

IN RE: MR. NADIE JAUHRI AND JALGAON DISTRICT MEDICINE DEALERS ASSOCIATION

Decision date: 20/06/2019

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

Issue: Whether the practice of charging a mandatory Product Information Service (PIS) charge amounts to an anti-competitive practice that has an appreciable adverse effect on competition. If yes, whether the OP is guilty of charging the same?

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

The Informant alleged that the OP was collecting Product Information Service (**PIS**) charges from the manufacturers of pharmaceutical products, in violation of the provisions of the Act. Upon considering the information and allegations therein, the Commission was convinced that there existed a *prima facie* case of contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act, and ordered investigation by the DG.

From the material and evidence collected during investigation, the DG found that the OP was levying and collecting PIS charges in Jalgaon District. The investigation revealed that pharmaceutical companies were paying PIS charges to MSCDA for getting the details of their products published in the bulletin/magazine published by their respective district association. Based on the above evidence, the DG found that the practice of the OP of demanding PIS charges from pharmaceutical companies was not for the purpose of any advertisement. Rather, the DG opined that the pharmaceutical companies did not mind paying Rupees 500/- per drug of dose/form for securing the goodwill of the association (*i.e.* the OP) and it was meant only for the purpose of getting prior permission of the OP to launch new drug in the market. The DG, thus, concluded that payment of PIS charges was in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act, as the levy of such charges limited and controlled free supply of products by pharmaceutical companies in the market.

The Commission noted that there were two issues which needed to be addressed in this matter:
“i. Whether the collection of PIS charges by the OP from pharmaceutical companies was made mandatory/compulsory by the OP in contravention of provisions of Section 3 of the Act?

ii. If answer to Issue I is in affirmative, whether office bearers of the OP are liable for violation

under Section 48 of the Act?”

Regarding the first issue, the Commission noted that the decisive factor of whether PIS charges are anti-competitive depends upon whether such charges are being paid voluntarily by the pharmaceutical companies or are mandatorily payable prior to the launch of their drugs. From the evidence, the Commission concluded that the mandatory requirement of payment of PIS charges, as alleged by the Informant, was established. Thus, it held that this practice amounted to an anti-competitive practice since it resulted in limiting and controlling the supply of drugs in the market, in violation of the provisions of Section 3(3)(b) read with Section 3(1) of the Act.

Regarding the second issue, the Commission held that it was only the President and Secretary of the OP who were in charge and were in control of the affairs of the OP and responsible to the OP for conduct of its affairs. Thus, they were found liable under Section 48(1) of the Act.

The Commission directed the OP, including its office bearers/officials, who have been held liable under Section 48 of the Act, to cease and desist from indulging in practices which had been found to be anti-competitive. Further, it imposed a penalty on the OP at the rate of 10 percent of its income from PIS charges for three financial years. With regard to the liability of the office bearers of the OP, the Commission imposed penalties calculated at the rate of 10 percent of their average income based on their income tax returns (ITRs) for three financial years.