

IN RE: ASHOK SUCHDE (INFORMANT) AND PERNOD RICARD INDIA PVT. LTD. (OPPOSITE PARTY)

**Decision date:** 16/10/2019

**Keywords:** anti-corruption, appreciable adverse effect on competition

**Rule:** Sec. 3 and 4 of the Competition Act, 2002.

The Informant was the proprietor of Vyn Marketing. The OP was engaged in the manufacturing, sale and distribution of various alcoholic products in India. Vyn Marketing was a service provider for the OP. Vyn Marketing, through its proprietor i.e. the Informant, entered into an agreement dated 19.12.2016 with the OP whereby the former was required to assist the latter in ascertaining the demand-supply position of various alcoholic brands of the OP and to procure orders from distributors/ wholesalers, and a host of other services.

The Informant had alleged that on 03.11.2017, the OP abruptly and without assigning any reasons, terminated the Agreement, despite due discharge of obligations under the Agreement by Vyn Marketing. Further, such termination was done without providing the 90 days' notice as required under Clause 21 of the Agreement. Subsequently, as per the Informant, the OP entered into a Settlement Agreement in January, 2018 with Vyn Marketing as per which, the OP paid a sum of ₹1,30,30,680/- to Vyn Marketing.

The Informant had submitted that after termination of the Agreement with Vyn Marketing, the OP entered into a new agreement with one ZK Marketing and thereby appointed ZK Marketing as its new service provider, who immediately w.e.f. 05.11.2017, started providing services to the OP. It was further alleged that ZK Marketing had no knowledge/experience in the relevant field. It was appointed as service provider by the OP only because its officers were persons of political parties. According to the Informant, such appointment was done by the OP only with the motive to gain an unfair advantage as it would be able to receive kickbacks from ZK Marketing in lieu of dealership.

This was alleged to be an anti-competitive agreement between the OP and ZK Marketing, having an adverse effect on competition ('AAEC') in India, in contravention of the provisions of Section 3(4) of the Act. The Informant had also alleged that the OP had abused its dominant position in violation of the provisions of Section 4 of the Act. As per the Informant, the abrupt termination of the Agreement by the OP and subsequent appointment of

an agency which had political connections but no relevant experience evidences such abuse by the OP.

### **Analysis of the Commission**

The allegations made by the Informant against the OP essentially pertain to termination of the Agreement without giving 90 days' advance notice as per the Agreement, appointment of ZK Marketing as service provider by the OP in place of the Informant, due to ZK Marketing having political influence etc. Further, the Informant had alleged that the OP, being a subsidiary of French Company, was bound by and liable under the French anti-corruption law (Sapin II) which stipulates that companies must establish an anti-corruption program to identify and mitigate corruption risks. Further, under Sapin II, the OP was also required to develop and implement a Code of Conduct. As per the Informant, bearing in the mind such Code, the agreement entered into between the OP and ZK Marketing was contrary to the Code as well as in violation of the provisions of the Act.

A bare perusal of the allegations made by the Informant indicates that the gravamen of the Informant pertains to appointment of ZK Marketing as its new service provider mainly due to its political and bureaucratic connections, alleged *quid pro quo*, corruption in government department, violation of French law and Code of Conduct by the OP etc. In this regard, the Commission was of the considered opinion that such allegations do not reveal any competition issues/concerns which can be examined within the statutory framework as provided in Sections 3 and 4 of the Act.

### **Conclusion**

In view of the above, the Commission was of the view that no case of contravention of either Section 3 or Section 4 of the Act was made out against the OP in this matter. Therefore, the matter was directed to be closed under the provisions of Section 26(2) of the Act.