

## Competition & Antitrust - India

### Recent Competition Commission penalties

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**Film Distributors Association (Kerala) penalised for anti-competitive practices**  
**Dumper Owners' Association and office bearers penalised for anti-competitive practices**  
**HPSCDA and office bearer penalised for anti-competitive practices**

#### **Film Distributors Association (Kerala) penalised for anti-competitive practices**

In its December 23 2014 order in *Shri PV Basheer Ahmed v M/s Film Distributors Association Kerala* (FDA (K))(1) the Competition Commission imposed a penalty of Rs75,315 on FDA (K) at 5% of its average turnover from the last three years for violating Section 3 of the Competition Act by imposing anti-competitive practices on its members in relation to film distribution. The FDA (K) had:

- given directions and issued circulars to its members;
- put restrictions on the distribution of produced films; and
- imposed a fixed revenue-sharing pattern on distributors' shares which was made binding on its members and exhibitors due to various measures adopted in order to pressurise all those concerned.

Members were forced to follow the terms imposed by FDA (K) if they wanted to screen Malayalam films in their multiplex theatres. In the event of non-compliance, FDA (K) prohibited the films from being shown in other theatres in Kerala and imposed fines and penalties on non-compliant distributors and members. Thus, as the single largest association of distributors in Kerala, FDA (K) controlled and regulated the film distribution and exhibition market.

In addition to issuing a cease and desist order against the association and imposing penalties on it, the commission imposed a penalty on the individual office bearers of the executive committee of FDA (K) and directed them to file their income statements and income tax returns for the last three financial years.

#### **Dumper Owners' Association and office bearers penalised for anti-competitive practices**

In its January 21 2015 order in *M/s Swastik Stevedores Private Limited v M/s Dumper Owners' Association*(2) the Competition Commission imposed a penalty of Rs260,463 (calculated at 8% of average turnover for the last three financial years) and Rs126,029 (calculated at 5% of the average income for last three financial years) on the Dumper Owners' Association (DOA) and its office bearers, respectively, for indulging in anti-competitive practices. The DOA controlled and limited the provisions of dumper services for the intra-port transport of cargoes inside the Paradip Port prohibited area by determining the prices of dumpers for intra-port transport in contravention of Section 3 of the Competition Act. M/s Swastik Stevedores Private Limited filed information with the commission alleging that DOA, M/s Paradip Port Trust and Paradip Port Stevedores Association were engaged in anti-competitive practices.

The DOA had been entrusted with the authority to issue gate passes for dumpers at Paradip Port by the Paradip Port Trust, which gave it a unique advantage in controlling supply at the port, as no machinery could enter the port without a gate pass. Further, the DOA's members owned a significant number of the dumpers used at the port. The DOA used this control over the supply of dumpers to refuse supply to the informant, thereby limiting its output. Moreover, the DOA collectively fixed the rates to be charged for dumpers. Members were forced to abide by these fixed rates and could not negotiate rates on an individual basis. This resulted in a determination of sale prices in violation of the Competition Act. However, the Paradip Port Trust was exonerated, as no evidence of a collusive agreement between the DOA and Paradip Port Trust existed.

#### **HPSCDA and office bearer penalised for anti-competitive practices**

By its January 29 2015 order in *M/s Rohit Medical Store v Macleods Pharmaceutical Limited*(3) the Competition Commission imposed a penalty of Rs265,423 (calculated at 10% of the average receipts for last three financial years) on Himachal Pradesh Society of Chemists and Druggists Alliance (HPSCDA) and Rs28,276 (calculated at 8% of the average income for last three financial

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years) on the president and office bearer of HPSCDA for violating Section 3(3)(b), read with Section 3 (1) of the Competition Act.

M/s Rohit Medical Store filed information with the commission alleging that Macleods Pharmaceutical Limited, M/s FDC Ltd, M/s Cipla Limited and HPSCDA and its president were engaged in anti-competitive practices by requiring the obtainment of a no objection certificate before stockists could be appointed in Himachal Pradesh.

While imposing its penalty, the commission observed as follows:

*"many of the state and regional chemists and druggists associations have been indulging in anti-competitive conduct in spite of Commission holding such practices in violation of provisions of the Act in similar cases. The Commission has unequivocally held that mandating the procurement of NOC for the appointment of chemist/druggist/stockists/super stockists and/or imposition of PIS charges are anti-competitive in terms of the Act. The Commission has directed these chemists and druggists associations and their members to cease and desist from indulging in such anti-competitive and restrictive trade practices. Even, MRTTP Commission has passed orders against Himachal Pradesh State Chemists & Druggists Association to cease and desist from indulging in anti-competitive practice of imposing the condition of procuring NOC for appointment of stockist. Subsequently, the said association changed its name to the Himachal Pradesh Society of Chemists and Druggists Alliance probably to circumvent the directions of MRTTP Commission. Keeping these aggravating factors in mind, the Commission feels it appropriate to impose a penalty on HPSCDA at the rate of 10% of its receipts."*

The commission exonerated the above-mentioned pharma companies.

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#### Endnotes

- (1) Competition Commission order dated December 23 2014, available at [www.cci.gov.in](http://www.cci.gov.in).
- (2) Competition Commission order dated January 21 2015, available at [www.cci.gov.in](http://www.cci.gov.in).
- (3) Competition Commission order dated January 29 2015, available at [www.cci.gov.in](http://www.cci.gov.in).

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