



COMPETITION COMMISSION OF INDIA
Case No. 53 of 2014

In Re:

Som Distilleries and Breweries Limited

Informant

And

SABMiller India Limited

Opposite Party

CORAM

Mr. Ashok Chawla
Chairperson

Mr. M. L. Tayal
Member

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Appearances: Shri Sumeer Sodhi and Shri Aman Nandrajog
Advocates for the informant

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

The present information has been filed under section 19(1)(a) of the Competition Act, 2002 („the Act“) by Som Distilleries and Breweries Limited



(„the Informant“) against SABMiller India Limited („the Opposite Party“) alleging *inter alia* contraventions of the provisions of section 4 of the Act.

2. The Informant, a company incorporated under the Companies Act, 1956, is engaged in the business of producing various liquor products such as beer, whiskey, rum, vodka, etc. and has many brands registered for their different products.

3. The Opposite Party, a company registered under the Companies Act, 1956, is involved in brewing, marketing and sale of beer, non-alcoholic beverages and mineral water. The Opposite Party is the subsidiary of SAB MILLER Plc, UK, the flagship company SAB Miller, which is among the world’s largest brewers. SABMiller group has a wide portfolio of International brands which includes premium international beers such as Pilsner Urquell, Peroni Nastro, Azzurro, Miller Genuine Draft and Grolsch, leading local brands such as HAYWARDS 5000, Knock-Out, Fosters, and Royal Challenge.

4. The Informant has stated that the Opposite Party is the operating entity of SABMiller Group in the Indian market. The Informant has alleged that since 2000, Opposite Party has acquired many small/individual competitors with the sole motive of eliminating competition. The Opposite Party entered India in the year 2000 through a joint venture with Narang Breweries Ltd. In June 2001 and May 2003, Opposite Party acquired Mysore Breweries (with its Knock Out Brand) and Shaw Wallace’s beer brands (Royal Challenge & Haywards). By end of 2003, Opposite Party acquired Rochees Breweries and formed a joint venture with Shaw Wallace, which was later acquired by Opposite Party. Subsequently, the group went on to acquire several small/Individual brewing companies in their pursuit of becoming the largest manufacturer of beer in India. The Opposite Party manufactures many popular brands of beer, viz. Haywards 5000, Fosters, knockout etc. and also imports

some of its brands like Peroni, into the country. Opposite Party has ten high quality breweries located across nine states in India.

5. The Informant has stated that there are two major companies in the brewery business across India i.e. United Breweries Limited and the Opposite Party, having a total market share of approximately 85%. Further, Heineken, the Dutch beer giant, is one of the largest shareholder of United Breweries, holding 40% shares of United Breweries. As alleged by the Informant, United Breweries and Opposite Party have adopted a practice of creating a situation, whereby other breweries are unable to sustain in the market and are forced to wind up breweries or sell off their business to the dominant players.

6. It has been further averred by the Informant that Opposite Party has regularly indulged in filing frivolous and fabricated cases against competitors with the motive of ousting them from the market. The Opposite party had filed cases against the Informant to restrain it from bottling its beer in bottles of the Opposite party. Opposite Party filed a suit against Informant in Bombay High Court, (Case no. 603/2007) alleging infringement and passing off of the numerals „5000“ in „Haywards 5000“ against informant's beer by the name of „Power 5000“. Injunction was granted by Bombay High Court by Order dated 05.09.2011. The informant preferred an appeal against the said order, which is still pending. Another Suit bearing No. 5A/2012 was instituted by the Opposite Party against Informant before District Court of Raisen, Madhya Pradesh, for restraining the Informant from infringing Opposite Party's design of bottle which was registered as Design No. 223479 and passing off its products as those of Opposite Party's products by use of the trademark „SABMiller / SABMiller India.“ At that point of time, Opposite Party had not been able to obtain registration of their Trademarks. The Opposite Party was not successful in obtaining an interim order from the District Court at Raisen. Later, the Opposite Party obtained the registration of trade mark but instead of approaching the Raisen Court, approached the Hon'ble High Court of Judicature at Bombay by filing CS No. 2584 of 2012.

7. The Informant has alleged that contesting such cases filed by the Opposite Party has caused a grave financial burden to the Informant. The Informant has further stated that Opposite Party has filed fabricated cases against several of its competitors to pressurize them to either wind up their operations or agree to be acquired by the Opposite Party at meagre prices. The Opposite Party alleged to have filed cases against the Informant to restrain it from bottling its beer in bottles of Opposite Party, which is an age old practice. The practice of using recycled beer bottles procured from scrap dealers is not actionable and is considered an honest industry practice and is also considered environment friendly.

8. Based on above allegations, the Informant has alleged that the Opposite Party has contravened the provisions of section 4 of the Act.

9. The Commission has heard the Informant at length and considered all the materials on the record.

10. Based on the factual matrix of the case as stated above, the relevant product market may be considered as “manufacture and sale of beer”. The relevant geographic market may be considered as “the territory of India”. Thus, the relevant market to be considered in this case is “the market for manufacture and sale of beer in India”.

11. In order to determine the issue of dominance of the Opposite Party, it is observed that although, the brands of beer of the Opposite Party like Haywards, Knock-Out, Fosters, and Royal Challenge etc. are popular in India and Opposite Party is second largest beer manufacturer in India, considering the fact that market share of United Breweries Limited is almost twice as that of the Opposite Party, the Opposite Party cannot be said to be dominant in the relevant market. Even otherwise the impugned conduct of the Opposite Party essentially relates to litigation involving intellectual property rights violations.



12. As the Opposite Party has not been found dominant in the relevant market, the question of abuse of dominance in terms of section 4 of the Act does not arise.

13. In view of the above discussion, there does not exist a prima facie case for causing an investigation to be made by the Director General under section 26(1) of the Act. It is a fit case for closure under section 26(2) of the Act and the same is hereby closed.

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

New Delhi

Date: 12/09/2014

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Mr. M. L. Tayal)
Member

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

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