



COMPETITION COMMISSION OF INDIA

Case No. 80 of 2016

In Re
XYZ

Informant

And
Sanofi India Limited ,
Sanofi House,
CTS No. 117-B, L&T Business Park,
Saki Vihar Road, Powai
Mumbai-400072

Opposite Party

CORAM
Mr. Devender Kumar Sikri
Chairperson

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Appearance:

For Informant : Mr. Harish Kumar Gupta, Advocate

For Opposite Party : Ms. Sonam Mathur, Advocate
Mr. Sanjeev Kumar, Advocate
Mr. Abhijit Yadav, Legal Head of Opposite Party

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

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the 'Act') by XYZ (hereinafter, '**Informant**') against Sanofi India Limited, (hereinafter, the '**OP**'), alleging, *inter alia*, contravention of provisions of Sections 3 & 4 of the Act.



2. The Informant has sought confidentiality of his identity and, *inter alia*, prayed before the Commission to initiate the enquiry.
3. On 17th November, 2016, the Commission considered the matter and granted confidentiality to the identity of the Informant. Due to confidentiality of identity of the Informant, the Commission decided to send a brief summary of the allegations to the OP instead of complete information. The following are the allegations in brief:
 - (1) As per the information, OP is not regularly supplying the drugs to the distributors in the garb of various formalities and documents, such as, TPDD and details of sales information.
 - (2) In order to provide regular supply, OP is asking the distributors to provide various documents, such as, successful completion of TPDD and submission of party wise, SKU wise sales and stock report indicating the prices at which the stock was sold, *etc.*
 - (3) As per The Drugs (Prices Control) Order, 2013, “28. *Manufacturer, distributor or dealer not to refuse sale of drug. – Subject to the provisions of the Drug and Cosmetics Act, 1940 (23 of 1940) and the rules made thereunder, - (a) no manufacturer or distributor shall withhold from sale or refuse to sell to a dealer any drug without good and sufficient reasons; (b) no dealer shall withhold from sale or refuse to sell any drug available with him to a customer intending to purchase such drug.*”
 - (4) Thus, the Informant has submitted that as per the said rule, the OP is under obligation to supply its drugs to the Informant.



- (5) In view of the aforesaid, it is alleged that OP has contravened the provisions of Sections 3 and 4 of the Act.
4. The Commission directed to have separate preliminary conferences with the Informant and Opposite Party on 7th and 8th February, 2017, respectively.
 5. Thereafter, on 7th February, 2017, the Commission heard Mr. Harish Kumar Gupta, Advocate on behalf of the Informant. During the hearing, the Informant reiterated the allegations mentioned in the information.
 6. On 8th February, 2017, Ms. Sonam Mathur, Advocate appeared on behalf of the OP and requested the Commission to adjourn the preliminary conference till 21st March, 2017. Thereafter, the OP, *vide* letter dated 15th March, 2017, submitted its written submission wherein it argued that it has a comprehensive evaluation process for the appointment of distributors which involves verification of retail coverage, financial strength, cold chain infrastructure and a third party due diligence (TPDD) by an external agency appointed by the company. In view of this, the OP has submitted that it has not violated any provisions of the Act and, TPDD and submission of party wise, SKU wise sales and stock report are necessary formalities required before appointing a distributor.
 7. On 21st March, 2017, Ms. Sonam Mathur appeared before the Commission and reiterated submissions made in the aforesaid written response. During the preliminary conference, the Commission raised certain queries, such as, inception date of TPDD practice and number of distributors of OP in Delhi. To respond to the queries raised by the Commission, the OP, *vide* submission dated 5th April, 2017, submitted that TPDD process was introduced in January, 2016.
 8. On 14th June, 2017, the Commission decided to forward a copy of the non-confidential version of the submissions of the Opposite Party dated 15th March,



2017 and 5th April, 2017 to the Informant and directed the Informant to file its response to the submissions of the Opposite Party within one week from the receipt of that order.

9. Thereafter, on 28th June, 2017, the Informant filed a response to the submissions of the opposite party dated 15th March, 2017 and 5th April, 2017. With regard to submissions made by the OP, the Informant has submitted that TPDD was not followed by any other similar global company like Pfizer, Glaxo or Abbott while appointing the Informant as a distributor. Hence, the process of TPDD is unfair and against the spirit of the Act and is in contravention on the Act. The Opposite Party has raised unethical and uncalled issues just to refuse to supply the drugs to the Informant.
10. On 12th July, 2017, the Commission considered the instant case and decided to pass appropriate order in due course.
11. The Commission has carefully perused the material available on record and is of the view that the Informant is mainly aggrieved by the irregular supply of medicine for not providing certain document, such as, TPDD-Third Party Due Diligence carried out by independent agency- and submission of party wise, SKU wise sales and stock report indicating the price at which the stock was sold.
12. With regard to violation of the provisions of Section 3 of the Act, the Commission could not find any agreement / understanding / arrangement which causes or is likely to cause appreciable adverse effect on competition. Hence, there is no violation of the provisions of Section 3 of the Act.



13. With regard to examination of allegations under Section 4 of the Act, the Commission observes that as per the data provided by industrial outlook in Table 1, there are more than 200 companies in India in the business of drugs & pharmaceutical products. In terms of market share, OP is at 18th place with 1.08 percent market share. Apart from OP, there are numbers of reputed firms having good market share and goodwill in the market, such as, Cipla Ltd., Lupin Ltd., Dr. Reddy's Laboratories Ltd., Aurobindo Pharma Ltd., Sun Pharmaceutical Inds. Ltd., Glenmark Pharmaceuticals Ltd., Cadila Healthcare Ltd., Torrent Pharmaceuticals Ltd., Sun Pharma Laboratories Ltd., Hetero Labs Ltd., etc. The Informant was trying to get distributor ship / medicine of OP to sell it into the market. Since the main motive of the Informant is to sell the drugs & pharmaceutical products, it can buy drugs & pharmaceutical products from any manufacturers and supply them in the market. As also admitted by the Informant, it is already distributing products of several other companies. Thus, it can be safely inferred that the Informant does not depend on OP for its survival. In view of above discussion, the OP does not appear to be dominant in the market and in the absence of dominance, the question of abuse of dominance does not arise.

Table.1 Market Share of Companies : Drugs & Pharmaceuticals

Per cent : 2009-10 to 2015-16

Rank		2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
1	Cipla Ltd.	4.55	4.54	4.23	4.4	4.07	3.94	6.07
2	Lupin Ltd.	3.22	3.34	3.29	3.9	3.97	3.84	5.59
3	Dr. Reddy's Laboratories Ltd.	4.21	4.4	4.2	4.57	4.42	4.17	5.29
4	Aurobindo Pharma Ltd.	2.71	2.96	2.64	3.01	3.24	3.36	4.73
5	Sun Pharmaceutical Inds. Ltd.	2.25	2.4	2.57	1.36	1.3	3.3	3.81



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6	Glenmark Pharmaceuticals Ltd.	0.47	0.87	0.96	1.09	1.06	2.14	3.08
7	Cadila Healthcare Ltd.	1.66	1.65	1.55	1.3	1.29	1.6	2.97
8	Torrent Pharmaceuticals Ltd.	1.21	1.27	1.25	1.46	1.49	1.43	2.8
9	Sun Pharma Laboratories Ltd.				0.13	1.81	1.8	2.52
10	Hetero Labs Ltd.	1.17	1.01		1.57	1.72	1.87	2.36
11	Divi's Laboratories Ltd.	0.82	1	1.17	1.2	1.16	1.29	1.97
12	Alkem Laboratories Ltd.	1.17	1.15	1.23	1.28	1.17	1.27	1.93
13	Alembic Pharmaceuticals Ltd.		1.05	0.86	0.83	0.84	0.84	1.55
14	Ipca Laboratories Ltd.	1.35	1.42	1.45	1.53	1.46	1.27	1.46
15	Glaxosmithkline Pharmaceuticals Ltd.	1.57	1.52	1.35	1.5	1.03	0.98	1.28
16	Biocon Ltd.	0.92	0.93	0.87	0.94	0.89	0.84	1.15
17	Strides Shasun Ltd.	0.51	0.25	0.41	0.34	0.37	0.34	1.09
18	Sanofi India Ltd.	0.81	0.77	0.74	0.84	0.79	0.78	1.08
19	Wockhardt Ltd.	1.25	1.29	1.49	1.19	0.72	0.69	1.02
20	Emami Ltd.	0.7	0.71	0.68	0.73	0.61	0.64	0.97
21	Nectar Lifesciences Ltd.	0.52	0.56	0.85	0.94	0.79	0.73	0.95
22	Pfizer Ltd.	0.65	0.63	0.61	0.52	0.46	0.69	0.95
23	Laurus Labs Pvt. Ltd.	0.16	0.19	0.27	0.39	0.52	0.55	0.92

Source: industrial outlook, CMIE

14. Considering the above analysis, the Commission is of the view that no case is made out against OP either under Section 3 or Section 4 of the Act. Thus, the case is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.



15. The Secretary is directed to communicate to the parties accordingly.

**S/d-
(Devender Kumar Sikri)
Chairperson**

**S/d-
(Sudhir Mital)
Member**

**S/d-
(Augustine Peter)
Member**

**S/d-
(U. C. Nahta)
Member**

**New Delhi
Date: 19.07.2017**