



COMPETITION COMMISSION OF INDIA

Case No. 63 of 2013

In Re:

**M/s Royal Agency,
Through its Partner Ms. Maria Rodrigues, Goa
Shop 'C', Phase – I,
Garden View Building, Margao, Goa
Informant**

And

**Chemists & Druggists Association, Goa
403, Shiv Towers, 14, Patto Plaza,
Panaji, Goa Opposite Party No. 1**

**M/s Franco-Indian Pharmaceuticals Private Limited
20, Dr. E. Moses Road
Mahalaxmi
Mumbai Opposite Party No. 2**

CORAM

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

**Mr. M.S. Sahoo
Member**



Appearances:

For the Informant : None

For Opposite Party No. 1: Shri Nakul Mohta, Advocate

For Opposite Party No. 2: Shri Vaibhav Singh, Advocate

Shri Ramesh Chaturvedi, GM

For M/s Drogaria

Shri Keane Sardinah, Shri Robin David

Menezes & Cia,

Shri Febin Mathew, Ms. Disha Gupta,

Advocates and Shri Agostinho Menezes
(Proprietor)

ORDER

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by M/s Royal Agency, through its Partner Ms. Maria Rodrigues, (hereinafter referred to as the 'Informant') against the Chemists & Druggists Association, Goa (OP-1) and M/s Franco-Indian Pharmaceuticals Private Limited (OP-2) (collectively referred to as the 'Opposite Parties') alleging *inter alia* contravention of the provisions of section 3 of the Act.

2. **Brief facts and allegations:**

- 2.1 The Informant, a distributor of drugs and medicines in Goa, was appointed by OP-2 as a distributor for sale of its drugs and medicines *vide* an agreement dated 10.07.2013. OP-1 is a State level Association registered under the Societies Registration (Goa Second Amendment) Act, 1998. As per the information furnished/gathered during the investigation by the DG in *Suo moto Case No. 05/2013*, OP-1 has more than 800 members spread across the State of Goa. OP-2 is a pharmaceutical company engaged in the manufacturing, selling and distribution of drugs and medicines



through wholesalers & retailers in different parts of India. In Goa, it has appointed five distributors including the Informant.

2.2 It is submitted that OP-2 had supplied products against the orders dated 12.07.2013 & 18.07.2013 placed by the Informant. Thereafter, OP-2 stopped the supply of the products to the Informant against its subsequent order dated 24.07.2013. It is alleged that the non-supply of the products to the Informant was under the influence of OP-1 who had allegedly coerced OP-2. The Informant has alleged that the conduct of OP-1 was because of the Informant's refusal to become a member of OP-1 and also for not obtaining NOC from it to carry out its business in Goa.

2.3 Aggrieved by the alleged anti-competitive conduct of the OPs, the Informant has, *inter alia*, prayed for imposing a fine on OPs for repetitively violating the provisions of the Act.

2.4 The Commission has earlier considered cases filed against OP-1 in Case no. MRTP-C-127/2009/DGIR(4/28) and *Suo moto* case No. 05 of 2013. The Commission found that OP-1 had violated the provisions of section 3(3)(a) and 3(3)(b) of the Act and had imposed a penalty *vide* its order dated 11.06.2012. The Commission has also issued notice under section 42 of the Act for continued violation of order of the Commission.

2.5 The Commission formed a *prima facie* opinion that there appeared to be a violation of the provisions of section 3 of the Act and directed the Director General (DG) under section 26(1) of the Act to cause an investigation to be made into the matter as well as investigate the role of persons who were in charge of and responsible for the conduct of the OPs.



3. **Investigation by the DG**

- 3.1 During the course of investigation, the DG considered the communications and statements of the Informant and the Opposite Parties, which are discussed in the succeeding paragraphs.
- 3.2 The DG examined the Agreement dated 10.07.2013 evidencing appointment of the Informant by OP-2 as its distributor in Goa. As per the terms of clause 2 of the said Agreement, the Informant was expected to concentrate its efforts in Margao and surrounding areas. However, the Informant was free to sell the products of OP-2 outside the said areas also. After appointing the Informant as its distributor, OP-2 had made supplies to the Informant against purchase orders dated 12.07.2013 and 18.07.2013 for a total invoiced amount of Rs. 4.03 lakhs.
- 3.3 The Informant has alleged that the supplies were stopped abruptly by OP-2 against its subsequent purchase order dated 24.07.2013. The Informant has placed on record copies of various documents evidencing placement of the said purchase order and reminders sent by it to OP-2 in the said matter. During the investigation, the DG examined various documents including fax, emails, letters which were exchanged between the Informant and OP-2. The DG took note of an email dated 03.08.2013 which was sent by the Informant to OP-2. It was stated in the said email that despite its repeated reminders, OP-2 has not responded or has made any supplies to the Informant and has also not provided any justification. Further, the Informant had brought to the notice of OP-2 about the directions of the Commission holding that there is no mandatory requirement of



procuring NOC prior to the appointment as a stockist and thus requested OP-2 to clear its pending order failing which the matter would be placed before the Commission. However, no response or justification was offered in this regard by OP-2.

3.4 During investigation, the DG also examined representatives of the Informant and OP-2. Ms. Maria Rodrigues, Proprietor of the Informant, stated on affidavit that:

‘Since Mr. Ramesh Chaturvedi was not responding to the said emails despite receiving the same I telephonically contacted Mr. Chaturvedi and it is during this conversation that Mr. Chaturvedi informed me that the company had intentionally suspended the supplies of drugs and medicines to me at the instance of the Chemists and Druggists Association of Goa. I further learnt from Mr. Chaturvedi that the Chemists and Druggists Association of Goa had ordered the company to stop supply of drugs and medicines to me and had been threatening to boycott the company if they continued to supply to me drugs and medicines as I had refused to become a member of the said Chemists and Druggists association and on account of the fact that I had not obtained a No Objection Certificate from the Chemists and Druggist Association of Goa to do business in Goa.’

3.5 She is stated to have also sent an email dated 03.08.2013 to OP-2 requesting it to resume supplies to the Informant quoting the Commission’s directions given in earlier cases of Chemists and Druggist Association. It was also mentioned in the email that in case OP-2 fails to resume supplies within 48 hours, the Informant would be constrained to approach the Commission.



3.6 The DG also examined Shri Ramesh Chaturvedi, General Manager of OP-2. Shri Ramesh admitted that the supplies against the order dated 24.07.2013 of the Informant were stopped by OP-2 and that its Clearing & Forwarding Agent was advised to execute the said order only after confirmation from the Head Office / Marketing Division of OP-2. The relevant extract of the statement of Mr. Ramesh is reproduced hereunder:

‘After receiving the order of 24.07.2013, FIPP came to know that previous stock supplied to M/s Royal Agency was further supplied by the Royal Agency to the same retailers/market to whom existing distributors were supplying due to which existing distributors had not placed any order for 6-7 days. Thereafter, FIPP told C&F to execute the order after further confirmation from the Head Office/Marketing of FIPP. In the meantime, we started enquiring from the field staff and C&F about the liquidation of stocks. This process took time. In November 2013, distribution and marketing departments of FIPP decided that irrespective of small addition in volume of sales in Goa, we should supply to M/s Royal Agency. Simultaneously, by the end of November 2013, FIPP advised C&F to take a fresh order and execute it. By then the matter had become complicated because of legal issues involved including matter being taken up by CCI. In December 2013, C&F Agent of FIPP started supplying to M/s Royal Agency.’

3.7 At the time of recording of the statement of Shri Ramesh on oath, he cited one more reason for withholding supplies to the Informant against its order dated 24.07.2013 as completion of the formalities



of scrutinizing the documentation and infrastructure of the Informant through the field staff of OP-2.

3.8 The DG also examined Shri Prasad Tamba, President, of OP-1. The relevant extracts of his statement are as under:

“Ms. Maria Rodrigues (proprietor of the Informant firm) worked with other existing distributor of FIPP i.e. Drogaria Menezes & Cia, Margao for several years. The owner of Drogaria Menezes & Cia, Mr. Agostinho Menezes was Wholesalers Chairman of CDAG at that time. In 2013, Ms. Maria left the job and became a distributor of FIPP and she started supplying drugs to the same retailers to which Drogaria Menezes & Cia, Margao was selling. That affected the sale of Drogaria Menezes & Cia, Margao. We understand that he may have informed the company that his sale is affected after the entry of M/s Royal Agency in the same market. Then FIPP stopped supplying to M/s Royal Agency for some time, which was restarted by the company after some time.”

3.9 The DG has further noted that the Informant parted ways from the office bearer of OP-1 (Mr. Agostinho Menezes who was Wholesalers Chairman of OP-1 at the relevant point of time) and had taken up the distributorship of OP-2, which led to a conflict of interest between Informant and the said office bearer of OP-1.

3.10 The DG has concluded that the reasons given by OP-2 for stopping supplies to the Informant on the ground that the Informant had started supplying the products in the same area in which other distributors of OP-2 were already supplying was not in consonance with the terms and conditions of the Agreement dated 10.07.2013



entered into by and between the Informant and OP-2. Considering the totality of the facts, the DG opined that OP-2 was under the coercion of OP-1 for not making supplies to the Informant.

3.11 The DG has stated that the investigations in earlier cases have revealed that the State/District level associations of Chemists and Druggists, like OP-1 seriously jeopardize the business interests of pharmaceutical companies by creating disruptions in the supply chain. Further, the fact that OP-1 had more than 800 wholesalers and retailers as its members spread across the state of Goa who were bound by the guidelines, decisions and directives of the Managing Committee of OP-1 indicate that OP-1 had the ability to dictate its terms on the pharmaceutical companies like OP-2 in the instant case.

3.12 Based on the above analysis, the DG has concluded that OP-1 has contravened the provisions of section 3(1) read with section 3(3)(b) of the Act by limiting/controlling the supply of medicines in the market. Further, the DG concluded that the understanding/decision of OP-2, acting under the suggestions of its distributor M/s Drogaria Menezes & Cia, amounts to agreement which contravenes provisions of section 3(1) read with section 3(4)(d) of the Act. Such conduct clearly establishes an agreement between OP-2 and M/s Drogaria Menezes & Cia which can be looked into under section 3(1) read with Section 3(4)(d) of the Act. The DG further opined that such an agreement is likely to have an appreciable adverse effect on competition as the Informant was an effective competitor who was intentionally excluded because of an arrangement between OP-2 and M/s Drogaria Menezes & Cia.



3.13 The Commission considered the investigation report of the DG in its ordinary meeting held on 18.02.2015 and decided to forward an electronic copy of the investigation report to the all the Opposite Parties and M/s Drogaria Menezes & Cia for filing their replies/objections. The Parties presented their oral arguments before the Commission on 19.05.2015.

4. **Reply/Objections of the Parties**

Reply/Objections of OP-1 in response to the DG Report

4.1 OP-1 has contended that the findings in the DG report is flawed on account of procedural as well as material infirmities. It is averred that the DG has drawn conclusions without any basis and has relied on oral statements of the interested parties without providing any opportunity of cross examination to OP-1 to test the veracity of such statements. It was submitted that the conclusions of the DG were not logical on the basis of material available on record.

4.2 OP-1 has submitted that it did not indulge in any anti-competitive conduct after the orders were passed by the Commission in earlier two cases viz, Order dated 11.06.2012 issued in Case No. MRTP-C-127/2009/DGIR (4/28) and Order dated 27.10.2014 issued in *Suo moto* Case No. 05 of 2013. OP-1 has submitted that it had informed all its members and pharmaceutical companies *vide* its letter dated 07.06.2013 that the requirement of NOC and compulsory membership are not mandatory. OP-1 has further submitted that possibly due to some personal animosity between Mr. Agostinho Menezes, proprietor M/s Drogaria Menezes, the Informant was denied supplies by OP-2. The same however, could



not be attributed to OP-1 for the sole reason that Mr. Agostinho Menezes was an office bearer of OP-1.

Reply/Objections of OP-2 in response to the DG Report

4.3 At the outset, *vide* its submission dated 13.04.2015, OP-2 has denied all the findings in the DG report. OP-2 has raised the preliminary issue of jurisdiction of the Commission. OP-2 has submitted that the Informant had *vide* an undated letter to the Commission after filing of the present information, has stated that it has been receiving regular supplies of drugs and medicines from OP-2 and it does not wish to pursue the matter further. OP-2 has also pointed out that the Commission in its previous decision in *Suo Moto* Case 05/2013 held that mere non-dealing with the Informant for a short span of time under coercion of OP-1 cannot be construed as an agreement in contravention of provisions of section 3 of the Act.

4.4 Further OP-2 highlighted the Commission's order in Case No. 20/2011, *Santuka Associates Private Limited vs. All India Organization of Chemists and Druggists (AIOCD), Organization of Pharmaceutical Producers of India, Indian Drug Manufacturers Association*, wherein it was held that MOU between AIOCD and manufacturers was anti-competitive in view of the fact that MOU contained clauses for requirement of NOC from distributors as compulsory. OP-2 has further submitted that no conclusive proof of any agreement between OP-2 and its appointed stockists was placed on record to show that OP-2 had an understanding with OP-1 for the requirement of NOC or any other document.



4.5 OP-2 has further stated that after receiving order from the Informant on 24.07.2013, it came to know that the Informant was supplying its previous stock to the retailers as a result of which other distributors of OP-2 had stopped placing any order for a week's time. As such, OP-2 was left with no alternative but to discontinue supply to the Informant. Thereafter, OP-2 conducted due diligence of the Informant and after completion of the same in December, 2013, fresh orders were taken from the Informant.

Reply/Objections of M/s Drogaria Menezes & Cia in response to the DG Report

4.6 Mr. Agostinho Menezes, proprietor of M/s Drogaria Menezes & Cia, denied all the findings against him in the DG report. It was urged by Mr. Agostinho Menezes that there was no coercion by M/s Drogaria Menezes & Cia on OP-2 to discontinue supplies to the Informant. Further, he has explained that there was no delay on its part as there is usually 6-7 days gap in placing orders. It was also contended that the whole investigation process was flawed as he was never given any prior notice or copy of the complaint to provide proper defence. Further, it was urged that the DG did not give opportunity to cross-examine the persons whose testimonies were relied upon by the DG. Based on the aforesaid, M/s Drogaria Menezes & Cia requested expulsion of all charges made against it.

5. On a perusal of the DG report and the replies/objections filed by the parties and other materials available on record, the Commission feels that the following issues need to be determined to arrive at a conclusion in the matter:

Issue 1: Whether the allegations levelled by the Informant



regarding stoppage of supplies by OP-2 have been substantiated by the evidence available on record?

Issue 2: Whether such stoppage of supplies by OP-2 to the Informant is on account of directions/diktats issued by OP-1 in contravention of Section 3(3) read with section 3(1) of the Act?

Issue 3: Whether the conduct of the OP-2 is in violation of section 3 of the Act?

6. **Issue 1: Whether the allegations levelled by the Informant regarding stoppage of supplies by OP-2 have been substantiated by the evidence available on record?**

6.1 As per the record placed before the Commission, the Informant was appointed by OP-2 as its distributor *vide* an agreement executed on 10.07.2013. OP-2 had made supplies against Informant's purchase orders dated 12.07.2013 & 18.07.2013. Thereafter, OP-2 had discontinued supply to the Informant against the subsequent purchase order dated 24.07.2013. The Informant has alleged that the discontinuation in the supply of medicines was due to the intervention by OP-1 who had coerced OP-2 to stop supplies by way of threat of boycott. Such stoppage continued till December 2013 after which regular supplies have been made to the Informant.

6.2 It is evident from the details of invoices provided in the DG report that OP-2 had in fact supplied goods to the Informant against its first two purchase orders dated 12.07.2013 and 18.07.2013. Thereafter, no supply was made by OP-2 to the Informant but supplies were resumed only in December 2013. Thereafter, regular supplies have been made by OP-2 to the Informant.



6.3 After analysis of the statements made by the above mentioned witnesses examined by the DG and the surrounding circumstances, the Commission is of the considered opinion that there was a short break in the regular supplies to the Informant by OP-2. However, this fact alone is not conclusive to fix the liability of OPs under the provisions of the Act. The following issues *i.e.*, Issue 2 and 3 would deal with that aspect.

7. **Issue 2: Whether such stoppage of supplies by OP-2 to the Informant is on account of directions/diktats issued by OP-1 in contravention of Section 3(3) read with section 3(1) of the Act?**

7.1 As observed by the Commission in issue 1 examined above, the stoppage of supplies by OP-2 to the Informant took place for a period of few months *i.e.* from July 2013 to December 2013. This stoppage, as alleged by the Informant, was on account of directions/diktats issued by OP-1 to OP-2 not to deal with the Informant as she was not a member of OP-1. The Commission has taken into account the findings of the DG and the submissions made by the Informant and OPs in this regard.

7.2 The letter dated 03.06.2014 sent by the Informant to the DG is relevant in this regard wherein the Informant has accepted that it has no evidence to support the said allegation. Further, it has also been brought on record since OP-2 resumed supplies to the Informant during the period of investigation itself, the Informant has requested the Commission to close the proceedings.

7.3 From the facts of the case, it appears that the matter pertains primarily to single instance of stoppage of supplies. As such, it is essential for the Commission to go into the background of the facts



of this case to understand the motives of the parties that led to the present situation.

7.4 On the basis of the material available on record, it is apparent that Mr. Agostinho Menezes, proprietor of Drogaria Menezes & Cia has been one of the authorized distributors of OP-2 and Ms. Maria Rodrigues, proprietor of the Informant firm had worked for him for about 30 years. She left the job in April 2013. In August 2013, Mr. Agostinho Menezes learnt that the Informant was appointed as a distributor of OP-2 and was supplying to the customers of Mr. Agostinho Menezes. Therefore, quite evidently, the Informant was working as a competitor of Mr. Agostinho Menezes which probably led to a conflict of interest between them.

7.5 As regards the allegation of discontinuation of supplies by OP-2 to the Informant, it is observed that there are three different explanations. As per the Informant, OP-1 influenced OP-2 to discontinue supplies to the Informant since she was not a member of OP-1. OP-1 has stated that the supplies were discontinued due to personal animosity between the Informant and Mr. Agostinho Menezes. It is pertinent to mention here that Mr. Agostinho Menezes had denied instructing OP-2 to discontinue supplies to the Informant or anyone else. Since the Informant was supplying to the customers of Mr. Agostinho Menezes, he said that he only informed the medical representative of OP-2 that he cannot place extra supply orders. OP-2 has given the explanation that the supplies to the Informant were discontinued for 4-5 months since OP-2 was conducting due diligence exercise which is a normal practice while appointing distributors.



7.6 At the outset, the Commission is of the view that the explanation provided by the Informant is uncorroborated. Though the DG has concluded that OP-1 has played an active role in the discontinuation of supplies to the Informant, the same is not supported by sufficient evidence. The DG seems to have been influenced by the earlier cases against OP-1 where its conduct has been found to be anti-competitive and has attributed the conduct of Mr. Agostinho Menezes to that of OP-1, the former being an office bearer of OP-1.

7.7 In order to fix the liability in the present case, it is to be seen as to whether the evidence on record is sufficient to hold OP-1 responsible or not. The Commission cannot ignore the fact that the Informant was appointed as a distributor of OP-2 in July 2013 though it was not even a member of OP-1. The Informant was appointed as distributor of another pharmaceutical company also namely M/s Neon Labs Ltd. though it was not a member of OP-1. Thus, the Commission is of the opinion that the Informant's allegation that membership of OP-1 is a *sine qua non* to be appointed as a distributor of any pharmaceutical company remains unsubstantiated in the facts and circumstances of the case.

7.8 The Commission has also taken into consideration the letter dated 07.06.2013 sent by OP-1 to its members, Organization of Pharmaceutical Producers of India (OPPI), Indian Drugs Manufacturers' Association (IDMA) and other pharmaceutical companies stating that obtaining NOC from OP-1 prior to the appointment of a distributor is not necessary. The President of OP-1, Mr. Prasad Tamba, had even filed an affidavit dated 13.11.2013



before the Commission stating that OP-1 did not have any communication with OP-2 in this regard.

7.9 Further, it would be pertinent to emphasize on the statement of Shri Prasad Tamba, President, of OP-1, recorded before the DG which throws light on the background of the case. The relevant extract is reproduced hereunder:

Ms. Maria Rodrigues (Proprietor of the Informant firm) worked with other existing distributor of FIPP, i.e., Drogaria Menezes & Cia, Margao for several years. The owner of Drogaria Menezes & Cia, Margao, Mr. Agostinho Menezes was Wholesalers Chairman of CDAG at that time. In 2013, Ms. Maria left the job and became a distributor of FIPP and she started supplying drugs to the same retailers to which Drogaria Menezes & Cia, Margao was selling. That affected the sale of Drogaria Menezes & Cia, Margao. We understand that he may have informed the company that his sale is affected after the entry of M/s Royal Agency in the same market. Then FIPP stopped supplying to M/s Royal Agency for some time, which was restarted by the company after some time.

7.10 There is nothing on record except the bare allegation of the Informant that on 01.08.2013, Mr. Ramesh Chaturvedi, Distribution Manager of OP-2, purportedly told the Informant that OP-1 was pressurising OP-2 to stop supplies to the Informant, and had advised the Informant to become a member of OP-1 for resumption of the supplies. This statement, which was part of the telephonic conversation between the Informant and Mr. Ramesh Chaturvedi, remained uncorroborated throughout the investigation process. Rather, Mr. Ramesh Chaturvedi has, in his statement dated 16.01.2015 expressly denied any conversation with the Informant in this regard. In the light of the foregoing, the Commission is of



the view that the version of the Informant is unacceptable being misplaced and without any concrete supporting evidence.

7.11 The Commission has also considered the explanations given by the OPs. In the light of the material placed on record, both the versions cannot be totally disregarded. The background of the case i.e. the fact that the Informant was an employee of Mr. Agostinho Menezes for 30 years and later became his competitor, supports OP-1's explanation for discontinuation of supplies to the Informant. On the other hand, the fact that the supplies were resumed after 4-5 months makes the explanation offered by OP-2 more plausible. One of these scenarios possibly explains why supplies were stopped to the Informant from July to December 2013, though the evidence is not enough to conclusively choose one to the exclusion of other.

7.12 The Commission is thus of the view that no competition issue arises in the instant case. Mr. Agostinho Menezes had categorically denied giving instructions to OP-2 to discontinue the supplies to the Informant or anyone. There is possibility that the Informant having parted ways from business of Drogaria Menezes & Cia did not go down too well with Mr. Agostinho Menezes which led to a conflict of interest between the Informant and Mr. Agostinho Menezes. This fact is even affirmed by the statement of Mr. Agostinho Menezes of M/s Drogaria Menezes & Cia. The relevant extracts of his statement recorded by the DG are reproduced below:

I confirm that Ms. Maria Rodrigues worked for my firm Drogaria Menezes & Cia, Margao for around 30 years. She left the job in April 2013 for better prospects as mentioned in her resignation letter. In the month of August 2013, my travelling salesman alerted me that Ms. Maria Rodrigues is also booking orders for the products of FIPP and supplying to



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my existing customers. Since she was aware about my customers as she has worked with my firm and handled my customers for more than 30 years. Subsequently, I informed Medical Representative of FIPP that I may not be able to place extra orders to complete their targets.

7.13 Even otherwise if it is accepted that Mr. Agostinho Menezes influenced OP-2 to discontinue the supplies to the Informant, the conduct of Mr. Agostinho Menezes cannot be attributed to OP-1. Unilateral actions taken out of personal animosity, as in the present case, does not raise any competition concern which requires intervention by the Commission.

7.14 The Informant threatened OP-2 of instituting a complaint before the Commission and thereafter filed the complaint on 08.08.2013. It is observed that the Informant made no efforts to resolve the dispute or contact OP-1 even though the main allegation was against OP-1. Further there is no correspondence between OP-1 and the Informant which may establish that OP-1 was responsible for the discontinuation of supplies of the product to the Informant.

7.15 Based on the foregoing, the Commission is of the view that the evidence on record is insufficient to hold OP-1 liable for the discontinuation of supplies to the Informant under the provisions of the Act.

8. **Issue 3: Whether the conduct of the OP-2 is in violation of section 3 of the Act?**

8.1 It has been alleged by Mr. Ramesh Chatuvedi in his statement dated 16.1.2015 that since the supplies which were made to the Informant were further supplied by the Informant to the same retailers/market to whom the other existing distributors of OP-2



were supplying, the other existing distributors of OP-2 had not placed any purchase order for 6-7 days.

8.2 The DG has concluded that the refusal to deal with the Informant on the part of OP-2 can be attributed to an agreement between OP-2 and M/s Drogaria Menezes & Cia which is in contravention of section 3(4)(d) read with section 3(1) of the Act. The Commission does not agree with the findings of the DG in this regard. Firstly, there is no evidence placed on record which shows that there was an agreement or understanding of some sort between OP-2 and M/s Drogaria Menezes & Cia.

8.3 The decision of OP-2 to suspend supplies to the Informant may at best be summed up as unilateral and voluntary. The facts of the case indicate that after OP-2 had started supplying to the Informant, other distributors had stopped placing orders with OP-2 for 6-7 days may be because the Informant was catering to their clients. Therefore, a commercial business decision taken by OP-2 to discontinue supplies for a short duration to inquire into the said situation cannot be brought within the purview of section 3 of the Act.

9. In light of the above analysis, the Commission finds that based on the evidence and material available on record, no contravention of the provisions of section 3 of the Act by OPs is established in the instant matter. Accordingly, the Commission decides to close the matter.



10. The Secretary is directed to inform the parties accordingly.

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M.S. Sahoo)
Member

New Delhi
Dated: 27.10.2015

DISSENT NOTE

PER

**AUGUSTINE PETER,
MEMBER**

I am not in concurrence with rest of the learned Members of the Commission. Hence, I am writing a separate order. Since the facts have been elaborately dealt with in the majority order, I shall deal with only those which I deem necessary for the present purpose.



Information

1. The Royal Agency (hereinafter called as 'the informant'), a partnership firm, is a stockist, wholesaler and distributor of OP2.
2. The Opposite Party 1 is the Chemist and Druggist Association, Goa (hereinafter called as 'the OP1'), a State level Association of Chemists and Druggists of Goa registered under the Societies Registration (Goa Second Amendment) Act, 1998 having more than 800 members spread across the State of Goa.
3. The Opposite Party 2 is M/s Franco Indian Pharmaceuticals Pvt Ltd, Mumbai (FIPP) (hereinafter called as 'the OP2') engaged in manufacturing and selling & distributing drugs and medicines through wholesalers & retailers in various regions of the country including Goa.

Allegations

4. The Informant approached the Commission alleging that its supplies were stopped by OP2 at the instance of OP1 under the latter's threat of boycott as the informant had refused to become a member of OP1 and had not obtained No Objection Certificate (hereinafter called as 'the NOC') for doing business in Goa. On the basis of the above, the informant submitted that the non-supply of drugs to the Informant by OP2 at the instance of OP1 amounted to limiting and restricting the supply and market of life saving drugs which contravened section 3(3)(b) of the Competition Act, 2002 (hereinafter called as 'the Act'). It was also alleged that after having appointed the informant as the stockist by virtue of a written agreement for distributorship dated



10/07/2013, the non-supply of stocks to the Informant amounted to refusal to deal as contemplated under section 3(4) (d) of the Act.

5. The informant, inter alia, prayed, that OP2 be directed to supply all their products to the informant without insisting for a NOC from OP1. The informant has also prayed that OP1 be directed not to insist for obtaining of NOC from OP1 and for the informant becoming member of OP1 for carrying out its business. The informant, vide application dated 19/08/2013 also proceeded under section 33 and requested the Commission to grant interim relief as its livelihood depended completely on its business.

Directions to the DG

6. The Commission, vide its order dated 03/10/2013, after taking into consideration the material on record, formed an opinion that the conduct of OP1 and OP2 was *prima facie* contrary to the provisions of law and in violation of section 3(3) of the Act and referred the matter to the Director General (hereinafter called as 'the DG') with the directions to submit its report (hereinafter called as 'the DG report') to the Commission and role of such persons who at the time of such contravention were in charge of and responsible for the conduct of the business of the company so as to fix responsibility of such persons u/s 48 of the Act, in case the DG finds a violation in the matter.

DG Report

7. In pursuance of the directions of the Commission, vide order dated 03/10/2013, the DG submitted its report on 03/02/2015.
8. The contents of the DG report has been adequately brought out in the Majority order and shall not be reiterated. However, it is pertinent to mention that the DG, identified two issues for investigation:



- a) Examination of the conduct of OP1, OP2 and any other parties in the light of the allegations of the informant and in the event of any contravention, the relevant provisions of the Act, contravened by them; *and*,
 - b) Identification of persons, and examination of their role in the anticompetitive conduct, if any, of the OPs and any other parties in terms of the provisions of section 48 of the Act.
9. The investigation concluded that supplies to the informant had been suspended by OP2 for a period of about four months in spite of having appointed the informant as its distributor and in spite of having executed its initial two orders. The DG found that:
- a) OP1 had been carrying on practices that limited and controlled the provisions of services/supply of drugs and medicines in Goa thereby contravening the provisions of Section 3(3) (b) read with section 3(1) of the Act.
 - b) The suspension of supplies to the informant against its order dated 24/07/2013 and thereafter till mid-December, 2013 was on account of the objections/ reservation of one of the existing distributors of OP2 in Goa namely M/s Drogaria Menezes & Cia under an agreement between OP2 and its said distributor. Such an agreement entered into between OP2 and its distributors M/s Drogaria Menezes & Cia, being an agreement between entities at different stages or levels of production chain in different markets, falls within the ambit of the provisions of section 3(4) read with section 3(1) of the Act.



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- c) Being parties to the said agreement whereby OP2 refused to deal with the informant, OP2 and M/s Drogaria Menezes & Cia have contravened the provisions of section 3(4) (d) of the Act.
10. For the purposes of section 48, Sh Agostinho Menezes, in dual capacity of proprietor of M/s Drogaria Menezes & Cia and as a member of the Managing Committee of Chemist & Druggist Association, Goa and Shri Ramesh Chaturvedi, General Manager Distributions of OP were named.

Submissions/Objections/Response of the Parties

11. These have been adequately dealt with in the majority order and will be reiterated as and when required for my purpose of explaining the issues in hand

Majority Order

12. The Majority of the members of the Commission have reached the conclusion that based on the evidence and material available on record, no contravention of the provisions of section 3 of the Act by OPs is established and is, accordingly, closing the matter.

Dissent

13. I have perused the material on record, including the DG report and the submissions/replies/objections of the parties. I am unable to agree either with the conclusions arrived at by the majority of the learned Members of the Commission or with the analysis of the case that led to such conclusions, for the reasons I shall explain in the following paragraphs.

Issues for determination

14. The following issues, according to me, arise for determination:
- a) Whether OP1 has limited and controlled the provisions of services/supply of drugs and medicines in Goa by insisting on NOC,



thereby contravening the provisions of Section 3(3) (b) read with section 3(1) of the Act.

- b) Whether OP 2, by entering into an agreement with its distributor, M/s Drogaria Menezes & Cia (who happened to be the chairman of the Wholesale wing of OP1) has contravened the provisions of section 3(4) read with section 3(1) of the Act.
- c) Identification of persons and examination of their role in the anticompetitive conduct, if any, of the OPs/any other parties in terms of provision of section 48 of the Act.

Analysis

15. The concerns, due to which I am constrained to write an order dissenting from the Majority of the Members of the Commission, arise, primarily, on account of the following:

- a) There are several important pointers available in the DG Report Annexures (page 47 of the DG report) regarding the likely continuing practice by the OP1 in spite of prohibition to the effect by the Commission which has not been looked at by the majority of the Members.
- b) There are a number of facts revealed in the investigation by the DG which have not been fully appreciated and analysed in the majority order.

16. Let me move on to determining the issues in a perspective different from that taken in the majority order. In order to answer both the issues for determination and for the analysis of the case, including the relevant



evidence missed out in the majority order, let me put all the relevant events in a chronological order.

Table showing Chronology of events in the case

Date	Event	Remarks
10-07-2013	Agreement executed between the Informant and OP2	Informant appointed by OP2 as distributor for sale of its drugs and medicines
12-07-2013	1 st order placed by the Informant	OP2 Supplied
18-07-2013	2 nd order placed by the Informant	OP2 Supplied
24-07-2013	3 rd order placed by the Informant over fax	OP 2 did not supply
27-07-2013	1 st reminder by the Informant to OP2	No response by OP2
29-07-2013	2 nd reminder by the Informant to OP2	No response by OP2
29-07-2013	The Informant received reply from C&F Agent requiring them to contact Head Office of OP2	
30-07-2013	Reply above forwarded by the Informant to OP2 HQs to do the needful	
31-07-2013	3 rd reminder of the Informant to OP2	No response by OP2
01-08-2013	4 th reminder of the Informant to OP2	No response by OP2
03-08-2013	Informant brought to the notice of OP2 about the repeated reminders and the fact that there is no need for NOC from OP1, referring to the Order of CCI in this regard	
08-08-2013	Information filed by the Informant with the Commission	
08-08-2013	Legal notice by the Informant to CDAG to intimate (require) OP2 to resume supplies of drugs and medicines to the informant (Para 24 of the Affidavit by the Informant dated 9-12-2013)	As per the Informant CDAG did not respond to the notice. However, the representative of CDAG approached the informant to settle the matter amicably and assured the Informant that they shall request OP2 to resume supplies of drugs and medicines.
19/08/2013	Informant approaches the Commission under section 33 of the Act	
03-10-2013	Section 26(1) order passed by the Commission	



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11/02/2014	Section 33 order by CCI	Prayer of the informant seeking interim relief rejected.
1 st week of October , 2013	Informant alleged that CDAG began threatening the Informant to become a member	As per the Informant CDAG began threatening the Informant to become a member. As per OP1, it received a letter dated 09-10-2013 from the Informant apologizing for the mistake done by the Informant which resulted in some conflict and to rectify the same and grant membership to the informant.
14-10-2013	Informant handed over a cheque bearing no 519788 dated 14/10/2013 drawn on The Goa Urban Cooperative Bank Ltd for an amount of Rs 2500/- towards the membership fee and signed an application seeking membership	
28-11-2013	The Informant approached her advocate	The Advocate addressed a legal notice to the association directing it to refrain from interfering in the dealings between the Informant and Neon Laboratories and further calling upon the Association to return the cheque forcefully obtained from the informant.
05-12-2013	Affidavit by the Informant to the Commission. Affidavit states that OP1 has not only arbitrarily directed but forced all such pharmaceutical companies establishing its industry in Goa, or interested in distributing its products in Goa, to appoint stockist/wholesalers/distributors only from those individuals and/or firms who are members of the Association thereby restricting and prohibiting any non-member from being appointed as a	



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	stockist/wholesaler/distributors of these pharmaceutical companies.	
13-11-2013	Affidavit by the Chairman of OP1	
14-12-2013	Resumption of supply	
17-07-2014	Letter from the Informant (undated) submitting that it has no grievance against OP1 and requesting a closure of the case (Letter submitted by the Informant and OP2)	'Undated letter' could raise the presumption that it was provided based on a condition stipulated by OP2 to resume supply

Determination of Issue 1: Whether OP 1 has limited and controlled the provision of services/supply of drugs and medicines in Goa by insisting on NOC, thereby contravening the provisions of Section 3(3) (b) read with section 3(1) of the Act.

17. It is to be noted that the case in hand is the third case before the Commission against OP1, the first being an SHTP case bearing No SHTP-C-127/2009/DGIR(4/28) transferred to the Commission u/s Section 66 of the Act wherein the Commission held a violation of Section 3 and directed the Association to file an undertaking that the guidelines and MoU with respect to non-appointment of a stockist or wholesaler from amongst the non-members of the Association or requirement of NOC for the appointment of stockist or wholesaler were done away with within 60 days from the receipt of the order, besides imposing a penalty of Rs. 2,00,000/-. The second case bearing No. Suo Moto Case No 05/2013 was taken up by the Commission on the information filed by one Sh Mario Vaz, Proprietor of M/s Xcel Healthcare who was one of the complainants in the above mentioned SHTP case alleging that CDAG, despite direction in order of the Commission in Case No SHTP-C-127/2009/DGIR (4/28), had not complied with the given directions and that CDAG was restraining the pharmaceutical companies from doing business with him. The second case resulted in another order from the Commission dated 27/10/2014 where a penalty of Rs. 10, 62,062/-



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calculated at the rate of 10% of average receipts was imposed on the Association for showing utmost disrespect to the Commission's mandates.

18. Before dealing with the issue let us see the background of the case in hand. On the basis of the material available on record it appears that Sh Agostinho Menezes, proprietor of Drogaria Menezes & Cia has been one of the authorized distributors of OP2 and the Informant had worked for him for about 30 years. Thereafter she left the job in April 2013 and started her own pharmaceutical distributorship. In August 2013, Sh Agostinho Menezes learnt that the Informant was appointed as a distributor of OP2 and was supplying to the customers of Sh Agostinho Menezes. Therefore, quite evidently the Informant was working as a competitor of Sh Agostinho Menezes which probably led to a conflict of interest between them. The Informant, before us, alleged that in spite of having a written agreement appointing it as a stockist, OP2 had stopped supplies to it under threat of boycott from OP1 if it continued to supply drugs and medicines to the informant since the informant refused to become the member of OP1 and had not obtained a NOC. Accordingly, section 3(4) (d) and 3(3) (b) of the Act, it was alleged by the informant, were violated.
19. The Majority of the learned members of the Commission are of the view that no competition issue arises in the instant case. The conclusion was formed on the basis of the fact that Sh Menezes had categorically denied giving instructions to OP2 to discontinue the supplies to the Informant or anyone and further that there is no possibility that the Informant having parted away from the business of Drogaria Menezes & Cia did not go down too well with Sh Agostinho Menezes which led to a conflict of interest between the Informant and Sh Agostinho Menezes creating a situation of personal animosity between the two. They rely on the statement of Sh Agostinho Menezes of M/s Drogaria Menezes & Cia where he states:



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“I confirm that Ms Maria Rodrigues worked for my firm Drogaria Menezes & Cia, Margao for around 30 years. She left the job in April 2013 for better prospects as mentioned in her resignation letter. In the month of August 2013, my travelling salesman alerted me that Ms Maria Rodrigues is also booking orders for the same products of FIPP and supplying to my existing customers. Since she was aware about my customers as she has worked with my firm and handled my customers for more than 30 yrs. Subsequently, I informed Medical Representatives of FIPP that I may not be able to place extra orders to complete their targets.”

20. It is clear that the basis of the decision of the majority of the members is the statement of Sh Agostinho Menezes before the DG, where he denied instructing OP2 to discontinue supplies to the Informant or anyone else and said that he only informed the medical representatives of OP2 that he cannot place extra supply orders. Thus, as per the majority, no case of contravention is made out against OP1 Association.
21. Let us see the case from a different perspective. As regards the role of OP1 the following facts from the chronology of events are relevant:
 - a) The original information filed under section 19(1) (a) on 08/08/2013 alleged that supply of goods were stopped by OP2 at the instance of OP1 as the informant refused to become a member of OP1.
 - b) It was initially submitted by the informant that she was not a member of OP1 due to which OP2 was coerced by OP1 to stop supplies to the informant. OP2, opposing the interim application of the informant, vide its application dated 29/11/2013, annexed a copy of the membership form submitted to it by the informant bearing the details of the firm and a cheque for Rs. 2500 towards membership fee for OP1 Association.



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- c) A legal notice dated 28/11/2013 served by the informant on OP1 calling the latter to return the cheque of Rs 2500/- towards membership fee on the pretext that the same was obtained forcefully and fraudulently.
 - d) An affidavit dated 05/12/2013 was submitted by the informant swearing that OP1 began to threaten her to become a member failing which the informant's dealing with Neon Laboratories Pvt Ltd would be disrupted. (Informant acquired the distributorship of OP2 and M/s Neon Laboratories Pvt Ltd even though it was not a member of OP1)
 - e) Meanwhile there was an application u/s 33 filed by the informant vide application dated 19/08/2013 praying the Commission to restrain OP1 from forcing the informant to become its member.
 - f) Thereafter, pending investigation, the informant filed an affidavit before the DG to the effect that pursuant to the said complaint, OP1 has been honouring the agreement between the informant and OP1 and that she has been regularly receiving the stock which redresses her grievance and requested for closure of the case.
 - g) A letter dated 17/07/2014 from the informant to OP2 has been submitted by the latter to the Commission in support of informant's application to close the case which states the fact that she has, post her initial grievance, enrolled herself as a member of OP1 and that she is happy with the functioning of the association and that she is receiving regular supply of medicines.
22. The application by the Informant dated 17/07/2014 submitting that it has no grievance against OP1 and requesting a closure of the case has to be seen against the above facts on record. When the chronology of events portrays



an apparently erratic behaviour on part of the informant, in as much as first the informant furnishes information before the Commission and later requests for withdrawal of the matter on the pretext that the matter has been settled between the parties, the question is whether OP1 can be exonerated having regard to such a behaviour by the Informant. It is pertinent to mention that in view of its past conduct, the present conduct of OP1 needs to be viewed with more care.

23. It is to be noted that the mandate of the Commission is not to act as a platform for parties to negotiate settlement of their disputes. Rather its responsibility is to *eliminate practices having appreciable effect on competition in markets in India*. This is the precise reason why the Act does not include any provision for withdrawal/settlement mechanism, and accordingly the Commission did not allow the application of the Informant to withdraw the matter post her settlement with the OP. The undesirable practice of NOC in the pharmaceutical sector has been the subject matter of a number of cases on which firm view was taken by the Commission, as mentioned earlier in this order. The Commission has repeatedly made it clear that such practice is anticompetitive and also penalised many Associations, including the present OP1. Given the past behaviour of OP1 and given that OP1 is conscious of the unambiguous orders of the Commission in this regard, finding direct evidence is nearly impossible.
24. In the absence of direct evidence, it is important to analyse how fruitful it would be for the Commission to go by the circumstantial evidence available. Circumstantial evidence in this case satisfies the test of 'strong probabilities', and I am satisfied with the indirect evidence available and concur with the conclusion of the DG in this regard. It will not be out of context to mention here that the standard of proof in section 3 cases is accepted as not being 'beyond reasonable doubt' but a 'strong probability'. The Hon'ble COMPAT in Appeal No 21/2012- 65/2012 *M/s International Cylinders (P) Ltd v.*



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Fair Competition
For Greater Good

Competition Commission of India, stressing on the standard of proof in competition cases, held that:

“The burden in this behalf cannot be equated with the burden in the criminal cases where the prosecution has to prove the allegation beyond the reasonable doubt. A strong probability would be enough to come to the conclusion about the breach of the provisions of the Competition Act. Some of the learned counsels argued that their participation or the pre-concerted agreement would have to be proved beyond doubt. We do not think so. It is obvious that an agreement cannot be easily proved because it may be a wink or a nod or even a telephone call. What is required to be proved is a strong probability in favour of a pre-concerted agreement and the factors which we have highlighted go a long way in that direction and as plus factors.” (emphasis supplied) (Para 30, Page 32)

25. In the same case it was further observed by the Hon’ble COMPACT that:

“In our opinion this condition was complete in the present matter. This is apart from the fact that the U.K. Competition Appeal Tribunal had recently confirmed that the appropriate standard is a civil standard and that case is, therefore, required to be proved on the balance of probabilities. It is true that this does not mean that U.K. applies a bare balance probabilities. In our opinion, there is very strong probability on the basis of the evidence led before the CCI. It is true that the application of the proof would differ from case to case and in accordance with the well-established principle the unlikely and/or particularly serious events would require more convincing proof. In our opinion, in this case such proof is available. We, therefore, reject the argument of Shri Srinivasan.” (emphasis supplied) (Para 45, Page 54)

26. However, the indirect evidence of the DG has not been able to convince the majority of the Members about the culpability of OP1. That being the case I



need to discuss the evidence in a bit detail. It is true that the Association had issued a circular/ letter indicating that NOC is not mandatory (dated 07/06/2013) to its members. However, when it came to the notice of OP1 that the issue of NOC was raised by the Informant, the former did not do anything about it. The view of the majority of the learned Members that the informant should have approached the OP1 Association is difficult to be appreciated in that the Informant was not a member of the Association at that time. Rather, as per her affidavit, she was being pressurised to become the member against her will. Moreover the informant had approached the Commission under section 33 for relief from OP1 as the latter was compelling her to become Member of the Association. In such a scenario there is no scope for expecting the Informant to approach OP1. On the other hand OP1, who was penalised more than once by the Commission, when it senses that its conduct on the same lines is again being questioned by the Informant, would normally have approached the Informant and clarified that there is no requirement of NOC. At any rate it would have been natural for the OP1 to check the matter with Sh Agostinho Menezes, who held dual position, as proprietor of M/s Drogaria Menezes & Cia and as Wholesale's chairman of OP1. OP1 could also have checked up with OP2 who is its member. That would have been the behaviour of a 'person' who cared about his/its integrity. OP1, however, consciously decided to do nothing about it as reflected in the Minutes of its meeting dated 06/12/2013 (Pg. 31 DG Annexures)

27. The chronology of events detailed above in paras 21 clearly shows that supplies were resumed by OP2 only after the Informant approached the Commission and after ensuring that the informant applied for membership of OP1 Association on 14/10/2013. The informant, who approached the Commission on 08/08/2013 and for interim relief under section 33 on 19/08/2013 against being pressurised to take membership of the Association OP1, finally withdraws the information on the basis of her taking up



Membership of the Association and receiving supply from OP2. It is all the more curious that the request of the Informant for closure of the case was undated (and also that it was submitted both by the Informant and OP2), which raises a presumption that this was part of the settlement between OP2 and the Informant and OP1.

28. Thus it can be seen that the entire matter revolves around the issue of the informant taking up the membership of the OP1 Association. The supplies, though honoured in the beginning when the stockistship/distributorship was granted to the informant, were stopped mid-way allegedly due to pressure of OP1 Association on OP2. It was resumed only after the Informant approached the Commission by way of an information filed under section 19(1) (a) on 08/08/2013. Thereafter, the Informant on 17/07/2014 requested the Commission to close the matter as it was resolved between the parties when the informant was willing to take up the membership of the OP1 Association and there remained no cause of suspension of the supplies of drugs and medicines by OP2 to the Informant.
29. All of the above discussions point towards the culpability of OP1 Association despite earlier orders of the Commission. The only question that remains to be answered is whether the person active behind the cessation of supply of drugs and medicines by OP2 to the Informant, i.e. Sh Agostinho Menezes, was acting in his official capacity as the office bearer of OP1 Association or in his personal capacity, as proprietor of M/s Drogaria Menezes & Cia, taking out his personal animosity against the Informant. In other words, while all the evidence point to the influence of Sh. Agostinho Menezes on OP2 to cease supplies to the informant, the issue is if such active interference by him could be treated as 'act' by the Association. In my opinion it can be treated as 'act' by the Association, as Sh Agostinho Menezes in the capacity of Wholesaler's Chairman of the Association was in a position to influence the minds of other office bearers to act in this regard. This is further reinforced by the fact that Sh Ashish Raiker, Vice President (North) of the Association



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is also one of the four distributors of OP2. When two important office bearers of OP1 are two of the four distributors of OP2, and these two are directly affected by the entry of the fifth distributor, the Informant, there is a reasonable likelihood of the will of the office bearers prevailing in the Association.

30. It is also necessary to focus on other evidence available against OP1 consistent with the requirement under the Act. Pursuant to an application filed by the informant seeking interim relief under section 33 of the Act, in response to the notice dated 11/11/2013 issued by the Commission for a hearing, OP2 submitted its reply through a counsel on 28/11/2013 requesting the Commission to issue directions to it to resume supplies to the informant stating that:

*“In address to the instant issue under the above referred case, if the Commission issues a directive to our client ordering them to supply drugs to the Informant, our client will be glad to honour such an order of the Commission. Our client has expressed that they have no reservations in supplying our manufactured drugs to any person within the framework of the applicable laws. **However, our client does not wish to fuel any misunderstanding with the CDAG.**”*(emphasis supplied)

31. Thus it is clear that despite previous orders of the Commission declaring certain practices as anti-competitive, there is some kind of pressure exerted by CDAG, the OP1 Association on the OP2 that gets manifested in the latter's disposition as reflected in its submission cited above and its behaviour viz. decision to stop supplies of drugs and medicines without assigning any reason and allegedly on the sole reason of non-procurement of NOC/not being member of OP1 Association. Statement of OP2 to the effect that it is willing to supply drugs to the informant but is not willing to fuel any misunderstanding with the CDAG, the OP1 Association, portrays the extent of threat prevailing in the mind of OP2 with respect to the behaviour of OP1.



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There is every reason to believe that such threat is not limited to OP2 only. All the pharma companies in the territory of Goa may be living under such threat. Moreover, considering that the proprietors of two of the four existing distributors of OP2 were important office bearers of OP1, one being its Wholesaler's Chairman viz Agostinho Menezes of M/s Drogaria Menezes & Cia and the other being its Vice president (North) viz, Sh Ashish J.N. Raikar of M/s Raikar Distributors, there is sufficient reason to believe that OP1 coerced OP2 to suspend supplies to the Informant. Further, the President of OP1 Association has stated:

“Ms Maria Rodrigues (Proprietor of the Informant firm) worked with other existing distributors of FIPP, i.e. Drogaria Menezes for several years. The owner of Drogaria Menezes & Cia, Margao, Sh Agostinho Menezes was Wholesales Chairman of CDAG at the time. In 2013, Sh Maria left the job and became a distributor of FIPP and she started supplying drugs to the same retailers to which Drogaria Menezes & Cia, Margao was selling. That affected the sale of Drogaria Menezes & Cia, Margao. We understand that he may have informed the company that his sale is affected after the entry of M/s Royal Agencies in the same market. Then FIPP stopped supplying to M/s Royal Agency for some time, which was restarted by the company after some time.” (emphasis supplied)

32. The DG is correct in finding that:

“Investigations concluded in the past form time to time have revealed that State/ District level Association of Chemists and Druggists, like OPI enjoy a position of strength that enables them to intervene in the supply chain through which drugs and medicines are made available in the market. These associations can seriously jeopardise the business interest of pharmaceutical companies by creating disruptions in the supply chain, if they wish to do so.



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That the OP Association had more than 800 wholesalers and retailers as its members spread across the State of Goa bound by the guidelines, decisions and directives of its Managing Committees, the OP Association had the ability to prevail upon pharmaceutical companies like OP2 to follow its directives to avoid any disruption in their supply chain in Goa through the member distributors & retailers of the OP Association.”

33. All the above mentioned facts and circumstances point to one direction only: that OP1 Association influenced OP2 to cease the supply of drugs and medicines to the Informant. Such an act cannot be termed as a mere act of personal animosity on part of the office bearers of the Association; more so when proprietors of two of the four existing distributors of OP2, affected by the entry of a new distributor (the Informant) in the area, are senior office bearers of the Association and the Informant’s entry was providing direct competition to them in the market.
34. There are a few other instances in the DG report suggesting the active influence of office bearers on OP2, missed by the majority of the members of the Commission, and suggesting that the anticompetitive practices may still be going on in OP1, in some form or the other. Such instances as referred to in the DG Report points the ‘eye of the needle’ clearly at OP1. For instance, the Minutes of Meeting of the Executive Committee of OP1 held on 17/08/2013 clearly state:

‘It was decided to issue PIS receipts to all companies and further stockist application with even single stockist were to be considered. The secretary said that for the last 3 months all receipts were on hold and in fact one cheque has got date barred in the office itself of Rs. 15,500/- (sic).’ (emphasis supplied).



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35. Thus despite the uncompromising words of the Commission, declaring collection of Product Information Service (hereafter called as PIS) charges anticompetitive in Case No SHTP-C-127/2009/DGIR (4/28) Varca Druggist and Chemist & Ors. against Chemist and Druggist Association, Goa, Collective Boycott/ Refusal to deal by the Chemist and Druggist Associations, Goa, M/s Glenmark Co and M/s Wockhardt Ltd, Suo Moto Case No 05/2013, Vedant Bio Science against Chemist and Druggist Association of Baroda C-87/2009/DGIR, 20/2011, 41/2011, 30/2011, 60/2012, M/s Rohit Medical Store against Macleods Pharmaceutical Ltd and Ors. 78/2012, this undesirable practice continues to be a bulging feature. What appears to have changed is not the policy of the Association in correcting its anticompetitive behaviour but the mode in which such behaviour manifests itself. The fact of NOC/PIS being granted which once used to be recorded in the minutes of meetings is now being excluded from the same in order to escape the reach of the Act further strengthens this conclusion. Sadly, this evidence which is available in the DG report (Pg. 47 DG Annexures) has been left untouched by the DG in the analysis. Nor does the majority order take cognisance of this important evidence.
36. Based on the above discussion, I have no doubt that the requirement of the Act of in terms of indirect evidence against OP1 as regards continued practice of NOC requirement and PIS is well satisfied in this case. There is indirect evidence confirming that the OP1 Association played a role in limiting and controlling the provision of services/supply of drugs and medicines in Goa by insisting on NOC, thereby contravening the provisions of Section 3(3) (b) read with section 3(1) of the Act. Not only is the NOC practice going on but PIS also continues. The evidence available passes the test of 'strong probability' (recognised by COMPACT).



37. Thus, I answer Issue No. 1 in the affirmative and hold OP1 to be in violation of section 3(3)(b) read with section 3(1) of the Act on account of the following reasons:

- a) Sufficient indirect/ circumstantial evidence against OP1 suggesting 'strong probability' of the culpability of OP1, analysed in conjunction with the past conduct of OP1 Association, viz statement of the President of OP1 Association that Sh Agostinho Menezes may have informed the company that his sale was affected after the entry of M/s Royal Agencies (the Informant) in the same market; resumption of supply by OP2 after filing of information by the Informant before the Commission, and the apparently erratic behaviour on the part of the Informant herself revealing the gravity of danger faced by her in the event of not taking up the membership of OP1 Association.
- b) Evidence of other anticompetitive practices (declared so by the Commission in previous cases, though not the subject matter in the case in hand) in the form of collection of PIS charges carried on by OP1 and which normally co-exist and re-inforce the practice of NOC.
- c) Admission by OP2 that it does not want to fuel any misunderstanding with OP1 exhibiting the threat faced by pharmaceutical companies in appointing new distributors without the consent of OP1 Association.
- d) Two of the four important office bearers, in position to influence the Managing Committee of OP1 Association, being distributors of OP2 in direct competition with the Informant. Presence of these two distributions in the Managing Committee of OP1 Association and the representation by the Wholesaler's Chairman can be reasonably be expected to act as a stimulus to influence OP2 to block further supplies to the Informant unless the latter takes up membership of OP1 Association.



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Issue 2: Whether OP2, by entering into an agreement with its distributor M/s Drogaria Menezes & Cia has contravened the provisions of section 3(4) read with section 3(1) of the Act.

38. In relation to the second issue, that of violation of the Act by OP2, the DG examined the Agreement dated 10/07/2013 between the parties evidencing the appointment of the informant by OP2 as its distributor in Goa subsequent to which the former placed orders dated 12/07/2013 and 18/07/2013 vide various invoices for a total amount of Rs 4.03 lakhs. The informant alleged that no supplies were made by OP2 against the subsequent order dated 24/07/2013 through fax for which a reminder was sent vide email dated 27/07/2013 followed by a second reminder vide email dated 29/07/2013 enquiring about the status of the order. In response thereto, the informant on 29/07/2013 received, from the C&F Agents of OP2, a mail advising the informant to contact the head office of OP2. The same was forwarded by the informant to OP2 on 30/07/2013 to do the needful. A third reminder was sent by the informant to OP2 in 31/07/2013 followed by the fourth on 01/08/2013 wherein the informant brought to the notice of OP2 the past reminders. Finally the informant, vide email dated 03/08/2013 brought to the notice of OP2 its repeated reminders and also that the order of the Commission directing no requirement of NOC prior to appointment of stockist/distributor and requested OP2 to clear its pending order. The DG, upon investigation, confirmed the allegation of the informant of supply of goods being stopped against the order dated 24/07/2013 after initial supplies against the first two orders.
39. To arrive at the above said conclusion, the DG relied on the statement of Shri Ramesh Chaturvedi, General Manager of OP2, after placing the above documents before him for seeking a clarification as well as for confirming the communications made by the informant. The relevant part of his statement reads:



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“After receiving the order of 24/07/20136, FIPP came to know that previous stock supplied to M/s Royal Agency was further supplied by Royal Agency to the same retailers/market to whom existing distributors were supplying due to which existing distributors had not placed any orders for 6-7 days. Thereafter, FIPP told C&F to execute the order after further confirmation form the Head Office/ Marketing of FIPP. In the meantime, we started enquiring from the field staff and C&F about the liquidation of stocks. This process took time. In November 2013 distribution and marketing departments of FIPP decided that irrespective of the small addition in volume in sales in Goa we should supply to M/s Royal Agency. Simultaneously, by the end of November 2013, FIPP advised C&F to take a fresh order and execute if. By then the matter had become complicated because of legal issues involved including matter being taken up by CCI. In December 2013 C&F Agent of FIPP started supplying to M/s Royal Agency.”

40. The reason given by OP2 and representatives thereof, to stop supply, are twofold:

- a) That the informant started supplying in the same area in which other distributors of OP2 were already supplying, and;
- b) That OP2 started enquiring from its field staff and C&F agents about liquidation of stocks which took time and it was only in November, 2013 that the decision was taken by the distribution and marketing departments of OP2 that irrespective of the small addition in volume of sales in Goa supply to the informant should be resumed.
- c) Legal issues involved including the matter being taken up by the Commission.

41. As far as the above reasons are concerned, according to the DG this was not in consonance with the terms and conditions of the agreement dated 10/07/2013 where no area specific restraint was placed upon the informant.



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Secondly, as per the information available the informant contributed a significant 12.77% in the total sales achieved by OP2 during the month of July 2013 and the same was not at the cost of other distributors of OP2, which too, achieved significantly higher sales turnover during the month even after the appointment of the informant. Moreover, the DG, concluded that OP1 coerced OP2 to stop supplies to the informant and such coercion was exercised through the other distributors of OP2 (one of which was Vice President of OP1) who suspended placing orders upon OP2 on account of supplies having been made by it to the informant. Also considering that the proprietor of two of the four existing distributors of OP2 were important office bearers of OP1, one being its Wholesaler's Chairman viz. Sh Agostinho Menezes of M/s Drogaria Menezes & Cia and the other being its Vice President (North) Viz Sh Ashish JN Raikar of M/s Raikar Distributors, it was the opinion of DG, that it can be construed that OP1 coerced OP2 to suspend supplies to the informant. Stress was also given on the fact that the informant having parted ways with Sh Agostinho Menezes Proprietor of M/s Drogaria Menezes & Cia, under whom she worked for around 30 years, before taking up the distributorship of OP2, led to conflict of interest between the informant and the said office bearer of OP1 and that the suspension of supplies was on account not only of the reservation/objection of its distributor but also on account of the intervention of OP1.

42. While fully endorsing the above conclusion of the DG, I would like to discuss certain additional reasons that could point to vertical restraints imposed by OP2 on the Informant. For instance, the contention of OP2 that the concerns expressed by Sh. Agostinho Menezes of Drogaria Menezes & Cia that their stocks are not being cleared due to the presence of the informant cannot be accepted as consistent with competitive behaviour. In a competitive scenario, market for a product is not created over time out of thin air. When a new distributor enters the market she/he does not bring all new consumers. She/he will normally eat into the share of existing distributors, presumably through



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her/his efficiency. This is all about competition at wholesale and retail levels. This cannot be an excuse by OP2 to stop supply to the Informant. To deal is the normal market behaviour by an enterprise. Given this when an enterprise refuses to deal, a possible explanation could be that such behaviour is on account of undue external influence. From the evidence available such pressure from OP1 and Sh. Agostinho Menezes, proprietor of Drogaria Menezes & Cia and Wholesaler's chairman of OP1, appears to explain the behaviour of OP2.

43. Vertical restraints in the form of agreements between persons/enterprises that are related at different levels of the production, distribution etc chain is not a presumed violation and is covered under sec 3(4) of the Act, governed by rule of reason, and the touch stone is sec 19(3) of the Act. In the instant case the alleged violation by OP2 relates to sec 3(4) (d) i.e. 'refusal to deal'.
44. It is certainly no one's case that every producer should deal with everyone who is showing interest in dealing with its products. There are certain situations when the producer can indicate that it is not in a position to deal with any specific distributor even when the latter is well qualified for the purpose. Such decisions of a person or enterprise would be subjected to the provisions of sec 19(3) to see if such refusal to deal results in appreciable adverse effect on competition in the market. In the instant case OP2 entered into an agreement with the informant for distribution rights in the area of Goa. And two orders placed by the informant on 12-07-13 and 17-07-13 respectively were supplied by OP2. Then based on an issue raised by another distributor, who happens to be the Wholesaler's Chairman of OP1, the supplies were stopped and the third order placed by the informant on 24-07-2013 was not supplied. No explanation was given by OP2 to the Informant. After repeated reminders the informant was directed to contact the Head Quarters of OP2, which it did. The chronology of events given in the Table on page 6-8 reveals much.



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45. The defence of OP2 for denying supply does not appeal to a man of reasonable prudence. It exhibits more its inability to stand up to another distributor who happens to be a major office bearer of OP1 Association. There is no denial to the fact that OP2 has delayed supply for over five months without any reasonable explanation. Finally when the explanation came it is something which is not sustainable. Refusal to deal was clearly due to the influence of OP1 and Sh. Agostinho Menezes, proprietor of Drogaria Menezes & Cia and Wholesaler's chairman of OP1.
46. The stoppage of supplies to the informant, after supplying twice in a gap of 6 days, i.e. on 12-07-13 and 18-07-2013, when the third order was placed by the Informant on 24-07-2013, without indicating any reason, clearly indicates that the reason for not supplying the third order was not for verification, as stated by OP2 before the Commission. The normal practice is for the verification to precede agreement with a distributor. In the instant case the Informant (applicant distributor) was having experience of more than three decades in this filed. It is natural that she was given distributorship presumably without need for verification. This after thought of OP2 to resort to verification after two supplies in six days was clearly prompted by reasons other than verification purposes, which normally would have been communicated by the marketing people. No such reasons were given to the Informant. Instead they simply referred the Informant to the Head Office. And then what follows is a long period of silence. Supplies were resumed by OP2 on 14/12/13, after the Informant approached the Commission on 08/08/2013 and after order under section 26(1) was passed on 03/10/2013 in this regard, that is when the fear of law was put into the mind of OP2. The resumption of supply was also preceded also by an Affidavit by the Informant before CCI (05/12/2013) as well as filing under section 33 by the Informant (19/08/2013) alleging threat from OP1.



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47. Now that it is proved that the supply of goods to the informant was stopped by OP2, the next step is to evaluate the act of OP2 on the touchstone of section 19(3) to see if it causes or is likely to cause any appreciable adverse effect on competition in the market in India.
48. An important aspect that has been ignored by the learned Members of the Majority is that the periodicity of the order by stockists/wholesalers/distributors is 6 or 7 days. The Informant had placed first order on 12-07-2013 and second order on 18-07-2013. Both were supplied. And the third order which remained unsupplied was placed on OP2 on 24-07-2013. There has been a gap of over five months for the next supply, and that too even after the Informant approached the Commission. In case we take the time taken for resuming supply to be five months, with minimum of 30 days in a month it has taken 150 days to resume supply. This becomes equivalent to 25 orders with a periodicity of 6 days per order. It does not require any proof to conclude that such a delay has caused harm to the Informant, more so because supplies were stopped for such a long time after the Informant started her marketing business and already procured supplies twice from OP2. Besides, such an act of OP clearly forecloses competition in the distribution market as per section 19(3) (c). Such an act also denies benefits to the consumers sec 19(3)(d) that could have otherwise accrued if a new distributor entered the market. No benefits accrue to the consumers or other players in the market, except to OP2 (by way of being able to avoid the wrath of OP1) and the other distributors including Sh Agostinho Menezes, under whose influence OP2 is alleged to have refused to deal with the Informant.
49. Moreover, resumption of supplies to the Informant was a decision motivated by the desire of OP2 not to invite legal complications including the matter being agitated before the Commission. This is clearly reflected from the statement of Sh Ramesh Chaturvedi to the same effect.



50. Thus it can be seen that OP2, did not have the courage to take on OP1, CDAG, the Association. Clearly OP2 was in awe to the office bearer of the Association, to the detriment of its own business interests. Such state of affairs when the pharmaceutical companies live in awe and fear of the Association bodes ill for competition in the market. While the Commission has penalised the Associations in the past, the pharmaceutical companies have gone scot-free. Whatever the influence that is wielded by the Associations the pharmaceutical companies cannot wilt under pressure and distort the market, resulting in adverse effect on competition. They have to be held responsible. External pressure cannot be an excuse by OP2 to escape the provisions of the Act.

51. Thus, I answer Issue No 2 in the affirmative holding that OP2, by entering into an agreement as defined under section 2(b) of the Act, with its distributor M/s Drogaria Menezes & Cia, who is also the Wholesales chairman of OP1, has contravened the provisions of section 3(4) read with section 3(1) and section 19(3) of the Act.

Issue 3: Identification of persons and examination of their role in the anti-competitive conduct, if any, of the OPs/any other parties in terms of provision of section 48 of the Act

52. For the purposes of section 48 the DG in his report has named Sh. Agostinho Menezes, proprietor of M/s Drogaria Menezes & Cia and Sh. Ramesh Chaturvedi, General Manager Distribution of OP2. As per the DG, Sh. Agostinho Menezes in the capacity of the Wholesaler's Chairman of the Association was a senior office bearer, especially as regards distribution, of OP1, who by entering into an agreement/understanding as defined under section 2(b) of the Act with OP2 restrained the latter from supplying goods to the informant. This he achieved by conveying to OP2 his inability to place further orders on it, the reason being the entry of a new distributor (read the



Informant). It is to be noted that liability on Sh Agostinho Menezes is imputed in his dual capacity of being Wholesaler's Chairman of OP1 Association and also as the proprietor of M/s Drogaria Menezes & Cia. I have no hesitation in accepting the finding of the DG in this regard. As a senior office bearer, and an interested party, being himself a distributor of OP2 he was in a position, and had the reason, to influence the decisions of OP1. As regards his other capacity, that of proprietor of M/s Drogaria & Cia, Sh. Menezes was the key person to influence OP2, whose distributorship his proprietary concern had for several years. As the proprietor of M/s Drogaria Menezes & Cia, he represented to the medical representatives of OP2 that his firm was not in a position to place further orders due to the entry of the Informant in the market. It was this, coupled with the clout of Sh. Menezes as Wholesaler's Chairman in the OP1 Association and the presence of the Vice President of the Association, Sh. Ashish JN Raikar of Raikar Distributors, both of whom are distributors of OP2, and whose business interests were affected by the entry of the Informant as the new distributor of OP2, that prompted OP2 to withhold supplies to the Informant after supplying her for initial two orders, on the ground of 'verification' being undertaken. The supply was finally restored when the Informant approached the Commission by way of Information under section 19(1)(a) and the Commission issued order under section 26(1) requiring the DG to investigate. In his written statement dated 11/04/2015, before the Commission, Sh. Agostinho Menezes contended that there is no evidence on record to prove that just because he was an ex employer he complained about loss in his business due to the informant's entry into the market. It was also submitted that his role as wholesaler's Chairman of OP1 is misconstrued by the DG as a position of power and authority. His statements cannot be taken in isolation. The indirect evidence as brought out in the DG report and reiterated by me in the above paras make me convinced of the role played by Sh. Agostinho Menezes in his dual capacity, I find it fit to penalize him under section 48 of the Act.



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53. As regards Sh. Ramesh Chaturvedi I am convinced that he played a direct role, as General Manager, Distribution, of OP2, to stop supplies to the Informant. The DG, during investigation, had sought a number of clarifications from Sh. Ramesh Chaturvedi in the matter as well as for confirming receipt of the communications made by the Informant to OP2. Sh. Ramesh Chaturvedi, during the recording of his statement, acknowledged receipt of various communications from the Informant in the context of the latter's order for supply dated 24/07/2013 on OP2. When he was asked as to why OP2 stopped supplies to the Informant against the above said order he was evasive in as much as he gave vague explanations as to the procedure of 'verification' after appointment of the Informant as stockist/distributor. He also took pretence of legal issues being involved in the matter. He also admitted that supplies against the order of the Informant dated 24/07/2013 were stopped by OP2, and that OP2's C&F Agents had been advised to execute the said order only after confirmation from the Head Office/ Marketing Division. As the head of the distribution of medicines of OP2 in Goa, his role in stopping supply of drugs and medicines to the Informant is evident. In his submissions dated 13/04/2015 he argued that when OP2 has not contravened any of the provisions of the Act, the question of his contravening any provisions does not arise. This argument of Sh. Chaturvedi cannot hold because I am finding that OP2 has contravened provisions of section 3(4)(d) of the Act. DG found him to be the key person responsible for and managing the sales operations of OP2 in Goa. Sh. Ramesh Chaturvedi was also found to be directly involved in the matter and is covered under section 48 of the Act. I concur with the finding of the DG in this regard.
54. Thus for the purpose of section 48, I hold, Sh. Agostinho Menezes and Sh. Ramesh Chaturvedi liable.



Conclusions

55. The Commission has in a number of cases already held that certain practices being followed by industry Associations, especially in the drugs and pharmaceutical sector, are hit by Section 3(3) and passed appropriate orders to rectify the market distortions. In spite of the strongly worded orders of the Commission these practices appear to continue in many sectors, especially the drugs and pharmaceuticals sector, and a number of new cases have been coming before the Commission and the Commission found violation of the Act by various state level Associations for insisting on NOC for appointment of stockist or wholesalers or distributors, fixation of trade margins, collection of PIS charges, boycott of products of pharmaceutical companies etc. However, it is an ugly truth that these practices are still rampant in the sector; practices continue though the modus operandi may differ.
56. It is needless to say that repeated investigation of the same enterprises/ persons does not yield the same type of evidence as it does in the very first investigation. Routine investigation would only lead to a blind alley. The Opposite Parties would be found continuing their unlawful practices, working in a paperless environment, making deliberate and conscious efforts to leave no trace of evidence. This is precisely the reason why the Act has provided for a very wide definition of 'agreement' under section 2(b) of the Act, and envisaged lower standard of proof in the form of indirect evidence and jurisprudence is evolving on the lines of 'strong probabilities' rather than direct evidence. The DG during investigation and the Commission while looking at evidence needs to be ever conscious of this fact. The majority has not been convinced by the findings of the DG. This only shows that the investigation strategy of the DG should go beyond the conventional cartel investigation techniques to more sophisticated and innovative ways to unravel the 'strong probabilities' to nail 'meeting of minds' of the OPs. (And the Act provides sufficient powers to the DG). Having said that, one has to recognise that when the definition of 'agreement' under the competition law



is wide, keeping in view the clandestine nature of agreements, horizontal agreements in particular, the Act also recognises that standard of proof needs to be correspondingly light. As jurisprudence evolves the need for a nuanced view of standard of proof when it comes to subsequent violations also needs to receive suitable appreciation.

57. I am aware that the Informant has requested for withdrawal of the information and closure of the case. It needs to be underlined that the proposal for withdrawal was through an undated letter by the Informant produced before the DG by the Informant and OP2, which raises strong presumption of a settlement between them and involving CDAG, OP1, because the settlement also resulted in the Informant becoming member of OP1. However, the law is not about settlement of individual grievances. The concern of the Act is with maintenance of competition in Indian markets, and it is the responsibility of the Commission to address any existing or likely distortions that are prohibited. Therefore, I have proceeded to penalty under section 27 of the Act.
58. I find that as per the provisions of the Act OP1 has limited and controlled the supply of drugs and medicines in Goa thereby contravening the provisions of Section 3(3)(b) read with section 3(1) and section 19(3) of the Act.
59. OP 2, by entering into an agreement, as defined under section 2(b) of the Act, with its distributor M/s Drogaria Menezes & Cia, who is also the Wholesalers chairman of OP1, has contravened the provisions of section 3(4)(d) read with section 3(1) and section 19(3) of the Act by refusing to deal with the informant.
60. Shri. Agosthino Menezes in his dual capacity as proprietor of his firm and as the Wholesaler's Chairman of OP1 has been responsible for entering into an agreement/understanding as defined under section 2 (b) of the Act with OP2 for 'refusal to deal' by the latter with the Informant.



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61. Shri Ramesh Chaturvedi, General Manager Distributions of OP2 is also found to have violated the provisions of law punishable under section 48 of the Act.

62. In view of the findings recorded by me, it is ordered as under:

- a) OP1 is found to be limiting and controlling the provision of services/supply of drugs and medicines in Goa thereby contravening the provisions of Section 3(3) (b) read with section 3(1) and section 19(3) of the Act read with section 19(3) of the Act.
- b) OP2 is found to be indulging in acts violating section 3(4)(d) read with Section 3(1) and section 19(3) of the Act.

63. With regard to penalty under section 27, it is natural that the same has to be determined after taking into account the aggravating and mitigating factors pertaining to each contravening opposite party. Further, the anticompetitive conduct needs to be so penalized as to cause sufficient deterrence to erring persons/enterprises engaged in such activities. In this regard, I cannot ignore the fact that OP1 Association had earlier been found to be in contravention of the provisions of section 3 of the Act in Case No SHTP-C-127/2009/DGIR(4/28) and Suo Moto Case No 05/2013 and was penalized in those cases. This is a case of continued violation of the provisions of the Act, in total disregard of the competition law provisions, by OP1. At the same time I do not see any mitigating factors that can be taken into account. Having regard to the nature of the anticompetitive conduct and its recurrence, I am of the view that it would be appropriate to impose a penalty on OP1 at the rate of 10% of their average income for the last three financial years based on the financial statements filed by them. Thus, the penalty imposed on OP1 amounts to Rs. 3,04,282/= (Rs. Three lakh four thousand two hundred and



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eighty two only) calculated as 10% of its average income during the preceding three financial years of violation viz. financial years ending 31st March, 2012, 2013 and 2014 and that imposed on OP2 is Rs. 105,27,146/= (Rs. one crore five lakh twenty seven thousand one hundred and forty six only) calculated as 3% of its average turnover during the preceding financial years ending 31st March 2012, 2013 and 2014 and that imposed on M/s Drogaria Menezes & Cia calculated @3% of the average turnover for the preceding three financial years ending 31st March, 2012, 2013 and 2014 amounting to Rs 16,24,621/= (Rs. Sixteen lakh twenty four thousand six hundred and twenty one only) calculated as follows:

Name of the Party	Turnover/ Receipts during the yr ended on 31 st March 2012 (Rs)	Turnover/ Receipts during the yr ended on 31 st March 2013 (Rs)	Turnover/ Receipts during the yr ended on 31 st March 2014 (Rs)	Average Turnover/ Receipts (Rs)	Percentage of turnover as penalty prescribed (%)	Amount of Penalty (Rs)
Chemist and Druggist Association of Goa	2176036.82	1784978.82	5167449.08	3042821.57	10	304,282
Franco Indian Pharmaceuticals Pvt Ltd	278015446	324109350	450589793	350904863	3	105,27,146
M/s Drogaria Menezes & Cia	54165000	55567124	52729970	54154031	3	16,24,621

- c) OP1 and OP2 are directed to deposit the amount of penalty within 60 days of receipt of this order.
- d) OP2 shall also implement a Competition Compliance Programme in the company and appoint a senior officer as Compliance Officer, within 60 days.



- e) In case of office bearer of OP1 Association, Sh Agostinho Menezes and OP2, Shri Ramesh Chaturvedi, a penalty calculated at the rate of 10% of the average income for the financial years ending 31st March 2012, 2013 and 2014, is imposed, which is calculated as follows:

Name of the Office Bearer	Income during the yr ended on 31 st March 2012 (Rs)	Income during the yr ended on 31 st March 2012 (Rs)	Income during the yr ended on 31 st March 2012 (Rs)	Average Income during for the yr ended on 31 st March 2012, 2013 and 2014 (Rs)	Percentage of turnover ordered as penalty (%)	Amount of Penalty (Rs)
Shri Ramesh Chaturvedi	1154138	1180157	1737574	1357290	10	1,35,729
Sh Agostinho Menezes	422586	799583	279402	500614	10	50,061

- f) Shri Ramesh Chaturvedi and Sh Agostinho Menezes are directed to pay the amount of penalty within 60 days of the receipt of this order.
- g) Sh Agostinho Menezes in the capacity of Proprietor of M/s Drogaria Menezes & Cia shall cease and desist from indulging in anti-competitive conduct which he is found to be indulging in. This shall come into effect immediately, i.e. on the day of receipt of this order by him. Shri Ramesh Chaturvedi, General Manager Distributions, OP2 shall cease and desist from indulging in anti-competitive conduct which he is found to be indulging in. This shall come into effect immediately, i.e. on the day of receipt of this order by him.
- h) OP1 is directed to also keep vigil against any possible violation of the provisions of the Act, keeping in view its past record, and to put in place in a time bound manner records and procedures that support competitive conduct.



64. It is ordered accordingly.

65. The Secretary is directed to inform the parties accordingly.

Sd/-
(Augustine Peter)
Member

New Delhi

Date: 27.10.2015