



COMPETITION COMMISSION OF INDIA

Case No. 02 of 2024

In Re:

Chakra R Prabakaran

193, Fourth Cross Krishna Garden

Chavadi, Kondur- Post Cuddalore

607006, Tamil Nadu

Informant

And

Tamil Nadu State Marketing Corporation Limited

(TASMAC)

CMDA Tower- II, IV Floor,

Gandhi Irwin Bridge Road, Egmore,

Chennai - 600008

Opposite Party

CORAM:

Ms. Ravneet Kaur

Chairperson

Mr. Anil Agrawal

Member

Ms. Sweta Kakkad

Member

Mr. Deepak Anurag

Member



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

1. The present Information has been filed by Chakra R Prabakaran (**‘Informant’**) under Section 19(1)(a) of the Competition Act, 2002 (**‘Act’**), against **Tamil Nadu State Marketing Corporation Limited (‘TASMAC/Opposite Party’/OP’)** *inter alia* alleging contravention of the provisions of Section 4 of the Act.
2. The Informant has stated that TASMAC is a Tamil Nadu state government wholly owned company registered under Companies Act to sell liquor through its 5000+ retail outlets in Tamil Nadu directly to consumers. The information further provides that TASMAC has exclusive rights to sell alcoholic products to consumers in the state of Tamil Nadu.
3. The Informant has alleged that TASMAC is selling only few beer brands, particularly brands like “*SNJ 10000*” and “*British Empire*” to name a few which are produced by particular distilleries, which impedes competitiveness of other beer brands in the market and discourages competition in business.
4. The Informant has alleged that TASMAC has formed a nexus with SNJ Breweries and few other breweries to purchase only particular beer brands from these breweries and sell through its 5000+ shops to consumers, while other beer brands are not given the opportunity to sell their products as liquor products are exclusively sold to public consumers through TASMAC.
5. The Informant has attached a white paper titled “TASMAC- Free Tamil Nadu”, published by Tamil Nadu BJP president K. Annamalai as evidence to support the allegations. The white paper *inter alia* states that “*SNJ continues to hold sway over the beer that is pushed to the market. Although there are 46 brands of beer in Tamil Nadu, only 4-5 brands are available for consumers - SNJ 10000 and British Empire made by SNJ Breweries are among the few options that consumers can choose from. Despite there being 46 brands of beer available, it is alarming to note that only a limited number, such as SNJ 10000 and British Empire produced by SNJ Breweries, are made accessible to consumers. This raises concerns about the lack of variety and choice available to consumers, suggesting a potential*

monopolistic control exerted by certain liquor manufacturing companies in collusion with TASMAC.”

6. The Informant has sought interim relief in the nature of – “Closing of 50% of TASMAC shops in Tamil Nadu within 15 days of interim order.” The Informant has stated that selling and promoting particular beer brands through TASMAC shops means that other beer brands do not have fair opportunity to sell their products to the public.
7. Informant has sought the following relief from the Commission:
 - (a) Closing all TASMAC Liquor shops in a phased manner within a year-2024.
 - (b) Imposition of Penalty on TASMAC and suppliers for causing appreciable adverse effect on competition.
8. The Commission considered the matter in its ordinary meeting held on 12.06.2024 and decided to seek responses/comments from the OP on the following within four weeks from the date of the receipt of the order:
 - a) *What is the selection criteria for brands of beer to be procured periodically and made available at TASMAC retail outlets in Tamil Nadu? Please indicate the official policy (if any) and the process for selection and division of total volume across beer manufacturers in this regard.*
 - b) *Please provide a list of manufacturers of beer and their respective brands, along with the quantity of beer procured from them and made available at the TASMAC retail outlets in Tamil Nadu (on a monthly basis), along with volume-wise share (in %) for each brand in the last 3 financial years.*
9. Subsequently, the Commission considered the matter in the ordinary meeting held on 14.08.2024 and noted that no responses/comments were received from the OP till date. The Commission directed that in the interest of justice, another opportunity may be provided to OP to file responses/comments as sought *vide* order dated 12.06.2024 within four weeks from the date of the receipt of the order.

10. The Commission further considered the matter in the ordinary meeting held on 23.10.2024 and noted that no responses/comments have been received from the OP till date. The Commission directed that in the interest of justice, another opportunity may be provided to OP to file responses/comments as sought *vide* order dated 12.06.2024 within four weeks from the date of the receipt of the order.

11. Meanwhile, *vide* email dated 18.11.2024, the Informant *inter alia* stated that –

“As per the Tamil Nadu government owned exclusive liquor selling company - TASMAC, they are not providing the annual brand wise beer sold in the last three years, even when requested through right to information act..TASMAC management directed its district officers to provide the data, but most of the district officers did not provided the asked data, citing various reasons. This data is not available in the TASMAC website or in any public domain.” The Informant requested the Commission to take necessary action to get the data to proceed further in the case. However, such data had already been sought by the Commission *vide* its order dated 12.06.2024.

12. Subsequently, the Commission considered the matter in the ordinary meeting held on 12.12.2024 and noted that no responses/comments have been received from the OP till date. The Commission directed that in the interest of justice, last opportunity may be provided to OP to file responses/comments as sought *vide* order dated 12.06.2024 within four weeks from the date of the receipt of the order.

13. The Commission considered the matter in its ordinary meeting held on 29.01.2025 and decided to pass an appropriate order in due course.

14. Subsequently, TASMAC submitted its response *vide* its letter dated 28.01.2025, received on 03.02.2025.

15. In its response, TASMAC *inter alia* stated the following –

“In Tamil Nadu State Marketing Corporation, procurement of Beer is system based indent generation. TASMAC follows the weighted average sales calculation method to place monthly order for IMFS/Beer manufacturers. The monthly order is auto

generated in the corporate office using software on the 1st day of every month. Since, computerization of TASMAC IMFS Depots, a scientific method for placing indents is being followed which was finalized by the internal committee constituted in the year 2015-2016. Considering the following factors the committee derived the guidelines for calculating the requirements of brands.

(i) Present stock position of various brands of the respective companies in the godown and stock in transit.

(ii) The previous 3 months sales of the concerned brand/ pack/ depot.

The following purchase policy formula is adopted for issue of monthly orders for IMFS and Beer on the 1st day of every month.

(iii) Weighted Average Sale Calculation

$$\begin{array}{ccc} \text{Weighted} & & \text{Last three} \\ \text{Average} & = & \text{month sales} \\ & & \text{No. of} \\ & & \text{working} \\ & & \text{days} \end{array} + \begin{array}{ccc} \text{Last month} \\ \text{sales} \\ \text{No. of} \\ \text{working} \\ \text{days} \end{array}$$

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(iv) Monthly Order Quantity

Monthly Order = Weighted average sale x 39 days – (closing stock + Stock in transit + Indents on hand)

TASMAC issues indents to all the suppliers weekly twice for replenishing of stock at the TASMAC retail shops.

TASMAC procures all brands from all the suppliers sufficiently to cater to the preference of consumers and do the stock transfer to all the retails shops of TASMAC.

The above procedure is followed impartially based on the sales in respect of each brand.

After receiving Indent, Beer Manufacturers Commence Production, and dispatch the stock to Depots. Sales of a particular brand depend on the preference of consumers and also other factors on manufacturers side like slow/ decreased production, delayed dispatch, mismanagement of not sending preferred brands to depots in time, etc.

Thus when the manufacturers mismatch the demands of the market their market share tend to fall down. The system based indent generation by TASMAC automatically places the indent to the manufactures, based on the formula as already explained above. Therefore, TASMAC is impartial in placing indents to the manufacturers.”

16. Further, TASMAC vide its response has provided the data sought by the Commission vide order dated 12.06.2024 i.e. the list of manufacturers of beer and their respective brands, along with the quantity of beer procured from them and made available at the TASMAC retail outlets in Tamil Nadu (on a monthly basis), along with volume-wise share (in %) for each brand in the last 3 financial years.
17. It is noted that the Informant is primarily aggrieved by the TASMAC shops in Tamil Nadu who are selling specific brands of beer such as “SNJ10000” and “British Empire” only, over other beer brands available in the market and thus, is in violation of provisions of Section 4 of the Act.
18. The Commission observes that for an assessment of alleged violations by an entity, it has to pass through the touchstone of being an enterprise as defined u/s 2(h) of the Act.

Enterprise

Section 2(h) of the Act states that ““enterprise” means a person or a department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, but does not include any activity of the Government relatable to the sovereign functions



of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.”

19. It is observed by the Commission that since OP is engaged in distribution and sale of alcoholic beverages in the state of Tamil Nadu, it is engaged in economic activity, and thus qualifies to be an enterprise in terms of Section 2(h) of the Act.
20. Further for assessing dominance of any entity and its alleged conduct, a relevant market needs to be delineated. Based on the Information and other material available on record, it is observed that the Informant is *inter alia* aggrieved of alleged abuse of dominant position by TASMAL in relation to the distribution and sale of beer in Tamil Nadu.
21. Beer appears to have distinct product characteristics than other forms of liquor. Hard liquor, also known as distilled spirits, is made by refining grains, vegetables, and fruits. It is produced in various forms like whiskey, gin, rum, brandy, tequila, and vodka etc. On the other hand, beer is made by extracting raw materials using water and fermentation. Further, it is noted that in EU, in Case AT.40134 – *AB InBev beer trade restrictions*, it was held that “According to almost all competitors and off-trade customers of AB InBev, the market for beer constitutes a separate product market as beer is not substitutable with other beverages, both from a supply- and demand-side perspective.”
22. Accordingly, the relevant product market in the instant matter appears to be “*procurement, marketing, distribution and sale of beer*”.
23. Further, it is noted that with respect to the working of the beer industry in India, the manufacture, production, possession, transport, purchase and sale of intoxicating liquors, including beer, falls within the ambit of Item No. 8 in List II of the Seventh Schedule of the Constitution of India (*i.e.*, the State List). Further, as per Item No. 51 of the State List, duties of excise on liquor is also a State subject. As such, each State/UT in India has its own unique method of regulating the sale of liquor (including beer) within its territory, leading to differences in pricing regulations and approvals, imposition of different taxes, different excise duties and differing terms of licensing, among others.



24. This variance in regulations and models of procurement and distribution of liquor from State to State make each State a possible distinct geographic market for the procurement and distribution of liquor.
25. In view of the relevant product market and the relevant geographic market delineated above, the Commission defines the relevant market as the “*procurement, marketing, distribution and sale of beer in the state of Tamil Nadu*”.
26. The underlying principle in assessing dominant position of any enterprise in the relevant market is whether the enterprise in question can operate independently of the competitive forces prevailing in the relevant market or can it affect its competitors or consumers or relevant market in its favour. As per information available on public domain, TASMAL is vested with the exclusive privilege of wholesale supply of Indian Made Foreign Liquor (‘IMFL’) for the whole State of Tamil Nadu as per Section 17(C)(1-A) (a) of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937). It took over the wholesale distribution of IMFL from the private sector in the state of Tamil Nadu in 1983. The exclusive privilege of retail vending of IMFL was granted to TASMAL under Section 17 (C)(1-B) of the Tamil Nadu Prohibition Act, 1937.
27. It is also ascertained from the public domain that the origin and history of TASMAL starts in 1983, the Tamil Nadu government formed two corporations — one exclusively to market liquor and another to manufacture it. The marketing arm was called TASMAL, and the manufacturing arm was called Tamil Nadu Spirit Corporation, or TASCOP. By 1987, TASCOP was abandoned and private companies were allowed to manufacture liquor. Around the same time tenders were issued for private shops to retail alcohol. In November 2003, the Tamil Nadu government announced that it would take over private retail sales of alcohol in the state with TASMAL having the monopoly to buy liquor from manufacturers and sell it to consumers.
28. Further, according to information available on TASMAL’s official website, currently TASMAL procures Indian Made Foreign Spirits (‘IMFS’) and beer stocks locally from 11 IMFS manufacturers and 7 beer manufacturers in the State. It also procures wine locally from one manufacturer and scotch, whisky and few wine brands from other states. TASMAL

also engages in retail sale of Foreign Liquor. Distribution of IMFS & beer is being done through the 43 depots of TASMAL located throughout the State.

29. The explanation to Section 4 of the Act states that: “*dominant position*” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to— (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour’.

30. It is observed by the Commission that TASMAL, being in a monopolistic position in the distribution and sale of liquor in the State of Tamil Nadu, faces no competitive pressure, as there are no competitive forces to operate independently from. On the basis of the same, TASMAL is dominant in the relevant market of *procurement, marketing, distribution and sale of beer in the state of Tamil Nadu*.

31. It is noted by the Commission that as per the price list (as on 01.02.2024) available on the official website of TASMAL, out of 38 brands available from 6 suppliers, the only well-known brands that appear on the list are – Tuborg, Carlsberg, Kingfisher and Fosters. The price list does not include other commonly known brands such as Budweiser, Corona, Heineken, Bira, Hoegaarden *etc.* Further, in the said price list, 21 out of 38 brands belong to three manufacturers *i.e.* United Breweries Ltd. (13 brands), SNJ Breweries Pvt. Ltd. (8 brands) and Kals Breweries Pvt. Ltd. (8 brands).

32. Further, upon perusal of information available in the public domain, some newspaper articles *viz.* news article published by Times of India on 16.05.2023 titled “*There's no beer! TASMAL menu has 46 beer varieties , but only 4-5 at outlets*” and an article by Times Now dated 31.10.2023 titled “*Bira, Thunderbolt and More: Chennai Outlets to Sell Premium Beer Brands From November*” appear to support part of the allegations raised above by indicating that only certain brands of beer are available at TASMAL retail outlets and the availability of popular brands is usually low.

33. Further, it is ascertained from the public domain that in 2014, in response to a petition filed by M/s Golden Vats Pvt. Ltd., a Chennai-based liquor manufacturing company (W.P. Nos.1937 & 1938 of 2014), the Hon’ble Madras High Court had stated in Para 29 “*In any sale of consumables, which is monopolistic in nature, it is the choice of the consumer*

that has to prevail and not the fourth respondent (TASMAC).

There should be a-la-carte system and consumer, who is the master of his choice, should be allowed to purchase according to his wishes. The consumer should have a choice which may vary based upon the quality of IMFL brands. Hence, all IMFL brands should be made available in the fourth respondent (TASMAC) shops across the counter, permitting the consumers to select the brands of their own choice”.

34. Further, TASMAC vide its response has stated that it follows a weighted average sales calculation method to place monthly order for IMFS/Beer manufacturers, which is auto generated using a software on the 1st day of every month. However, it is observed that the formula for calculating such weighted average takes into account last 3 months and last month's sales, and does not factor in the demand for specific brands from the retail stores. Thus, in the given formula, the brand which has already been stocked and sold in the previous month more than the other brands will be automatically given higher orders in the present month. To this extent the formula appears to perpetuate the status quo of the sales and inventory position observed in the previous months.
35. On analysis of the data furnished by TASMAC regarding brand-wise and manufacturer-wise procurement of beer in the last 3 financial years, it is observed that the share of brands of two manufacturers i.e Kals Breweries Pvt. Ltd. and SNJ Breweries Pvt. Ltd. such as ‘British Empire’, ‘SNJ 10000’, ‘Black Pearl’, ‘High Voltage’ etc. is significantly higher compared to other brands (with the exception of Kingfisher and Zingaro) in TASMAC's procurement in the last three financial years. The Informant has also alleged that these brands receive preferential procurement over other brands, and their names have also been mentioned in the abovementioned news reports regarding availability of select brands in TASMAC outlets. It is also observed that the combined share of Kals Breweries Pvt. Ltd. and SNJ Breweries Pvt. Ltd. has significantly increased in the last three financial years, from 40.22% in 2021-22, to 58.41% in 2022-23 and 56.76% in 2023-24.
36. It is further observed that among the few well-known brands such as Tuborg, Carlsberg, Kingfisher and Fosters mentioned in TASMAC's price list available on its website, only Kingfisher has a significant share in procurement. Following table depicts the share of the abovementioned brands in the last three years:

Sl. No.	Name of brand	Share in procurement in 2021-22	Share in procurement in 2022-23	Share in procurement in 2023-24
1.	Kingfisher	35.39	24.40	32.07
2.	Tuborg	5.30	3.39	2.18
3.	Carlsberg	1.12	0.34	0.15
4.	Fosters	0.00	0.61	8.74

37. Therefore, it appears from the data provided by TASMAL that only a few brands dominate the share of its procurement of beer, and the well-known brands in TASMAL price list command a significantly lower share in procurement.

38. In consideration of the facts and circumstances of the present case, the Commission is of the *prima facie* view that TASMAL appears to be abusing its dominant position by limiting market access to certain brands of beer in the state of Tamil Nadu in contravention of Section 4(2)(c) of the Act. On the basis of the material available on record, there appears to be substance in the allegations levelled by the Informant and the same merits investigation by the Director General ('DG').

39. Accordingly, the Commission directs the DG to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. The Commission also directs the DG to complete the investigation and submit the investigation report within a period of 60 days from the receipt of this order.

40. It is also made clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case, and the DG shall conduct the investigation without being swayed in any manner, whatsoever, by the observations made herein.



41. The Secretary is directed to send a copy of this order along with the material available on record to the DG forthwith, through speed post/email. The Secretary is directed to serve a copy of this order to the parties also, through speed post/e-mail.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

New Delhi

Date: 25/03/2025