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Grasim Industries to pay ₹ 301.61 Crores for abusing its dominant position in sale of Viscose Staple Fibre to customers in domestic market

To begin with, it is important to know that a large number of spinning mills in India, engaged in the business of production of yarn, need a staple raw material viz. Viscose Staple Fibre ('VSF'). This VSF is converted into fabric used in making of various types of apparel produced in the market of textiles. Any enterprise with a dominant position in the manufacturing of VSF in India, automatically, attains an ability to influence the entire supply chain.

With this background, the Informant, seeking confidentiality of its identity, alleged that Grasim Industries Limited ('Grasim'), a sole producer of VSF with market share of almost 100% in India, abused its dominant position by selling VSF at lower rates to its international customers and at higher rates to its domestic customers. In addition to this, allegations were made by the Informant regarding non-disclosure of discount price/policies and interference with trade of customers by Grasim, by forcing the customers to disclose their production and sales data to Grasim.

The Competition Commission of India ('CCI'), on the basis of the Information filed under Section 19(1)(a) of the Competition Act, 2002 (the 'Act'), formed a *prima facie* opinion of abuse of dominant position by Grasim and directed the Director General (the 'DG') to cause an investigation under section 26(1) of the Act.

The DG during investigation observed that there was rampant discrimination amongst the customers of the same segment, buying the same product, in nearly the same quantity. With respect to the discount policy, the DG analysed the actual sales data submitted by Grasim with respect to similar transactions and found differences in the discount offered by it for the sale of VSF and also observed that the said transactions were not treated similarly. The DG also observed that Grasim controlled the production of spinning companies by forcing them to submit their monthly production data before any discount was passed on by Grasim to these spinning companies.

The Grasim objected to the DG's investigation report and submitted that the DG did not demonstrate that equivalent transactions were treated differently. As per Grasim, the difference in pricing was a result of cogent business reasons and were in fact on account of factors such as type of VSF, location of plant, denier, grade, dyeing charges of dyed VSF etc.

The CCI carefully perused the Information, report of the DG, submissions made by the Informant, OP-2 and other material available on record and deemed it appropriate to first define the relevant market and then assess the dominance of OP in the delineated relevant market, before proceeding to examine the alleged abuse of dominance.

With respect to relevant product market, the CCI noted that VSF was different from other man-made fibers in terms of characteristics, price and consumer preference and, hence, was distinct and non-substitutable. Relying on this, the CCI delineated the relevant product market as '*the market for supply of VSF to spinners*'. With regard to the relevant geographic market, the Commission noted that the demand for VSF was homogenous with no geographical advantages/disadvantages within the country, thus, the relevant geographic market was delineated as '*whole of India*'.

Accordingly, the Commission defined the relevant market as '*the market for supply of Viscose Staple Fibre (VSF) to spinners in India*'.

For assessment of position of dominance, the CCI analysed the factors i.e., market share, size and resources, lack of competitors, vertical integration of the enterprise, sale and service network of enterprise, entry barriers and opined that Grasim enjoyed a dominant position in the relevant market.

Thereafter, the CCI examined the allegation and noted that the data provided by Grasim, confirmed that it was charging discriminatory prices from downstream spinning companies. The CCI observed that a dominant firm, like Grasim, had a responsibility to be transparent regarding its pricing and discounting policies to its buyers and should not have discriminated against similarly placed buyers. Non-transparency in the discounting/pricing policies indicated abusive behaviour of Grasim. The CCI stated that the collection of details of production and sale by Grasim from its buyer allowed it to control the relevant market. Additionally, as held by CCI, the imposition of such supplementary obligations, which had no connection with the sale of VSF, were in contravention of Section 4(2)(d) of the Act.

Thus, the CCI held that conduct of Grasim was in contravention of Sections 4(2)(a)(ii) & 4(2)(d) of the Act and accordingly, a penalty of ₹ 301.61 Crore was imposed on Grasim by the CCI. (Case No. 62 of 2016)



Heard at the BAR

Legal news from India and the world

CADE investigates Bayer for alleged involvement in anticompetitive practices

The General Superintendence of the Administrative Council for Economic Defense ('CADE') launched an investigation against Bayer Aktiengesellschaft, Monsanto Company and Monsanto do Brasil, all owned by the Bayer Group.

The companies are under investigation for anti-competitive practices in the seed and biotechnology markets.

The investigation has been launched to review three practices; firstly, the establishment of certain rules in the Monsoy Multiplica Program (PMM), by Monsoy, a company owned by Grupo Monsanto, which works with genetic improvement of soybean seeds.

Secondly, the grant of commercial incentives to breeders by Monsanto for adoption of Intacta technology, also known as breeding incentives.

Thirdly, the obligation imposed by Monsanto that seed multipliers acquire at least 15% of the parent seeds in relation to their production area.

After the investigation is complete, the companies shall be notified to present their defense.
(Press Release 13th March, 2020)

The Competition Commission of India responds to the situation arising from Covid -19 pandemic

The Competition Commission of India ('CCI') suspended filings in relation to Section 3 and 4 of the Competition Act, 2002 ('Act'), notifications relating to combinations, other filings before Director General and CCI and all matters listed for hearing until 31st March, 2020.

(Notice 23rd March 2020)

The Competition and Market Authority writes open letter to the pharmaceutical, food and drink sectors in view of Covid-19 outbreak in United Kingdom

The Competition and Market Authority ('CMA') decided to write an open letter to companies engaged in pharmaceutical, food and drink sectors after it received reports that a minority of firms in the said sectors were seeking to capitalise on the current situation, caused due to Covid-19 Outbreak, by charging unjustifiably high prices for essential goods or by making misleading claims around their efficacy.

The CMA cautioned the companies engaged in the said sector and reiterated its range of competition and consumer powers to tackle the bad behaviour during the Coronavirus outbreak.

The CMA acknowledged that price rise in the form of passing of by a firm as a result of increase in the prices by wholesalers or suppliers were unavoidable. In these situations, the CMA urged the businesses to inform it about such price increases by wholesalers or suppliers, so that it could investigate these issues in the entire supply chain.
(Press release 20th March 2020)

Italian Competition Authority investigates Amazon & eBay for excessive price increase of health products during Covid 19 Outbreak

On 27.02.2020, the Italian Competition Authority (the 'Authority') requested online sales platforms and other sales websites to provide information about the marketing of hand sanitizers and disposable respiratory protection masks as the Authority was receiving numerous complaints from the consumer and associations.

The complaints were made with regard to unjustified and significant increase in the prices of hand sanitizing/disinfectant products, respiratory tract protection masks and other health and hygiene products, during the health emergency caused by Covid-19 Virus.

Apart from the above, misleading claims relating to effectiveness of the products in terms of protection and/or contraction against the above COVID 19 virus was also made by the sellers on the Amazon and eBay platforms.

The Authority gave 3 days to the companies to communicate the measures they adopted to eliminate advertising slogans that were misleading consumers.

After gathering the information, the Authority on 12.03.2020, opened two separate investigations, one against the Amazon and another against the ebay online platform.

The Authority decided to open the two investigations, considering that Covid-19 Virus limited the traditional forms of commerce and the practices of online platforms was having larger impact on the consumers due to large number of items sold online.

(Press Release 27th February, 2020 and 12th March, 2020)

The CCI finds Bengal Chemists and Druggists Association mandating NOC from Stockist, directs to conduct advocacy events

The Competition Commission of India ('CCI'), time and again, has played crucial role in eliminating the anticompetitive practices carried on by the pharmaceutical companies, All India Organization of Chemists and Druggists ('AIOCD') and its affiliate associations in the pharmaceutical sector. Since the passing of order in Case No. 20 of 2011 *Santuka Associates Pvt. Ltd., Cuttak v. AIOCD and Others*, in 2013, the practices like No Objection Certificate ('NOC'), PIS Approval, Fixation of trade margin and boycott by pharma companies has declined drastically but not completely as is evident from the Information filed by the Informants in Case No 36 of 2015, 31 & 58 of 2016.

The Informants in the abovementioned cases alleged that Bengal Chemists and Druggists Association ('BCDA'), its two District Committees i.e. Murshidabad District Committee and Burdwan District Committee and their office bearers, indulged in anticompetitive practices by demanding Stock Availability Information ('SAI')/NOC and Product Availability Information ('PAI') from the stockists and charged donations from Promotion cum Distributor ('PCD') agents, as a pre-requisite for supply of drugs by pharmaceutical companies viz. Alkem Laboratories Limited ('Alkem') and Macleods Pharmaceuticals Limited ('Macleods'). The CCI perused the Information and was of *prima facie* opinion that BCDA, along with its District Committees, were mandating NOC/SAI for appointment of stockists in West Bengal and directed the Director General (the 'DG') to cause an investigate the matter.

The DG in its investigation report concluded that BCDA, Macleods and Alkem contravened provisions of Section 3(3) (b) of the Competition Act, 2002 (the 'Act').

Before examining the allegations, the CCI stated that there is rarely any direct evidence in cases of violation of Section 3 of the Act. Hence, the assessment of the material on record was done on the basis of preponderance of probabilities by the CCI.

The CCI noted that, on various occasions, the supplies of the drugs by Macleods and Alkem to the stockiest were only made once the circulation letter was issued by BCDA. For issuance of circulation letter, the Informants had to obtain SAI from BCDA after paying a sum of ₹ 13,000/- to BCDA.

The CCI examined the telephonic conversation and letters exchanged between office bearers of BCDA, district committees and Stockist which established that BCDA was carrying on the practice of requiring SAI/NOC before supply of drugs to the prospective stockists of pharmaceutical companies were made. The CCI also examined the bank account details of BCDA and found that BCDA charged monetary considerations in the form of 'voluntary' donations from PCD agents of pharma companies, for issuance of PAI, for them to start marketing of drugs of their respective pharma companies.

With respect to conduct of Macleods and Alkem, the CCI observed that supplies by them were only made to the stockiest once BCDA circulated letter which indicated that there was an agreement between the Macleods, Alkem and BCDA to control and limit the supply of drugs in the state of West Bengal.

Though, the CCI found that the BCDA, Macleods, Alkem and their office bearers were guilty of contravening Section 3(3) (b) of the Act but were not penalised because Alkem and Macleods pleaded that their conduct was due to threat/directions from BCDA, on the other hand, BCDA demonstrated to the CCI, the steps taken by it to end the practice of requiring NOC/SAI. Thus, the CCI, in terms of Section 27 (g) of the Act, directed BCDA to conduct advocacy event to spread awareness of the Act and closed the matter.

(Case Nos. 36 of 2015, 31 & 58 of 2016)

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