



COMPETITION COMMISSION OF INDIA

Case No. 84 of 2016

In Re:

Mr. Rajendra Kumar Nigam

Informant

And

Franco-Indian Pharmaceuticals Private Limited

20, Dr. E. Moses Road, Mahalaxmi, Mumbai- 400011

Opposite Party - 1

Mr. Rishi Kapoor,

Depot Manager/C&F of Opposite Party - 1

C-11 Site-1, Panki Industrial Area, Kanpur-208022

Opposite Party - 2

CORAM

Mr. Devender Kumar Sikri

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. U. C. Nahta

Member

Justice Mr. G.P. Mittal

Member

Appearance:

For the Informant:

Informant in-person, and Mr. Gopal Jha, Advocate



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

1. The information in the present case has been filed by Mr. Rajendra Kumar Nigam (hereinafter, the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the "**Act**") against Franco-Indian Pharmaceuticals Private Limited (hereinafter, the '**OP-1**') and Mr. Rishi Kapoor (hereinafter, the '**OP-2**'), collectively referred to as the Opposite Parties/OPs, alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. The Informant is stated to be a registered wholesaler of medicines, carrying on its business viz Cepvet Pharmaceuticals in Jaunpur, Uttar Pradesh. OP-1 is stated to be a pharmaceutical company selling different brands of medicines in India. OP-2 is stated to be a depot manager/clearing and forwarding agent of OP-1.
3. As per the information, the Informant had requested OP-1 to allow him to be a stockiest of its medicines. However, allegations are that OP-1 asked the Informant to obtain a No Objection Certificate (hereinafter, the "**NOC**") from the local Chemist and Druggist Welfare Association (hereinafter, the "**Chemist and Druggist Association**") stating that in the absence of NOC, OP-1 would not be able to supply stock of medicines to the Informant.
4. It is stated that the Informant placed an order with OP-1 for supply of certain medicines on 31st December, 2015 enclosing a demand draft in favour of OP-1. Subsequently, on 30th January, 2016, the Informant placed another order with OP-2 for supply of medicines enclosing a demand draft again. However, the aforesaid orders were allegedly not supplied. Thereafter, the Informant called OP-2, the Depot Manager/ Clearing and Forwarding Agent of OP-1. It has been contended by the Informant that the supply of medicine ordered by the Informant was declined on account of non-production of NOC by the Informant from the local Chemist and Druggist Association. It has also been contended that OP-2 also declined to provide the price list of medicines to the Informant.



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5. As per the Informant, refusal to supply the medicines and the price list of the medicines amounts to violation of paragraphs 25(2), 25(3) and 28 of the Drug Price Control Order, 2013 (hereinafter, the “**DPCO 2013**”). Accordingly, on 12th February, 2016, the Informant wrote a letter to the National Pharmaceutical Pricing Authority (NPPA) complaining of violation of the above said provisions of the DPCO 2013 by OPs, a copy of which was also forwarded to OP-1. As per the Informant, when OP-1 came to know about the said letter dated 12th February, 2016, the medicines were supplied to the Informant on 20th February, 2016.
6. On 08th March, 2016, NPPA wrote a letter to OP-1 stating that a complaint has been received from the Informant regarding refusal of supply of drugs by OP-1. It was also stated in the said letter that “...para 28 of DPCO, 2013, provides that refusal of medicines without any good and sufficient reasons like non-validity of wholesale/retail license, non-availability of stock, and non-payment will be considered as violation of the said order...” Further, OP-1 was advised to supply drugs to the Informant and submit a compliance report.
7. On 16th March, 2016, OP-1 responded to NPPA stating that it has not refused to supply medicines to the Informant and stocks have been supplied against all the orders placed by the Informant on OP-1.
8. It has also been submitted by the Informant that OP-1 gives 2 per cent cash discount to its customers. However, the same has not been given to the Informant by OP-1 and no reasons have been assigned for such refusal. In this regard, the Informant wrote a letter dated 31st March, 2016 to OP-1 stating, *inter alia*, that he has been getting supplies of medicines regularly on advance payment but cash discount of 2 per cent is not being given to him. It was further stated in the letter that denial of cash discount would amount to commercial discrimination, which is not permissible under law.
9. It has also been alleged that OPs are abusing their dominant position by imposing unfair and discriminatory conditions in supply of medicines to the Informant, in



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violation of Section 4 of the Act. Further, the anti-competitive agreement between OP-1 and OP-2 is in violation of Section 3(1) and Section 3(4) of the Act.

10. The Informant has hence prayed, *inter alia*, for initiation of an inquiry against the OPs for their alleged anti-competitive practices and to impose penalty for their alleged conduct.
11. The Commission, after considering the information on 26th October, 2016, decided to call the Informant for a preliminary conference on 28th December, 2016. During the preliminary conference, the Informant reiterated the allegations and claims presented in the information. The Informant also alleged that 2 per cent cash discount is being denied to him under the pressure of local Chemist and Druggist Association.
12. At the outset, the Commission notes that it has passed several orders against state level and regional chemists and druggists associations for their anti-competitive activities like requirement of NOC, Product Information Service (PIS) approval, fixing trade margins, *etc.* A press release dated 03rd February, 2014 was also issued by the Commission to all India level, State level and District Level Associations of chemists, druggists, stockists, whole-sellers and manufacturers that penalties would be imposed by the Commission on such trade associations of chemists and druggists if they are found to commit such anti-competitive practices.
13. The Commission, in the present case, notes that the Informant placed two orders with the OPs and the ordered medicines were allegedly not supplied on account of non-production of NOC from the local Chemist and Druggist Association. However, the Informant has not provided any material to substantiate his allegation that OPs demanded an NOC from the Informant and refused to supply the medicines on account of non-production of NOC from the local Chemist and Druggist Association. The Informant has also not produced any material to



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indicate that the local Chemist and Druggist Association has indulged in the practice of issuance of NOC.

14. Further, as per the letter dated 16th March, 2016 written by OP-1 to NPPA, all the orders placed by the Informant with OP-1 have been completed. During the preliminary conference, the Informant did not contest the said letter of OP-1. In view of the foregoing, the Commission notes that the Informant is regularly getting supplies of medicines from OP-1 indicating that it is not mandatory for him to produce NOC from the local Chemist and Druggist Association for the same.
15. Further, during preliminary conference, the Informant also alleged that 2 per cent cash discount is being denied to him under the pressure of local Chemist and Druggist Association. However, the Informant has also not placed on record any cogent material to substantiate that cash discount of 2 per cent was denied to the Informant because of any arrangement/understanding between the OPs and the local Chemist and Druggist Association.
16. The Commission notes that discriminatory pricing, by way of refusal to give discounts which are being given to other customers, may be looked into for probable violation of Section 4 of the Act. For the purpose of analysis under Section 4 of the Act, the first requirement is to delineate the relevant market as per Section 2 (r) of the Act. The next step will be to assess the dominance of OPs in the defined relevant market as per the factors enumerated under Section 19(4) of the Act and once the dominance of OP is established, the final step is to look into the allegations of abuse of dominance.
17. In this regard, the Commission notes that the Informant has not placed any information on record so as to establish the dominance of OPs in any relevant market. Further, there is no specific information available in public domain to suggest that the OPs could be dominant in any relevant market. The Informant has also not placed on record any documentary proof relating to the discount policy of



OP-1 so as to examine whether the Informant is eligible for cash discount from OP-1. In the absence of such information, the instant matter cannot be examined under the provisions of Section 4 of the Act.

18. In the light of the above analysis, the Commission finds that no case of contravention of the provisions of Sections 3 and 4 of the Act is made out against the OPs in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.
19. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi

Dated: 24.01.2017