



**COMPETITION COMMISSION OF INDIA**

**Case No. 31 of 2014**

**In Re:**

**The Malwa Industrial & Marketing Ferti-chem  
Co-operative Society Ltd. (MIFCO)**

**Informant**

**And**

- 1. The Registrar,  
Co-operative Societies, Punjab** **Opposite Party No. 1**
- 2. Shri A.S. Miglani, Registrar  
Co-operative Societies, Punjab** **Opposite Party No. 2**
- 3. The Additional Registrar (General)  
Co-operative Societies, Punjab** **Opposite Party No. 3**
- 4. Dr. S.K. Batish, Additional Registrar (General)  
Co-operative Societies, Punjab** **Opposite Party No. 4**
- 5. The Punjab State Co-operative Supply & Marketing  
Federation Ltd. (MARKFED)** **Opposite Party No. 5**



**CORAM**

**Mr. Ashok Chawla**  
**Chairperson**

**Mr. S. L. Bunker**  
**Member**

**Mr. Sudhir Mital**  
**Member**

**Mr. Augustine Peter**  
**Member**

**Mr. U C Nahta**  
**Member**

**Appearances:** Shri Dharma Vir Sharma, Senior Advocate with Ms. Nitika Sharma and Ms. Pushpa Chopra, Advocates for the Informant alongwith Shri Ramesh Kumar, President of the Informant.

Shri Krishna Keshav, Shri Swapnil Rastogi, Ms. Ranjana Roy Gawai, Advocates for the Opposite Party Nos. 1 to 4.

Shri Vineet Bhagat, Ms. Supriya Garg, Advocates for the Opposite Party No. 5 alongwith Shri Shiv Kumar, Sr. Manager (Law) and Shri Gagan Inder Singh, Assistant Law Officer of the Opposite Party No. 5.

**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 The Malwa Industrial & Marketing Ferti-chem Co-operative Society Ltd. (MIFCO) ('the Informant') against the Registrar, Co-operative Societies, Punjab ('the Opposite Party No. 1'),



Shri A.S. Miglani, Registrar, Co-operative Societies, Punjab ('the Opposite Party No. 2'), the Additional Registrar (General), Co-operative Societies, Punjab ('the Opposite Party No. 3'), Dr. S. K. Batish, Additional Registrar (General), Co-operative Societies, Punjab ('the Opposite Party No. 4') and the Punjab State Co-operative Supply & Marketing Federation Ltd. (MARKFED) ('the Opposite Party No. 5') alleging *inter alia* contravention of the provisions of sections 3 and 4 of the Act.

2. Facts, as gathered from the information, may be briefly noted:
3. The Informant is a co-operative society registered under the provisions of the Punjab Cooperative Societies Act, 1961. One of the objects of the Informant is stated to be to make arrangements for marketing and sale of the finished goods of the society to Cooperative Agricultural Service Society Ltd. and Co-operative Marketing Societies and individuals in Punjab and other States.
4. The Opposite Party Nos. 1 to 4 are the Registrar, Co-operative Societies, Punjab and other officers of the Office of the Registrar, Co-operative Societies, Punjab. The Opposite Party No. 5 is also a co-operative society (PSU) registered under the provisions of the Punjab Co-operative Societies Act, 1961.
5. The Informant has alleged that the Opposite Party Nos. 1 to 4 are not allowing it to supply micro nutrients and agro chemicals to the Primary Co-operative Agricultural Service Societies/ Multi-Purpose Co-operative Agriculture Societies/ Co-operative Marketing-cum-Processing Societies, which make purchases for distribution amongst their members.
6. It is alleged that although under the Punjab Co-operative Societies Act, 1961 or Rules framed thereunder, there is no provision to restrain any co-



operative society to make purchases from open market or from a particular co-operative society, yet Opposite Party Nos. 1 to 4 for reasons best known to them have not been allowing the Primary Co-operative Agricultural Service Societies, Multipurpose Co-operative Agriculture Societies and the Co-operative Marketing-cum-Processing Societies to make purchases from the Informant and thus creating a monopoly in favour of Opposite Party No. 5 for sale/distribution of micro-nutrients and agro chemicals. It is averred that the Opposite Party Nos. 1 to 4 assess the overall demand in the State of Punjab and then they tie-up with some manufacturers to supply micro nutrients and agro chemicals for distribution/sale amongst the co-operative societies in the State of Punjab through Opposite Party No. 5, which is not a manufacturer but supplies under its brand name at an exorbitant rate. The co-operative societies are stated to be the biggest consumers in the State of Punjab as their membership mostly consists of persons, who are involved in agricultural production.

7. It is further pointed out that in the State of Punjab, about 400 Primary Co-operative Agricultural Service Societies had been converted into Multipurpose Co-operative Agriculture Societies. It is alleged that although the Registrar Co-operative Societies, Punjab issued a circular dated 24.05.2004 stating that the Multi-Purpose Co-operative Agriculture Societies are free to purchase fertilizer, insecticides, pesticides and other items from wherever they like for distribution to their members yet the Opposite Party Nos. 1 to 4 in practice are not allowing them to make the purchases on their own free will and are directing them to make the purchases of micro nutrients and agro chemicals from the Opposite Party No. 5.
8. It is the case of the Informant that instead of allowing the Informant to sell its products to the co-operative societies in the State of Punjab, the Opposite Party Nos. 1 to 4 issued a policy for distribution of Fertilizer,



Micro Nutrients and Pesticides etc. for Rabi 2012-13 *vide* Memo No. RCS /Marketing/I.F./Policy/451 dated 25.10.2012 creating monopoly in favour of the Opposite Party No. 5 and the Informant was debarred from supplying its products to the co-operative societies in the State of Punjab. It is alleged that a perusal of condition No. 7 of the policy would show that the Opposite Party Nos. 1 to 4, by using their dominant position, have ordered the Opposite Party No. 5 to give incentives out of its margins to the employees of those co-operative societies who make purchases from it so that the micro nutrients and agro chemicals are not purchased from the Informant.

9. It is further alleged that the policy dated 25.10.2012 only provides that the fertilizer *etc.* will be supplied by MARKFED and IFFCO in the ratio of 70:30 but it does not restrict the purchases from other sources including the Informant. Similar is the position with regard to the micro nutrients. A perusal of para 2 under the heading distribution policy for the supply of Zinc Sulphate, Sulphur *etc.* would make it clear that the Registrar himself has mentioned that the Zinc Sulphate, Sulphur *etc.* and micro nutrients would be supplied by MARKFED/ IFFCO/ KRIBHCO/ NAFED. However, it was specifically mentioned in the policy that these agencies are not producing the micro nutrients at their own level. They are supplying these items to the co-operative societies after purchasing the same from the market.
10. Based on these and other allegations which have been detailed in the information, the Informant has alleged contravention of the provisions of sections 3 and 4 of the Act.
11. The Commission has perused the material available on record including the written submissions filed by the parties. For the reasons noted below, it is not necessary to refer in great detail the submissions made by the parties as the matter can be disposed of on the issue of jurisdiction itself.



12. The gist of the allegations made in the information is that instead of allowing the Informant to sell its products to the co-operative societies in the State of Punjab, the Opposite Party Nos. 1 to 4 issued a policy for distribution of Fertilizer, Micro Nutrients and Pesticides *etc.* for Rabi 2012-13 *vide* Memo No. RCS /Marketing/I.F./Policy/451 dated 25.10.2012 creating monopoly in favour of the Opposite Party No. 5 (PSU) and the Informant was debarred from supplying its products to the co-operative societies in the State of Punjab.
13. Before examining the allegations on merits, it is pertinent to ascertain whether the Opposite Party Nos. 1 to 4 are enterprises within the meaning of the definition of 'enterprise' as given in section 2(h) of the Act.
14. On a careful perusal of the Punjab Co-Operative Societies Act, 1961 and the Rules framed thereunder, it appears that the Office of the Registrar, Co-operative Societies is a statutory office enjoined upon to discharge the various functions delineated thereunder. These functions are essentially regulatory and statutory in nature. Besides, admittedly, the Informant is aggrieved of the various policy statements issued by the Registrar. Thus, the challenge in substance is related to the regulatory and policy functions of the Registrar. Such functions are beyond the scope of the activities covered under the term 'enterprise' as given in section 2(h) of the Act.
15. The term enterprise has been defined in section 2(h) of the Act meaning as 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, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of



the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

16. A perusal of the definition would reveal that for an entity to fall within the definition of the term enterprise it must be engaged in any activity which is relatable to the economic and commercial activities specified therein. It is thus apparent that regulatory functions are not *per se* amenable to the jurisdiction of the Commission.
17. In the present case, the Registrar while discharging its regulatory and statutory mandate cannot be said to fall within the purview of the term enterprise as defined in section 2(h) of the Act.
18. In the result, the Opposite Party Nos. 1 to 4 do not qualify to be 'enterprise' within the meaning of the term as given in section 2(h) of the Act and as such the issue of abuse of dominance does not present itself before the Commission to be adjudicated. Also, no relief has been sought against the Opposite Party No. 5.
19. In view of the above discussion, no case of contravention of the provisions of section 4 of the Act is made out against the Opposite Parties and the information is ordered to be closed forthwith in terms of the provisions contained in section 26 (2) of the Act.
20. The Secretary is directed to inform the parties accordingly.

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



**Sd/-**  
**(S. L. Bunker)**  
**Member**

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

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

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

New Delhi  
Date: 18/11/2014