

Competition Commission of India
Case No. 75 of 2011

December 28, 2011

In re:

Krishna Mohan Hospitals & Allied
Medical Research Centre Private Limited

v.

Informant

The Secretary
Ministry of Agriculture & Cooperation
New Delhi

Opposite Party No.1

The Secretary
Ministry of Food & Civil Supplies
New Delhi

Opposite Party No.2

The Principal Secretary
Ministry of Food & Civil Supplies
Lucknow

Opposite Party No.3

Food Cooperation of India (FCI)
New Delhi

Opposite Party No.4

Central Warehousing Corporation (CWC)
New Delhi

Opposite Party No.5

The Managing Director
UP State Warehousing Corporation (UPSWC)
Lucknow

Opposite Party No.6

The Managing Director
Uttar Pradesh Co-operative Federation Limited (PCF)
Lucknow

Opposite Party No.7

The Managing Director,
UP State Food & Essential Commodities Corporation
(UPSFECC)
Lucknow

Opposite Party No.8

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

Briefly stated, the informant is a private limited company and is stated to be engaged in the business of health services. The informant, however, also entered into the warehousing business and built a warehouse under the name and style 'Krishna Warehouse' in District Bareilly, UP.

2. The OP No.1 is the Ministry of Agriculture, Government of India. The OP No.2 is the Ministry of Food & Civil Supplies, Government of India. The OP No.3 is the Ministry of Food & Civil Supplies, Government of Uttar Pradesh. The OP No.4 is Food Corporation of India (FCI) set up under the Food Cooperation Act, 1964 and is mandated *inter alia* to distribute food grains in the country through the public distribution system and to maintain satisfactory level of operational and buffer stocks of food grains to ensure national food security. The OP No.5 is Central Warehousing Corporation (CWC) set up under the Warehousing Corporations Act, 1962 with the aim to provide logistics support to the agricultural sector. The OP No.6 is the UP State Warehousing Corporation (UPSWC) set up under the provisions of the Warehousing Corporations Act, 1962 and is stated to be the biggest warehousing agency of the State of UP and is a major partner of FCI in storage/procurement of agriculture produce in the State of UP. The OP No.7 is UP Cooperative Federation Ltd. (Pradashik Co-operative Federation/PCF) and is engaged *inter alia* in the procurement/marketing of agriculture produce. One of the functions of PCF is stated to be construction and operation of warehouses and cold storages. The OP No.8 is UP State Food & Essential Corporation Ltd. (UPSFECC) and is entrusted *inter alia* to undertake procurement, purchase, storage, movement, distribution and sale of food grains/oil seeds/other agriculture products.

3. It has been stated in the information that the Government of India allocates a minimum target for procurement for central pool to FCI and similarly State Governments allocate their minimum targets to their procurement agencies (like PCF/UPFECC etc. in the State of UP) irrespective of the fact whether these institutions have sufficient and enough scientifically covered storage facility or not. As a result of lack of covered godown capacity, these agencies store food grains in open in Covered and Plinth (CAP) facility and consequently every year large quantity of food grains rot. It is also stated that the Government pays incidental charges to these agencies towards purchase/procurement handling preservation/storage/distribution transportation etc.

4. The informant has alleged that the procurement agencies to overcome their deficiency in storage capacity hire godowns from the private godowns owners and others directly or through their associates. It is alleged that FCI hires the storage capacity from CWC/SWCs and if any institution/body is willing to rent out its godown to FCI, then such institution has to first rent out the godown either to CWC or concerned SWC and then CWC or the concerned SWC, as the case may be, sublets the godown to FCI. This practice amongst FCI/CWC/SWCs is alleged to be anti-competitive and in abuse of dominant position.

5. The informant has further alleged that these procurement agencies while taking any warehouse on rent do not call for any tender or proposal of interest from private warehouse owners. In the last two years, when FCI called tenders, the same were without any intention to hire godowns but only to harass the private godown owners. Moreover, CWC/SWCs hire additional capacity of godowns from other parties including private godown owners through a process whereby these agencies ask the private godown owners to submit the proposal from their side to rent out the godowns to these agencies and no proposals/tenders/bids are called. It is also alleged that these agencies impose discriminatory conditions in as much as the godown owners are deprived to quote the rates as per their choice. Further, these agencies due to their dominant position take these godowns on rent without the right of procurement, weighment, storage, preservation, handling, security *etc.* These are all stated to be ancillary activities of warehousing. It is averred that a number of such private warehouses are capable of storage, weighment, preservation, security but these agencies prevent and deny them the right of warehousing and force them to rent out only the godown premises at their discriminatory terms and conditions. This practice amongst them is alleged to be anti-competitive and in abuse of dominant position since godown of informant was not hired by either of the agency.

6. The informant also seems to be aggrieved by another policy of the Government of India in giving absolute right and contract of procurement to FCI even though the latter has no capacity to procure fresh crops in covered godowns and the same is alleged to be anti-competitive and in abuse of dominant position besides being against the interest of the country and national food security. Further, it is alleged that under this protectionist policy of the Government of India, the FCI and associates are abusing their dominance and have formed an anti-competitive cartel amongst them. By such agreements, they are not only exploiting private godown owners but also are creating hurdles in development and progress of food grains warehousing infrastructure in the country. Further, it is alleged that on the one hand, these agencies are not enhancing the covered godown capacity and on the other hand, they are creating hindrances in participation of private sector in warehousing. The informant has also alleged that FCI/CWC/SWCs by forming amongst themselves a cartel have levied various discriminatory conditions on the owners of private godowns who are willing to rent out their godowns to FCI. The informant is one such private godown owner.

7. The present information was considered by the Commission in its ordinary meeting held on 29.11.2011. The Commission after considering the information decided to ask the informant to appear before the Commission to explain the case either personally or through authorised representative on 28.12.2011. Accordingly, the informant appeared before the Commission and made submissions.

8. The informant has also alluded to the proposed National Food Security Bill, 2011 under consideration of the Parliament. The informant projected that if the Bill was passed then at least 67% of the population will come under the PDS system (75% rural & 50% urban). In these circumstances, the central pool of procurement will increase to 1000 lacs tonnes from the existing 605 lacs tonnes resulting into a shortage of covered godowns as FCI and its associates have only 330 lacs tonnes capacity only. Thus, it is premised that 670 lacs tonnes of food grains will have no space to be stored.

9. It is the case of the informant that the anti-competitive and abusive practices of the Government of India result not only into exploitation of godown owners but also creates hurdles in the development and progress of food grains and warehousing infrastructure in the country as on the one side these government procurement agencies are not enhancing covered godown capacity and on the other hand create hindrances in participation of private companies/individuals/firms in storage capacities through covered godowns.

10. It may be noted that the FCI and CWC/SWCs are discharging their statutory functions within the framework of their respective laws, viz., the Food Corporation Act, 1964 and the Warehousing Corporations Act, 1962 within the overall policy framework of the Government of India. Reliefs sought for by the informant relate to the policy domain and as such cannot be granted. It is pertinent to note that the informant, except making bald references to the acts of the opposite parties as anti-competitive and in abuse of dominant position, has not placed before the Commission any such anti-competitive agreement or material or data to define the relevant market. The main grievance of the informant is more in the abstract and is not backed by averments in the pleadings.

11. Further, the informant has sought 38 reliefs through an omnibus prayer clause. In particular, the informant *vide* prayer Nos. 35 and 36 has sought compensation. Such prayers are not maintainable as the Commission does not have the power to grant compensation. The informant has not brought out coherently any competition issue or contravention of the provisions of the Act. The informant's main grievance seems to be not hiring his godown by SWC or CWC.

12. The informant has failed to make out a case of either under section 3 or 4 of the Act, i.e., anti-competitive agreement or abuse of dominant position. The Commission is of considered opinion that there exists no *prima facie* case and the matter deserves to be closed forthwith in terms of the provisions of section

26(2) of the Act leaving the informant to pursue his remedies before the appropriate authorities, if so advised.

13. It is ordered accordingly.

14. The secretary is directed to inform the parties accordingly.

Sd/-
Member (G)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy

