



## COMPETITION COMMISSION OF INDIA

### In Re.

### Case No: 37/2016

<b>File by:</b>	<b>Kaveri Seed Company Limited</b>	<b>Informant</b>
<b>Against:</b>	<b>Mahyco Monsanto Biotech (India) Limited</b>	<b>OP-1</b>
	<b>Monsanto Holdings Private Limited</b>	<b>OP-2</b>
	<b>Monsanto Company, USA</b>	<b>OP-3</b>
	<b>Maharashtra Hybrid Seeds Company Limited</b>	<b>OP-4</b>

### With

### Case No: 38/2016

<b>File by:</b>	<b>Ajeet Seeds Private Limited</b>	<b>Informant</b>
<b>Against:</b>	<b>Mahyco Monsanto Biotech (India) Limited</b>	<b>OP-1</b>
	<b>Monsanto Holdings Private Limited</b>	<b>OP-2</b>
	<b>Monsanto Company, USA</b>	<b>OP-3</b>
	<b>Maharashtra Hybrid Seeds Company Limited</b>	<b>OP-4</b>

### With

### Case No: 39/2016

<b>File by:</b>	<b>Ankur Seeds Private Limited</b>	<b>Informant</b>
<b>Against:</b>	<b>Mahyco Monsanto Biotech (India) Limited</b>	<b>OP-1</b>
	<b>Monsanto Holdings Private Limited</b>	<b>OP-2</b>
	<b>Monsanto Company, USA</b>	<b>OP-3</b>
	<b>Maharashtra Hybrid Seeds Company Limited</b>	<b>OP-4</b>



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**CORAM:**

**Mr. Devender Kumar Sikri**  
**Chairperson**

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

**Dr. M. S. Sahoo**  
**Member**

**Justice G. P. Mittal**  
**Member**

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

All the three informations have been filed under Section 19(1)(a) of the Competition Act, 2002 ('Act') alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act by Mahyco Monsanto Biotech (I) Limited, Monsanto Holdings Private Ltd., Monsanto Inc., U.S.A. and Maharashtra Hybrid Seeds Company Ltd.

2. In all these Informations, allegations have been made, *inter alia*, in connection with the OPs, abusing the dominant position by imposing unfair and discriminatory conditions in the sub-license agreements through which Bt technology is sub-licensed to the seed manufacturing companies in India; charging unfair trade value; limiting scientific development relating to Bt cotton technology as well as Bt cotton seeds; denial of market access and leveraging its dominant position in Bt cotton technology market for expanding their presence in Bt cotton seeds market. The Informants have further alleged that the OPs have entered into exclusive supply agreement, refused to deal with Indian seed manufacturers and reserved the right to fix price of seeds in certain circumstances, which according to the Informants are in contravention of provisions of Section 3 (4) of the Act.

3. The Commission, *vide* majority order dated 10<sup>th</sup> February 2016, passed under Section 26 (1) of the Act in Reference Case No. 2 of 2015 and Case No. 107 of 2015, directed the Director General ('DG') to cause an investigation into the matter. Subsequently, taking



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into consideration the substantial similarity in the issues and allegations, the Commission, *vide* its order dated 18<sup>th</sup> February 2016, clubbed Case No 03 of 2016, Case No 10 of 2016 and Reference Case No 01/2016 along with Reference Case No. 2 of 2015 and Case No. 107 of 2015.

4. The Commission notes that most of the issues and allegations raised in the instant cases are substantially similar to the aforesaid cases. The additional allegations brought out in the informations include: (a) unfairness of Clause 3.1(a) which requires the sub-licensees to pay one-time non-refundable technology fee of INR 50 lakh; (b) OP-1 adopting differential discounting/ pricing policy to its affiliates in downstream market; (c) OP-1's requirement that the advertisement and selling expenses have to be borne by the seed manufacturers/sub-licensees *i.e.* the Informants; (d) restriction on the sub-licensees to use the donor seeds, such as modification of the genes therein or backcrossing with public germplasm; (e) OP-1 entering into different sub-license agreement with its affiliates in the downstream market where the onerous requirements as imposed on the Informants were absent; and (f) OPs influencing Genetic Engineering Appraisal Committee (GEAC) to insist on no-objection-certificate from the OPs, for approving any hybrid based on single gene technology even though the OPs did not possess any patent over Bollgard-I (*i.e.* product of the OPs based on single gene technology) in India, .

5. The Commission observes that the direction to the DG in Reference Case No. 2 of 2015 and Case No. 107 of 2015 to cause investigation into the matter are broad enough to cover the aforesaid issues brought out by the Informants in the instant matters. Considering the substantial similarity of the core allegations in the instant Informations and scope of directions given in the earlier cases referred, in exercise of the powers conferred under proviso to Section 26(1) of the Act read with Regulation 27 of the Competition Commission of India (General) Regulations, 2009, the Commission decides to club the present cases also with Reference Case No. 2 of 2015 and Case No. 107 of 2015. The DG shall investigate the instant cases along with the above mentioned cases.



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6. Subject to his views in dissent note to the Order dated 10<sup>th</sup> February 2016 of the Commission, in Ref. Case No. 2/2015 and Case No. 107/2015, Member (Dr. M. S. Sahoo) agrees with the above direction.

7. The Secretary is directed to communicate this order to the DG along with copies of the Information and submissions of the parties, accordingly.

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**Sd/-**  
**(Dr. M. S. Sahoo)**  
**Member**

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

**New Delhi**  
**Dated: 09.06.2016**