



COMPETITION COMMISSION OF INDIA

Case No. 20 of 2020

In Re:

Solar Life Sciences Medicare Private Limited

Chak No. 48 NGC, Krishna Market,
Town Junction Road, Hanumangarh Town,
Rajasthan

Informant

And

Chemist Association, Raisingh Nagar

Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 1

Radheshyam Bhakhar

President, Chemist Association, Raisingh Nagar
Kamal Medical Store
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 2

Mahesh Garg

Secretary, Chemist Association, Raisingh Nagar
Garg Medicos, Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 3

Rajendra Kumar Mangla

Treasurer, Chemist Association, Raisingh Nagar
Paras Medical Agency
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 4

Paramjit Singh

Vice-President, Chemist Association, Raisingh Nagar
Khalsa Medical Store

Opposite Party No. 5



Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Kulbhushan Bansal

Vice-President, Chemist Association, Raisingh Nagar
Ambika Medical Store
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 6

Kamal Chawla

Vice-President, Chemist Association, Raisingh Nagar
Chawla Medicos
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 7

Navjyot Singh

Vice-President, Chemist Association, Raisingh Nagar
Dashmesh Medicos
Rai Singh Nagar – 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 8

Vikas Jyandhi

Jyandhi Medical Store
office bearer, chemist Association, Raisingh Nagar
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 9

Deepak Singhal

Press spokesperson, Chemist Association, Raisingh Nagar
Rai Singh Nagar Pharma Ltd.
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 10

Sohan Lal

Press spokesperson, Chemist Association, Raisingh Nagar
Manas Medical Store
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 11



Kamal Medical store through its proprietor/ owner

Opposite Kalra Nursing Home, Near Bus Stand
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 12

Kamal wholesale Agency through its proprietor/ owner

Opposite Kalra Nursing Home, Near Bus Stand
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 13

Chawla Medicos through its proprietor/ owner

Opposite Indira Trust
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 14

Garg Medicos through its proprietor/ owner

Near Dhanmandi, near HDFC Bank
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 15

Pankaj Medical store through its proprietor/ owner

Near Indira Trust, Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 16

Khalsa Medical Store through its proprietor/owner

Near Indira Trust and near Dr. Naresh Gupta Nursing Home,
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 17

Shri Balaji Medicos

Near Devgan Hospital, Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 18

Shri Bikaner Medicos, through its proprietor/owner

Agarwal Hospital Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 19

Manas Medical store, through its proprietor/owner

Near Dr. Tej Sharma Clinic., Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 20

Ambika Medical, through its proprietor/owner

Kalra Nursing Home Road
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 21

Paras Medical Agency through its proprietor/ owner

Kalra Nursing Home Road

Opposite Party No. 22



Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Dashmesh Medicos through its proprietor/ owner
Near Mundra Hospital
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 23

Jyandhi Medical store through its proprietor/ owner
Near Underpass, Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 24

Kumal Medicos through its proprietor/owner
Kalra Nursing Home,
Rai Singh Nagar- 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 25

Rai Singh Pharma Ltd. through its proprietor/owner
Near Government Hospital
Rai Singh Nagar - 335051,
District Sri Ganganagar (Rajasthan)

Opposite Party No. 26

Sri Ganganagar Chemists Association (City)
Sri Ganganagar - 335001 (Rajasthan)

Opposite Party No. 27

Omprakash Mittal
President, Sri Ganganagar Chemists Association (City)
Mittal Medical Agency

Opposite Party No. 28

CORAM

Ms. Ravneet Kaur
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member



Present on 05.07.2023:

For Informant	Mr. Aditya Gupta, Advocate Mr. Gourav Kumar Nagpal, Director, Solar Life Sciences Medicare Pvt. Ltd.
For OP-1 and OP-2	Mr. Radheshyam Bhakhar, President, Chemist Association, Raisingh Nagar
For OP-27 and OP-28	Mr. Omprakash Mittal, President, Sriganganagar Chemists Association accompanied by Mr. Deepak Jain, Advocate

Order under Section 27 of the Competition Act, 2002

1. The instant information was filed by Solar Life Sciences Medicare Private Limited (hereinafter, '**Informant**'), under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') alleging contravention of provisions of Section 3(3) read with Section 3(1) of the Act.

Facts and allegations, as stated in the Information

2. It was stated that the Informant is a supplier of pharmaceutical products under the brand name 'SOLAR' and has contract manufacturing tie-ups with accredited pharma units. It claims to be one of the leading suppliers of generic medicines for human consumption particularly in the State of Rajasthan and is stated to be growing its business in different parts of the country.
3. It was stated that OP-1, Chemist Association, Raisingh Nagar is an association of at least 60 chemists and druggists as members in Raisingh Nagar, a Tehsil, in the district of Sri Ganganagar in the State of Rajasthan. OP-2 to OP-11 are stated to be the key office bearers of OP-1, also engaged in the trade of pharmaceutical products whereas OP-12 to OP-26 are some of the chemists who are the members of OP-1 and are enterprises engaged in the trade of pharmaceutical products. OP-27 is stated to be the association of chemists in the city of Sri Ganganagar, State of Rajasthan. OP-28 is stated to be the President of OP-27. OP-1 to OP-28 are collectively referred to as 'OPs/Opposite Parties'.
4. It had been averred in the information that the OPs had engaged in and continued to engage in anti-competitive practices of collectively boycotting the pharmaceutical products of certain manufacturers/suppliers such as the Informant. As stated, the *modus*

operandi of the OPs, *inter alia*, was to collectively decide and impose margins and incentive schemes on the manufacturers/suppliers of pharmaceutical products. In the event of failure to offer such margins and incentive schemes to the OPs, the pharmaceutical products of such manufacturers/suppliers were boycotted *i.e.* the purchase and supply of such manufacturers/ suppliers of pharmaceutical products was limited by the OPs. As a result, the manufacturers/ suppliers of pharmaceutical products, under the threat of boycott were compelled to offer high margins and incentive schemes to the OPs.

5. The Informant had alleged that such decisions pertaining to boycotts, margins and incentive schemes were taken by the OPs under the aegis of the trade association *i.e.* OP-1. The Informant had relied upon two resolutions passed by OP-1, both dated 07.06.2020, wherein the Informant demonstrated that the OPs had indulged in the following anticompetitive practices:
 - a. Agreeing upon margins to be sought from manufacturers/suppliers of pharmaceutical companies.
 - b. Agreeing upon the incentive schemes to be sought from manufacturers/ suppliers of pharmaceutical companies.
 - c. Agreeing upon imposing these margins and incentive schemes.
 - d. Agreeing to take punitive measures such as not selling and purchasing products of manufacturers/ suppliers who refuse to offer the agreed upon margins and incentive schemes.
 - e. Implementing punitive measures against non-compliant manufacturers/ suppliers such as the Informant.
6. As stated, pursuant to the passing of the aforesaid notices/resolutions by OP-1, other chemist associations in the State of Rajasthan which were Gharsana Chemist Association (Distt. Sri Ganganagar), the Gajsinghpur Chemist Association (Distt. Sri Ganganagar), Kesrisinghpur Chemist Association (Distt. Sri Ganganagar), Rawla Chemist Association (Distt. Sri Ganganagar), Anupgarh Chemist Association (Distt. Sri Ganganagar) and Padampur Chemists Association (Distt. Sri Ganganagar) also issued verbatim resolutions. The Informant had alleged that these associations issued their resolutions under the influence of OP-1 and its office bearers and had thus, indulged in anti-competitive practices.



7. The Informant also stated that a notice dated 17.06.2020 had been given by Sri Ganganagar Chemists Association (OP-27) informing that the Informant had been boycotted in all the markets of the district of Sri Ganganagar for the past few days of the said date and demanded an explanation from the Informant within 7 days. The Informant, *inter alia*, had alleged that the said notice threatened 'non-cooperation' with the Informant in the neighbouring division of Bikaner if no explanation was received within the said period of 7 days. Thus, the OPs' actions pertained to boycotting/non-cooperation with the Informant in the district of Sri Ganganagar and the division of Bikaner in the State of Rajasthan.
8. The Informant, *inter alia*, prayed to the Commission to cause an investigation into the matter and further direct the OPs and the members of OP-1 to cease and desist from engaging in anticompetitive practices in violation of Section 3 of the Act.
9. The Informant had also filed an application under Section 33 of the Act, praying for an interim relief in the matter.

Order under Section 26(1) of the Act

10. The Commission considered the matter on 03.07.2020. After careful perusal of the information and documents filed by the Informant, it was *prima facie* convinced that the resolutions dated 07.06.2020 passed by OP-1 and subsequent verbatim resolutions, passed by other associations and the tenor of notice dated 17.06.2020 issued by OP-27 were in the form of diktat of the associations of boycotting/non-cooperating in dealing with the products of the Informant. This had the effect of limiting or controlling supplies/distribution/availability *etc.* of drugs and in denial of market access to pharmaceuticals companies and non-availability of drugs to consumers in contravention of provisions of Section 3(3)(b) read with Section 3(1) of the Act. Further, on the issue regarding fixation of margin and provision of incentive schemes, the Commission observed that the collective actions of the OPs had a direct bearing on the price of pharmaceutical products and *prima facie* seemed to be in contravention of Section 3(3)(a) read with Section 3(1) of the Act.
11. Accordingly, the Commission *vide* order dated 17.07.2020 directed the Director General ('DG') to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act and submit the Investigation Report.

12. Thereafter, the Commission took up the interim application filed by the Informant. The Commission allowed the said application for interim relief passed under Section 33 of the Act *vide* order dated 17.09.2020 after no written comments of OP-1, OP-2, OP-3, OP-27 and OP-28 were received. The Commission directed the stay of operation of resolutions/notices dated 07.06.2020 in relation to the Informant's products passed by OP-1 and the notice dated 17.06.2020 issued by OP-27, pending investigation and inquiry in the matter. Further, the OPs or any of its members were precluded from acting in any manner, directly or indirectly, in terms of the said resolutions and/or notice dated 17.06.2020 to the detriment of the Informant.

Investigation by the DG

13. Pursuant to the directions of the Commission issued under Section 26(1) of the Act, the DG conducted investigation and submitted the Investigation Report dated 12.07.2022 to the Commission, after seeking due extensions of time.
14. The DG identified the following issues for investigation:
- i. *Whether the OPs are in violation of the provisions of Section 3(3)(a) read with Section 3(1) of the Act, by communicating with their constituent members via circulars issued in respect of discounts, payment terms, transportation charges etc., which otherwise should have been the subject matter of commercial discretion of the manufacturer.*
 - ii. *Whether the OPs have indulged in violation of the provision of Section 3(3)(b) read with Section 3(1) of the Act, by limiting supplies in the market through agreeing to take punitive measures such as not selling and purchasing products of manufacturer/supplier who refuse to offer agreed upon margin and incentive scheme.*
 - iii. *Whether the role of individuals/persons/officers who were in charge of and were responsible for the conduct of the activities/business of the parties/entities at the time the alleged contravention was committed as well as the individuals/persons/officers with whose consent or connivance was committed, attracted the provisions of Section 48 of the Act.*



15. As stated, the Informant submitted that the chemist margins were fixed at usually 20% since the time its medicines were being sold in Raisinghnagar market from 2015 up till May 2020. In May 2020, during COVID pandemic OP-1 on behalf of all chemist members demanded 20% extra margins (total 40%) on sale or equivalent quantities of free medicine or else face boycott of the Informant by the member chemists in sale of their medicines. On refusal by the Informant for the aforesaid increased margins, OP-1 issued a circular dated 07.06.2020 to member chemists of OP-1 directing them to boycott the products of the Informant. Chemist associations of the nearby areas also issued similar circulars. The Informant received another letter on 17.06.2020 from OP-27, declaring boycott of the Informant by the chemist associations of district of Sriganganagar. The Informant also stated that OP-27 marked a copy to the Rajasthan Chemist Association, Jaipur and warned that in case of non-compliance, the Informant would not be able to do business in any district of Rajasthan. Similar circulars/letters were also issued by associations of Gharshana, Anupgarh, Kesrisinghpur, Gajahsinghpur, Rawla and Padampur, under the influence of OP-1. The Informant also submitted that the non-cooperation/boycott by the association led to a reduction in its sales by approx. 90% in Raisinghnagar. Further it was stated that OP-1 had established system of NOC from the pharma companies, in lieu of charges to the association along with details of margin and schemes before launching of any product by pharma companies.
16. The DG also stated that there was disregard of the summons issued during the investigation by OP-2 and his presence could be secured only after the issuance of bailable warrants. OP-2, the President of OP-1, in his statement before the DG (dated 20.06.2022 & 21.06.2022), *inter alia*, submitted that he was made aware about the problems pertaining to high prices, shortage of stocks, lower margins as compared to other multinationals. OP-2 admitted that the notice dated 07.06.2020 was signed by him on behalf of members of the association for settlement of their problem and due to the death of a patient on administration of medicine PIPSOL, belonging to the Informant, the Informant was boycotted. OP-2 further added that a letter dated 20.05.2020 was written by the association to the Informant elaborating upon the chemists' problem, and on receiving no reply from the Informant, OP-1 boycotted the sale and purchase of medicines/drugs from the Informant in the interest of consumers and for non-settlement of chemist issues.



17. OP-28, the President of OP-27, in his statement dated 04.07.2022, *inter alia*, submitted that as the President he had no discussion with the Informant for the last two years, however, as a stockist of the Informant he had day-to-day discussions regarding margins and schemes. With reference to the notice dated 17.06.2020 issued in the name of the Informant by OP-27 and under his signature, he stated that the said letter had been written on the letter head of OP-27. He further stated that he came to know about the misuse of letter head when he received the notice dated 31.05.2022 sent by the DG. He denied signing on the same.
18. The investigation found that summons under Section 41(2) read with Section 36(2) of the Act which were issued to secure presence of OP-28 were served but OP-28 was trying to evade investigation, not only before the DG, but also kept themselves away from scrutiny when asked to appear before the Commission. However, only after issuance of letter dated 14.06.2022 and issuance of bailable warrants, OP-28 appeared in person and tendered his handwritten statement to the DG on 04.07.2022.
19. Further, the investigation observed that OP-28 had been the President of OP-27 since 1988 and continued till date without any election during these years and under these circumstances his contention that he had neither issued nor signed the notice dated 17.06.2020 issued on letterhead of OP-27 was untenable. Based on the preponderance of probability, the DG drew an adverse inference against OP-28, that, the notice dated 17.06.2020 was issued and signed by OP-28, for OP-27.
20. The DG emphasised that though the parties had been given ample opportunities for clarification and explanation on letters/notices issued by them, they had intended not to cooperate with the investigation. This intent of parties to evade and not to cooperate with the investigation '*constitute the intention*' of the offence committed by them.
21. The DG also observed that the association was working as a cartel of chemists for implementation of their common agenda against the Informant through boycott and blockade. Further, the DG also observed that OP-1 had commenced boycott and blockade of the Informant's products even prior to the issuance of notice dated 17.06.2020, where the modalities of boycott were well spelt out and the Informant was threatened with the implementation and continuation of boycott not only in the district

of Sriganganagar but also in Bikaner division. Pursuant to the passing of impugned resolution by OP-1, Chemist associations of Gharshana, Anupgarh, Kesarisinghpur, Gajahsinghpur, Rawal and Padampur also issued similar notices for boycott of the Informant. However, the same was symbolic and did not have any significant adverse effect according to the DG.

22. Considering the above factors, the DG concluded that OP-1 and OP-27 along with the respective Presidents of their respective associations decided on anti-competitive calls/threats for boycott, fixation of margins amongst its stockist association members, boycotting and restricting of supply to the detriment of the Informant. The DG emphasised that OP-1, OP-2, OP-27 and OP-28 in particular apart from non-effective association, have explicitly established the cartel, in contravention of provisions of Section 3(3)(a) of the Act. Further, their conduct of boycotting and blockading of the sales and purchase of the pharmaceutical products of the Informant, has limited supply to the detriment of the Informant and consumers, contravening the provision of Section 3(3)(b) read with Section 3(1) of the Act.
23. The Commission considered the Investigation Report on 20.07.2022 and decided to call objections/suggestions to the Investigation Report from OP-1, OP-2, OP-27 and OP-28 and decided to hear them on 13.09.2022. On 17.08.2022, the Commission allowed the extension application of the Informant to file objections/suggestions to the Investigation Report. However, due to administrative exigency, the date of hearing was further rescheduled to 16.11.2022. In the meantime, OP-1, OP-2, OP-27 and OP-28 filed their objections/suggestions to the Investigation Report. On 06.10.2022, the Commission allowed the application for extension of time by the Informant for filing of rejoinder. The same was filed by the Informant in due course.
24. The objections/ suggestions on the Investigation Report have been summarised hereinbelow:

Objection/Suggestion/Replies by the Informant

25. The Informant in its objection to Investigation Report, filed on 16.09.2022, submitted that the DG has erroneously excluded OP-3 to OP-26 from the purview of investigation. The Informant has objected on the following grounds:

25.1. *Scope of Investigation*

The Informant submitted that the Commission vide its order dated 17.07.2020 had specifically directed the DG to investigate the role of individuals/persons/officers in-charge of and responsible for the conduct of business of the parties at the time alleged contravention was committed. The DG had without just cause and reason failed to investigate the role of OP-3 to OP-26, the person in-charge and responsible for conduct of business of these OPs. The only reason provided for such non-inclusion of individuals/persons/officers in-charge (OP-3 to OP-26) was that their acts did not amount to anti-competitive behaviour, without providing any basis for such finding.

25.2. *Statement of Informant misconstrued by DG*

The Informant further submitted that the DG misconstrued its statement concerning the Gharshana, Anupgarh, Kesharisinghpur, Gajahsinghpur, Rawla, and Padampur Chemist, to mean that OP-3 to OP-26 continued to sell the products of the Informant. The Informant reiterated that OP-3 to OP-26 were office bearers and member chemists of OP-1 and were unrelated to the Gharshana, Anupgarh, Kesharisinghpur, Gajahsinghpur, Rawla, and Padampur Chemist associations. Further, these associations had not even been listed as OPs by the DG. Whereas, OP-3 to OP-26 had specifically been alleged by the Informant to have actively indulged in the boycott and blockading of the Informant and its products pursuant to resolutions passed by OP-1.

25.3. *Admitted consensus and prima facie evidence of collective anti-competitive action*

The Informant pointed out that OP-2, Mr. Radheshyam Bhakhar, President of OP-1, had himself admitted signing the notice dated 07.06.2020 and that the action of boycotting the Informant, was taken after consensus from the member chemists. The Informant had reiterated that the allegation was of collective anti-competitive practices by the member chemists of OP-1, as is evident from the Investigation Report.

25.4. *Impossibility of boycott by OP-1 without boycott by OP-3 to OP-26*



The Informant submitted that OP-1 being merely an association of chemists, it was impossible for it alone to indulge in a boycott unless its member chemists, *i.e.* OP-12 to OP-26 themselves indulge in it. Further the Informant mentions that the decision of boycott was taken by consensus of the other office bearers being OP-3 to OP-11. The Informant thus concluded that OP-3 to OP-26 had played an active role in the anti-competitive conduct, thus contravening the provisions of Section 3(3)(a).

Objection/Suggestion/Reply from OP-1 and OP-2

26. OP-2 in its objections/suggestions to the Investigation Report filed on 30.08.2022, submitted that OP-1 is an unregistered and informal association of Chemists in Raisinghnagar and no fees or charges are payable for obtaining the membership of OP-1. He further submitted that the Informant had different registered addresses in the records of Ministry of Corporate Affairs, office of Registrar of Companies, Jaipur Bench and stating of such wrong addresses by the Informant suggests its wrongful intent and fraud, as the registered address was changed post the investigation by the Commission and after filing of RTI by OP-1 with ROC in June 2020. OP-2 submitted that the information at hand had been filed to harass OP-2 after he filed letter with ROC Mumbai to ensure that the Informant was not misleading public with a fake company.
27. OP-2 also submitted that the DG had placed heavy reliance on letters dated 04.05.2020 and 20.05.2020 for its findings and conclusion in the Investigation Report. The above dated letters were sent to the Informant by OP-2 to discuss issues, *inter alia*, relating to high MRP, unequal availability and distribution of Informant's medicines. The Informant was asked to discuss these issues failing which legal action would be taken. By use of words legal action OP-2 only meant legal proceedings and that there was no evidence to prove that OP-1 and OP-2 had restricted the supply of medicines of the Informant. There was nothing anti-competitive or restrictive in the language or action of OP-1/OP-2.
28. OP-2 also stated that there was no investigation or evidence to indicate that OP-1, through OP-2, had restricted or created circumstances to restrict supply of the medicines of the Informant. The DG had placed reliance on the statement and submission of the Informant wherein it was alleged that its sales reduced by 90% in Raisinghnagar,



although there is no investigation or evidence undertaken by the DG to conclude that the sales were actually decreased or restricted in any way. Further OP-2 was not given any opportunity to cross examine the Informant as required under Regulation 41(5) of General Regulations.

29. OP-2 further submitted that the DG had failed to analyse the factors under Section 19(3) of the Act to show if there is any appreciable adverse effect on competition (AAEC) in the market.

29.1. No evidence to show OP -1 & OP-2 created barriers for new entrants

OP-1 is a non-profit making body and works for the welfare of Chemists. Further, it does not dictate any terms or rules for the chemists. The chemists through the association are incapable of controlling or restricting entry into the market of manufacture or supply of medicines. It was only an association for a small tehsil of Rajasthan and there existed several other associations functioning in other tehsils in Rajasthan. Even assuming that Informant suffered a loss, it cannot be a reason to prove that AAEC was caused by OP-1 merely because one party incurred a loss. The forms alleged by the Informant as No-Objection Certificates (NOC) were mere informational forms to keep chemists updated with the available products/brands in the market. There was no evidence to prove that these forms were mandatory to be filed. Further, no evidence was adduced to prove that these are NOC forms, causing or likely to cause any restrictive effect. These were never confronted to OP-2. OP-2 submitted that the notice dated 07.06.2020 was merely to stop the rude behaviour of the Informant towards the chemists. There was no evidence as to the extent of execution of this notice. Further, even assuming that OP-1 boycotted the Informant, there were only 70 chemists under OP-1 out of more than 2,500 chemists across 6 other tehsils of Sriganganagar District, thus no issue of AAEC arose.

29.2. OP-1 has not determined prices

OP-1 had never dictated nor suggested any price or discounts to the member chemist for any brand or product. The notices/letters dated 04.05.2020, 20.05.2020 and 07.06.2020 merely stated that the Informant's medicine prices were higher than the multinational companies and the margins of chemist were



low. There was no sanction/threat or direction to lower the prices or increase chemists' margins. Moreover, there was no evidence to demonstrate price determination by OP-1 as an association or between the chemists under the garb of OP-1.

29.3. OP-1 has not limited or controlled supply of medicines

29.3.1. OP-2 submitted that there were more than 2,500 chemists in district of Sriganaganagar, even assuming that OP-1 had boycotted products of the Informant, it could not result in controlling or limiting products in the market.

29.3.2. OP-2 submitted that DG had failed to investigate into the market conditions and working in the medicine chain of supply, as Informant is not a manufacturer of medicine itself, but only a supplier (official website of Informant states it to be engaged in supplying and exporting pharmaceutical products). Informant having wholesaler license controlled the supply of medicines. Members of OP-1 were dependent on the Informant for the supply and were themselves incapable of restricting the demand of the consumers.

29.4. No agreement or understanding between OP-1 and OP-2 to show collusion.

29.4.1. The DG has failed to produce evidence to prove existence of any agreement or understanding between OP-1 and OP-2 for determination of price and control of supply of medicine.

29.4.2. The DG has failed to investigate into and record names and total number of member chemists of OP-1 and had baselessly concluded that such chemists were engaging in cartel under OP-1.

29.4.3. The DG has further, baselessly concluded cartel between OP-1 and OP-27 merely on the basis that notice issued by OP-1 dated 07.06.2020 and notice dated 17.06.2020 by OP-27 and other associations were on the same lines. The DG concluded collusion between OP-1 and OP-27 without having record or evidence of any agreement or understanding between OP-1 and OP-27.



29.4.4. The DG has annexed WhatsApp chat as evidence against OP-2 without a certificate under Section 65B, Indian Evidence Act, 1872; making such evidence inadmissible in accordance with Regulation 41(3)(c) of the General Regulations.

29.5. Mitigating factors

29.5.1. That OP-1 worked for the welfare of its member chemists without charging any membership fees or other charges. There was no monetary gain/funds or expenditure of OP-1.

29.5.2. That the Informant had not approached the Commission with clean hands, as it had not clearly specified its working mode *i.e.*, that it had a wholesale drug sale license of stockiest/wholesaler in Rajasthan.

29.5.3. There is no evidence of engaging in cartel or boycott being executed or continued by OP-1 and OP-2 and no loss/AAEC incurred to the Informant/market. There is unawareness of the competition law in small districts of Rajasthan.

30. OP-2 thus, submitted that OP-1 and OP-2 had not engaged in any anti-competitive activity either severally or jointly with other OPs in contravention of Section 3(3)(a) and/or 3(3)(b) read with section 3(1) of the Act.

Objections/Suggestions/Reply from OP-27 and OP-28

31. OP-28 in its objections/suggestions to the Investigation Report filed on 30.08.2022, submitted that OP-27 is an unregistered and informal association of chemist in the district of Sriganganagar, Rajasthan. That OP-27 charged no fees/application /forms/charges from its members. OP-28 further submitted that though he was elected as the President of OP-27 in 1988, but for many years had not been the President due to his age and referred to the notice dated 22.06.2022 wherein it claimed that President was Mr. Rajender Chugh and not OP-28.

32. It was submitted that investigation has not been carried out in compliance with CCI (General) Regulations, 2009 as non-English documents have been relied upon without



translating the same in English. The Investigation Report is based on conjectures and surmises.

33. OP-28 submitted that the letter dated 17.06.2020 was not signed by him, as he had not been handling the activities of OP-27 since a long time. OP-28 submitted that the DG erroneously, without any investigation or forensics, concluded the signature to be of OP-28.
34. OP-28 submitted that even if it was assumed that letter dated 17.06.2020 was issued by OP-28, the letter, without any further evidence, was not sufficient to conclude any boycott or restriction on the products of the Informant. There was nothing anti-competitive or restrictive in the language or action.
35. OP-28 submitted that for the alleged decrease in demand by the Informant, the DG had not investigated the sales of the Informant. OP-28 also submitted that when a consumer demands medicine, no chemist would refuse or fail to procure the same from the stockist like the Informant.
36. OP-28 further submitted that the DG had failed to analyse the factors under Section 19(3) to show if there is any AAEC.

36.1. *No evidence to show barriers for new entrants in the market created by OP-27.*

36.1.1. OP-28 submitted that OP-27 only worked for the welfare of Chemists and no new entrant was required to be part of OP-27 for the supply of medicines. As there were many other associations for other tehsils, even assuming that Informant suffered loss, the same could not be a reason to prove that AAEC was caused by OP-27.

36.1.2. OP-28 also submitted that neither the Informant had placed any evidence to show a decrease in sales nor the DG has investigated the same.

36.2. *No determination of purchase and sale prices by OP-27*

OP-28 submitted that it had never dictated nor suggested any price or discounts to its member chemists. Letter dated 17.06.2020 mentioning merely that the prices of the products of the Informant were high did not amount to determination of prices. The said letter contained no threat/sanction/direction to lower the prices or

increase the margins of the chemist. OP-28 submitted that the DG had failed to show how the prices were determined by OP-27, without evidence or investigation.

36.3. No limiting or controlling of supply of medicines by OP-27

36.3.1. OP-28 stated that the DG has failed to adduce any evidence to show that any decision of OP-27 resulted in restricting/limiting of supply of the products of the Informant. Further, even if it were to be assumed that OP-27 boycotted products of Informant, there were only 400 chemists under OP-27 and more than 2,500 chemists are across other 6 tehsils of district Sriganganagar, and therefore boycott by OP-27 could not result in control/limiting the products of Informant in the market.

36.3.2. OP-28 submitted that Informant had not approached the Commission with clean hands and had suppressed the fact that it was not a manufacturer of medicines but only a supplier or third-party supplier of medicines, having a license for the distribution of medicines, the same could be observed from the official website of the Informant.

36.3.3. OP-28 submitted that the Informant had a wholesaler license to distribute medicines. Chemists were dependent on the Informant for medicines which the consumer asked. Therefore, the member chemists of OP-27 were incapable of restricting the demand of consumers which affected the supply of the Informant.

36.4. No cartel between OPs

36.4.1. The DG had no evidence of the existence of an agreement or understanding between OP-1 and OP-27 for the determination of prices or/and control of the supply of medicines.

36.4.2. The DG had not even recorded the total number and names of member chemists of OP-27 and had baselessly concluded cartel of chemists working under OP-27, without even identifying the name of these chemists.



36.4.3. The DG erroneously concluded two types of cartels for the same party, the first being a cartel of chemists under the garb of Association and another cartel of association OP-1 and OP-27.

36.4.4. The DG had merely concluded the cartel on the basis of notice issued by OP-1, assuming that OP-27 and other associations issued notices on the same lines post the notice dated 07.06.2020 by OP-1. The conclusions drawn by the DG were flawed and there was no evidence on record to show any meeting minds between the associations.

36.5. Mitigating factors

36.5.1. That it worked for the welfare of its member chemists without charging any membership fees or other charges. There was no monetary gain or expenditure by OP-27.

36.5.2. That the Informant had not approached the Commission with clean hands, as it has not clearly specified its working mode and that it had a wholesale drug sale license of stockiest/wholesaler in Rajasthan.

36.5.3. There is no evidence of engaging in cartel or boycott being executed or continued by OP-27 and OP-28 and no loss/AAEC incurred to the Informant/market. There is unawareness of the competition law in small districts of Rajasthan.

Informant's rejoinder to the objections/suggestions by OP-1 and OP-2

37. The Informant submitted that the objections raised by OP-1 and OP-2 to the Investigation Report are baseless. The findings of the investigation are neither perverse nor inaccurate since the evidence on record proved the Informant's allegations to be correct.

38. The Informant submitted that it had never attempted to conceal the change in registered address from the Commission and that it was a licensed manufacturer, distributor and seller of medicine conducting business and operating out of multiple addresses as is common to trade and that it reserved its right to furnish all details of its business addresses and registered address at a later stage.

39. The Informant further submitted that it had never alleged that it was only a manufacturer, the first paragraph of the information mentions that “*the Informant supplies pharmaceutical products*”. Further, the main contention of the Informant is that its supplies to the member chemists was made vulnerable to punitive measures pursuant to the resolution passed by OP-1 and OP-27. Further, the Managing Director (MD) of the Informant has submitted on oath that 90% of Informant’s sale have been impacted as a result of the concerted action. The Informant thus, concludes that the near identical resolutions dated 07.06.2020 and 17.06.2020, WhatsApp chats between OP-2 and other chemist associations, irrevocably demonstrate the call for boycott and blockage of the Informant. The illegal margin demand, price fixing and clarion boycott leading to 90% decrease in the gross sales are a direct impact of collusive behaviour of OPs. The objection to the Investigation Report, that no evidence of AAEC was found, is false and liable to be rejected.
40. The Informant further submitted that the objection raised by the OPs that the DG has not produced evidence to prove any agreement or understanding between OP-1 and OP-27, is false and liable to be rejected. As recorded in the Investigation Report and relied upon in the investigation, OP-2 has specifically admitted to taking the decision of boycott based on consensus.
41. The Informant further mentions that on account of resolutions passed by OP-1, other chemist associations in the State of Rajasthan had also issued similar resolutions, thus the conclusions reached upon by the DG of concerted and collective acts of boycott of OPs are correct and are to the detriment of the Informant and consumers.
42. On 10.11.2022, the hearing on the Investigation Report in the matter, earlier scheduled on 16.11.2022, was cancelled. On 14.06.2023, the matter was taken up by the Commission and the hearing on the Investigation Report was fixed on 05.07.2023. The hearing was concluded on 05.07.2023.

Analysis of the Commission

43. The Commission has perused the Information filed, Investigation Report, submissions of the parties to the Investigation Report and submissions made by the parties during the hearing held on 05.07.2023.

44. According to the Investigation, OP-1, OP-2, OP-27 and OP-28 have been found to be contravening the provisions of Section 3(3)(a) and Section 3(3)(b) read with Section 3(1) of the Act. Further, OP-2 and OP-28 have been found to be liable under the provisions of Section 48 of the Act by the DG. For examining the conduct of the aforesaid parties, the Commission has identified the following four issues for the purposes of the analysis:
- Whether the decision taken or practice carried on by OP-1 and/or OP-27 constitute a decision or practice for the purposes of Section 3(3) of the Act?*
 - Whether the OP/OPs are in violation of the provisions of Section 3(3)(a) read with Section 3(1) of the Act, by communicating with their constituent members via circulars issued in respect of discounts, payment terms, transportation charges etc., which otherwise should have been the subject matter of commercial discretion of the manufacturer/supplier?*
 - Whether the OP/OPs have indulged in violation of the provision of Section 3(3)(b) read with Section 3(1) of the Act by limiting supplies in the market through agreeing to take punitive measures such as not selling and purchasing products of manufacturer/supplier who refuse to offer agreed upon margin and incentive scheme?*
 - Whether the role of individuals/persons/officers who were in charge of and were responsible for the conduct of the activities/business of the parties/entities at the time the alleged contravention was committed as well as the individuals/persons/officers with whose consent or connivance was committed, attracted the provisions of Section 48 of the Act?*
45. The aforesaid issues have been dealt in the ensuing paragraphs.
46. The Commission noted that OP-1 and OP-27 are associations respectively operating in their territories within Sri Ganganagar in the State of Rajasthan. The allegations present in the matter pertaining to the decisions of boycott/non-cooperation taken by OP-1 and OP-27. In terms of Section 3(3) of the Act, *‘any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any*

association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services [....]’. In a plethora of cases, the Commission has found practices or decisions taken by the trade associations fall within the domain of Section 3(3) read with Section 3(1) of the Act. Thus, the conduct/practices carried on by associations are squarely covered under the provisions of Section 3(3) read with Section 3(1) of the Act.

47. Having determined that the decision or practice carried on by any association is covered within the ambit of Section 3(3) of the Act, the Commission shall now proceed in identifying the role and conduct of OPs in the present case within the provisions of Section 3(3)(a) and Section 3(3)(b) of the Act and the applicability of Section 48 of the Act, if any.
48. During the hearing, the Informant referred to paragraph 24 of the *prima facie* order passed under Section 26(1) of the Act by the Commission and argued that the DG ought to have investigated OP-3 to OP-11 (office bearers of OP-1 association) and OP-12 to OP-26 (various medical stores which are members of OP-1 association). The Informant invited attention to Issue No. 3 as framed by the DG and page no. 5 of the Investigation Report and submitted that the DG wrongly attributed their non-involvement to the statement of the Informant. The Informant then referred to its reply dated 01.12.2021 to question no. 5 asked by the DG and submitted that the said statement was misconstrued by the DG. The Informant further stated that the said reply was given in the context of member chemists of other chemist associations in nearby areas. Resultantly, the DG has wrongly kept OP-3 to OP-26 out of the purview of the investigation. Thus, the Informant prayed that the matter ought to be sent back for investigation for examining the roles of OP-3 to OP-26 within the scope of investigation and penalty be imposed on the members of the association.
49. The Informant referred to notice dated 20.05.2020, WhatsApp chats on record, resolutions/notices dated 07.06.2020 and 17.06.2020 and argued that there was a collective call taken by the member chemists of OP-1 to boycott the products of the Informant.

50. Thereafter, the Informant referred to reply (iii) to Question no. 12 asked by the DG from OP-2 to highlight that the fixation of margin was the reason of the boycott of Informant's products by the OPs. The Informant informed the Commission that the issue of death of a patient was investigated by the drug authority and it did not find anything against the Informant. Therefore, the purpose of boycott was not the death of the patient, as stated by OP-2 in its response to Question 14 but their demand of seeking higher margin/commission from the Informant. Referring to OP-2's reply to Question no. 15, the Informant reiterated its submission that the members of OP-1 ought to have been arraigned before the Commission. It stated that OP-2's replies to the DG clearly show that the decision of boycott was taken by consensus. Even the DG has recorded so in its report to this effect. Thus, the DG erred in not examining the role of OP-3 to OP-26 for their participation in the collective boycott call which has been found to be in contravention of the provisions of the Act.
51. To address all the issues in respect of OP-1 and OP-2, the Commission perused the statements dated 20.06.2022, 21.06.2022 of OP-2 and the notice/resolution dated 07.06.2020 (page 39 of Investigation Report), 07.06.2020 (page 40 of the Investigation Report) and notices/letters dated 04.05.2020 and 20.05.2020 (pages 45-48 of the Investigation Report).
52. Relevant replies of OP-2, in his statements dated 20.06.2022 and 21.06.2022, are reproduced hereinbelow:

Statement dated 20.06.2022

[....]

Q5. Do you have any other profession other than this?

Ans. I am the president of Chemist Association Raisingh Nagar since 2017 till date.

[....]

Q12. What do you have to say regarding Solar Life Sciences Medicare Pvt. Ltd.?

Ans. (i) The products of this company were priced more than many multinational companies which was to detriment of consumers.

(ii) The company had two stockiest but none of them had complete stocks be provided to each of the chemists.

(iii) The margin offered by the company was less than that of the multinationals and it was demanded that margin be paid equivalent to the multinational.

(iv) The address shown on the products of the company was suspected by chemist of Raisingh Nagar and so the association contacted the company representative and the company on this issue but no response was received from their end.

(v) The interaction of the employee of the company Sh. Gaurav Kumar Nagpal was not well behaved with the association and whenever the association interacted with him he responded saying that the company has tie-up with the doctors and so no consultation is required with the chemists.

(vi) On 02.06.2022, a chemist was attacked due to a product named PIPSOL of Solar Life Sciences Pvt. Ltd. This after being administered for control of infection in the patient the patient passed away. Name of the patient was Sajjan Kumar S/o Sh. Ranveer Singh.

[....]

Q14 Notice dated 07.06.2020 signed by you is being shown to you. In the said notice you have given the direction that on the issue of margin, scheme, stockiest the company will be boycotted and no chemist will sell or purchase its products. What do you to say on this?

Ans. All decisions are taken on consensus. I being the President of the Association have to sign on them. Due to such decision taken by the chemists on the issue of their problems being raised repeatedly and on the issue of the death of the patient due to administering of the medicine of the company (Solar Life Sciences Medicare Pvt. Ltd. New Prabha devi, Prabha Devi, New Goldman Sachs, Mumbai, Maharashtra 400025) which blemished the image of the chemist. So we boycotted the company. The death of the patient Sajjan Kumar attributed to the malfunctioning of the medicine of the company by the family members of the patient.

Q15 You notice dated 07.06.2020 is on the issue of the margin scheme of the chemist and stockist. Please elaborate.

Ans. It was the decision of the members of the association. The MRP of the some of the products of the company is much higher than that of other multinationals and the margin offered were also very less which was being pursued by the chemist to meet it equivalent to that of the multinationals. There were two stockist of the company one had some products of the company while the other had some other products as per monopoly of the company. Due to which the chemists were facing problem. In some products other companies offers schemes due to which the margin increase but this was not in the case of PIPSOL. This was being sold at the very high price to the chemist as the consumer as well and we demanded for deduction of price at the level of other company.

[...]

53. The conjoint reading of OP-2's replies to Question nos. 14 and 15 clearly indicate that decision of boycott/non-cooperation was perpetrated against the Informant by OP-1. The Commission further notes from the above that OP-2 admitted that he has been the President of OP-1 since 2017. The Commission further notes that the notice dated 07.06.2020 was confronted to OP-2 by the DG and was asked about the contents of the

said notice in Question nos. 14 and 15. OP-2 admitted that in the capacity of President of OP-1, he had signed.

54. As far as the contents of the two notices/resolutions dated 07.06.2020 are concerned, the Commission notes that the terms like “बायकाट” (boycott)/ “असहयोग” (non-cooperation) have been used. The use of the words such as “साथियों” (companions) and “संयुक्त” (collectively) in the notices/resolutions clearly indicate that the decision of boycott/non-cooperation by OP-1 was taken against the Informant.
55. The Commission also notes from the contents of the notices as well as reply to question no. 15 that the boycott was on the issue of margin scheme of the chemist and stockiest. The same has not been denied by OP-2. For further analysis, the relevant extract from statement dated 21.06.2022 is reproduced hereinbelow:

Statement dated 21.06.2022

Q1 In your statement dated 20.06.2022 you have stated that (you) used to discuss issues of commissions, scheme and stockiest with Sh. Gaurav Nagpal. Who is this Gaurav Nagpal?

Ans. I did not know him personally. I got his telephone number [from] my member chemist. He said he is the representative of Solar Life Sciences Medicare Pvt. Ltd. New Prabhadevi Marg, Prabhadevi, New Goldman Sachs, Mumbai. Maharashtra 400025for which he works ties up with doctors for the sale of his products and it does not matter whether any chemist orders for the company's product or not. On my discussion regarding margin scheme and stockiest he had said that once the doctor prescribes his medicines the chemist will automatically seek the supply from the company.

Q2 Was there any outcome of your discussion with Sh. Gaurav Nagpal?

Ans. Being the president of the association, I had discussed the issues with Sh. Gaurav Nagpal twice. He had asked me to contact his company on the same.

[...]

Q3 In your letter dated 20.05.2020 to M/s Solar Life Sciences Medicare Pvt. Ltd. you have written that in the company does not respond to your issues/demands in writing within 15 days the association will resort to stringent measures against the company?

Ans. Our letter dated 20.05.2020 to M/s Solar Life Sciences Medicare Pvt. Ltd. New Prabhadevi Marg, Prabhadevi, New Goldman Sachs, Mumbai Maharashtra 400025 was on the problems being faced by the chemist. All decisions in the issue of business of the chemist are taken by consensus towards the welfare of the chemists. When no response was received from representative of the company nor from the letter written to the company the company and also its products came under suspect by

the chemist. As such due to this reason, till the time some response is received from this company's end the association had boycotted the sale and purchase of the products of the company in the interest of the consumers to avoid any mishap. This company did not approve out issues related to margin, scheme and stockiest. That is why decision to boycott the company was taken and blockage of his sale and purchase of his products was carried out.

[...]

Q17 Did you place your demand of 40% with Sh. Gourav Nagpal ?

Ans. No. we have demanded that on account of their high MRP the margin offered to the chemist is less. They should make it equivalent to other multinationals.

56. From the statement dated 21.06.2022 of OP-2, it is evident that the issue of high MRP, margin scheme and stockiest were the sources of discontent between the Informant and OP-1 and thus, it cannot escape the conclusion that notices dated 07.06.2020 calling for boycott of sale of the Informant's products were the result of such discontent. The DG in paragraphs 4.13, 4.14, 4.15 and 4.16 of the Investigation Report has also found the same.
57. Thus, from the above, the Commission is of the view that there is no iota of doubt that the notices dated 07.06.2020 were issued by OP-1 under the signature of OP-2 and the decision of boycotting Informant's products was taken by OP-1.
58. The Commission perused the statement dated 04.07.2022 of OP-28. As far as role of OP-27 and OP-28 is concerned, it is noted that the objections/suggestions to the Investigation Report dated 30.08.2022 has been filed by OP-28 on behalf of OP-27 and OP-28. It has been highlighted by OP-28 in paragraph 15 therein that OP-28 has not been the President of OP-27 since many years and relied upon notice dated 22.06.2022 to assert his claim of not being the President. For further analysis, the relevant extract of the statement of OP-28 is reproduced.

Statement dated 04.07.2022

[...]

Q7. You are the present president of Sri Ganganagar Chemist Association. Since when are you its President?

Ans. I am the president since 1988. However, after 2010 the affairs of the association was handed over to District Chemist Association. Because there was no election and I also reach 66 years so there has been no activity since last 10 years from my end.



59. The Commission perused the records and notes the contents of letter dated 07.06.2022 addressed to the DG, which was provided by OP-28 on his own accord during the hearing on 05.07.2023. The said letter has been given by OP-28 in the capacity of the President of OP-27. Further, OP-28 filed an affidavit dated 30.08.2022 on behalf of OP-27 wherein he has deposed as the President of OP-27. From the records, there is no doubt, in view of the Commission that OP-28 is the President of OP-27 and continued to be so.
60. The Commission perused the notice/circular dated 17.06.2020 (Page 38 of Investigation Report). The DG had confronted OP-28 with the notice/circular dated 17.06.2020 issued against the Informant.
61. OP-28 submitted before the DG that he always signs in English and denied signing the notice/circular since it was in Hindi. He claimed that he came to know about the misuse of letter head from the notice sent by the DG office and he was enquiring about who had forged his signature. In the objections filed, OP-28 submitted that the signatures on the notice was not his since he has not been handling the activities of the association for a long time and the DG ought to have undertaken an inquiry to prove that such signatures are of OP-28. Therefore, OP-28 submitted that the DG erred in relying upon the notice dated 17.06.2020 against OP-28 in the Investigation Report. The Commission notes that in the Investigation Report the DG has made observations on the conduct of OP-28 during the investigation. The Commission notes from paragraph 4.2 and 4.9 of the Investigation Report that OP-28 did not appear in person or through counsel at the DG office in response to the summons issued by the DG. The DG office was able to secure the presence of OP-28 only after the issuance of bailable warrants against him. He appeared along with his counsel and tendered his handwritten statement in Hindi at the DG office on 04.07.2022. Certain replies are extracted hereinbelow:

[...]

Q12. What sort of problems do local chemist members have with medical companies and what role does the association render? Discuss in detail.

Ans. Retailers have numerous problems like expiry date, withdrawal of scheme, less margin, many companies also monopolize their business, discussed the stockiest with them, renewal of DL of chemist, discuss the NDPS medicines and relation with the district controller of drug. Apart from this there are also other activities for the welfare of association members.

[...]

Q16. In respect of M/s Solar Life Sciences Medicare Pvt. Ltd. for the issues of Margin, Commission, Stockiest, Scheme etc., did you have any discussion with Gaurav Nagpal or any other association?

Ans. Since last two year as a president I had no discussions however, I am being a stockiest of the company I had day to day discussion regarding margins and schemes. The representative of the company who's to come there used to solve the problems. I have just had telephonic discussion with Shri Madan Arora at about 1:30 PM from your office whereby I have learned that the association President Shri Rajender Chug, its secretary Shri Madan Ji Arora, Shri Radheshyam Bhakar, Raisinghnagar and representative of Solar Company Shri Gorav ji has had discussions with regard to Solar company. Whatever discussion had been there in between Radheshyam and company the same is not reached its logical end yet. Shri Madan ji informed me that he will go to Shri Gorav Ji today and discuss.

62. The DG found that OP-28 in his statement elaborated on the issues of chemist's problems like margins, schemes, stockists, etc. which are identified and resolved by the association in consultation with the representative of the companies. Based on this analysis, the DG concluded that the contents of the letter dated 17.06.2020 are authentic and OP-28 had pursued the issues with the Informant. Further, the DG found that OP-28 had been the President of OP-27 since 1988 and continued without any further election and thus, the contention of OP-28 that he had neither issued the notice dated 17.06.2020 nor signed on it, cannot be accepted. Moreover, the statement that OP-28 has always been signing in English seems to be contradictory particularly when OP-28 preferred to write his statement in Hindi. Thus, the DG drew an adverse inference and concluded that the letter/notice dated 17.06.2020 was signed and issued by him.
63. The Commission has given thoughtful consideration to OP-28's evasive conduct during the investigation, his claim of not being the President of OP-27, filing of documents as the President on behalf of OP-27 before the Commission and analysis of the DG as to letter/notice dated 17.06.2020. In the facts and circumstances of the present matter, the Commission is inclined to concur with the views of the DG that the letter/notice dated 17.06.2020 was signed by OP-28 in the capacity of President of OP-27. As far as the contents of letter/notice dated 17.06.2020 is concerned, the tenor of letter/notice dated 17.06.2020 issued by OP-27 is in the form of decision/diktat of the association of boycotting/non-cooperating in dealing with the products of the Informant, which is *per se* anticompetitive under Section 3(3) of the Act.



64. Now, the Commission shall deal with the objections/suggestions to the Investigation Report of OP-1, OP-2, OP-27 and OP-28 at the same place since it is noted that majority of their objections/suggestions are similar in nature.
65. In the objections/suggestions, the said OPs stated that the Investigation Report is untenable, illegal and non-compliant with the CCI (General) Regulations, 2009. The documents submitted by OP-2, in statement dated 20.06.2022, were not considered by the DG indicating the incorrect address of the Informant submitted by it. It is said that because OP-2 challenged the Informant on its incorrect address, the present Information has been filed to harass the OP-2. In the rejoinder by the Informant, it is stated that it never attempted to conceal change in its registered office from the Commission, and also that it was a licensed manufacturer, distributor and seller of medicine conducting business and operating out of multiple addresses is common to trade. The Commission notes that OP-2 during the recording of statement dated 20.06.2022 and the hearing on 05.07.2023, raised the issue of incorrect address of the Informant. The Commission perused the statement dated 01.12.2021 of Mr. Gaurav Nagpal (Informant), statements dated 20.06.2022 and 21.06.2022 of OP-2, documents annexed along with the objections/suggestions filed by OP-2 and notices dated 07.06.2020. The Commission observes that there is no denial on the part of OP-2 meeting Mr. Gaurav Nagpal and raising the issues of margin scheme and stockist of the Informant's products. Secondly, the reasons as stated in the said notices for boycott of Informant's products are '*margin scheme and stockist*'. Therefore, the Commission is of the view that for assessment of conduct of the said OPs under Section 3(3) of the Act the objection to incorrect address of the Informant is irrelevant.
66. In the objections/suggestions, the said OPs stated that the documents were required to be translated in English as required by the General Regulations and the DG has entirely based its conclusion on non-English documents without translating the same. The Commission notes that there is no denial on the part of OP-2 on the existence of notices dated 07.06.2020 (Hindi). The Commission notes that OP-2 has also relied upon some of the documents annexed with the objections/suggestions of OP-2 which are in Hindi. As can be seen from the record, the Informant had filed English translated copies. The English transcripts of statements of OPs are on record. Moreover, it is not the case that the OPs have challenged the English translation as on record. Otherwise also, the



Commission, is of the view, that relying upon non-English documents does not vitiate the inquiry/investigation and therefore, this objection of OP-2 is untenable.

67. In the objections/suggestions, the said OPs stated that the DG has not properly investigated the matter and has not made any efforts to investigate the matter beyond the order passed by the Commission under Section 26(1) of the Act. In the rejoinder, the Informant stated that threatening letter dated 20.05.2020 was sent by OP-2 to the Informant to illegally compel the Informant to cave-in to price fixing demands. It is stated that the two resolutions dated 07.06.2020 and 17.06.2020; the WhatsApp chat records of OP-2 and OP-27 and other documentary evidence prove the Informant's allegations to be accurate. The Commission notes that genesis of the present matter arises from the notices issued by OP-1 through OP-2 calling for boycott of the products of the Informant. OP-1 and OP-2 were given ample opportunities as noted by the DG in the Investigation Report to appear before it as was the case with OP-27 and OP-28. The Commission notes from paragraphs 4.2, 4.3, 4.4, 4.10, 4.11 and 4.12 of the Investigation Report that OP-2 and OP-28 did not appear in person or through their authorised representative. As noted, it is only after the issuance of bailable warrants against OP-2/OP-28, the DG was able to secure their presence and they appeared along with their respective counsels and tendered their handwritten statements. Therefore, considering the conduct of OP-2 and OP-28 during the investigation, the Commission is of the view such objections with respect to the investigation by OP-2 and OP-28 are untenable.
68. In their objections/suggestions, the said OPs stated that the Informant has not approached the Commission with clean hands. The Informant has misled the investigation since the Informant is not a manufacturer of medicines who is being restricted but itself a wholesaler. The Informant is engaged as a supplier of medicines and in no way OP-1/OP-27 could have restricted or controlled prices or supply of the products of the Informant. There is no determination of prices by OP-1/OP-27 and members of OP-1/OP-27 are incapable of restricting the demand of consumers effecting the supply of the Informant. In the rejoinder, the Informant stated that it has never stated that it was only a manufacturer. The first paragraph of the Information reads as "*the Informant supplies pharmaceutical products*". The Commission perused the statement dated 01.12.2021 of Mr. Gaurav Nagpal and notes that in reply to question no. 2, he stated that the Informant is engaged in '*third-party manufacturing of around 60*

medicines for the last 6 years’ as has been claimed in the Information (*‘contract manufacturing’*) and has claimed that it is considered one of the leading suppliers of generic medicines particularly in the State of Rajasthan. The Commission notes that the purport of Section 3(3) of the Act is that any decision or practice of association which hinders the economic activities undertaken by any person is to be held against the spirit of competition in the market, which exist in the present case. As far as the role of chemists in the supply chain of medicines is concerned, the Commission is of the view that chemists play an important role in the value chain of pharmaceutical products. If the chemists in the region/area refuse to stock Informant’s product it will affect the availability of the product in the market. Therefore, the issue in the present matter is the scope of the notices issued by OP associations in terms of margin schemes, stockist and therefore, such objections are untenable.

69. In the objections/suggestions, OP-2 stated that the DG, during recording of statement of OP-2, searched and seized the mobile phone without having warrants and accessed the WhatsApp chats. Further, the electronic evidence of WhatsApp chats is not supported with affidavit under Section 65B of the Act. The Commission notes that neither any such complaint was filed by OP-2 before the Commission nor objection was raised to this effect during the hearing before the Commission by OP-2. The Commission further notes from paragraph 4.12 of Investigation Report that OP-2 was accompanied by his counsel and no such protest or objection can be seen from the material on record except that it has been raised in objections to the Investigation Report. Further, the Commission considers all the facts and circumstances of the case in totality and does not rely upon any individual evidence alone while deciding any contravention under the scheme of the Act.
70. In the objections/suggestions, the said OPs stated that the DG has based its conclusion on letter dated 04.05.2020 which was sent to the address of the Informant and got returned. The DG also placed reliance on letter dated 20.05.2020. It is stated that there is nothing anticompetitive or restrictive in the language or action. The Commission notes from the Investigation Report that the said letters refer to the issues of high MRP, stockists, lesser margin available to the chemists in the district of Sriganganagar. They also express discontent with Mr. Gaurav Nagpal, representative of the Informant. As discussed above, the contents of letter dated 20.05.2020 have been admitted by OP-2.



The notices dated 07.06.2020 issued by OP-1, following the letters issued in May 2020, were based on the issue of margin schemes and stockist. Therefore, the Commission does not find anything perverse in the DG finding. It does not matter whether the letter dated 04.05.2020 was received by the Informant or not. The fact is that it was issued by OP-1, as can be seen from letter dated 20.05.2020, which is relevant in the present matter.

71. In the objections/suggestions, OP-2 stated that the DG did not provide any opportunity to cross examine the Informant in terms of Regulation 41(5) of General Regulations. However, there is nothing on record to indicate that there was any application made by OP-2 to cross examine the Informant. The Commission notes that OP-2 was called for hearing on the Investigation Report on 05.07.2023. No such request was made by OP-2 during the hearing.
72. On the issue of NOC as raised by the said OPs, the Commission notes from paragraphs 5.2 and 5.3 of the Investigation Report that the DG has not based its findings on NOC only.
73. In the objections/suggestions, the said OPs stated that they have not engaged in anticompetitive activity either severally or jointly with any other OP. There is no evidence on record to show meeting of minds/agreement between the associations and hence, no cartel. In the rejoinder, the Informant stated that the notice/resolution dated 07.06.2020 passed by OP-1, a near identical resolution was passed by OP-27 on 17.06.2020, for boycott of Informant's product in the whole Sriganaganagar district which are clear and sufficient proof of meeting of minds. The Informant also stated that as recorded in the Investigation Report and relied upon in the investigation, OP-2 has specifically admitted to taking the decision of boycott based on consensus (Question no. 10 at Page 30 of the Investigation Report). The Commission notes from paragraphs 4.7-4.8 of the Investigation Report that the DG has noted how the boycott calls commenced. The DG has also noted the evasive behaviour of OP-2 and OP-28 during investigation that it was constrained to take recourse to issuance of bailable warrants to secure their presence before it. The Commission again perused the notices dated 07.06.2020 and 17.06.2020 issued by OP-1 (association at tehsil level) and followed by OP-27 (association at district level). The Commission noted that the language of notice dated 17.06.2020 is sufficient to indicate that the decision to boycott/non-cooperation *vis-a-*

vis the Informant had taken place before issuance of such notice. Further, the notice dated 17.06.2020 stated that the boycott against the Informant had already got executed in all the *mandis* of Sriganganagar district and there was an imminent threat of extension of such non-cooperation for Bikaner division against the Informant. Moreover, from the statements of OP-2 and OP-28, it is evident that operation of working of both the associations is in the same district of Sriganganagar. Therefore, on appreciation of facts and circumstances in the present case, it cannot be said that the actions of OP-1 and OP-27 were isolated and coincidental. Thus, even *dehors* WhatsApp chats available on record, there is sufficient indication from the material on record as to the timing of boycott calls, affected region, directed action against the Informant and OP-1 and OP-27 being associations of chemists that there was concertedness in the actions taken by OP-1 and OP-27 and the scope of the impact of their actions in the market. Therefore, the Commission does not find anything perverse in DG's inference/findings in paragraphs 4.8 and 4.19 of the Investigation Report.

74. The Commission notes that the said OPs in their objections/suggestions stated that the DG did not analyse factors laid down under Section 19(3) of the Act and failed to investigate the extent of execution of notice dated 07.06.2020. Also, the said OPs stated that there is no evidence on record to support the claim of the Informant that its sales plummeted by 90%. The Commission is of the view that the onus of rebutting the presumption of AAEC is on the parties who have been accused of anticompetitive conduct under Section 3(3) of the Act and is not necessary upon the DG to analyse AAEC for invoking Section 3(3) of the Act. The Commission further notes the scope of operation of such notices dated 07.06.2020 and letter/notice dated 17.06.2020 and is of the view that it cannot be said that they did not cause or not likely to have caused AAEC in the market. It does not lie in the mouth of the said OPs that they constituted very small numbers *vis-à-vis* the number of channels operating in the Sriganganagar District, taken as a whole, and that there is no AAEC. The consumers would have been prejudiced for want of the Informant's products which they could have had access to at their doorsteps rather than visiting another tehsil. Moreover, OP-1, OP-2, OP-27 and OP-28 failed to rebut the presumption of causing AAEC before the DG. Also, OP-2 admitted the fact that the boycott call was made against the Informant. Even during the hearing before the Commission, the parties failed to rebut the presumption of causing AAEC in the market, which arose against them under Section 3(3) of the Act. As already noted above, the

conduct of the said parties during investigation was evasive and non-cooperative which led to the issuance of bailable warrants against them. Ample opportunities were provided to present their case before the DG. Therefore, this objection of the said OPs is untenable.

75. While examining the conduct of OP-1 and OP-27, the Commission observes that the language and purport of Section 3(3)(a) and Section 3(3)(b) of the Act are quite clear and to the effect that any decision taken by any association of persons/enterprises involved in identical or similar trade of goods or provision of services directly or indirectly determines the purchase or sale prices and/or limits or control, *inter alia*, supply, markets *etc.* must be frowned upon and are presumptively anticompetitive in nature. The Commission also observes that the price includes any consideration, direct or indirect, which in effect relates to the sale of any goods or to the performance of any services. The determination of prices or supplies may include any manifestation of control over prices seeking higher margins and control over stockists such as in the present case where OP-1 acting through OP-2 and OP-27 acting through OP-28 issued diktats of non-cooperation and boycott on the issue of margins and stockist scheme having an effect on the price and supply of the product in the market within the ambit of Section 3(3)(a) and Section 3(3)(b) of the Act. The Commission is mindful, based on its past decisions, that chemist and druggist associations at various levels wield considerable control and power over the course of trade of pharmaceutical products and the defence taken by OP-1 and OP-27 cannot thus, be accepted.

Other Associations

76. The Commission notes that the DG found that the chemist associations of Gharshana, Anupgarh, Kesrisinghpur, Gajahsinghpur, Rawla and Padampur issued similar boycott notices/resolutions under the influence of OP-1. However, their boycott call was rather symbolic and their member chemists continued to sell the Informant's medicines. The DG found that since the commission of offence was not complete and the Informant did not suffer any setback, they were kept out of the ambit of investigation. The Commission deems it fit to reproduce the reply of the Informant hereunder.

Question 5. Which other associations issued circular to its member chemists directing them to boycott SLS medicines?

Ans. 5. Within two days of the circular issued by OP-1, chemists associations in nearby areas namely Gharsana, Anoopgarh, Kesrisinghpur, Gajasinghpur, Rawla and Padampur also issued similar circulars to their member chemists calling for

boycott of SLS medicines, which clearly seems to have been done under the influence of OP-1 association. However, the abovenamed associations did not strictly impose the boycott and their member chemists continued to sell our medicines, and there was no significant effect on the sale of our medicines in their respective markets.

77. The Commission notes from the record that the abovementioned associations' notices/resolutions were issued between 08.06.2020 and 09.06.2020. The objections/suggestions filed by OP-1, OP-2, OP-27 and OP-28 are silent on this aspect dealt in the Investigation Report. Thus, in view of the Commission, there is no denial to the closeness in timing of their issuance and purport of these notices/resolutions and can be deduced that these were issued under the influence of OP-1 or OP-27. However, in the statement before the DG, the Informant admitted that these associations did not strictly impose the boycott on the Informant and continued to sell its medicines. Thus, for the reasons mentioned by the DG, the Commission agrees with the finding of the DG.
78. In view of the foregoing analysis, the Commission finds contravention against OP-1 and OP-27 through their respective Presidents in terms of the provisions of Section 3(3)(a) and Section 3(3)(b) read with Section 3(1) of the Act.

Liability under Section 48

79. Once the contravention of the provisions of the Act by the aforesaid OPs has been established, the Commission now proceeds to determine and analyse, in the subsequent paragraphs, the role and liability of the respective individuals who would be liable for such anti-competitive acts of the aforesaid OPs in terms of Section 48 of the Act.
80. As per the Investigation Report, the DG has found the following individuals of the OPs to be liable in terms of Section 48 of the Act for the anti-competitive conduct of the OPs, which are also arrayed as OP-2 and OP-28:

Opposite Parties	Liability
Mr. Radheshyam Bhakhar (President, OP-1)	Section 48
Mr. Omprakash Mittal (President, OP-27)	Section 48

81. The role and liability of each is discussed below.



Mr. Radheshyam Bhakhar, President of Chemist Association, Raisingh Nagar

82. The DG noted that it was discernible from the evidence that Mr. Radheshyam Bhakhar was the person at the helm of affairs of OP-1 with whose connivance, consent or neglect the contravention of the provisions of the Act were committed. The DG further noted that the notice/resolution dated 07.06.2020 and letter dated 20.05.2020 of OP-1 was issued under the signature of Mr. Radheshyam Bhakhar. The DG also stated that there was disregard of the summons issued during the investigation by OP-2 and his presence could be secured only after the issuance of bailable warrants. According to the DG his specific role was palpable and his non-cooperation with investigation establishes the commission of the offence.
83. The Commission has already discussed his conduct in its foregoing analysis and need not deliberate further. Hence, in view of the above, the Commission finds Mr. Radheshyam Bhakhar liable in terms of Section 48 of the Act for anti-competitive conduct of OP-1.
84. The Informant, in its objections to the Investigation Report and rejoinder has stated that the DG has failed to examine OP-3 to OP-26 and kept them out of the scope of investigation. The Commission notes that while OP-1 is the association and OP-2 its President, OP-3 to OP-26 are the members of OP-1. The DG has examined OP-1 and OP-2 and during the investigation found the decisions taken by the association to be in contravention of the provisions of Section 3(3) of the Act. In the facts and circumstances of the present case, the Commission is of the view that the ends of justice have been met by examining the role of the association *i.e.* OP-1 and the conduct of its key office bearer *i.e.* OP-2. Accordingly, there is no need for examination of OP-3 to OP-26 in the matter.

Mr. Omprakash Mittal, President of Sriganaganagar Chemist Association, OP-27

85. The DG noted that it was discernible from the evidence that Mr. Omprakash Mittal was the person in charge of affairs of OP-27 with whose connivance, consent or neglect the contravention of the provisions of the Act were committed. The DG further noted that the notice/resolution dated 17.06.2020 was passed under the signature of Mr. Omprakash Mittal. The DG also stated that there was disregard of the summons issued during the investigation by Mr. Omprakash Mittal and only after the issuance of the bailable warrants, his presence could be secured. The DG in the Investigation Report noted that Mr. Omprakash Mittal contended that he neither issued any notice to the

Informant nor boycotted their products in the city or the nearby areas. The DG stated that he recorded his statement in writing in Hindi and when was asked to sign in Hindi he said that he had always been signing in English which can be seen from his Permanent Account Number (PAN) Card. The DG further noted that he had been the President of OP-27 from 1988 and enjoyed unrivalled power in OP-27. The DG found the claim of Mr. Omprakash Mittal of not issuing the notice dated 17.06.2020 (Hindi signature is appended on the notice) or claiming the signature to be forged (misuse of letterhead) as contradictory on the ground that he had given his statement in Hindi before the DG, which belies his claim.

86. The Commission has already discussed his conduct in its foregoing analysis and need not deliberate further. Hence, in view of the above, the Commission finds Mr. Omprakash Mittal liable in terms of Section 48 of the Act for anti-competitive conduct of OP-27.

Conclusion

87. Based on the foregoing analysis, the Commission holds OP-1 and OP-27 through their respective presidents guilty of contravention of the provisions of Sections 3(3)(a) and 3(3)(b) read with 3(1) of the Act. Further, under Section 48 of the Act, the Commission holds Mr. Radheshyam Bhakhar (President of OP-1) and Mr. Omprakash Mittal (President of OP-27) liable under Section 48 of the Act for anti-competitive conduct of their respective associations.

Penalty

88. Once contravention of the provisions of the Act has been established, the Commission now proceeds to determine the quantum of penalty to be imposed upon the contravening parties under the provisions of Section 27(b) of the Act.
89. It is noted that the said OPs are tehsil/ district level associations and first-time offenders. OP-2/OP-28 have, *inter alia*, submitted that OP-1/OP-27 have no funds and that they receive no fees/payment/charge from chemist members for membership or otherwise. OP-2/OP-28 have also stated that they are working for the welfare of the Chemists. During the hearing, OP-28 stated that presently he is the stockist of the Informant's



products and continues to sell its products. OP-28 also stated that any such resolution was immediately withdrawn.

90. The Commission is mindful of the conduct of the said OPs during the investigation. However, considering the matter holistically and cumulatively, the Commission, in the interest of justice, refrains from imposing a monetary penalty upon OP-1, OP-2, OP-27 and OP-28, keeping in mind the facts and circumstances of the instant case, as elucidated above. The objective of the Act is to prevent/correct market distortions and discipline the behaviour of the market participants. The Commission is of the considered opinion that the objectives of the Act would be met if the said OP-1, OP-2, OP-27 and OP-28 in the present matter are directed to cease such behaviour and desist from indulging in similar behaviour in the future.
91. The said OPs are cautioned that their future conduct remains strictly in accordance with the provisions of the Act, failing which any such future conduct/behaviour by the OPs would be viewed seriously constituting recidivism with attendant consequences.
92. In view of the above discussion, the Commission passes the following:

Order

93. The Commission holds OP-1 and OP-27, through their respective presidents, guilty of contravention of the provisions of Section 3(3)(a) and Section 3(3)(b) read with 3(1) of the Act.
94. The Commission holds Mr. Radheshyam Bhakhar (President of OP-1) and Mr. Omprakash Mittal (President of OP-27) liable under Section 48 of the Act for anti-competitive conduct of their respective associations.
95. The Commission, in terms of Section 27(a) of the Act, directs OP-1, OP-2, OP-27 and OP-28 to cease and desist in future from indulging in any practice/conduct/activity that has been found in the present order to be in contravention of the provisions of Section 3 of the Act. OP-1 and OP-27, through their respective Presidents, are directed to inform their respective members about the directions of the Commission, as given in this order, to ensure compliance.



96. The Secretary is directed to forward certified copy of this order to the Informant, OP-1, OP-2, OP-27 and OP-28, accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date:23/08/2023