



COMPETITION COMMISSION OF INDIA

Case No. 91 of 2016

In Re:

**M/s Kiran Enterprise
1730, Shop No.7, Block No. VI,
2nd Floor, Ram Gali, Bhagirath Place,
Delhi- 110 006**

Informant

And

**M/s Abbott Healthcare Pvt. Ltd.
D-Mart Building, Goregaon Mulund Link Road,
Mulund West, Mumbai- 400 080**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

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



Justice Mr. G.P. Mittal

Member

Appearances

For the Informant: Mr. Deep Chand Gupta, Proprietor and Mr. Harish Kr. Gupta, Advocate

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

1. The information in the present case has been filed by M/s Kiran Enterprise (hereinafter, the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the "**Act**") against M/s Abbott Healthcare Private Limited (hereinafter, the '**Opposite Party**'), alleging contravention of the provisions of Sections 3 of the Act.
2. As per the information, the Informant is a wholesaler of pharmaceutical products having distributorship of number of companies and the Opposite Party is a pharmaceutical company.
3. It has been stated that the Informant placed an order with the Opposite Party for supply of medicines against advance payment *vide* letters dated 22th April, 2016 and 01st June, 2016 along with the required documents like drug license, *etc.* Thereafter, *vide* letter dated 05th July, 2016 the Informant requested the Opposite Party to send proforma invoice against the above said orders. However, the Opposite Party allegedly failed to respond to the demand made by the Informant. Subsequently, the Informant sent a legal notice dated 08th August, 2016 to the Opposite Party stating that if the Opposite Party fail to supply the goods or materials, the Informant will be constrained to take legal recourse.
4. It has been alleged that the Opposite Party *vide* its reply dated 10th August, 2016 refused to supply the medicines stating *inter alia* that its products are available



in the market through various distributors and the Informant can approach the nearby local stockiest for availing its products. Subsequently, the Informant received another reply from OP dated 26th August, 2016 stating *inter alia* that the Informant may deal with the Carry & Forward Agent (CFA) of Opposite Party in connection with his further query/requisition.

5. It has been further averred that after receiving the above said reply from the Opposite Party, the Informant *vide* letter dated 08th September, 2016 approached CFA of Opposite Party located in Delhi for supply of goods as per the requirement. As no response was forthcoming from the Opposite Party, the Informant *vide* another letter dated 23rd September, 2016 again sought delivery of the goods from the Opposite Party. It has been averred that the Informant received a reply from the Opposite Party dated 30th September, 2016 in which the Opposite Party allegedly refused to supply the medicines ordered by the Informant on the premise that the goods of the Opposite Party are available in the market for intending purchasers.
6. In this regard, the Informant has relied on the order passed by the Commission in case no. 30/2011 titled *M/s Peeveear Medical Agencies, Kerala vs All India Organization of Chemist and Druggists & Others*. It has been averred that the Informant as a wholesaler and distributor is entitled for the goods of the Opposite Party directly from it or from its CFA so that the Informant can give the maximum benefit to the customer.
7. The Informant has also alleged that the Opposite Party has abused its dominant position by indulging into unfair trade practices which may adversely and appreciably affect the competition in the market. Aggrieved by the alleged anti-competitive conduct of the Opposite Party, the Informant has, *inter alia*, prayed the Commission to direct the Director General to institute an inquiry into violation of Section 3 of the Act by the Opposite Party and impose penalty on the Opposite Party.



8. The Commission, after considering the information on 15th November, 2016, decided to call the Informant for a preliminary conference on 31st January, 2017. During the preliminary conference, the Informant reiterated the allegations and claims as mentioned in the information.
9. Based on the facts and allegations made in the information, oral submissions of the Informant and the material available on record, the Commission notes that the Informant is aggrieved by the alleged refusal on the part of the Opposite Party to supply medicines ordered by the Informant in contravention of Section 3 of the Act. The Informant has also alleged that Opposite Party has abused its dominant position by indulging into unfair trade practices in violation of Section 4 of the Act.
10. In this regard, the Commission notes that mere refusal to supply to one party when there are already enough distributors in the existing supply chain cannot be said to be anti-competitive. In the instant case, the Commission notes from the replies of Opposite Party that it already has 5229 distributors across India catering to chemists in India and has 65 stockists in Delhi region. Further, the Opposite Party has not received any complaint with respect to shortage or non-availability of its medicines from them, and that the existing stockists have been able to make effective supply to the consumers. The Opposite Party has also stated that its product expiries are already at 3%, which is more than the industry average substantiating the fact that there is no shortage of its medicines.
11. The Opposite Party has further conveyed to the Informant that adding additional distributors to its existing distribution network is not desirable from a business perspective, and had accordingly directed the Informant to purchase the company's product from its nearby local stockist.



12. The Commission also notes that it has passed orders against pharmaceutical companies for refusing to deal with a particular distributor if the refusal is on the basis of a requirement of No Objection Certificate (NOC) from any chemists and druggists association. 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, stockiest, 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. In the present case, the Commission notes that the Informant has not placed on record any document suggesting that refusal by the Opposite Party to supply medicines to the Informant is on account of any requirement of NOC from any chemists and druggists association.
13. Thus, the Opposite Party has sufficient commercial reasons for not supplying the medicines to the Informant and its refusal cannot be held to be in violation of Section 3(4)(d) of the Act.
14. The Informant has also alleged that Opposite Party has abused its dominant position by indulging into unfair trade practices by using unfair means which may adversely and appreciably affect the competition in the market. However, the Informant has not placed any cogent material on record to show as to in which market the Opposite Party is dominant. Further, there is no specific information available in the public domain to suggest that the Opposite Party is dominant in any particular market. In the absence of such information, the instant matter cannot be examined under the provisions of Section 4 of the Act.
15. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of Sections 3 and 4 of the Act is made out against the Opposite Party in the instant matter. Accordingly, the matter is ordered to be closed under the provisions of Section 26(2) of the Act.



16. The Secretary is directed to inform the Informant accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

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

New Delhi

Dated: 08/03/2017