



COMPETITION COMMISSION OF INDIA

(Case No: 41/2011)

In Re:

M/s Sandhya Drug Agency, Barpeta, Assam:

Informant

1. Assam Drug Dealers Associations (ADDA), Guwahati; **Opposite Parties**
2. Barpeta Drug Dealers Association (BDDA), Barpeta Road, Assam;
3. All India Organization of Chemists & Druggist (AIOCD), Mumbai;
4. All India association of Chemists and druggists (IDMA);
5. Organisation of Pharmaceutical Producers of India (OPPI); and
6. Alkem Laboratories Ltd.

Per. Dr. Geeta Gouri, Member

Order

This is the fifth of the information filed by distributors of pharmaceutical products, under Section 19(1)(a) of the Competition Act, 2002, against the All India Organization of Chemists and Druggists Association (hereinafter referred to as AIOCD) and its allies the State Associations downstream and associations upstream. The information filed against the respondents by M/s Sandhya Drug Agency, Barpeta, Assam, who is a wholesaler and supplier of various pharmaceuticals companies including Alkem in Barpeta district of Assam. The allegations pertain to certain restrictive trade practices adopted by Assam Drug Dealers Associations (hereinafter referred to as ADDA), Guwahati, which is a state level association in Assam of drug distributors, sellers and stockiest etc. and affiliated with all India level association of chemists and druggist namely, AIOCD and against Barpeta Drug Dealers Association (hereinafter referred to as BDDA), Barpeta, which is a district level association for the druggists and chemists in the Barpeta district of Assam and affiliated with ADDA. All India Organization of



Chemists and Druggists Association (hereinafter referred to as AIOCD) is a national level association of druggists and chemists. The OP-6 i.e. Alkem Laboratories Ltd. is a registered company engaged in manufacture, supply and sale of medicine and lifesaving drugs in India and abroad. Since the allegations levied against the AIOCD and its affiliates in the present case are similar to the allegations made in case no. 30 of 2011 (M/s Peeveear Medical Agencies vs AIOCD and others), I prefer not to give a comprehensive Order and for all the detailed analysis, I would like to invite attention to my Order in the above said case no. 30 of 2011.

2. The Commission in its meeting held on 10.8.2011, considered the information and referred the case to DG for investigation under section 26(1) as it found existence of prima-facie case.
3. The allegations in the present case are more or less same as in case No. 20 of 2011 (M/S Santuka Associates Pvt. Ltd, Cuttack, Orissa Vs. AIOCD and USV Ltd.) and Case no. 30 of 2011 (M/s Peeveear Medical Agencies vs AIOCD and others). Commission also observed that the business guidelines and rules framed by ADDA vide resolution No. 07 dated 17.05.2009, were also prima-facie appears to be anti-competitive.
4. On the basis of DG report, submissions made by various parties and on the basis of other material available on record, the majority decision in the present case relied upon following issues for determination of violation of the provisions of the Act by the opposite parties:

Issue No. 1

Whether the action and practices of AIOCD and its affiliated state association of Assam, i.e. ADDA and district level association of Barpeta i.e. BDDA 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 are in violation of Section 3 of the Competition Act?

Issue No. 2

Whether OPPI and IDMA are also liable for violation of Section 3(4) of the Act alongwith AIOCD as the practices pertaining to NOC/LOC, PIS, fixed trade margins etc. 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, ADDA, BDDA, OPPI and IDMA are liable for violation of Section 3 of the Act?

Issue No. 4

Whether the conduct of Alkem Laboratories Ltd also falls foul of the provisions of the Act?

Since, Issue no. 1 itself involves five sub-issues; I preferred to analyse all these one by one in case no. 20 of 2011 and also in case no. 30 of 2011 and therefore not repeating the whole analysis in the present case. The sub-issues of Issue no. 1 are as follows:

- (i) Conduct of AIOCD and its affiliated state association ADDA and district level association BDDA in the matter of granting of no-objection certificate (NOC) before the appointment of stockists/distributors leads to reduction of supply in the market, in contravention of section 3(3)(b) of the Act.
- (ii) Fixing of trade margins for stockists/distributor amounts to fixing of prices
- (iii-a) Fixing of PIS charges leading to the fixing of prices of drugs
- (iii-b) Requirement of approval for launching a product in the markets in form of PIS approval results in entry barrier and hence restrict supply of drugs in the market drugs



- (iv) Indulgence of AIOCD and ADDA in practices of boycotting pharma companies on various issues contained in MoU.

Conclusion

5. On the basis of detailed discussion and analysis in the case no. 30 of 2011, I conclude as following:

(i) Regarding Issue No. 1(i) above, I am of the opinion that no-objection certificate (NOC) from AIOCD before the appointment of stockists/distributors is anti-competitive and agree with the majority order that the requirement of NOC leads to reduction of supply in the market and in contravention of section 3(3)(b) of the Act.

(ii) Similarly for Issue No. 1(iii-b) and 1(iv) above, I am also of the opinion that requirement of approval for launching a product in the markets in form of PIS approval and boycotting the pharma companies for various unjustified reasons by AIOCD and its affiliates results in entry barrier and hence restricts supply of drugs in the markets and is in violation of Section 3(3)(b) of the Act.

(iii) However, remaining two allegations i.e. fixing of margins and fixing of PIS charges for dissemination of information regarding new drugs by the AIOCD or its affiliates does not result in price fixing and hence cannot be termed as violation of Section 3(3)(a) of the Competition Act, 2002.

(iv) Regarding Issue No. 2, I am of the view that by signing an agreement with AIOCD, which has some clauses which causes or may cause supply restraints of drugs in the markets, IDMA and OPPI are also violated Section 3(1) of the Act.

(v) Regarding Issue No. 3, I held the office bearers of IDMA and OPPI along with office bearers of AIOCD responsible for violation of Section 3(1) of the Act for signing tripartite agreement with AIOCD which contains clauses which are anti-competitive in nature. I also held ADDA and BDDA, which are state and district level association for chemists and druggists respectively affiliated to AIOCD, and



their office bearers responsible for violating the provisions of the Act as explained in the majority order.

(vi) With regard to Issue No. 4, I am in full agreement with the majority order and found no contravention of any of the provisions of the Act by Alkem Laboratories Ltd.

Order under Section 27

This order finds contravention by AIOCD, ADDA and BDDA on the following counts:

- a. In the appointment of stockists by way of issue of 'NOC' and regulating the number of stockists in contravention of Section 3(3)(b) of the Competition Act, 2002.
 - b. The restrictive conditions related to delay or withholding the approval for launching a new product in the markets by way of PIS approval which results in entry barrier and hence restrict supply of drugs in the markets and hence is in contravention of Section 3(3)(b) of the Act.
 - c. Boycotting of pharma companies for various unjustified reasons has the effect of limiting or controlling the supplies of drugs in the markets and results in non-availability of the same to the consumers which causes an AAEC on competition and is in contravention of Section 3(3)(b) of the Act.
2. I also find contravention by IDMA and OPPI for signing tripartite agreement with AIOCD which contains some clauses which are restrictive in nature and result in/may result in limiting of supply of drugs in markets.
3. Regarding imposing penalty on AIOCD, ADDA and BDDA, I fully support the majority decision (para 28). However, I also order that penalty to be imposed on IDMA and OPPI at the rate of 10% of the average of the receipts for the financial year 2008-09, 2009-10 and 2010-11 as was done in the case of ADDA. Proceedings be also initiated against IDMA, OPPI and their office bearers along with the proceedings against AIOCD, ADDA and BDDA and their office bearers.



The culpability of these associations cannot be ignored in distorting the market for drugs in India, through concerted actions between the various associations.

4. AIOCD, ADDA, BDDA, IDMA, OPPI and their members to cease and desist from the following activities and to furnish an undertaking to this effect within 60 days from the date of receiving this order:

- a. Mandatory requirement of grant of NOC for appointment of stockists;
- b. Withholding/delay in giving PIS approval for launching a new product in the markets; and
- c. Boycotting of pharma companies for various unjustified reasons.

5. AIOCD shall issue a letter to OPPI, IDMA and Alkem Laboratories Ltd. clearly indicating withdrawal of mandatory requirement for obtaining NOC from it for appointment of stockists and wholesalers by the pharma companies and also indicating withdrawal of mandatory requirement for PIS approval for the new drugs as AIOCD or its affiliates are not regulators.

6. It shall also issue a circular to all its members, affiliates associations, all chemists and druggists, clearly indicating that they were free to give discounts to their customers.

7. The Secretary is directed to inform the parties accordingly.

Date: 09.12.2013

Sd/-
(GEETA GOURI)
Member