 'profit' within the meaning of Section 2(y) of the Act which includes value of sale of goods and services. Furthermore, while Section 27(a) has used the word 'association of enterprises or persons or association of persons' whereby an association can be directed to cease and desist, Section 27(b) consciously omits any mention of an association and only empowers the CCI to impose a penalty on the 'turnover' or 'profit' of an enterprise and ATMA does not earn any 'turnover' or 'profit'. At this juncture, it is also important to take into consideration 'The Competition (Amendment) Bill, 2022 which was tabled before Lok Sabha on 05.08.2022 and has been referred to Finance Committee which is expected to give its report within 3 months. The Bill seeks to insert the following proviso in Section 3(3), after the proviso –

"Provided further that an enterprise or association of enterprises or a person or association of persons though not engaged in identical or similar trade shall also be presumed to be part of the agreement under this sub-section if it actively participates in the furtherance of such agreement."

From the aforesaid, it is clear that as per the current framework, an association cannot be brought within the purview of the Act. Moreover, the CCI is not empowered to impose a penalty on an association in terms of Section 27(b) as an association does not generate 'turnover' or 'profit'.

Invalid Reference and malafide intentions of Mr. SP Singh is distinctly clear that it is a matter of record that on 11.09.2013, Mr. SP Singh, Convenor of All India Tyre Dealers' Federation ("AITDF") made a false representation to the Ministry of Corporate Affairs ("MCA") for requesting the CCI to take suo moto action against oligopoly of domestic tyre manufacturers who have formed a cartel. This representation was marked to the Secretary to Government of India ("Gol"), Principal Secretary to Gol (PMO), Chairman, Tariff Commission and Chairman CCI. It is humbly submitted that the CCI did not initiate any suo moto action against the tyre manufacturers based on this representation. Thereafter, on 28.11.2013, Mr. SP Singh made another representation to Ministry of Commerce and Industry and MCA for requesting the CCI to take suo moto action against the restrictive trade practices of domestic tyre manufacturers. This representation was marked to the Secretary to Gol, Principal Secretary to Gol (PMO), Secretary to Government of India, Ministry of

Road Transport and Highway and Chairman CCI, Secretary to Gal, Department of Consumer Affairs. It is submitted that this representation had not named any domestic tyre manufacturer and did not even suggest any collusion on part of any association, let alone the Ops. Further, the representation contained incorrect data with no reliable source which is clear from the fact that it states that the price of natural rubber in the 2011-12 dropped to Rs. 151 per Kg. The correct position of facts is demonstrated from the data submitted by ATMA which is recorded in para 10 of the prima facie order dated 24.06.2014 passed by the CCI, which states that the average price of natural rubber in 2011-12 was Rs. 208.11 per Kg. It is further submitted that the source of data in the prima facie order is Rubber Board which is an organisation constituted under the Rubber (Production and Marketing) Act, 1947 and works under the aegis of Ministry of Commerce and Industry, Gal. It is submitted that, on the basis of the representation dated 28.11.2013, the MCA, in its own wisdom and without any application mind merely forwarded the incorrect/ illegal reference dated 16.12.2013 to the CCI. Since the reference suffered from multiple infirmities, the CCI ought to have rejected it. Some of the infirmities are enumerated below

—

- i. The reference was violative of Regulation 10(1)(e) and 10(2) of the General Regulations as it was bereft of recording any legal name or addresses of the enterprises that allegedly contravened the Act and details of contravention along with succinct narrative and list of

documents, affidavit and evidence in support of the contravention.

- ii.* As per Regulation 11 (2), the reference should have been mandatorily signed by an officer not below the rank of a joint secretary to the Gol. However, in the present case, the reference was signed by a director.

However, the failed to implement its own regulations. The failure has been highlighted below:

- a. Regulation 14(7)(c) of the General Regulations: The Secretary ought to have scrutinized the reference to find out if they are in conformity with rules and regulations.
- b. Regulation 15 of the General Regulations: The alleged reference ought to have been scrutinized and checked. Furthermore, as per Regulation 15(3), in case the defects are not removed, the information should have been treated invalid.

- 70. In this light, it is worth considering that ATMA had challenged the locus of Mr. SP Singh to take part in the proceedings of Reference Case 8 of 2013 before CCI and on 17.05.2016, CCI passed an order directing Mr. SP Singh to "not share any detail pertaining to the record submitted to him during the proceedings with any person who is not a party to the proceedings". The CCI also directed him to file an undertaking to that effect. On the same date, Mr. SP Singh filed an undertaking stating

therein that AITDF will comply with the directions of CCI. Despite submitting the undertaking dated 17.05.2016, Mr. SP Singh had written a letter to Dr. Inderjeet Singh, the Designated Authority, Anti-Dumping and Allied Duties and allied services wherein the findings of DG Report in Reference Case 8 of 2013 were verbatim extracted. Additionally, Mr. SP Singh on several occasions went to press, more particularly issued statements in Times of India on 20.01.2014 and Economic Times on 21.01.2014 about the proceedings. The impugned order at para 156 notes that the case was instituted on an information referred by MCA against parties named therein. It is worth mentioning here that in order to justify the allegation of cherry picking, the CCI at para 156 records that the inquiry is confined to the parties named in the information. It is submitted that neither the Reference dated 16.12.2013 nor the Representation dated 28.11.2013 contained any specific allegations against the OPs. Furthermore, no information or reference was filed, it was merely forwarding of a frivolous representation which did not name any party. It is further submitted that the CCI vide its order dated 20.12.2012 in RTPE Case 20 of 2008 had exonerated the tyre manufacturers and ATMA for alleged contravention during the period 2005-10. The CCI had observed that 'rational conscious parallelism arising out of interdependence of firms' strategic choices of manufacturers has to be differentiated from purely concerted action. The CCI further observed that the economic theory demonstrates that

'conscious parallelism' is not uncommon in a homogenous oligopolistic market. Therefore, economic evidence must go beyond parallel movement in price. However, in complete deviation from order dated 20.12.2012, the CCI has returned a finding of concerted action. The CCI had further observed that "the trade associations may adopt the measures, which are necessary to protect the interest of members". The CCI after careful consideration of the minutes of MCM (Managing Committee Meetings) of ATMA held that the evidence available does not give enough proof that tyre manufacturers/ ATMA were acting and controlled the production and price of tyre in Indian market (Para 359 to 365 of order dated 20.12.2012 in RTPE Case 20 of 2008) However, in the present proceedings, the CCI refused to acknowledge the reasoning and analysis in RTPE Case 20 of 2008 on the ground that the same was closed due to lack of evidence and not on the merits of the case.

71. It is also stated that wrongful imposition of Penalty is evidently clear that computation of penalty is flawed as the CCI has incorrectly held that the contravention by OPs is of Section 3(3)(a) as well as Section 3(3)(b) in para 163 of the impugned order. Furthermore, the Counsel for CCI submitted before this Tribunal that para 163 of the impugned order to the extent it records that there exists a violation of Section 3(3)(b) contains a typographical error. It is submitted that in para 173 of the impugned order, the CCI has recorded, in no uncertain terms, that OPs are directed to cease and desist from activities with respect to

arrangement on 'prices' as well as 'production' and therefore it is clear that the CCI had proceeded against OPs for contravention of Section 3(3)(a) as well as Section CCI in the present proceedings. Without prejudice to the position that the CCI is not empowered to impose monetary penalty on an association, it is submitted that particularly in case of ATMA, the turnover to be considered, for the period of cartelization in the year 2011-12 was Rs. 1,40,07,690. However, the CCI has imposed a penalty on the basis on the average income between 2011-14. Based on the same, the turnover of ATMA for the purpose of imposing the penalty was incorrectly considered as Rs. 1,68,34, 754. The said position again demonstrates the monumental non-application of mind and perversity by the CCI.

Submissions on behalf of Mr. Rajiv Budhraja In Appeal 18 Of 2022

72. At the outset, it is submitted that since ATMA has not contravened the Act, Mr. Rajiv Budhraja cannot be held liable under Section 48 of the Act. It is submitted that the CCI has failed to establish any specific role and conduct undertaken by Mr. Rajiv Budhraja and the penalty imposed is solely on the basis of the position held by him in ATMA. The CCI has failed to analyse the threshold of liability under Section 48 of the Act and, in the absence of concrete evidence, has erred in holding that Mr. Rajiv Budhraja liable under Section 48(2). It is submitted that the CCI has also failed to consider the deposition statement of Mr. Raj iv Budhraja wherein he has clarified that the key object of data collection

was to track industry trend to enable ATMA make submissions to the Government on the overall industry position in respect of growth in production, exports etc. It is further submitted that the constitutionality of Section 48 of the Act is under challenge before the Hon'ble Supreme Court in SLP (C) 30641/2018, 33871/2018, 4254/2019 and 4009/2019 and thus no penalty ought to be imposed upon him. 62. It is submitted that since ATMA did not fall under the rigors of Section 27(b), the act of imposition of penalty on Mr. Rajiv Budhraj under Section 48(2) was patently illegal. Without prejudice to the position that the CCI is not empowered to impose monetary penalty on an association, it is submitted that when the alleged period of cartelisation was 2011-12, the CCI could not have imposed penalty on average income of Mr. Budhraj for FY 2011-12, 2012-14 and 2013-14.

73. Mr. Ankit Virmani, Ld counsel for appearing on behalf of the Appellant in Competition Appeal (AT) No. 20 of 2022 – Birla Tyres limited, has submitted that the Appellant alongwith Respondent No.3-6 have indulged in cartelization under the aegis of Respondent No.7 (ATMA) during the year 2011-12 in contravention of provisions of Section 3(3) R/w Section 3(1) of the Act and imposing on the Appellant a penalty of Rs. 178.33 Crores being 5% of the average turnover of the years 2011-12, 2012-13 and 2013-14 is not tenable on facts and law.

No price Parallelism; In the relevant period i.e. 2011-12, the Appellant's price increase was 16.3% and not 11.62% as erroneously recorded at 123 of the impugned order. Correct calculation of price increase is given below:

- Base price of Appellant as on 01.03.2011 was Rs. 12,005/- (B) and as on 01.03.2012 is Rs. 13,960/- (A). Therefore, the increase in price during 2011-12 is $A - B = \text{Rs. } 1,955/-$ (C) the percentage price revision is therefore $C/A \times 100 = 16.3\%$.

Price revision of others during 2011-12 is significantly different and ranges from around 11.5% to around 16.5%. Table 3 at para 123 of the impugned order, which suggests that all parties have increased their prices in 2011-12 by almost the same amount i.e. between 11-12% is wholly incorrect and could not have been relied upon to find price parallelism.

Appellant suffered losses during 2011-12; cartels are typically formed by enterprises to make abnormal profits with each other rather than competing. In present case, the Appellant has made significant operating losses during 2011-2012.

The Impugned Order records that Appellant had negative operating margin of Ram 418.68 Crore. As a percentage of sales in the said period, this translates to (-) 10.67% of EBITDA to sales. This fact, by itself, shows that the Appellant was not part of any cartel.

Appellant's economic circumstances were different from others – Appellant's raw material costs were extremely high and significantly greater than others; impugned order records at table 6 that natural

rubber constitutes 30% of the entire cost of production. The DG investigation has found that cost of natural rubber significantly and consistently increased, and more than doubled, during the period 2008-2009 till 2011-12. The Appellant increased the tyre prices in this period, but the tyre price hike was nowhere near the drastic increase in cost of raw materials. In fact, during 2010-11 and 2011-12, the Appellant suffered operating losses and (-) 10.67% respectively.

Findings against the Appellant at para 133 of impugned order are arbitrary, non-germane and do not show that Appellant participated in a cartel; The submission of the Appellant recorded at para 70-93 of the impugned order have been largely ignored. The impugned order at para 133 summarily rejects Appellant's submissions by giving the following reasons:

- a. Percentage of sale of cross ply or bias tyre of Appellant in the replacement market vis-à-vis production of cross ply or bias tyre by the Appellant indicates that Appellant's sale in the replacement market has been increasing from 61.1% in 2011-12 to over 76% in 2013-14.
- b. The Appellant's EBITDA figures have turned positive in 2012-13 and 2013-14, which is a fallout of the price increase effected in 2011-12 by the Appellant.

These reasons are entirely misconceived.

First,

- a.increase in percentage of sale of cross ply tyre of Appellant in the replacement market vis-à-vis production of cross ply tyre by the Appellant does not, in any manner, indicate that Appellant was part of any cartel;
- b. this purported trend would only show that out of the total tyres produced by the Appellant, a larger percentage of tyres produced by Appellant has been sold in the replacement market, and consequently, a shrinking percentage of tyres produced by Appellant has been sold in other markets, such as OEM etc. during the period 2011 12 to 2013-14;
- c. this has absolutely no relevance to any analysis of whether or not Appellant was part of any cartel to determine prices of tyres or otherwise.

Second,

- a. the parameters referred in para 15 above have been examined for 2012-13 and 2013-14, which period is outside the relevant period [2011-12]. Commission ha categorically concluded that “*OP-1 to OP-5 have indulged in cartelization under the aegis of the association OP-6 during 2011-12...*”;

- b. in any case, improvement in operating margin of the Appellant in 2012-13 a 94, is by no means an indicator of participation in any cartel.

In this regard is submitted as under:

- i. As submitted above, on account of steep hike in raw materials prices 2008-09 onwards till 2011-12, Appellant suffered

significant operating losses in 2009-10 and 2010-11 despite price hike.

ii. Thereafter, even with reduction in raw material costs in 2012-13 and 2013-14, the raw material costs continued to remain significantly higher than the levels in 2008-09 and 2009-10.

iii. Despite the relatively high raw material prices in 2012-13 as well as 2013-14.

iv. In 2012-13 and 2013-14, though the operating margin turned positive, the same was a modest 2.06% and 6.75% respectively. This is a far cry from abnormal profits that one would expect to see in a cartel.

v. The Appellant was evidently in a bad financial position and had been suffering operating losses in the two previous years. Appellant was therefore, attempting to recoup some its losses which has been ignored.

vi. Further more, the Appellant's market share both in terms of production and sale in replacement market has reduced from 2011-12 to 2013-14

- Market share in production reduced from 15.81% to 12.32% and
- Market share of sale in replacement market reduced from 14.14% to 13.30.

vii. Production and sale of the Appellant is absolute numbers has also declined during the period 2011-12 to 2013-14.

It was argued that the Impugned Order completely ignores all of the submissions of the Appellant . In the absence of any economic evidence on price parallelism or coordinated price hike leading to abnormal profits, especially insofar as the Appellant is concerned, the Appellant ought to have been exonerated by the Commission. The Impugned Order is contrary to law, erroneous, without application of mind, and is liable to be set aside.

There is no other evidence against the Appellant; the primary evidence on the basis of which the impugned order concludes that there is an agreement under Section 3 of the Act, is an email of 18.05.2011. This email is neither addressed by the Appellant nor is it written to the Appellant. Further Appellant is not copied on this email. This email is addressed by Mr. Rajiv Budhiraja of ATMA to Mr. Neeraj Kanwar of Apollo, and refers to a purported discussion between Mr. Budhiraja and Mr. Koshy Varghese of MRF to increase price by 10-11%.

Pertinently, neither Mr. Rajiv Budhiraja of ATMA, nor Mr. Koshy Varghese of MRF have stated that above email was forwarded by them to the Appellant or that the contents thereof were discussed with appellant. On contrary, Mr. Neeraj Kanwar of Apollo has specifically stated that no price sensitive information was ever shared with any competitors. Email dated 18.02.2011 from ATMA is the only communication referred in the impugned order which was market to the Appellant's officers Mr. George Peter and Mr. S.K. Patodia

were marked. This email does not contain any agreement to determine prices or limit production or supply to TBB tyres. It only contains information on raw material cost, and that too in aggregated form and not of any specific company. The Appellant has not sent this email. Pertinently, neither of the officers of the Appellant who were marked on this mail- Mr. George Peter nor Mr. S.K.Patodia – have been held liable for contravention of Section 3 of the Act. Summons were issued to these officers by DG in 2015, but the summons was sent to Appellant's address. On receiving such summons, Appellant duly informed the Commission by letter dated 26.10.2015 that both Mr. George Peter (Advisor-Purchase) and Mr. S.K.Patodia (Company Secretary) were no longer working with the company since December 2011 and August 2011 respectively and offered to depute an officer who was at the time working with the Appellant. Commission wrote back surprisingly insisting that Appellant must ensure their presence, but took no further steps to summon either of the two persons above named. DG never posed any question about this email of 18.02.2011 to Appellant either in the questionnaires sent to Appellant or while recording statement of Appellant's officer Mr. P.Radhakrishnan (Treasurer) on 17.07.2015. Further the glaring circumstance that apart from this solitary email of 18.02.2011, Appellant has not been marked on any of the emails that are relied on in the impugned order. The Appellant's objection to DG report on this aspect have been ignored in the impugned order. participation in meetings of ATMA or its sub-groups does not in any manner indicate that Appellant has colluded to determine prices or limit production of TBB Tyres. Even assuming

whilst denying there was any such agreement or understanding, the economic indicators especially for the Appellant including lack of price parallelism make it evidence that no such alleged agreement was implemented, especially by Appellant. Based on the Commission's own position in Re: alleged cartelization in Flashlights Market in India (2018) SCC Online CCI 98) an agreement cannot cause an AAEC and result in a contravention of Section 3 of the Act if it has not been implemented.

Grave Errors Committed in penalty computation – wrong years considered for computing turnover and no mitigating factors considered; In the present matter, no such exercise has been done. Pertinently, Commission has not considered inter alia the following mitigating factors qua the Appellant:

- a. Commission has itself observed that the operating margins of Respondent No.3-6, except that of Appellant, have remained positive from 2009 until 2014;
- b. As compared to the Respondent Nos.3-6, the input costs for Appellant are the highest. In 2011-12, Appellant's costs increased;
- c. In 2011-12, Appellant was incurring operating losses, while the operating margins for the Respondent No.3-6 were much higher;
- d. Production and sale of the Appellant in absolute numbers has also declined during the period 2011-12 to 2013-14;
- e. Appellant's operating margins are substantially lower than other Respondent Nos.3-6;
- f. Appellant's market share in production reduced from 15.81% to 12.32%;

g. Appellant's market share of sale in replacement

74. Mr. Samar Bansal, Ld. Counsel for the CCI has submitted that there is specific case of violation of section 3(3)(a) on the basis of evidence of collusion and cartelization by Opposite Party(s). The findings on collusion and cartelization are based on following parameters unearthed by the DG in its report – (a) circumstances conducive for collusion; (b) existence of price parallelism amongst the Opposite Party(s) [hereinafter 'OPs']/Appellant ; (c) cost analysis of key raw materials; (d) financial performance of the Appellant; and (e) evidence of communication exchanged amongst the Appellant. Each of these factors are discussed below:

(a). Circumstances conducive for collusion

i. As per ATMA, there are 39 tyre companies in India, out of which the OPs/Appellant together control about 83% of the tyre market. In terms of production of cross-ply/bias tyres belonging to truck bus tyre segment during 2011-12 to 2013-14, the OPs/Appellant constitute around 93% to 95% of the Indian tyre industry. Therefore, the market is highly concentrated with a few players holding the large chunk of the market indicating strong possibility of a conducive environment for collusive behavior. The presence of an active trade association (ATMA) that collates sensitive information

further provides a platform for coordination amongst the OPs/Appellant.

ii. The DG has also observed that the products manufactured by these OPs/Appellant are homogenous in nature and substitutable from the point of view of customers. Further, the demand of tyres is fairly predictable as the tyre industry is cyclical and seasonal in nature because the demand for tyres is closely related to growth in the automotive sector which in turn is dependent on the growth of economy. The entry barriers are high as the tyre manufacturing process is a complex process and it requires heavy investment of capital and technology. The technology for manufacturing cross ply/bias tyres has also not witnessed any significant change. Lastly, the DG also noted that in the TBB tyre segment, the component of import is highly insignificant being about 0.50% only (of the domestic production).

(b) Existence of Price Parallelism

- i. The Net Dealer Price (NDP) of cross-ply/bias type tyres in the truck-bus tyre segment sold by the OPs from 2009 to 2014 show that the prices charged by the OPs/Appellant have been moving in tandem exhibiting price parallelism.
- ii. The percentage changes in prices of the OPs/Appellant in March 2011 – February 2012 and March 2012 – February

2013 show that the prices have moved in the same direction and have varied within a small range (above 11%). The price revision was in line with the email dated 18.05.2011 exchanged between ATMA and Apollo.

- iii. The correlation coefficient between absolute prices of the OPs/Appellant during the period March 2009-February 2014 is very high i.e., more than 0.97. The direction and close range of percentage change in prices and the high correlation coefficient seen in conjunction indicate parallel pricing behavior.

(c) Cost analysis of key raw materials

- i. As per Tariff Commission Report on Study of Tyre Pricing (2011), natural rubber constitutes the maximum percentage (30%) in the weightage of raw materials in terms of cost, in manufacturing of tyres.
- ii. The prices of natural rubber have shown a consistent decline during 2011-12 to 2013- 14 (from Rs. 214.56/kg to 172.56/kg). However, the market shares of the OPs/Appellant – both in terms of production as well as in terms of sales of cross-ply/bias tyre in the truckbus segment has remained stable during 2011-12 to 2013-14. Even the sales revenue in percentage terms earned in the replacement market has remained more or less stable for

the OPs/Appellant. Such stability indicates that the OPs/Appellant were not competing with each other during 2011-12 to 2013-14 in spite of decrease in prices of inputs.

(d) Financial performance of the Respondents

i. The operating margin/EBITDA of all the OPs/Appellant (except Birla Tyres) remained positive from 2009-10 till 2013-14. While achieving positive operating margins is not a competition issue, but when seen in conjunction with other evidences such as the purchase group meetings and email correspondences between parties, indicates that the improvement in operating margin/EBITDA was a result of coordinated price increase.

(e) Evidence of communication exchanged amongst the Appellants

- i. Email dated 18.05.2011 exchanged between ATMA and Apollo which reveals communication on price raise between Apollo and MRF through ATMA. The said email points towards an explicit agreement between Apollo and MRF facilitated by ATMA to increase the price of tyres by the same proportion during the course of the year.
- ii. Emails dated 04.01.2011 and 12.01.2011 exchanged between MRF and ATMA referring to discussion about raw material compound index and containing a table showing sensitive price trend information of Apollo.

- iii. Email dated 18.02.2011 by ATMA which reveals that the MDs of the association members desire that in view of the volatility in the raw material (RM) prices, especially steep increase in natural rubber prices, regular feedback be given on RM price/compound indexation. It also states that the RM data is shared in Purchase Group meetings on a quarterly basis, including projections for the next quarter.
- iv. Email dated 23.02.2011 sent by ATMA indicating that ATMA's Purchase Group meeting consisting of purchase heads of all member companies of ATMA was held on 21.02.2011 and the decision taken by the Purchase Group was shared in the said email.
- v. ATMA had also constituted various sub-groups which held regular meetings. These sub-groups served as platform where the OPs/Appellant were regularly meeting. In one such meeting of the Purchase Group, a sensitive topic pertaining to Raw Material Cost Increase v. Tyre Price Increase and the 'Gap' between them was discussed. Surprisingly, no minutes of these meetings were being maintained by ATMA.
- vi. ATMA also collected and compiled information relating to company wise and segment wise data on production, domestic sales and export of tyres on a real time basis

much prior to the publishing of quarterly results in the public domain. Such compiled data of sensitive information was circulated amongst its members which made coordination easier amongst the Respondents.

vii. The aforesaid evidences establishes that the platform of ATMA was used by the tyre companies for resorting to anti-competitive activities and not merely for protecting the legitimate interests of its members. The evidences provide strong evidence of coordinated behavior and reveals the existence of an anti-competitive agreement amongst the OPs/Appellant.

B. 'Arithmetical' Error';

It is submitted that there is no arithmetical error in the calculations regarding percentage of price change as alleged. On demurrer, the CCI has dealt with this issue by holding that even assuming there is an 'arithmetical error', the prices of OPs/Appellant moved in the same direction, and were above the 10.5% mark set by email dated 18.05.2011.

C. No error in considering the Truck Bus Bias tyre (TBB) segment for the enquiry

i. The Commission has noted that in India, truck and bus tyre production/demand is the major segment with over 60% of the total

size of the tyre market. Even in this, out of the two types of tyres in terms of ply reinforcement – cross-ply or bias tyres and radial tyres – the cross-ply or bias tyres constitutes about 76%.

ii. The sale of truck bus tyres in terms of revenue is 55% and in terms of tonnage is 46%. The replacement market in case of truck bus tyres is also much bigger than passenger vehicles owing to greater wear and tear experienced by trucks and buses. Accordingly, the TBB tyre segment was correctly taken as the basis for analysis. At the same time, it is relevant to note that as clarified by the Hon'ble Supreme Court by order dated 07.05.2018 in M.A. No. 490 of 2017 in C.A. 6691 of 2014, definition of relevant market is not required for the purpose of section 3(3) of the Act.

iii. Therefore, owing to factors such as movement in the price of leading cross-ply/bias tyre variants sold in the replacement market, increase in the price effected by the OPs/Appellant, absence of competitive pressure between radial tyres and cross-ply/bias tyres in case of truck bus segment, and the uniformity in conduct of the OPs/Appellant indicates that the OPs/Appellant have gradually increased the prices of their respective truck bus tyre variant in close succession in a leader-follower type model by using ATMA as a medium.

D. No error in proceeding only against the 5 tyre companies;

The CCI has not arbitrarily cherry picked only 5 tyre companies for the investigation. The representation dated 28.11.2013 of AITDF as forwarded by the MCA on 16.12.2013, allegations were against the alleged oligopoly of domestic tyre manufacturers which includes even the 5 tyre manufacturers against whom investigation was ordered.

E. Validity of 'Reference' dated 16.12.2013

i. While it is true that the General Regulations, 2009 provide a specific manner in which the reference is to be made, any irregularity in the procedure which does not affect the merits of the case does not invalidate the proceedings of the Commission. [This aspect has been considered in detail by the Division Bench of Hon'ble Madras HC reported as MRF v. Ministry of Corporate Affairs, 2022 SCC OnLine Mad 50; Also see Section 15 of the Competition Act, 2002 and Regulation 2(j), 10, 11 and 15].

ii. For the purpose of the Act, it is the "information" and not the form in which it is provided which is relevant. This is also borne out by the distinction between 'information' and 'complaint' after the 2007 Amendment. This aspect also dealt with by the Hon'ble Madras High Court. The character of the information does not change based upon

the form in which it is presented. It is trite principle of law that procedures should not become an impediment in the implementation of substantive law.

F. No violation of the principle of 'he who hears must decide'

i. It is submitted that only because the impugned order was signed by 3 and not all 4 members who heard the arguments does not go to the root of the matter or affect the merits of the case. None of the Ops/Appellant have established any prejudice caused to them due to the retirement of one of the four members, prior to passing of the final order.

ii. Under section 15 of the Competition Act, 2002, such an alleged defect, even if it exists, cannot vitiate the impugned order.

G. Re-investigation of events already closed in RTPE Case No. 20 of 2008;

i. Merely because no contravention was found by the CCI in an earlier proceeding due to lack of evidence would not mean that the activities of the Ops/Appellant cannot be investigated in the future. In the present proceedings, fresh evidence came to light during the investigation of the DG which unmistakably pointed towards actions of the Ops/Appellant which were in violation of the Act.

ii. Similar contention was raised before the Hon'ble Madras High Court which was rejected.

H. No direct evidence of cartelization, prima facie order passed without evidence;

i. It is well known that in cases of cartelization, it is very difficult to come across direct evidences of an agreement. What is required is a strong probability in favour of a preconcerted agreement. Cartel operators conceal their activities. Economic evidences such as simultaneous and identical price increases which are inconsistent with the hypothesis that the market participants are acting unilaterally in their self-interest play an important role in a cartel investigation.

ii. The email dated 18.05.2011 is relevant which shows that the Ops/Appellant under the aegis of its association ATMA were discussing coordinated price increase which was in-fact implemented by the Ops/Appellant as well.

iii. The argument that the prima facie order under section 26(1) was passed without evidence is incorrect. The said order was passed by CCI after giving opportunity to address preliminary arguments and/or submit written submissions to AITDF as well as ATMA. A perusal of the prima facie order itself proves that it was a well-reasoned

order based on the record available with the CCI at the preliminary stage. Similar contention was canvassed before the Hon'ble Madras High Court which was rejected. SLP against the above judgment of the Hon'ble Madras High Court has also been dismissed.

iv. Some Ops/Appellant have alleged that the CCI ought to have satisfied itself beyond reasonable doubt for establishing anti-competitive agreement. This argument is flawed. It is well settled that in cases under the Competition Act, the standard of proof is one of probability. The Hon'ble Supreme Court in *Rajasthan Cylinders & Containers Ltd. v. Union of India & Anr.*⁵ (2020) 16 SCC 615 at para 81 has upheld the decision of COMPAT in case of *M/s International Cylinder (P) Ltd. v. Competition Commission of India* 2014 Comp. L.R. 184 (CompAT) in respect of appropriate standard of proof for evaluating the violation of section 3(3) of the Act.

v. Some Ops/Appellant have also alleged that the CCI failed to establish any AAEC in the present matter. However, the Hon'ble Supreme Court in *Excel Crop Care Limited v. Competition Commission of India & Anr.*, (2017) 8 SCC 47 at para 41.2 has held that the agreements mentioned in Section 3(3) of the Act would be treated as ipso facto

causing appreciable adverse effect on competition. Once the CCI held that the case is covered by one or more of the clauses mentioned in Section 3(3), it need not undertake any further enquiry and the burden would shift upon such enterprises or persons, to rebut the said presumption by leading adequate evidence. The Opposite Parties including the Appellant have failed to displace the presumption of AAEC.

I. No violation of principles of natural justice

i. The refusal by DG to allow the Ops/Appellant to be assisted by lawyers during deposition has not resulted in violation of any principles of natural justice. In *Competition Commission of India v. Oriental Rubber Industries* 2018 SCC OnLine Del 9192, the Hon'ble High Court of Delhi has observed that the presence of a counsel during the deposition has the tendency of hindering the questioning of the witness. Further, Regulation 46-A relied upon by the Ops/Appellant was incorporated by way of an amendment in 06.12.2018 i.e., much later to when the depositions were made in the present case. ii. Some OPs/Appellant have also alleged that no notice was given before passing of the section 26(1) order by the CCI. This issue has been settled by the Hon'ble Supreme Court in *Competition Commission*

of India v. Steel Authority of India & Anr. (2010) 10 SCC 744 wherein it has been made clear that there is no requirement for the CCI to issue notice or accord a hearing to every party at the initial stage of forming a prima facie opinion under section 26(1).”

Summary & Observations

75. We have carefully gone through the pleadings of the parties, submission made by the Ld. Sr. Counsels/Counsels of the parties ,the related provisions of the Competition Act and concerned Regulations and the law laid down on the subject and our summarized observations are as follows:

- A. Since this is a case where 14 appeals have been filed on various date upto July 2022 against the impugned order dated 31.08.2018 in the case No.08 of 2013 passed by the Competition Commission of India, the cases were heard together from 29.07.2022 to 20.09.2022 and Judgment was finally reserved on 20.09.2022.
- B. There are certain issues /fact which are undisputed;
 - i. The All India Tyre Dealer Federation (AITDEF) who is complainant here also, filed a complaint before the MRTP Commission vide RTPE No.20 of 2008.

After conducting a detailed investigation, the CCI has dismissed the allegations through its final order dated 30.10.2012 observing that there is not sufficient evidence to hold a violation by the tyre companies, Apollo, MRF, JK tyre, Birla, CEAT and ATMA of the provisions of Section 3(3) (a) and Section 3(3)(b) R/w Section 3(1) of the Act, para 366 of the order as stated supra.

AITDF appealed to CCI order before the Competition Appellate Tribunal which dismissed the appeal through its order dated 25.04.2013 as stated supra.

- ii. The CCI on its own getting complaint from AITDF has not initiated any suo motu investigation against the Tyre Companies. The CCI has initiated investigation based on representation made to the Hon'ble Minister of the Ministry of Corporate Affairs urging the MCA to direct the CCI to take suo motu action against Tyre Companies and the MCA forwarded the representation to the CCI under Section 19(1)(b) of the Act vide its letter dated 28.11.2013. The same is scanned & reproduced below based on typed copy in appeal paper book :

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Typed copy

Ph(O) : 23976671

23962414

Telefax: 011-25936288

ALL INDIA TYRE DEALER'S FEDERATION
(APEX BODY OF TYRE DEALERS AFFILIATING STATE/
REGIONAL ASSOCIATIONS)

865/32, Guru Nanak House, S.P. Mukherjee Marg, Delhi 110006
(INDIA)

Ref. No.: AITDF/COM-TI-04M/2013-14

Date: 28 Nov. 2013

Hon'ble Sh. Anand Sharma
Minister of Commerce
and Industry
Government of India
Udyog Bhawan
New Delhi 110011

Hon'ble Sh. Sachin Pilot,
Minister of Corporate Affairs
Government of India
5th Floor, A-Wing,
Shastri Bhawan
New Delhi-110001

Subject: a) Request for asking Competition Commission of India (CCI) to
'Suo Moto take action against oligopoly of domestic tyre
manufacturers rather than insisting on tyre dealers to file the
complaint as contesting the tyre cartel involves huge legal cost of
small business as against resourceful tyre manufacturers.

b) Rubber prices plunge to Rupees 151 / kg from earlier peak price
of Rs.240/kg, which had resulted in arbitrary/ disproportionate tyre
price increases of 15%-17% during 2011-12, the domestic tyre
majors holding on to high tyre prices by strangulating free play of
market forces, thus Government Intervention for Immediate tyre
price roll back

Respected Sir/s,



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This is in continuation of our earlier communication addressed to Ministry of Corporate Affairs dated 11 Sep'2013 (copy enclosed) on the above subject. Since then the natural rubber price has further dropped to Rs.151/kg from the previous peak of Rs.240/kg and also the prices of crude oil have also dropped leading to softening of prices of various key inputs, which go into the manufacture of tyres. The rubber prices during year 2008 went up ...illegible...peak level of Rs.140/kg in August/ Sept 2008 from Rs.75/kg in March 2008 and similarly the crude oil price internationally went up to \$ 142/a barrel from \$ 65/a barrel. Again in December 2008, the natural rubber price drop to Rs.69/kg and crude oil price plunged to previous low levels of March 2008. The domestic tyre majors in a concerted manner in year 2008 jacked up the prices by 15%-22% for various categories of tyres and tubes which included tyres for trucks/ buses, LCVs, passenger cars/ MUVs, two wheeler/ three wheelers, tractors tyres and of the road/mining tyres. After steep drop in raw material prices, none of the leading domestic tyre manufacturers rolled back the tyre prices. Same is the situation now for the last round of steep tyre price increases indulged into by Indian Tyre Majors during year 2011-12 as the major drop in price of natural rubber to Rs.151/kg from earlier peak of Rs.240/ kg has not ruffled the domestic tyre companies to reduce the tyre prices in a pro rata manner as was the argument for increase in tyre-prices.

2. Unfortunately, the steep decline in natural rubber prices has not so far augured well for the tyre trade and consumers because the domestic tyre industry is maintaining a self styled 'price control' on the pricing and their trade practices by strangulating the free and fair play of market forces leading to zooming 'declared' margins of leading tyre companies. The domestic tyre majors are exploiting a languishing auto market and poor performance of the transport sector as economy has been on a very slower growth mode. It is strange that the tyre buyers – OEMs and truck/bus owners – are suffering losses and on the contrary, the leading tyre companies are able to increase their profits have been going up and in

several cases the revenues are being pulled out by way of unethical trade practices, which are also leading to loss of revenue to the State Exchequer. Moreover, the depreciation of Rupee against dollar has created a wall of higher tariff on import of tyres and on the contrary the export of tyres has rendered the production and sales management in the domestic market countered to the interest of end users. Therefore, there is need to dismantle the price control mechanism of domestic tyre makers, who are working in unison in regulating the price of tyres for all variety and usages.

3. The All India Tyre Dealers' Federation (AITDF), being equi-distant to the tyre makers and tyre users, once again pleads in order to safeguard the road transport industry and also to help in containing the operating cost of fleet owners to keep check on the inflationary impact of freight cost due to indiscriminate and disproportionate tyre prices:

a) The Competition Commission of India (CCI) should be requested by the Government to immediately initiate SUO MOTO action against the restrictive trade practices of domestic tyre majors so that they are stopped from indulging in strangulating free and fair play of market forces and our earlier plea for this action is already pending with the Ministry of Corporate Affairs and other Central Government Departments.

b) Since domestic tyre majors are engaged in self styled 'price control' and are not maintaining their commitment that they have increased the tyre prices due to increase in raw material prices including natural rubber and now prices are supposed to be aligned in line with drop in raw material cost, then it is the duty of Central Government to intervene and direct the domestic tyre majors to roll back tyre prices in line with drop in rubber prices. The prices of all the raw materials i.e. natural rubber, nylon tyre cord, synthetic rubber, carbon black, rubber chemicals etc. and their market movement is in the full public domain and the input prices have been coming down for last 8-10 quarters, it should not be

X7

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difficult for the government to have the tyre prices rolled back with immediate effect.

It cannot be ignored that powerful tyres majors took undue advantage of their dominant, position and refused to reduce the tyre prices in year 2008-09 when economy was plunged into down turn and again now in 2012-13, the economy is in bad shape and same set of domestic tyre manufacturers are maintaining indiscriminately high tyre prices even when the raw material prices have slumped significantly.

Awaiting an early response, with regards,

Yours faithfully

Sd/-

..illegible..

S.P. Singh

Encl: as above

Convenor, AITDF
(Mobile) 9810604730

Copy with best compliments to:

1. The Secretary to Government of India, Cabinet Secretariat
2. The Principal Secretary to Government of India, Prime Minister's Office (PMO)
3. The Secretary to Government of India, Ministry of Road Transport and Highways
4. The Chairman, Competition Commission of India, New Delhi 110001
5. The Secretary to Government of India, Department of Consumer Affairs.

- iii. Final arguments were heard by the CCI in presence of four members and the final order has, however, been signed by three members.
- iv. Errors by DG in calculation of percentage increase in price as follows:

ERRORS BY DG IN CALCULATION OF PERCENTAGE INCREASES IN PRICES					
2010 - 11	Apollo	MRF	CEAT	JK	Birla Tyre
Price as on 01.03.2010 as per DG Report	10640	9912	10571	10428	10030
Price as on 01.03.2011 as per DG Report	12075	11620	12600	12294	12005
Formula to calculate percentage increase	((Price as on 01.03.2011 - Price as on 01.03.2010) / Price as on 01.03.2010)*100				
Figures after applying Formula	((12075 - 10640) / 10640)*100	((11620 - 9912) / 9912)*100	((12600 - 10571) / 10571)*100	((12294 - 10428) / 10428)*100	((12005 - 10030) / 10030)*100
Figures in DG Report	13.49	17.23	19.19	17.89	19.69
	13.49	17.23	19.19	17.89	19.69
2011 - 12	Apollo	MRF	CEAT	JK	Birla Tyre
Price as on 01.03.2011 as per DG Report	12075	11620	12600	12325	12005
Price as on 01.03.2012 as per DG Report	13945	13532	14090	13756	13960
Formula to calculate percentage increase	((Price as on 01.03.2012 - Price as on 01.03.2011) / Price as on 01.03.2011)*100				
Figures after applying Formula	((13945 - 12075) / 12075)*100	((13532 - 11620) / 11620)*100	((14090 - 12600) / 12600)*100	((13756 - 12325) / 12325)*100	((13960 - 12005) / 12005)*100
Figures in DG Report	15.49	16.45	11.83	11.61	16.28
Margin of Error by DG	11.55	11.64	11.18	11.16	11.62
	3.94	4.81	0.65	0.45	4.66
2012 - 13	Apollo	MRF	CEAT	JK	Birla Tyre
Price as on 01.03.2012 as per DG Report	13945	13532	14090	13756	13960
Price as on 01.03.2013 as per DG Report	14237	13939	14275	14169	13770
Formula to calculate percentage increase	((Price as on 01.03.2013 - Price as on 01.03.2012) / Price as on 01.03.2012)*100				
Figures after applying Formula	((14237 - 13945) / 13945)*100	((13939 - 13532) / 13532)*100	((14275 - 14090) / 14090)*100	((14169 - 13756) / 13756)*100	((13770 - 13960) / 13960)*100
Figures in DG Report	2.09	3.01	1.31	3.00	-1.36
Margin of Error by DG	10.21	10.3	10.13	10.3	-1.36
	8.12	7.29	8.82	7.30	N/A
2013 - 14	Apollo	MRF	CEAT	JK	Birla Tyre
Price as on 01.03.2013 as per DG Report	14237	13939	14275	14169	13770
Price as on 01.03.2014 as per DG Report	14113	13828	13819	14340	13050
Formula to calculate percentage increase	((Price as on 01.03.2014 - Price as on 01.03.2013) / Price as on 01.03.2013)*100				
Figures after applying Formula 1	((14113 - 14237) / 14237)*100	((13828 - 13939) / 13939)*100	((13819 - 14275) / 14275)*100	((14340 - 14169) / 14169)*100	((13050 - 13770) / 13770)*100
Figures in DG Report	-0.87	-0.80	-3.19	1.21	-5.23
	-0.87	-0.80	-3.19	1.21	-5.22

Date: / /

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Saathi

2011 - 2012
APOLLO TYRES

PRICE AS ON 1 MARCH 2011 = INR 12,075

PRICE AS ON 1 MARCH 2012 = INR 13,945

INCREASE IN PRICE
FROM 2011 to 2012 = INR 13,945
- INR 12,075
INR 1,870

FORMULA TO CALCULATE
PRICE INCREASE PERCENTAGE = $\left(\frac{\text{INCREASE IN PRICE}}{\text{ORIGINAL PRICE}} \right) \times 100$

= $\left(\frac{1,870 \times 100}{12,075} \right)$

PRICE INCREASE BY APOLLO = 15.49%
IN PERCENTAGE TERMS IN
2011 - 2012

PERCENTAGE PRICE INCREASE = 11.55%
RECORDED IN DG REPORT

MARGIN OF ERROR BY DG = 3.94%

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Date / /

Saathi

2011-2012

MRF

PRICE AS ON 1 MARCH 2011 = INR 11,620

PRICE AS ON 1 MARCH 2012 = INR 13,532

INCREASE IN PRICE IN 2011-2012 = INR 13,532

- INR 11,620

INR 1,912

FORMULA TO CALCULATE

$$\text{PRICE INCREASE PERCENTAGE} = \left(\frac{\text{INCREASE IN PRICE}}{\text{ORIGINAL PRICE}} \right) \times 100$$

$$= \left(\frac{1,912}{11,620} \times 100 \right)$$

PRICE INCREASE BY MRF = 16.45%

IN PERCENTAGE TERMS IN

2011-2012

PERCENTAGE PRICE INCREASE = 11.64%

RECORDED IN DG REPORT

MARGIN OF ERROR BY DG = 4.81%

Date ____/____/____

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2011-2012

CEAT

PRICE AS ON 1 MARCH 2011 = INR 12,600

PRICE AS ON 1 MARCH 2012 = INR 14,090

INCREASE IN PRICE IN 2011-2012 = INR 14,090

- INR 12,600

INR 1,490

FORMULA TO CALCULATE PRICE INCREASE PERCENTAGE = $\left(\frac{\text{INCREASE IN PRICE}}{\text{ORIGINAL PRICE}} \right) \times 100$

PRICE INCREASE BY CEAT = 11.83% $\left(\frac{1,490}{12,600} \right) \times 100$

IN PERCENTAGE TERMS IN 2011-2012

PERCENTAGE PRICE INCREASE = 11.18%

RECORDED IN DG REPORT

MARGIN OF ERROR BY DG = 0.65%

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Date / /

2011-2012
JK

PRICE AS ON 1 MARCH 2011 = INR 12,325
 PRICE AS ON 1 MARCH 2012 = INR 13,756
 INCREASE IN PRICE IN 2011-2012 = INR 13,756
 - INR 12,325
 INR 1,431

FORMULA TO CALCULATE PRICE INCREASE PERCENTAGE = $\left(\frac{\text{INCREASE IN PRICE}}{\text{ORIGINAL PRICE}} \right) \times 100$

PRICE INCREASE BY JK IN PERCENTAGE TERMS IN 2011-2012 = $\left(\frac{1,431}{12,325} \right) \times 100$
 = 11.61%
 PERCENTAGE PRICE INCREASE BY DG = 11.16%
 MARGIN OF ERROR BY DG = 0.45%

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(saathi)

Date / /

2011-2012

BIRLA

PRICE AS ON 1 MARCH 2011 = INR 12,005

PRICE AS ON 1 MARCH 2012 = INR 13,960

INCREASE IN PRICE IN 2011-2012 = INR 13,960

- INR 12,005

= INR 1,955

FORMULA TO CALCULATE PRICE INCREASE PERCENTAGE = $\left(\frac{\text{INCREASE IN PRICE}}{\text{ORIGINAL PRICE}} \right) \times 100$

PRICE INCREASE BY BIRLA IN PERCENTAGE TERMS IN 2011-2012 = $\left(\frac{1,955}{12,005} \right) \times 100$

= 16.28%

PERCENTAGE PRICE INCREASE RECORDED IN DG REPORT = 11.62%

MARGIN OF ERROR BY DG = 4.66%

C. These corrected data apparently reveal non-existence of price parallelism.

D. Similarly, this arithmetical error as stated above is accepted then the actual price increase varied in a wide range of 11.6% to 16.5 % thereby the alleged agreement between the

OPs/ Appellants herein may not be as fully proved before the CCI.

- E. Similarly, the calculation of Correlation Coefficient used a wrong period of financial year 2009-13 instead of Financial 2011-12, if correct calculations are made for Correlation Coefficient, it looks to be much lower. This also provides a ground that there is no violation of Section 3(3) of the Act on account of price parallelism. As a result of which the requisites of CCI to include same direction of price changes, close range of percentage price changes and high Correlation Coefficient are not met.
- F. After hearing the Ld. Sr. Counsels/Counsels for the parties, it is also revealed that there was no allegation in the AITDF representation and the MCA Forwarding letter pertaining to limited production or supply by the Appellants. The impugned order is silent on this aspect while arriving at a finding of contravention of Section 3(3) (b) of the Act. Hence, a finding under Section 3(3)(b) of the Act is matured for set aside.
- G. The arithmetical error as stated above, although accepted by the CCI but considered it a typographical error.
- H. It is apparently clear that the judgment of Hon'ble High Court of Delhi is under challenge before the Hon'ble

Supreme Court in Civil Appeal No. 4887-98/2021 filed by the Union of India and the CCI. It is also relevant to mention that subsequent to the judgment of Hon'ble Delhi High Court in Mahindra Electric Mobility Ltd. Vs. CCI & Anr. (2019) SCC Online (Del) 8032 as stated supra, the issue was considered in CADD Systems & Services Ltd. v. Competition Commission of India (2019 SCC Online Del 9252 at para 16 to 21) which held that the order of CCI would not be held to be vitiated on this ground alone. However, we wish not to pass any comments on this as Hon'ble Supreme Court is ceased with the matter.

- I. In this context, we refer Sections 15(a) and 15(b) of the Act which provide that vacancy etc. not to invalidate proceeding of the CCI. The same is reproduced herein below for brevity & clarity :

“15. Vacancy, etc., not to invalidate proceedings of Commission.-No act or proceeding of the Commission shall be invalid merely by reason of-

- (a) any vacancy in, or any defect in the constitution of, the Commission; or
- (b) any defect in the appointment of a person acting as a Chairperson or as a Member.”

However, since this issue is already sub-judice before the Hon'ble Supreme Court, in all fairness, this Tribunal is unable to make any comments. Moreover, this Tribunal has to work within the four boundaries of the Competition Act and related Regulations. Hence, we are concerned with the provisions of Section 15 of the Competition Act, 2002 and do not wish to go further on this issue.

J. One area of bone of contention is levying penalty on the basis of the turnover for the preceding three years (Financial Year 2009-10, 2010-11 & 2011-12) on relevant turnover i.e. turnover of the Appellant for the tyre variant considered by DG to investigate upon each such person or enterprises which are parties to such agreement or abuse in terms of Section 27 of the Act. CCI has taken a stand that it has adopted the legally correct approach in taking three proceeding years as per information and financial account statements provided by the parties themselves. If any violation has been found in a particular year, then appropriate preceding years in terms of Section 27(b) of the Act, last three preceding years prior to the event of the financial year are required to be considered. At this juncture, it is necessary to reproduce Section 27(a) and Section 27(b) of the Act as follows:

“27. (a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be; 27. (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 any cartel, the Commission shall impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty equivalent to three times of the amount of profits made out of such agreement by the cartel or ten per cent. of the average of the turnover of the cartel for the last preceding three financial years, whichever is higher;”

- K. On the issue of finding of CCI regarding violation of provision of Section 3 (3)(b) of the Act, we are reproducing the written submission dated 30.09.2022 filed by the CCI vide Diary no. 61630 as follows:

“59. It has been submitted that in none of the documents i.e. the Representation sent by AITDF, the forwarded letter of MCA, the CCI’s order and the DG report anything regarding Section 3(3)(b) has been stated. It appears that the mention of Section 3(3)(b) in para 163 of the impugned order is a typographical error.”

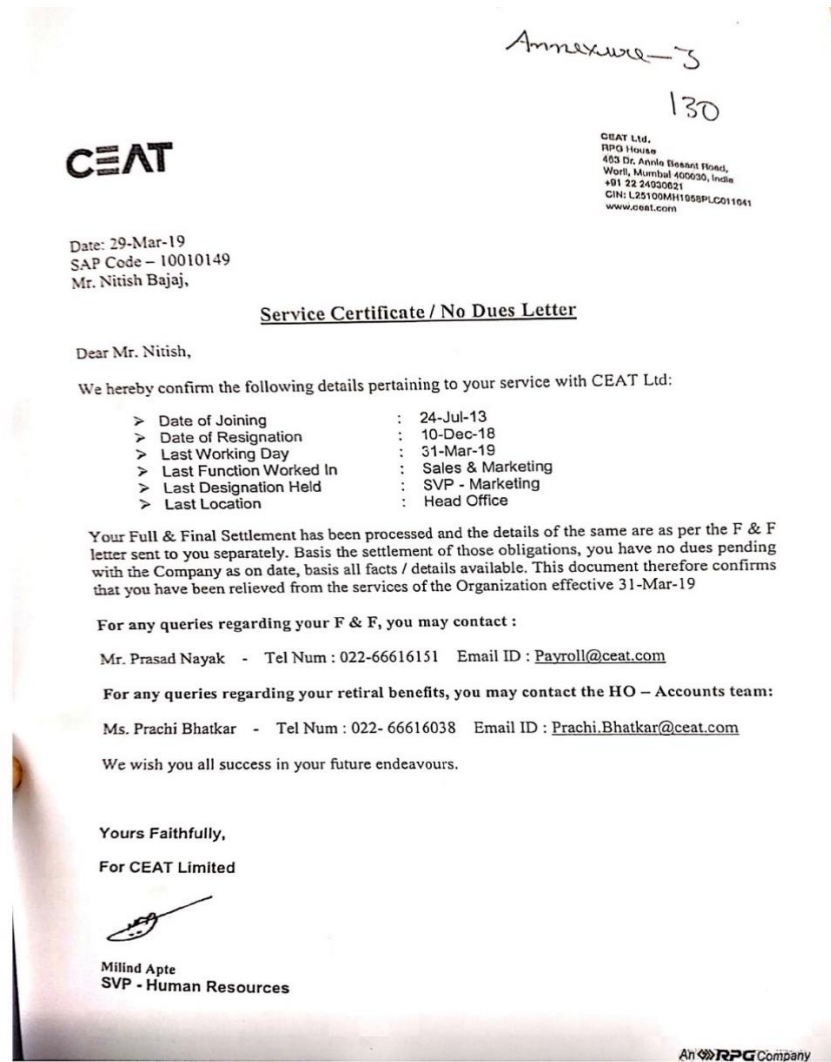
- L. It is very much clear from the above that the mentioning of Section 3(3)(b) of the Act as mentioned in para 163 of the impugned order dated 31.08.2018 is a typographical error as accepted by the CCI and hence there is no question of contravening this Section by the Appellants.
- M. Regarding levying of penalty on Mr. Nitish Bajaj, Vice President Marketing CEAT Ltd, (Competition Appeal (AT) No. 06 of 2022), the CCI itself has submitted in its written submission on 30.09.2022 vide Diary no. 61630 as follows:
 “ 56.The impugned order has been assailed by Mr. Nitish Bajaj, Vice President (Marketing), CEAT Ltd., on the ground that he was not in the employment of CEAT Ltd. in the year of contravention i.e., 2011 and hence no penalty could have been levied on him under Section 48 of the Act. An argument was also advanced that no opportunity was given to the individuals to present their case by CCI.

57. In this regard, it is submitted that after the DG submits the investigation report to CCI, the CCI sends the investigation report to all the opposite parties including the individuals named therein to file the reply/objections to the investigation report submitted by the DG. In the present case also, all the parties were given ample opportunities to file their objections to the investigation report and a joint reply/objection to DG report was filed by CEAT Ltd. Mr. Nitish Bajaj and Mr. Arnab Banerjee. After the filing the reply/ Objection, the CCI granted opportunity to all the parties to present their oral argument. At none of the stages, the fact that Mr. Nitish Bajaj was not employed with CEAT Ltd. was brought to light by the Appellant. No averment was made either in the objections filed to the DG Report or during the oral arguments before the CCI.

58. It may further be noted that by an order dated 18.02.2016 and 17.05.2016, the CCI had asked the Appellant to furnish the ITR's for the last three financial years and was directed to appear before the CCI for oral hearing. Even during the hearing on 17.05.2016, the fact was not stated by the Appellant. In fact, it was only in the present appeal that the fact came to light that Mr. Nitish Bajaj had joined CEAT Ltd. in the year 2013. If the fact was

brought to CCI's notice, such inadvertent error would not have crept in the impugned order. Given the facts and circumstances of this particular individual, it is submitted that this Tribunal may take appropriate decision on the penalty levied on Mr. Nitish Bajaj."

- N. From the above, it is very much clear that the Appellant was not in the role /employment of CEAT in the year of the alleged contravention i.e. Financial Year 2011-12. He has joined only in the year 2013 i.e. 24th July, 2013, the service certificate copy as appearing at Annexure 3 of the memo of appeal in Competition Appeal (AT) No. 06 of 2022 is reproduced hereinbelow:



- O. Hence, it is very much clear that Mr. Nitish Bajaj was not in the employment of CEAT and hence, CCI cannot impose a penalty under Section 27 r/w Section 48(1) of the Act as the Appellant was not in any way associated in the decision-making process leading to alleged violation of the provisions of the Act.

- P. We are also very much clear on one issue that mere forwarding of a letter by MCA does not amount to reference under Section 19(1)(b) of the Act.
- Q. The CCI (General) Regulations, 2009 prescribes contents of reference, signing of reference, procedure of filing of reference etc vide Regulations 10 (1), 10(2), 11(2), 12 & 23. Non-compliance of these regulations can make even a reference non-est in law and on a non-existing matter, no jurisdiction can be exercised. The CCI has been provided with an enough power under Section 19 of the Act to make enquiry and vide Section 26 procedure for enquiry has been prescribed. However, whenever a reference is received, CCI may like to consider the compliance of CCI General Regulations, 2019 also apart from the provisions of the Act.
- R. Since cartel has been found for the year 2011-12 and the same is surrounded by arithmetical errors may be leading to wrong conclusions apart from other flaws as depicted above. Accordingly, we are of the opinion that matter can be remitted back to the CCI to re-examine the calculation of arithmetical errors & also consider reviewing the penalty to save domestic industry in view of the fact that domestic tyre industry is under lot of pressure from global tyre manufacturing companies where lot of unutilized capacity is available, the

promotion of domestic industry is also to be kept in mind by CCI, as the object of the Competition Act, 2002 requires to keep in view the economic development of the country also. If violations are done by domestic industries, no doubt they should be penalized and be given a chance of reformatory instead of virtually putting the organization on weak health. One of the Appellant – Birla Tyre is already under Corporate Insolvency Resolution Process.

- S. Hence, we are constrained to remand back the cases for review to CCI after hearing the parties. Accordingly, we are disposing of all the 14 appeals as stated above.

Pending application, if any, stands disposed of.

No order as to costs.

(Justice Rakesh Kumar)
Member(Judicial)

(Dr. Ashok Kumar Mishra)
Member(Technical)

Raushan