

## COMPETITION COMMISSION OF INDIA (CCI) IMPOSES PENALTY ON CHEMISTS AND DRUGGISTS ASSOCIATION OF BARODA<sup>1</sup>

The Competition Commission of India ('Commission') has found the Chemists and Druggists Association of Baroda ('CDAB') to be in contravention of the provisions of the Competition Act, 2002 ('Act'). A complaint/information was filed with the Monopolies and Restrictive Trade Practices Commission (MRTPC) in 2009 alleging that the CDAB has indulged in restrictive trade practices. The allegations were that the CDAB, through its practices, is limiting and controlling the supply of drugs and medicines in the market by mandating 'No Objection Certificate' ('NOC') prior to appointment of stockists and payment of 'Product Information Service' ('PIS') charges prior to introduction of new products in the market by pharmaceutical companies. Besides, there were allegations that CDAB was fixing the trade margins for the wholesalers/retailers. Subsequently, the case was transferred to the Commission by MRTPC under the provisions of Section 66(6) of the Act. The Commission after forming a *prima-facie* opinion directed the office of Director General (hereinafter, the 'DG') to conduct investigation into the matter.

Investigation carried-out by the DG established contravention on part of the CDAB. After detailed enquiry, the Commission passed an order dated 05.09.2012 wherein it was found that the CDAB was imposing the requirement of mandatory NOC and was also fixing margins for the wholesalers and retailers by enforcing the norms laid down by AIOCD. The same was found to be in contravention of the provisions of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act. Accordingly, the Commission imposed a monetary penalty, in addition to cease and desist directions, under Section 27 of the Act.

Pursuant to an appeal filed by CDAB, the erstwhile Hon'ble COMPAT, *vide* its order dated 18.11.2016, set aside the Commission's order dated 05.09.2012 on a procedural issue and remanded the matter back to the Commission for fresh adjudication.

Accordingly, the matter was considered afresh. After allowing CDAB with an opportunity to cross-examine various witnesses, the Commission allowed parties to file their written submissions and conducted a detailed hearing in the matter. Based on the material available on record, the Commission found that the CDAB was indulging in the anti-competitive practice of insisting NOC prior to the appointment of new stockists by pharmaceutical companies and was also fixing/prescribing the trade margins during the relevant time period, in contravention of the provisions of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act.

Accordingly, CDAB was directed to cease and desist from indulging in the aforesaid anti-competitive practice. Further, the Commission imposed a monetary penalty of Rs. 32,724/- calculated at the rate of 10% of the average relevant income of CDAB for the relevant period, under the provisions of Section 27 of the Act.

The detailed Order can be seen at the Commission's website [www.cci.gov.in](http://www.cci.gov.in).

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### Team ICSI

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<sup>1</sup> Available at: <http://pib.nic.in/PressReleaseDetail.aspx?PRID=1560181>