

COMPETITION COMMISSION OF INDIA

[Case No 39/2012]

19th September, 2012

**Mr. Ramakant Kini
402A, Jyoti Apartment, Plot 205,
Sher Punjab Colony, Maha Kali Road,
Andheri (East), Mumbai-400093**

- Informant

**M/s Dr. L H Hiranandani Hospital,
Hill Side Avenue, Powai,
Mumbai- 400076**

- Opposite Party

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

1. The present information has been filed before the Commission on 10th July, 2012 by Mr. Ramakant Kini (hereinafter referred to as “the Informant”) under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as “the Act”). The information relates to the alleged abuse of dominant position by M/s Dr. L H Hiranandani Hospital, Mumbai (hereinafter referred to as the “Opposite Party” or “OP”) and its anti-competitive agreement with M/s Cryobanks, a stem cell banking company in India.

2. As per the information the OP is an enterprise and is engaged in the provision of health care services in Mumbai and is known as one of best high end multi-speciality hospital in the country. A patient, Mrs. Manu Jain was expecting her baby for which she was availing the maternity health care services of the OP. With a view to preserve the stem cell of her expected baby Mrs. Manu Jain had entered into an agreement with M/s LifeCell India Pvt. Ltd., a leading umbilical cord stem cell banking company in India, for availing its umbilical cord stem cell banking services.
3. After signing the agreement with M/s LifeCell India Pvt. Ltd. for collection, processing and preservation of umbilical cord stem cell of her expected baby, Mrs. Jain requested the OP to allow her to engage M/s LifeCell India Pvt. Ltd. for collection of cord blood samples of her expected baby at the time of delivery because the cord blood sample has to be collected from the umbilical cord immediately after the birth of a baby, ideally within 10 minutes of delivery. Since the cord blood sample has to be collected immediately after the delivery it has to be collected either by the concerned hospital staff present at the time of delivery or by a para-medical staff of the concerned stem cell banking company present at the time of delivery. In the later case the hospital must allow the para-medical staff of the concerned stem cell banking company to be present at the time of delivery.
4. But, as per the Informant, the OP refused to allow Mrs. Jain to engage M/s LifeCell India Pvt. Ltd. for the collection of cord blood samples from the hospital at the time of delivery. Moreover, the OP unduly pressurised Mrs. Manu Jain to terminate the existing agreement with M/s Lifecell India Pvt. Ltd for umbilical cord stem cell banking services and insisted her to avail the umbilical cord stem cell banking services of M/s Cryobanks, another leading umbilical cord stem cell banking company in India and a competitor of the OP, with whom it has an exclusive tie-up.

5. The Informant has submitted that the OP not only denied Mrs. Jain to engage M/s LifeCell India Pvt. Ltd. for collection of cord blood samples of her expected child at the time of delivery from the hospital but also directed M/s LifeCell India Pvt. Ltd. not to enrol any of its patients for providing stem cell banking services as M/s Cryobanks is its 'cord blood banker' with effect from 01.09.2011. The Informant has alleged that it was because of the persuasion of the OP, that M/s LifeCell India Pvt. Ltd. has declined to provide Mrs. Jain with the stem cell banking services.
6. As per the Informant, the exclusive tie-up between the OP and M/s Cryobanks for stem cell banking services has been revealed from an email sent by Dr. Shashikant Pawar, Senior Manager (Operations) of the OP to the husband of Ms. Manu Jain wherein, Dr. Pawar has admitted that there exists an exclusive tie-up between the OP and M/s Cryobanks for cord blood sample collection. Further, Dr. Pawar has also admitted that the OP does not allow any other company to collect cord blood samples.
7. The Informant has submitted that pursuant to the OP's refusal to deal with M/s LifeCell India Pvt. Ltd., Mrs. Jain had to either sign up for the stem cell banking services of M/s Cryobanks or chose another hospital for giving birth to her child. Mrs. Jain refused to succumb to the undue pressure exercised by the OP and opted for another high end multi-speciality hospital providing maternity services.
8. The Informant has alleged the existence of two relevant product markets in this case: (i) the primary market - the market of maternity services in high end multi-speciality hospitals. The reason for delineating the relevant product market as the high end multi-specialty hospitals is that the patients interested in the services of a high end multi-specialty hospital would not consider another mid-level multi-

speciality hospital or government hospital in the areas as substitutes. If the Opposite Party increases the price of its maternity services in a small but significant manner, the patient would not shift to other mid-level hospitals in the area; (ii) the secondary market - the market for the provision of umbilical cord stem cell banking services.

- 9.** As per the informant the relevant geographic market in this case is the geographical area of S, L, N, K, E municipal wards of Mumbai which consists of the locality of Bhandup, Jogeshwari, Powai, Ghatkopar, Vikhroli, and Andheri East of Mumbai. The informant has chosen S, L, N, E, K municipal wards of Mumbai as relevant geographic market because of high density of population and congestion in Mumbai which constrains the patients from travelling long distance to avail the medical facilities from the hospitals located in other places of Mumbai.
- 10.** The informant has submitted that the OP is in a dominant position in the relevant market of provision of maternity services in high end multi-specialty hospitals in S, L, N, K, E municipal wards of Mumbai. It is so because the OP is a leading hospital in the said area of Mumbai with a formidable 240 bed facility. It enjoys commercial advantages over its competitors and the size and resources of the OP are much larger compared to its competitors.
- 11.** The Informant has alleged that being a dominant enterprise in the relevant market the OP has abused its dominant position:
 - i. Under Section 4(2) (a) (i) of the Act, by imposing unfair condition on the patients of maternity services to avail the stem cell banking services of M/s Cryobanks and preventing its patients of maternity services to avail the services of other stem cell banking companies.

ii. Under Section 4(2) (c) of the Act, by entering into an exclusive tie-up/agreement with M/s Cryobanks which result into denial of market access to the competitors of M/s Cryobanks.

iii. Under Section 3 (4) of the Act, by entering into exclusive tie-up/agreement with M/s Cryobanks which has resulted in the denial of market access to all other competing players of M/s Cryobanks.

12. In my view the relevant product market in this case cannot be categorised as market of maternity services in high end multi-specialty hospitals. At the time of emergency for medical services no person makes a distinction between high end and low end medical services. Rather, priority is given for the best available medical services. Patients usually considered better treatment as their priority for treatment not the luxury. Thus, all hospitals providing maternity healthcare services should be considered as substitute of each other in this case. Therefore, in my view the relevant product market in the present case is the market of “provision of maternity services in the hospitals/nursing homes/clinics”.

13. The Relevant geographic market in this case is “the geographical area of Mumbai” instead of particular municipal wards of Mumbai as submitted by the Informant. The reason being that for medical services people usually prefer hospitals which provides better services, without considering the distance factor. Otherwise also, in normal circumstances, for maternity services a patient can plan well before availing such services and thus, can choose from variety of hospitals within the city. Thus, I consider the relevant market in the present case as the market of “provision of maternity services in the hospitals/nursing homes/clinics within the geographical area of Mumbai”.

- 14.** Considering the revised relevant market as the “provision of maternity services in the hospitals/nursing homes/clinics within the geographical area of Mumbai”, I am of the, *prima facie*, opinion that the OP is not in a dominant maternity healthcare service provider in Mumbai. The reason being that there are a large number of hospitals/clinics/maternity homes in Mumbai which are providing maternity services which are substitutable for the services of the OP. Moreover, there are hospitals in Mumbai whose scale of operation, turnover, resources etc. are larger than those of the OP.
- 15.** The allegations of abuse of dominance by an enterprise can only be examined if the enterprise is in a dominant position in the relevant market. In the instant case considering the aforesaid revised relevant market, I hold the view that the OP, *prima facie*, does not appear to be in a dominant position in the relevant market. So, the question of abuse of dominant position by the OP in the relevant market does not arise. Thus, on the basis of above analysis, I am of the view that the OP has not violated any of the provisions of Section 4 of the Act.
- 16.** The Informant has also alleged that the exclusive tie-up between the OP and M/s Cryobanks for the services of stem cell banking is anti-competitive under Section 3(4) of the Act. It is noted from the provisions of Section 3(4) of the Act that for the applicability of the said section, there should be an agreement between two undertakings operating at different stages or level of production chain in different markets in respect to production, supply, distribution, storage, sale or price of, or trade in goods or provision of services.
- 17.** In the instant case, the OP is engaged in the provision of maternity services whereas M/s Cryobanks is engaged in the provision of stem cell banking services. It is observed that the OP and M/s Cryobanks, *prima facie*, are not operating at

different stages or level of the production chain because the business/activities of the OP not vertically related to the business/activities of M/s Cryobanks. What is understood as being in different stages of the production process (e.g., a manufacturer and a retailer) is the existence of a relationship where the product supplied by a manufacturer to the retailer is then sold by the retailer to its customers after either using that product as an input in its production process or by providing retailing services. Rather than competing with each other the products or services supplied by the manufacturer and the retailer are complementary to each other. Manufacturer needs the retailer to sell its product while the retailer needs the manufacturer to supply it. In my view, the above described manufacturer-retailer relationship is not present between the OP and M/s Cryobanks. The allegations of the existence of an anti-competitive agreement between two enterprises can only be examined if such an agreement exists between such entities. Since based on the above analysis, I am of the view that the OP and M/s Cryobanks are not parties to any vertical arrangement; the OP cannot be in violation of any of the provisions of Section 3(4) of the Act.

- 18.** In view of the foregoing, I hold that *prima facie* no case is made out for making a reference under section 26 (1) of the Act to the Director General (DG) for conducting investigation into the matter under the provisions of Section 3(4) and Section 4 of the Act.

M. L. Tayal

(Member)