

## COMPETITION COMMISSION OF INDIA

[Case No. 70/2011]

Date: 27.08.2012

**Informant:** Shri Saurabh Bhargava, s/o Shri Shashank Bhargava, Civil Line  
Near Jalori Garden, Vidisha (M.P.)-464001

**Opposite parties:**

- 1) Secretary, Ministry of Agriculture and Cooperation, Krishi Bhawan, New Delhi.
- 2) Agriculture Commissioner, Chairman of the Registration Committee, Krishi Bhawan, New Delhi
- 3) Secretary, Central Insecticide Board & Registration Committee, NH-4, Faridabad

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

The informant in this case is aggrieved by the Rules and Regulations made in respect of registration of insecticides for importing into India. To regulate the import, manufacture, sale, transport, distribution and use of pesticides and insecticides, the legislature framed The Insecticides Act, 1968 (hereinafter called the Act). Insecticides are basically toxin substances capable of causing health hazards. The import of insecticides is regulated under the Act, and the Regulations framed under the Act by Central Insecticides Board (CIB). The Act is administered by the Ministry of Agriculture, Department of Agriculture & Cooperation, who is Opposite Party No. 1 in this case. The Ministry is advised by CIB on technical matters arising out of administration of the Act. Director General, Health Services is an ex-officio Chairman of CIB (as per section-4 of the Act). The Act provides for a Registration Committee (RC), which is a technical executive body and has responsibility to register insecticides after scrutinizing their formulae and verifying claims of the importers or manufacturers in regard to the efficacy and safety to human beings and animals. Elaborate rules have been made under the Act for field trials of the insecticides.

2. The grievance of the informant is that the conditions prescribed for grant of registration certificate were onerous and these conditions created monopoly in respect of the existing entrants and it was difficult for new entrants to get themselves registered, with the result that in respect of many molecules, there was



monopoly in the market and exorbitant prices were being charged by insecticide importers and manufacturers.

3. As per informant, there were two kinds of entrants, first and subsequent. The first entrant is registered under section 9(3) of the Act. The second and onward entrants are entitled to import the same insecticides under section 9(4) of the Act with reduced field trial parameters because ongoing testing had already been done on such insecticides. The plea taken by the informant is that terms and conditions under section 9(3) are difficult to achieve because of financial impracticability and high entry cost. The entry of second entrant under section 9(4) has been suspended under the new rules and regulations of 2010. The Opposite Party No. 1 & 2 though have been taking steps for correcting the anti competitive conditions for many years, but every time when regulations are amended, the new terms introduced in the regulations are very harsh on the competition. If the amended rules under the Act are allowed to prevail, the entry of new entrants will be practically barred and the total field in the area of insecticides will rest in the hands of first registrants who predominantly were MNCs.

4. The informant has prayed that competition must be established in the insecticides business by the Commission for the benefit of farming community so that prices go down and registration under section 9(4) should be opened to establish and sustain competition. The terms and conditions of field trial for import of insecticides must not be changed for the party who makes an application for registration under prevalent rules framed under section 9(4) of the Act. Once an application is made only terms and conditions existing at the time of making application should be applied and the subsequently changed terms and conditions should not apply. The new terms and conditions should be so framed by Opposite Parties 1 & 2 so as to enhance the competition. The informant therefore prayed to the Commission to declare the terms & conditions of 2010 framed by OP 1 and OP 2 under Insecticides Act to be anti competitive and void and thus wanted the Commission to remove these terms & conditions and open the market of insecticides under section 9(4) of the Act.

5. The Commission had given hearing to the informant as well as to the Opposite Parties and had also sought written response to the information from Opposite Parties. On considering the facts and circumstances of the matter and the submissions made by the parties, the Commission is of the view that the impugned conditions prescribed for grant of registration certificate cannot be termed either anti-competitive agreement under section 3 of the Act, or abuse of dominant position in terms of the provisions of section 4 of the Act. Ministry of Agriculture or



CIB are not engaged in any activity so as to qualify to be termed as enterprise(s) in terms of section 2(h) of the Act. The informant has also not submitted any material to show that insecticide importers and manufacturers are charging exorbitant prices either due to any anti-competitive agreement between them or any dominant player amongst them is abusing its dominance in the relevant market.

6. It is, thus, evident that opposite parties cannot be termed as enterprises in terms of Section 2(h) of the Competition Act, 2002, nor can they be construed as being participants in the market under consideration. The question of violation of Sections 3 or 4 of the Act, therefore, does not arise. The opposite parties are primarily responsible for administration of The Insecticides Act, 1968 and rules framed thereunder, including the related technical and procedural responsibilities and, as such, their activities would normally not be covered under the Competition Act, 2002 unless there are strong grounds to suggest otherwise.

7. In view of the foregoing discussion, no case of violation of either Section 3 or Section 4 of the Act is made out against the opposite parties. Therefore, the Commission is of view that the information filed by the Informant and the material as placed before the Commission do not provide basis for forming a, prima facie, opinion for referring the matter to the Director General (DG) to conduct the investigation. The matter is, therefore, closed under Section 26(2) of the Competition Act, 2002.

8. The Secretary is directed to inform all concerned accordingly.

Sd/-  
Member (G)

Sd/-  
Member (T)

Sd/-  
Member (GG)

Sd/-  
Chairperson

Sd/-  
Member (AG)

Sd/-  
Member (D)

Certified True



*Sd/- P. Gahlaut*  
27/08/2012  
P. GAHLAUT  
Assistant Director  
Competition Commission of India  
New Delhi