



सत्यमेव जयते



Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 77 of 2015

In Re:

**Mr. Vivek Sharma
Chamber No. 359, Civil Wing,
Tis Hazari Courts, New Delhi**

Informant

And

**1 M/s Becton Dickinson India (P) Ltd.
1, Investate Bawal, Rewari, Haryana**

Opposite Party No. 1

**2 Max Super Speciality Hospital
108-A, Indraprastha Extension,
Patparganj, New Delhi**

Opposite Party No. 2

CORAM

**Mr. Ashok Chawla
Chairperson**

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

**Mr. Sudhir Mital
Member**

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

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

**Justice (Retd.) Mr. G. P. Mittal
Member**

Case No. 77 of 2015

Page 1 of 7



Appearances:

For the Informant: Shri Vivek Sharma, the Informant-in-person

For Becton Dickinson India (P) Ltd.: Advocates Shri P. Srinivasan and Shri Raghav G

For Max Super Speciality Hospital: Advocates Shri Samir Gandhi, Shri Hemangini Dadwal, and Shri Rahul Worah along with Shri Vishal Ahlawat, Assistant Manager of Max Super Speciality Hospital.

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

1. The information in the present case has been filed under section 19(1)(a) of the Competition Act, 2002 (the 'Act') by Mr. Vivek Sharma (the 'Informant') against M/s Becton Dickinson India (P) Ltd. ('OP 1') and Max Super Speciality Hospital ('OP 2') [collectively, 'OPs'] alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act.
2. As per the information, the Informant is a social worker, OP 1 is a multinational company which manufactures disposable syringe in the brand name of 'Emerald' and OP 2 is a multi-specialty hospital.
3. As per the information, the Informant had purchased a 'Disposable syringe, with needle size 10ml of B. D. Emerald Brand' ('DS') from a inhouse pharmacy of OP 2 hospital network located at Indraprastha Extension, Patparganj, New Delhi. The said syringe is stated to be manufactured by OP 1 and was sold for a price of Rs.19.50/- per piece as per the Maximum Retail Price (MRP) marked on it. Further, it is stated that when the Informant had again purchased the same product from a medicine store located outside *i.e.*,



सत्यमेव जयते



Arihant Medicos at Ashok Vihar, Delhi he was charged only Rs.10/- per piece against MRP of Rs.11.50/-. As per the Informant, both the products were of same name, quality, quantity and standard and also manufactured by OP 1.

4. The Informant has alleged that OP 1 in collusion with OP 2 printed a higher MRP on the product in order to cheat the patients admitted in the hospital of OP 2. The Informant has further alleged that taking advantage of its monopoly position and in collusion with OP 1, OP 2 is compelling its patients to pay higher price as printed on the products in the pretext of MRP. The Informant has submitted that OP 1 supplies DS bearing higher MRP to OP 2 which is in sharp variance with regular MRP for the same product of the same quality, standard and brand manufactured by OP 1 as available in the open market. Furthermore, OP 2 sells only the product of OP 1 in its hospital, leaving no choice for the consumers/ patients. Based on the above, the Informant has averred that such collusion/ arrangement between OPs is a clear violation of the provisions of section 3(1) of the Act.
5. The Informant has also submitted that OP 1, in collusion with OP 2, has been printing higher MRP on its product to be sold in the hospitals of OP 2 in order to increase the margins of both the OPs and to cheat the patients/ consumer. It is further submitted that OP 2 has given exclusive right to OP 1 to sell its product in its hospital. As per the Informant, OP 1 is in a dominant position for sale of DS in the hospital run by OP 2 and the above said conduct of OPs amounts to abuse of dominant position in terms of section 4 of the Act.
6. The Commission has perused the information, additional submissions and other materials available on record, also heard the counsels of the Informant and the Opposite Parties at length.
7. The Commission observes that the Informant is primarily aggrieved by the conduct of OPs in charging a higher MRP for a DS manufactured by OP 1, brought from a inhouse pharmacy located within the hospital network of OP 2,



सत्यमेव जयते



compared to the MRP of the same product in the open market. Since the allegations of the Informant in the instant matter essentially relates to the abusive conduct of OP 2 in charging a higher MRP for a DS in its hospital at Indraprastha Extension, Patparganj, New Delhi *vis-à-vis* the prevalent open market price for the same product with same quantity and quality, the matter requires the examination in terms of the provisions of section 4 of the Act.

8. To examine the matter under the provisions of section 4 of the Act, the relevant market, consisting of the relevant product market and the relevant geographic market, in terms of section 2(r) of the Act needs to be delineated first, before determining the position of dominance of OP 2 in the relevant market and its alleged abusive conduct.
9. In the present matter, the dispute in question pertains to a transaction of a DS while availing the healthcare services from a hospital of OP 2. It is observed that the OP 2 is providing healthcare services in super speciality category which can be distinguished from the general/ ordinary healthcare services provided by non-super speciality hospitals. A super speciality hospital¹ is defined as a hospital that engages itself in the treatment of the patients suffering from a specific disease in addition to the general diseases. Such hospitals offer specialised services to their patients in relation to a particular disease. According to the National Accreditation Board for Hospitals and Healthcare Providers², super speciality centres are centres which provide specialized health services related to Cardiology, Clinical Haematology, Clinical Pharmacology, Endocrinology, Immunology, Medical Gastroenterology, Medical Genetics, Medical Oncology, Neonatology, Nephrology, Neurology, Neuro-radiology, Rheumatology, Cardiac Anaesthesia, Child and adolescent psychiatry, Paediatrics Cardiology, Hepatology, Cardio-vascular and thoracic surgery, Paediatric Cardio Thoracic

¹ The reference has been quoted from <http://consumer-voice.org/comparative-product-testing/Service-Test/What-are-Super-Speciality-Hospitals> and accessed as on 12.10.2015.

² The reference has been quoted from www.nabh.co/shco-Definition.aspx and accessed as on 12.10.2015.



सत्यमेव जयते



Vascular Surgery, Urology, Neuro-Surgery *etc.* On the contrary, a non-super speciality hospital only caters to general healthcare services. Further, in terms of healthcare facilitating infrastructure, technology, specialised human resource *etc.* healthcare services delivered by a super speciality hospital can be distinguished from the non-super speciality category. Thus, the Commission is of the view that healthcare services effected by a super speciality hospital is a distinct product. Accordingly, the relevant product market may be considered in the instant case as the market for “provision of healthcare services by super speciality hospitals”. In regards to the relevant geographic market, the Commission is of the view that owing to factors such as ease of access, language, lesser travel time, low transport cost, consumer’s preference the geographic area of Delhi would be the relevant geographic market in the instant case. Further, the conditions of competition for the supply of relevant product are homogeneous throughout Delhi and can be distinguished from the conditions prevailing in adjacent areas of Delhi such as other regions of NCR. Furthermore, in normal circumstance, a person/ patient residing in Delhi will prefer to avail the healthcare services of a super speciality hospital located in Delhi, rather than from other regions of NCR. Accordingly, the Commission is of the view that the relevant market in the instant case is the market for “*provision of healthcare services by super speciality hospitals in Delhi*”.

10. On the issue of dominance, the Commission is of the *prima facie* view that OP 2 is in a dominant position in the relevant market defined above. In this regard, it is observed that even though there are various super speciality hospitals such as BLK, Primus, Rajiv Gandhi, Saroj, Suman, Kalpavriksh, Kosmos, Adiva *etc.* operate in Delhi, in terms of number of hospitals OP 2 is larger/ bigger. In the relevant geographic market, as per the information available on public domain, OP 2 has five super speciality hospitals whereas none of the competitors of OP 2 have more speciality hospitals than OP 2. Further, OP 2 operates throughout the country *vis-à-vis* its competitors in Delhi thus, in terms of size and resources, it is ahead of them. Furthermore, the brand name of OP 2 in super speciality healthcare services attracts more patients *vis-à-vis*



सत्यमेव जयते



its competitors. Also, the Commission is of the view that OP 2 has the ability to affect the patients/ consumers and competitors in its favour and can act independently of the competitive forces operating in the relevant market.

11. So far as the alleged abusive conduct of OP 2 in terms of section 4 of the Act is concerned, the Commission found force in the submission of the Informant that OP 2 has charged a higher price, in terms of higher MRP, which is almost double the price of the same product available in the open market. The evidence submitted by the Informant in terms of receipts for purchase of DS from OP 2 and M/s Arihant Medicos at Ashok Vihar, Delhi clearly reveal that OP 2 has charged higher MRP, almost double, compared to M/s Arihant Medicos. It is observed that once a patient is admitted in the hospital of OP 2, she/ he has hardly any option to purchase the product from the open market other than from OP 2. Taking advantage of such situation OP 2, in connivance with OP 1, has charged a higher price by raising the MRP of DS which is unfair. The Commission is convinced that DS sold by OP 2 to the Informant and as available in the open market is same in terms of quantity, quality, design *etc.* The Commission finds no force in the arguments advanced by the counsels of OP 2 that DS available in the open market is different from the product sold by OP 2 in terms of packaging and its usefulness at the time of surgery. Accordingly, *prima facie*, the Commission is of the considered opinion that the conduct of OP 2 in charging higher price, through printing higher MRP on DS in connivance with OP 1, from the Informant amounts to imposition of unfair price in sale of DS which is in violation of the provision of section 4(2)(a)(ii) of the Act.

12. In view of the above, the Commission is of the view that there exists a *prima facie* case of contravention of provisions of section 4 of the Act by OPs and it is a fit case for investigation by the Director General (DG). Accordingly, under the provisions of section 26(1) of the Act, the Commission directs the DG to cause an investigation into the matter and to complete the investigation within a period of 60 days from the receipt of this order.



सत्यमेव जयते



13. In case the DG finds that OPs have acted in contravention of the provisions of Act, the DG shall also investigate the role of the officials/ persons who at the time of such contravention were in-charge of and responsible for the conduct of the business of OPs. The Commission makes it clear that nothing stated in this order shall tantamount to a final expression of opinion on the merit of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.
14. The Secretary is directed to send a copy of this order along with the information and the documents filed therewith to the Office of the DG forthwith.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M. S. Sahoo)
Member

Sd/-
(Justice (Retd.) G. P. Mittal)
Member

New Delhi
Dated: 17.11.2015