



**COMPETITION COMMISSION OF INDIA**  
(Case No. 92 of 2013)

***In Re:***

M/s Himalya International Ltd ... Informant

And

M/s Himalya Simplot Pvt Ltd ...Opposite Party No. 1  
M/s. Simplot India Foods Pvt Ltd ...Opposite Party No. 2  
Comida Foods Pvt Ltd ...Opposite Party No. 3  
M/s. Simplot India LLC ...Opposite Party No. 4

**CORAM:**

Mr. Ashok Chawla  
Chairperson

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

Mr. M.L.Tayal  
Member

Mr. Justice (Retd.) S.N. Dhingra  
Member

Mr. S.L. Bunker  
Member

Present: Informant through Sh. V. Shankara & Pushpa Singh, Advocates.

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

The present information was filed under the provisions of section 19(1) of the Competition Act 2002 (“the Act”) *inter alia* alleging anti competitive practices in contravention of Sections 3 and 4 of the Act by the Opposite Parties (OPs).



2. The Informant which is a public limited company is carrying on business of Agro and Food processing etc. and having plants at Paonta Sahib (Himachal Pradesh) and Mehsana (Gujarat). The Opposite Party no. 1 (OP1) is a registered joint venture (JV) Company of Informant and Opposite Party no. 2, 3 and 4 (OP2, 3 & 4). The “Joint Venture” agreements - Share Holders Agreement (SHA) dated 06/10/2011, Master Agreement (MA) dated 24/08/2012 and Spirit of Agreement dated 16/05/2012 were executed between Informant and OPs 2, 3 & 4. The Informant further alleged that Clause 2.5 of the SHA is anti-competitive. The Clause 2.5 of the SHA reads as:-

*“During the term of this agreement, the Company shall act as the exclusive marketing, selling and distribution organisation for HIL for the products in the Product Channels, as each may change from time to time during the term of this agreement. The Company shall perform such services in accordance with the following provisions of this Clause .....*”

3. Informant alleged that OP4, a multi-billionaire Company unduly influenced the Informant in signing the joint venture agreements. As per Clause 2.5 of SHA, OP1 was exclusive marketing, selling and distribution entity for the Informant for all the frozen potato based food products and appetizers produced by the Informant. Informant alleged violation of the provisions of Sections 3 & 4 of the Act due to such clause in the SHA. The Informant was barred from selling its potato food products and food appetizers in the market because all the rights of exclusivity were taken by OPs to themselves which has caused appreciable adverse effect on competition within India.
4. The Commission considered all material on record including the information and arguments addressed by the Counsel of the Informant.



5. In the present case, the relevant product market appears to be marketing, selling and distribution of potato based food products and food appetizers. The relevant geographic market would be territory of India. Based on the above delineation of relevant product market and relevant geographic market, the relevant market in the instant case would be the marketing, selling and distribution of potato based food products and food appetizers in India.
6. OP4 is the Indian subsidiary of M/s J.R. Simplot Company, one of the largest global food and agribusiness conglomerate with no significant presence in the Indian market. As per the Director's report of the Informant for the year 2012-13, it is the largest food processing company in India. Therefore, OP1 to 4 cannot be said to be in the dominant position in the relevant market in India. Otherwise also, the allegation of the Informant with respect to formation, organization, ownership, operation, control and financing of OP1 JV cannot be said to be the abuse of dominant position. Any such arrangement entered into between the parties in furtherance of the common business parlance cannot be termed to be abuse by one party only because it did not meet the expectations of the other party. Further, in terms of clause 1.10 of the SHA, the exclusivity is a mutual exclusivity, volunteered by both the parties to conduct the business in a specified manner. There is no case of any exclusivity imposed upon the Informant by the OPs, as has been alleged in the information. Thus, *prima facie* no case of violation of Section 4 of the Act is made out against the OPs.
7. The Commission notes that during the currency of the SHA, the JV Company had to act as the exclusive marketing, selling and distribution organization for the Informant for its products (clause 2.5 of SHA). It appears that since the



arrangement in terms of SHA did not work well, a Master Agreement (MA) between the parties was entered into. The clause 2.01 of the MA reads-

*“During the term of this Agreement, HSPL will act as the exclusive marketing, selling and distribution organisation for Simplot India for French fry and specialty potato products, including but not limited to hash browns (“Potato Products”) in the Product Channels (as identified in the Shareholders Agreement) as such Potato Products and Product Channels may change from time to time during the term of this agreement.”*

8. It is pertinent to mention that the clause 2.5 of SHA has been amended by the Clause 5.04 of MA to replace the Informant by the OP4 with similar obligations and responsibilities. Therefore, it can be seen that the alleged arrangement was for a very limited period till the execution of the MA. The Commission, in view of the fact that the alleged exclusive selling and distribution arrangement was the very purpose of the formation of the JV Company and voluntarily adopted by the parties to further their respective business interests, it cannot be termed to be anti-competitive. Further, *inter alia*, in view of the currency of the SHA being for a very limited period, no appreciable adverse effect on competition (AAEC) in India can be *prima facie* conceived. In the facts of the case, the reference of exclusivity drawn by the Informant does not make it a case actionable under Section 3(4) of the Act (vertical restraint). There is no allegation or material on record for horizontal restraints under Section 3(3) of the Act. As such *prima facie*, no case of violation of Section 3 of the Act is made out against the OPs.



9. 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.

10. The Secretary is directed to inform the parties concerned accordingly.

New Delhi

Date: 06-03-2014

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**

**Sd/-**  
**(Geeta Gouri)**  
**Member**

**Sd/-**  
**(Anurag Goel)**  
**Member**

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

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