



COMPETITION COMMISSION OF INDIA

Case No. 17 of 2022

In Re:

Mr. Ashwani Kumar Singla
E-701, Park Grandeura, Sector 82,
Faridabad - 121007, Haryana

Informant

And

M/s Sun Pharmaceutical Industries Limited
Sun House, Plot No. 201/B1,
Western Express Highway,
Goregaon (E) - 400063, Mumbai

Opposite Party No. 1

M/s Sialkot Medicos
Near Rajindra Hospital,
Jagdish Ashram Road, Patiala - 147001, Punjab

Opposite Party No. 2

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present information is filed by Mr. Ashwani Kumar Singla (**Informant**) under Section 19(1) (a) of the Competition Act, 2002 (**Act**), alleging contravention of the provisions of Section 4 of the Act by M/s Sun Pharmaceutical Industries Limited (**OP-1**) and M/s Sialkot Medicos (**OP-2**) [Collectively, '**Opposite Parties/ OPs**'].



2. OP-1 is stated to be a company registered under the Companies Act, 1956 which possesses the license, *inter alia*, to manufacture and market FluGuard 400mg medicine and OP-2 is a retail chemist based in Patiala, Punjab.
3. The Informant has submitted that he tested COVID-19 positive during the second wave of the pandemic in April 2021 and was required to take FluGuard 400mg along with some other medicines. Thus, he purchased two strips of FluGuard 400mg and some other medicines from OP-2 on 25.04.2021. However, he observed that the original maximum retail price (**MRP**) of FluGuard 400mg strip was masked and a new sticker of Rs. 650/- was pasted on it. The Informant has submitted that he is not aware about the original MRP printed beneath the sticker.
4. As per the information, the FluGuard 400mg medicines were manufactured by BDR Pharmaceuticals International Private Limited (**BDR**) under a license/ arrangement with OP-1.
5. The Informant issued a legal notice dated 24.01.2022 to BDR and OP-2 regarding the aforesaid conduct. OP-2 did not reply to the said legal notice. However, BDR *vide* its reply dated 09.02.2022, *inter alia*, stated that it manufactures the said medicine on behalf of OP-1 and has no role in its distribution and marketing. It further stated that as a manufacturer of the said product, it does not do stickering of price or price change of products, nor it has given any instructions *qua* such product. The reply of BDR further stated that MRP of the said product, FluGuard 400mg on the date of purchase mentioned in your notice was Rs.650/ and there was no price increase as alleged by the Informant in his notice.
6. After receiving BDR's reply to his legal notice, the Informant issued a legal notice dated 16.02.2022 to OP-1, *inter alia*, requiring OP-1 to explain its stand on re-labelling of MRP on FluGuard 400mg medicine. OP-1, *vide* its reply dated 03.03.2022, *inter alia*, stated that the purported stickering of price was not done by it and the MRP of FluGuard 400mg was Rs. 650/- on the date of purchase by the Informant and there was no price escalation of the said medicine. Further, relying



upon a notification/ circular issued by the Directorate General of Health Services (DGHS), OP-1 stated that there is no bar on re-labelling or re-printing on the packaging of a drug and it officially allows pharma companies to re-print or re-label the drugs without violating any rule of Drugs and Cosmetic Act and states that it is necessary to take a practical approach to expedite reprinting of price.

7. However, as per the Informant, OP-1 did not enclose the said notification/ circular with its reply. The Informant, on searching the publically available information found the said circular [(No. DCG(I)/MISC/2013) dated 26.06.2013] (**DGHS Circular**) which permits relabeling of drugs by means of adhesive stickers, only in cases of price reduction and not otherwise.
8. The Informant is unaware about the existing/ old MRP printed on FluGuard 400mg strip and he sought withdrawal of the case in case the same is found to be higher than Rs. 650/-, else he has requested the Commission to look into the allegations against the OPs.
9. On the basis of the above, the Informant has alleged that during the peak of COVID-19 pandemic wave in April 2021, the OPs hiked the MRP of FluGuard 400mg by pasting sticker on the existing medicine strips. As the said medicine was in a short supply, the OPs allegedly misused their dominant position and have resorted to restrictive/ unfair trade practice.
10. The Informant has, thus, prayed before the Commission:
 - i) To direct OP-1 and/or OP-2 to compensate the Informant by paying Rs. 5/- lacs or any other such amount as the Commission may deem fit.
 - ii) To direct the OPs to pay a penalty of Rs. 50/- crores or any other sum as the Commission may deem fit, for misusing their dominant position and/or resorting to restrictive and unfair trade practice during the pandemic of COVID-19.



11. The Commission considered the Information in its ordinary meeting held on 31.05.2022 and decided to pass an appropriate order in due course.
12. The Commission notes that the primary allegation of the Informant is that the OPs have relabeled the price of FluGuard 400mg by sticking an adhesive sticker of Rs. 650/- on the medicine strip during the second wave of COVID-19 pandemic in India in April 2021 and thus, have abused their dominant position in contravention of the provisions of Section 4 of the Act. As per the Informant, this also falls within the purview of restrictive/ unfair trade practice.
13. In order to substantiate the allegations, the Informant has annexed legal notices served by it on the OPs and BDR and replies received from the said entities. OP-2, however, as per the Informant, has not replied to its legal notice as of date. The Informant has also annexed OP-2's bill dated 25.04.2021, showing purchase of one strip of FluGuard 400mg along with other medicines by the Informant and a photocopy of two strips of FluGuard 400mg displaying Rs. 650/- as its MRP on an external adhesive slip.
14. The Commission notes from BDR's reply to the legal notice of the Informant that BDR manufactures FluGuard 400mg for and on behalf of OP-1 and it has no role in its marketing. However, it neither sticks price tags/change prices on the products nor it was given any instructions for the same. It is noted that OP-1 in its response to the Informant's legal notice has stated that the price of FluGuard 400mg, on the date of purchase by the Informant was Rs. 650/- only and that there was no escalation in its price as alleged by the Informant. OP-1 has also stated that under the applicable laws governing labelling and packaging of drugs, there is no bar on re-labelling or re-printing on the packaging of a drug. Reference has been made by OP-1 to DGHS Circular which allows pharmaceutical companies to re-print/re-label drugs without violating any rule of Drugs and Cosmetic Act, 1940.



15. With respect to OP-2, the Commission notes that it had not replied to the legal notice of the Informant. Presumably it was a retail store selling/licensed to sell drugs in the open market and may not have had any role in determination/relabeling of MRP on FluGuard 400mg as alleged in the Information.
16. The Commission observes that while determination of price of a drug and the aspects pertaining to its labeling may not be in the domain of the Commission, however, any unfair or discriminatory conduct in relation thereto by a dominant entity can be assessed by it, provided that the facts disclose a violation of the relevant provisions of the Act.
17. The Commission notes from publicly available information that FluGuard 400mg tablet, manufactured by OP-1 is an antiviral medicine which is used for the treatment of mild to moderate coronavirus disease (COVID-19) in adults. It stops the virus from multiplying and, therefore, decreases the viral load in the body. FluGuard 400mg contains Favipiravir which belongs to a group of medicines called antiviral agents and is indicated for the treatment of patients with mild to moderate COVID-19 disease.
18. As per the information available on a healthcare platform, more than 40 substitutes of FluGuard 400mg are available¹ in the market. The Commission further notes that there are several manufacturers such as Glenmark, Cipla, Lupin, among others, which manufacture and supply substitutes of FluGuard 400mg containing Favipiravir and the market for said medicine appears to be competitive and there is nothing on record to suggest that OP-1 could have operated independent of its competitors.
19. With regard to the DGHS Circular dated 26.06.2013 annexed with the Information, the Commission notes the allegations of the Informant that relabeling is permitted only when the prices of the drug see a downward revision and not otherwise whereas

¹ <https://www.1mg.com/drugs-substitutes/fluguard-400-tablet-630284> (accessed on 01.06.2022)



the OP-1 has replied to the Informant that so is not the case. The Commission does not wish to delve into this issue as *prima facie* OP-1 does not seem to hold any market power in view of the discussions above. It is open for the Informant to raise his grievance, if any, with regard to violations of the Drugs and Cosmetics Act, 1940 or any other relevant law with the appropriate forum/authority. The Commission has refrained from commenting on the merits of the claim in the Information in any manner as the ingredients required for attracting Section 4 of the Act, appears to be lacking in the facts and circumstances of the present case.

20. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case of contravention of the provisions of Section 4 of the Act against the OPs and, therefore, the matter be closed forthwith under the provisions of Section 26(2) of the Act.
21. The Secretary is directed to communicate the order to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi

Date: 10.06.2022