



COMPETITION COMMISSION OF INDIA

Case No. 42 of 2019

In Re:

**Mr. Makarand Anant Mhaskar
(Sole Proprietor of M/s Welcome
Agencies) 5/97, Opp. Union Bank of
India, Bazarpeth, AT/P Kankavli,
Dist. Sindhudurg,
Maharashtra-416602**

Informant

And

**USV Private Limited,
Arvind Vithal Ghandi Chowk,
BSD Marg, Govandi,
Mumbai-400088**

USV

**Kundan Pharmacon (C&F Agent),
Gate No. 1104, 1st Floor,
10th Mile, Pune-Saswad Road,
A/P Wadki,
Pune-412308**

Kundan

CORAM:

**Mr Ashok Kumar Gupta
Chairperson**

**Ms Sangeeta Verma
Member**

**Mr Bhagwant Singh Bishnoi
Member**



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

1. The instant case has been filed by Mr. Makarand Anant Mhaskar (“**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against USV Private Limited (“**USV**”) and its C&F Agent, Kundan Pharmacon (“**Kundan**”) alleging contravention of the provisions of Section 4 of the Act.
2. As stated in the information, the Informant is a pharmaceutical wholesaler who had placed an order for purchase of drugs from USV on 31.07.2019. Kundan *vide* its letter dated 06.08.2019, confirmed receipt of the said order of the Informant along with documents and demand draft.
3. The Informant alleged that USV imposed the following unfair conditions on the Informant:
 - Collection of goods from Pune C&F agent (Kundan), which is 360 km away from the Informant’s location.
 - The Informant is not entitled to return any product purchased from USV for any reason whatsoever including those on account of expiry or damage.
 - Advance payment to be paid every time.
 - The Informant cannot purchase the products of USV from any other C&F agent.
4. The Informant has averred that all requisite documents were provided and terms of advance payment were also accepted. It has been alleged that drugs were not supplied by Kundan on the ground that the Informant rejected the condition which provided that the Informant is not entitled to return any product purchased from USV for any reason whatsoever including those on account of expiry or damage. It has been further alleged that another order was placed by the Informant on 11.09.2019, as per the requirements, but the same was not executed and demand draft, which was held for two months, was also returned on 30.09.2019.
5. The Informant has prayed that the Commission should take an appropriate action against USV and Kundan for imposing unfair and discriminatory conditions.



6. The Commission has perused the Information on record and material available in public domain.
7. The Commission observes that the Informant has objected to certain terms and conditions which were imposed upon it by USV, as mentioned in para 3 above.
8. The Commission notes that the Informant has alleged contravention of the provisions of Section 4(2)(a) of the Act by USV and Kundan. However, it appears that Kundan is merely a C&F agent of USV, therefore, for the purpose of analysis under the provisions of Section 4 of the Act, USV is the relevant entity and the Commission has accordingly analysed the case from that perspective.
9. The Informant has not brought on record any material (except for a few emails exchanged between USV and Informant) which could throw light upon the nature of business relationship between itself and USV. The Informant has merely alleged that USV is dominant without substantiating the grounds on which such assertion is made.
10. The Commission notes that the abusive conducts, as set out under section 4(2) of the Act, can fall into two into two broad categories viz; 'exclusionary' and 'exploitative' practices. Exclusionary abuses are those practices adopted by dominant firm which drive competitors out of markets, or create entry barriers for its competitors. On the other hand, exploitative abuses are those practices in which dominant firm takes advantage of its market power by *inter alia* charging discriminating and unfair prices or imposing unfair terms and conditions on its customers. The Commission observes that in the instant matter there is neither any allegation of any exclusionary abuse nor it *prima facie* appears to be a case of such conduct. The Commission, thus, notes that the matter may fall under the exploitative abuse, provided the dominance of USV in the relevant market and some abusive conduct in terms of the provisions of Section 4 of the Act, is established against it.



11. The Commission observes that in the instant matter, the primary grievance of the Informant pertains to certain conditions imposed by USV. Amongst those conditions, in the opinion of the Commission, the main grievance of the Informant appears to be the condition whereby it cannot return the products to USV *‘for any reason whatsoever, including expired products’*.
12. To analyse the aforesaid grievance, position of USV in the pharmaceutical sector needs to be assessed. From the information available in public domain, the Commission observes that USV is a 55-year-old healthcare company which began as a joint venture with USV&P Inc. USA, a subsidiary of Revlon. Its product offering presently includes Active Pharmaceutical Ingredients (APIs) which are marketed globally in 65 countries. Perusal of the website of USV states that *“In the financial year 2018-19, our total income was Rs 31,065 million. Our Indian business contributed 83% to the revenue and the rest was from export of APIs and Finished Dosages.”* (<https://www.usvindia.com/aboutus.php>, Retrieved on 29.11.2019 at 10:12 AM).
13. Further, the Commission observes that USV in Indian pharmaceutical market has presence in the following portfolios (Source: <https://www.usvindia.com/india-operations.php>, Retrieved on 29.11.2019 at 10:12 AM) :
- Diabetes
 - Cardiovascular
 - Orthopaedics
 - Nutritional
 - Dermatology/Cosmetology
 - Gynaecology
 - Paediatrics
 - CNS
 - Respiratory



14. As per the CMIE's Prowess IQ data, accessed on 23.01.2020, sales data across pharmaceutical companies show that numerous pharmaceutical companies have sales more than that of USV and as such the USV does not seem to enjoy dominant position.
15. Additionally, it is also not the Informant's case that the drugs for the above mentioned portfolios are only available with USV and no substitutes are available. He has merely stated that USV has imposed certain unfair conditions in its dealing with the Informant. In absence of any evidence of dominant position of USV, no case is made out against OP-1 under the provisions of Section 4 of the Act.
16. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case and the information filed is closed forthwith under Section 26(2) of the Act.
17. The Secretary is directed to communicate the order to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 07.02.2020