

Competition Commission of India Imposes Penalty on Karnataka Chemists & Druggist Association and pharmaceutical company Lupin

The Competition Commission of India (**‘Commission’**) has found the Karnataka Chemists and Druggist Association (**‘KCDA’**) and Lupin Ltd. (**‘Lupin’**) to be in contravention of the provisions of the Competition Act, 2002 (**‘the Act’**). In a case filed by M/s Maruti & Co., it was brought to the notice of the Commission that KCDA restrains pharmaceutical companies from appointing new stockists in the State of Karnataka unless a No Objection Certificate (**‘NOC’**) is obtained from it. It was alleged that Lupin refused to supply drugs to M/s Maruti & Co. on account of not having obtained NOC from KCDA.

Following a detailed investigation by the Director General (**‘DG’**), the Commission has found that KCDA was indulging in the anti-competitive practice of mandating NOC prior to the appointment of new stockists by pharmaceutical companies. This case highlights the obstinacy of chemists & druggist associations who, despite various orders by the Commission in similar cases in other parts of India with respect to this NOC practice, have not abstained from indulging in such anti-competitive conduct. Instead of desisting from such activity, these associations are mandating the NOC requirement, either verbally (in order to avoid any documentary evidence/proof) or under camouflaged congratulatory/intimation letters, with a view to hide their apparent anti-competitive behaviour behind these benign nomenclatures. The Commission has unambiguously clarified that the use of benign nomenclatures by these associations will not absolve them of the legal consequences of their anti-competitive conduct. Based on the evidence collected by the DG during investigation, the Commission concluded that KCDA has been indulging in the practice of NOC prior to the appointment of stockists by pharmaceutical companies, which has the effect of limiting and controlling of the supply of drugs in the market, in violation of the provisions of Section 3(1) read with 3(3)(b) of the Act. KCDA was thus found to have contravened the provisions of Section 3(1) read with Section 3(3)(b) of the Act.

The Commission also observed that the pharmaceutical companies, without any resistance, cooperate with such associations to implement their anti-competitive decisions, thereby becoming equally complicit in the anti-competitive effect of such practice. Instead of approaching the Commission, these pharmaceutical companies cooperate with the NOC requirement of the associations, thus becoming perpetrators of such anti-competitive practice.

The Commission has thus held the pharmaceutical company, Lupin, to be in contravention of the provisions of Section 3(1) of the Act for its anti-competitive arrangement/understanding with KCDA, which led to a refusal to supply of drugs to M/s Maruti & Co.

Further, the Commission has also found three office bearers of KCDA, namely Mr. K.E. Prakash, Mr. D.S. Guddodgi and Mr. A.K. Jeevan, responsible under Section 48 of the Act, for their active involvement in the anti-competitive practice of KCDA and also on account of the positions of responsibility held by them in KCDA during the period of contravention. Two of the officials of Lupin, namely Mr. Amit Kumar Dhiman and Mr. Nishant Ajmera, were found to be actively involved in the anti-competitive arrangement/understanding of Lupin with KCDA during the relevant period.

Accordingly, KCDA, Lupin and their office bearers/officials have been directed to cease and desist from indulging in the practice of mandating NOC prior to stockist appointment. The Commission imposed a monetary penalty of Rs. 8, 60,321/-, calculated at the rate of 10 % of the average income of KCDA, under the provisions of Section 27 of the Act. While imposing penalty on Lupin, the Commission observed that the refusal to supply by it was for a brief period, after which Lupin resumed supplies to M/s Maruti & Co. Considering this as a mitigating factor, the Commission imposed a penalty at the rate of 1% of Lupin's average turnover, amounting to Rs. 72.96 crores. In addition, monetary penalties were imposed on the office bearers of KCDA and officials of Lupin at the rate of 10% and 1% of their incomes, respectively.

The detailed order can be seen at the Commission's website www.cci.gov.in