

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

(Under Section 37(1) of the Competition Act, 2010)

**IN THE MATTER OF ALLEGED COLLUSIVE ACTIVITIES IN THE FLAT STEEL
SECTOR**

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1 BACKGROUND

1. The Competition Commission of Pakistan ('the Commission') on 27th May 2021 initiated an enquiry under Section 37(1) of the Act into alleged contraventions of Section 3 and/or 4 of the Competition Act, 2010 ('the Act') by flat steel manufacturers. An enquiry committee comprising of the following officers was constituted to conduct the aforesaid enquiry:
 - a. Maliha Quddus, Joint Director (Cartels & Trade Abuse)
 - b. Fahd Gauhar, Joint Director (Cartels & Trade Abuse)
 - c. Furqan Khattak, Management Executive (Cartels & Trade Abuse)
 - d. Samiullah Jan Afridi, Management Executive (Research)
2. Due to the transfers and deputation of certain enquiry officers, the enquiry committee was reconstituted by the Commission on 27th November 2023 to include the following officers:
 - a. Maliha Quddus, Sr. Joint Director (Cartels & Trade Abuse)
 - b. Awais Zahid, Management Executive (Cartels & Trade Abuse) ('the enquiry committee'). (Annex 'A1')
3. The enquiry was initiated on the basis of a number of factors detailed below:
 - a. On 02nd February 2021 Industries & Production Division forwarded a letter from Pakistan Agriculture Machinery and Implements Manufacturers Association (PAMIMA). It was alleged that prices of flat steel products have been increasing continuously and its supply reduced. It was noted that the increase in steel prices was despite the fact that steel prices have neither increased in the international market nor has the Government imposed any new duties. The complaint accused the 'Karachi Steel Mafia' that was behind this price rise which had resulted in increase in agricultural machinery prices (Annex 'A2').
 - b. On 18th March 2021 another concern was received vide the Commission's complaint portal from an individual alleging that the three local flat steel manufacturers namely: International Steels Limited. ('ISL'), Aisha Steel Mills Limited ('ASML') and Hadeed Pakistan Limited ('HPL') have increased the prices of flat steel products abnormally. Prices were also increased simultaneously and with the same percentage increase. Moreover, the undertakings have also colluded with each other to create an artificial shortage in the market. (Annex 'A3')



- c. Market structure: Flat steel products comprise of Cold Rolled Coil ('CRC'), Hot Dipped Galvanized Coil ('GC') and Colour Coated Coils ('CC'). The primary raw material for manufacture of these products is Hot Rolled Coil ('HRC') which is being wholly imported¹. GC are being manufactured locally by only ISL and ASML whereas, CC is only being manufactured by ISL. Commercial imports are allowed however, they were impacted by imposition of Anti-dumping duties ('ADD') on CRC originating from China and Ukraine in the range of 13.17-19.04% (w.e.f from 13.01.2016²). Similarly ADD of 13.94% have also been imposed on CRC originating from Canada and Russia (w.e.f. 20.09.2019³). NTC had, in December 2020, initiated another anti-dumping investigation on CRC originating from European Union, Korea, Chinese Taipei and Vietnam⁴. The flat steel market in Pakistan is highly concentrated with only 3 major producers and restriction on imports. The estimated market size for flat steel products was approximately 617,806 mts⁵ out of which imports accounted for approximately 31% of total supply whereas, the share of ISL and ASML was 39% and 20% respectively and HPL accounting for a 10% share.
- d. Simultaneous price changes: Analysis of price lists of the 03 abovementioned undertakings from the period 12th May 2020 to 22nd March, 2021 included 16 instances whereby all three companies increase their prices on same dates for different grades of CRC and the exact amount of increases was also similar. Table 1 Annex A-4 shows the price trends for CRC of thickness 2.00mm. As can be seen during the period under review all three companies increased prices of CRC (thickness 2.00) by Rs. 51,000 or by 48 percent. The increase in steel prices follows a trend i.e. ASML is priced the highest, followed by HPL whose prices are Rs. 25 lower than the former. Similarly prices of ISL are Rs. 25 lower than HPL. E.g.

¹ Pakistan Steel Mills was the only local entity capable of producing HRC but it has been non-operational since 2015.

² <https://ntc.gov.pk/wp-content/uploads/2017/02/Non-Confidential-Report-Final-Determin.-CRC-dated-January-13-2017-1-35.pdf>

³ <https://ntc.gov.pk/wp-content/uploads/2020/03/ADC-55-FD-Report-Non-Confidential-final-dated-March-16-2020.pdf>

⁴ As per National Tariff Commission <https://www.ntc.gov.pk/antidumping-investigation-reports/>

⁵ 2020-21.

ASML increases its price to 123,050 then HPL increases at 123,025 and ISL at 123,000, this trend can be seen on every date for almost 90% of products.

4. Based on the above factors, the Cartels & Trade Abuse department concluded that although there has been a rise in raw material prices⁶, the pattern of price increases warrants further investigation especially considering structure of the market (comprising of only 3 players), imposition of AD duties on CRC which has restricted imports of the same. A working paper detailing these findings was placed before the Commission which after examining the matter decided to initiate an enquiry u/s 37 (1) of the Act.
5. Subsequent to initiation of the enquiry, four other informal complaints regarding the flat steel sector were also received through the Pakistan Citizen's Portal ('PCP') primarily constituting small scale businesses that use flat steel products as raw materials. These are summarized as follows:
 - a. 21.05.2021: Small business owner involved in production of steel wardrobes and trunks, based in Vehari. In the last six months alone, both ISL and ASML had increased their rates which made the industry unattractive for the dealers, distributors and by extension the end users. Six months ago the rate was Rs. 152 which has been increased to Rs. 225 without any objective justification.
 - b. 12.07.2021: An individual based in Karachi alleging existence of a mafia involved in manipulating the steel market of Pakistan. It was alleged that ISL has been involved creating an artificial gap between the supply and demand due to its monopoly position in the market thereby creating a shortage and thus increasing prices. From December, 2020 to May, 2021, prices increased from Rs. 130 per kg to Rs. 250 per kg and there was a continuous upward trend. ISL increased its rate by Rs. 5000-6000 per MT in a span of weeks and importers followed the same trend. It was further alleged that that ISL usually increases rates on Monday at the beginning of the week and as soon as the rate is out, retailers from Aata Mill and Moin Market, Karachi increase rates immediately, followed by importers.

⁶ International prices for the main raw material HRC appear to be an increasing trend. As per information from ASML's financial statements the prices of HRC f.o.b China are as follows: July 2020 USD 450 /ton; September 2020 USD 515/ton, December 2020 USD 700 / ton, March 2021 USD 750/ton. Based on this data, it appears that there is a rise of 67% between July 2020 and March 2021.



- c. 03.08.2021: From an individual based in Lahore. He expressed serious concern over rising steel prices. He submitted that when small businesses confirm their orders at e.g. Rs. 195/kg, and they go to the market the very next day, the prices stand increased to Rs. 210/kg. He alleged that there was a mafia which was destroying the industry for its own sake and further noted that for instance, if the price in China is increased by Rs. 1 then the local giants increase the price by Rs. 6 or more.
- d. 20.08.2021: from an individual based in Daska, Punjab, involved in production of small agricultural machinery. He submitted that Daska is home to a small industry involved in manufacturing agricultural machinery and implements. As of last year (2020), the steel sheet that was available for Rs. 120 per kg was selling for Rs. 240 per kg in August, 2021, a trend which was resulting in closure of industry. (Annex A-5)
6. In addition, a letter was also received from Karachi Iron and Steel Merchants Association ('KISMA') dated 02.09.2021 titled "Unusual & Continuous Price Hike, Monopolization & Cartel created in steel industry for cold rolled, galvanized and color coated steel coils/sheets". The letter noted that the steel processors, namely ISL, ASML and HPL had monopolized the market and created a cartel which has been increasing the prices of CRC, GC and CC coils and sheets since September, 2020. The letter also informed that flat steel products have also been subject to ADD since 2016 (on applications filed by the domestic industry) which have made them costly to import. They were of the view that protection afforded to the local industry due of levy of AD duties on imports from multiple sources has resulted in a monopoly of three producers. (Annex A-6).
7. Analysis of price trends: Price lists of ISL, ASL and AHSM for various products were analyzed from July 2020 to December 2023 and the enquiry committee has observed a pattern of simultaneous price increases by all three companies with price lists issued on the same dates with identical amount of increase. (Refer to subsequent paragraphs of this enquiry for details).
8. **Market Visit:** There are two major markets for flat-steel products in Pakistan, one in Lahore and the other is in Old Haji Camp, Moin market, Aata Mill, Karachi. To verify the information and allegations levelled through informal complaints, the enquiry committee



conducted a market survey at multiple localities in Lahore including Brandreth Road and Steel Sheet Market, Landa Bazar on 3rd November, 2022. Five large dealers/wholesalers were interviewed. Questions regarding supply chain, price changes and general market information were asked. The main findings of the visit are summarized as follows:

- a. ISL was the first entrant in the local flat-steel market and; therefore, has the largest market share. ASML is ranked as second in terms of market share, whereas HPL is comparatively a new company which started its operations almost two years ago, having a very small market share. ISL being the biggest player sets prices; ASML and HPL follow the lead through mutual consent. As per one dealer, prices were expected to go down as the owners of these three companies had recently conducted a meeting and discussed a price reduction. The enquiry committee noted that the survey took place on 03.11.2022 and as predicted by the dealers, prices were reduced by all three companies on 10.11.2022 by Rs. 12,000 per MT. Almost all dealers/wholesalers approached, informed that the companies mutually agreed on prices.
 - b. Incentives of all three companies towards dealers and distributors are different and margins vary as per individual purchase quantities.
 - c. It was informed that imported products help traders earn big margins as compared to buying from ISL, ASML and HPL; however, with the increase in regulatory duties domestic traders are compelled to buy from the local producers.
9. **Enter & Search under Section 34 of the Act:** Based on these aforementioned factors namely: fresh concerns received, price trends revealing simultaneous price changes over a period of three years and findings of market visit, the enquiry committee submitted another working paper to the Commission for authorization of an enter and search under Section 34 of the Act on the premises of ISL and ASML since they were the two largest flat steel producers in order to gather evidence of collusion between the undertakings. The Commission authorized the said inspection on 20th May, 2024 which was conducted on 12th June 2024 by duly authorized officers of the Commission. A number of documents and computer stored information was impounded from the premises of ISL and ASML. (Authorizations placed at Annex A-7)



10. Forensic analysis: The handheld devices impounded from premises of ASML were given for forensic analysis to the Federal Investigative Agency ('FIA') on and the forensic report was received on 01st October 2024. (Annex A-8).
11. Correspondence with the undertakings: Letters were written to the undertakings on 19th August 2024 requiring them to furnish the following information:
- a. Reasons for parallel movement in prices;
 - b. Impact of international price movement of HRC on CRC (specifically the major cost components of CRC production);
 - c. Sales and production figures as well as market share from 2021 to date;
 - d. Rated capacity and capacity utilization;
 - e. Major suppliers of HRC and whether there has been any joint procurement between the local producers; (Letters placed at Annex A-9)

Responses of each undertaking are summarized herein below:

12. ISL submitted a response dated 27th August 2024 and a meeting with the ISL along with its legal counsel was also held with the enquiry committee on the same date. ISL in response to price parallelism, between the local producers of flat steel products, stated that:
- "Price movements in the steel market are largely driven by market forces and the competitive environment. In a commodity market like flat steel, where products are similar and price sensitivity is high, competitive pricing is a natural approach to maintain market share. The flat steel market is heavily influenced by imports, so we aim to offer prices that can compete with these imported products. This might create a perception of price parallelism among domestic manufacturers, but it's important to note that no intentional price parallelism exists.*

Furthermore, the market in general is highly transparent and operates with very small margins, meaning that prices are often determined by international market trends, leaving little room for significant differences.....

Additionally, factors such as fluctuations in raw material costs, energy prices, and exchange rates also influence pricing decisions, further reinforcing that any observed price parallelism is more a result of these external factors than any coordinated effort". (Annex A-10).



13. ASML response: ASML vide its response dated 26th August 2024 w.r.t price parallelism explained that *“CRC and GI prices are closely linked with HRC prices as the raw material for both these products is HRC. HRC is not produced locally (after the closure of Pakistan Steel Mills) and is imported from different countries. Being a commodity, HRC price is reported internationally on daily basis. So is the case for CRC and GI. When Pakistan Steel Mills was operational, the price list was issued routinely giving price of various items including HRC, CRC and GI. In the same tradition, Aisha Steel Mills and International Steel Mills issue reference price list of items produced. As the major cost component in CRC and GI production is HRC, the reference prices are very similar. The actual selling price can be different depending on quantity, specifications and delivery terms.”* (Annex A-11).
14. HPL vide response dated 16th September 2024 categorically denied any participation in price manipulation or collusive practices. HPL also noted that post-Covid the flat steel industry faced a number of issues including depreciation of PKR vs USD, incentive package for FATA/PATA which has adversely affected the sector which now has to compete with cheap/subsidized Chinese imports. (Annex A-12).
15. The information obtained from enter & search and the responses received from the undertakings form an integral part of the enquiry report.

2 ISSUES

16. Based on the ToRs assigned to it by the Commission, following issues have been identified for further deliberation by the enquiry committee:
- What is the relevant market in terms of Section 2(1)(k) of the Act?
 - Identification of undertakings in terms of Section 2(1)(q) of the Act;
 - Whether there is any *prima facie* violation of Section 4 of the Act by the undertakings in the relevant market.
 - Whether there is any *prima facie* violation of Section 3 of the Act by the undertaking(s) in the relevant market.

3 WHAT IS THE RELEVANT MARKET IN TERMS OF SECTION 2(1)(K) OF THE ACT?

17. For the purpose of defining the relevant market under this enquiry, we refer to the relevant market as defined under Section 2(1)(k) of the Act.

“Relevant market means the market which shall be determined by the Commission with reference to a product market and a geographic market and a product market comprises of all those products or services which are regarded as interchangeable or substitutable by the consumers by reason of the products’ characteristics, prices and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring geographic areas because, in particular, the conditions of the Competition are appreciably different in those areas;”

18. As a first step in determining the relevant market we look at the major features and intended uses of flat steel products. Flat-steel products include Cold Rolled Coil (‘CRC’), Hot Dipped Galvanized Coil (‘GC’), and Color Coated Coils (CC). The primary raw material for production of flat-steel products is Hot Rolled Coil (‘HRC’) which is converted to CRC, GC, and CC of various thickness and sizes. The domestic industry does not have the capability to produce HRC and therefore, relies on imports. For production of GC, zinc and its various alloys are also imported⁷. CRC, GC and CC are distinct products in terms of physical properties as well as intended usage and price which can be summarized as follows:

19. CRC:

- a. Physical properties: Annealed, skin passed, Oiled / unoiled, Bright or dull finish, tension levelled. Available in thicknesses ranging from 0.25 to 2 mm.
- b. Standards: ASTM A1008, JIS G3141 and equivalent standards.

⁷ As per the Annual Report of ASML 2020 <https://www.asml.com/en/investors/annual-report/2020>

- c. Applications: Automotive components (two & four wheelers, buses), tubes and sections, domestic appliances, electrical goods, oil filters, hardware, packaging drums, furniture and fixtures, gates, etc.
- d. Prices: Rs.256,450 to Rs.256,500- /mt as of December 2023 (for 1.00mm thickness)

20. GC:

- a. Physical properties: Galvanization is the process of applying a protective zinc coating to steel, to prevent rust and corrosion.
- b. Standards: ASTM A653, JIS G3302 and equivalent standards
- c. Applications: HVACR and ducting, industrial and agricultural warehouses and sheds, domestic appliances, silos, door frames, roofing sheets, trunks and storage boxes, cable trays, razor wire, etc.
- d. Prices: Rs. 265,800 to Rs.265,850/mt as of December 2023 (for 1.00mm thickness).

21. CC:

- a. Physical properties: A steel coil that is coated with decorative paint on both sides is known as a colour-coated steel coil. Steel coils commonly feature polymer coating in various colours and matte, lustre or decorative natural finish. The colour coating protects it from atmospheric corrosion while giving it more strength and durability⁸.
- b. Standards: ASTM A755, JIS G3312 and equivalent standards.
- c. Applications: Temperature-controlled vehicles, industrial and agricultural warehouses, sheds (roofing and cladding), appliances, furniture and fixtures, false ceilings, trunks, storage boxes, etc.
- d. Prices: Rs.277,500/mt (for 1.00mm thickness).

22. It is noted that all three products have distinct physical properties and therefore, constitute separate products in this respect. Whereas, CRC is a distinct product with different applications, GC and CC have an overlap in some applications. However, in terms of price CC is more expensive than GC with the former being more expensive by Rs. 11,700/mt which is a significant difference especially considering the fact that these constitute raw

⁸ "Colour coated steel coil: Characteristics, types, application and more", <https://blog.tatanexarc.com/da/colour-coated-steel-coil-characteristics-types-application/>.



materials for industrial or other applications. Based on the foregoing it appears that CRC, GC and CC form distinct and separate relevant product markets.

23. The next question is whether imported CRC, GC and CC are substitutable with locally produced products. In terms of product characteristics the answer would be affirmative. In terms of price it appears that imported products are also comparable. We first look at share of imports in the overall market. The total demand for CRC and GC in 2021-22 demand was approximately 900,000 mts which has now shrunk to approximately 617,806 mts in 2022-23⁹. Out of 61,806 mts, 54% (330,717 mts) is GI whereas 46% (287,089 mts) is CRC¹⁰. In terms of share of local production vs imports it is noted that the share of imports is approximately 31% (2022-23) which has increased over the previous year (22% in 2021-22)¹¹ on account of apparent misuse of SRO 1212 & 1213. By way of background these SRO's grant exemptions from Sales Tax and Income Tax for entities operating within FATA & PATA. The industry estimates that this gives importers a price advantage of 18% over the domestic industry¹². Locally produced flat steel is therefore, being substituted for steel imported under this regime and therefore, local and imported flat steel are substitutes and part of the same relevant market.
24. Flat steel products can be further classified into primary grade and secondary grade. Most of the products available in the market are of prime grade however, secondary grade material is also sold. Secondary grade is essentially defective material as a result of disruptions in the production process or other such related issues. On average, 3 to 3.5% material is secondary and is sold in the market at a discount ranging from 2 to 5%¹³. The fact that there is a market for secondary material (albeit the quantity is relatively small as compared to primary grade) it appears to be substitutable and is included in the relevant product market.
25. In terms of relevant geographic market it is noted that flat steel products move freely throughout Pakistan. The main supply source is Karachi from where it is imported and locally produced flat steel products are transported up country. Since this is a bulk product,

⁹ Calculated from sales and production figures submitted by companies. For details please refer to Table 1 below.

¹⁰ Own calculations based on abovementioned data.

¹¹ Enquiry committee's calculations refer to **Table 1** below. Page 48 'Existing Operations and Market Share', ASML Annual Report 2022-23 gives the import shares at 30% and 27% for 2022-23 and 2021-22 respectively.

¹² ISL response dated 27.08.2024.

¹³ Minutes of meeting with CEO, ISL.

the price is ex-factory and logistics costs are borne by the customer. It is also noted that the conditions of competition are homogenous throughout Pakistan and therefore, the relevant geographic market is the territory of Pakistan.

26. Based on the foregoing paragraphs, the relevant market is that of CRC, GC and CC in Pakistan.
27. Spillover: In terms of spillover it is noted that the two major local producers of flat steel products (ISL and ASML) are based in Karachi, imports of these products are also made through KPT and Port Qasim located in Karachi. These products are subsequently transported all over Pakistan to be used in various industries therefore, the effect of any anti-competitive activity will have a spillover effect beyond provincial boundaries.

4 UNDERTAKINGS

28. Section 2(1)(q) of the Act defines undertakings as:

“‘undertaking’ means any natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision or control of services and shall include an association or undertakings”

In the instant matter the following have been defined as undertakings as per Section 2(1)(q) of the Act.

29. **ISL:** International Steels Limited is considered as a pioneer for manufacturing flat-steel products in Pakistan. It was founded in 2007 and commenced its operations in 2010 as a public limited company. The main products offered by ISL include CRC, GC, and CC. It is the only company manufacturing CC coils locally. The annual production capacity of ISL is about 1 million mts per annum with production facilities spread over an area of 47 acres in Karachi. In 2022-23 ISL made sales of Rs. 76.75 billion and had a GP and NP ratio of 13.82% and 4.58% respectively. It has a network of dealers scattered throughout Pakistan and also exports to 30 countries globally¹⁴. ISL is a company involved in production and sale of CRC, GC and CC, it is therefore, an undertaking in terms of Section 2(1) (q) of the Act.

¹⁴ ISL Annual report 2023.



30. **ASML:** Aisha Steel Mills Limited is a public limited company which was incorporated in 2005 and commenced its operations in 2012. It is a part of Arif Habib Group and is included in one of the top flat-steel products manufacturers in Pakistan. ASML specializes in manufacturing and selling CRC and GC. The company has an annual production capacity of 700,000 mts per annum and its sales in 2022-23 were Rs. 31.1 billion with a GP ratio of 6.47% and a NP ratio of (10.34%). It's manufacturing plant and head office is based in Karachi and has a network of dealers spread throughout Pakistan. ASML also exports its products to various countries¹⁵. ASML is a company involved in production and sale of CRC and GC and is therefore, an undertaking in terms of Section 2(1) (q) of the Act.
31. **HPL:** Hadeed Pakistan Private Limited is a manufacturer of CRC in Pakistan with its head office located in Lahore and manufacturing plant in Sheikhpura. Its manufacturing capacity is 300,000 mt per annum and in 2022-23 its total sales were valued at Rs. 13,708, 342 million. In the same year it had a GP ratio of 12% and NP ratio of 2%. ¹⁶. As per market visit, HPL's CRC is primarily sold in Punjab and north side of the country. Since, HPL is a company involved in production and sale of CRC it is therefore, an undertaking in terms of Section 2(1) (q) of the Act. (A summary of three years financial information of all companies is placed at Annex A-13).

5 ANALYSIS I: Whether there is a prima facie violation of Section 4 of the Act by the undertakings in the relevant market.

32. In addition to concerns received by various stakeholders as discussed in detail above, the enquiry committee noted certain factors that pointed towards possibility of *prima facie* collusion in the relevant market these factors included: a simultaneous price pattern spanning from July 2020 to December 2023 and a market structure with fewer players and high barriers to entry due to the capital intensive nature of CRC/GC production. These are described in further detail in the paragraphs below.

5.1 Simultaneous price changes

33. Price lists of ISL, ASML and HPL for various products were analyzed from July 2020 to December 2023 and the enquiry committee has observed a pattern of simultaneous price

¹⁵ ASML Annual Report 2023.

¹⁶ HPL response dated 16th September 2024.



increases by all three companies with price lists issued on the same dates with identical amount of increase. (Refer to Annex 'B1' for details). Following observations are made with regards to the price change:

- a. Prices have been changed 55 times by ISL, ASML and HPL between July, 2020 and December, 2023. In all but one instance, all three companies increased / decreased their prices on the exact same dates.
- b. Overall price increase for CRC from July 2020 to Dec 2023 was Rs. 146,000 per MT by ISL, Rs. 146,000 per MT by HPL and Rs. 145,900 per MT by ASML. Overall percentage increase in price by all three companies was on average 111%¹⁷.
- c. The quantum of the price change by all three companies on each occasion is exactly the same.
- d. It appears that not only price increases but even decreases are coordinated. For example, on 02.12.2021 all three companies decreased prices by Rs. 8,000 per mt, on 17.08.2022 by Rs. 12,000 per mt, on 10.11.2022 by Rs. 12,000 per mt and on 10.07.2023 all three companies reduced prices by Rs. 25,000 per mt. Similarly, on 02.10.2023, two companies reduced prices by Rs. 8,000 per mt and one company decreased prices by Rs. 8,100 per mt. Moreover, on 11.10.2023, all of the three companies decreased the prices by Rs. 17,000.
- e. The price differential between the companies is maintained. ASML is priced the highest, followed by HPL whose prices are Rs. 25 lower than the former. Similarly, prices of ISL are Rs. 25 lower than HPL e.g. if ASML increases its price to Rs. 123,050, HPL increases its prices to Rs. 123,025 and ISL to Rs. 123,000. This trend can be seen for most of the products with various thickness in the CRC range.
- f. This price trend is repeated for Galvanized steel coils/sheets which are being produced by ISL and ASML only. Prices were increased / decreased by both companies on the exact same dates. The total increase in price from July 2020 to December 2023 is almost same for both undertakings with a difference of Rs. 100 i.e. Rs. 152,000 per MT by ISL and Rs. 151,900 per MT by ASML, which in percentage terms is 115%¹⁸ for both

¹⁷ For 0.25mm thickness CRC. Price analysis is also carried out for other thicknesses for details refer to Annex B-1).

¹⁸ For 0.25mm thickness CRC. Price analysis is also carried out for other thicknesses for details refer to Annex B-1).

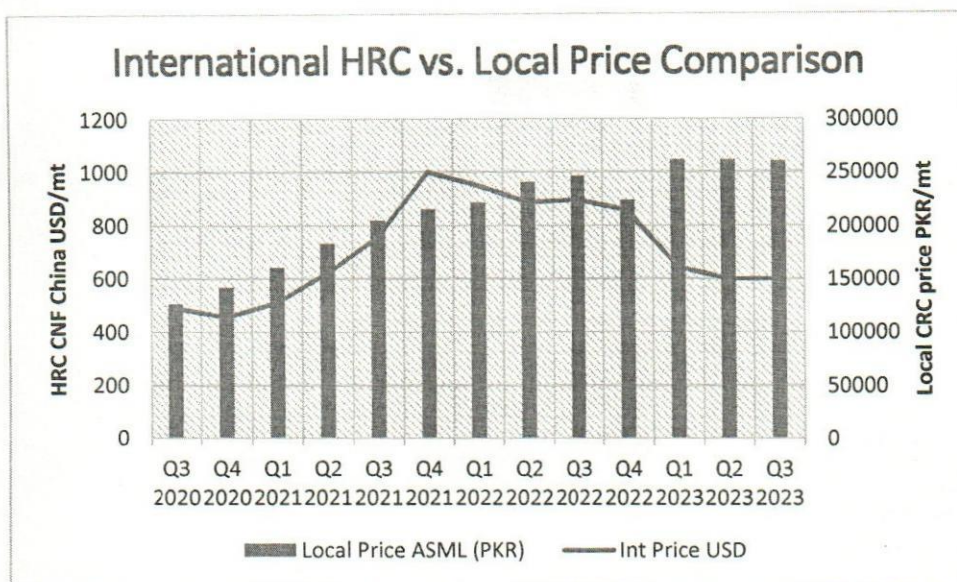


ISL and ASML. The quantum of price increase / decrease on all but one occasion (02.10.2023) is the same.

34. Impounded price lists and computer stored information from the premises of ISL and ASML confirm this trend. (Annex B-1 for price lists and tables of price changes). The companies have informed the enquiry committee, that prices of CRC and GI *“are closely linked with HRC prices as the raw material for both these products is HRC. HRC is not produced locally (after the closure of Pakistan Steel Mills) and is imported from different countries. Being a commodity, HRC price is reported internationally on a daily basis. So is the case for CRC and GI. When Pakistan Steel Mills was operational, the price list was issued routinely giving price of various items including HRC, CRC and GI. In the same tradition, Aisha Steel Mills and International Steel Mills issue reference price list of items produced. As the major cost component in CRC and GI production is HRC, the reference prices are very similar. The actual selling price can be different depending on quantity, specifications and delivery terms”*¹⁹.
35. Whereas, it is evident that imported HRC is a major cost component for the production of CRC and GI and therefore, there is a positive correlation between international HRC prices and local prices. As shown in the figure below international HRC prices started a rising trend post-covid (Q2 2021) and reached a peak of USD 1000 per/mt in (Q4 2021) before declining. It is also noted that local prices were also impacted after 2022 due to depreciation of PKR against USD. Therefore, these factors alongwith the resultant inflationary impact caused an upward movement in CRC and GI prices in 2022 to 2023. However,

¹⁹ Para a of Response submitted by ASML.





Source: HRC price data impounded from premises of ASML.

Evidence gathered by the enquiry committee however, points out to the fact that there was indeed coordination on price changes between ASML and ISL. It is also important to note that admittedly both the companies have different cost structures and purchase HRC at prices not identical to each other. ISL has noted that since it purchases in a larger quantity it has a freight advantage. Secondly profitability ratios of both companies vary with ASML making a net loss of 10.34% in 2022-2023 whereas ISL was earning a net profit of 4.58%²⁰ in the same period.

5.2 Market structure

36. The capital intensive nature of the steel sector makes has limited the number of local producers in the sector. Flat steel products are supplied in the Pakistani market by local producers and importers. There are 4 local producers of CRC in the market with estimated shares in terms of sales volume provided in Table 1 below. As far as GC is concerned ISL and ASML are the only local producers and CC are produced only by ISL. It is pertinent to mention that the share of imports has increased in the market from previous level of 22% in 2021-22 to 31% currently which the companies attribute to misuse of concessions granted to FATA/PATA. Previously in the years 2019-20 to 2021-22 the share of total imports in the sector had dipped on account of various anti-dumping duties in place. (Refer to Annex B-2 for details of market shares). A high concentration in the sector is an enabling

²⁰ Respective financial statements of ASML and ISL.

factor in reaching collusive outcomes as it is easier for a few companies to reach a consensus.

Table 1: Total Sales (CRC & GC)					
FY 2022-23 (MT)					
ISL	ASML	HPL	AHN	Imports	Total
				189,459	617,806
				31%	

Source: ASML, ISL sales figures submitted by companies. HPL Production figures submitted by company. AHN data estimated from NTC report, Imports data estimated from impounded material from ASML premises.

5.3 Evidence Analysis

37. The enquiry committee impounded evidence from the premises of ISL and ASML which shows that the two companies were in regular contact with each other to discuss and share future pricing decisions and other sensitive information such as procurement contracts and rates for the primary raw material i.e. HRC. In determining whether there is a *prima facie* violation of Section 4 of the Act it is appropriate to define what constitutes a prohibited activity in terms of the statute:

“Prohibited agreements — (1) No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting or reducing competition within the relevant market unless exempted under section 5.

(2) Such agreements include but are not limited to-

(a) fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods or the provision of any service;

(b) dividing or sharing of markets for the goods or services, whether by territories, by volume of sales or purchases, by type of goods or services sold or by any other means;

(c) fixing or setting the quantity of production, distribution or sale with regard to any goods or the manner or means of providing any services.....”

38. An agreement is further described under Section 2(b) of the Act as follows:

“agreement” includes any arrangement, understanding or practice, whether or not it is in writing or intended to be legally enforceable;”

The paragraphs below detail the evidence of an arrangement between ASML and ISL.

39. The primary source of communication evidence is the handheld device of Dr. Munir Ahmed, CEO ASML which was sent for forensic examination to FIA. Some of the communication is between ASML and ISL whereas other communication is between officers of ASML alluding to discussions with ISL. The key persons involved in these conversations are identified as follows.

Table Key persons				
Sr.#	Number	Name	Position	Organization
1.			CEO	ASML
2.			Chairman (BoD)	ASML
3.			Non-Executive Director	ASML
4.			Director Marketing & Sales	ASML
5.			Personal Assistant to Arif Habib	ASML or Arif Habib Group
6.				ASML
7.			CEO	ISL
8.			CEO	ISL
9.			COO	ISL
10.				ISL
11.			CEO	HPL
12.			Representative	Cargill
13.			Trader	Marubeni representing Nippon Steel Corporation
14.			Representative	Mitsubishi

40. Evidence impounded from the handheld device of Dr. Munir Ahmed, CEO ASML shows that he is in regular contact with Mr. Yousuf Mirza, CEO ISL and discussions are made inter alia with respect to discounts and prices. The record available shows that these discussions are via telephone calls, texts and WhatsApp. It is further observed that in some instances after communication between the companies, price changes follow. These instances are reproduced below and start from November 2020. (The chat record can be found from FIA’s forensic report placed at Annex A-8).



41. By way of background, it is noted that there are two main sales channels for flat steel products: (a) B2B supply of material to large industrial buyers including auto companies and vendors, manufacturers of consumer durables. Sales to this channel are made on order. The price depends on the quantity purchased and product specifications. (b) Commercial segment where sales are made through dealers. These sales are made from inventory. In both these cases the price lists issued act as a reference²¹.

5.3.1 Discussions on Price

11/9/2020

Calendar	11/9/2020 11:00:00 AM(UTC+5) [Start Date]	faisal.muhammad@aisha... dr.munir@aishasteel.co...	Meeting with Mr. Yusuf Mirza, CEO-ISL
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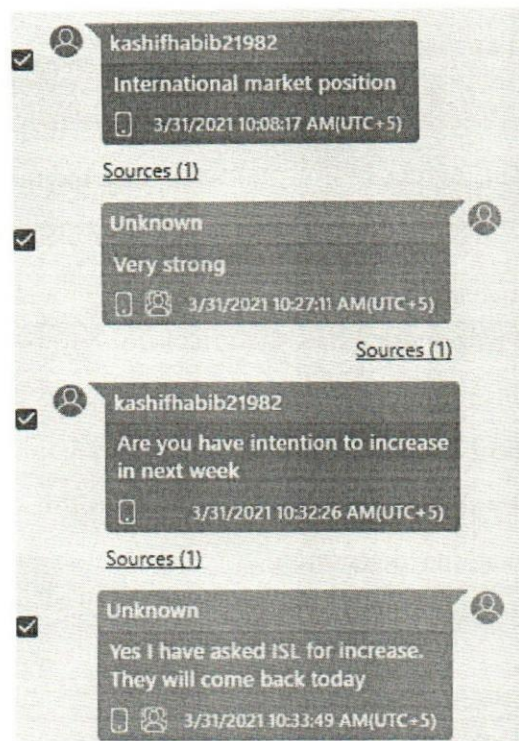
42. An entry in the calendar of CEO ASML marks a meeting with the CEO ISL and it is observed that on the next day i.e. 11/10/2020 both companies increase prices of CRC and GC by Rs.3000.

3/31/2021

43. Director ASML questions CEO ASML through Whatsapp regarding a price increase to be made in the next week since the international market is strong meaning prices are going up internationally. In response CEO ASML notes that he has asked ISL for an increase to which they are expected to respond that day. Price lists show that both ASML and ISL increase prices the next week i.e. 4/5/2021 by Rs.3000.

²¹ Minutes of meeting with ISL.



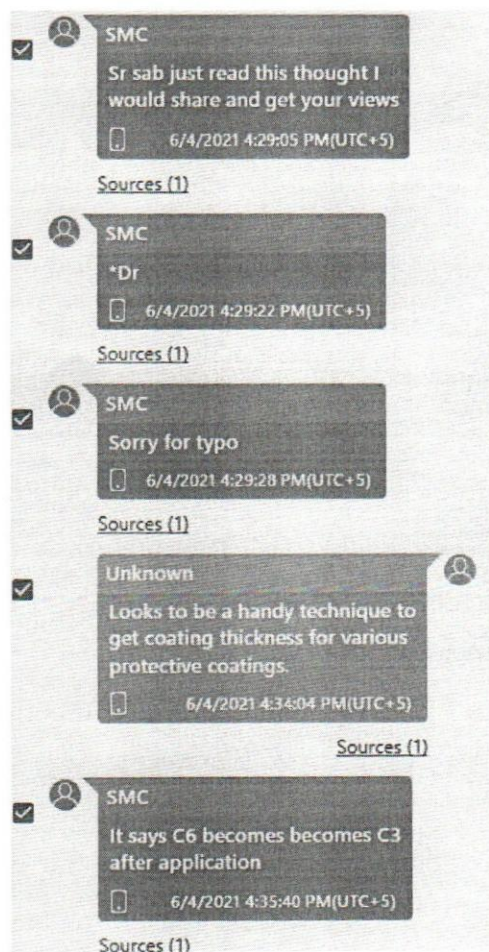


6/4/2021

44. This conversation takes place between CEO ASML and COO ISL regarding prices of Galvanized coils (referred to here as GI). For reference purposes GI coils come in various sizes ranging from 0.25mm to 2mm depending on the amount of zinc coating with there being an inverse relationship between price and thickness i.e. the thicker sizes are cheaper. In the following conversation COO ISL asks CEO ASML regarding what appears to be a production technique for zinc coating. The CEO ASML then talks about prices and states: “our recommendation is to increase 0.25 to 0.5 by Rs.5000 (addition two rupees with the three rupees increase)”. To which COO ISL replies “ok” and further states: “My recommendation is not to touch above 0.4 as 5 and 6²² is very sensitive to price as mainly rural Pakistan size” to which CEO ASML replies “Agreed”.
45. CEO ASML recommends that the prices of Galvanized coils ranging from thickness of 0.25mm to 0.5mm should be increased by Rs.5000. He mentions in brackets (two rupees with the three rupees increase) which could mean that there has already been an agreement to increase prices by Rs.3000 but he wants the price of thickness range to increase by a

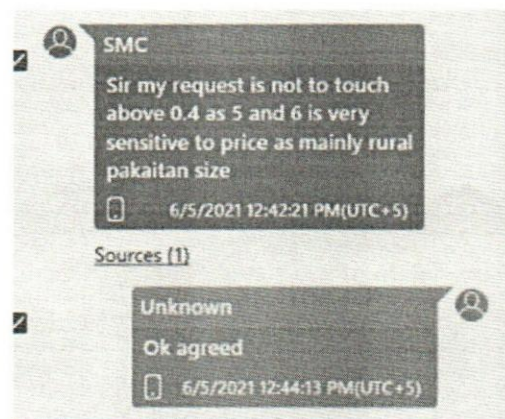
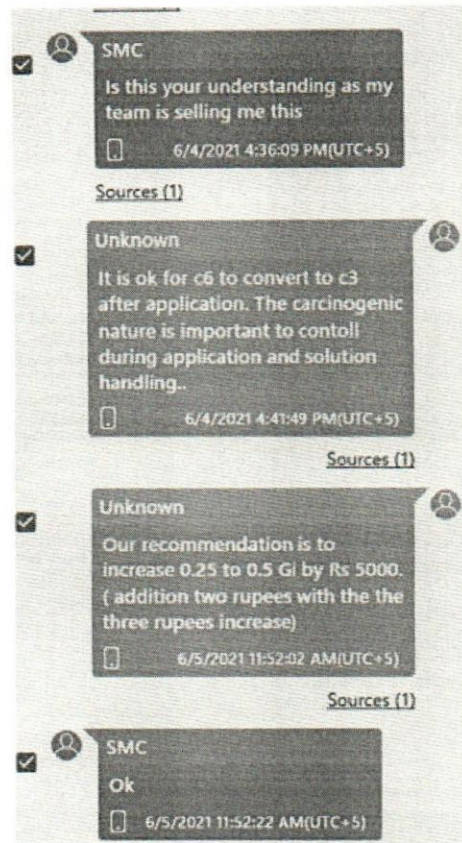
²² COO ISL is referring to thicknesses of 0.5 and 0.6.

further Rs.2000. COO ISL agrees but recommends that the price of thickness ranges 0.5 and above should not be increased by as much since they are price sensitive. CEO ASML types agreed to this suggestion. The next day i.e. 7th June 2021 both companies raise prices of Galvanized coils and as per price lists the price of 0.2 to 0.4 mm is raised by Rs.5000 and thicknesses above this range only see a Rs.3000 increase in price (Refer to Annex B1 for price table). If we observe price trends of the two companies, for GC, the prices of all the thicknesses change by the same amount however, on this date the price increase was different. This shows that the discussion on prices between the two companies were implemented. (Refer to Annex C1 for calculation).



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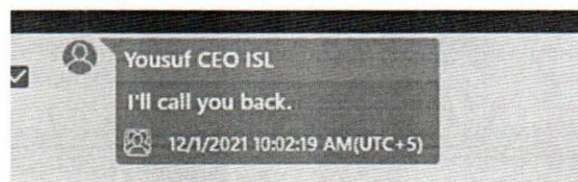


11/13/2021

45. CEO ASML sends a message to an ex-employee of ASML who it appears is now working with ISL. The message mentions a meeting held between CEO ASML and CEO ISL on this particular date. Although we do not know what transpired in the meeting this instance is just an example of the regular contact between the two companies at the highest levels.



12/1/2021



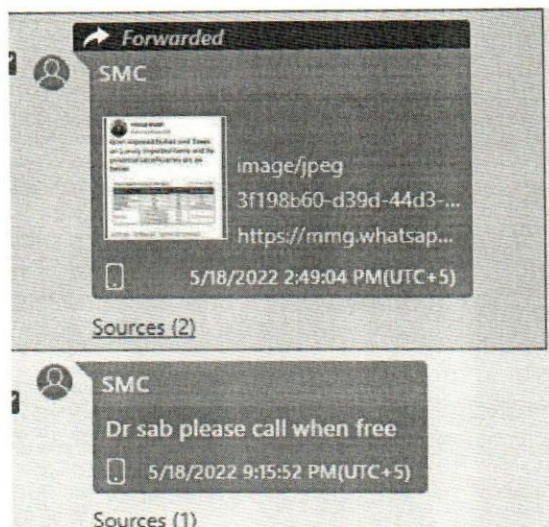
46. CEO ISL messages CEO ASML telling the latter that he will return his call: "I'll call you back" and it appears that the two had some sort of contact on this date. The next day, i.e. 1/2/2/2021, both companies decreased prices of CRC and GC by Rs. 8000.

5/18/2022

47. COO ISL shares a tweet with CEO ASML regarding enhancement of Regulatory Duty on CRC products (among other items) from the existing 5% to 10% with ISL and ASML listed as potential beneficiaries. He then sends a message asking CEO ASML to call him. The enquiry committee observes that the very next day i.e. 5/19/2022 prices of CRC and GC are raised by Rs. 5000 by both ISL and ASML.

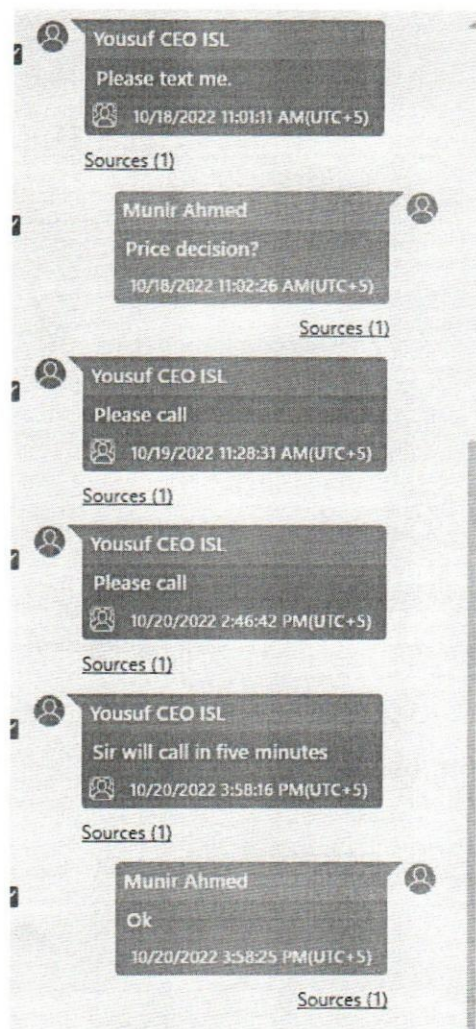
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10-20th October 2022

48. This is a conversation thread between the two CEOs where CEO ASML texts: “price decision?” to which CEO ISL responds the next day: “Please call”. Subsequently the next day i.e. 10/20/2022, the respective price lists of the companies show a downward revision of prices by Rs.9000 per ton.

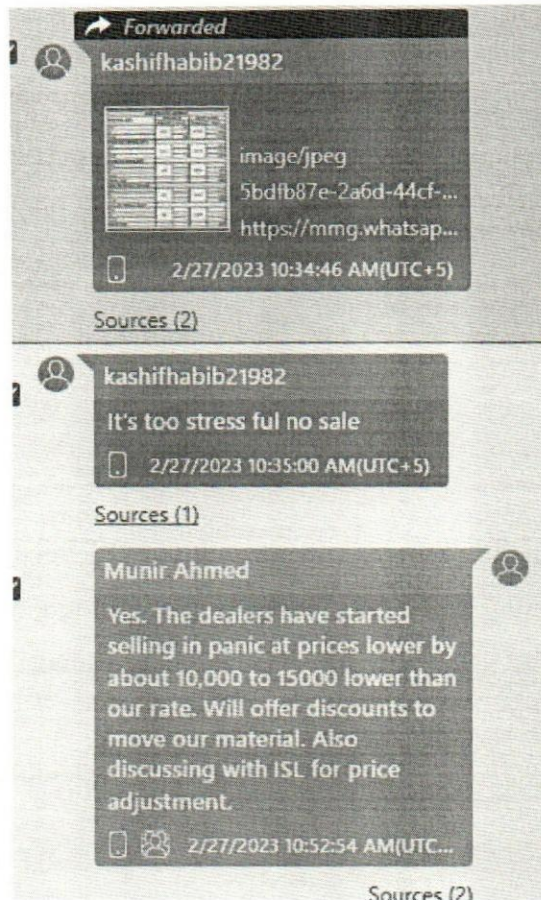


2/27/2023

49. Director ASML after receiving a summary of sales to date notes that sales are slow to which CEO ASML and the latter explains that the dealers are selling at discounts from the list prices and that he is in discussion with ISL for a **'price adjustment'**. By way of background, it is noted that CRC and GC are sold according to list prices issued by the companies. Dealers are offered an average commission of 1.5% of basic price exclusive of sales tax. When sales are sluggish dealers can sell at a discount from the list price to move the product. ISL and ASML have recently adopted a practice of 'back door selling prices' whereby they do not reduce their list prices but offer the product on a discount of 5-10% in the market. In the instant matter we see that the CEO ASML is in touch with ISL to coordinate a strategy on discounts and prices.

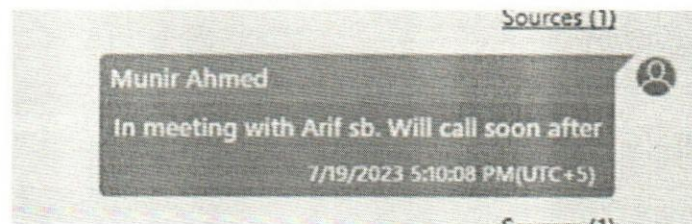
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ASML



7/19/2023

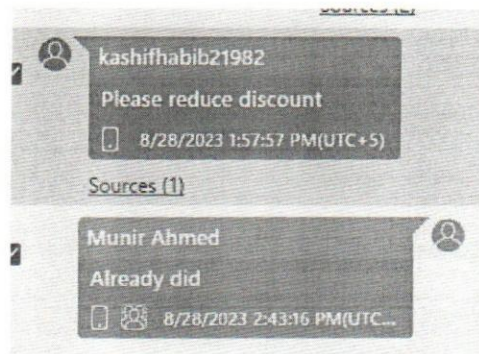
50. The interaction between the two companies continues in July 2023 regarding discount fixation, reflecting collusive and coordinated behavior. Message from Munir Ahmed (CEO, ASML) to Yousuf Mirza (CEO, ISL).



8/28/2023

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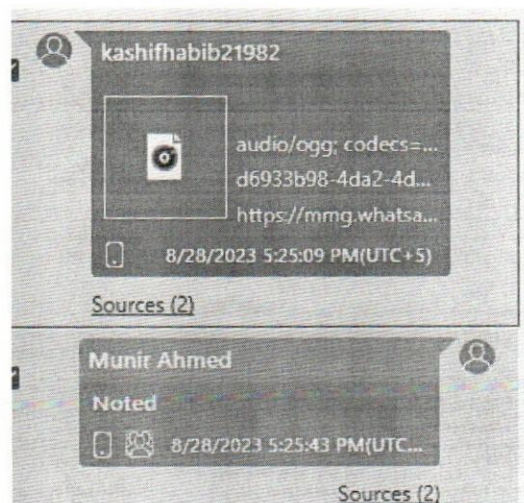
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51. After sending this message there is a voice note from Director ASML to CEO ASML on the same day informing him that CEO ISL is coming for a meeting the next day i.e. 8/29/2023 and CEO ASML is invited to attend. (Voice notes attached with reference in CD Annexed as CD-1)

"Aoa, acha kal 11:30 bajay Yousuf ISL walay mujh say milnay aa rahay hain tau aap bhi maujud huye ga"

Dr. Munir Ahmed (CEO): Noted



8/30/2023

52. Although it is not known to the Enquiry Committee as to what transpired in the meeting, however, from the subsequent voice messages we see that a number of issues were discussed in the meeting particularly w.r.t suggestions for operational efficiency such as closing the plant at peak hours (for saving on electricity bills).

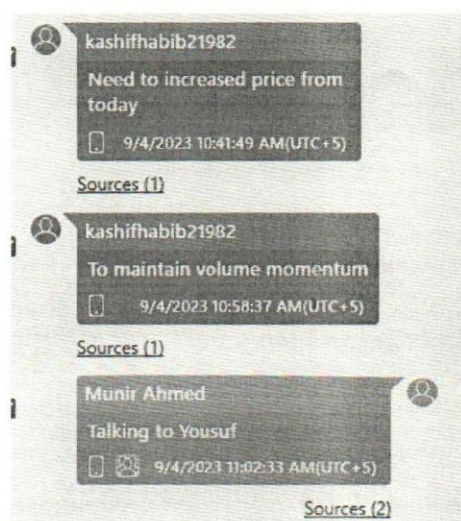
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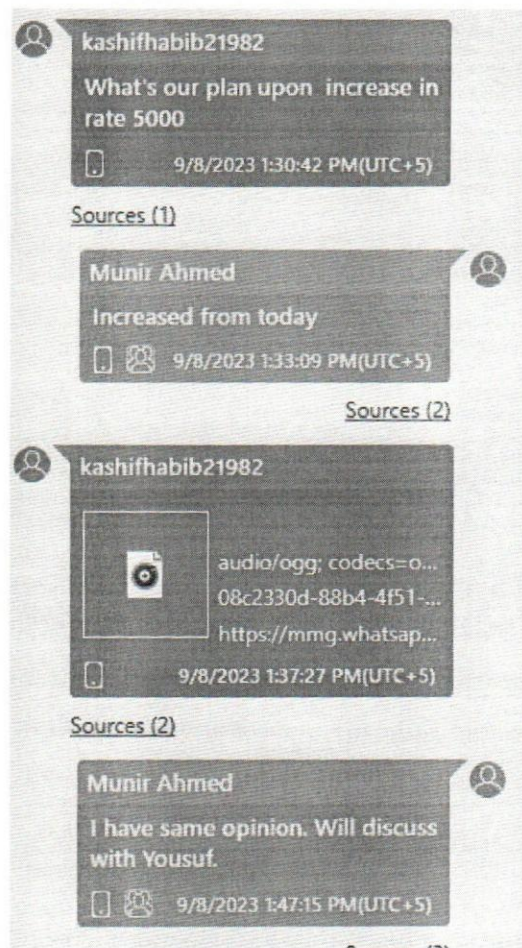
9/4/2023 and 9/8/2023

53. It can be observed that price changes are coordinated by both companies. In a message from Director ASML regarding price increase, CEO ASML responds that he is talking to CEO ISL. We can see that subsequently on 9/8/2023 prices are revised upwards by Rs.5000 by both companies.



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9/8/2023 Kashif Habib Director ASML voice note:

"Acha mera yay mashwara hai kay yay 5000 hee barhaye ga kyunkay dollar abhi neechay ki taraf hai tau bakya 5000 nai barhaye ga muje tau yay lagta hai".

10/10/2023

54. Voice Note from Kashif Habib Director to CEO ASML

"Aoa, acha dr sb muje yay lag raha hai jaisay rupaye (Rs) ka haal hai aur agay humari pricing behtar hoti ja rai hai HRC ki. Apko 12 rs tak tau girana hee ho ga. Apki price girant ho gi discount kay ilawa. Werna yay import kay sath itna bara margin hai kay yay humain barbad ker day ga. Daikhain HRC itna mustakil aa raha hai yay issi wajah say aa raha hai kay hum nay margin khulla rakha hai khailnay kay liye. Hum apnay paon pay kulhari maar rahay hain.

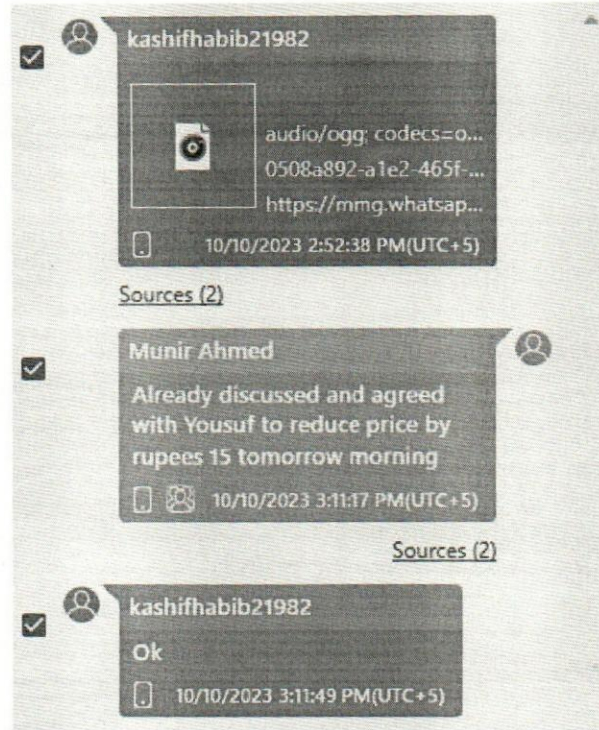
ISL ko kaho yar agar yay nai kerta 12 rs kum tau hum ker dain gay phir hum kya kerain. Hum tau bol rahay hain unko. Jitna late ker raha hai utni meri quantity effect ho rai hai.

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[Signature]

Muje aj mein 12 keron ga behtar hai. 4 din baad mein keronn ga muje 20 rs kernay parhain gay mein aur nuqsan mein jaon ga”.

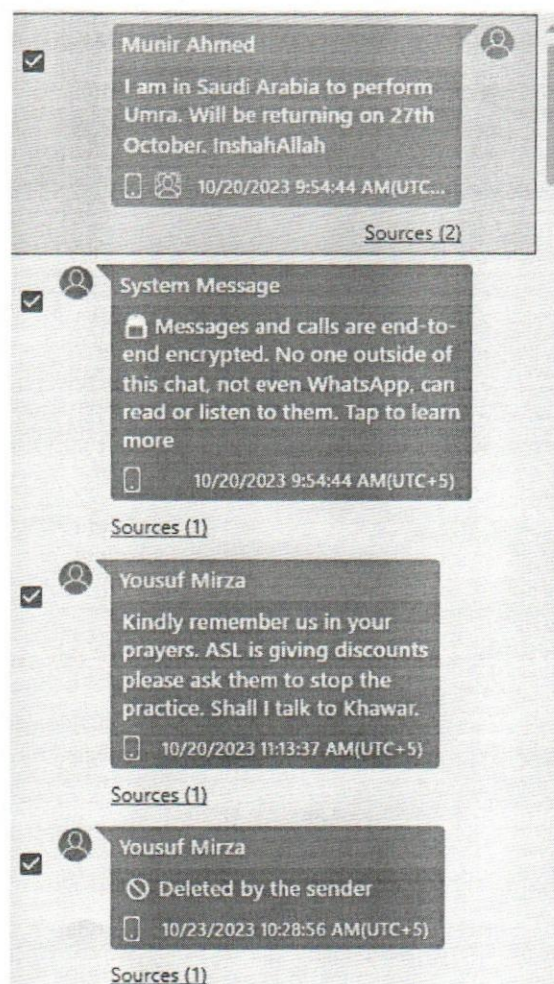
As per the price lists, both companies decreased their prices the next day on CRC and GI by Rs.17,000 per ton and not by Rs. 15,000 as discussed by the two.



10/20/2023

55. In another apparent reference to coordination between the two companies for the provision of discounts we can observe a conversation between CEO ASML and CEO ISL where the latter informs the former to stop giving discounts and since CEO ASML is out of the country at this point in time CEO ISL suggests that he can talk to ASML's Director Marketing & Sales. The next message from CEO ISL to CEO ASML is deleted. It is noted that price fixation in terms of Section 4(2)(a) of the Act has been interpreted by the Commission in a broad context and encompasses agreements or decisions on various elements of price including decisions to eliminate price discounts or to adhere to published prices²³.

²³ Para 46, In the matter of Show Cause Notice issued to Karachi Stock Exchange et al...dated 18 March 2009.



10/28/2023

56. Voice note from Kashif Habib Director ASML to CEO ASML makes reference to a discussion between ASML and CEO ISL regarding a discussion on the volume of HRC imports with the intent being to reduce the amount of HRC imported to 10,000 tons. Although production data from ASML does not show a drop in volume what we can note from this instance is discussion on matters of a commercially sensitive nature between ASML and ISL which would have a direct bearing on supply of CRC and GC in the market.
- "Aoa, acha Dr sb yay jo cheez, bhalay hum mil kay kaam kerain gay iss pay. Yay humain buhat zyada disaster ker daiti hai itna asan nai hai kay hum issay sustain ker payen kay hum pehlay 15000 target kertay hain apni sale ko local is kay hisab hum buying ker laitay hain hum log. Phir hum 12000 kehtay hain ho hee jaye ga humara phir abhi tak 7800 buy not lifted ko bhi mila lain agar hum tau itni zyada variation jo hai na ab wo carrying cost buhat high hai apka wo kill ker laity hai pooray business ko affect kerta. Dosra aik fixed*

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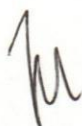
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cost hai humari wo bhi humain recover kerni hai. Agar hum aik quantity nai kertay jaisay 12000 ton nai kerain gay hum iska matlab hai kay mein fixed cost nai cover ker raha aur seedha seedha loss ker raha hon neechay. Tau iss tarah kaisay sustain hon gi cheezain. Quantity buhat important factor hai aik tau fixed cost ko absorb kernay kay liye dosra interest jo carrying cost ap nay jo itna buy ker liya hai tau usko kernay kay liye. Ya tau hum wo policy pay chalay jayen jo ISL soch raha hai kay muje nai pata hai kitna ker raha ya nai ker raha hai lekin muje policy sahi lagti hai kay mangaein hee buhat kum yay 20-20,000 ton na mangwayen hum. Hum kerain hee 10,000 ton kay bhai agar market mein short bhi ho jatay tau wo zyada behtar hai na kay itni high borrowing pay itni high carrying cost lay kay chalain”.

10/29/2023

57. In group ASML Local Sales (Members) Group ASML local sale: created by Kashif Habib (Director): 9/17/2023. Members: Dr. Munir Ahmed (CEO, ASML), Kashif Habib (Director), Khawar Siddiqui (Director Marketing & Sakes). In the conversation below Director ASML is referring to the cost of HRC (Up Rs depreciate) means that the PKR depreciated as compared to the USD making imported raw material more expensive²⁴. To which CEO ASML responds that he has already discussed the matter with CEO ISL and they will take back the discount in phases. This discussion could be a reference to the conversation between the two CEOs on 10/20/2023 regarding discounts.

²⁴ PKR depreciates as compared to USD in month of October 2023 and the negative trend continues in November 2023





10/30/2023

58. In reply to a voice note from Khawar Siddiqui regarding discounts offered by dealers in the market:

Kashif Habib responds:

"Lekin masla yay hai kay kal ko koi apko koi kahay ga 20000 mein day dain tau hum kaisay baat manain gay uski? Bolnay walay tau kuch bhi bol saktay hain. Yay bhi tau aik masla hai.

Yay tau kal apko bolain gay 20, 000rs day raha hai ISL tau hum kahain gay acha hum apko 20,000rs daitay hain. Tau phir kal kahay ga 25,000rs discount day raha hai ISL.

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Iss hee liye mainay kaha tha kay ap buhat bari ghalti ker rahay hain jo Mustafa say relationship honi chahiye Khawar bhai ki wo kyun nai hai apka? Mera sab say bara issue yay hai kyun mil kay kaam nai kertay apka. Iss say dono companies ko nuqsan ho raha hai. Kya hum nuqsan khanay aye hain iss waqt apka? Yay tau mil kay kaam hee nai ker rahay apka neechay Head of Department hain yay. Yay apni relationship banayen. Yay message dain Mustafa ko. Jo Mustafa ko humara bhi message aa raha ho ga issi tarah 10,000 ka. Wo bhi message share keray apka. Aik dosti nai ker saktay hum log aik dosray say? Muje samaj nai ati yay kaisay kaam ker rahay hain hum log".

"Matlab yay tau bilkul hee bachon wali cheez hai yay tau humain pata hai market mein. Hum khailtay aye hain apke cement sector mein. Yay tau yay hee kertay hain dealer neechay kay log. Aik ko pagal banatay hain aik ko kehtay hain 20,000 rs day raha hai. Aik ko kehtay hain 25000 rs day raha hai. Yay tau koi aqalmand ho na wo bhi yay keray ga kay inkay hath nai khailay ga aur jo hai na apas mein engagement barha kay jo hai iss cheez ko resolve keray ga. Wo hum ker nai rahay hain jo asal kaam kerna hai humain".

Khawar Siddiqui:

"Kashif bhai mein thora sa clarity day don. Jis din meri aur apki baat hui thi kay Mustafa aur khawar ka ccoordination hona chahiye tau mainay ussi waqt ussay call kiya tha aur mainay usko bola tha kay humain baith kay humain baith koi strategy banani chahiye takay dealers humain blackmail na kerain.

Tau he agreed to that. Uss nay kaha kay nai hum baithain gay aur saray kaam kerain gay. Ab phir meray stall²⁵ pay Samir aya tha aur uss pay bhi discussion meri team kay sath hua tha kay humain discount band ker daini chahiye. Aur hum nay aj subah say jo humara discount chal raha tha humaray paas abhi bhi orders maujood hain lekin mein abhi bhi execute nai ker raha.

Mein execute issi waja say nai kera raha kyunkay muje clarity nazar nai aa rai kay mein kis rate pay keron. Mairay paas 10,000 ki awaz bhi hai, 12 rs ki awaz bhi hai 13 rs ki awaz bhi hai. Tau isko ab ap blackmail kahain kuch bhi kehain lekin yay aisay hee yay market flow kerti hai.

Mainay abhi bhi Mustafa ko apke message kay baad call ki lekin uss nay mera phone nai uthaya. It means kay wo yay discount market mein day rahay hain. Agar humain rokna hai yay sari cheezain kerni hain tau lets sit together and resolve the issue kay humari kya liabilities hain jo humain pay kerni hain wo kitni hain aur wo hum kis tara manage ker saktay hain. Adha din mera nikal gaya hai jahan pay mera material hee nai bikka hai".

59. Director Marketing & Sales ASML provided details of the discounts offered in the market as per information from dealers to which Director ASML responds that a dealer could mislead ASML by saying that its competitor ISL is offering a xyz discount in order to get that same amount of discount by ASML. He therefore, stresses that there should be

²⁵ Reference to the Pakistan Auto Show 2023 in Expo Centre Karachi where ISL and ASML participated.
<https://isl.com.pk/news/>

coordination between Director Marketing & Sales ASML and his counterpart Mustafa (referring to Mustafa Khan GM Marketing & Sales ISL) so that they are on the same page and dealers do not 'blackmail' them. In response GM marketing and sales ASML notes that he called his counterpart in ISL and they agreed to sit down and develop a strategy vis-a-vis dealer discounts. He then also states that COO ISL visited ASML's stall where there was an agreement to stop discounts. He further states that he tried calling his counterpart but the call was not attended to which it was assumed that ISL was still offering discounts in the market to move its product.

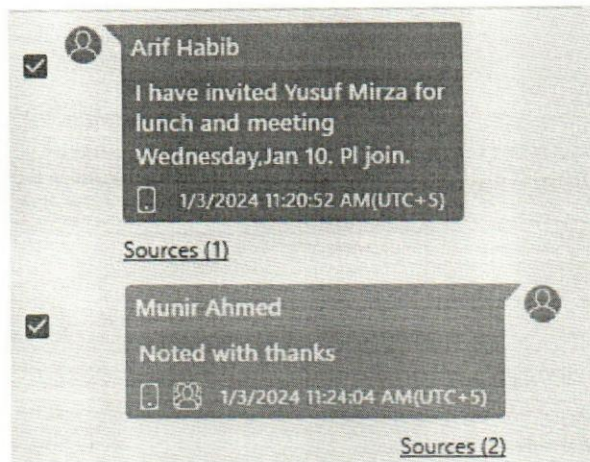
11/4/2023

60. CEO ASML sends a message to CEO ISL stating that HPL the other market player based in Lahore, is giving discounts there and CEO ISL notes that this information is incorrect. This conversation shows that the two CEOs are discussing discounts offered in the market.

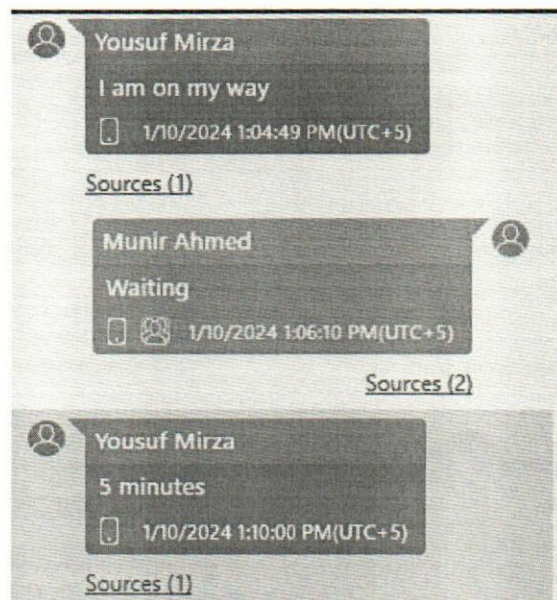


1/3/2024

61. The subsequent conversations are regarding a meeting arranged by Arif Habib, Chairman ASML with CEO ISL which CEO ASML is also invited to attend. The meeting was held on 1/10/2024 and CEO ISL attended as his messages to CEO ASML show.



62. 1/10/2024.

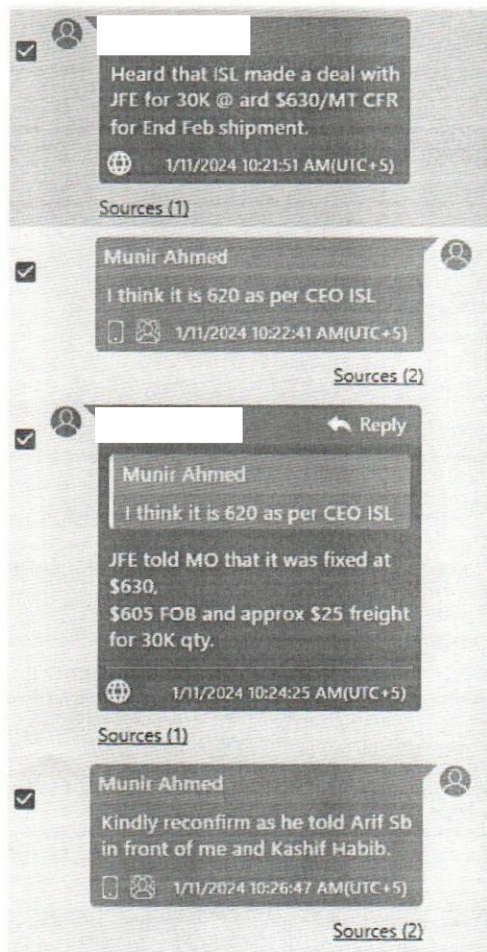


63. Insofar as the topics of discussion of the meeting are concerned we get a hint from a chat between CEO ASML and Farrukh Abbas who is a representative of Mitsubishi. In the chat, which takes place the day after the meeting i.e. on 1/11/2024, the representative informs CEO ASML about the deal ISL has made for purchase of HRC from JFE (a Japanese mill) which is 30,000mt @630/mt. CEO ASML responds that the CEO ISL told him in front of Arif Habib and Kashif Habib that this rate was USD620. This sharing of purchasing price

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(of HRC) is of a commercially sensitive nature since it has a direct bearing on future sale price of CRC and GI.

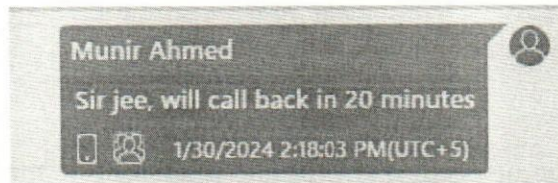


1/30/2024 Calls and interaction between CEO ASML and CEO ISL:

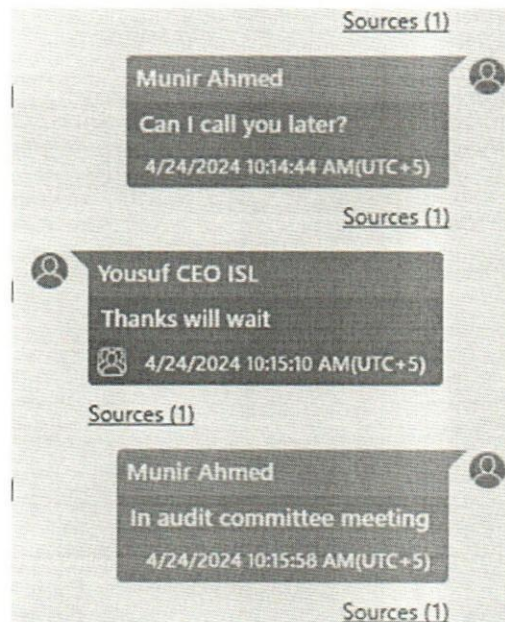
64. Forensic analysis of handheld device of CEO ASML could retrieve call log of only six months from the said device. The device was impounded on 06/12/2024 and the call log reveals that there was regular contact between the two in this six month period in addition to their interaction via messages. Starting from 12/27/2023, approximately 116 phone interactions were made between the two (Refer to Annex C-2 for details). The messages in this regard are reproduced below.

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65. 4/24/2024



4/7/2024

66. A powerpoint presentation titled 'market share-ASML & ISL' is shared by CEO ASML it is prepared by ASML and contains a time series of the market shares of the two companies in terms of tonnage of CRC and GC sold by both. In terms of percentages mentioned in the document, ISL has a share of 58% and ASML 42%. (Annex C-3 for powerpoint shared). After sharing this document, Director ASML sends a voice note saying: "Muje lagta hai humain issay convince kerna chahiye kay yar 55% ap baicho 45% hum baichtay hain. Muje lagta hai yay shayad humain khainchay ga 60-40 pay. 55-45 pay humain issay razi kerna chahiye. Mera tau yay mashwara hai". This is an apparent reference to CEO ISL and appears to be negotiation between the companies on division of production/sales. CEO ASML agrees to this and goes on further to state his negotiation strategy. The enquiry committee does not know the outcome of this discussion. It is noted that CEO ISL and ASML had a phone conversation (duration 15 minutes) on the previous day (4/6/2024)

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A handwritten signature in black ink, consisting of a stylized 'A' followed by a flourish.

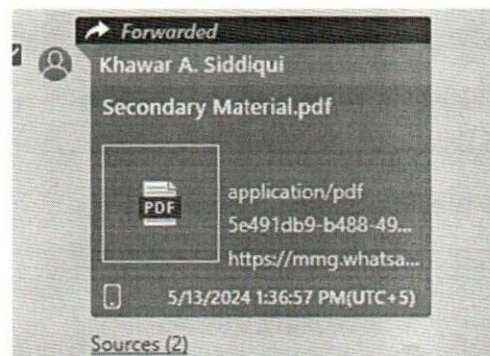
however, no violation of Section 4(2)(b) and/or (c) can be made out on this count since there appears to be no agreement. Production and sales data for May and June 2024 submitted by the companies also does not provide any discernible pattern with regards to market shares.



05/13/2024

67. Director Marketing & Sales ASML sends CEO ASML a pdf document titled 'secondary material' and states that this is ISL's secondary list. It often happens that during the process of cold rolling some material may come out with some defects or be damaged during the production process. This material is known as secondary grade as opposed to primary grade. The pdf document contains CRC of various thickness in different quantities which

are being sold as secondary material. It is also stated that this material is being sold at a discount of Rs. 32,000 on invoice. CEO ASML in response asks his Director Marketing & Sales to send this list to CEO ISL to ascertain the veracity of the document. CEO ASML further states: "if true we would also start giving secondary prime grade but need to confirm from them". This indicates that the two companies also have an **understanding with regards to sale of secondary material in the market**. The response from CEO ISL forwarded by GM states that this was done to counter ASML but nothing was sold. It is noted that secondary material is an inevitable outcome as a result of defects in the production process and even though companies try to minimise such inefficiencies some secondary material will be produced. Since this is a bulk product its storage is costly and thus this material will eventually have to be sold in the market. There appears to be an understanding w.r.t sale of such material without the consent or informing the other company which is a prima facie violation of Section 4(2)(c) of the Act.

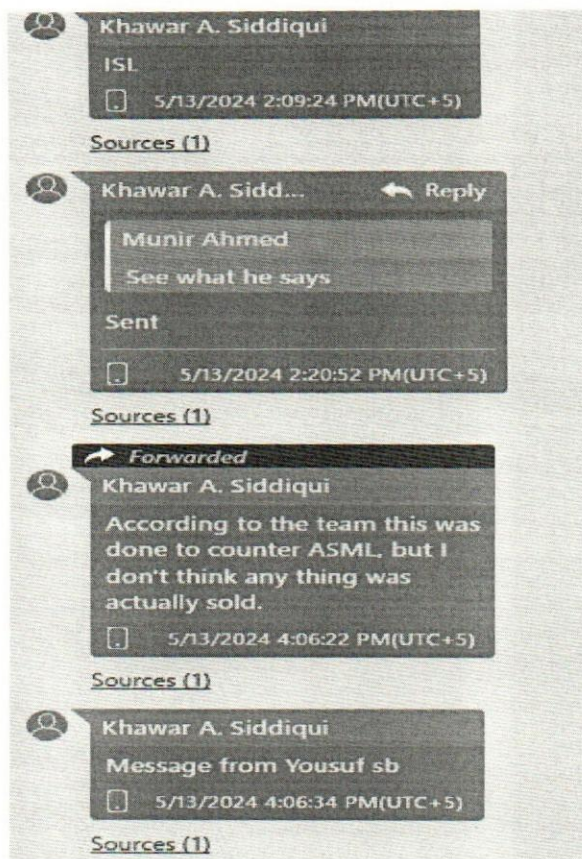


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6/10/2024

68. Meetings between officers of ISL and ASML continue at the highest level with Chairman Arif Habib convening another joint meeting between the CEOs of the two companies on 06th June 2024.

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5.3.2 Summary of discussion on prices:

69. To sum up the above ASML and ISL have an arrangement whereby they regularly coordinate with each other before making any price changes. It appears that the timing of the price changes as well as the amount of change are also decided jointly by both companies. There are instances where (a) the two companies are directly communicating regarding price changes or (b) there is indirect evidence through internal communications (between ASML officers) regarding communication made with ISL on prices and (c) there is evidence of meetings between senior officers of ASML with their counterparts in ISL. Price lists of the two companies show that immediately after these interactions prices were changed by the companies simultaneously and in the same quantum as alluded to in the communications. A price table highlighting these price changes is also placed at Annex C-4. These instances constitute price fixing in *prima facie* violation of Section 4(2)(a) of the Act. The time period for this infringement is starts from 11th September 2020 (11/09/2020) to 11th October 2023 (10/11/2023).

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70. There are instances where ASML and ISL are coordinating with each other regarding provision of discounts. It is noted that there is a practice by ASML and ISL whereby they do not change prices by issuing new price lists but rather start giving it at discounts to dealers. Even in this scenario the price list acts as a reference price for any discount. It is noted that discount is an element of price and any attempt to fix amount of discount or any other coordination with regards to it is considered as price fixing. Four instances regarding discussion on discounts are observed which constitute a *prima facie* violation of Section 4(2)(a) of the Act:

- a. 10/20/2023 Between two CEOs;
- b. 10/29/2023: reference to a conversation between the two CEOs where there is an agreement to take back discounts;
- c. 10/30/2023: Allusion to a collective discount policy discussed between Director Sales and Marketing of ASML and ISL.
- d. 11/4/2023: Between the two CEOs regarding discounts offered in the market by a competitor.

71. Secondary material: There appears to be an understanding w.r.t sale of such material without the consent or informing the other company which is a *prima facie* violation of Section 4(2)(c) of the Act. Period of infringement is 5/13/2024.

5.3.3 Involvement of HPL

72. The enquiry committee notes that although HPL's prices are moving in tandem with ISL and ASML we did not find any sufficient direct evidence of coordination with HPL. We therefore, analyse 'plus factors' which are factors to be considered in addition to price parallelism to ascertain whether HPL was involved in the *prima facie* price fixing arrangement:

- a. Concentrated market structure;
- b. Product homogeneity: CRC is a homogenous product with very little product differentiation;
- c. HPL is a smaller concern in comparison to ISL and ASML, with a different cost structure specifically in terms of economies of scale for production and procurement. However, prices are at the same level as ISL and ASML.



- d. Only two instances of communication were found between CEO HPL and CEO ASML in contrast to the various instances for ISL and ASML. In one instance, dated 2/20/2020 CEO HPL is rescheduling a meeting that was to be held with CEO ASML due to another meeting. In another instance a meeting was held between CEO HPL and CEO ASML. In a voice note CEO HPL (dated 05/12/2022) is mentioning his attendance at a meeting at office of CEO ASML.

"Aoa Dr sb. Dr sb mein apke paas IA sawa char bajay apke office poncho ga. Jo ap nay muje guide kiya hai Arif Habib building jo hai. Shukriya". We don't know what transpired in the meeting and there is no immediate price increase following this date and no subsequent communication in this regard between the two nor is there any indirect reference of HPL's consent to price changes in any of the communication between CEO ASML.

- e. What is also pertinent to note here is that HPL is a smaller unit compared to ISLA and ASML producing CRC only with production and sales limited to Lahore and Punjab areas.

73. Based on the foregoing, no prima facie violation of Section 4 of the Act is made out on the part of HPL.

5.3.4 Sharing sensitive commercial information between competitors

74. The major cost component for the production of CRC, GI and CC coils is HRC accounting for approximately 85% to 92% of total cost²⁶. 100% of HRC used for production CRC, GC and CC coils is imported from various sources. ISL and ASML primarily import from Japan, China and Taiwan. Imports are made through agents of trading houses/traders with the rate depending upon international market prices and quantity purchased.

75. Since HRC is such an essential component, the price at which it is purchased has an impact on the prices and profitability of the producers. As such the price at which a company procures a consignment of HRC could be considered as sensitive information as it determines the future price at which it would sell CRC (and GC and CC) and it would not want to disclose such information to its competitors. As per information provided by ISL

²⁶ Estimates provided by ASML and ISL.



its main import source is JFE (through its trader Sumitomo Corporation) but it also purchases from Dragon Steel (through Cargill) and Anang Steel (through Duferco). ASML purchases from Nippon Steel Corporation (through Marubeni and Metal One Corporation), Cargill and Duferco. ASML and ISL have also categorically stated that they do not purchase jointly with either each other or HPL. ISL has stated that it purchases primarily from Japan and its large order size (30,000 mts) relative to its competitors enables it to negotiate a good price and obtain a freight advantage and so it does not want to subsidize its competitors with this advantage by jointly purchasing with them.

76. Evidence from the handheld device of CEO ASML show conversations with traders from Marubeni and Cargill where CEO ASML is aware of ISL's purchase price or both companies are part of purchase negotiations (in the case of Cargill). The conversations with each importer are discussed separately below.

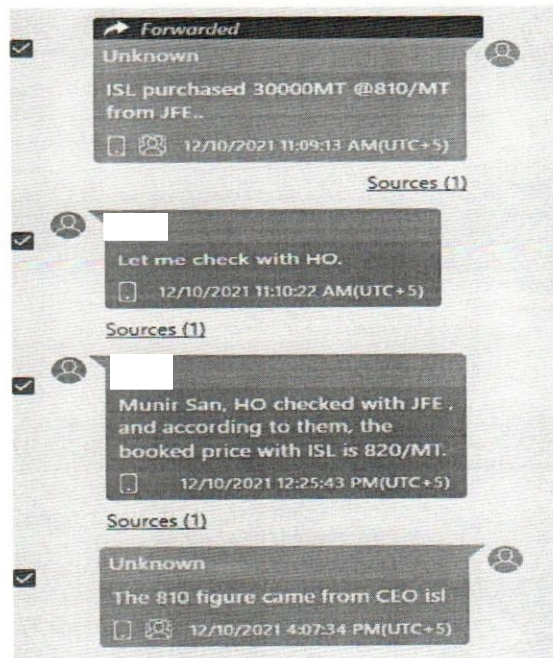
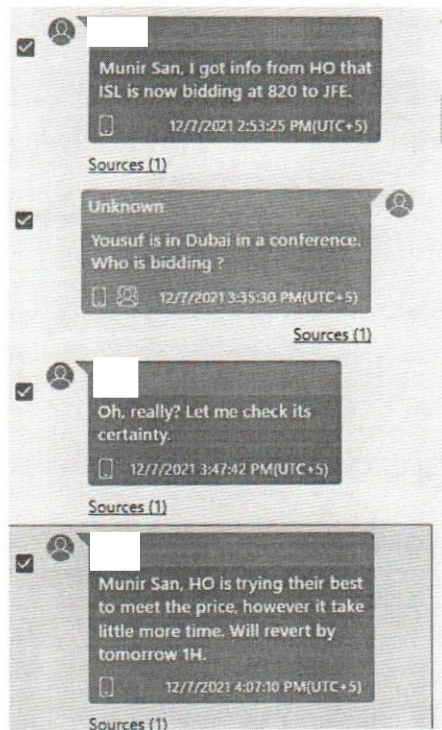
Marubeni Representing Nippon Steel Corporation (NSC)

12/7/2021

77. While negotiating an import order with _____ from Marubeni in the month of December 2021 at a price of USD 820/MT for 10k MT the following conversation takes place where the representative informs CEO ASML that ISL made a deal at USD 820 with JFE. CEO ASML then sends a forwarded the message stating that ISL had purchased 30,000MT @810/MT from JFE²⁷. When the representative responds that according to his knowledge the deal was made at USD 820 CEO ASML replies that the USD810 figure was from the CEO ISL.

²⁷ JFE is a Japanese Mill that sells through trader Sumitomo Corporation as per information received from ISL.

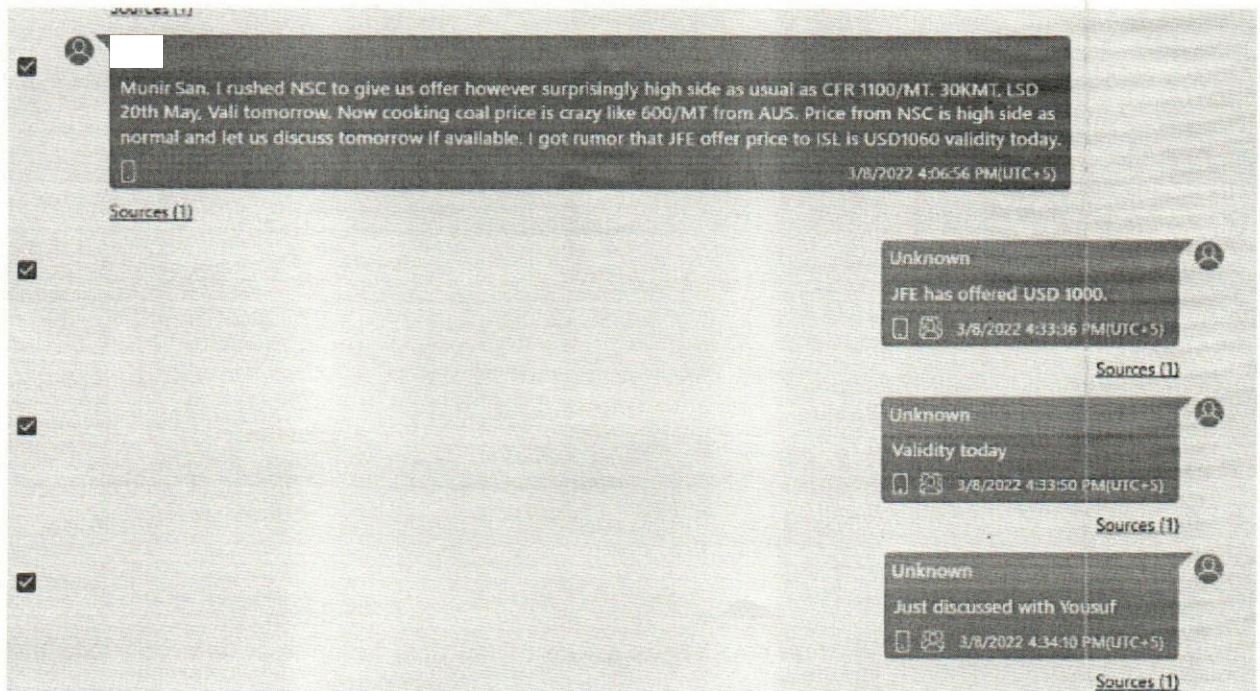




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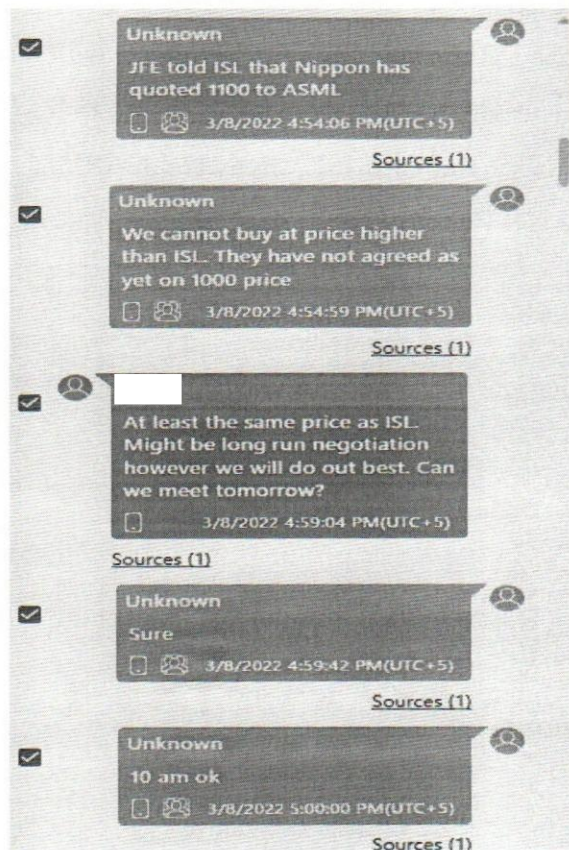
3/8/2022

78. In another such instance while quoting a price the representative quotes a price of USD 1100 for ASML and also mentions that ISL was offered USD 1060 by JFE. CEO ASML in his response states that as per his discussion with Yousuf (CEO ISL) the price offered to ISL by JFE is USD1000. In further reference to his (CEO ASML's) discussion with CEO ISL, he tells that ISL was aware of ASML's deal being negotiated with Nippon (NSC) for USD1100. CEO ASML then asks to match the price offered to ISL.



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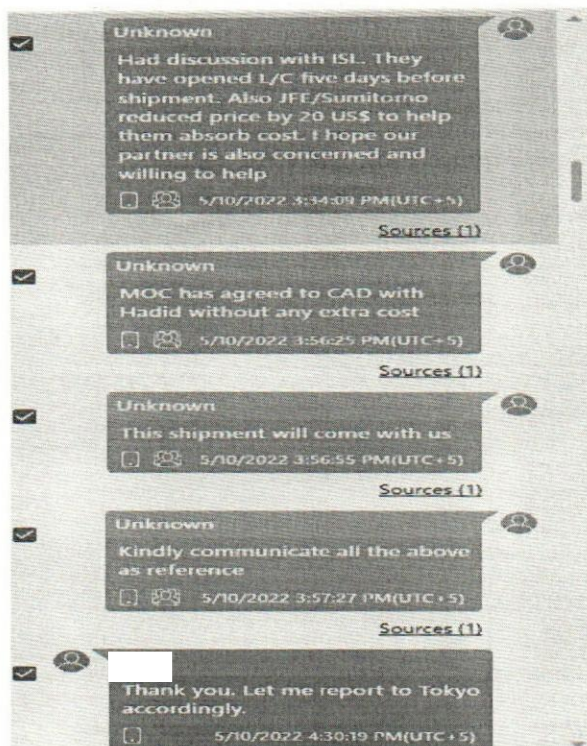


5/10/2022

79. In another instance CEO ASML is aware of the deal being negotiated by ISL and HPL which shows the interaction and exchange of information between the competitors.

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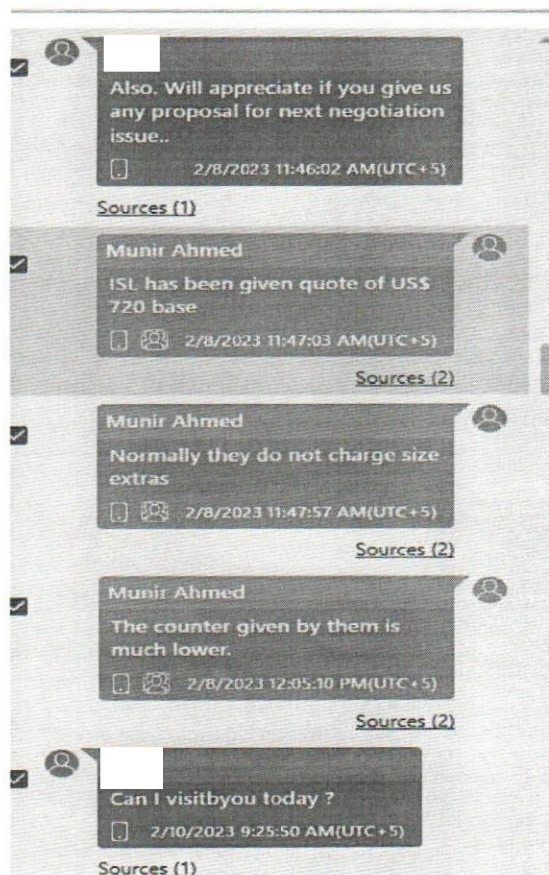


2/8/2023

80. ASML again appears to be aware of the price at which ISL is buying.

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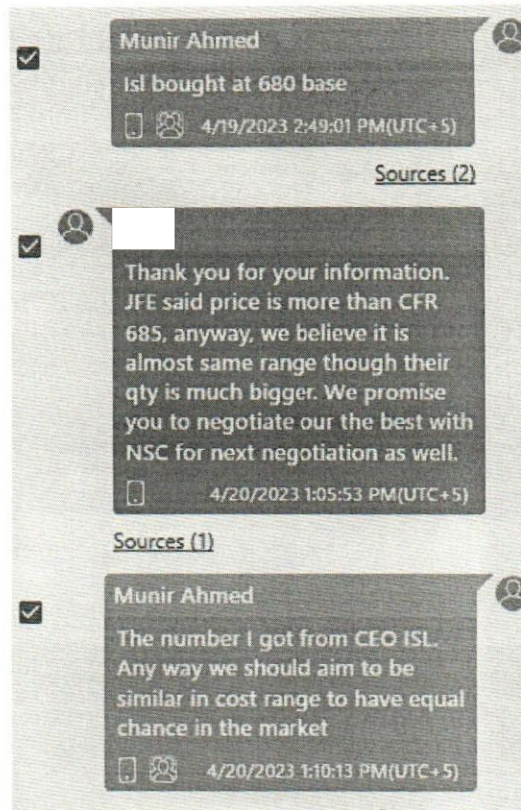


4/19/2023

81. CEO ASML informs about the rate that ISL had bought i.e. USD 680 base. When the trader replies that it is in the range of USD 685, CEO ASML responds that he was informed of the figure (of USD 680) by CEO ISL.

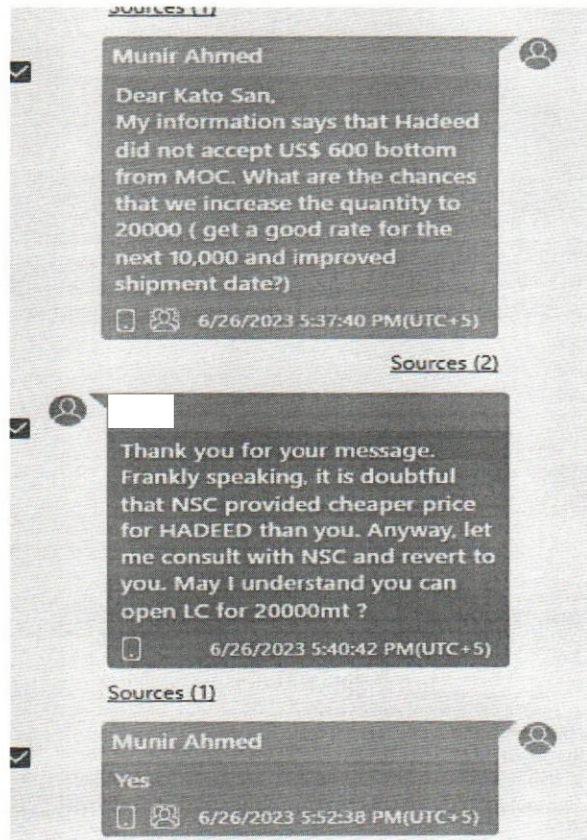
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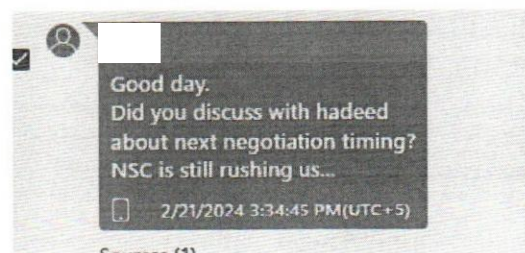


6/26/2023

82. CEO ASML appears to have information about the deal between HPL and Metal One Corporation however, we do not know whether this information was received from HPL or some other source. Similarly in another discussion on 2/21/2024 the trader asks about ASML's discussion with HPL regarding timing of negotiation with NSC to which there is no response.



2/21/2024

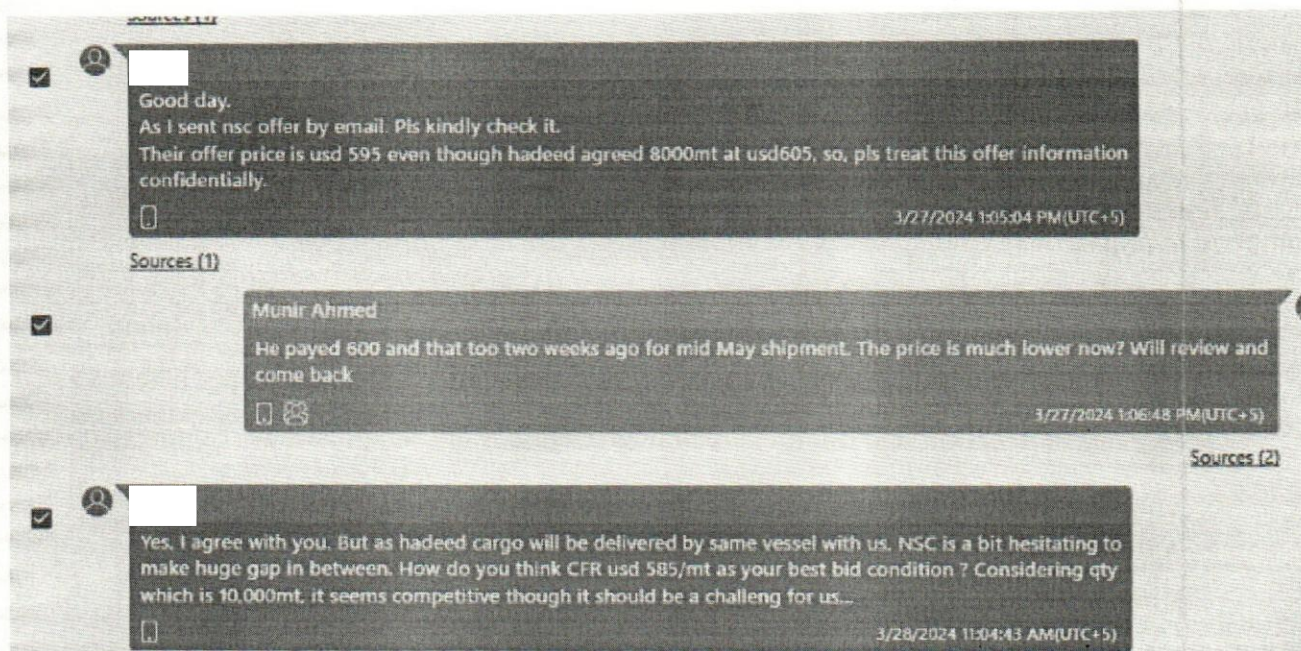


3/7/2024

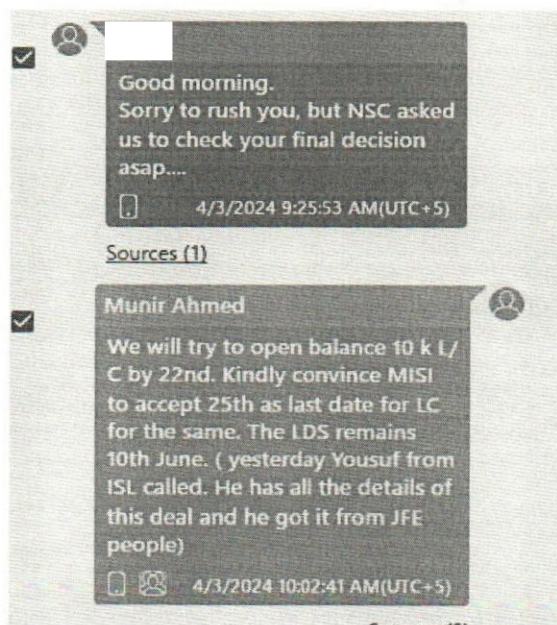
83. In this conversation the CEO ASML appears to be aware of the purchase price of HPL however, we do not know the source of the information.

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4/3/2024



CEO ASML notes that he talked to CEO ISL on the phone the previous day and that the latter was aware of the details of ASML's deal with NSC. As per the call log there is a call from CEO ISL to CEO ASML on 4/2/2024 lasting 18 minutes.

4/2/2024 2:10:13 PM(UTC+5)

4/2/2024 2:28:06 PM(UTC+5)

com.apple.InCallServ...

incoming call from Yousuf CEO I...

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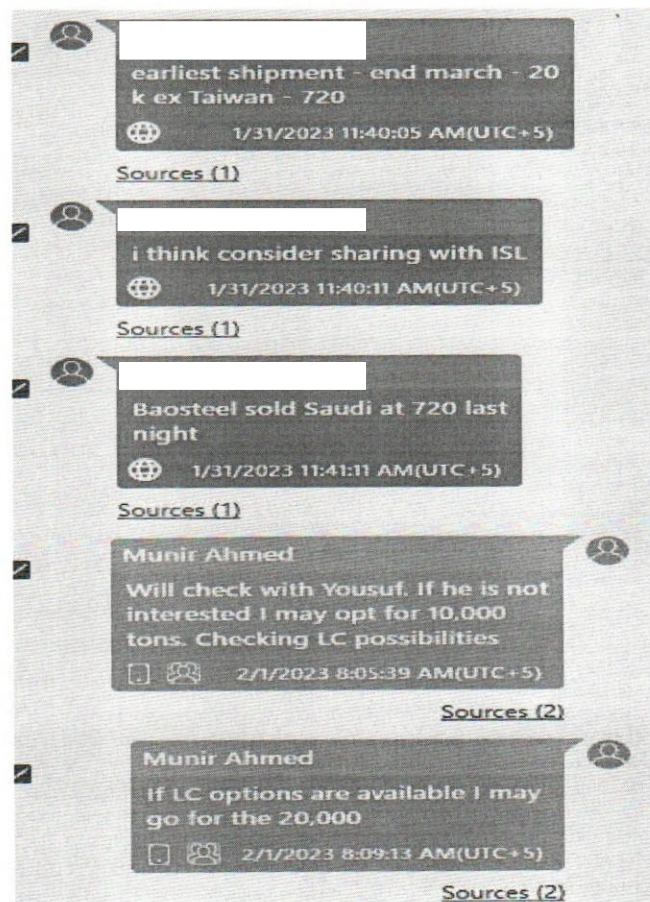
[Signature]

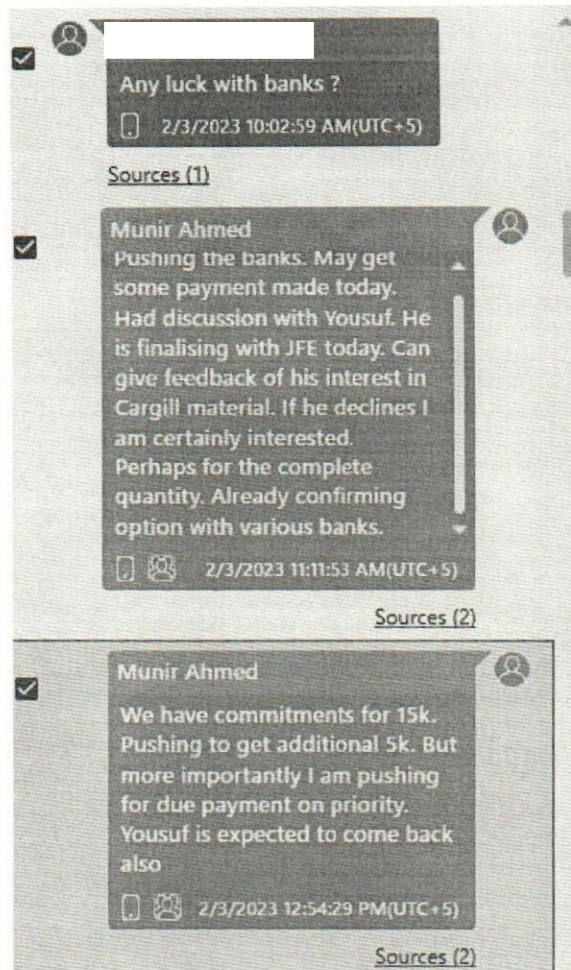
Cargill

1/3/2023

84. In a conversation with the representative of trading house Cargill

it appears that ASML and ISL are coordinating their procurements. It is pertinent to add here that both ASML and ISL procure through Cargill. Cargill representative quotes a price of USD 720 for 20,000mt. Since the order quantity is large the representative suggests that ASML and ISL share it in response to which CEO ASML states that he will discuss it with his counterpart at ISL. The next day after discussing the matter with his counterpart at ISL, CEO ASML informs that the former is in negotiation with JFE (a Japanese supplier) however, he will confirm regarding the order with Cargill.



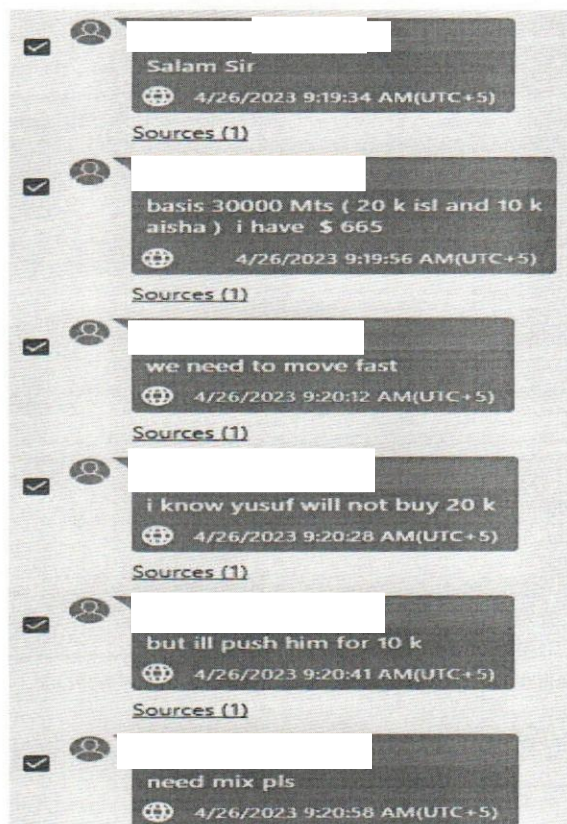


4/26/2023

85. In another conversation the representative for Cargill quotes a joint offer for ASML and ISL. However, the outcome of this deal is not known.

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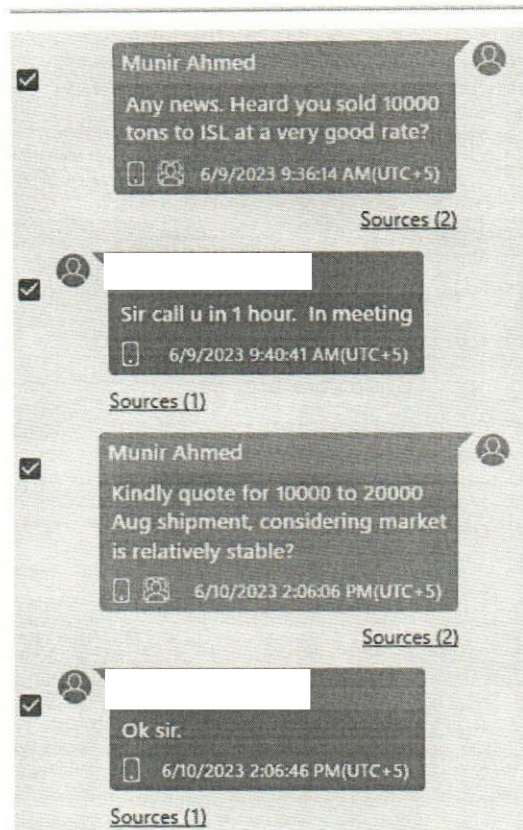


6/9/2023

86. In this message too it appears that CEO ASML is aware of the deal between Cargill and ISL.

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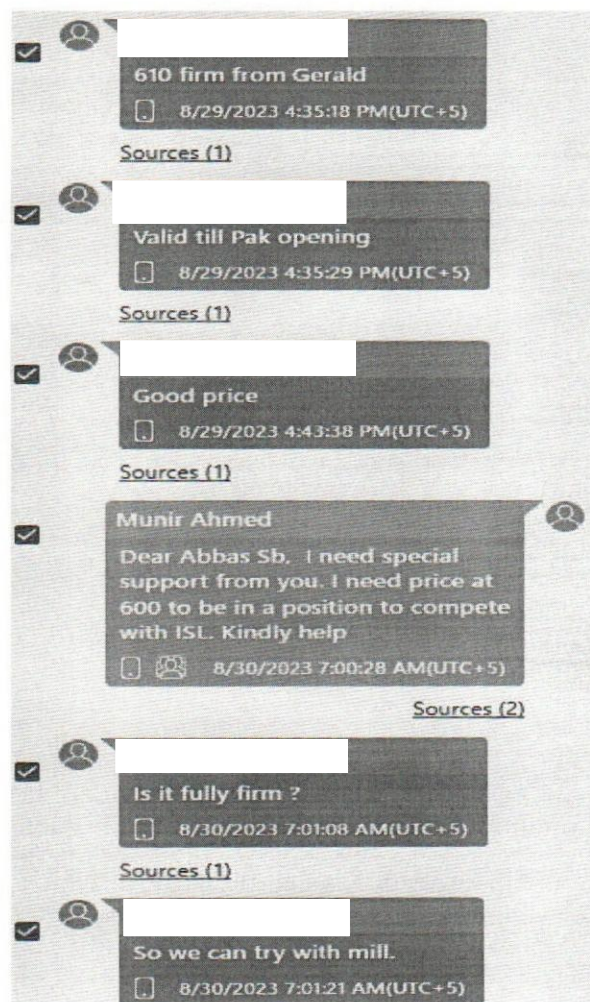


8/29/2023

87. In a procurement negotiation, the representative of Cargill quotes a rate of USD 610 to CEO ASML to which the latter responds that the price at which ISL procured was USD 600 and thus ASML needs to make a deal which is at this price in order to be able to compete with ISL.

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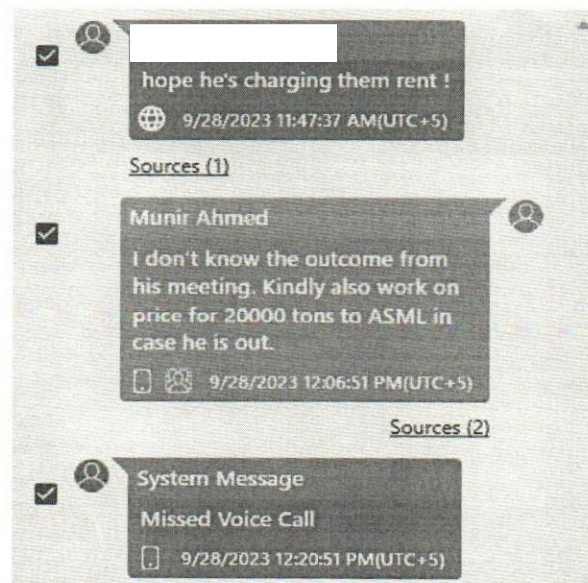
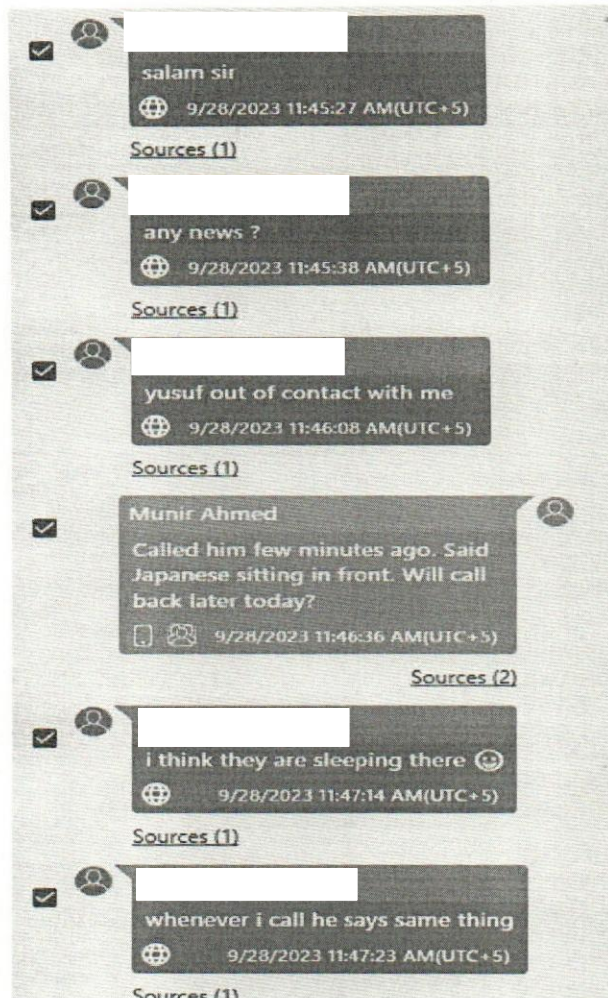


9/28/2023

88. This is also an instance where Cargill is making a joint offer to ASML and ISL. CEO ASML calls his counterpart at ISL and is informed that he is currently in a meeting with Japanese (possible reference to JFE). CEO ASML notes that he is unaware of the outcome of the said meeting but in case ISL does not participate in the joint deal ASML would purchase 20,000mts. Later messages of Cargill's representative reveal that ISL is waiting for an offer from the Japanese and will buy more at USD 600.



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Sir. Give me usd 600 for 20 k firm and let me discuss with Gerald.
 9/28/2023 12:23:12 PM(UTC+5)


Sources (1)





System Message
Missed Voice Call
 9/28/2023 4:34:54 PM(UTC+5)


Sources (1)





System Message
Missed Voice Call
 9/28/2023 4:55:32 PM(UTC+5)


Sources (1)





Spoke yusuf
 9/28/2023 4:55:38 PM(UTC+5)


Sources (1)



Plz call
 9/28/2023 4:55:41 PM(UTC+5)

Sources (1)

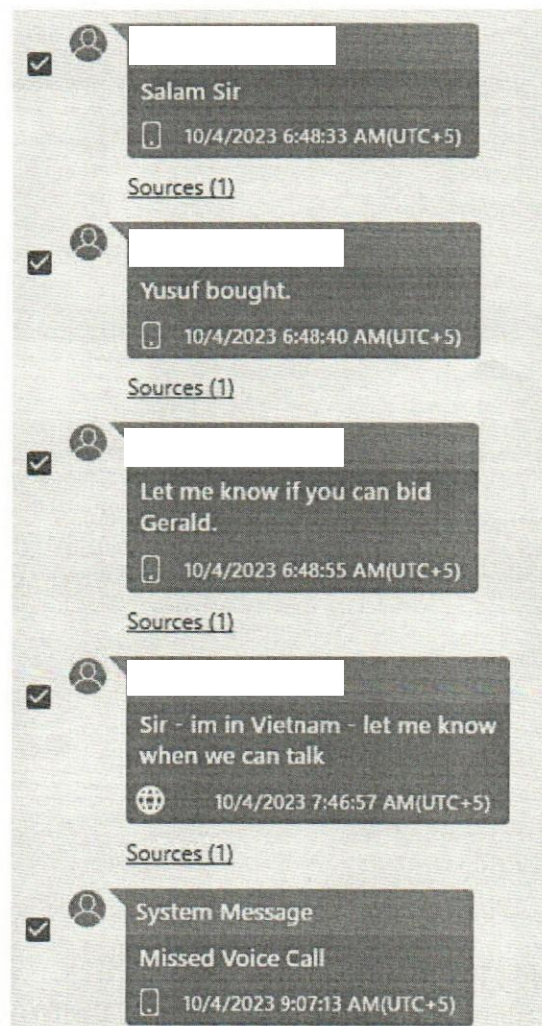
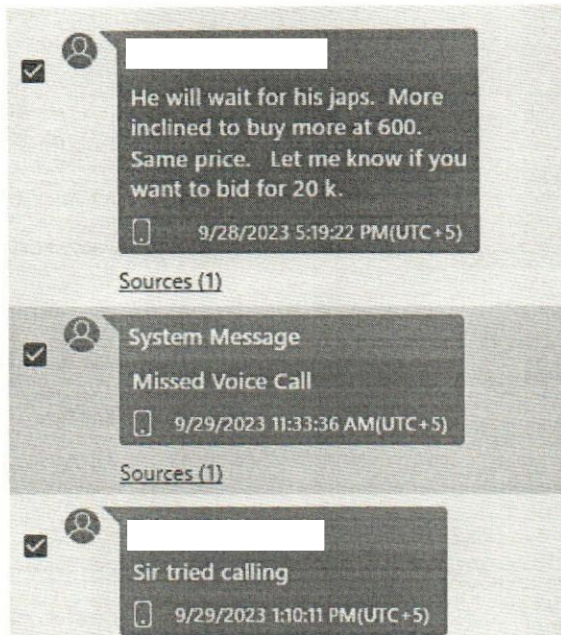


System Message
Missed Voice Call
 9/28/2023 5:18:34 PM(UTC+5)

Sources (1)

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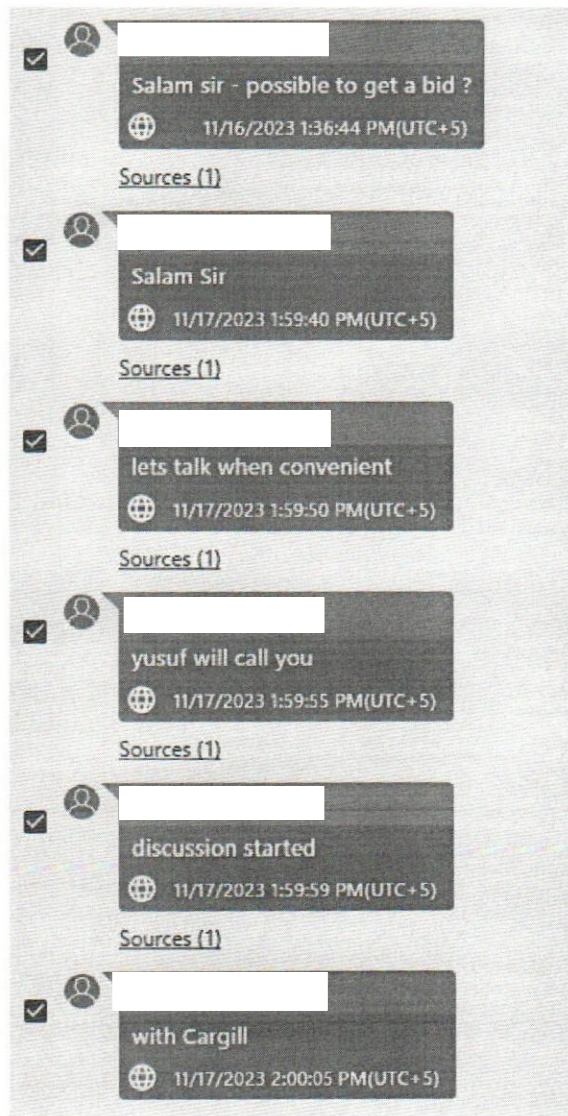


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11/17/2023

89. In this conversation as well we see that Cargill is negotiating with ISL and states that CEO ISL will call CEO ASML. The outcome of the subsequent conversations is not known.

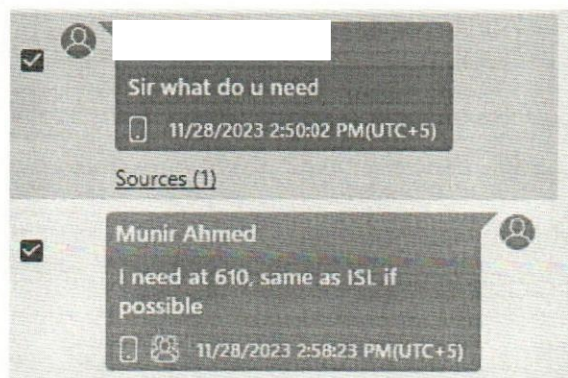
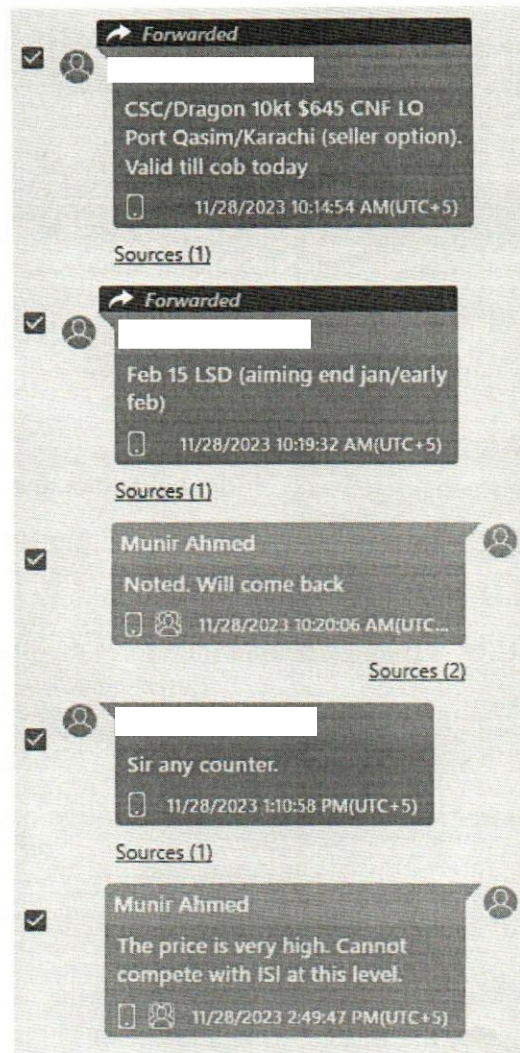


11/28/2023

90. In another negotiation, Cargill quotes a rate of USD 645 for 10,000mts to ASML to which ASML responds that it needs the same rate of USD 610 at which ISL has purchased. Showing that ASML was aware of the rate of its competitor.

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5.3.5 Summary of sharing of sensitive commercial information

91. Based on the above it is noted that information on purchase price of HRC is being exchanged between ASML and ISL. From the above conversations the following factors are noted:

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- a. The information exchanged is for the purchase price that is currently being negotiated or has been negotiated. The purchase price is negotiated on average 02 months advance of delivery and therefore, once the consignment is delivered, produced and sold will take an average of 03 months at least. The purchase price negotiated today will thus impact the future price at which CRC, GC and CC will be sold in the market.
- b. The information is considered as confidential and is not publically available.
- c. The information is in disaggregated form and mentions the exact purchase price.
- d. The information is strategic commercial information as HRC is the largest cost component (for CRC, GI and CC) and therefore, the price at which it is procured will determine the final price of flat steel products sold by a company. It is also noted by ISL and ASML that the prices of CRC, GC and CC are closely pegged to HRC price therefore, making HRC prices strategic in determining final prices.
- e. The exchange of this information is not one off and the enquiry committee has found a number of such instances starting from: 12/7/2021 to 4/3/2023 (Marubeni-NSC) and 1/3/2023 to 11/28/2023 for Cargill.
- f. As mentioned above, the market for flat steel in Pakistan is highly concentrated with only two producers of GC and three for CRC making the exchange of information between the two largest companies more problematic as it makes it easier for them to coordinate their prices.

92. Based on the above, ASML and ISL have been involved in exchange of information of a commercially sensitive nature that allows them to coordinate on prices of CRC and GC in *prima facie* violation of Section 4(2)(a) of the Act.

6 ANALYSIS II: Whether there is any *prima facie* violation of Section 3 of the Act by the undertaking(s) in the relevant market.

93. The enquiry committee has found *prima facie* violations of Section 4 of the Act by ASML and ISL, two of the largest players in the sector, in the instant matter and therefore, the question of a violation of Section 3 of the Act does not arise.




7 CONCLUSION

94. **Background:** Concerns raised regarding alleged collusion in the flat steel sector which had resulted in a rise in prices of CRC, GC and CC in the market. Upon an initial examination of price lists (from May 2020 to March 2021) issued by local producers ASML, ISL and HPL it was observed 16 instances where prices were changed on the same dates and by the same amount. Based on these facts it was noted that the matter warranted further investigation especially considering structure of the market (comprising of only 3 players), imposition of AD duties on CRC which has restricted imports of the same. The Commission after considering these factors initiated an enquiry u/s 37(1) of the Act on 27th May 2021.
95. **Issues:** Based on the ToRs assigned to it by the Commission, following issues have been identified for further deliberation by the enquiry committee:
- What is the relevant market in terms of Section 2(1)(k) of the Act?
 - Identification of undertakings in terms of Section 2(1)(q) of the Act;
 - Whether there is any *prima facie* violation of Section 4 of the Act by the undertakings in the relevant market.
 - Whether there is any *prima facie* violation of Section 3 of the Act by the undertaking(s) in the relevant market.
96. **Relevant market:** Based on the findings of paragraphs 18-27 above, the relevant market in terms of Section 2(1)(k) of the Act is that of CRC, GC and CC in whole of Pakistan.
97. **Spillover:** Based on the findings of paragraph 28 above, it is noted that the two major local producers of flat steel products (ISL and ASML) are based in Karachi, imports of these products are also made through KPT and Port Qasim located in Karachi. These products are subsequently transported all over Pakistan to be used in various industries therefore, the effect of any anti-competitive activity will have a spillover effect beyond provincial boundaries.
98. **Undertakings:** Based on the findings of paragraphs 29 to above the following are involved in the production and sale of flat steel products in Pakistan and thus fall within the definition of undertakings as per Section 2(1)(q) of the Act:
- International Steels Limited;

- b. Aisha Steel Mills Limited; and
- c. Hadeed Pakistan Private Limited.

99. Whether there is any *prima facie* violation of Section 4 of the Act by the undertakings in the relevant market:

- a. **Simultaneous price changes:** Based on the findings of paragraphs 33 to 35 above, prices have been changed 55 times by ISL, ASML and HPL between July, 2020 and December, 2023. In all but one instance, all three companies increased / decreased their prices on the exact same dates. Overall price increase for CRC from July 2020 to Dec 2023 was Rs. 146,000 per mt by ISL, Rs. 146,000 per mt by HPL and Rs. 145,900 per mt by ASML. Overall percentage increase in price by all three companies was on average 111%.
- b. **Market structure:** Based on the findings of paragraph 36 above, the capital intensive nature of the steel sector makes has limited the number of local producers in the sector with the following market shares in terms of production (2022-23): ISL (39%), ASML (20%), HPL (10%) and imports (31%).
- c. **Discussion on prices:** Based on the findings of paragraph 69 above, ASML and ISL have an arrangement whereby they regularly coordinate with each other before making any price changes. It appears that the timing of the price changes as well as the amount of change are also decided jointly by both companies. There are instances where (a) the two companies are directly communicating regarding price changes or (b) there is indirect evidence through internal communications (between ASML officers) regarding communication made with ISL on prices and (c) there is evidence of meetings between senior officers of ASML with their counterparts in ISL. Price lists of the two companies show that immediately after these interactions prices were changed by the companies simultaneously and in the same quantum as alluded to in the communications. These instances constitute price fixing in *prima facie* violation of Section 4(2)(a) of the Act. The time period for this infringement starts from 11th September 2020 (11/09/2020) to 11th October 2023 (10/11/2023).
- d. **Discussions on discounts:** Based on the findings of paragraph 70 above, there are instances where ASML and ISL are coordinating with each other regarding provision of discounts. It is noted that there is a practice by ASML and ISL whereby

they do not change prices by issuing new price lists but rather start giving it at discounts to dealers. Even in this scenario the price list acts as a reference price for any discount. It is noted that discount is an element of price and any attempt to fix amount of discount or any other coordination with regards to it is considered as price fixing. Four instances regarding discussion on discounts are observed which constitute a *prima facie* violation of Section 4(2)(a) of the Act. These instances are dated: 10/20/2023; 10/29/2023; 10/30/2023 and 11/4/2023.

- e. **Secondary material:** Based on the findings of paragraph 71 above, there appears to be an understanding w.r.t sale of such material without the consent or informing the other company which is a *prima facie* violation of Section 4(2)(c) of the Act. Period of infringement is 5/13/2024.
- f. **Involvement of HPL:** Based on the findings of paragraphs 72-73 above, the enquiry committee notes that although HPL's prices are moving in tandem with ISL and ASML we did not find any sufficient evidence of coordination with HPL.
- g. **Sharing of commercially sensitive information:** Based on the findings of paragraphs 90 to 91 above, it is noted that information on purchase price of HRC is being exchanged between ASML and ISL. The information is strategic commercial information as HRC is the largest cost component (for CRC, GI and CC) and therefore, the price at which it is procured will determine the final price of flat steel products sold by a company. It is also noted by ISL and ASML that the prices of CRC, GC and CC are closely pegged to HRC price therefore, making HRC prices strategic in determining final prices. The exchange of this information is not one off and the enquiry committee has found a number of such instances starting from: 12/7/2021 to 4/3/2023 (Marubeni-NSC) and 1/3/2023 to 11/28/2023 for Cargill. This exchange of information of a commercially sensitive nature allows ASML and ISL to coordinate on prices of CRC and GC in *prima facie* violation of Section 4(2)(a) of the Act.


100. **Whether there is any *prima facie* violation of Section 3 of the Act by the undertaking(s) in the relevant market?** Based on the findings of paragraph 92 above, The enquiry committee has found *prima facie* violations of Section 4 of the Act by ASML


and ISL, two of the largest players in the sector, in the instant matter and therefore, the question of a violation of Section 3 of the Act does not arise.

8 RECOMMENDATION

101. In light of the above stated findings, the enquiry committee recommends that the Commission may consider initiating proceedings under Section 30 of the Act for *prima facie* violation of Section 4(1) read with subsection 4(2)(a) and (c) of the Act against the following:

- a. International Steels Limited; and
- b. Aisha Steel Mills Limited.


Maliha Quddus
Enquiry Officer


Awais Zahid
Enquiry Officer