



COMPETITION COMMISSION OF INDIA

Case No. 106 of 2015

In Re:

Tamilnadu Consumer Products Distributors Association

Informant

And

Britannia Industries Ltd.

Opposite Party No. 1

Britannia Dairy Pvt. Ltd.

Opposite Party No. 2

CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Justice G. P. Mittal
Member



Appearances: *For Informant* Mr. A. K. De, Advocate
Mr. Ganeshram, President
Mr. S. Prakash, Associate

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

1. The instant information has been filed by Tamilnadu Consumer Products Distributors Association (hereinafter referred to as the **“Informant”**) under Section 19 (1)(a) of the Competition Act, 2002 (hereinafter referred to as the **“Act”**) against Britannia Industries Ltd. and Britannia Dairy Pvt. Ltd. (both the Opposite Parties collectively referred to as **‘OPs’**) alleging, *inter alia*, contravention of the provisions of Section 4 of the Act.
2. As per the information, the Informant is a registered consumer products distributors association. It has been stated that a large number of members of the Informant have been distributors of various products of OPs for a long time. It has been claimed that by virtue of sincere and earnest hard work of the members of the Informant, the products of OPs have gained reputation in the market throughout Tamil Nadu.
3. The Informant has not provided any description about OPs. However, based on the information available on their website, it is evident that OPs are engaged in the manufacture of food-products and a FMCG that sells bakery and dairy products throughout India under brand names *‘Britannia’* and *‘Tiger’*.



4. The main concern of the Informant relates to the conditions imposed by OPs on their distributors and termination of distributorship whenever those conditions are not adhered to. The purported conditions imposed by OPs, taking advantage of their dominant position, are indicated as abuse of dominant position under Section 4 of the Act. The brief details of the allegations are as follows:
- 4.1. OPs never allow their distributors to deal with any other biscuit manufacturing company even through their sister concerns;
 - 4.2. OPs have orally restricted each and every distributor to operate business with retailers within the area demarcated by them. Further, the area of operation of distributors was reduced from time to time;
 - 4.3. OPs unfairly force their distributors to use gadgets and software introduced by them. This was emphasised to monitor the business of the distributor with retailers in their respective territory;
 - 4.4. OPs have dumped stocks on the distributors beyond their requirement by making automatic dispatches. Further, OPs realize the entire amount against dispatched goods by encashing the blank cheques issued by the distributors;
 - 4.5. OPs offer special rates to firms like Reliance Mart, Big Bazar, *etc.* As a result, the products of OPs are available to whole sale shops at rates (price) below the cost price of the distributors. Further, OPs transfer/provide slow/less selling stocks for general trading of the distributors;



- 4.6. OPs require their distributors to maintain infrastructure like godown space, vans, employees, computers, software *etc.* and also force distributors to extend credit to retailers; and
- 4.7. OPs make their product available at rates below the cost rates of authorised distributors thereby humiliating the distributors before the retailers.
5. It has also been submitted that OPs cancel the distributorship of agencies that do not abide by the aforesaid stipulations. Some of the examples cited are the termination of distributorship of M/s Mangai Biscuit Stall, 7-9-5A, Madurai Road, Sivaganga District, Tamil Nadu – 630211 and M/s Sri Lakshmi Stores, 3/46, Second Main Road, M.M. Avenue, Kanchipuram, Tamil Nadu – 631501. To substantiate its claim, the Informant has *inter-alia* annexed letters of termination issued by OPs.
6. The Commission has given a careful consideration to the information and other materials available on record. The Commission also had preliminary conference with the Informant on 2nd February 2016. During the preliminary conference, the Informant stressed on the point that OPs offer special rates to malls/chain stores and the same amounts to discrimination against distributors. It was averred that OPs unilaterally dispatch certain products to its distributors and require them to sell the same even though they have less demand in the market. Further, OPs require its distributors to issue blank cheques and encash the same without their knowledge. It was alleged that all these practices of OP distorts the level playing field in the market. In response to the queries of the Commission regarding market share, the Informant stated that Parle is the biggest biscuit manufacturer on Pan-



India basis and Britannia is the market leader in Tamil Nadu followed by Sunfeast (ITC) and Parle.

7. For the purposes of examining the allegations of the Informant under the provisions of Section 4 of the Act, it is necessary to determine the relevant market at the first instance. The purpose of delineating the market is to ascertain whether OPs enjoy a position of strength required to operate independent of the market forces in the relevant market. Only when such a position is enjoyed by OPs, it is imperative to examine whether the impugned conduct(s) amounts to abuse.
8. The Informant has not provided any information or description about the relevant market. However, the allegations pertain to the products manufactured/produced by OPs. As per the details available on their website, OPs are engaged in manufacture/production of a variety of bakery and dairy products such as biscuits, breads, cakes, rusk, milk, butter and cheese. It is observed that the biscuits segment constitutes the major component of the business of OPs and hence has been considered from the perspective of defining relevant market. The nature of other products manufactured and supplied by OPs under the categories of dairy products, breads and cakes could be distinguished from biscuits in terms of their characteristics, taste and price. More particularly, these products have lesser shelf-life than that of biscuits. Accordingly, the market for biscuits appears to constitute a separate and distinct relevant product market. As regards the relevant geographic market, it appears that the conditions of competition are homogeneous across India. In the absence of any material on record brought by the Informant to suggest heterogeneity in the conditions of competition across India, the whole of India is considered as the relevant geographic market. Resultantly,



the relevant market in the instant case is the '*market for biscuits in India*'.

9. Further, the other bakery and dairy products supplied by OPs viz. cakes, rusk, milk, ghee, cheese, butter, *etc.* face intense competition from organised and un-organised local players; and the business of OPs in these segments appear to be relatively insignificant. Accordingly, it does not merit making assessment of dominant position in respect of these products and it can reasonably be presumed that the conduct of OPs in relation to these products cannot be considered as contravention of the provisions of the Act.
10. As regards the relevant market, the Commission notes that Britannia is a prominent biscuit brand in India. However, the biscuits industry in India has always evidenced the presence of other organised and unorganised players. The other organised players in the market include ITC, Parle and Priya Gold. The market for manufacture and sale of biscuits in India has also witnessed recent entries by foreign brands such as '*Unibic*' and '*Mc Vities*'. These competitors of OPs have comparable size and resources; and also offer different categories/range of biscuits. Presence of such players indicates that the buyers have options to choose in the relevant market. Thus, it is found that market for biscuits, including each of the segments therein, exhibits intense competition and OPs do not possess sufficient market power to act independently of the competitive forces prevailing in the relevant market. Notwithstanding this, the Commission also notes that market-segmentation and offering special rates/discounts on the basis of sale volumes *per se* cannot be regarded as anti-competitive.



11. In view of the foregoing, no case of contravention of the provisions of Section 4 of the Act is made out against OPs. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.
12. The Secretary is directed to inform all concerned accordingly.

Sd/-

(Devender Kumar Sikri)
Chairperson

Sd/-

(S. L. Bunker)
Member

Sd/-

(Sudhir Mital)
Member

Sd/-

(Augustine Peter)
Member

Sd/-

(U. C. Nahta)
Member

Sd/-

(M. S. Sahoo)
Member

Sd/-

(Justice G. P. Mittal)
Member

New Delhi

Date: 29/03/2016