



COMPETITION COMMISSION OF INDIA
Case No. 28 of 2018

In Re:

Mr. Prabhakar Pandey
C/o Pawan Medical Agencies,
Bhangwa Chungi,
Pratapgarh-230001,
U.P.

Informant

And

Nutricia International Private Limited
The Centrium, Office No. 1,
3rd floor, Phoenix Market City,
LBS Marg, Kurla(W),
Mumbai-400070,
Maharashtra

Opposite Party

CORAM

Mr. Sudhir Mital
Chairperson

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

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

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (the **Act**) by Mr. Prabhakar Pandey (the **Informant**) against Nutricia International Private Limited (the **OP**) alleging contravention of the provisions of Section 4 of the Act.
2. As per the information, the Informant is the proprietor of Pawan Medical Agencies and has been stockist of several pharmaceutical companies including Wockhardt Ltd. since 1995.



3. As stated in the information, the OP is a Danone group company. From the website of Danone it is observed that Danone is a global food and beverage company having four businesses namely dairy and plant-based products, water, early life nutrition products and advanced medical nutrition products¹. The OP is stated to be an Indian subsidiary of Danone².
4. As per the information, Wockhardt Ltd. transferred its mother and child care (MCC) business to the OP. Consequently, the Informant became stockist of OP from 26.07.2012 onwards in the area of Pratapgarh, UP.
5. It has been stated that the Informant had deposited an advance of Rs. 14,137/- on 03.04.2017 into the OP's account for the supply of certain products. It has been alleged by the Informant that the OP neither supplied the said products to the Informant nor gave any response. It has been further alleged that Credit Note amounting to Rs.7,574/- in favour of the Informant is also pending with the OP due to non-supply of goods and that the OP has blocked the Informant's capital amount of approximately Rs. 21,711/- for more than one year. Accordingly, the Informant has submitted that the aforesaid conduct of the OP amounts to abuse of dominance under the provisions of the Act.
6. The Informant has prayed the Commission to direct the OP to supply ordered products to him and continue doing business with him. It is also prayed that the Commission may direct the OP not to abuse its dominant position.
7. The Commission has perused the information submitted by the Informant and the material available on record and also in the public domain. It is noted that the grievance of the Informant is that the OP failed to supply certain goods for which payments had already been made by the Informant.

¹http://danone-danonecom-prod.s3.amazonaws.com/Danone-RA2017-EN-PDF-e-accessible_02.pdf (accessed on 21.08.2018)

² <https://www.danone.com/content/dam/danone-corp/investors/danone-at-a-glance/List%20of%20subsidiaries%202017%20V2.pdf> (accessed on 21.08.2018)



8. The Commission notes that since the allegations of the Informant are with regard to violation of the provisions of Section 4 of the Act, it would be appropriate to first delineate the relevant market and then to assess the dominance of the OP in the same.

9. While no information has been given by the Informant about the exact product(s) ordered or purchased from the OP, it is noted that Wockhardt Ltd. transferred the business of four medical nutritional brands comprising Dexolac, Farex, Nusobee and Protinex under its MCC division to the OP, an Indian subsidiary of Danone group. As mentioned above, Danone is a global food and beverage company having four businesses: dairy and plant-based products, water, early life (baby) nutrition products and advanced medical nutrition products. From the website of Danone (accessed on 21.08.2018), the Commission observes that Dexolac, Farex and Nusobee (lactose and sucrose free) are powdered milk substitutes for infant babies aged between 0 to 24 months. In addition, Danone also sells an Iron fortified milk cereal based complementary food suitable for babies aged between 06 to 24 months under the brand name Farex baby food. Protinex is a protein based nutritional supplement for persons aged above 2 years. The Commission, therefore, is of the view the relevant product markets in the instant case be delineated as (i) *market for infant formula milk*; (ii) *market for baby food nutritional supplements*; and (iii) *market for protein based nutritional supplement products*.

10. With regard to the relevant geographic market, it is observed from the information and public domain that the conditions of competition in the above stated relevant product markets appear to be similar across India and that there are no regulatory or economic barrier regarding purchase or sale of the relevant products in the country. Thus, the Commission delineates the relevant geographic market as *India*.



11. Hence, the three relevant markets in the instant case are delineated as i) *the market for infant formula milk in India*; (ii) *the market for baby food nutritional supplements in India* and (iii) *the market for protein based nutritional food supplements in India*.
12. On the assessment of dominance, the Commission notes that though granular data is not available for each of the three markets delineated above. As per publicly available information reported in November, 2012³, Dexolac, Farex and Nusobee brands together had 8 per cent market share in the Indian baby food market dominated by Nestle with over 75 per cent market share. Even in 2017, Nestle remained market leader with 63 per cent market share in the baby food market in India⁴. From another news report⁵, it is observed that Gujarat Cooperative Milk Marketing Federation (GCMMF) and Nestle had combined market share of 90 per cent in 2014 and 83 per cent in 2017 in the Indian baby food market. Other major infant formula milk players in India are Abbott Laboratories, Mead Johnson Nutrition and Raptakos Brett etc. Further, there are many alternatives to Protinex also in Indian market such as ‘Horlicks Protein Plus’ of GlaxoSmithKline, ‘Resource’ of Nestle, ‘B-Protein’ of British Biologicals, ‘Ensue’ by Abott, ‘Nutrilite’ and ‘XS Whey Protein’ of Amway, ‘Threptin’ of Raptakos Brett and Nutrix, *etc.* In view of the foregoing, the OP does not appear to be in a dominant position in any of the relevant markets. Therefore, in the absence of any dominant position, the issue of abuse of dominance need not be examined.

³ <https://economictimes.indiatimes.com/industry/cons-products/food/french-food-major-danone-aims-high-for-its-nutrition-business-in-india/articleshow/17415482.cms> (accessed on 21.08.2018)

⁴ <http://www.euromonitor.com/baby-food-in-india/report> (accessed on 21.08.2018)

⁵ <http://www.foodbeverageasia.com/en/news-archive/multinational-companies-usurping-market-share-from-local-players-in-indian-infant-formula-market-globaldata/1630> (accessed on 21.08.2018)



13. In view of the above, the Commission holds that no *prima facie* case of contravention of the provisions Section 4 of the Act is made out against the OP in the instant matter.
14. Accordingly, the matter is ordered to be closed under the provisions of Section 26(2) of the Act.
15. The Secretary is directed to inform the parties accordingly.

**Sd/-
(Sudhir Mital)
Chairperson**

**Sd/-
(Augustine Peter)
Member**

**Date: 28.08.2018
Place: New Delhi**

**Sd/-
(U. C. Nahta)
Member**