

COMPETITION COMMISSION OF INDIA

New Delhi

Case No. 9 of 2009

24th September, 2010

In the matter of

Manish Singh,)
Kamal Udog,)
501/A, Kamat Towers, Patto Plaza,) Informant
EDC Complex, Panjim, Goa-403001.)

1. Mr.Roger Williams, CEO)
US Pharmacopecia)
12601, Twinbrook Parkway,)
Rockville, Maryland 20852 USA)
) Opposite Parties
2. Mr.B.R.S. Rao,)
Managing Director, LGC Prochem)
India Ltd.,)
P.O. Box 8061, #142, 3rd Floor,)
5th Cross, RMV Extn, Bangalore-560080)

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

The informant Mr. Manish Singh has filed the present information alleging the breach of Section 3(1) and 3(4)(c) of the Competition Act, 2002 (the Act) against opposite parties.

2. The gravamen of the information is that the informant is a proprietor of a firm M/s. Kamal Udyog situated in Panjim, Goa. Informant's firm is one of the distributors of US Pharmacopeia (USP) in India. USP is a 'not for profit' pharmaceutical standard setting organization based in Maryland, United States of America. The opposite party No. 1 on 1st July, 2009 terminated all its distributorship contracts in India and appointed M/s. LGC Promochem India Pvt. Ltd. (opposite party 2) as its exclusive authorized distributor in India. The informant has alleged that by this action, the opposite party NO. 1 has violated Section 3(1) and 3(4) of the Act.

3. The informant has prayed for investigation and consequential relief against the alleged action of opposite parties. The informant has also filed application



under section 33 of the Competition Act, 2002, praying status-quo and restraint on exclusive agreement between the opposite parties.

4. The informant in support of his case, has submitted letters written by US Pharmacopeia (Annexure I of information), a notification by US Pharmacopeia appointing LGC Promochem India Pvt. Ltd. (hereinafter LGC) as the exclusive distributor of USP products in India (Annexure II of information), and a notification of US Pharmacopeia (Annexure III of information) addressed to USP customers, which reiterated appointment of LGC as exclusive distributor of USP products in India. The informant has also submitted a letter written to him dated June 15, 2009 (by US Pharmacopeia) wherein USP has stated that the agreement with the informant's firm is expiring on June 30, 2009 and they will not renew the agreement (Annexure IV of information). This letter also disclosed that LGC has appointed an exclusive distributor for USP's reference material and publication in India and USP will not accept direct orders from its customers. A similar letter (Annexure V of information) written by USP to Mr. Sandeep Sehgal of M/s. Rishab Enterprises, New Delhi has also been submitted. The informant has also supplied letters from various pharmaceutical manufacturing associations (Annexures VI, VII and VIII of information).

5. The Commission in its meeting held on 16th December, 2009 considered the matter and asked the informant to appear and substantiate his case. The informant appeared before the Commission, explained the case and also submitted some additional information in compliance with the Commission's directions. The informant again appeared on February 9 and February 23, 2010 and made submissions in furtherance of his additional information submitted to the Commission.

6. It has been submitted by the informant that USP is one of the oldest organization, which is relied upon worldwide for its pharmaceutical standards for setting references and publishing literatures. Reference standards are laboratory chemicals used by pharmaceutical companies to test the standard of the pharmaceutical products to be released in the market. The reference standards are assayed by the pharmaceutical companies using either spectro-photometer or chromatography instrument. These standards are approved in India and pharmaceutical companies used USP standards for producing and marketing pharmaceutical products in India.

7. On the basis of these submissions, the informant has alleged breach of section 3(4)© of the Competition Act, 2002.

8. The Commission has considered the entire material placed on record by the informant and also taken into account the submissions made by him from time to time. The Commission also made certain queries from the informant as well as from the authorities outside the country including from the office of Fair Trade Commission. On going through the relevant material, it is found that the opposite



party is a non-profit making organization and has appointed its agents in various countries. The said organization has appointed exclusive distributors of USP products in various countries. This is evident from the letter of Barbara B. Hubert, Director USP Sales which is available at page 63-68 of the record.

9. On going through the list of various USP Distributors, it is found that in various countries the organization has appointed 1 or 2 or more distributors. The right of a principal to appoint distributors/agents is a legally valid right. Merely because the opposite party namely USP has appointed LGC Promochem India Pvt. Ltd. as exclusive distributor of USP products in India, it cannot be concluded that the organization is abusing its monopoly. Besides, it is also not established that by appointing said distributor, there is appreciable adverse effect on competition in the market. It is not established that the agreement in relation to appointment of distributor restricts or limits or withholds supply of goods or services.

10. As per the informant, the opposite parties by their conduct have committed breach of section 3(4)(c) of the Act. The Commission is of the opinion that this allegation is not substantiated. For establishing appreciable adverse effect on competition in India, the essentials laid down in section 19(3)(a) to (f) of the Act are to be satisfied. The informant has alleged that by exclusive distribution agreement, the opposite parties have created barriers to the individual entrants in the market but it is not shown as to in which manner barriers to the new entrants are created. The products of USP are available in the market and can be procured through its distributor. The freedom of any organization in appointing one or two or more distributors is well recognized under law and the organization has to exercise its freedom as per its own requirements as well as the market conditions. Further, there is no denial of accrual of benefits to the consumers and thus the provisions of section 19 are not attracted.

11. The informant has made reference to the letters written by various pharmaceutical manufacturers and their associations wherein they have referred to apprehended possible shortage and delay in supply of reference material but these facts again are based upon surmises and gestures. No concrete evidence is adduced to establish that the USP standards are not available. Thus the material supplied by the informant does not establish the allegation that exclusive distribution agreement has caused or is likely to cause any appreciable adverse effect on competition in India.

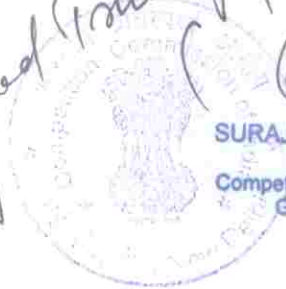
12. In the light of the above, the Commission is of the opinion that the informant has not been able to substantiate the allegations made in the information by credible and cogent material. As on the basis of the material and also on the basis of queries made by the Commission, no prima facie case is made out for directing an investigation to be made under section 26(1) of the Act, the Commission concludes that the information deserves to be closed under section 26(2) of the Act.



13. The Commission, therefore, directs that the information be closed forthwith under section 26(2) of the Act. As the information is closed under section 26(2) of the Act, the prayer for interim relief made under section 33 of the Act becomes infructuous.

14. Secretary is directed to inform the informant accordingly.

Confirmed from copy



SP Gahlaut
02/11/2010

SURAJ PARKASH GAHLAUT
Office Manager
Competition Commission of India
Government of India
New Delhi