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THE COMPETITION COMMISSION OF INDIA FINDS NO EVIDENCE OF ANTICOMPETITIVE CONDUCT BY CHHATTISGARH CHEMIST AND DRUGGIST ASSOCIATION AND PHARMACEUTICAL COMPANIES

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On 5 July 2022, the Competition Commission of India (CCI) dismissed allegations that the Chhattisgarh Chemist and Druggist Association (CCDA) controlled the supply of medicines in the State of Chhattisgarh in cohorts with the pharmaceutical companies Alkem Laboratories Limited (Alkem), Intas Pharmaceuticals Limited (Intas), and Koye Pharmaceuticals Private Limited (Koye).¹

Background

On 14 August 2019, the CCI received a complaint which alleged that the CCDA had coerced pharmaceutical companies to pay Product Information Service (PIS) charges, as a precondition for the launch of new medicines in the State of Chhattisgarh.

The complaint referenced certain news articles which reported that the CCDA was generating revenues between INR 50,000 / - to INR 5,00,000 / - from each pharmaceutical company, through the levy of PIS charges. These charges were purportedly being collected under the garb of payments towards the CCDA's "building and bulletin fund".

Based on an examination of the complaint, the CCI was of the *prima facie* opinion that the CCDA had imposed anticompetitive PIS charges, in contravention of Section 3(3)(b) read with Section 3(1) of the Competition Act, 2002 (Competition Act).

Thereafter, the CCI passed an order under Section 26(1) of the Competition Act directing the Director General, Competition Commission of India (DG) to investigate the conduct of the CCDA (*Prima Facie* Order). The CCI also directed an investigation into the conduct of Alkem, Intas, and Koye. Interestingly, no specific allegation had been made against these pharmaceutical companies in the complaint.

Investigative Findings

Subsequent to the *Prima Facie* Order, the DG initiated its examination into the conduct of CCDA and the pharmaceutical companies identified by the CCI.

The scope of the DG's investigation was two-fold. First, whether the payment of PIS charges to the CCDA was mandatory for the launch of new medicines. Second, whether the CCDA was controlling / limiting the appointment of stockists in the State of Chhattisgarh by requiring potential stockists to obtain No Objection Certificates (NOC) from the CCDA.

¹ In Re: Alleged anti-competitive practices by the Chhattisgarh Chemist and Druggist Association in limiting supply of drugs / medicines in the State of Chhattisgarh (Suo Motu Case No. 04 of 2020) dated 5 July 2022.

Notably, the *Prima Facie* Order had not directed the DG to investigate the requirement of NOCs by the CCDA.

On the levy of PIS charges, the DG concluded that the CCDA had coerced pharmaceutical companies to make payments to the CCDA prior to the launch of new medicines. The conclusion of the DG was based on, *inter alia*, the email dump of CCDA, a third-party statement by Macleods Pharmaceuticals Limited (Macleods), exchanges between the CCDA and the All India Organisation of Chemists and Druggists (AIOCD), etc.

To this end, the DG found that the CCDA had contravened Section 3(3)(b) read with Section 3(1) of the Competition Act. Two office bearers of the CCDA were also found liable under Section 48 of the Competition Act. The DG, however, did not record any findings against the pharmaceutical companies under investigation.

On the issue of NOCs, the DG found that there was insufficient evidence to ascertain whether prospective stockists were required to obtain an NOC from the CCDA. Here too, the DG did not record findings against the pharmaceutical companies under investigation.

Alkem, Intas and Koye parallelly preferred writ petitions before the High Court of Delhi to challenge the scope of the DG's investigation² However, the DG finalised the DG Report during pendency of the writ and submitted it before the CCI. Subsequently, and for the reasons set out below, the CCI closed the matter.

Analysis and Findings of the CCI

As a first step, the CCI analysed the material on record to determine whether the payment of PIS charges had been made mandatory by the CCDA.

The CCI reviewed the submissions of several pharmaceutical companies (such as, Intas and Koye) which had been made before the DG. Except Macleods, every pharmaceutical company had submitted that the launch of medicines was not impeded by the CCDA for want of PIS. Instead, the payment of PIS was made on a voluntary basis towards the publication of information on new launches in the CCDA bulletin. Such publication leveraged the wide network of CCDA and facilitated the dissemination of information regarding the new medicine to stockists and retailers.

As for Macleods, the CCI acknowledged their submission that the PIS charges were mandatory. However, Macleods had also stated that (i) the CCDA had never hindered the launch of a new medicine in the State of Chhattisgarh, and (ii) there had been instances wherein PIS was paid after the launch of a medicine. Given this, the CCI was of the view that pharmaceutical companies made the voluntary payment of PIS charges to the CCDA.

The CCI also noted the remaining evidence relied on by the DG including, email dumps and communications between CCDA and AIOCD. However, in light of the categorical submissions by several pharmaceutical companies that the PIS charges were paid voluntarily, the CCI was inclined to extend the benefit of doubt in favour of the CCDA. As regards the requirement of NOCs, the CCI did not delve into the question at all in its assessment.

Conclusion

Based on the above analysis, the CCI rejected the DG's findings and held that the CCDA was not in contravention of Section 3(3)(b) read with 3(1) of the Competition Act. Further, in the absence of a contravention by the CCDA, no question of individual liability of the office

² *Alkem Laboratories Limited and Another v. Competition Commission of India and Others (Writ Petition (C) 6015 / 2021) and connected matters.*

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bearers of CCDA arose. Much like the DG, the CCI too did not make any observations against the pharmaceutical companies.

Accordingly, the CCI exonerated the CCDA and closed the matter.

Khaitan & Co successfully represented Alkem Laboratories Limited and Intas Pharmaceuticals Limited before the CCI in the matter.

Manas Kumar Chaudhuri (Partner), Sagardeep Rathi (Partner), Aman Singh Baroka (Senior Associate), and Alisha Mehra (Senior Associate) represented Alkem Laboratories Limited

Pranjal Prateek (Partner), Ebaad Nawaz Khan (Senior Associate), Armaan Gupta (Associate) represented Intas Pharmaceuticals Limited

- *Khaitan & Co Competition / Antitrust Team*

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