



COMPETITION COMMISSION OF INDIA

Case No. 42 of 2020

In Re:

Muralya Dairy Products (P) Ltd.

Informant

3rd Floor, Trans Tower Vazhuthacaud
Thiruvananthapuram – 695014,
Kerala

And

**Kerala Co-operative Milk
Marketing Federation Ltd.**

Opposite Party No. 1

Milma Bhavan, Pattom,
Thiruvananthapuram - 695004
Kerala

**Thiruvananthapuram Regional
Co-operative Milk Producers
Union Ltd.**

Opposite Party No. 2

Ksheera Bhavan, Pattom,
Thiruvananthapuram - 695004
Kerala

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**



Appearances during the preliminary conference held on 15th December, 2021:

Muralya Dairy Products (P) Ltd. Mr. C. N. Sreekumar, Senior Advocate
(Informant) Mr. Amit Sharma, Advocate

Kerala Co-operative Milk Marketing Federation Ltd. (OP-1) & Mr. Abir Roy, Advocate
Thiruvananthapuram Regional Cooperative Milk Producers Union Ltd. (OP-2) T Sundar Ramanathan, Advocate
Ishaan Chakrabarti, Advocate
Vivek Pandey, Advocate
Harshapreetha, Advocate

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

1. The instant information has been filed by Muralya Dairy Products (P) Ltd. (“**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (“**the Act**”), alleging contravention of provisions of Sections 3 and 4 of the Act by Kerala Co-operative Milk Marketing Federation Ltd. (“**KCMF**”/ “**OP-1**”) and Thiruvananthapuram Regional Co-operative Milk Producers Union Ltd. (“**TRCMPU**”/ “**OP-2**”) (hereinafter KCMF and TRCMPU are collectively referred to as “**MILMA/Opposite Parties**”).

Facts and allegations, as per the Information:

2. The Informant is a body corporate incorporated under the Companies Act, 1956 having its registered office at Thiruvananthapuram, Kerala. The Informant has established an integrated dairy project in the State of Kerala and has been engaged in the business of supplying milk and milk products within the State since 2018.
3. The Opposite Parties are co-operative societies. The Opposite Party No.1, *i.e.*, KCMF, is a society registered under the Cooperative Societies Act, 1969. MILMA was formed in the year 1980 as a State adjunct of the National Dairy Programme “Operation Flood.”



MILMA is a three-tiered organization and is the apex society / body of three Regional Milk Unions, viz., Trivandrum Regional Cooperative Milk Producers Milk Union (**TRCMPIU**), Ernakulam Regional Cooperative Milk Producers Union (**ERCMPUI**) and Malabar Regional Cooperative Milk Producers Union (**MRCMPU**), and these three regional unions are affiliated to MILMA.

4. It has been stated that the Informant and Opposite Parties are operating in the same/similar geographic market as well as product market as envisaged under the Act. The Opposite Parties are dominant in the market for the supply of milk and milk products within the southern parts of the State of Kerala, mainly in the districts of Thiruvananthapuram, Kollam, Alappuzha and Pathananhitta.
5. The Informant has averred that, with the emergence of its milk and milk products in 2018 under the brand name “Muralya, the business of the Opposite Parties began to decline significantly. This was solely on account of the fact that the milk products of the Informant were of a far superior quality compared to the Opposite Parties. The Informant has never advertised its products in any media or newspapers, and the reception to its products by consumers in the market clearly indicates the quality of the product manufactured by the Informant.
6. It has been alleged that the Opposite Parties, while supplying milk to retailers/agents, have unilaterally proposed certain conditions in the letter of agency whereby retailers/ agents are strictly prohibited from dealing with dairy products manufactured by companies in the same line of business. In the event, that the Opposite Parties come to know that retailers/agents are dealing with milk and milk products of other companies, their agency is liable to be withdrawn and they would be liable for punitive action including imposition of penalty by the Opposite Parties. It is submitted that the retailers/ agents and shopkeepers, apprehending the aforesaid punitive action proposed by the Opposite Parties, have now refused to accept and sell the products manufactured



by the Informant. Resultantly, the Informant's business has been seriously affected and the Informant is unable to expand its business in competition with the Opposite Parties.

7. Since the Informant is a new entrant in the market, the retailers are afraid of the growth and sustainability of the Informant compared to the Opposite Parties who have positioned themselves as market leaders for the past 35 years. For of this reason, the retailers are forced to withdraw from selling the Informant's products, even though they have sufficient demand in the market. The Opposite Parties have more than 12 directly run outlets in Thiruvananthapuram and Kollam districts of Kerala, and all these outlets are positioned in government lands. Apart from the above outlets, the Opposite Parties have allotted franchisees to the retailers across their operational area to sell their products exclusively. Due to the aforesaid action of the Opposite Parties, the Informant is unable to make its products available in the market.
8. It is submitted that the Informant's daily sale volume of milk is about 41,000 litres, which forms not even 14% of the daily sale volume of the Opposite Parties in the same market. Also, other private dairies (around 11 brands) put together are selling another 18% of the daily sale volume of the Opposite Parties in the same market.
9. As regards contravention of provisions of Section 3(4) of the Act, the Informant has stated that the Opposite Parties have entered into agreements with various distributors/retailers/agents expressly restricting them from dealing in the products of the Informant (as well as the products of other competitors of the Opposite Parties). In order to deal in the products offered by the Opposite Parties, it is made incumbent upon such distributors/retailers/agents to refuse to deal in products offered by other manufacturers/suppliers of milk and milk products which are in competition with that of the Opposite Parties. It has been stated that the Opposite Parties are the largest manufacturer and supplier of milk and milk products. As a result, they also have the largest network of distributors/retailers/agents in the State of Kerala for the sale of its goods. By preventing such distributors/retailers/agents from engaging in the supply of



goods manufactured/supplied by its competitors, the Opposite Parties are creating a significant barrier for any potential entrant from effectively competing in the market, driving existing competitors out of the market by making it impossible for competitors to operate and foreclosing the possibility of potential competition.

10. As regards Section 4 of the Act, the Informant has delineated the relevant market as the “market for the manufacture and supply of milk and milk products in the territory of Kerala.” As per the Informant, the Opposite Parties are in a dominant position in the relevant market. The Opposite Parties have not only the widest distribution network but also the maximum number of products in the market. In these circumstances, the Opposite Parties are stated to have abused its dominant position by: (a) limiting/restricting the provision of goods in the relevant market through imposition of a condition on their distributors/ retailers/ agents to choose between their own products against the products of their competitors, in contravention of the provisions of Section 4(2)(b)(i) of the Act; and (b) denying market access to their competitors such as the Informant, in contravention of the provisions of Section 4(2)(c) of the Act. Further, the Opposite Parties are limiting the choice of their distributors/retailers/agent in the products that they may be able to deal with by preventing existing as well as potential competitors from entering into the relevant market.
11. The Informant had instituted a suit (O.S.203/2019) before the Learned Munsiff’s Court, Thiruvanthampuram, praying for a permanent prohibitory injunction restraining the Opposite Parties from creating any unlawful restraint in trade against the business of the Informant and seeking a decree of prohibitory injunction restraining the Opposite Parties from preventing the retailers from the purchase and sale of milk and milk products of the Informant. However, since the suit was not an effective remedy with regard to unfair competition, the Informant was left with no other alternative but to approach the Commission. The Informant has since withdrawn the Suit with liberty to approach this Commission.



12. Based on the above submissions, the Informant has, *inter alia*, prayed to the Commission to undertake an investigation with regard to the alleged contravention of the provisions of Sections 3 and 4 of the Act and impose a penalty on the Opposite Parties. The Informant has also sought interim relief under Section 33 of the Act and requested the Commission to direct the Opposite Parties not to prevent the sale of the dairy products of the Informant, *i.e.*, "Muralya" brand dairy products, by retailers in the districts of Thiruvananthapuram, Kollam and Ernakulum of the State of Kerala and pass such other orders as the Commission may deem fit and proper in the nature and circumstances of the case.
13. The Information filed was considered by the Commission in its ordinary meeting held on 10.11.2020, wherein the Commission directed the Informants to file certain additional information, which was filed on 16.01.2021, after seeking extension of time. Thereafter, on 24.02.2021, the Commission considered the Information and additional information filed by the Informant and decided to seek the response of Opposite Party No. 1 on the Information filed and additional submissions. The Commission also directed Opposite Party No. 1 to file further information along with its reply /response, latest by 29.03.2021. Opposite Party No. 1 provided certain information on 26.04.2021, after seeking due extension of time; however, did not file its reply/response to the Information.
14. *Vide* order dated 08.06.2021, the Commission noted that Opposite Party No. 1 did not file its reply/response to the Information and additional information filed by the Informant, and directed Opposite Party No. 1 to file the same and also provide a copy of a sample agreement entered into by it with its (a) exclusive and (b) non-exclusive dealers for the supply of milk and milk products during the period 2017-18, 2018-19 and 2019-20. The Opposite Party No. 1 was further directed to share a copy of its response with the Informant. The Informant was also given the liberty to file its further response, if any, to the reply response made by Opposite Party No. 1, latest by 15.07.2021, with a copy to Opposite Party No. 1. Opposite Party No. 1 filed its comments to the Information as well as additional information on 10.08.2021. Thereafter, the Informant filed its further



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response to the reply filed by Opposite Party No. 1 on 04.10.2021, after seeking due extension of time.

15. On 21.10.2021, the Commission considered the information, additional information filed by the Informants, replies/comments of the Opposite Parties and response thereto filed by the Informant and decided to call the parties for a preliminary conference on 15.12.2021. The Commission heard the parties through their authorised representatives during the preliminary conference held on 15.12.2021. Post the conclusion of the preliminary conference, the Commission directed both the parties to file their synopsis of arguments and also directed the Opposite Parties to submit further information on affidavit, *inter alia*, in relation to its volume and turnover, including milk sold by it since the year 2017-18, the market share of MILMA, details of five largest competitors, copy of dealership agreement, *etc.* within four weeks of the receipt of the order. The Informant and the Opposite Parties have filed their respective responses on affidavit and also filed their written submissions subsequently, after seeking due extension of time.
16. The Opposite Parties, in their replies/responses/written submissions/ affidavit, as well as the submissions made during the preliminary conference, have denied the allegations made by the Informant and have stated that there is no basis to show that the conduct of the Opposite Parties are in violation of the provisions of the Act. On the contrary, the submissions made in the Information itself shows that the market in the present case is highly competitive with the presence of many players and there are no barriers to entry into the market. It has been stated that the vertical agreement entered into by the Opposite Parties with their agents/dealers has an objective justification to prevent free riding, maintain uniformity and quality standardisation and promote inter-brand competition. The revenue of the Informant has grown by nearly four times in one year which shows that they have grown tremendously. This is itself a testament to the fact that there are no barriers to entry and expansion in the market, and the Opposite Parties are not in possession of any market power. The Informant can reach out to the general public



through various channels of distribution which are available in the relevant market, including supermarkets, agents and franchisees, which it has done very successfully.

17. It has been submitted that the Opposite Parties are following a franchisee model for its agencies. When an agency is given based on request or communication, the agent will be briefed about the terms and conditions of the agency, and the agency is given only after the agent is ready to accept the conditions. Furthermore, the agency must be for a fixed timeframe (a year or so). Further, the retailers of products of the Opposite Parties are not restrained from selling other products as alleged. The Opposite Parties have categorically mentioned that they have an agreement only with its exclusive agents and there is no agreement with non-exclusive dealers, and the Informant is intentionally trying to obfuscate the issue and mislead the Commission in this respect. It has been stated that there are many retailers in the relevant market, which are non-exclusive and sell products of all companies, including that of the Informant. The Informant is free to sell its products (which it already does) through such retailers. It has been stated that the total number of agencies of MILMA in Thiruvananthapuram is 2076, and in Kollam, it is 1700. However, the total number of retail shops available is 40 times the exclusive agencies. Hence, presently, there are multiple channels of distribution available in the market, which is being used by the Informant.
18. It has been submitted that the allegation of the Informant that the Opposite Parties prohibited their retailers from dealing with the products of other companies is a deliberate misrepresentation of facts with the sole reason to free ride on the network of the Opposite Parties. The Informant has failed to produce any evidence that retailers are prohibited by the Opposite Parties to sell the milk of the Informant. There are two modes in which products of the Opposite Parties are sold in the market, one through exclusive agencies and the other through non-exclusive retailers. The Opposite Parties have certain exclusive agencies with which they have an explicit agreement in place. As such, the Informant is building out a case based on two such agreements with exclusive agencies, presenting a picture that retailers are prohibited by the Opposite Parties.



19. While the Informant has itself admitted that they have no issues with the operation of the exclusive outlets of the Opposite Parties, yet the Informant is using such communications of the Opposite Parties with its exclusive agents to bring out a case that all retailers are prohibited, which is not the case at all. It is submitted that, except for the limited number of exclusive agents, the Opposite Parties do not have any other agreement with other distributors. It has been stated that MILMA has exclusive agents, including wholesale distributors. These wholesale distributors can supply milk through sub-dealers, who are linked directly with the wholesalers. MILMA has agreements only with its dealers/agents who are its exclusive agents. The sub-dealers do not have any kind of exclusivity with MILMA, and it does not enter into any agreement with non-exclusive dealers. Wholesalers are free to distribute the milk through such dealers, which also includes supermarkets. Therefore, except for its exclusive agents, MILMA does not enter into any agreement with other sub-distributors.
20. The Opposite Parties have further submitted that they are not a dominant player in the market, and the market is broader, as milk distribution also includes the unorganised sector. Even in the organised sector, there are several other players. It is submitted that MILMA is not an enterprise which has any market power, thus any question of denial of market access and abuse of dominance does not arise at all. Accordingly, the Opposite Parties have prayed that the present matter may be closed under Section 26(2) of the Act.
21. The Informant, in its rejoinder response to the reply filed by the Opposite Party and in subsequent submissions made during the preliminary conference, as well as in its filings made before the Commission subsequent thereto, has submitted that it is not interested in franchisees and distributor agencies that MILMA has deployed for exclusively selling its product. Further, the Informant has no complaint against the operation of exclusive outlets of the Opposite Parties. It has been stated that the anti-competitive issues arose when the Opposite Parties began exerting its dominance to prevent non-exclusive distributors from selling the products of competing milk suppliers such as the Informant.



In this regard, a copy of the appointment of one Mr. Jayakumar C. dated 11.11.2013 by the Opposite Party No.1 as well as a letter dated 30.12.2018 evidences cancellation of the said agreement. Another letter dated 30.07.2021 written by Ms. Raseena Sidhiq of Grand Smart Supermart to MILMA declaring that it will stop selling milk products of other brands and will sell MILMA dairy products also shows the same. It has been submitted that most retailers of milk spread across the State of Kerala are unwilling to sell the milk of the Informant only because of the threat of MILMA. It has been submitted that the principle of objective justification can only be invoked if the manufacturer in question makes investments that can potentially be used to sell the products of other manufacturers. However, in the case of non-exclusive distributors and other retail shops, there is no investment for other suppliers to 'free ride' on. Being the largest supplier of milk, MILMA is using its position to prevent non-exclusive distributors from retailing products of competing manufacturers. It has been submitted that MILMA is obtaining undertakings from such shops by forcibly restraining them from selling other brands of milk. It has been further submitted that the milk products offered in the organised sector is not substitutable with the milk available in the unorganised sector for reasons of quality assurance. As such, the relevant market in the present case is the supply manufacture of milk and milk products in the organised sector in Kerala.

22. The Commission has given a consideration to the Information, additional information filed by the Informants, replies/comments, affidavit of the Opposite Parties and response thereto filed by the Informant as well as submissions made by the parties during the preliminary conference and other material available on record.
23. Upon consideration of the above, the Commission notes that the gravamen of the allegations against the Opposite Parties is that they have entered into agreements with various distributors/ retailers/ agents expressly preventing such distributors/ retailers/ agents from dealing with products manufactured by the competitors of the Opposite Parties including the Informant, who are also in the business of manufacturing and supply



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of milk and milk products. Further, it has been alleged that, in the event such distributors/retailers/agents, are found to be dealing in goods other than those of the Opposite Parties, the agreement is liable to be terminated, and such entities will be liable for punitive action, including penalty. It has been alleged that the Opposite Parties are the largest manufacturer and supplier of milk and milk products and also have the largest network of distributors/retailers/agents for the sale of such products in the State of Kerala. By preventing the distributors/retailers/agents from the supply of products manufactured/ supplied by their competitors, the Opposite Parties have allegedly created significant barriers for any potential entrant from effectively competing in the market, driving existing competitors out of the market by making it impossible for them to operate and, foreclosing entry into the market, in contravention of Sections 3 and 4 of the Act.

24. Based on the facts and allegations discussed above, the Commission at the outset notes that the allegations arise *qua* MILMA belonging to the Opposite Parties. The issue which arises for *prima facie* consideration is whether the conduct of the Opposite Parties in entering into an agreement with its agents/distributors for grant of its agency for supply of milk and milk products, thereby restricting such entities from dealing with any brands of milk and milk products of the competitors of such Opposite Parties, is in contravention of the provisions of Sections 3 and 4 of the Act.
25. The Commission notes that MILMA appears to be the most popular brand available in the State of Kerala and consumers are aware of the brand. Based on the assessment of data available on record as well in the public domain, the Commission notes that MILMA appears to be the largest player in the relevant market for milk and milk products in the organised dairy market in the State of Kerala. The Opposite Parties/MILMA is also stated to be in the business for the last 35 years and has the largest distribution network in the State of Kerala. The Commission also notes that MILMA has more than 25,000 outlets in the state of Kerala. As regards the competitors of the Opposite Parties/MILMA, the Commission notes that the Informant is one of the competitors and there are not many



competitors posing a competitive constraint upon MILMA. The Commission notes that MILMA has given a list of competitors, which are 44 in number. Upon perusal of the said list, it appears that these are various brands offered by smaller competitors. The Commission also notes that MILMA has total turnover of Rs.3003.19 Cr and Rs.2980.03 Cr for the financial years 2017-18 and 2018-19, respectively which appears to be very high compared to its competitors. In view of above, the Opposite Parties/MILMA *prima-facie* appears to enjoy market power in relation to its offering. The Commission, however, notes that a precise definition of relevant market and assessing dominance of the Opposite Parties/MILMA may not be necessary in the facts of the present case owing to the reasons mentioned in the subsequent paragraphs.

26. As regards the allegations pertaining to the imposition of restrictions by the Opposite Parties/MILMA upon the Informant, the Commission has perused Clause 2 of the template letter of Thiruvananthapuram dairy (of the Opposite Parties) in relation to the sanctioning of temporary MILMA agency for the supply of milk and milk products. The said letter indicates certain restrictions upon the retailers/ dealers *etc.* who propose to take the agency of MILMA *i.e.*, not deal with any brands of milk and milk products other than that of MILMA. It is stipulated in the said letter that if any agent deals with the products of brands other than MILMA, the agent would be liable for penalty and the security amount deposited shall stand forfeited. The Commission has also perused the contents of the letter dated 11.11.2013 written by MILMA's Thiruvananthapuram dairy to Mr. Jayakumar C. in respect of rules regarding the allotment of temporary agency for providing MILMA milk and milk products as well as the cancellation of agency letter dated 30.12.2018 written by MILMA to Mr. Jayakumar C. Upon perusal of Clause 2 of the said allotment letter, Mr. Jayakumar C. appears to have been prohibited from selling milk and milk products of brands other than MILMA and his security deposit was confiscated. The Commission has also perused a copy of letter/declaration dated 30.07.2021 written by Raseena Sidhiq of Grand Smart Supermarket to MILMA, wherein it has been stated that "*I hereby declare that, I will stop selling of milk products of other brands and will do sale of MILMA dairy products only.*" From a collective reading of



the above-mentioned letters, notices and clauses of agreement, it appears that the Opposite Parties/MILMA has placed restrictions upon the retailers/ dealers etc. who propose to take the agency of MILMA from not dealing with any brands of milk and milk products other than MILMA.

27. However, in view of the assertions of the Informant, that restrictions were being placed on non-exclusive dealers and that Informant had no issue in case such restrictions were upon exclusive outlets, the Commission directed Opposite Parties, to specifically provide their comments on the same as well as provide clarification as to whether the Opposite Parties/MILMA has entered into different kinds of agreement with its exclusive and non-exclusive agents and the basis of the categorisation of such agents. The Opposite Parties, while denying such allegations in their response to the Information as well as affidavit dated 20.01.2022, have categorically stated that MILMA has an agreement with its dealers/ agents who are their exclusive agents. The relevant extract of the said affidavit reads as follows: *“MILMA has exclusive agents, including wholesale distributors. These wholesale distributors can supply milk through sub-dealers who are linked directly with the wholesalers. MILMA do not get into any agreement with these sub-dealers. MILMA is having agreement only with its dealers/agents who are their exclusive agents. These sub-dealers do not get into any kind of exclusivity with MILMA”*. It has also been stated by the Opposite Parties that it does not enter into any agreement with non-exclusive dealers, and wholesalers are free to distribute the milk through such dealers, which also includes supermarkets. Therefore, except for the exclusive agents, the Opposite Parties/ MILMA does not enter into agreements with other sub-distributors. The Commission also notes that the Opposite Parties, during the preliminary conference as well in their written submissions, have stated that the entire evidence which is being relied upon by the Informant pertains to exclusive agents of the Opposite Parties who are being prohibited from dealing in the products of other companies, and the Informant has admitted that they have no issues with the operation of exclusive outlets of MILMA, yet the Informant is using such communications of MILMA with its exclusive agents to bring out a case that all retailers are prohibited, which is not the case. It has been stated that,



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except for a limited number of exclusive agents, the Opposite Parties do not have any other agreement with other distributors. It has also been stated that the Informant has deliberately misrepresented facts with the sole reason to free ride on the network of the Opposite Parties. These facts and assertions have been made by the Managing Director of MILMA on affidavit. The Commission tends to believe the same. The Commission also observes that certain restrictions which are placed on exclusive outlets/dealers by the manufacturers may not always be termed as anti-competitive. An exclusive arrangement in a vertical chain is not an anathema under competition law, when supported by circumstances warranting such exclusivity when looked at objectively. Thus, the Commission is of the *prima-facie* view that no case of contravention of the provisions of either Section 3(4) or Section 4 the Act is made out in the facts and circumstances of the present case.

28. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case, and the Information filed is directed to be closed forthwith against the Opposite Parties under Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises, and the same is also rejected.
29. The Secretary is directed to communicate to the parties accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 31.03.2022