

**BEFORE THE COMPETITION COMMISSION OF INDIA, NEW DELHI**

Case No. 20/2011

Date : 19.02.2013

- Informant:** M/s Santuka Associates Pvt. Ltd.  
Through Shri Suresh Santuka & Shri Amit Gupta, Advocate
- Opposite Parties:**
1. All India Organization of Chemists and Druggists  
Through Shri Yusuf Iqbal Yusuf, Advocate.
  2. Organization of Pharmaceutical Producer of India  
Through Shri Ravisekhar Nair, Advocate
  3. Indian Drug Manufacturers' Association  
Through Shri D.B. Patil, Secretary General & Shri S. K. Arya, Jt
- Director**
4. USV Ltd., Mumbai  
Through Shri Ankit Shah, Advocate

**ORDER**1. **BACKGROUND**

- 1.1 The present information was filed on 02.05.2011 by Santuka Associates Pvt. Ltd., through its Managing Director, Shri S. L. Santuka (hereinafter referred to as the "**Informant**") under Section 19 of the Competition Act, 2002 (hereinafter referred to as the "**Act**") alleging abuse of dominant position by the All India Organization of Chemists & Druggists (hereinafter referred to as "**AIOCD**" or "**Opposite Party No. 1**") by, *inter alia*, limiting and restricting supply of pharmaceutical drugs in India.
- 1.2 As per the information, the Informant (a company incorporated under the provisions of the Companies Act, 1956) is a clearing and forwarding agent (C&FA) in medicines of various pharmaceutical companies at Cuttack. Santuka Agencies, a sister concern of the Informant was the sole distributor of medicines of U. S. Vitamins Ltd., now known as

USV Ltd. (hereinafter referred to as “**USV**” or “**Opposite Party No. 2**”) for the entire state of Odisha since 1977. Since 1991, the Informant had been the C&FA of USV for entire State of Odisha.

- 1.3 The Informant is a member of the District Association namely, Cuttack District Chemists & Druggists Association (hereinafter referred to as “**CDCDA**”), affiliated to Utkal Chemists & Druggists Association (hereinafter referred to as “**UCDA**”).
- 1.4 As per the information, AIOCD, an all India body registered under the Societies Registration Act, has full control over the stockists of drugs and medicines all over the country. The membership of AIOCD is now open only to the State Chemists & Druggists Associations, which can either become an ordinary or an associate member. As per the information, one of the many objectives of AIOCD is to promote and protect the interests of drug trade industry and allied lines in India and also that of persons engaged therein. It has also been stated that USV is a company involved in manufacturing of various medicines and pharmaceutical products with commonly known products like Glynase, Visyneral, Glycomet, Ecosprin, Tazloc and Olmetrak etc.
- 1.5 The Informant has further submitted that there was a dispute in the election of representatives of CDCDA and the President of AIOCD refused to recognize the elected office bearers of UCDA and instead formed “**AIOCD UTKAL COMMITTEE**” appointing himself as the Chairman and his supporters as Convener and Committee Members. Because of the dispute over elections to CDCDA, the Informant was allegedly told that in case he did not cooperate with the President of AIOCD, AIOCD would ensure that no products of USV are sold in India, unless USV terminated its agreement with the Informant.
- 1.6 The Informant has claimed that its representative was also informed several times telephonically by the representative of USV that they were under constant pressure and threat from AIOCD to terminate their contract with the Informant and that the sales of USV’s products, which were to the tune of Rs. 3.5 crores per month, had already been stopped in Mumbai city, and further that AIOCD threatened to extend the stoppage to entire State of Maharashtra, if USV did not cancel its agreement with the Informant.

- 1.7 It has been stated by the Informant that AIOCD had entered into various Memorandum of Understanding's (hereinafter referred to as "MOU's") and Agreements with the associations of pharmaceutical manufacturers such as IDMA (Indian Drugs Manufacturers Association) and OPPI (Organisation of Pharmaceutical Producers of India), according to which a drug manufacturing company can appoint a stockist only in consultation with the concerned State/District Chemists & Druggists Association as per the guidelines laid down by the State Association. Furthermore, where there is only one stockist of the company in the district, the second stockist can be appointed only in consultation with the concerned State/District Association and even the second stockist should be a bona fide member of the associations affiliated with the AIOCD.
- 1.8 The Informant has submitted that AIOCD was regularly involved directly in influencing the purchase and sale price of the drugs and pharmaceutical products throughout India. The following documents of AIOCD influencing the trade had been submitted by the Informant:
- (a) AIOCD sent a telegram dated 30.05.2005 directing that the purchase of GSK and Novartis – Sandoz should be stopped immediately and no sale should be made by any retailer from 15.06.2005.
  - (b) AIOCD vide telegram dated 09.05.2006 directed that purchase of certain medicines should immediately be stopped from 15.5.2006 in view of the reduction in margin of trade.
  - (c) AIOCD vide a letter dated 11.12.2008 wrote to all marketing and distribution heads of pharma companies requesting them not to appoint any new stockists in the State of Kerala and Utkal (Odisha) without consulting AIOCD.
  - (d) AIOCD headed by its President J. S. Shinde through one "AIOCD UTKAL COMMITTEE" issued a circular dated 14.9.2009 to all the C&F, C&A, Super Distributors of pharma companies of Odisha directing them not to dispatch any stock to any stockist who does not have a 'no objection certificate' from the affiliated body of AIOCD.

1.9 As per the Informant, in RTPE 9/2005, the MRTPC, New Delhi took cognizance of the anti-competitive practices of AIOCD and vide Order dated 2.9.2005 in I.A. No. 34/2005 directed various pharmaceutical companies asking them not to boycott certain dealers or suppliers merely because the said dealers or suppliers had not obtained a letter of consent from the concerned District Chemists & Druggists Association. The said order was confirmed by the Competition Appellate Tribunal on 18.01.2010 and has been made absolute and binding on the parties. However, even after the said orders, AIOCD through its affiliated associations has continuously resorted to practices which had the effect of disrupting the supply of medicines and prejudicing the interests of both the pharmaceutical industry as well as the consumers.

1.10 As per the Informant, AIOCD performs various acts in the matter of controlling the trading policies of different manufacturing companies, controlling the profit margins, regulating the stockist-ship of each and every manufacturing company, recommending to all its members and stockists all over the country the profit margins of a company, collecting Rs. 2,000/- per product from new stockists of Pharma Companies described as the Product Information Service (hereinafter referred to as "PIS").

1.11 The Informant has made following allegations in his information:

1.11.1 AIOCD is abusing its dominant position by imposing unfair and discriminatory conditions which has the effect of limiting/denying market access to genuine stockists, distributors and C&FAs unless they submit to its dictates and mandates.

1.11.2 AIOCD is imposing conditions which have the effect of creating barriers to new entrants and also foreclosing competition by hindering entry into the market.

- 1.11.3 The restriction imposed by AIOCD and the so called “AIOCD UTKAL COMMITTEE” that no person shall be appointed as stockist or distributor or C&FA of the products of a pharmaceutical or drug manufacturing company, limits and controls the supply and marketing of the pharmaceutical products in India and in terms of law is presumed to have an appreciable adverse affect on competition.
- 1.11.4 The constant threats given by AIOCD to the pharmaceutical companies can, in no way, be said to increase the efficiency in supply, distribution or storage of pharmaceutical products in India or to be in the benefit of the various stockists or distributors or C&FAs.
- 1.11.5 AIOCD has been giving oral threats to various drug manufacturers to comply with their illegal demands and objectives and in the process have indulged in practices resulting into denial of market access.
- 1.11.6 The conditions imposed by AIOCD that no agreement by a drug manufacturing company with a stockist or a distributor or a C&FA would be entered into unless they have a “no objection certificate” from an affiliated organization of AIOCD, is clearly an abuse of dominant position by AIOCD.
- 1.11.7 The various MOU’s and agreements by AIOCD and its affiliated organizations either with the association of drug manufacturers or with individual drug manufacturers restricting the appointment of stockists by prescribing unfair conditions is illegal and contrary to the provisions of the Act.

1.12 The Informant had sought the following reliefs:

1.12.1 To inquire into the illegal actions and activities of AIOCD which are in direct contravention of the provisions of the Act.

1.12.2 To direct AIOCD not to abuse their dominant position by limiting and restricting the supply of pharmaceutical drugs in India or by indulging in practices resulting in denial of market access.

1.12.3 To direct AIOCD not to threaten and coerce any pharmaceutical drug manufacturer including USV to terminate its C&F Agency or stockist or distributor arrangement or contract with the informant.

1.13 The informant had also sought following interim reliefs:

1.13.1 To direct AIOCD not to terminate the C&F Agency with the USV product and the products of USV be allowed to be distributed in India.

1.13.2 To restrain AIOCD from issuing any direction, whether oral or written, to USV for terminating the Informant's C&F Agency and also a direction to USV not to appoint any other C&FA within the State of Odisha pending the application.

2. The Commission, after giving due consideration to the matter, opined that there exists a *prima facie* case to direct the Director General (DG) to cause an investigation and accordingly directed the DG, vide order dated 10.05.2011, under Section 26(1) of the Act to conduct an investigation into the matter. The Commission also decided that the prayer of the Informant for interim relief be considered on 19.05.2011.

3. In the meantime, the Informant filed a petition dated 10.05.2011 before the Hon'ble High Court of Delhi in which the Hon'ble High Court vide order dated 12.05.2011 directed the Commission to hear the application of the Informant for interim relief under Section 33 of the Act on an urgent basis on 16.05.2011.
4. Accordingly, the Commission considered the prayer of the Informant for passing interim order in its meeting held on 16.05.2011 in which Shri Amit Gupta and Shri Gautam Narayan, Advocates of the Informant along with the Informant Shri S. L. Santuka appeared before the Commission and made oral submissions in support of the prayer of the interim order. The Commission, having noted that all the necessary conditions for granting the interim relief are found to be satisfied, allowed the prayer of the Informant for grant of interim relief and passed an order restraining USV from giving effect to its letter dated 04.05.2011 regarding termination of its C&F Agency. AIOCD was also restrained from issuing any direction or threat to USV for termination of its C&F Agency with the Informant. The said interim order was to remain effective till 01.06.2011 when the parties were required to appear before the Commission.
5. In pursuance of the above said order, the parties were called for oral hearing on 01.06.2011. Shri Amit Gupta, Advocate for the Informant, Shri M. M. Sharma, Advocate for AIOCD and Shri Ashwani Kumar Mata, Advocate for USV appeared before the Commission. The Counsel of AIOCD requested for adjournment which was allowed and the parties were further directed to appear for oral hearing, if they so desired, on 14.06.2011. Till then, the interim order dated 16.05.2011 was extended. The Commission in its meeting held on 14.06.2011 adjourned the matter and allowed the parties to file written submissions in the matter and also appear for hearing on 30.06.2011. The interim order dated 16.05.2011 was also made effective till 30.06.2011. The Commission further considered the matter on

30.06.2011 in which the counsel for the respective parties appeared and advanced oral arguments and the Commission decided to extend the interim order upto 01.07.2011.

6. The matter was further considered on 01.07.2011. The Commission, after hearing the contentions of the parties and also after giving due consideration to the written submissions dated 11.06.2011 of AIOCD, written submissions dated 01.06.2011 of USV and rejoinder dated 27.06.2011 of the Informant to the counter affidavit filed by AIOCD as well as the other material on record, was of the view that cumulative effect of the facts and circumstances lend credence to the allegation leveled by the Informant and clearly establish all the essential ingredients for grant of interim relief in favour of the Informant. The Commission, therefore, decided that the interim order dated 16.05.2011 be confirmed to continue till further orders.
7. The DG vide his note dated 12.09.2011 recommended initiation of penalty proceedings against AIOCD under Section 43 of the Act. After considering the said note and correspondence with AIOCD by the office of DG, the Commission decided to initiate proceedings against it under Section 43 of the Act, however, the Commission also accorded an opportunity of hearing in person or through authorised representation on 25.10.2011.
8. The matter was fixed before the Commission for personal appearance on behalf of AIOCD, however, AIOCD chose not to appear and accordingly the matter was proceeded ex-parte. The Commission, however, considered the reply filed by AIOCD dated 10.10.2011. The Commission vide its order dated 25.10.2011 noted that AIOCD is in a habit of either withholding information sought by the Commission / DG or furnishing only a part of the information. It was also noted that AIOCD had shown the same attitude in other cases pending before the



Commission / DG related to it e.g. Case No. 30/2011 and 41/2011. The Commission further noted that non filing of reply to various notices of DG viz. dated 28.06.2011, 22.07.2011 and 10.08.2011 shows willful disregard by AIOCD to the communications of DG, despite having being made aware of its consequences and ample opportunities and time given to it. The said act of the party in not providing the requisite information for such a long period was found to hamper the inquiry in the case. Thus, considering the conduct of the AIOCD, the Commission passed an order to the effect that a penalty of Rs. 25,000/- (Rs. Twenty Five Thousand only) per day from 02.09.2011 till AIOCD provides the requisite information to the office of DG would suffice to meet the ends of justice.

9. The Commission in its meeting held on 13.12.2011 noted that no response to the letter dated 03.11.2011 sent for information and compliance to AIOCD has been received, therefore, it was decided that the process for recovery of penalty amounting to Rs. 25,75,000/- (from 02.09.2011 to 13.12.2011) be initiated. It was also decided that the penalty of Rs. 25,000 per day till the party provides requisite information to the office of DG shall continue in terms of order of the Commission dated 25.10.2011.
10. The DG submitted his investigation report dated 22.12.2011. It is noted that in order to investigate into the alleged infringement of the Act, probe letters / notices were issued by DG to several parties including the Informant, AIOCD, AIOCD UTKAL COMMITTEE, UCDA, certain other distributors of Odisha and various associations and pharmaceutical companies including USV, IDMA, OPPI, IPA (Indian Pharmaceutical Association) and PAMDAL (Pharmaceutical and Allied Manufacturers and Distributors Association). The summons were also issued to several parties including the office bearers of various pharmaceutical companies and the associations.

## 11. Findings of DG:-

The observations and the findings of the DG are summarized as under:

### 11.1 Obtaining NOC:

11.1.1 On the basis of the evidence on record, DG has observed that production of 'No Objection Certificate' (NOC) or 'Letter of Consent / Cooperation' (LOC) from the respective District / State Chemists and Druggists Associations, affiliated to AIOCD, to the Pharma companies by the prospective stockists are *sine qua non* for being appointed as a stockist / wholesaler / distributor of pharmaceutical companies.

11.1.2 The DG has stated that whatever may be the genesis and rationale for the NOC in the MOU, the manufacturers face a genuine problem with regard to the NOC due to a very strict collective regimen enforced by AIOCD or its affiliates.

11.1.3 In view of the above, DG has observed that the issue of NOC clearly limits the market / supply of pharma products and thus the conduct of AIOCD and its affiliates, as well as that of OPPI and IDMA, being signatories to the agreements regarding the requirement of NOC for appointment of stockist, has to be presumed in contravention of the provisions of Section 3(3) (b), read with Section 3(1) of the Act.

### 11.2 PIS approval:

11.2.1 The DG has stated that PIS approval entails payment of prescribed charges for the purpose of publication of the product information in the PIS bulletin, which is published State wise. The PIS bulletin is generally a part of the magazine published at periodic intervals by the respective State Chemists and Druggists Associations affiliated to AIOCD. The charges are paid to State Associations except in Maharashtra where the system of payment to District Association is in vogue. The product information covers the information as per Form V of the Drug Price Control Order. The PIS charges are payable per entry in the PIS bulletin and entry means product –brand and dosage form / strength. However, no PIS charges are payable for additional pack sizes, additional flavours and / or price revisions and where no PIS bulletin is published or circulated regularly. For payment of PIS charges the different States / Union Territories have been categorized into two categories ‘A’ States & ‘B’ States wherein the respective PIS charges are Rs. 2,000/- and Rs. 500/- per entry. The SSI units are eligible for 50% concessional PIS charges.

11.2.2 DG has observed that the practice of obtaining PIS approval by the Pharma companies from the respective State Chemists and Druggists Associations affiliated to AIOCD is followed, almost in every case and enforced far more strictly than the NOC. The Pharma companies have to obtain PIS approval from the respective State Chemists and Druggists Associations affiliated to AIOCD before they can introduce new products in the market. The evidence gathered by the DG in this regard is analysed in the later part of this order.

11.2.3 DG has further observed that when the different AIOCD affiliates ask for exorbitant charges which are not in line with the MOU and AIOCD is unable to ensure adherence of its members to the terms of MOU, the

new product launches get delayed and cause hindrance to freedom of trade of the manufacturers and deprive the consumers of the products in question. Thus, as per DG, any attempt on the part of the members of AIOCD and / or its affiliates to delay or withhold any PIS approval on any ground which limits or controls supply or market thereof has to be treated as a kind of boycott and thus attract the provisions of Section 3(3) (b), read with Section 3(1) of the Act.

### **11.3 Fixing Trade Margins**

11.3.1 On the basis of the attestation by the parties on record, DG has observed that the industry practice of charging uniform trade margins is present. DG has examined the issue of the trade margins to the retailers and wholesalers on the basis of the replies of various pharmaceutical companies and associations. Based on the replies of the said entities DG has observed that it is evident that the said industry practice is a consequence of various agreements / MOUs between AIOCD – OPPI – IDMA. The evidence submitted by the DG in this regard is discussed in the later part of this order.

11.3.2 As per DG, the fact that the trade margins have been decided for the wholesalers and retailers operating in the pharmaceutical market by way of an agreement between the trade and the industry means that the prices of drugs are directly or indirectly getting fixed and are not getting determined by the interplay of market forces. Therefore, DG observed that it implies that the manufacturer while deciding the MRP of the drugs cannot fix the prices without providing for the agreed minimum trade margins for the wholesalers and retailers of the entire industry.

11.3.3 The DG has further observed that as the minimum trade margins are a part of horizontal agreements amongst the members of the trade and industry, there is hardly any occasion for price competition between one retailer and the other, resulting in drugs being generally sold on the MRP.

11.3.4 As per DG, since the consumers have no choice, the retailers exploit the situation by not selling the drugs below the MRP, wherein the trade margins of 20% on MRP is already built in as per the terms of their agreement. Where any sale of drug below the MRP could entail a price war among the retailers, it would go against the whole edifice of the agreement. Therefore, as per DG, sale of drugs on MRP is a direct fall out of agreement entered into between the trade and industry which has the effect of causing harm to the consumers and determination of the sale and purchase prices of drugs which is presumed to cause an Appreciable Adverse Effect on Competition (AAEC) in terms of Section 3(1) of the Act.

11.3.5 In view of the above, DG has observed that the MOUs between AIOCD, OPPI and IDMA have directly or indirectly led to the determination of the purchase or sale prices of drugs in the market and the said conduct therefore falls within the mischief contained in Section 3(3)(a) of the Act.

#### **11.4 Boycott of Pharmaceutical Companies:**

11.4.1 As per DG, AIOCD & its affiliated State / District Chemists & Druggists Association also resort to the practice of boycott of pharmaceutical companies / their products to enforce the clauses relating to NOC, PIS approval & fixed Trade Margins. On the basis of the documents on record, DG has also observed that the pharma companies often stopped supplies to the stockists under the threat of boycott of sale / purchase of

the products of the company by AIOCD and its affiliated State / Districts Chemists and Druggists Association. The evidence collected in this regard by DG is assessed in the later part of this order.

11.4.2 The DG has also noted that the pharma companies are also boycotted on the issue of trade margins when they try to market their products directly to the consumers. DG has cited the case of Cipla which tried to bypass the supply chain by providing home services of its products. In this case, Cipla faced strong resistance from the traders lobby and ultimately had to withdraw the scheme.

11.4.3 The DG had referred to several letters issued to pharma companies directing them to call back the goods dispatched to several stockists who are not members of these associations or who have indulged in anti – associational activities. The DG has collected relevant documents in this connection with respect to Case no. 41/2011 (Sandhya Drug Agencies Vs Assam Drug Dealers Associations & Ors.).

11.4.4 On the basis of the above, DG has observed that AIOCD and / or its affiliated State / District Trade Associations do boycott and / or issue threats of boycott on various issues to coerce the pharmaceutical companies to agree to their demands, a large part of which appeared to originate from the MOUs signed between AIOCD - OPPI - IDMA or appear to be related to various association related issues and / or factionalism within the chemist and druggist association.

11.4.5 DG has further observed that AIOCD and its affiliates indulge in practices of boycotting pharma companies on various issues contained in the MOUs. In case of internal disagreements / factionalism with the

association, different groups try to enforce their decisions on the pharmaceutical companies in the matter of appointment of stockist being made contingent on NOC from a particular faction, payment of PIS charges to a particular group etc. The DG has drawn the conclusion that the act of boycott either to enforce the covenants of the MOUs or otherwise on account of internal dissensions cannot be deemed to be pro-competitive in any manner as it has the effect of limiting or controlling supplies / distribution / availability etc. of drugs which causes appreciable adverse effect on competition and results in denial of the market access for the pharmaceuticals companies and non availability of drugs to the consumers.

11.4.6 On the basis of the above, DG has held that the act of boycott, contravenes the Section 3(3)(b) read with Section 3(1) of the Act.

## **11.5 Conclusion in the DG report**

11.5.1 Based on the detailed analysis and investigation, the DG has concluded that the horizontal agreement amongst the members of AIOCD & the practices carried on by their members on the issue of grant of NOC for appointment of stockists, fixation of trade margins and collection of PIS charges and/or boycott of products of pharmaceutical companies fall within the mischief enshrined in Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act.

11.5.2 The DG has also concluded that the decisions amongst the members of OPPI & IDMA to enter into agreements and to give effect to the decisions contained in the MOUs pertaining to NOC/LOC, PIS charges, fixed trade

margins also amount to an anti-competitive agreement within the meaning of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act.

12. The said report of the DG along with the entire material was placed for consideration of the Commission in its meeting held on 10.01.2012. After examining the entire material, the Commission decided that a copy of DG report be sent to the Informant, AIOCD, IDMA and OPPI for their comments / objections. The Commission also directed the opposite parties to file their financial statements for last three years and also to provide the names and addresses of office bearers of their respective associations.
13. The matter was again considered by the Commission in its meeting held on 09.02.2012. Shri Amit Gupta, Advocate along with his associates appeared before the Commission for the Informant. The letters dated 08.02.2012 and 23.01.2012 received from AIOCD and OPPI respectively seeking adjournment and the reply dated 02.01.2012 filed by IDMA providing therein the details of office bearers and copies of financial statements were considered by the Commission. Considering the request of the parties for adjournment, the Commission allowed a further time of 4 weeks to the parties to file the replies to the DG report. It was also decided that USV be sent a copy of DG report to invite its comments / objections.
14. Thereafter, the matter was considered by the Commission on 15.03.2012. The Informant Shri S. L. Santuka along with Shri Amit Gupta, Advocate of the Informant appeared before the Commission. Shri Samir Gandhi, Advocate for OPPI and Shri Ankit Shah, Advocate for USV appeared before the Commission and explained the matter. The written submissions dated 12.03.2012 filed by the Informant, the written submissions dated 23.02.2012 filed by IDMA, written submissions dated 09.03.2012 and 12.03.2012 filed by OPPI and the written submissions dated 29.02.2012 and 05.03.2012 filed by USV were taken on record. The Commission



noted that no written submissions had been filed by AIOCD although the notice of the Commission dated 10.02.2012 had been delivered to the party and its counsel on 13.02.2012. It was also decided to treat the financial statements of OPPI as confidential as requested by them vide their letter dated 09.03.2012 along with which the financial statements for 2008-09 2009-10 and 2010-11 and the list of its office bearers had been submitted by them.

15. The matter was further considered by the Commission in its meeting held on 29.03.2012. While considering the e-mail letter dated 13.03.2012 received from AIOCD seeking further time of 2 weeks to file reply / comments to the DG report, Commission noted that since the party had stated to have already prepared the reply and the same was pending for finalization, its request of extension be allowed. Accordingly, a 2 weeks time was allowed to AIOCD to file its reply / comments. It was also decided that AIOCD may appear for oral hearing, either personally or through authorised representative on 19.04.2012.
16. The matter was again considered on 19.04.2012. The Commission considered the request dated 17.04.2012 of AIOCD for adjournment of the matter and allowed AIOCD to file its reply / comments to the DG report by 25.04.2012. It was also decided that AIOCD may be allowed to appear for oral hearing, if it so desires, on 01.05.2012.
17. Thereafter, the Commission considered the matter in its meeting held on 01.05.2012 in which request of AIOCD made vide letter dated 23.04.2012 requesting for further adjournment of the matter was considered. The Commission allowed the request of the party to file its reply / comments to the DG report by 04.05.2012. The Commission further allowed AIOCD to appear for oral hearing, if so desired, either personally or through authorised representative on

08.05.2012. The party was directed to file its reply / comments within the stipulated period, failing which matter was to be proceeded ex-parte.

18. Shri Yusuf Iqbal Yusuf, Advocate for AIOCD appeared before the Commission on 08.05.2012. During his argument, he reiterated the contentions raised in the reply/objections to the DG report already submitted by AIOCD.

19. The Informant had filed written submissions dated 12.03.2012 to the DG's investigation report. The gist of the submissions of the Informant is as under:

19.1.1 The report of the DG completely ignores the actions of the USV and fails to even mention its anti-competitive acts in the "Findings and Conclusions". It had been submitted by the Informant that AIOCD could not have acted in an anti-competitive manner on its own, without the active support from and understanding with USV.

19.1.2 The Informant had emphasized that the allegations made against USV stood substantiated on the basis of the evidence collected by the DG during investigation. As per the Informant, USV was not able to controvert the averments made by the Informant which proves that the prima facie opinion of the Commission regarding the actions of USV is correct. USV did accept asking for NOC from the affiliates of AIOCD before appointing stockists/distributors and also paying PIS Charges to AIOCD and its affiliates.

19.1.3 The Informant had further submitted that it was clear, and even the DG had formed an opinion that there was a possible boycott during the last week of April as regards the products of USV. The Informant in this regard contended that it appeared that an explanation was called for as

to the reasons for a drastic fall in the sales during the last week of April and though the letter through which the information was sought for was not a part of the Investigation Report, from the Investigation Report it appeared that merely on the basis of the letter dated 12.12.2011 from USV, no further analysis and the reasons for the fall in the sales of USV had been undertaken by the DG.

19.1.4 The Informant had also submitted a chart showing the details of the sales of the products of USV in Mumbai and Thane for the months of January 2011 to August 2011 which as per Informant gave a clear picture of the market trend showing that sales of the medicines were the highest in the last week of each month and lowest in the first week of each month. However, the sale in the last week of April 2011 was lowest for the entire period mentioned in the Chart. Correspondingly, the sales for the first week of May 2011 were the highest. On the basis of the above submissions, the Informant emphasized that it clearly indicates that the products of the USV were boycotted in the last week of April 2011 as a result of which more products were bought in the first week of May 2011.

19.1.5 It is the contention of the Informant that the Investigation Report is completely silent over the amount paid by USV and the specific averments made by the Informant during the investigation that the payment was made by USV to buy peace with the President of AIOCD. It had been submitted by the Informant that the timings of the payment and the boycott of goods of USV coincide and in the absence of any further examination, support the averments made by the Informant. As per the Informant, the Opposite Parties had not been able to produce

anything on record to show, whether the educational seminar was actually held or not and what was the amount spent for the same.

19.1.6 It has been further submitted by the Informant that the details of amounts/grants paid by the USV during the last 3 years, itself shows that the payment of Rs. 25.00 Lakhs to Maharashtra State Chemist & Druggist Association (MSCDA) was abnormal even from the standards of USV. The Informant, therefore, contends that the statement by USV that the grant was in usual course is wrong. The Informant has submitted that the said amount of Rs. 25.00 Lakhs to MSCDA was paid by USV in lieu of its (USV's) failure in not taking action against the Informant. The Informant in this regard has submitted that the Investigation Report fails to draw the correct conclusions in so far as the payment of Rs. 25.00 Lakhs by the USV is concerned.

19.1.7 With respect to the allegation of the Executive Director & CEO of USV during the investigation that the Informant had failed to meet the expected standards of the company as its customer service both internal as well as external was below par, the Informant has submitted that though further details were sought by the office of DG, USV failed to give any details whatsoever to substantiate the same. In view of the aforesaid, it has been submitted by the Informant that the Investigation Report completely absolves USV of its anti-competitive acts.

20. IDMA had submitted its written submissions dated 02.02.2012 and 24.02.2012. The gist of the submissions of IDMA is as under:

20.1 IDMA has submitted that they did not agree with all the conclusions drawn in the DG report relating to the role of IDMA vis-à-vis the enquiry

against AIOCD which led to the said DG report. It reiterated that the documents furnished by it and the oral testimony given by its Secretary General during the investigation should be relied upon to determine their true meaning and intent.

- 20.2 IDMA has further submitted that its executive committee vide its resolution dated 02.12.2011 had resolved that the all MOU's entered between IDMA and AIOCD during the years 1982 to 2003 deemed to be operative on that date had been terminated.
- 20.3 IDMA has objected to the observation of the DG that the termination of MOU entered with AIOCD by IDMA appeared merely to be an attempt on its part to wriggle out of any culpability in violation of the Act and that even if it ceases to practice the agreements entered into vide their various MOU's, there is nothing to suggest that they will continue to desist from anti-competitive practices in future given the rational and justification for the MOU's furnished by the parties in course of inquiry. In this regard, it has submitted that it is not in the business of manufacturing and marketing of drugs and pharmaceuticals and is formed in the mutual interest of its members *inter se* and with the outside world. IDMA has put thrust on the point that it is not a kind of association which can or does anti-Competitive practices.
- 20.4 IDMA has also informed that for good measure they have issued a separate circular dated 1st February 2012 to all their Members informing them of the termination of the MOU's with AIOCD to inform them that no such understanding is there with AIOCD. IDMA had advised its members that in their own interest any action between each individual Members and AIOCD or any of its affiliates i.e. the State Organizations of

Chemists and Druggist which violate the provisions of the Act would be illegal and lead to consequences provided under the Act.

- 20.5 IDMA has also submitted annual report for the years 2008-09, 2009-10 and 2010-11 and the list of its office bearers, a copy of its circulars to Members and the circular published in IDMA bulletin.
21. OPPI has submitted its written submissions dated 09.03.2012. The gist of the submissions of OPPI is as under:
- 21.1 OPPI has emphasized that it has been erroneously implicated as a respondent in this investigation by the DG. OPPI has submitted that it is irrational for an association of multinational pharmaceutical producers such as OPPI, to limit the supply of its own products as it would be against its own business interest. As per OPPI, it itself is the biggest victim of the practices adopted by AIOCD.
- 21.2 It has been submitted by OPPI that while it had entered into MOU's with AIOCD between 1982 and 2003 to allow for the smoother functioning of the pharmaceutical industry, these MOU's were terminated when the Act was enforced in 2009, based on the well-documented and recorded legal advice of the Legal Committee of OPPI. As per OPPI, it did not renew these MOU's because of the advice of the Legal Committee despite receiving ultimatums from AIOCD to do so by the 11<sup>th</sup> September 2009, failing which AIOCD had threatened to enter into individual MOU's with pharmaceutical companies. OPPI, therefore, contended that it was not party to any MOU's or agreements with AIOCD after the Act was enforced and hence, there is no basis for investigation against it under the Act.

- 21.3 As per OPPI, it had introduced the PIS system in the expired MOU's as an entirely legitimate system which allowed companies to pay a nominal fee while launching a new product in the market, in return for which the respective local association affiliated to AIOCD, would publish information and circulate it amongst all the dealers. This was an easy and efficient manner to comply with the requirements of the DPCO (Drug Pricing Control Order). However, this legitimate mechanism was grossly misused by AIOCD which caused delays which ultimately limited supply in the market for pharmaceutical drugs. As per OPPI, the only reason why pharmaceutical companies are compelled till date to avail of the PIS approval mechanism, in spite of the expiry of the MOU's, while launching products in the market is because they face the risk of boycotts and delays if they do not get the approval from AIOCD. Therefore, OPPI has emphasized that it is AIOCD which has acted in contravention of Section 3(3)(b) of the Act by misusing the PIS mechanism and OPPI continues to be a victim of such exploitative tactics of AIOCD.
- 21.4 OPPI has further submitted that at no stage did the Informant raise any allegations regarding the conduct of OPPI and even the order passed by the Commission under Section 26(1) of the Act on 10.05.2011 and the subsequent interim orders under Section 33 of the Act dated 16.05.2011 and 1.07.2011 had not found any cause of action against OPPI. It itself had made depositions to the DG regarding the exploitative behavior of AIOCD in order to assist the Commission in investigating the allegations against AIOCD.
- 21.5 OPPI has also brought to the notice of the Commission that the information filed by the Informant was against AIOCD and USV - a

pharmaceutical company which is not even a member of OPPI. The Informant has initiated this complaint before the Commission on the basis of a letter dated 04.05.2011 sent by USV terminating its C&F Agency agreement with the Informant. The OP contends that a contract for appointing a C&FA is a private contract between a pharmaceutical company and the agent and does not involve any other party.

21.6 OPPI has further submitted that it was the direct result of the decision to terminate the MOU's that prompted AIOCD, in its letter dated 31.07.2009, to threaten OPPI to finalize the MOU's by 11.09.2009 failing which AIOCD would approach companies and finalize individual MOU's with them. Despite such threats, OPPI did not renew the said MOU's with AIOCD within or after the limit of 11.9.2009 and instead raised its concerns to AIOCD in its email dated 25.08.2010 on the possible implications of signing such MOU's under the Act. As per OPPI, in this email, the Director General of OPPI had clearly pointed out that given the change in the legal environment, it would not be appropriate for AIOCD to continue to require companies to make requests for seeking permission to introduce new drugs into the market.

21.7 OPPI has further contended that the DG cannot rely upon purely circumstantial speculation to establish the existence of an agreement for the purpose of the violation of the Act. As per OPPI, the DG had failed to discharge his burden to establish the existence of an agreement through direct and concrete evidence. OPPI contends that in the absence of such conclusive proof, the DG has assumed that the MOU's entered into by OPPI with AIOCD between 1982 and 2003 constitute an agreement. As per OPPI, the DG had completely disregarded the minutes of the meetings of OPPI held on 16.04.2010 in which the termination of the



MOU's with AIOCD was recommended and also ignored the correspondence between the two parties. Instead, the DG assumed that such MOU's cannot be said to have been terminated due to absence of a 'public declaration' of the termination.

- 21.8 It has been submitted by OPPI that the DG has comprehensively failed to show that there is an agreement amongst pharmaceutical producers acting through OPPI to limit supply or fix prices. As per OPPI, while the margins for the wholesalers and retailers of scheduled drugs are determined by the DPCO, pharmaceutical producers are free to offer any rate of trade margin for distribution of non-scheduled drugs. OPPI had incorporated the practice of fixed margins for non-scheduled drugs in its MOU's in order to allow for a reasonable margin for non-scheduled drugs, which was unregulated, unlike scheduled drugs, where the NPPA prescribes trade margins of 8% and 10% to wholesalers and retailers respectively.
- 21.9 OPPI has further contended that the practice of offering a fixed trade margin emanates not because of any agreement among pharmaceutical producers or any mandate of OPPI. On the contrary, it is AIOCD which compels pharmaceutical producers to maintain trade margins at the fixed level for distribution of all types of products for all distributors.
- 21.10 OPPI has further submitted that pharmaceutical producers are under tremendous pressure to maintain minimum trade margins of 10% to wholesalers and 20% to retailers. OPPI contends that while it is true that prior to 2003, OPPI had entered into MOU's with AIOCD to offer fixed margins for non-scheduled drugs to address frequent disruptions in the distribution chain created by the stockist, after the termination of these

MOU's, stockists have compelled pharmaceutical producers to maintain uniform trade margins in the market.

21.11 OPPI has submitted that to the best of its knowledge and information, its member companies do not follow the practice of appointing stockists who have obtained a NOC from AIOCD either at the behest of OPPI or because of any mutual consensus among themselves and OPPI does not have any role in requiring such NOCs from its members.

21.12 On the basis of the above, OPPI has emphasized that it is not in violation of Section 3(3) read with Section 3(1) of the Act as it does not limit or restrict supply or the market through any agreements with AIOCD to enforce boycotts against pharmaceutical companies.

22. USV submitted its written submissions dated 29.02.2012 and has emphasized that as the DG report did not find any wrong doing by USV nor had found it guilty of any anti-competitive / unfair trade practice, they were advised not to deal with the same. However, they had submitted the financial statements for last 3 years and also the names and addresses of its Directors.

23. AIOCD in its e-mail reply / objections to the DG report had submitted as under :

23.1 The DG has failed to carry out any economic analysis in respect of the relevant market or any anti-competitive agreement in the report. It has further submitted that there is no evidence in the DG report showing the existence of any agreement between the members of AIOCD to show the violation of Section 3 (3) of the Act.

- 23.2 AIOCD has submitted that it is an Association of Chemists & Druggists and is covered under the definition of “enterprise” under Section 2(h) of the Act only by virtue of the service of introducing the new products launched by the drug manufacturing companies through its bulletins and charging PIS for the said service. As per AIOCD, the relevant product market, therefore, should be related to this “service” rendered by it and it can certainly not be the “market for pharmaceuticals in the Union of India” or that of “drugs sold by the stockists and retailers to the consumers”, as determined by the DG. AIOCD has submitted that in the absence of an appropriate market definition the conclusion of violation of Section 3(3)(a) and Section 3(3) (b) drawn by the DG in the report cannot sustain under the eyes of law.
- 23.3 As per AIOCD, the DG has failed to collect any material evidence in support of his conclusion, and that the statements of Informant / Complainant which too are full of leading questions and suggestive answers without having been cross-examined by AIOCD and therefore are inadmissible in evidence.
- 23.4 AIOCD has submitted that the DG has shown utmost disregard to the established legal principles of examination of witnesses on oath in exercise of his power under Section 41(2) of the Act and therefore the documentary evidences attached with the report is not admissible in evidence.
- 23.5 As per AIOCD, the DG has based his conclusion entirely on the basis of the oral allegations made by the Informant without any corroborative independent evidence and has thus contended that the allegations made by interested witnesses cannot be relied upon. AIOCD has alleged that

the investigation has been conducted in a most casual manner sitting in New Delhi without any efforts to collect onsite evidence by discreet inspection to verify the veracity of the allegations made in the complaint.

- 23.6 AIOCD has submitted that NPPA regulates the fixation and revision of prices of bulk drugs and formulations and also monitors the prices of both controlled and decontrolled drugs in the country through the provisions of the DPCO. As per AIOCD, till date no complaint has been made before the NPPA (National Pharmaceutical Pricing Authority) for any violation of the DPCO. AICOD has submitted that as per DPCO the margins allowed to whole sellers and retailers are fixed at 16% (para 19 of DPCO) for controlled drugs and trade margins of the decontrolled formulations have been mentioned as 20% for retailers and 10% for whole sellers in the same paragraph of DPCO.
- 23.7 AIOCD has submitted that the practice of NOC was evolved on the recommendation of the Mashelkar Committee appointed by the Union Health Ministry of the Government of India which had recommended that the Chemist and Pharmacists through their association should act as “watch dog” to prevent entry of spurious/ doubtful quality drugs of those purchased from unauthorized sources and had specifically reiterated that AIOCD should play an active role to educate their members and to cooperate with regulatory authorities to eliminate sale of spurious and sub standard drugs by their members.
- 23.8 As per AIOCD, the MOU signed between AIOCD, IDMA and OPPI was in the above context and based on the recommendations of the Mashelkar Committee whereby the trade of sale of pharmaceutical products through chemists was organized in accordance with the DPCO and the

practice of obtaining NOC from the State level associations of Chemists and Druggists was evolved to curb the proliferation of large number of stockists and wholesalers at the cost of the smaller retailers and the DG in his Reports has completely overlooked the growth of competition in the pharmacy trade and has thus failed to recognize the efforts made by AIOCD in organizing a balanced relationship between the large pharmaceutical companies and the small retailers.

23.9 As per AIOCD, the DG has also failed to examine any pharmaceutical company to verify the allegations made by the Informant regarding the alleged role of AIOCD in restricting the entry of new stockists/whole sellers etc.

23.10 Based on the above, AIOCD has requested the Commission to reject the findings of the DG.

## **ISSUES**

24. The Commission considered the matter on 19.04.2012 and 01.05.2012. In the Commission's meeting held on 01.05.2012, request of AIOCD for further adjournment was allowed and it was required to file its reply / comments to the DG report by 04.05.2012. It was also allowed to appear for oral hearing on 08.05.2012. Shri Yusuf Iqbal Yusuf, Advocate and Shri Ahmed Chunawala from AIOCD appeared before the Commission and made oral submissions. The Commission also considered the reply filed by AIOCD. Thereafter the matter was considered by the Commission on 27.06.2012 and it was noted that OPPI, IDMA and USV Ltd. had filed their financial statements and names and addresses of their office bearers, however, AIOCD had neither filed the financial statements nor the

names and addresses of the office bearers. Accordingly, the Commission directed AIOCD to file profit & loss account / balance sheet and annual turnover in respect of AIOCD as well as of enterprise / firm represented by the office bearers (separately for each individual) for the last three years. It was also directed by the Commission to issue notices to the office bearers of OPPI, IDMA and USV Ltd. to file profit & loss account / balance sheet and annual turnover of the enterprise / firm which they represent for the last three years.

25. The matter was again considered by the Commission in its meeting held on 07.08.2012 in which the Commission viewed the status of filing of financial statements in respect of AIOCD as well office bearers of all the opposite parties. It was decided that the DG report be sent to the office bearers of OPPI and IDMA. The Commission in its meeting held on 25.10.2012 considered inter alia the application filed by the Informant seeking withdrawal of the case. In absence of any provision in the Act for withdrawing the information filed before the Commission, the Commission was of the view that once the Commission passes an order under Section 26(1) of the Act, the DG is bound to submit his investigation report irrespective of the fact that the Informant has withdrawn himself from the matter. Thus, once DG report is filed before the Commission, it has to consider the DG report and proceed as per law and accordingly withdrawal of the information at any stage does not affect the proceedings of the Commission. In view of the same the application filed by the Informant was rejected by the Commission.
26. Thereafter the matter was considered by the Commission in its meetings held on 29.11.2012 and 10.01.2013. During the Commission's meeting dated 10.01.2013, the representatives of the office bearers of the opposite parties argued in support of their contentions regarding requirement of financial statements from the office bearers. It was noted by the Commission that the office bearers of AIOCD have neither filed reply to the DG report nor have submitted the financial statements,

instead the Counsel of AIOCD vide letter dated 06.09.2012 had requested the Commission to dispense with the requirement of furnishing the P&L account / balance sheet of the enterprises of the various office bearers of AIOCD. After hearing the representatives of the office bearers of opposite parties, Commission decided to pass appropriate orders with regard to the office bearers in due course.

27. The Commission has carefully considered the essential issues raised by the Informant, the submissions made by the respective parties before the DG, the evidence gathered by the DG during investigation as well as the replies filed by the respective Opposite Parties before the Commission and also the Informant's response to the DG report. After careful perusal of the said documents, the issues arising for consideration and determination of the Commission are as follows:

**Issue No. 1**

Whether the actions and practices of AIOCD regarding grant of NOC for appointment of stockists, fixation of trade margins, collection of PIS charges and boycott of products of pharmaceutical companies are a violation of Section 3 of the Act

**Issue No. 2**

Whether OPPI and IDMA are also liable for violation of Section 3(3) of the Act along with AIOCD as the practices pertaining to NOC / LOC, PIS and fixed trade margin followed by their members are arising out of the various agreements between AIOCD, OPPI and IDMA?

**Issue No. 3**

Whether the members / office bearers of the Executive Committees of AIOCD, OPPI and IDMA are also liable for violation of Section 3 of the Act?

**Issue No. 4**

Whether the conduct of USV falls foul of the provisions of the Act, as alleged by the Informant?

**28. Determination of Issue No. 1**

28.1. The DG has found that the horizontal agreement amongst the members of AIOCD and the practices carried on by their members on the issue of grant of NOC for appointment of stockists including the second stockists, fixation of trade margins, collection of PIS charges and / or boycott of products of pharmaceutical companies fall within the mischief enshrined in Section 3(3) (a) and 3(3) (b) of the Act. It is necessary that the relevant Section 3(3) of the Act may be looked into which reads as under :

*“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, which –*

- (a) directly or indirectly determines purchase or sale prices;*
- (b) limits or controls production, supply, markets, technical development investment or provision of services;*
- (c) .....*
- (d) .....*



*shall be presumed to have an appreciable adverse effect on competition.*

- 28.2. For the purpose of appreciation of applicability of relevant provisions relating to anti-competitive agreements, it is useful to consider the various elements of Section 3 of the Act in detail. Section 3(1) of the Act prohibits and Section 3(2) makes void all agreements by association of enterprises or persons in respect of production, supply, distribution, storage, acquisition or control of goods or provisions of services which cause or are likely to cause appreciable adverse effect on completion within India. Therefore, if any agreement restricts or is likely to restrict the competition then it will fall foul of Section 3 of the Act.
- 28.3. Further, Section 3(3) of the Act applies not only to an agreement entered into between enterprises or associations of enterprises or persons or association of persons or between any person and enterprises but also with equal force to the *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 and provision of services which has the purpose of directly or indirectly fixing prices, limiting output or sales for sharing markets or customers. Once existence of the prohibited agreement, practice or decision enumerated under Section 3(3) is established there is no further need to show an effect on competition because then a rebuttable presumption is raised that such conduct has an appreciable adverse effect on competition and is therefore anti-competitive. In such a situation the burden of proof shifts on the opposite parties to show that impugned conduct does not cause an appreciable adverse effect on competition.
- 28.4. The next question arises whether AIOCD which comprises of the State Chemists & Druggists Associations is covered under the category of entities enumerated in Section 3(3) of the Act.

- 28.5. In this respect the definition of 'enterprise' as provided in Section 2(h) runs as follows:-

*“enterprise” means a person or a department of the Government, who or which is, or has been, engaged in any activity relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind ..... but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defense and space.*

- 28.6. It is noted by the Commission that AIOCD is a national level registered association of chemists and druggists, active since 1975. Its website mentions that at every district level, there are associations which are in turn affiliated to the State Associations and all these States and Union Territories Associations are affiliated to AIOCD. On its website, it also mentions that it has over 7.5 lakh members from retail chemists and pharmaceutical distributors / stockists. As per the information available on its website, AIOCD transacts almost 95% of the overall pharmaceutical business in India which is currently growing @ 12 to 13% basis yearly.
- 28.7. As noted above, all the States and Union Territories Associations are affiliated to AIOCD and all the District level Associations are affiliated to the respective States and Union Territories Associations and accordingly AIOCD claims to have over 7.5 lacs members from retail chemists and pharmaceutical distributors / stockists. In view of the said position, it can be inferred that members/ constituents of AIOCD (though indirectly) are stockists and retailers

of pharmaceutical companies who are engaged in the supply of pharma products to the consumers. Therefore, such members/constituents fall squarely within the definition of 'enterprise' provided in the Act. Further, Section 3(3) of the Act not only covers agreements entered into between enterprises or associations of enterprises but also the practice carried on or decision taken by any association of enterprises engaged in identical or similar trade of goods or provision of services. Thus all actions and practices of AIOCD including entering into various MOU's with OPPI and IDMA regarding issues such as NOC, fixation of trade margins and imposing PIS charges and conducting boycotts would fall squarely as 'practice carried on' or 'decision taken by' an 'association of enterprises' under Section 3(3) of the Act.

- 28.8. The Commission, therefore, holds that AIOCD, being association of its constituent enterprises, is taking decisions relating to distribution and supply of pharma products on behalf of the members who are engaged in similar or identical trade of goods and that such practices carried on, or decisions taken by AIOCD as an association of enterprises are covered within the scope of Section 3(3).
- 28.9. It is noted by the Commission that the investigation by DG has found the acts and conduct on part of AIOCD, OPPI and IDMA as anti-competitive. Therefore, it is necessary to examine such infringements by them as found substantiated by the DG, in order to arrive at a conclusion. Here, the conduct of AIOCD is being examined and the conduct of OPPI and IDMA shall be examined while determining subsequent issues.

#### **Issue of NOC**

- 28.10. DG has observed that the issue of NOC clearly limits the market / supply and thus the conduct of AIOCD and its affiliates, as well as that of OPPI and IDMA, being

signatories to the agreements regarding the requirement of NOC for appointment of Stockist, has to be presumed a per se contravention of the provisions of Section 3(3) (b), read with Section 3(1) of the Act.

28.11. The evidence collected / forwarded by DG in this regard are as under:

- (a) A letter dated 02.03.2009 of UCDA issued to all Pharma companies / their depots etc. of Odisha, to submit applications for LOC / NOC to concerned District Association, which in turn would forward their recommendations to the UCDA which will issue LOC / NOC in favour of the party as recommended by the concerned District Association within seven days of receipt. The said letter is at page no. 92 of Annexure – III of the DG report.
- (b) A copy each of 169 NOCs / LOCs issued by the UCDA during the period 28.02.2009 till 26.09.2011 (Annexure III Page NO. 58-63 of the DG report).
- (c) A copy of letter dated 09.08.2010 issued by Ranbaxy Lab. Ltd. to Shri Jaganath Pharmaceuticals requiring them to obtain NOC from AIOCD (Annexure – III Page No. 68 of the DG report).
- (d) The communication dated 14.09.2009 of AIOCD – Utkal Committee to the C&F, C&A, Super Distributors of Pharma companies of Odisha stating that they should verify the NOC issued by District Associations from the list of office bearers given in the said communication and that NOC for three district named therein, would be issued by AIOCD directly (page 79 of the ‘information’).
- (e) Letters dated 01.04.2011 and 03.05.2011 of M/s Sanjeebani Agencies, Keonjhar, addressed to Secretary, KCDA, Keonjhar, regarding non supply of goods / non billing by Mankind Pharma and Orchid Pharma respectively on the

ground of not producing NOC from AIOCD (Annexure – IV Page No. 194-195 of the DG report).

- (f) Letter dated 21.06.2011 issued by Torrent Pharmaceutical Ltd. requiring parties to obtain NOC from existing association affiliated to AIOCD for the purpose of stockist ship for Oncology Division (Annexure -IV Page No. 196 of the DG report).
- (g) Letter dated 11.12.2008 and 01.11.2010 issued by AIOCD to all marketing and distribution Heads of Pharma companies directing them not to appoint any new stockist in the State of Kerala and Orissa without consulting AIOCD , Mumbai (Annexure- IV Page No.215-216 of the DG report).
- (h) A copy of an e-mail dated 22.05.2010 addressed to the Depot Manager, Raptakos, Brett & Co. Ltd., Cuttack wherein it has been informed that M/s Drug Deal Aska Ganjam district has been appointed with a forged NOC and that the said stockist be directed to obtain original NOC from AIOCD (Utkal) or from GPWA approved by AIOCD Utkal (Annexure- IV Page No.225 of the DG report).
- (i) A copy of letter dated 14.02.2011 of Akumentis Healthcare Ltd. addressed to Shri P.K. Jena, AIOCD - Utkal Committee wherein three managers of the company have given an undertaking that the company would stop supply to M/S Subudhi Agencies, Bhubaneswar and M/S Sworna Pharmaceuticals, Keonjhar who were appointed as stockist without NOC from the District Association affiliated to AIOCD, Mumbai and that in future, such mistake would not be repeated. (Annexure- IV Page No.291 of the DG report). The said facts have also been furnished by M/s Sanjeebani Agencies vide reply dated 05.10.2011 (Annexure-VI Page No. 343-344 of the DG report).

- (j) Reply of Parekh Pharmaceuticals dated 22.09.2011 stating that their supplies were stopped even though they had submitted NOC obtained from UCDA and CDCDA as the said LOC / NOC was not issued by CDCDA affiliated to AIOCD. It was further stated that AIOCD and AIOCD - Utkal Committee are forcing all manufacturers to obtain LOC/NOC for appointment of stockists and are charging huge amount as LOC / NOC charges to parties (Annexure – V Page NO. 326-328 of the DG report).
- (k) Reply of Suraj Traders dated 15-09.2011 that in March 2011 it was informed by the Cuttack Depot of the company that M/s Torrent Pharmaceuticals Ltd. has received telephonic instruction from Mr. P. K. Jena, Convener of AIOCD - Utkal Committee, that goods cannot be supplied to Suraj Traders unless it obtains a fresh LOC/NOC from CCDA Affiliated to AIOCD by paying Rs.15,000/- as fee (Annexure-VII Page No.361-363 of the DG report).
- (l) As per the DG report the following pharmaceutical companies have also attested, on record, to the requirement of NOC / LOC.
- i. USV, vide response dated 28.06.2011, had stated that it follows industry practice and that NOCs are brought by the stockist and wholesalers who are members of the local association (Annexure-IX Page No. 393-394 of the DG report).
  - ii. Novartis India Ltd (NIL), vide its letter dated 16.08.2011, had stated that it believes that AIOCD requires its members to obtain NOC from AIOCD or its affiliated State / District Associations before being appointed as a stockists by pharmaceutical companies (Annexure-X Page No.509-510 of the DG report) .

- iii. GlaxoSmithKline (GSK), vide its reply dated 17.08.2011, had informed DG that a letter of confirmation signed by AIOCD is furnished to them by the stockists as part of appointment documentation (Annexure-XI Page No.538 of the DG report).
- iv. Corned Chemicals Ltd., vide its reply dated 24.08.2011, had stated that as and when it needs to have alternate / second C&FA then the new applicant has to obtain NOC from the respective State association and follow the norms as per the prevalent practice and guidelines of their associations and/ or as per the terms as enumerated in the understanding/ MOU between IDMA, AIOCD & OPPI (Annexure-XII Page No.554-555 of the DG report).
- v. Janssen division of Johnson & Johnson Ltd, vide its reply dated 16.08.2011, had stated that as a matter of trade and industry practice, the members of the State Chemists and Druggists Associations affiliated to AIOCD obtain NOC on their own (Annexure – XIII Page No. 576 of the DG report).
- vi. German Remedies Division of Cadila Healthcare Ltd., vide its reply dated 23.08.2011, had stated that it follows industry practice on the issue of NOC (Annexure – XIV, Page No. 601 of the DG report).
- vii. Alkem Laboratories Ltd., vide its reply dated 20.10.2011, had stated that it requires NOC / LOC from prospective distributor / wholesaler (Annexure – XV Page No. 621 & 623 of the DG report).
- viii. Torrent Pharmaceuticals Ltd., vide its reply dated 19.08.2011, had stated that it requires prospective distributors to bring NOC from concerned State Chemists & Druggists Associations affiliated to AIOCD for their appointment. It had, however, also submitted vide its response dated 24.11.11 that it had

appointed around 111 stockists, during the period 2008 to 2011 in the states of Andhra Pradesh, Gujarat, Tamil Nadu and Uttar Pradesh without obtaining NOC from the Associations based on the declaration/ verbal confirmation from the stockists that there is no requirement of any NOC / clearance from the respective Associations for the same (Annexure-XVII Page No.667 & 669 of the DG report).

- ix. Ranbaxy Laboratories Ltd, vide its reply dated 29.08.2011, had stated that the interested parties do provide reference letter- to emphasize their credibility, track record and merits of their applications (Annexure-XVIII Page No.74 of the DG report).
- x. OPPI, vide its reply dated 27.07.2011, had furnished copies of its MOU's signed with AIOCD between 1982 to 2003 in which the requirement of NOC had been clearly stated. It had further submitted vide its reply dated 07.11.2011 that in view of the trade experience and to avoid trade related disruptions and surprises, OPPI member companies may at times be constrained to approach AIOCD / its affiliated bodies in such matter (Annexure XIX Page No. 683 of the DG report).
- xi. IDMA, vide its reply dated 11.07.2011 & 03.08.2011, had also submitted copy of the MOU between IDMA – OPPI and AIOCD dated 12.03.2003 showing that the trade bodies have agreed to the manner of appointment of stockists (Annexure – XX Page No. 791 & 806 of the DG report).

28.12. From the examination of the evidence forwarded by the DG, as discussed above, it is evident that normally without obtaining NOC from AIOCD (acting through respective State and District Associations) no stockist can be appointed.



28.13. Thus, the Commission finds that the requirement of NOC for appointment as a stockist by a pharma company arising out of MOU's between AIOCD, OPPI and IDMA is an essential condition for the appointment of a stockist. . This is also strengthened from the fact that during the course of investigation by DG, most of the pharmaceutical companies had stated that in the matter of appointment of stockist, they are guided by the MOU's between AIOCD, OPPI and IDMA. The Commission notes, in this regard, from the statement of Shri Aniruddha Rajurkar, Vice President, German Remedies, a division of Cadila Healthcare Ltd. (at Page No. 69 of the DG report) that as a matter of fact appointment of stockist without NOC is an exception. The relevant excerpts of the statement of Shri Rajurkar are reproduced hereunder:

“..... As a matter of fact the appointment of stockists without NOC is an exception rather than the general practice and the company has been able to appoint them since they met our criteria of appointment.....”

28.14. The Commission also notes from the reply dated 27.07.2011 of OPPI given at page 69 of the DG report that the members of OPPI are constrained to approach AIOCD or its affiliate state / district associations for appointment of stockists. The relevant excerpt from the reply of OPPI is reproduced hereunder :

“In our considered view it is not necessary for any pharmaceutical company to consult with the AIOCD or its affiliated state / district associations for the appointment of stockists .....’ ‘..... However, in view of the trade experience and to avoid trade related disruptions and surprises, OPPI member companies may at times be constrained to approach AIOCD or its affiliated state / district associations in such matter .....”

28.15. In view of the evidence discussed above, Commission is of the considered view that there is no reason in not agreeing with the conclusion of DG that the conduct of AIOCD and its affiliates in the matter of grant of NOC attracts the provisions of Section 3(3)(b) read with Section 3(1) of the Act as AIOCD and its affiliates create restraint on freedom of trade on account of NOC, through MOU's, which has the effect of limiting or controlling the market or supply.

**On the issue of PIS:**

28.16. As per DG, any attempt on the part of the members of AIOCD and/ or its affiliates to delay or withhold any PIS approval on any ground which limits or controls supply or market thereof has to be treated as a kind of boycott thus attracting the provisions of Section 3(3) (b), read with Section 3(1) of the Act.

28.17. Further, DG had also found that the boycott of the product of the pharma companies on the issue of PIS approval etc. by AIOCD and its affiliates is in violation of the provisions of Section 3(3)(b), read with Section 3(1) of the Act.

28.18. The evidence collected / forwarded by DG in this regard are as under:

- (a) Copies of receipts dated 12.02.2008 and 08.03.2007 issued by the UCDA, affiliated to AIOCD, towards payments made on account of PIS as furnished by the Informant during the recording of statement on 03.08.2011 (Annexure – IV Page No. 191-192 of the DG report).
- (b) Copies of letter receipts in connection with PIS charges furnished by Shri P. K. Mohapatra, General Secretary, UCDA vide his letter dated 31.10.2011 had also been enclosed by the DG with his report. The same are as under:

- (i) Letter dated 15.01.2009 from Piramal Health care regarding deposit of Rs. 1.30 lac with AIOCD on account of PIS for new products in Odisha (Annexure-III Page No.95 of the DG report).
- (ii) Receipt dated 15.12.2009 issued by Sri P. K. Jena for Rs. 90,000/- to Green Ray Pharmaceutical (P) Ltd. as PIS (Annexure-III Page No. 99 of the DG report)
- (iii) Receipt No. 196 dated 11.12.09 issued by AIOCD for Rs. 88,000/- to Nexzen Pharma towards Utkal PIS (Annexure-III Page No. 100 of the DG report).
- (iv) Receipt dated 21.09.09 for Rs. 24, 000/- issued by Sri P. K. Jena towards PIS to Bio Next Pharma (Annexure-III Page No. 101 of the DG report).
- (v) Letter dated 08.07,09 from Indechemie Health Specialities Ltd. to Mr. Prasant Mohapatra informing PIS deposited at AIOCD & 8 Nos. of price list approved & signed by Mr. J. S. Shinde (Annexure-III Page No. 103 of the DG report).
- (vi) Receipt dated 29.06.09 issued by Sri Girija Prasad Rath on behalf of Sri P. K. Jena for Rs. 12,000/- from Ashrita Udyani towards PIS. (Annexure-III Page No.112 of the DG report).
- (vii) Receipt dated 24.11.10 for Rs. 34, 000/- issued to Akumenties Health Care Ltd. by Shri P. K. Jena towards Utkal PIS (Annexure-III Page No. 114 of the DG report).

- (viii) Receipt dated 25.05.11 for Rs. 20,000/- issued to M/s Amkus Health Care issued by Sri P. K .Jena towards Utkal PIS (Annexure-III Page No. 115 of the DG report).
- (c) Shri P. K. Mohapatra General Secretary, UCDA vide his letter dated 05.11.2011 had also submitted copies of payment receipts dated 27.10.2011 and 08.11.2011 issued by Shri P. K. Jena (on behalf of AIOCD - Utkal Committee) on account of PIS charges (Annexure-IV Page No.171 of the DG report).
- (d) A copy of price approval given under the signature Mr. J. S. Shinde with AIOCD stamp in respect of products of USV as furnished by the Informant during the recording of statements on 03.08.2011 (Annexure – IV Page No. 181-182 of the DG report).
- (e) A copy of letter dated December 11, 2008 sent by Mr. J. S. Shinde President, AIOCD to Marketing and Distribution Heads of all Pharma companies to forward all PIS of new products @ Rs. 2000 per product for the State of Utkal and Kerala to AIOCD Mumbai (Annexure- III Page No.65-66 of the DG report).
- (f) A copy of letter dated November 01 2010 sent by Mr. P. K. Singh, Honorary General Secretary, AIOCD asking the pharma companies to send contribution for PIS for Kerala and Orissa to AIOCD Mumbai (Annexure- III, Page No. 67 of the DG report).
- (g) The USV had submitted that it follows industry practice of PIS approval (or consent in any other form) which varies from state to state. It had also stated that such approvals are obtained from concerned State/District Associations of Chemist & Druggists affiliated to AIOCD (Annexure-IX Page No. 394 of the DG report).

- (h) Novartis had stated that it seeks PIS approval from AIOCD or its affiliated State Associations and that without such approvals new products are not allowed to be launched or introduced in the distribution channels. The company had also stated that obtaining a PIS on the payment of a fee is a mandatory requirement under the DPCO as intimated to them by AIOCD (Annexure-X Page No.510 of the DG report).
- (i) GlaxoSmithKline had informed that PIS is in the form of advertisement through a publication of AIOCD for creating awareness amongst the trade of new product launches and it is guided by the same (Annexure-XI Page No.538 of the DG report).
- (j) Corned Chemicals Ltd. had submitted that whenever new products are introduced or any change in packing, formulation or pricing is done then the company pays for the PIS to the concerned Chemists and Druggist Association for advertisement (Annexure-XII Page No.555 of the DG report).
- (k) Janssen division of Johnson & Johnson Ltd had stated that before launching a new product the company obtains Product Information System approval by paying charges for advertisement as new products are not allowed to be launched or introduced in the distribution channels without such approval (Annexure XIII, Page No. 576 of the DG report).
- (l) German Remedies Division of Cadila Healthcare Ltd. had stated that it follows the prevalent industry and market practice (Annexure – XIV Page No. 601 of the DG report).
- (m) Alkem Laboratories had also stated that PIS approval is required and it pays charges for the same in terms of MOU dated 12<sup>th</sup> Sep 2003 (Annexure – XV, Page No. 623 of the DG report).

- (n) Alembic Pharmaceuticals Ltd. had stated that on the issue of PIS, it follows the industry practice which varies in different states (Annexure – XVI, Page No. 655 of the DG report).
- (o) Torrent Pharmaceutical Ltd. had submitted that it seeks PIS approval from convened State / District Associations affiliated to AIOCD (Annexure – XVII, Page No. 667 of the DG report).
- (p) Ranbaxy Laboratories Ltd. had not furnished a direct response to the query and has stated that the information on new product launches are published in newsletters/mailers and such decisions are taken by the company on various factors including the trade custom of the pharmaceutical sector (Annexure-XVIII Page No. 674 of the DG report).
- (q) OPPI had furnished copies of all the eight MOU's signed with AIOCD between 1982 and 2003 wherein the issue of PIS had been mentioned. It had, however, stated that its members companies may be compelled by AIOCD/ its affiliated bodies to seek PIS approval and without such process the new products are not allowed to be launched or introduced in the distribution channels (Annexure-XIX Page No. 684 of the DG report).
- (r) IDMA had also furnished to the DG copy of the MOU between IDMA-OPPI and AIOCD dated 12.09.2003 and had also submitted relevant extracts of the same pertaining to PIS. It has further stated that its member companies obtain PIS approval in terms of the aforesaid MOU (Annexure-XX Page No. 791, 793 & 794 of the DG report).

28.19. From the examination of the evidence forwarded by the DG, as discussed above, the Commission observes that the practice of PIS approval from the State Chemists & Druggist Association on payment of the prescribed charges in the name of advertisement in the association bulletin is again a *sine qua non* in absence of which new products are not allowed to be introduced in the distribution channel. The DG had mentioned that the issue of PIS also forms part of the various MOU's between AIOCD, OPPI and IDMA. It was also mentioned by the DG that the bulletin carries the information as per Form V of the DPCO.

28.20. The justification / rationale for making payment of the prescribed charges for PIS approval had been explained by Shri Aniruddha Rajurkar, Vice President, German Remedies, a division of Cadila Healthcare Ltd. (at page no. 76 of the DG report) that it (PIS approval) helps to circulate and inform large number of retailers regarding price and availability of new products. The relevant excerpts from the reply of Shri Rajurkar is reproduced here under :

“..... As regards PIS approval, the PIS publication from the association helps to circulate and inform large number of retailers regarding price and availability of new products. In the absence of PIS approval, the company would have to bear huge time and money and resources to provide the same information regarding the product and prices to the retailers .....”

28.21. The DG, in this regard, has observed that the payment of PIS charges by the pharma companies in the name of advertisement charges to the State Chemists & Druggists Associations at the time of the product launch or any change in product brand / dosage form / strength thereof in the respective PIS bulletin ensures not only deemed compliance of the law but also enables it to advertise and circulate product information to all the retailers at a very nominal cost. However, the

launch of product in the market being made contingent on PIS approval by the concerned association of Chemists & Druggists sometimes results in restraint of trade and leads to denial of market access / controlling of supply / market for any product of a company which can also deprive consumers of the benefits of such drugs.

- 28.22. The DG has mentioned that there are many instances where the association of Chemists & Druggists refuses to grant PIS approval on a variety of factors, including asking for charges in excess of the prescribed charges in the MOU. The Secretary General of IDMA has also testified to this effect. As and when the different AIOCD affiliates ask for exorbitant charges, the new product launches get delayed and cause hindrance to freedom of trade of the manufacturers and deprive the consumers of the products. The DG, in view of the same, has concluded that any attempt on the part of the members of AIOCD and or its affiliates to delay or withhold any PIS approval on any ground which limits or controls supply or market thereof has to be treated as a kind of boycott, thus attracting the provisions of Section 3(3) (b), read with Section 3(1) of the Act.
- 28.23. AIOCD in its reply to the DG report has emphasized that the conclusion of DG is not based on any economic analysis and also that the relevant market has been determined by the DG incorrectly. As per AIOCD, the relevant product market with respect to AIOCD has to be related to the PIS service rendered by it and therefore has contended that in absence of an appropriate market definition, the conclusion of violation of Section 3(3) (a) and 3 (3) (b) drawn by the DG in his report is not sustainable in the eyes of law.
- 28.24. In this regard, as also held in MRTP case no. C-127/2009/DGIR(4/28) in the matter of Varca Druggist & Chemist & Ors. Vs. Chemist & Druggist Association of Goa, the Commission is of the view that the contention raised by AIOCD are flawed and



contrary to scheme and provisions of the Act as for finding contravention under Section 3, the delineation of relevant market is not required.

28.25. In view of the preceding discussion and assessment of evidence forwarded by DG, the Commission is in agreement with the DG's findings that AIOCD and its affiliates actions regarding delay or withholding of PIS approval on any ground is in violation of the provisions of Section 3 (3) (b) read with Section 3 of the Act.

### **On the issue of Fixed Trade Margins**

28.26. DG has observed that the MOU between AIOCD, OPPI and IDMA have directly or indirectly led to the determination of the purchase or sale prices of drugs in the market and the said conduct therefore falls within the mischief contained in Section 3(3)(a) of the Act.

28.27. The evidence collected / forwarded by DG in this regard are as under:

(a) USV had submitted that it follows the industry practice, which is 16% for retailers and 8% for wholesalers for scheduled formulations as per para 19 of the DPCO 1995 and 20% for retailers and 10% for wholesalers for non-scheduled formulations (Annexure-IX Page No.394 of the DG report).

(b) NOVARTIS (NIL) had stated that the trade margins of non scheduled drugs are fixed on the basis of market considerations and do not exceed 10% for wholesalers and 20% for retailers and the trade margins for scheduled drugs are fixed on the basis of the DPCO and is 8% for wholesalers and 16% for retailers (Annexure-X Page No.510-511 of the DG report).

- (c) GlaxoSmithKline had informed that trade margins for scheduled drugs are guided by the DPCO. It had also stated that for the non-scheduled drugs, the trade margins are decided based on its internal costing and other parameters which includes the MOU of AIOCD (Annexure-XI Page No.538 & 540 of the DG report).
- (d) Corned Chemicals Ltd. had also stated that the trade margins for wholesalers and retailers are as per the norms / guidelines agreed by and between IDMA, AIOCD and OPPI. It had further stated that for scheduled drugs the margin for wholesaler is 8% and for retailers the margin is 16%, for non-scheduled products the margins for wholesalers is 10% and for retailers is 20% (Annexure-XII Page No.555, 556 & 558 of the DG report).
- (e) Janssen division of Johnson & Johnson Ltd. had furnished the margin structure followed by the company as under and had stated that none of its products are covered under the DPCO (Annexure XIII Page NO. 576-577 of the DG report). It had further stated that none of its products are covered under the DPCO (Annexure XIII Page NO. 576-577 of the DG report).
- 10% for distributors and 20% for retailers for all locally manufactured and traded non scheduled formulations
- 8% for distributors and 16% for retailers for all imported formulations.
- (f) German Remedies Division of Cadila Healthcare Ltd. had stated that it follows the DPCO guidelines for scheduled formulations and practice / past practice of the company for non scheduled formulations ( Annexure - XIV Page No.601-602 of the DG report).

- (g) Alembic Pharmaceuticals Ltd. had stated that for scheduled formulations, the margin is fixed at 8% for wholesaler stockists and 16% for Retailers as per DPCO,1995 and for non-scheduled formulations is 10% for wholesaler stockists and 20% for retailers. (Annexure XVI Page No.555 of the DG report).
  - (h) Alkem Laboratories Ltd. had stated that as regards the trade margins, it follows MOU dated 12th September, 2003 entered between IDMA, OPPI and AIOCD. (Annexure-XV Page No.623 of the DG report).
  - (i) Torrent Pharmaceuticals Ltd. had stated that it follows the DPCO norms for scheduled formulations and for non scheduled formulations it follows the prevailing industry practice (Annexure XV Page No. 668 of the DG report).
  - (j) Ranbaxy Laboratories Ltd. had stated that the trade margins for DPCO products are as per the stipulations of the DPCO and for the non scheduled formulations, is generally around 10% of the margin for the stockists and 20% of the margin for the retailers. (Annexure SVII Page No. 674 of the DG report).
- 28.28. On perusal of the DG report it is found that IDMA, OPPI and all other parties, whose replies / statements are on record, had also attested to the above industry practice.
- 28.29. From the examination of the evidence given by the DG, Commission observes that the practice of fixed trade margins results from the MOU's between AIOCD, OPPI and IDMA. The Commission also notes that as a result of the above said industry practice the trade margins are not being determined on a competitive basis nor are allowed to fall below the agreed percentages. The Commission, in this regard, further notes that while the margin of 16% for retailer is fixed for scheduled (controlled) drugs in terms of para 19 of the DPCO, for non-scheduled drugs there

is no statutory obligations to pay any specified margins either to the retailers or to the wholesalers.

- 28.30. The Commission has also noted from the DG report that the Director General of OPPI (at page 81 of the DG report) on the issue of trade margins have provided some justification/rationale for it. The relevant excerpts from his statement are reproduced hereunder:

*“..... 10% and 20% trade discount were mutually agreed between the industry and the AIOCD before Competition Law came in place for the manufacturers to conduct their business in a predictable and smother way. The similar process was followed even in DPCO 1995 i.e. 8% for wholesalers and 16% for retailers for the products under price control. The trade demand were at that time when the government has specified 8% and 16% margin for DPCO products, the non DPCO products (without price control) should merit slightly higher margin.”*

- 28.31. On examination of the origin of the practice of fixed trade margin, justification forwarded by the parties and DG’s observation in this regard, the Commission is of the view that there is no reason to disagree with the DG’s observation that the agreement to give fixed trade margins to the wholesalers and the retailers has the effect of directly or indirectly determining the purchase or sale prices of the drugs in the market and the said conduct of AIOCD, its constituents and affiliates fall within the mischief contained in Section 3(3)(a) of the Act. There could be no denying to the fact that had there been no fixed trade margins, competition amongst the retailers would have forced them to reduce their trade margins resulting into sale of drugs at prices even below the MRP.

**On the issue of Boycott:**

- 28.32. DG has observed that AIOCD and / or its affiliated State / District Trade Associations do boycott and / or issue threats of boycott on various issues to coerce the pharmaceutical companies to agree to their demands, a large part of which appear to originate from the MOU signed between AIOCD - OPPI - IDMA or appear to be related to various association related issues and / or factionalism within the chemist and druggist association.
- 28.33. DG has further observed that AIOCD and its affiliates indulge in practices of boycotting pharma companies on various issues contained in the MOU's. In case of internal disagreements / factionalism with the association, different groups try to enforce their decisions on the pharmaceutical companies in the matter of appointment of stockist being made contingent on NOC from a particular faction, payment of PIS charges to a particular group etc. The, act of boycott either to enforce the covenants of the MOU's or otherwise on account of internal dissensions cannot be deemed to be pro-competitive in any manner as it has the effect limiting or controlling supplies / distribution / availability etc. of drugs which causes appreciable adverse effect on competition and results in denial of the market access for the pharmaceuticals companies and non availability of drugs to the consumers.
- 28.34. On the basis of the above, DG has held that the act of boycott contravenes the provisions of Section 3(3)(b) read with Section 3(1) of the Act.
- 28.35. The evidence collected / forwarded by DG in this regard are as under:

- (a) List of several documents furnished during the course of recording of his statement by Shri P. K. Mohapatra, General Secretary, UCDA, on 21.10.2011 has also been enclosed by the DG with his report. The same are as under:
- (i) Copy of letter dated 22.12.08 to Dr. Reddy's Laboratories Ltd., Bhubaneswar office, for non-supply of goods to Amit Pharmaceuticals, Bhubaneswar and a similar letter dt 13.01.09 to Drugs Controller regarding non supply of goods to Amit Pharmaceuticals, allegedly stopped at the behest of AIOCD - Utkal Committee, as furnished by the Informant (Annexure-III Page No.72-73 of the DG report).
  - (ii) Letter dated 10.12.08 to Zuventus Healthcare Limited, Cuttack for non-execution of valid orders of S. S. Pharmaceuticals Rourkela & Life Care Rourkela. A similar letter dated 12.12.08 to Drugs Controller, Bhubaneswar regarding non-supply of goods has also been enclosed by the DG with his report (Annexure-III Page No.74-75 of the DG report).
  - (iii) Letter dated 21.10.09 to Capital Agencies for non-supply of stocks on receipt of indent of S.S. Pharmaceuticals, Rourkela. A similar letter dated 23.11.09 to the Drugs Inspector Cuttack for non-supply of drugs has also been enclosed by the DG with his report (Annexure-III Page No. 76 & 78 of the DG report).
  - (iv) Letter dated 30.06.10 to Aristo Pharmaceuticals Pvt. Ltd. for non supply to Chakodola Enterprises & Uditnagar Medical Agencies Rourkela (Annexure-IH Page No.79 of the DG report).

- (v) Letter dated 30.06.09 & 24.12.09 to Abbot India Ltd. for non-supply of goods to Indian Pharmaceuticals, Cuttack (Annexure-III Page No.81-82 of the DG report).
- (vi) Letter dated 28.12.09 to Pfizer Ltd, for non supplies of goods to Indian Pharmaceuticals, Cuttack (Annexure-III Page No.83 of the DG report).
- (vii) Letter dated 04.03.10 to Ajanta Pharma Ltd. for non supplies of goods to KPS Agencies, Berhampur (Annexure - III Page No.84 of the DG report).
- (viii) Letter dated 15.12.10 to Jaksons Agencies, Cuttack, the agents of Ophtho Remedies Ltd. for non supply of stocks to Sangita Enterprises (Annexure-III Page No.85 of the DG report).
- (ix) Letter dated 14.07.11 to Raptakoss Brett & Co. regarding non-supply of goods to Drug Deal, Aska, Ganjam. It was also observed from the order dated 15.09.2011 of the Drugs Controller by the DG that Raptakoss Brett & Co. had been directed to resume supplies (Annexure-III Page No. 86-87 of the DG report).
- (x) Letter dated 17.02.11 to Glenmark Pharmaceuticals Ltd. for non supply of Drugs to Jyoti Agencies, Cuttack (Annexure-III Page No. 89 of the DG report).
- (xi) UCDA vide letter dated 31.10.2011 had also enclosed copy of show cause notice issued by the Drug Controller, Odisha dated 17.10.2011 to Dr. Reddy's Laboratories Ltd., Bhubaneswar in the matter of stoppage of supply of Drugs to Ashoka Pharmaceuticals. It had also enclosed a copy of notice dated 17.6.2005 addressed to the then General Secretary UCDA, Shri P. K. Das by the Drug Controller stating that the boycott, if any, of the products of Franco India

Pharma, Mumbai and Juggat Pharma, Bangalore be lifted forthwith. (Annexure-III Page No.116 & 119 of the DG report).

(b) The DG has also enclosed with his report several documents furnished by Informant. Some of the documents submitted by the Informant in this regard are as under:

- (i) Letter of Parekh Pharmaceuticals dated 18.05.2011 addressed to the Drug Inspector, Cuttack in which he was requested to intervene in the matter of non supply of drugs by Sun Pharmaceutical Industries Ltd. and their C&FA M/s Aditya Medi Sales, allegedly at the behest of AIOCD. (Annexure - IV Page No. 198 of the DG report).
- (ii) Letter issued by the Drug Controller Odisha dated 31.07.2010 addressed to M/s Dr. Reddy's Laboratories Ltd., Bhubaneswar (a depot of Dr. Reddy's of Hyderabad) instructing them not to withhold or refuse sale of drugs to Ashok Pharmaceuticals, Bhubaneswar. (Annexure-IV Page No. 199 of the DG report).
- (iii) Letter dated 07.04,2011 to Torrent Pharmaceuticals Ltd., letter dated 17.02,2011 to Glenmark Pharmaceuticals Ltd., letter dated 24.02.2011 to Akumentis Healthcare Ltd. and letter dated 23-05-2011 to Kayal Associates, Cuttack (C&F Agent of Akumentis), all issued by Shri Prasanta Mohapartra, General Secretary, UCDA, Bhubaneswar, requesting them to resume supplies to various parties whose supplies were allegedly stopped at the behest of AIOCD (Annexure-III Page No.89 & Annexure-IV Page Nos. 205 & 206A-206D of the DG report).



- (iv) A letter dated 16.08.2011 of Kayal Associates, C&F agent of Akumentis Healthcare Ltd. addressed to the Drugs Inspector Cuttack explaining that the supply to M/s Sworna Pharmaceuticals had been stopped on account of directions of the company as the said stockist did not produce the required NOC from AIOCD (Annexure-IV Page No.292 of the DG report).
- (c) M/s Sanjeebant Agencies had informed the DG that despite submitting NOC M/s Life Star (a Mankind group company) and M/s Mano Pharma (a divisions of Orchid Chemicals and Pharmaceuticals Ltd.) had not supplied goods to it (Annexure-VI Page No.343-344 of the DG report).
- (d) Suraj Traders had also informed the DG that it had written letters to the Drugs Inspector, Kendrapada with copy to the Drugs Controller, Odisha regarding non supply of goods and requested the authorities to take action against Torrent Pharmaceuticals (Annexure-VII Page No. 361 of the DG report).
- (e) The DG has also mentioned that the pharma companies were also boycotted on the issue of trade margins when they tried to market their products directly to the consumers. The DG has given instance of Cipla which when tried to bypass the supply chain by providing home service for its products to the consumers had to face strong resistance from the traders lobby, which stopped stocking Cipla's product. As a result, Cipla had to withdraw the scheme. (Annexure XXIII, Page No. 1097 of the DG report).
- (f) Several Pharmaceutical companies detailed hereunder had also stated to the DG that their products had been boycotted by AIOCD and its affiliated State / District Chemists & Druggists Associations.

- (i) GlaxoSmithKline Ltd. in its reply to DG had stated that in the past there had been instances where its products had been boycotted by AIOCD or its affiliated State / District Associations (Annexure-XI Page No.538 of the DG report).
  
- (ii) Novartis India Ltd. had also stated that the Company in the recent past had faced some instances of threats as well as a few instances of trade boycott in various parts of the country. In this regard DG has also collected copies of news items dated 11.04.2009 and 13.04.2009 which reveal that approximately 60 drugs and formulations of Novartis were boycotted for 2-3 days in Mumbai and Thane on the grounds of alleged 'unethical promotion' of 'Khatika Churna-Calcium Sandoz @ 250' and the pharma traders in Mumbai vowed to extend the boycott to other parts of the country. A copy of the said new items has been appended with the reply of Novartis India Ltd. (Annexure-X Page No.512 & 529 of the DG report).
  
- (iii) Janssen had also replied that the products of its Consumer Products Division were boycotted in the year 2002 and they had moved to the MRTP Commission in this regard. It had further informed that Janssen was forced to withhold supplies to the Peeveear Medical Agencies, Kerala in view of the boycott on purchase of the Company's products with effect from 12.04.2011 to 26.04.2011 (Annexure-XII Page No.578 of the DG report).
  
- (iv) Corned Chemicals Ltd. had also stated that it did have a problem in this regard towards the end of the 2009 but that issue was resolved with the State Association after intervention of AIOCD. (Annexure-XII Page No. 556 of the DG report).

(v) Alembic Pharmaceuticals Ltd. in response to DG's query regarding instances of boycott faced by it, though, had not furnished specific details but had also not denied the same and had only stated that there were difference between with the concerned Association which had been mutually sorted out in due course. (Annexure – XVI Page No. 655 of the DG report).

(g) The DG has also enclosed copies of several letters issued by Assam Drugs Dealers Association (ADDA), affiliated to AIOCD, wherein the General Secretary of the ADDA had issued call of organizational movement / stoppage of purchase and sale of drugs of several companies on various dates starting from 11.01.2010 till 19.09.2011 to all its members. As per the DG, the call of boycott had been made against the following companies:

- (I) Corned Chemicals Limited
- (II) Piramal Health Care Limited
- (III) Pharmed Limited
- (IV) Lupin Limited
- (V) VHB Limited
- (VI) Sun Pharmaceuticals Ind. Limited.
- (VII) Alembic Limited
- (VIII) Ranbaxy Laboratories Limited
- (IX) Unichem Laboratories Limited
- (X) Morepen Laboratories Limited
- (XI) Alkem Laboratories Limited
- (XII) Cosmic Life Sciences Limited
- (XIII) Dr. Morepen Limited
- (XIV) Wockhardt Limited
- (XV) Ajanta Pharma Limited

(XVI) Abnot India Pharma Limited

(XVII) Khandelwal Laboratories Private Limited

(h) The DG has also collected, in connection with Case No. 41 / 2011 (Sandhya Drug Agencies vs. Assam Drug Dealers Association and Ors.), several letters issued to several Pharma companies directing them to call back the goods dispatched to several stockists who are non member of their Association or who have indulged in anti Associational activities ( Annexure – XXII Page Nos. 1063-1095 of the DG report).

(i) OPPI in its reply dated 27.07.2011 before the DG had stated that since 2009 and even earlier also many of its members have complained a trade boycotts from AIOCD and its affiliated State Chemist and Drug Associations. It had also stated that the exact details of each such threat of boycott have not been documented by OPPI (Annexure XIX, Page No.685 of the DG report).

(j) IDMA in its reply dated 03.08.2011 before the DG had stated that to their knowledge, there has been no such activity of boycott between 2009 to date. It had also mentioned that in most cases companies do not send them complaints in writing due to the fact that companies do not want to antagonize AIOCD (Annexure XX, Page No. 791-792 of the DG report).

28.36. From the examination of the evidence given by the DG, the Commission observes that the DG report concludes that AIOCD and its affiliates indulge in practice of boycotting pharma companies on various issues contained in the MOU's. The DG, in this regard, has observed that the act of boycott, either to enforce covenants of the MOU's or otherwise, has the effect of limiting or controlling the supplies, distributions, availability of drugs which causes Appreciable Adverse Effect on Competition (AAEC) for the pharma companies and non-availability to the consumers.

28.37. On assessment of DG's observation and recognizing the fact that such boycott deny the market to the pharma companies when AIOCD and its affiliates try to enforce their decision on the pharma companies on the appointment of stockist (issue of NOC), mandatory payment of PIS charges etc, the Commission records its agreement with the DG's finding that such boycott have the effect of limiting or controlling supplies/distribution/availability of drugs which cause AAEC as it results in denial to market access to the pharma companies and non-availability of drugs to the consumers. The Commission, thus, is of the considered view that the act of boycott by AIOCD and its affiliates is in contravention of the Section 3(3)(b) read with Section 3(1) of the Act.

**29. Determination of Issue No. 2**

29.1. Now the Commission proceeds to determine the issue no. 2 i.e. whether OPPI and IDMA are also liable for violation of Section 3(3) of the Act along with AIOCD.

29.2. DG has come to conclusion that the decision amongst the members of OPPI and IDMA to enter into a tripartite agreements between AIOCD, OPPI and IDMA and to following the decision contained in the MOU's pertaining to NOC/LOC, PIS, fixed trade margins amounts to an anticompetitive agreement within the meaning of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act.

29.3. The relevant Section 3(3) of the Act has already been discussed in detail while determining the preceding issue. For the sake of brevity, the same is not being reproduced here.

29.4. The Commission has noted that OPPI vide its letter 07.11.2011 had submitted that its executive committee has not renewed the MOU's with AIOCD and had, thus,

contended that the previous arrangements including the MOU's stands expired. It is also noted that IDMA vide its letter 20.12.2011 had also forwarded a resolution dated 02.12.2011 of its executive committee wherein it has been resolved that all the MOU's entered between IDMA and AIOCD between the years 1982 to 2003 have been terminated.

- 29.5. DG, not being satisfied with the justification offered by OPPI and IDMA in this regard, had observed that neither OPPI nor IDMA has intimated that they have issued any public statement or have even intimated their members that the MOU's between AIOCD, OPPI and IDMA had been terminated. The DG had also observed on the basis of replies of various pharmaceutical companies who are affiliated to OPPI that the agreement (understanding) of the parties, which was earlier documented by way of MOU's between AIOCD, OPPI and IDMA, is very much practiced by them. With regard to the resolution of IDMA, the DG has observed that there is no evidence to suggest that its members do not practice the content of the MOU's any longer.
- 29.6. In view of the above, DG had observed that the stand of OPPI and IDMA that the various MOU's signed between AIOCD, OPPI and IDMA had been terminated or stood expired, does not have any substance and appeared to be an attempt on their part to wriggle out of their culpability in violation of the Act. The DG had, therefore, concluded that the anticompetitive practices of AIOCD, OPPI and IDMA are enforced notwithstanding above said communications.
- 29.7. However, leaving apart the observation of DG on possibility of continuance of the practice by OPPI and IDMA, the basic issue arising for consideration of the Commission here is that whether the conduct of AIOCD, OPPI and IDMA, arising out of the various MOU's between them, can be the subject of examination under Section 3(3) of the Act.

- 29.8. In this regard, it has been noted by the Commission that OPPI, established in 1965, describes itself on its website as an association of research based international and large pharmaceutical companies in India and also as a scientific and professional body. IDMA, formed in 1961, as noted from its website, has about 750 wholly Indian large, medium and small pharmaceutical companies and State Boards in Gujarat, Himachal Pradesh, Uttaranchal, Haryana, Tamil Nadu and West Bengal as its members.
- 29.9. Thus it can be seen that OPPI and IDMA are the associations of manufacturers of drugs whereas, on the other hand, AIOCD is the all India association of chemists & druggists. Section 3 (3) of the Act examines anti-competitive agreement amongst the entities engaged in identical or similar trade of goods or provision of services; whereas the anticompetitive agreements amongst entities at different stages or levels of the production chain fall under Section 3(4) of the Act.
- 29.10. In view of the above discussion, AIOCD, OPPI and IDMA cannot be said to be the associations of enterprises who are engaged in identical or similar trades of goods or provision of services. Therefore, the MOU between AIOCD, OPPI and IDMA cannot be examined for violation of Section 3(3) so far as the OPPI and IDMA are concerned.
- 29.11. Section 3(4) of the Act provides that agreement amongst enterprises or persons at different stages or levels of the production chain in different market, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provisions of services including (a) tie-in arrangement; (b) exclusive supply agreement; (c) exclusive distribution agreement; (d) refusal to deal; (e) resale price maintenance, shall be an agreement in contravention of Section 3(1) of the Act if such agreement causes or is likely to cause an AAEC in India.

29.12. Here, the Commission notes that AIOCD, IDMA and OPPI are associations of enterprises and their constituent enterprises are engaged in activities mentioned in Section 2(h) of the Act. But, AIOCD, IDMA and OPPI themselves are not engaged in any activity mentioned in Section 2(h) of the Act and therefore, cannot be held to be “enterprises” under Section 2(h) of the Act. Therefore, they cannot be said to be part of a vertical chain as envisaged under Section 3(4) of the Act and, consequently agreement in form of MoU does not fall under the ambit of Section 3(4) of the Act.

29.13. Moreover, the fact which should also not be lost sight of is that why an association like IDMA and OPPI would restrict / limit the supply of its own products. Such limit or restrict would obviously be against the very interest of the said associations. OPPI in its written submission had submitted that it itself is the biggest victim of the practices adopted by AIOCD. OPPI had further submitted that the PIS system was grossly misused by AIOCD which ultimately limited supply in the market for pharmaceutical drugs. OPPI has emphasized that the only reason why pharmaceutical companies are compelled till date to avail of the PIS approval mechanism is that they face the risk of boycott and delays if they do not get the approval from AIOCD. Further, it is worthwhile to note that IDMA vide its resolution dated 02.12.2011 had resolved that all the MOUs entered between IDMA and AIOCD during the years 1982 to 2003 deemed to be operative on that date had been terminated and IDMA had informed its members the same through a separate circular dated 01.02.2012. Likewise OPPI had also submitted that all the MOUs with AIOCD were terminated when the Act was enforced in 2009, based on the well documented and recorded legal advice of its legal committee and the MOUs were not renewed despite receiving ultimatums from AIOCD to do so by the 11.09.2009.



29.14. Considering the fact that the members of IDMA and OPPI do not stand to gain by offering fixed trade margins, the argument advanced by these associations that they are compelled to maintain fixed trade margins by AIOCD under the threat of boycott etc. also has some force. The Commission in this regard is of the view that the OPPI, IDMA and its members appear to be victims of the exploitative tactics of AIOCD and their conduct of entering into MOU with AIOCD is not at par with the conduct of the AIOCD as far as the violation of the provisions of the Act is concerned. Therefore, IDMA and OPPI cannot be held liable for violation of the provisions of the Act.

30. **Determination of Issue no. 3**

After having dealt with the first two issues the Commission proceeds to decide the issue no. 3 i.e. whether the members / office bearers of the Executive Committees of AIOCD, OPPI and IDMA are also liable for violation of Section 3 of the Act?

30.1 As held by the Commission in its order in MRTP case no. C-127/2009/DGIR (4/28) in the matter of Varca Druggist & Chemist and Ors. Vs. Chemists & Druggists Association, Goa, in case of association of enterprises comprising of entities which themselves are enterprises, liability for anti-competitive conduct may arise two fold. While the association of enterprises may be liable for breach of Section 3 of the Act embodied in a decision taken by the association, the constituent enterprises of association may also be held liable for contravention of Section 3 of the Act arising from an agreement or concerted practice among them. Moreover, the anti-competitive decision or practice of the association can be attributed to the members who were responsible for running the affairs of the association and actively participated in giving effect to the anti-competitive decision for practice of the association.

30.2 In the present matter, the Commission had asked AIOCD, OPPI, IDMA and USV Ltd. to furnish the names and addresses of its office bearers and annual turnover of the enterprises / firm, which they represent for the last three years. It is noted that the office bearers of AIOCD have not filed the financial statements of the enterprises they represent, so far. Therefore, the Commission has decided to deal with the issues of passing orders under Section 27 of the Act against the individual office bearers of AIOCD separately when the requisite information is submitted by them to the Commission. There is no liability of office bearers of OPPI and IDMA in view of the finding given on issue no. 2.

**31. Determination of Issue No. 4**

31.1 The Informant in his information had not made any specific allegation against USV and had submitted that AIOCD is threatening / coercing USV to terminate its C&F arrangement with the Informant. The Informant had also prayed for granting interim relief in its favour so that its C&F Agency is not terminated by USV by giving effect to its letter dated 04.05.2011.

31.2 The Commission had considered the prayer of the Informant for passing interim order in its meeting held on 16.05.2011 and having noted that all the necessary conditions for granting the interim relief were satisfied, allowed the prayer of the Informant for grant of interim relief and passed the order restraining USV from giving effect to its letter dated 04.05.2011 regarding termination of C&F Agency. AIOCD was also restrained from issuing any direction / threat to the USV for terminating its C&F Agency with the Informant.

- 31.3 Thereafter, the Commission in its meeting held on 01.07.2011, in view of cumulative effect of the facts and circumstances, again noted that the essential ingredients for interim relief in favour of the Informant are clearly established and therefore, confirmed the interim order dated 16.05.2011.
- 31.4 DG has found no evidence against USV. The Informant while submitting its reply / comments to the DG report, had contended that though the Investigation Report concludes that the practice of requirement of NOC and payment of PIS is anti-competitive and falls within the mischief enshrined in Section 3(3) (a) and 3(3) (b) read with Section 3(1) of the Act, no finding or conclusion is drawn against the USV. In this regard, the Informant had emphasized that the USV and other pharmaceutical companies are as much a party to the anti-competitive practices as is AIOCD and its affiliates and submitted that there is no reason in not penalizing USV for its conduct.
- 31.5 The Commission, in this regard, is of the view that after making the interim order absolute in favour of the Informant, there is left nothing against USV. The Informant is aggrieved because of the practices being followed by AIOCD and its affiliates for which they are held liable. Under the circumstances, there is no need to pass any specific order against USV Ltd.

#### **Order under Section 27 of the Act**

32. As the Commission has found the AIOCD in violation of the provisions of Section 3(3) (a) and Section 3(3) (b) of the Act, the Commission now proceeds to pass suitable orders under Section 27 of the Act against the AIOCD including penalty.

33. As per the financial statements of AIOCD, it had the following turnover / receipts during the preceding three years i.e. 2008-09, 2009-10 & 2010-11:

Name	Turnover / Receipts for Financial Years (In Rupees)		
	2008-09	2009-10	2010-11
<b>AIOCD</b>	<b>5,79,55,458.62</b>	<b>4,13,18,692.41</b>	<b>4,29,44,230.00</b>

34. On the quantum of penalty, Commission considers that severity of penalty should be proportionate to the severity of infraction. Thus, proportionality requires that the level of punishment should be scaled relative to the severity of violation. Here, it can be reiterated that AIOCD is the apex body of Chemists and Druggists having full control over the stockists / retailers of drugs and medicines all over the country. It is evident that AIOCD because of its position is able to continuously engage in limiting and controlling the supply and market and influencing the prices of the drugs and pharmaceutical products by insisting upon NOC for appointment of stockists, fixation of trade margins etc. It cannot be doubted that had these practices not been there, the consumers at large would have been benefited in monetary terms and otherwise and, accordingly, the conduct of AIOCD needs to be sternly dealt with. Therefore, the Commission after considering the facts and circumstances of the present case is of the opinion that it is appropriate to impose penalty @ 10% of the average of the receipts for financial years 2008-09, 2009-10 & 2010-11 on AIOCD. Therefore, in exercise of powers under Section 27 (b) of the Act, the Commission imposes penalty on AIOCD as under:

Name	2008-09		2009-10		2010-11		Average of (A), (B) and (C) [(A) +(B)+(C)] ÷3 (In Rs.)
	Gross receipt / turnover (Rounded off) (In Rs.)	10% of receipt/ turnover (Rounded off) (In Rs.) (A)	Gross receipt / turnover (Rounded off) (In Rs.)	10% of receipt/ turnover (Rounded off)(In Rs.) (B)	Gross receipt / turnover (Rounded off) (In Rs.)	10% of receipt/ turnover (Rounded off) (In Rs.) (C)	
<i>AIOCD</i>	<i>5,79,55,459</i>	<i>57,95,546</i>	<i>4,13,18,692</i>	<i>41,31,869</i>	<i>4,29,44,230</i>	<i>42,94,423</i>	<i>47,40,613</i>

35. Accordingly, the Commission passes the following orders under Section 27 of the Act against AIOCD.

- (i) AIOCD and its members are directed to cease and desist from indulging in and following the practices which have been found anti-competitive in violation of Section 3 of the Act in the preceding paras of this order.
- (ii) The AIOCD is further directed to file an undertaking that the practices carried on by it and its members regarding grant of NOC for appointment of stockists, fixation of trade margins, collection of PIS charges and boycott of products of pharmaceutical companies have been discontinued within 60 days from the date of receipt of this order.
- (iii) AIOCD shall issue a letter to the organization of pharmaceutical producers of India, Indian Drug Manufacturers Association and to USV Limited i.e. OP-2 to OP-4 that there was no requirement of obtaining an NOC for appointment of stockists and the pharmaceutical companies, stockists, whole sellers were at liberty to give discounts to the customers.
- (iv) It shall also inform all Chemists & Druggists and all its members and associations by sending a circular/letter that they were free to give discounts to the customers.

(v) It shall also issue circular that PIS charges were not mandatory and PIS services could be availed by manufacturers/pharmaceuticals firms on voluntary basis.

(vi) The Penalty of Rs. 47,40,613 is also imposed on AIOCD. The penalty shall be paid by it within 60 days from the date of receipt of copy of this order.

36. Secretary is directed to send a copy of this order to the concerned parties for compliance immediately.

Sd/-  
**H. C. Gupta**  
(Member)

Sd/-  
**Anurag Goel**  
(Member)

Sd/-  
**M. L. Tayal**  
(Member)

Sd/-  
**Ashok Chawla**  
(Chairperson)