



सत्यमेव जयते



Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA
Case No. 22 of 2019

In Re:

United Breweries Limited
UB Towers, 24, Vittal Mallya Road
Bengaluru, Karnataka - 560001.

Informant

And

The Commissioner
Department of Excise, Entertainment and Luxury Tax
Government of National Capital Territory of Delhi
L&N Block, IP Estate, Vikas Bhawan, New Delhi.

Opposite Party

CORAM

Ashok Kumar Gupta
Chairperson

U. C. Nahta
Member

Sangeeta Verma
Member

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

1. The present Information has been filed under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') by United Breweries Limited (the 'Informant') against the Commissioner, Department of Excise, Entertainment and Luxury Tax, Government of National Capital Territory (NCT) of Delhi (the 'OP') alleging contravention of the provisions of Sections 3(4) and 4 of the Act.
2. As per the Information, the Informant is engaged in the business of manufacturing and marketing of beer. The OP is *inter alia* responsible for collection of excise tax, regulation of manufacture, sale and distribution of liquor including beer, intoxicants and narcotics (for medicinal purposes) and making liquor available in safe quality to the consumers in Delhi.



सत्यमेव जयते



3. The Informant has stated that Article 47 in the Directive Principles of State Policy ('**DPSP**') of the Constitution of India *inter alia* directs that the State shall endeavour to bring about prohibition of consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health. It is on this principle that alcohol laws for different States have taken shape.
4. The Informant has further stated that Entry 51 in the State List of Schedule Seven of the Constitution of India makes "alcoholic liquor for human consumption" a subject matter of States. Accordingly, each State and Union Territory retains autonomy and has its own laws/ rules regarding regulation of manufacture, sale and distribution of alcoholic beverages within its territory.
5. It is stated that each year Govt. of NCT of Delhi formulates the excise policy of Delhi and OP issues public notice containing terms and conditions to invite qualifying manufacturers for grant of L-1 licenses, for wholesale supply of Indian Made Foreign Liquor ('**IMFL**') to holders of licenses for retail sale of respective IMFL in Delhi in six categories viz. (i) Economy Brands of Whisky & Rum; (ii) All other Whisky; (iii) All Beer; (iv) All other Rum/Gin/Vodka; (v) Brandy and (vi) Wine/Liqueur/Alcopop/Mixed Alcoholic Beverages.
6. The Informant has alleged that the OP has contravened Section 3(4)(e) of the Act by setting a discount price control mechanism on the L-1 licensees within the terms and conditions. It is submitted that clause 7.5(a) of the public notice of 2018 states that no L-1 licensee shall allow any discount/commission/rebate in any shape to any retail licensee for retail sale beyond what is permitted by the criteria fixed by the Commissioner. It is also stated that there are four corporations owned and controlled by Government of NCT of Delhi, namely, Delhi Tourism and Transportation Development Corporation Ltd., Delhi State Civil Supplies Corporation Ltd., Delhi State Industrial and Infrastructure Development Corporation and Delhi Consumer Cooperative Wholesale Store (collectively called as '**Delhi State Corporations/ DSCs**') engaged in the retail



सत्यमेव जयते



trade of liquor, including beer in addition to the private entrepreneurs who are also licensed for retail sale of IMFL including beer in Delhi, besides hotels, clubs and restaurants.

7. The Informant has submitted that the following terms and conditions imposed on the L-1 licensees by the OP are unfair and discriminatory and amounting to contravention of provisions of Section 4 of the Act:
 - a. alcohol prices are strictly controlled by the OP or the procurement authority such as DSCs and the design of distribution system virtually eliminates competition at different levels of supply chain. Profit margins are fixed at 5 per cent of landed price, which includes all the input costs for wholesalers except the excise and additional excise duty.
 - b. maximum retail price (MRP) of beer in Delhi is determined by the OP based on Ex- Brewery Prices (EBP) submitted by the L-1 licensees. EBP includes all the production and marketing costs as well as a proposed margin and is used by the OP to set an MRP. However, if an L-1 licensee such as the Informant desires to sell a particular brand of beer at MRP below Rs. 100/- then in such cases EBP is approved by the OP on the basis of the lowest EBP in other states.
 - c. terms and conditions are rarely revised with the changing economic landscape and increasing costs and there is insufficient provisioning for inward freight, transportation and handling charges.
 - d. pre-payment of excise duty, rounding off duty and no liability on part of the OP for any delay in the reimbursement of any amount to the L-1 licensee: It is submitted that the pre-payment of excise duty without timely reimbursement by the OP has caused immense financial distress to the Informant without any redressal mechanism. Further, a rounding off mechanism to the detriment of the Informant has only reduced the EBP which would accrue to the Informant and in turn increased the revenue which accrues to the exchequer of Government of NCT of Delhi, through the OP. It is further submitted that while L-1 licensee is required to pay an interest on any delayed



सत्यमेव जयते



- payments, the OP is not liable to provide any relief in the event if it delays any payment towards the L-1 licensee. The Informant argues that such conditions are unfair.
- e. OP grants a non-renewable L-1 license for wholesale of existing brands of an L-1 licensee for a period of a license year. If the same license is extended by the OP for some/complete part of new license year then to introduce a new brand in the said new license year an L-1 licensee has to pay for the full previous license year and for the extended period on a *pro rata* basis.
- f. L-1 licensee such as the Informant can get L-9 retail license to open exclusive outlets for sale of their brands (consisting usually around 6-7 brands). However, for the same, minimum qualifying carpet area is 1000 sq. ft. in a commercial complex situated in community centres and district centres. On the other hand, the minimum carpet area required for opening an L-7 outlet (for retail vending of various brands of IMFL consisting around 300 brands) is only 500 sq. ft.
- g. arbitrarily set license fee without ceiling on beer brands compared to other IMFL¹ and differential conditions for grant of license for L-1 and L-1F (licenses are for the wholesale vend of Foreign Liquor) licensees for beer².
- h. Indian manufacturer with facilities in India is not permitted to appoint an agent for the distribution of beer within the country. However, a foreign manufacturer of beer in India is permitted to appoint an agent for distributing another of its own brand imported into India.
8. The Informant has stated that it agreed to afore said one-sided and arbitrary conditions imposed by the OP, as it is completely dependent on the OP, the sole licensing authority, for license for supply of beer in Delhi.

¹ From the impugned Public Notice dated 19.07.2018 it is seen that there are separate license fees ranging from Rs. 2 lakh to 25 lakh per brand for L-1 licensees for different category of IMFL and only for Category 6 (Wine/Liqueur/Alcopop/Mixed Alcoholic Beverages) there is a ceiling of Rs. 14 lakh (which was increased few years earlier from Rs. 10 lakh).

² As per the website of the OP, a total of 72 L-1 licenses for IMFL and 26 L-1F licenses for foreign liquor were issued 2018-19.



सत्यमेव जयते



9. In view of the foregoing, the Informant has alleged that the conduct of the OP amounts to contravention of Sections 3(4)(e) and 4(2) of the Act. It has made reference to the certain earlier orders of the Commission and prayed that the Commission may investigate the matter.
10. The Informant has defined the relevant market as the '*market for the grant of license for the wholesale supply of beer in the state of Delhi*'.
11. The Commission has carefully perused the Information filed by the Informant, documents annexed therewith, orders of the Commission referred by the Informant and other relevant information available in public domain. At the outset the Commission notes that a case has to be decided by looking into its own facts and circumstances.
12. The Commission notes that in the present matter the Informant has alleged violation of the provisions of Section 3(4)(e) and 4 of the Act. As per the scheme of the Act, the first step in analysing any allegation pertaining to violation of Section 4 of the Act is determining whether the OP is an enterprise as defined under the provisions of Section 2(h) of the Act.
13. The Commission observes that the OP is a department of Government of NCT of Delhi and its responsibilities, *inter alia*, are to regulate liquor and narcotics including country liquor, IMFL, foreign liquor and collect excise tax as prescribed from time to time. For regulation and monitoring functions, the statutory powers of the OP are derived from the Delhi Excise Act, 2009 and rules framed thereunder and Medicinal & Toilet Preparation Act, 1955 and rules framed thereunder. The allegations by the Informant are emanating from the licensing conditions imposed by the OP in the public notice for grant of L-1 license for wholesale vend of IMFL.
14. The Commission is of the considered opinion that impugned conduct of the OP in the course of grant of license in discharge of its statutory functions falls within the realm of public policy and does not fall within the ambit of activities included



सत्यमेव जयते



for the purposes of Section 2(h) of the Act. That being so, the OP is not an enterprise in the instant matter. Therefore, no case of contravention of provisions of Section 4 of the Act can be made out against the OP.

15. The Commission further notes that the OP is not involved in production, storage, distribution or sale of beer and no vertical agreement of the nature as mentioned in Section 3(4) of the Act exists in the present matter. Without the existence of a vertical arrangement, possibility and need of examination of the present matter in the framework of the provisions of Section 3(4) of the Act is also ruled out.
16. In view of the foregoing, the Commission is of the view that no case of contravention of the provisions of Sections 3(4) and 4 of the Act is made out against the OP. Therefore, the matter is ordered to be closed forthwith under the provisions of Section 26(2) of the Act.
17. The Secretary is directed to communicate the order to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(U.C. Nahta)
Member

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 02/08/2019