

COMPETITION COMMISSION OF INDIA

Case No. C-195/2008/DGIR/17/28

Date 25.11.10

Empire Store

Informant

Verses

Proctor & Gamble Home Products Ltd.

Respondent

Order

The instant case has been received by the Competition Commission under Section 66 of the Competition Act, 2002. The relevant facts of the case are as follows:

1. The complainant, Empire Stores filed a complaint against Proctor & Gamble (P&G) to erstwhile Monopolistic and Restrictive Trade Practices Commission (MRTPC). It was stated by the complainant that it is dealing in P&G products for last so many years. The distributor of said company had asked the complainant to install the display cabinet in its stores for P & G's newly launched product, viz. 'Oil of Olay' but the same could not be installed in its stores by the complainant due to paucity of space. The complainant further alleged that the P&G distributor M/s Nirman Associates pressurized it for the above mentioned display cabinet and refused to supply goods to the Empire Stores against orders until it fixes the display cabinet in its stores.

2. The Director General of Investigation and Registration (DGIR), MRTPC undertook preliminary investigation and issued letter to the M/s Procter & Gamble Hygienic Health Care Limited for furnishing comments on the allegations of complainant and for submission of other information. The respondent, Proctor & Gamble Home

Product Limited submitted *vide* its letter dated 11.09.2008, that this product is related to it and not to P & G Hygiene & Health Care Ltd. and sought two weeks time for a detailed reply. P&G Home Product submitted its reply *vide* letter dated 30.09.2008 and stated that retailers are paid for product display; and fixed amount is given as discount in the bill. The copies of invoice confirming supply of the product 'Oil of Olay' to Empire Stores by distributor Nirman Associates were annexed with the said reply. The copy of Distribution Agreement with M/s Nirman Associates was also submitted by the respondent on 7.10.2008 to DGIR *vide* its letter dated 26.09.2008.

3. The DGIR further issued a letter dated 26.02.2009 to P&G seeking complete information/documents to its earlier queries and comments on the allegations of the complainant. The DGIR observed that Clause 6 of the distribution agreement was in violation of section 33 of MRTP Act, 1969. P & G sought time for furnishing information. DGIR issued reminder on 11.05.2009 and another reminder on 10.06.2009. The P&G submitted that their business terms with M/s Empire Stores have been restored and Empire Stores has withdrawn its complaint filed before DGIR. The respondent furnished required information and further stated that the impugned Clause 6 of the Distribution Agreement has already been amended.

4. The complainant *vide* its letter dated 14.3.2009 informed the MRTPC that its business relations with P&G are no more strained and the same have been normalized. Complainant prayed to the DGIR MRTPC to withdraw its complaint against P&G. The case thereafter was transferred to the Competition Commission of India (the Commission) under section 66 of the Act.

5. The Commission considered the entire matter in its meeting held on 25.11.2010. On examining the material on record, it was found that the P&G had launched a promotional campaign for its product namely 'Oil of Olay' and gave discount to the stores which displayed the product in a new window or counter. The grievance of the complainant was that P&G stopped supply of the product to its stores for want of a display cabinet. By furnishing its invoices etc., the respondent has shown that the products are being duly supplied to the complainant at present. The complainant has

also resumed normal business relations with the respondent and had already prayed to DGIR MRTPC for withdrawal of its complaint against the P & G. The respondent has submitted before DGIR that it has removed the impugned 'clause 6' from the distribution agreement.

6. After considering the submissions made before the DGIR MRTPC, the Commission is of the opinion that neither the violation of relevant provisions of MRTP Act nor the violation of the provisions of section 3 and 4 of the Competition Act is found. The matter relates to year 2008 and the alleged infringement has no continuing effect to be considered within the purview of the provisions of the Competition Act. Therefore, on these facts and in the circumstances of this matter and on the basis of above discussion, no *prima facie* case is made out against the respondent to proceed further in the present case. The Commission, therefore, decided to close the matter.

7. The matter is hereby closed forthwith. The Secretary is directed to inform the informant accordingly.