

**IN RE: MP CHEMISTS AND DISTRIBUTORS FEDERATION (MPCDF) VS. MP CHEMISTS AND  
DRUGGIST ASSOCIATION (MPCDA) & ORS.**

**Decision date:** 03/06/2019

**Keywords:** anti-competitive agreement, appreciable adverse effect on competition

**Issue:** Whether the associations and pharmaceutical companies are guilty of encouraging the practice of mandating NOC/LOC from certain associations prior to appointment of stockists, thereby stifling competition and limiting access of consumers to pharmaceutical products.

**Rule:** Sec. 3(3)(b) read with Sec. 3(1) of the Competition Act, 2002.

The Informant alleged that OP-1 to OP-3 issue No Objection Certificate (“NOC”)/Letter of Consent (“LOC”) on the basis of which appointment of the stockist is made by pharmaceutical companies. It was submitted that this practice of mandating NOC/LOC is stifling competition in the market by limiting access of consumers to various pharmaceutical products and controlling supply of drugs in the market by ensuring that only those distributors which are favoured by OP-1 to OP-3 are eventually selected by the pharmaceutical companies to do business with them.

It was further alleged that pharmaceutical companies being OP-4 to OP-10 were also active participants in the anti-competitive practices carried out by OP-1 to OP-3 since they willingly adhered to the directives of these OPs (Associations) and refused to appoint fresh distributors until OP-1 to OP-3 gave their consent for such appointment, as a result of which supply of drugs to the consumers was restricted.

Based on the material available on record and oral submissions made by the Informant, the Commission *prima facie* found merit in the allegations of the Informant. Accordingly, the Commission directed the DG to cause an investigation into the matter and submit its investigation report.

The DG found that the pharmaceutical companies arraigned as OP-4 to OP-10, had not contravened the provisions of the Act, as refusal by them for appointment of M/s Pharma Agencies as stockist was on account of justified/commercial reasons and the same could not be attributed to alleged non-production of NOC/LOC from the associations. Further, the DG

did not come across any evidence of alleged practice of NOC/LOC being followed by OP-2 and OP-3. With regard to the allegation against the MPCDA (OP-1) and Indore Chemist Association (OP-11), the DG concluded that they were carrying out anti-competitive practice of requirement of NOC/LOC prior to appointment of stockists in the State of Madhya Pradesh. The DG further noted that the understanding between the associations (OP-1 and OP-11) and the pharmaceutical companies (OP-12, OP-13 and OP-14) had restricted appointment of stockists and had consequently led to limiting and controlling the supply of drugs in the State of Madhya Pradesh.

The Commission dismissed the preliminary objections concerning its jurisdiction and lack of opportunity to cross-examine. The Commission had three issues to consider:

- (i)* Whether the allegations, regarding practice being carried on with respect to the requirement of NOC/LOC prior to appointment of stockists by pharmaceutical companies, against OP-1, OP-11 and OP-15 are substantiated by evidences, and if so, the provisions of the Act contravened?
- (ii)* Whether the allegations regarding non-appointment of stockists/ non-supply of pharmaceutical products by OP-4 to OP-10 as well as the newly impleaded OP-12 to OP-14 (pharmaceutical companies) on the ground of inability to produce NOC/ LOC from the Associations i.e. OP-1, OP-11 and OP-15, are substantiated by facts and evidences and if so, the provisions of the Act contravened?
- (iii)* Identification of role of opposite parties who have been found to have contravened the provisions of the Act, if any, and the respective officers/ office bearers/ persons/ individuals liable under the provisions of Section 48 of the Act.

*Regarding the first issue*, the Commission observed that requirement of NOC is an obstacle that discourages new/existing stockist to enter/expand in a market. It found that OP-1 and OP-11 were carrying on the practices in contravention of provisions of Section 3(3) read with Section 3 (1) of the Act.

Regarding the second issue, the Commission took note of the findings of the DG that there is no direct evidence against OP-4 to OP-10 in respect of seeking NOC/LOC for appointment of stockists. It held that the allegations made by the Informant against OP-4 to OP-10 are unsubstantiated and devoid of any merit. However, it found OP-12 and OP-14 to be liable for having an agreement/arrangement/understanding with OP-1 and OP-11.

Regarding the third issue, the Commission examined and held liable the office bearers of the contravening association *viz.* OP-1, OP-11 and officials of contravening pharmaceutical companies *viz.* OP-12 and OP-14. It went on to impose penalties on the liable associations, companies and the office-bearers.