



COMPETITION COMMISSION OF INDIA

Case No. 77 of 2015

In Re:

**Shri Vivek Sharma
Chamber No. 359, Civil Wing
Tis Hazari Courts
New Delhi 110054**

Informant

And

**1 Becton Dickinson India (P) Ltd.
1, Investate Bawal, Rewari
Haryana 123501**

Opposite Party No. 1

**2 Max Super Speciality Hospital
108-A, Indraprastha Extension
Patparganj, New Delhi 110092**

Opposite Party No. 2

CORAM

**Mr. Sudhir Mital
Chairperson**

**Mr. U. C. Nahta
Member**

**Justice G. P. Mittal
Member**



Appearances:

For the Informant: Shri Vivek Sharma, the Informant-in-person

For Becton Dickinson India (P) Ltd.: *Shri Nitin Sharma, Legal Counsel, South Asia of Becton Dickinson India (P) Ltd.; Shri Amit Kapur, Ms Unnati Agrawal and Ms Diksha Rai, Advocates.*

For Max Super Speciality Hospital: *Shri Kuldeep Kumar Sharma, Vice President, Legal, Max Healthcare; Shri Raj Shekhar Rao, Shri Rahul Satyan, Ms Shivanghi Sukumar, Ms Kruttika Vijay, Shri Aakarsh Narula and Ms Anuja Agrawal, Advocates.*

ORDER

1. The information in the present matter was filed by Shri Vivek Sharma (hereinafter, the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against Becton Dickinson India (P) Ltd. (hereinafter, '**OP-1**') and Max Super Speciality Hospital, Patparganj, Delhi (hereinafter, '**OP-2**') [collectively hereinafter, '**OPs**'] alleging contravention of the provisions of Sections 3 and 4 of the Act in the matter.
2. Finding *prima facie* contravention of the provisions of the Act, the Commission, *vide* its order dated 17.11.2015 passed under Section 26(1) of the Act, referred the matter to the Director General (hereinafter, '**DG**') for investigation. Pursuant to the aforesaid order of the Commission, the DG submitted the investigation report in the matter on 05.05.2017.



3. The Commission considered the investigation report of the DG in its ordinary meeting held on 31.10.2017 and decided to forward an electronic copy of the same to the Informant and the Opposite Parties for filing their suggestions / objections. The Commission also decided to forward an electronic copy of the investigation report of the DG to four individuals, who were identified in the DG's report to be liable under the provisions of Section 48(2) of the Act being the key persons of OP-2 responsible for the conduct of the affairs of OP-2 at the time of contravention of the provisions of the Act, for filing their suggestions / objections. The Informant, OP-1 and OP-2 filed their suggestions / objections to the investigation report of the DG.
4. The Commission has perused the investigation report of the DG, the suggestions / objections filed by the parties in response to the investigation report of the DG and the material available on record. The Commission has also heard the Informant and the Opposite Parties on the investigation report of the DG on 26.04.2018.
5. The Commission notes that the allegation of the Informant that OP-1, in collusion with OP-2, has printed a higher MRP on the disposable syringes to be sold in the in-house pharmacy of OP-2 in order to cheat the patients has not been substantiated in the DG's investigation report. It has been reported by the DG that OP-1 and OP-2 have not entered into any exclusive agreement with respect to supply of disposable syringes as OP-1 supplies its blister pack disposable syringes to OP-2 through M/s Shobhan Surgical Works and its flow wrap syringes through M/s Hindustan Surgical. Thus, according to the DG, the OPs have not contravened any of the provisions of Section 3(3) of the Act.
6. The Commission also notes that the DG has considered the market for *'provision of healthcare services/ facilities by private super-speciality hospitals within a distance of about 12 kms from Max Super Specialty Hospital,*
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Patparganj' as the relevant market for examination of the present matter and found that OP-2 is in a dominant position in the said relevant market. It is observed that while assessing the dominance of OP-2, the DG has considered factors such as the number of beds, number of on-roll and on-call general doctors, number of on-roll specialised doctors with DM/ M.Ch degree, number of in-patients and out-patients, financial strength, brand name *etc.* of OP-2 *vis-a-vis* its competitors operating in the relevant market.

7. With regard to the abusive conduct of OP-2, it is noted from the DG's report that OP-2 had earned huge profit margins ranging from 269.84% to 527% in the financial year 2014-15 and ranging from 276.96% to 527% in the financial year 2015-16 by sale of different syringes. Also, with view to earn more profit, OP-2 had shifted its procurement / purchase from flow wrap syringes to blister pack syringes during 2015-16. Further, it has been found by the DG that OP-2 has been compelling its in-patients to purchase products only from its in-house pharmacy once they are admitted to OP-2. As per the DG's report, such conduct of OP-2 amounts to contravention of the provisions of Section 4(2)(a)(ii) of the Act.
8. The Commission observes from the DG report that while there is a reference to OP-2's alleged conduct as being akin to 'aftermarket abuse'; however, DG has not investigated / analysed the same in greater detail. The Commission is of the considered view that it would be desirable that a finding be given on the delineation of relevant product market considering the aspect of aftermarket abuse, if any. Further, it is noted that the DG has delineated the relevant geographic market using the out-patient data of OP-2 whereas the abusive conduct of OP-2 has been examined in relation to the in-patients of OP-2. It has been observed by the DG that once a patient is admitted in OP-2 for treatment, she / he has to depend on the subsequent services rendered by OP-2 only (for drugs / devices required in treatment), even if the same is available at a discounted price in the open market. This results in a locked-in effect for a



patient which may enable OP-2 to exercise its dominance over its in patients. Further, to exacerbate the locked-in effect, OP-2 imposes conditions on its in-patients that they have to purchase the aftermarket products from its in-house pharmacy only. In such a situation, the patients do not hold any countervailing buying power and they are completely dependent on OP-2. Such a conduct may be considered as an aftermarket abuse even if OP-2 is found to be not dominant in the primary market for provision of healthcare services in Delhi.

9. As far as imposition of unfair price by OP-2 is concerned, the Commission observes that the DG has looked into the very high profit margins of OP-2 in sale of flow wrap syringes and blister pack syringes alone to come to a finding that unfair prices were being charged as an abuse of dominant position. However, to sustain this inference, the DG has not looked into the absolute total profits of OP-2 from the sale of syringes as well as from the sale of other products in the after-market such as medicines, surgical tools *etc.* Keeping in view the locked-in effect, further investigation regarding other products such as medicines, surgical tools *etc.* may be conducted to establish that the higher profit margins from sale of syringes or any other products cause consumer harm due to lack of competition. Particularly, the after-market products which are not required on an urgent basis for any medical procedure or which do not involve any high degree of quality issue from the medical procedure point of view may be looked into to establish whether OP-2 abuses its dominant position by forcing the in-patients to purchase the same at higher/unfair prices from its in-house pharmacy though the same are available at discounted rates in the open market.
10. Though the monopoly of OP-2 in the aftermarket of pharmaceutical and other consumables in healthcare services for in-patients by itself is not an issue for the purposes of the Act; however, abuse of that position by OP-2 by charging supra-competitive prices from the locked-in in-patients for the products and / or services including but not limited to syringes in that aftermarket needs to be



explored. It is common knowledge that this practice of exploitative pricing from the locked-in patients is followed with impunity by most of the hospitals. Though the information in the present matter was received with respect to the alleged abusive conduct of OP-2 only in the sale of syringes, the scope of investigation may be broadened by the DG by including other super speciality hospitals who are indulging in the aforesaid practices not only with respect to syringes but also with respect to other products such as medicines, surgical tools *etc.*

11. Since the present investigation report of the DG suffers from some inconsistencies as detailed above, the Commission is of the view that further investigation in this matter is required. The DG should focus on the following issues during re-investigation of the matter:
 - (i) The relevant market definition as provided in the DG's investigation report may be revisited. The concept of 'aftermarket abuse' referred to in the DG's report may be used to define the relevant market as the market for healthcare services/ facilities in the after-market for in-patients in super speciality hospitals. With regard to the relevant geographic market, instead of considering "*a distance of about 12 kms from Max Super Specialty Hospital, Patparganj*", the DG may consider Delhi as the relevant geographic market, as considered by the Commission in its *prima facie* order.
 - (ii) Besides huge profit margins from the sale of syringes as pointed out in the DG's report, the scope of investigation should be broadened by covering all aftermarket healthcare products and services provided by super speciality hospitals across Delhi to their in-patients. The investigation may especially focus on the products sold by the super speciality hospitals to their in-patients which are not required on an urgent basis for any medical procedure / intervention or which do not involve any high degree of quality issue from the medical procedure point of view and for the purchase of



which, the patients have the time and scope to exercise their rational choice to purchase such products from open market as well where such products may be available at lower rates.

12. Accordingly, in terms of the provisions contained in Regulation 20(6) of the Competition Commission of India (General) Regulations, 2009, the Commission deems it appropriate to direct the DG to conduct further investigation / analysis in the present matter in the light of observations made above and to submit a detailed supplementary investigation report including the issues identified in this order within a period of 45 days from the receipt of this order.
13. The Secretary is directed to communicate to the DG accordingly. The DG shall be at liberty to requisition the investigation report and the records already filed with the Commission in the matter.

Sd/-
(Sudhir Mital)
Chairperson

Sd/-
(U. C. Nahta)
Member

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

New Delhi
Dated: 31/08/2018