

COMPETITION COMMISSION OF INDIA

16.12.2010

Case No. 11/2010

Information Filed by : Rohit Medical Store through its Proprietor

Against :

1. M/s Aashish Enterprises, Ambala Cantt.
2. M/s. Novartis India Limited, Parwanoo
3. M/s. Novartis India Limited, Bhiwadi
4. M/s. Himachal Pradesh State Chemist & Druggists Association, Shimla
5. M/s. Bilaspur Chemist & Druggists Association, Bilaspur

Order under section 26(6) Of the Competition Act, 2002

The instant information was filed by M/s Rohit Medical Store through its Proprietor (hereinafter referred to as Informant) on 25.02.2010 under Section 19 of the Competition Act, 2002 (hereinafter referred to as the Act) against M/s Aashish Enterprises, Ambala Cantt, M/s. Novartis India Limited, Parwanoo, M/s. Novartis India Limited, Bhiwadi, M/s. Himachal Pradesh State Chemist & Druggists Association, Shimla and M/s. Bilaspur Chemist & Druggists Association, Bilaspur (hereinafter referred to as Opposite Party No. 1,2, 3, 4 & 5 respectively).

2. The facts, in brief, as stated in the information are as under:

- 2.1 The Informant is the proprietor of M/s. Rohit Medical Store and is carrying on business as Chemist & Druggist. The Opposite Party No. 1 is the dealer /consignee agent of Opposite Party No.2 and 3 i.e. Novartis India Limited. Opposite Party No. 4 & 5 are the associations of the Chemist & Druggists at the state and district level respectively.
- 2.2 The Informant has alleged that it had been appointed as the dealer of Novartis India Limited through Opposite Party No.1 in the District Bilaspur, Himachal Pradesh with effect from July'2009. There were already five stockiest/dealer in the State and the Informant had been appointed as the 6th stockiest by the Opposite Party No. 1.
- 2.3 The Informant alleged that its appointment as stockiest/dealer of Opposite Party No. 1 for the District Bilaspur was not liked by the party No. 4 and therefore, it pressurized Opposite Party No. 1 & 2 to cancel the dealership of Informant forthwith. Yielding to such pressure from Opposite Party No. 4 & 5, Novartis India Limited stopped the supply of medicine to the Informant in the month of September, 2009.
- 2.4 It has been alleged by the Informant that the Opposite Party No. 4 & 5 are deliberately interfering in the business of the Informant with the party No. 1. Further, because of pressure exerted by Opposite Party No.4 and 5, Opposite Party No. 1 is demanding from Informant a No Objection Certificate ('NOC') issued by Opposite Party No. 4, regarding the appointment of Informant as additional stockiest. As per the Informant, there is no legal requirement of submitting any No Objection Certificate to the Opposite Party No. 1 but because of the cartel formed by the Opposite Party No. 1 to 5, the Opposite Party No. 1 is asking the NOC on behest of Opposite Party No. 4 & 5.

3. The Commission considered the matter in its meeting dated 03.05.2010, and having formed an opinion under Section 26(1) of the Act that there exists a *prima facie* case, referred the matter to the Director General (DG) for investigation vide order dated 03.05.2010.
4. During the pendency of the investigation report, the Informant filed an application before the Commission for the withdrawal of the information on the ground that the matter had already been settled by the Informant and Novartis India Limited. The Commission vide its order dated 03.09.2010 rejected the above application of the Informant on the ground that there is no provision of withdrawal of the information under the Act.
5. The DG, after receiving the directions from the Commission, got the matter investigated and submitted his report dated 02.11.2010 to the Commission.
6. During investigation, the replies from the parties were called by the DG. The gist of the replies filed by the opposite parties before the DG is as under :
 - 6.1 The Opposite Party No.1 submitted before DG that it has not stopped the supply of drugs and pharmaceuticals to the Informant. The supply of medicines was disrupted for a temporary period due to certain logistic issues. Further, it was also submitted by the Opposite Party No. 1 that the Informant had cancelled its earlier order and placed a fresh order with the opposite party No. 2 on 11.06.2010 and the Opposite Party No. 2 in turn had raised its invoice and the supply to the Informant was resumed. The Opposite

Party No. 2 has also submitted that it had never asked any No-Objection Certificate from the Informant.

6.2 Novartis India Limited, in its reply, has denied all the allegations leveled against it and submitted that the matter does not fall within the ambit of the Act.

6.3 The Opposite Party No. 4 in its reply before the DG submitted that till April 2008 it was an association of person with no framed rules and regulations. It has been submitted by the Opposite Party No. 4 that it came into existence in April 2008 with the name of Himachal Pradesh Society of Chemist & Druggist Alliance. The erstwhile Himachal Pradesh State Chemists & Druggists Association was not in existence when the information was filed. Appointment of Stockiest/ wholesaler is the subject matter of each Pharmaceutical Company individually and no set parameters are available in this respect. The Opposite Party No. 4 denied each and every allegation leveled against it and submitted that it has no role to play in the appointment of the stockiest. It has also been stated that it has never pressurized Opposite Party No. 1, 2 & 3 for the cancelation of dealership of Informant.

6.4 The Opposite Party No. 5 reiterated the same story as mentioned by the Opposite Party No. 4 in its reply and denied each and every allegation leveled against it. It has also submitted that it was in existence only till year 2008.

Findings of DG Report

7. On the basis of the replies of the parties, the information and the other evidence, the DG concluded in his report that as all the entities are acting on different level of value chain, provisions of Section 3 (3), which are concerned with horizontal agreements, do not apply in this case. The DG further concluded that there is no agreement or arrangement on record to hold that Novartis India Ltd., in connivance with its other dealers, had made the Informant ineligible for supplies of medicines, so, there has been no violation of Section 3 (4) of the Act as well. The DG has further concluded in its report that there is no evidence which shows that the party No. 1 & 2 ever demanded the NOC from the Informant.

8. It is pertinent to mention here that the DG has found that some of the rules of the party No. 4 have competition concerns such as the power of Executive Committee of the party No. 4 to suspend and initiate the termination of the membership of the members on the issue of disregard to the rules and regulations of the association. The decision of the Executive Committee is binding on the members, the Executive Committee can suspend any member of the association if it does not follow the rules of the alliance. This may give rise to competition concern since the alliance at a later date may take some actions which are against the tenets of the competition and therefore such clause should not remain into the Rule Book.

9. The Commission considered the investigation report of the DG in its meeting dated 25.11.2010 and decided to send a copy of the investigation report to the parties for filing their objections. The Commission also directed the Informant and the Opposite Party No. 1 to 5 to appear before the Commission for oral hearing, if they so desire. On 16.12.2010

Mr. Sameer R Gandhi, Advocate, for the Opposite Party No. 2 & 3 and Mr. Jaiveer Shergil, Advocate, for the Opposite Party No. 1 appeared before the Commission and made oral submissions. None of the parties filed any objections to the DG report.

10. The Commission has carefully considered the information, the report of DG, the replies filed by the parties before the DG and the other material available on record. The only grievance of the Informant is that the supplies of the medicines were stopped by the Opposite Party No. 1, 2 & 3 on the behest of Opposite Party No. 4 & 5. The one of the relief prayed by the Informant is that the supply of the medicines should be resumed.
11. As per the DG report, the supplies to the Informant have been resumed and the Informant did not choose to file any evidence in support of his allegations before the DG and instead informed the DG as well as the Commission that the dispute between it and the Opposite Parties No. 1 to 5 has been resolved and the Informant even moved an application to withdraw its information.
12. Despite the above, the DG investigated the matter and filed his detailed report. The DG has concluded that there is no violation of any provisions of the Competition Act in the present case. The Informant has not placed any material in support of his allegations that the Opposite Party No. 1 ever asked for the No Objection Certificate from the Informant on the behest of Opposite Party No. 4 & 5. The DG has not found any evidence which could establish the violation of any provisions of Competition Act by the Opposite Parties. The Informant has also failed to produce any evidence which can indicate that there is any anti-competitive agreement amongst the Opposite Parties.

13. In view of the foregoing discussion and after considering the entire material, the Commission is of the view that in the absence of any evidence to the contrary there is no reason to disagree with the investigation report of the DG. There is not even an iota of evidence on record which can establish infringement of any provisions of the Act. The Commission, therefore, is of the view that the proceeding relating to instant information should be closed forthwith under Section 26 (6) of the Act.

14. In view of the above, the matter relating to this information is hereby closed under Section 26(6) of the Competition Act.

15. Secretary is directed to inform the parties accordingly.

Sd-
Member (G)

Sd-
Member (A)

Sd-
Member (P)

Sd-
Member (G)

Sd-
Member (A)

Sd-
Member (T)

Chairperson