COMPETITION COMMISSION OF INDIA

Case No. 19 of 2022

***In Re*:**

Medicos Legal Action Group Trust (Regd.)
Through: Dr. Neeraj Nagpal,
The Convenor, MLAG, SCO NO. 1066-67
Sector 123, Aerodale Market,
New Sunny Enclave, Kharar
S.A.S. Nagar – 140301. **Informant**

And

Punjab Medical Council
Through its President
Medical Education Bhawan, Sector 69
Mohali – 160062. **Opposite Party No. 1**

Omnicuris Healthcare Pvt. Ltd.
Through its Director
102, 1st Floor, 1032, 24th Main, HSR Sector-1
Bengaluru – 560102. **Opposite Party No. 2**

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

Order under Section 26(2) of the Competition Act, 2002

1. The present Information has been filed by Medicos Legal Action Group Trust (Regd.) (MLAG/the Informant) through its convener Dr. Neeraj Nagpal, under Section 19(1)(a) of the Competition Act, 2002 (Act) against Punjab Medical Council (PMC/Opposite Party No. 1/OP-1) and Omnicuris Healthcare Pvt. Ltd. (OHPL/Opposite Party No. 2/OP-

2), alleging contravention of the provisions of Sections 3 and 4 of the Competition Act, 2002.

2. The Informant is stated to be registered as a non-profit trust in Chandigarh, run by a group of doctors from all over the country who wished to legally engage the Government of India regarding its various policies concerning the medical profession, training, working conditions, etc.

3. The Informant has stated that OP-1 is the State authority to register medical practitioners who are intending to practise in the State of Punjab. According to PMC's website, the main function of PMC is to provide for the registration of medical practitioners, i.e., doctors (RMPs), and maintain an up-to-date register of all medical practitioners in the State of Punjab.

4. It is stated that periodic re-registration of doctors has become inevitable, considering that quality of care provided by practitioners depends on their efforts to keep themselves updated. The need for such updation has resulted in the introduction of lecture series and knowledge-sharing programmes in the form of Continuing Medical Education (CME). It is stated by the Informant that RMPs are required to achieve a specific number of credit hours—50 credit hours in case of the Punjab Medical Council in order to be eligible for renewal of registration and continue their medical practice as an RMP.

5. According to the information available on the website of PMC, any professional organization or body or institution desiring to conduct CMEs is required to apply for accreditation to PMC. PMC, on verifying the credentials of the organization intending to conduct CMEs, gives certificates of accreditation to those bodies to hold CME programmes.

6. It is stated in the Information that, before the onset of the COVID-19 pandemic, CME conferences/workshops conducted physically (i.e., offline) by the Informant were duly granted accreditation by OP-1. However, as a result of the pandemic, CME

conferences/workshops could not be conducted on an offline/physical basis. Thus, CME programs could only be conducted online.

7. It is alleged by the Informant that PMC issued guidelines approving only the *Omnicuris* digital platform of OP-2 for conducting CME programme, debarring all other online platforms. It is further stated by the Informant that such other platforms are considered valid platforms for online CMEs by other State Medical Councils for the purposes of conducting CMEs.

8. It is also alleged that the agreement between OP-1 and OP-2 restricts conducting online CME conferences/workshops only to the digital platform of OP-2, i.e., *Omnicuris*. This is being forced upon medical professionals/bodies if they are required to conduct any online CME program, i.e., medical conference/workshop, and accordingly, has the effect of limiting or controlling technical development in the field of medical practice. According to the Informant, this agreement between OP-1 and OP-2 is in violation of the provisions of Section 3 of the Act.

9. Further, the doctors attending CMEs on platforms other than *Omnicuris* were deprived of CME credit hours, failing which they would not be re-registered as RMPs and therefore, cannot practise as medical practitioners. The Informant has also placed on record the copies of certain letters/emails issued by OP-1 by which it refused to grant credit hours/accreditation to the Informant's online CME programmes.

10. In addition, the Informant has alleged violation of provisions of Section 4 of the Act, stating that OP-1 is a dominant player in the State of Punjab as well as the rest of the country. Also, OP-1 has directly or indirectly imposed unfair and discriminatory condition in the purchase of service, i.e., credit hours for online CME. Due to the said act/conduct of OP-1, other similar service providers of online digital platforms have been foreclosed of competition by hindering entry into the relevant market, which has the effect of limiting/restricting technical and scientific development relating to medical practice and its continuity as well as denial of market access, as the organizers of online CMEs are no longer allowed to access any other available digital platform.

11. Lastly, the Informant has stated that such conduct of OP-1 has adversely impacted medical practitioners who would have otherwise achieved credit hours by attending such online CMEs, enabling them to continue their medical practice. The conduct of OP-1 and OP-2 is alleged to be in violation of the provisions of Sections 3 and 4 of the Act, considering that they restrict and control the market and supply of online CME/conferences to a single platform, i.e., that of OP-2.

12. The Informant has prayed that OP-1 and OP-2 be directed to allow the Informant or other medical persons/bodies to conduct online CME conferences/workshops on any valid digital platform. The Informant has also sought interim relief under Section 33 of the Act and requested the Commission to issue directions to OP-1 to amend their guidelines immediately, whereby the prospective medical persons/bodies who wish to conduct online CMEs/conferences be allowed to conduct them on any valid digital platform. The mandatory condition of utilizing the digital services of only the *Omnicuris* platform of OP-2 should be done away with in the interest of medical practice and online platform competition.

13. The Commission considered the Information in its ordinary meeting held on 13.07.2022 and decided to seek a response from OP-1. The Informant was also allowed, thereafter, to file its rejoinder, if any, to such response, with an advance copy to OP-1.

14. OP-1 and the Informant have since filed their response and rejoinder. The Commission, in its ordinary meeting held on 06.09.2022, considered the Information and other material available on record and decided to pass an appropriate order in due course.

15. In relation to the allegations levelled in the Information, OP-1 has made detailed submissions, which are briefly noted below:

    a. OP-1 has submitted that it is neither statutorily in a dominant position to refuse accreditation nor is it entrusted with the power to exclude accredited CME providers from conducting CME programmes (online/offline). OP-1 has also stated that it had launched the online CME programme during the COVID-19 pandemic on account

of the inability to conduct the CME programme on a physical basis. However, subsequently, CME programmes were also allowed to be conducted on the physical basis with limited numbers as imposed by the State Government of Punjab in view of the pandemic, and credit hours for the same have been awarded as per the CME guidelines for physical CME/workshop.

b. Regarding the relationship between OP-1 and OP-2, it has been stated that the MoU entered between them is only for ensuring standardized dispensation of knowledge, considering that standardization is highly important in the field of medical sciences. Further, it was submitted that the said MoU does not bar or restrict other accredited CME providers from designing, developing and publishing online CME modules. Additionally, accredited CME providers are not prohibited or restricted in any manner from organizing offline/online CME programmes.

c. Apart from the above, OP-1 has submitted that, being a statutory body, it discharges functions which are regulatory in nature in respect of the medical profession, and therefore, OP-1 cannot be said to be an 'enterprise' within the meaning of the term as defined in Section 2(h) of the Act. In this regard, OP-1 has relied upon the decision of the Hon'ble Supreme Court in *Civil Appeal No. 2036 of 2022 [Thupili Raveendra Babu v. Competition Commission of India & Ors.]*, whereby the Hon'ble Court upheld the decision of NCLAT that the Bar Council of India is a statutory body established under Section 4 of the Advocates Act, which is an exclusive rule-making authority to set the standards of legal education, and thus, it could not be said to be an 'enterprise' within the meaning of Section 2(h). Further, OP-1 placed reliance on the Commission's order dated 12.09.2014 passed in *Re: Dilip Modwil and Insurance Regulatory and Development Authority (IRDAI)*, wherein the Commission observed that any entity can qualify within the definition of the term 'enterprise' if it is engaged in any activity which is relatable to the economic and commercial activities specified therein. It was further observed that the regulatory functions discharged by a body are not per se amenable to the jurisdiction of the Commission.

d. OP-1 has also submitted that it discharges functions which are non-economic and non-commercial in nature, as the CME/workshop conducted by OP-2 are not

promoted by it, and the aforesaid MoU has been entered into only for ensuring standardized dispensation of knowledge. Further, under the said MoU, there is no instance of purchase/sale or imposition of price, and thus, there is no scope for any monetary transaction thereunder between the OPs.

e. Owning and operating a digital platform for knowledge enhancement and skill upgradation of physicians, Omnicuris Healthcare Pvt. Ltd./OP-2 approached OP-1 to join as a project partner in an endeavour to launch a first-of-its-kind online CME programme for doctors in the State of Punjab across various specialties. OP-1 further submitted that the said conduct of OP-1 and OP-2 has not caused any losses to other platforms like Zoom, Google Meet, PGi and any other private players.

f. The MoU was entered into with an objective to provide online CMEs through PMC-accredited CME providers across various specialties for doctors in Punjab. Hence, the impugned partnership/project was launched for the purpose of knowledge enhancement and skill upgradation of medical practitioners, specifically due to the advent of the pandemic.

g. There is no ground for *prima facie* case of violation of Section 4 of the Act, as the Informant has not placed any evidence on record to show/establish that OP-1 is dominant and has abused the same under Section 4 of the Act.

16. Additionally, OP-1, in its submissions, has stated that if any eligible entity/platform/candidate/accredited CME providers approach it for purposes similar to the impugned MoU/partnership and for rendition of services akin to that rendered at present by OP-2, OP-1 is willing to enter into another MoU/partnership with another such entity/platform/candidate, subject to the candidate being sufficiently qualified and competent.

17. Lastly, OP-1 has also denied that the doctors attending CMEs on platforms other than *Omnicuris* were deprived of CME credit hours, failing which, they would not be re-registered.

18. In its response OP-1 stated that neither OP-1 is in a statutorily dominant position nor is it entrusted with the prerogative to wholly exclude accredited CME providers from conducting CME programmes (whether online / offline). The Informant has, however, averred that OP-1 has refused to give accreditation to CME programmes of the Informant and in this regard, pointed out that the role of the OP-1, being the sole statutory body constituted under the Punjab Medical Registration Act, 1916 and the Punjab Medical Registration (Amendment) Act, 2010, is to ensure good medical practice and regulate the official registration of all doctors as well as maintain an updated register of all medical practitioners. It was further alleged that OP-1 grants accreditation to only such CMEs which are conducted on OP-2's platform. The Informant has averred that its grievance is not so much about OP-2 having been chosen by OP-1 as a platform to conduct CMEs, but it is about OP-1 not allowing other well-accredited online CME platforms to conduct CMEs. Such a stipulation by OP-1 is alleged as unfair and unjust.

19. The Informant has also submitted that it had sought information from OP-1 under the Right to Information Act, 2005, regarding accreditation granted to online CMEs, to which OP-1, in its reply, informed that, during the period from 04.02.2021 to 23.03.2022, OP-1 received 08 (eight) applications for online CMEs, and during the same time period, it granted credit hours to none of the CME conference applicants. Accordingly, OP-1, during same time period, rejected 08 (eight) applications for CME credit hours, and it is incorrect and wrong to say that the said MoU does not bar or restrict other accredited CME providers from designing, developing and publishing online CME modules. Further, the Informant pointed out that it is misleading to suggest that accredited CME providers are permitted to conduct offline/physical sessions of CME/workshop, as the matter relates only to online CMEs.

20. The Commission has perused and considered the Information and reply/response filed by the parties. On perusal of the allegations, it appears that the gravamen of the Informant is that OP-1 has imposed a condition in the guidelines for online CME accreditation that credit points for online CME programs/conferences are granted only if the same have been organized through OP-2's digital platform, i.e., *Omnicuris*, and no other online CME provider is granted accreditation by OP-1, and resultantly, in case a medical

practitioner undergoes an online CME not approved/accredited by the OP-1, the said medical practitioner loses credit hours.

21. In order to appreciate the facts in the matter, it is imperative to examine the status and role of OP-1 before proceeding with regard to the allegations raised in the Information. It is observed that OP-1 is a statutory body constituted under the Punjab Medical Registration Act, 1916 and the Punjab Medical Registration (Amendment) Act, 2010 and is vested with the powers, duties and functions of regulating the practice of modern scientific system of medicine (allopathy) in the State of Punjab.

22. In this regard, the Commission further notes that Section 13(a) of the Punjab Medical Registration (Amendment) Act, 2010 (PMCAA) provides that, "*In case, a person, registered with a Medical Council of any other State or Medical Council of India, intends to practice in the State of Punjab, he shall have to get himself registered with the Punjab Medical Council on payment of the prescribed fee.*"

23. Further, Section 13(b) of the PMCAA reads that:

> "*every registered practitioner shall get his registration renewed after every five years within a period of two months from the date of the expiry of his previous registration on payment of the prescribed fee*:
>
> *Provided that before getting his registration renewed the registered practitioner shall have to obtain a certificate from a State Medical Council or Medical Council of India or National or International Bodies to the effect that he had got fifty credited hours of Continuing Medical Education in every five years."*

24. In view of the functions discharged by OP-1, it is clear that the role of PMC is dual in nature. While, on the one hand, it performs statutory functions relating to the regulation of the medical profession, such as registration of medical practitioners and maintaining and updating the register for this purpose, on the other hand, it grants accreditation to

medical institutions, professional bodies and associations/organizations for conducting continuous medical education conferences on payment of a fee. Accordingly, for discharging its functions with respect to the registration of medical practitioners, it may specify certain qualifications, disqualifications, prescriptions of certain standards, etc., for meeting the objectives of the discipline, growth, quality of service, etc., which essentially appears to be regulatory in nature. However, the other part, relating to the accreditation of various bodies for conducting medical education conferences/workshops on payment of fee, is more in the nature of an economic activity. The Commission also notes that, as per sub-clause (c) of Clause II of the MoU entered between the OPs, the OPs have agreed that *materials will be provided at a pre-determined fee to be charged by PMC to RMPs as outlined in Annexure B*. Accordingly, the said activities relating to conferences/workshops against a pre-determined fee qualify OP-1 to be an 'enterprise' in terms of Section 2(h) of the Act.

25. As regards the averment of the Informant that the CME guidelines deprive RMPs in the State of Punjab of CME credit hours in case they attend e-CME programmes conducted on other platforms, the Commission notes that the said allegation has been denied by a statutory body (OP-1) stating in clear terms that the doctors attending CMEs on platforms other than *Omnicuris* were not deprived of CME credit hours.

26. In relation to the allegation as well as submission of the Informant that its concern is not that OP-2 has been chosen to conduct CMEs, but that it is not allowing other well-accredited online CME platforms from conducting CMEs, the Commission notes the submission of OP-1 that it is ready to enter into an MoU with accredited CME providers/platforms, subject to ascertainment as regards the candidate being sufficiently qualified and competent to conduct such CME programmes. Further, in this regard, the Informant has not placed on record any material/evidence which suggests that OP-1 has denied accreditation to an online CME platforms which is qualified and competent to conduct such CME programmes, as per the requirements of OP-1. In the opinion of the Commission, OP-1 is well within its jurisdiction to prescribe certain standards, guidelines, etc., for the purpose of maintaining quality in medical education and practice.

27. In view of the above and taking the submissions and assertions made by OP-1 and Informant into consideration, as noted in the preceding paras, the Commission is of the view that it is unnecessary to dwell any further on the issues projected in the Information by examining the matter on merits.

28. Resultantly, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out and the Information filed against OPs is directed to be closed forthwith in terms of the provisions of Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises, and the same also stands dismissed.

29. The Secretary is directed to communicate to the parties accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 11/10/2022

New Delhi