



COMPETITION COMMISSION OF INDIA

Case No. 25 of 2019

In Re:

**Ashok Suchde
15 Makani Manor
16 Peddar Road, Mumbai
Maharashtra – 400026.**

Informant

And

**Pernod Ricard India Private Limited
5th Floor, D-3, District Center
Saket, New Delhi – 110017.**

Opposite Party

CORAM

**Ashok Kumar Gupta
Chairperson**

**Sangeeta Verma
Member**

**Bhagwant Singh Bishnoi
Member**

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

1. The present Information has been filed by Mr. Ashok Suchde (the ‘**Informant**’) under Section 19(1)(a) of the Competition Act, 2002 (the ‘**Act**’) against Pernod Ricard India Private Limited (the ‘**Opposite Party**’/ ‘**OP**’), *inter alia*, alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. The Informant is the proprietor of Vyn Marketing, a company incorporated under the provisions of the erstwhile Companies Act, 1956 and having its registered office at Mumbai. The OP, a wholly owned subsidiary of Pernod Ricard SA, is engaged in the manufacturing, sale and distribution of various alcoholic products in India.



3. As per the Informant, Vyn Marketing has been a service provider for the OP, in the territories of Silvassa (Union Territory of Dadra and Nagar Haveli) and Gujarat for the last ten years. Vyn Marketing, through its proprietor *i.e.* the Informant, entered into an agreement dated 19.12.2016 (the '**Agreement**') with the OP whereunder, the former was required to assist the latter in ascertaining the demand-supply position of various alcoholic brands of the OP and to procure orders from distributors/ wholesalers; to regularly visit the retailers to educate them about product availability and ensure product visibility at their stores; to provide necessary market research/ intelligence and feedback in respect of market acceptance of the OP's products and assist the OP in executing all methods of promotion for increased market visibility; to monitor the products bought by retailers and update the OP about the same and ensure that the retailers are maintaining adequate stocks; to ensure compliances of contracts between the OP and the distributors/ wholesalers; to carry out marketing and brand building activities as per the instructions of the OP; to assist in undertaking necessary correspondences with the distributors/ wholesalers as per the instructions of the OP and periodically follow up with the distributors/ wholesalers for payments towards supplies made by the OP, *etc.*
4. The Informant has alleged that on 03.11.2017, the OP abruptly and without assigning any reasons, terminated the Agreement, despite due discharge of obligations under the Agreement by Vyn Marketing. Further, such termination was done without providing the 90 days' notice as required under Clause 21 of the Agreement. Subsequently, as per the Informant, the OP entered into a Settlement Agreement in January, 2018 with Vyn Marketing as per which, the OP paid a sum of ₹1,30,30,680/- to Vyn Marketing.
5. The Informant has submitted that after termination of the Agreement with Vyn Marketing, the OP entered into a new agreement with one ZK Marketing and thereby appointed ZK Marketing as its new service provider, who immediately *w.e.f.* 05.11.2017, started providing services to the OP.



6. It has been further alleged that ZK Marketing has no knowledge/ experience in the relevant field. It has been appointed as service provider by the OP only because its officers are persons of political parties. According to the Informant, such appointment has been done by the OP only with the motive to gain an unfair advantage as it would be able to receive kickbacks from ZK Marketing *in lieu* of dealership. This is alleged to be an anti-competitive agreement between the OP and ZK Marketing, having an adverse effect on competition ('AAEC') in India, in contravention of the provisions of Section 3(4) of the Act.
7. The Informant has also alleged that the OP has abused its dominant position in violation of the provisions of Section 4 of the Act. As per the Informant, the abrupt termination of the Agreement by the OP and subsequent appointment of an agency which has political connections but no relevant experience evidences such abuse by the OP.
8. Based on the aforesaid averment and allegations, the present Information has been filed by the Informant against the OP alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.
9. The Commission has perused the Information and the related information available in the public domain. The main grievance of the Informant emanates out of the alleged unilateral termination by the OP of the Agreement and the subsequent appointment of ZK Marketing in its place.
10. At the outset, it is observed that post-termination of the Agreement, the OP and Vyn Marketing had reached a settlement agreement in January, 2018, whereby compensation towards notice period, pending service charges *etc.* were paid to the Informant by the OP. Be that as it may, the Commission proceeds to examine the allegations levelled by the Informant under the statutory scheme of the Act.



11. On perusal of the Information, it is seen that the allegations made by the Informant against the OP essentially pertain to termination of the Agreement without giving 90 days' advance notice as per the Agreement, appointment of ZK Marketing as service provider by the OP in place of the Informant, due to ZK Marketing having political influence *etc.* The Informant has also alleged illegal grant of L2 licenses to ZK Marketing in 2015 and renewal thereof in 2016 despite the stated policy of the Excise Department, Dadra and Nagra Haveli, *vide* notification dated 02.04.2012, for not granting fresh licenses.

12. Further, the Informant has alleged that the OP, being a subsidiary of French Company, is bound by and liable under the French anti-corruption law (Sapin II) which stipulates that companies must establish an anti-corruption program to identify and mitigate corruption risks. Further, under Sapin II, the OP is also required to develop and implement a Code of Conduct. The Informant has submitted that the OP's Code of Conduct (the '**Code**') provides that the employees shall act ethically and that their dealings with government officials are made with special precautions. Further, the Code also provides that in case of availing services from a third party, due diligence on part of the OP would be imperative. The Code also prohibits practices such as market sharing, price fixing and abuse of dominant market position to unfairly disadvantage competitors and consumers. As per the Informant, bearing in the mind such Code, the agreement entered into between the OP and ZK Marketing is contrary to the Code as well as in violation of the provisions of the Act.

13. A bare perusal of the allegations made by the Informant indicates that the gravamen of the Informant pertains to appointment of ZK Marketing as its new service provider mainly due to its political and bureaucratic connections, alleged *quid pro quo*, corruption in government department, violation of French law and Code of Conduct by the OP *etc.* In this regard, the Commission is of the considered opinion that such allegations do not reveal any competition issues/



concerns which can be examined within the statutory framework as provided in Sections 3 and 4 of the Act.

14. In view of the above, the Commission is of the view that no case of contravention of either Section 3 or Section 4 of the Act is made out against the OP in the present matter. Therefore, the matter is directed to be closed under the provisions of Section 26(2) of the Act.
15. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-
Ashok Kumar Gupta
(Chairperson)**

**Sd/-
Sangeeta Verma
(Member)**

**Sd/-
Bhagwant Singh Bishnoi
(Member)**

**New Delhi
Date: 16/10/2019**