COMPETITION COMMISSION OF INDIA

Case No. 06 of 2012

In Re:

Mr. Kailash Gupta, President, All India Chemists and Distributors Federation
All India Chemists and Distributors Federation
Bharat Pharma
D-14-A/2, Model Town
Delhi - 110 003 — **Informant**

And

1. All India Organisation of Chemist & Druggist
201, Safalya Bldg., 2nd Floor
Opp. Jaigopal Industrial Estate
Banurao Parulekar Marg
Dadar (W) Mumbai – 400 028 — **Opposite Party No. 1**

2. Indian Drug Manufacturers' Association
Indian Drug Manufactures Association
102- Poonam Chambers, 'A; Wing
Dr. Annie Besant Road
Worli, Mumbai – 400 018. — **Opposite Party No. 2**

3. Organisation of Pharmaceutical Producers of India
1620, C- Wing, One BKC, G – Block
Plot No. C-66, Bandra Kurla Complex
Bandra East
Mumbai – 400 051 — **Opposite Party No. 3**

4. Retailers and Distributors Chemist Association of National Capital Territory of Delhi
11-H-9, Lajpat Nagar New Delhi – 110024 — **Opposite Party No. 4**

5. Punjab Chemist Association
Lebon Pharmaceuticals
Opp. Sohan Singh Eye Hospital
Katra Sher Singh, Amritsar — **Opposite Party No. 5**

6. Amritsar Chemist Association
465, Gopal Nagar, Majitha Road
Amritsar – 143 001 — **Opposite Party No. 6**

7. AIOCD Utkal Committee
Plot No. 1 Bhouma Nagar, Unit – IV Bhubaneswar,
Odisha – 751 001 — **Opposite Party No. 7**

8. Madhya Pradesh Chemist & Druggist Association
Jain Products (INDIA), Gonsa Farwaja
Ujjain Madhya Pradesh – 456 606 — **Opposite Party No. 8**

9. Rewari District Chemist & Druggist Association
Aggarwal Stores, Gokal Bazar, Rewari — **Opposite Party No. 9**

10. Karnataka Chemist & Druggist Association
III Floor, Lakshmi Complex, K.R. Road,
Opp. Vanivilas Hospital,
Bangalore – 560 002 — **Opposite Party No. 10**

11. Bihar Chemist & Druggist Association
2nd, Floor, Palit Niketan
Govind Mitra Road, Patna – 800 004 (Bihar) — **Opposite Party No. 11**

12. Dr. Reddy's Laboratories Ltd. **Opposite Party No. 12**

8-2-337, Road No.3, Banjara Hills

Hyderabad – 500 034, Telangana

13. Ranbaxy Laboratories Ltd. **Opposite Party No. 13**

8-2-337, Road No.3 Banjara Hills

Hyderabad – 500 034, Telangana, India

14. Torrent Pharmaceuticals Ltd. **Opposite Party No. 14**

Torrent House, Off Ashram Road

Ahmedabad – 380 009

15. Comed Chemicals Pvt. Ltd. **Opposite Party No. 15**

2nd Floor Sun Plaza -1 Nr. Vadsar Bridge, Makarpura GIDC

Road Vadodara – 390 010

16. Cipla Ltd. **Opposite Party No. 16**

CIPLA House, Peninsula Business Park, Ganpatrao Kadam

Marg, Lower Parel, Mumbai, Maharashtra – 400 013

17. Aventis Pharma Ltd. **Opposite Party No. 17**

Sanofi House, CTS No. 117-B, L&T Business Park Saki Vihar

Road, Powai Mumbai, Maharashtra – 400 072

18. Panacea Biotec Ltd. **Opposite Party No. 18**

Ambala – Chandigarh Highway

Lalru – 140 501 (Punjab)

19. Embiotic Laboratories (P) Ltd. **Opposite Party No. 19**

20C Kumbalgodu Indl. Area, 1st Phase, Kumbalgodu Mysore

Road, Bengaluru, Karnataka – 560 074

20. Franco Indian Pharmaceuticals Pvt. Ltd. **Opposite Party No. 20**

54 B, Mathuradas Vasanji Road
Andheri (E)
Mumbai – 400 093

21. Cadila Pharmaceuticals Ltd. **Opposite Party No. 21**
Cadila Corporate Campus
Sarkhej – Dholka Road, Bhat
Ahmedabad – 382 210, Gujarat

22. Glaxo SmithKline **Opposite Party No. 22**
GSK House
Plot No. 252, Dr. Annie Besant Road
Worli
Mumbai – 400 036

23. Pfizer Ltd. **Opposite Party No. 23**
The Capital, 1802/1901
Plot No. C-70, G Block
Bandra Kurla Complex
Bandra (East), Mumbai – 400 051

24. Merck Ltd. **Opposite Party No. 24**
Godrej One 8th Floor, Pirojshanagar,
Eastern Express Highway, Vikhroli (East), Mumbai,
Maharashtra – 400 079

25. Glenmark Pharmaceutical Ltd. **Opposite Party No. 25**
Glenmark House, B D Sawant Marg
Andheri (E)
Mumbai – 400 009

26. Sun Pharma **Opposite Party No. 26**
Sun House, Plot No. 201 B/1

Western Express Highway, Goregaon (E)
Mumbai – 400 063, Maharashtra

27. Wockhardt Ltd. **Opposite Party No. 27**
Wockhardt Research Centre, D-4, M.I.D.C. Chikalthana,
Aurangabad, Maharashtra - 431006.

28. Unichem Laboratories Ltd. **Opposite Party No. 28**
Unichem Bhavan
Prabhat Estate Off S. V. Road
Jogeshwari (West) Mumbai – 400 102

29. IND Swift Ltd. **Opposite Party No. 29**
781, Industrial Area Phase II, Chandigarh – 160 002

30. Eli Lilly & Co. India (P) Ltd. **Opposite Party No. 30**
Plot No. 92 Sector -32
Gurgaon – 122 001 (Haryana)

31. FDC Ltd. **Opposite Party No. 31**
B-8 MIDC, Industrial Estate, Waluj, Aurangabad,
Maharashtra – 431 130

32. J.B. Chemicals & Pharmaceuticals Industries Ltd. **Opposite Party No. 32**
Cnergy IT Park, Unit A, 8th Floor,
Appa Saheb Marathe Marg
Prabhadevi Mumbai – 400 025

33. MSD Pharmaceuticals Pvt. Ltd. **Opposite Party No. 33**
1544, Level 15, Eros Corporate Towers
Nehru Place
New Delhi – 110 019

34. All Indian Origin Chemist and Distributors Ltd. **Opposite Party No. 34**

6th Floor, Corporate Park-II, V.N. Purav Marg, Chembur,

Mumbai, Maharashtra – 400 071

CORAM

Ms. Ravneet Kaur

Chairperson

Mr. Anil Agrawal

Member

Ms. Sweta Kakkad

Member

Mr. Deepak Anurag

Member

Appearances:

For Informant	:	None
For Opposite Party No. 1, and Mr. J.S. Shinde, President, Opposite Party No. 1	:	Mr. Nakul Mohta, Mr. Sachin S, and Mr. Hitesh Nagar, Advocates
For Opposite Party No. 2 and Mr. Daara B. Patel, Secretary General, Opposite Party No. 2	:	Ms. Avantika Kakkar, Mr. Aman Singh Baroka and Ms. Ananya Mahant, Advocates
For Opposite Party No. 3	:	Mr. Navnit Kumar and Mr. Shubhankar Gupta, Advocates
For Opposite Party No. 5	:	Mr. Nakul Mohta, Mr. Sachin S, and Mr. Hitesh Nagar, Advocates

For Opposite Party No. 6 and Mr. Rajesh Soi, President, Opposite Party No. 6	:	Mr. Nakul Mohta and Mr. Sachin S, Advocates
For Opposite Party No. 7	:	Mr. Ayush Kashyap and Ms. Saijal Arora, Advocates
For Opposite Party No. 8	:	Ms. Devahuti Pathak and Ms. Ishani Bannerjee, Advocates
For Opposite Party No. 10	:	Mr. Nakul Mohta, Mr. Sachin S, and Mr. Hitesh Nagar, Advocates
For Opposite Party No. 11 and Mr. Parsan Kumar Singh, President, Opposite Party No. 11 and Former General Secretary, (OP-1)	:	Mr. Nakul Mohta, Mr. Sachin S, and Mr. Hitesh Nagar, Advocates
For Opposite Party No. 12		None
For Opposite Party No. 13	:	Ms. Avantika Kakkar, Mr. Aman Singh Baroka and Ms. Ananya Mahant, Advocates
For Opposite Party No. 14 and Mr. Vijay Kelkar, Former Assistant General Manager, Opposite Party No. 14	:	Mr. Arun Kathpalia, Senior Advocate, Mr. Ram Kumar Poornachandran, Ms. Chandni Anand, Ms. Ileina Srivastav, Ms. Nidhi Mehta, Ms. Diksha Gupta and Mr. Harshawardhan, Advocates
For Opposite Party No. 15 and Mr. J.S. Sethi, Managing Director, Opposite Party No. 15	:	Mr. Kalrav Mehrotra and Ms. Aishwarya, Advocate
For Opposite Party No. 18	:	Mr. G R Bhatia, and Ms. Vatsala Pandey, Advocates
For Opposite Party No. 20	:	Mr. Samar Bansal, Ms. Rhea Parkash, , Mr. Jay Zaveri and Mr. Pranav Saigal, Advocates
For Opposite Party No. 21	:	Mr. Arjun Nihal Singh and Mr. Manav Gupta, Advocates

For Opposite Party No. 22	:	Mr. Vaibhav Gaggar, Senior Advocate and Ms. Yaatri Shah, Advocate
For Opposite Party No. 23	:	Mr. Samar Bansal, Ms. Zenia Cassinath, Mr. Abhay, Ms. Pallavi Damor, Ms. Radhika and Mr. Vaibhav Singh, Advocates
For Opposite Party No. 25	:	Ms. Nisha Kaur Uberoi, Mr. Sarthak Pande, Mr. Ishan Arora, Mr. Sudhanshu Prakash Singh and Mr. Kamal Sharma, Advocates with Mr. Samir Kazi and Mr Anil Shukla, Company Representatives
For Opposite Party No. 26	:	Ms. Avantika Kakkar, Mr. Aman Singh Baroka and Ms. Ananya Mahant, Advocates
For Opposite Party No. 28	:	None
For Opposite Party No. 30	:	Mr. Krishna Vijay Singh and Ms. Pragya Sharma, Advocates
For Opposite Party No. 32	:	Mr. Ritin Rai Sr. Advocate, Ms. Avantika Kakkar, Mr. Aman Singh Baroka, Ms. Ananya Mahant, Ms. Rasmani Raghuwanshi, Ms. Ankita Gupta, and Mr. Vishal Chavan, Advocates
For Opposite Party No. 33	:	Mr. Riku Sharma and Mr. Shubhankar Gupta, Advocates

Order under Section 26(9) of the Competition Act, 2002

1. This order shall dispose of the case that has arisen from the Information filed by Shri Kailash Gupta ('**Informant**'), President, All India Chemist and Distributors Federation ('**AICDF**') on 23.01.2012 under Section 19(1)(a) of the Competition Act, 2002 ('**Act**') against the Opposite Parties ('**OPs**'), namely, All India Organisation of Chemist &

Druggist ('**AIOCD**'/ '**OP-1**'), Indian Drug Manufacturers' Association ('**IDMA**'/'**OP-2**'), Organisation of Pharmaceutical Producers of India ('**OPPI**'/ '**OP-3**'), Retailers and Distributors Chemist Association of National Capital Territory of Delhi ('**OP-4**'), Punjab Chemist Association ('**OP-5**'), Amritsar Chemist Association ('**OP-6**'), AIOCD Utkal Committee ('**OP-7**'), Madhya Pradesh Chemist & Druggist Association ('**OP-8**'), Rewari District Chemist & Druggist Association ('**OP-9**'), Karnataka Chemist & Druggist Association ('**OP-10**'), Bihar Chemist & Druggist Association ('**OP-11**'), Dr Reddy's Laboratories Ltd ('**OP-12**'), Ranbaxy Laboratories Ltd ('**OP-13**'), Torrent Pharmaceuticals Ltd ('**OP-14**'), Comed Chemicals Pvt. Ltd. ('**OP-15**'), Cipla Ltd. ('**OP-16**'), Aventis Pharma Ltd. ('**OP-17**'), Panacea Biotec Ltd. ('**OP-18**'), Embiotic Laboratories (P) Ltd. ('**OP-19**') , Franco Indian Pharmaceuticals Pvt. Ltd. ('**OP-20**'), Cadila Pharmaceuticals Ltd. ('**OP-21**'), Glaxo SmithKline ('**OP-22**'), Pfizer Ltd. ('**OP-23**'), Merck Ltd. ('**OP-24**'), Glenmark Pharmaceutical Ltd. ('**OP-25**'), Sun Pharma ('**OP-26**'), Wockhardt Ltd. ('**OP-27**'), Unichem Laboratories Ltd. ('**OP-28**'), IND Swift Ltd. ('**OP-29**'), Eli Lilly & Co. India (P) Ltd. ('**OP-30**'), FDC Ltd. ('**OP-31**'), J.B. Chemicals & Pharmaceuticals Industries Ltd. ('**OP-32**'), MSD Pharmaceuticals Pvt. Ltd., ('**OP-33**') and All Indian Origin Chemist and Distributors Ltd. ('**OP-34**'), alleging *inter alia* contravention of the provisions of Sections 3 and 4 of the Act.

2. AICDF is a society registered under the Tamil Nadu Societies Registration Act, 1975. It is stated that the Informant Association was established with the objective of safeguarding and promoting the interests of wholesale pharmaceutical distributors across India. The Informant comprises several affiliated associations at the State and District levels, whose membership primarily consists of wholesale pharmaceutical distributors.

3. In the Information, allegations were raised against 34 OPs comprising different categories of entities within the pharmaceutical sector. These included ten chemist and druggist organisations, wherein OP-1 and OP-34 were pan-India organisations and OP-4 to OP-11 were regional organisations; two pharmaceutical manufacturers' associations, *viz*. OP-2 and OP-3; and twenty-two pharmaceutical companies, *viz.*, OP-12 to OP-33.

4. The Informant alleged that OP-1 compelled manufacturers' associations to enter into a Memorandum of Understanding ('**MoU**') containing various unreasonable conditions,

including insistence on Letters of Cooperation ('**LOCs**'), with the objective of leveraging its position to benefit OP-1 and its office bearers. It was alleged that the said arrangement was restrictive in nature, disrupted free trade, and was null and void under Sections 3(2) and 3(4), read with Section 3(1) of the Act. The Informant further alleged that OP-1 and its affiliated associations collected Product Information Service ('**PIS**') charges from drug manufacturers under the pretext of disseminating product information, compelling manufacturers to comply due to fear of adverse market consequences and business disruptions. It was further alleged that such practices amounted to concerted and conspiratorial refusal to deal and group boycott of members of the Informant, attracting the provisions of Section 3(4)(a) to (e) of the Act.

5. The Commission, *vide* its order dated 07.02.2012, passed under Section 26(1) of the Act opined that there existed a *prima facie* case against OPs and accordingly directed the Director General ('**DG**') to investigate the matter and submit the investigation report.

6. Thereafter, a Writ Petition ('**WP**') No. 24297/2012 was filed by the Karnataka Chemist & Druggist Association (OP-10) before the Hon'ble High Court of Karnataka on 16.07.2012, challenging the Commission's order dated 07.02.2012, and the notice issued by the office of the DG in the present case. Pursuant to filing of the petition, the Hon'ble High Court, *vide* interim order dated 09.08.2012, stayed the proceedings before the Commission as well as the notice directing furnishing of information under Section 41(2) read with Section 36 of the Act. Subsequently, on 10.11.2022, the Hon'ble High Court disposed of the aforesaid WP and permitted the Commission and the DG's office to proceed with the investigation and proceedings.

Investigation by the Director General

7. To examine the allegations, the DG issued notices to the OPs to collect relevant information/ data. The DG also recorded statements of the office bearers of the OPs during the investigation. The investigation report was prepared based on such documentary evidence, duly corroborated by the oral testimony of the witnesses.

8. The investigation report was submitted by the DG on 04.04.2024 in confidential and non-confidential versions, along with case record. In the investigation report, the DG, *inter alia*, concluded as under:

8.1 The practice of issuing No Objection Certificates ('**NOCs**')/LOCs as a *sine qua non* condition prior to the appointment of stockists resulted in limiting and controlling the supply of products in the market. Accordingly, OP-1, OP-5, OP-6, OP-7, OP-8, OP-10 and OP-11, by mandating the requirement of obtaining NOCs/LOCs before the appointment of stockists, were found to have contravened the provisions of Section 3(3)(b) of the Act.

8.2 PIS approval was mandatory, and pharmaceutical companies were not permitted to launch new products without such approval. Consequently, OP-1, OP-5, and OP-8, by enforcing the requirement of PIS approval as a precondition for the launch of new products, were found to have contravened the provisions of Section 3(3)(b) of the Act.

8.3 The provisions of the MoU required pharmaceutical companies to obtain prior consent or approval from District/State associations affiliated with OP-1 before appointing stockists and to obtain PIS approval from State Associations of OP-1 for the advertisement of newly launched products. The MoU further prescribed trade margins for wholesalers and retailers in respect of non-scheduled drugs, which pharmaceutical companies were required to adhere to, and also imposed restrictions on direct supplies by pharmaceutical companies. Accordingly, the MoUs entered into between OP-1, OP-2, and OP-3 were found to be anti-competitive in nature, and OP-1, along with OP-2 and OP-3, were found to have contravened the provisions of Section 3 of the Act by continuing to follow such arrangements even after the Act had come into force.

8.4 Pharmaceutical manufacturers, being members of either OP-2 or OP-3, followed the MoUs entered into between OP-1, OP-2 and OP-3. Several pharmaceutical companies were found to have appointed stockists only upon submission of an NOC/LOC from District/State associations affiliated with OP-1, while evidence also indicated that supplies to stockists were discontinued at the behest of OP-1 or its affiliated associations. Further, trade margins were frequently determined in meetings with representatives of OP-1 or in accordance with the terms of the MoU, and pharmaceutical companies obtained PIS approval from OP-1 or its affiliated associations before launching new products in the market. These practices were found

to have resulted in contravention of Section 3(1) of the Act. The investigation further found evidence against several pharmaceutical companies for implementing or adhering to such anti-competitive practices, including demanding or mandating NOCs prior to the appointment of stockists, discontinuing supplies at the instance of State associations, following anti-competitive provisions of the MoU, and determining trade margins in consultation with OP-1. Findings in this regard were recorded against OP-12, OP-13, OP-14, OP-15, OP-18, OP-20, OP-21, OP-22, OP-23, OP-25, OP-26, OP-28, OP-30, OP-32 and OP-33 for their respective roles in implementing and complying with such anti-competitive arrangements.

8.5 With respect to OP-34, it was observed that although the company had been floated by members of OP-1, it functioned as an independent entity. Further, with regard to the allegations relating to cartelisation and compelling manufacturers to provide customer data, no sufficient evidence was found on record to substantiate the same.

8.6 The DG identified certain individuals as being liable under Section 48 of the Act for their roles in the conduct under investigation. These included Mr. J.S. Shinde, President of OP-1; Mr. Parsan Kumar Singh, General Secretary of OP-1; Mr. Daara B. Patel, Secretary General of OP-2; Mr. Rajesh Soi, President of OP-6; Mr. Vijay Kelkar, Former Assistant General Manager – Supply Chain Management of OP-14; and Mr. J.S. Sethi, Managing Director of OP-15.

9. The Commission considered the investigation report of the DG in its ordinary meeting held on 31.05.2024 and *vide* order of even date directed to forward an electronic copy of the investigation report (non-confidential version) to the Informant, OP-1, OP-2, OP-3, OP-5, OP-6, OP-7, OP-8, OP-10, OP-11, OP-12, OP-13, OP-14, OP-15, OP-18, OP-20, OP-21, OP-22, OP-23, OP-25, OP-26, OP-28, OP-30, OP-32 and OP-33 (24 OPs), whom the DG found to have contravened the provisions of the Act as well as to the individuals identified by the DG to be liable in terms of the provisions of Section 48 of the Act (together referred to as the '**Parties**'). The Commission also allowed the parties to file their respective objections/suggestions, if any, to the said investigation report within four (4) weeks from the receipt of the order.

10. The above-mentioned OPs as well as the individuals identified by the DG to be liable in terms of the provisions of Section 48 of the Act were also directed to furnish their audited

financial statements and income details, including Income Tax Returns, respectively, for the Financial Years ('**FYs**') 2021-22, 2022-23, and 2023-24 in terms of the Competition Commission of India (Determination of Turnover or Income) Regulations, 2024 and the Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024 ('**Penalty Guidelines, 2024**') within four (4) weeks from the receipt of the order . Thereafter, *vide* order dated 08.01.2025, the Commission further directed the OPs and identified individuals to submit audited financial statements and income details for FYs 2009–10 to 2013–14 within two (2)weeks from the receipt of the order.

11. Meanwhile, the Commission granted several opportunities to the parties for filing their objections/suggestions to the Investigation report as well as for submission of the requisite financial details. Thereafter, *vide* order dated 12.02.2025, the Commission granted a final opportunity to the OPs and the individuals identified under Section 48 of the Act, who had not filed their objections/suggestions, to submit the same within one (1) week from the date of receipt of the order. Further, through separate orders, the Commission issued show-cause notices to 11 concerned OPs and respective identified individuals who had failed to furnish financial details for the specified periods, requiring them to explain why proceedings under Section 43 of the Act should not be initiated for non-compliance with the Commission's directions. Subsequently, all parties, except OP-12, complied with the directions issued by the Commission. OP-12 remained non-compliant with the directions contained in the show cause notice and had also filed W.P. No. 25689/2024 before the Hon'ble High Court of Telangana, challenging the Commission's order dated 31.05.2024.

12. The Commission, *vide* order dated 25.02.2026, directed the parties to appear for a final hearing on the investigation report on 08.04.2026 at 02:30 PM.

13. The hearings in the matter had been conducted across multiple dates, namely 08.04.2026, 16.04.2026, 23.04.2026, 30.04.2026 and 13.05.2026. During the course of these hearings, OP-1, OP-2, OP-3, OP-5, OP-6, OP-7, OP-8, OP-10, OP-11, OP-13, OP-14, OP-15, OP-18, OP-20, OP-21, OP-22, OP-23, OP-25, OP-26, OP-30, OP-32 and OP-33 advanced their respective submissions, including arguments relating to penalty and mitigating circumstances. Upon conclusion of the hearing on 13.05.2026, the Commission granted liberty to the parties to file short written submissions, if they so desired, within one (1)

week from the date of the order. Further, *vide* order dated 13.05.2026, the Commission also granted a final opportunity to OP-12 to submit its objections/suggestions to the investigation report along with the requisite financial information within one week (1) from receipt of the said order.

14. The Informant neither submitted objections/suggestions to the investigation report nor appeared before the Commission for hearing on any of the above-mentioned dates. The Commission, thus, having heard the appearing parties, decided to pass a final order in the matter.

Objections/Suggestions to the investigation report by the OPs, along with their oral and written submissions post-hearing

Summary of submissions made on behalf of OP-1 and its individuals

15. OP-1 argued that the DG failed to establish coercion or compulsion in relation to stockist appointments, NOC/LOC requirements or PIS practices. OP-1 maintained that various communications relied upon by the DG merely constituted recommendations or advisory measures intended to facilitate distribution and improve market efficiency and did not amount to mandatory directions. It was also emphasised that multiple pharmaceutical companies had appointed stockists independently without obtaining NOCs and had denied being compelled to follow such requirements.

16. OP-1 submitted that the findings were based upon the MoU framework executed between OP-1, OP-2 and OP-3, which stood terminated in 2011, and therefore any reliance on the said framework for establishing continuing anti-competitive conduct after its discontinuation was misplaced. OP-1 submitted that, pursuant to the final order dated 19.02.2013 passed by the Commission in *Case No. 20 of 2011: M/s Santuka Associates Pvt. Ltd. v. All India Organization of Chemists and Druggists and Ors.,* and the orders dated 09.12.2013 in *Case No. 30 of 2011: M/s Peeveear Medical Agencies, Kerala v. All India Organization of Chemists and Druggists and Ors. and Case No. 41 of 2011: M/s Sandhya Drug Agency v. Assam Drug Dealers Association and Ors* , it undertook various compliance measures. In particular, OP-1 filed an Affidavit of Compliance and Undertaking dated 03.01.2014 before the Commission, affirming that NOC/LOC

requirements, fixation of trade margins, and collection of PIS charges were not mandatory, that there would be no boycott of pharmaceutical products, and that the MoUs dated 16.08.2003 and 03.07.2009 executed between OP-1, OP-2 and OP-3 stood terminated. OP-1 further submitted that no violation of the aforesaid undertaking has been reported since its filing. It was also pointed out that, as part of its compliance efforts, OP-1 issued a communication dated 18.04.2013 to OP-2 and OP-3, clarifying that obtaining an NOC for appointment of stockists was not mandatory and that pharmaceutical companies, stockists and wholesalers were free to offer discounts to customers. On the same date, OP-1 circulated a communication to its members and affiliated associations, clarifying that PIS charges were voluntary in nature and not a mandatory requirement.

17. OP-1 further submitted that the investigation was barred by principles analogous to *res judicata*, in view of previous findings in Case *No. 20/2011: Santuka Association Pvt. Ltd. Vs. AIOCD and Ors.* which dealt with the similar issues.

18. On the issues of PIS charges and boycott allegations, OP-1 submitted that PIS served as a voluntary information dissemination mechanism aimed at improving product awareness and ensuring availability of medicines, particularly in rural areas, and was not mandatory for launching new products. Further, allegations of boycott or refusal to deal were disputed on the ground that no evidence of any industry-wide or systematic mechanism had been produced, and that isolated incidents relied upon by the DG reflected individual commercial decisions rather than coordinated anti-competitive conduct.

19. OP-1 submitted that no penalty should be imposed as the MoU framework had been discontinued in 2011 and the DG had failed to establish any continuing contravention or Appreciable Adverse Effect on Competition('**AAEC**'). It was further contended that OP-1, being a non-profit trade association, did not derive any revenue or financial benefit from the alleged NOC, PIS or boycott practices. Additionally, OP-1 argued that no liability could be attributed to its office bearers under Section 48 of the Act, as there was no evidence of their consent, connivance, or involvement in any anti-competitive conduct, and therefore the findings against them should be set aside.

Summary of submissions made on behalf of OP-2 and its individual

20. OP-2 primarily argued that the DG incorrectly found it liable under Section 3(1) of the Act and ignored the Commission's previous findings in the earlier AIOCD cases. It submitted that substantially the same factual matrix, allegations and evidence had already been examined by the Commission in *Case No. 20 of 2011, Case No. 30 of 2011 and Case No. 41 of 2011*, where the Commission had expressly held that OP-2 had not contravened the provisions of the Act.

21. OP-2 further submitted that the DG failed to establish any AAEC, which is a necessary requirement for attracting Section 3(1) of the Act. It was argued that the DG merely relied upon precedents without conducting an independent assessment of the actual or likely impact of the alleged conduct on competition, trade, or consumers. OP-2 contended that in the absence of any AAEC analysis, no finding of contravention under Section 3(1) of the Act could be sustained. It was also argued that Mr. Daara B. Patel could not be held liable under Section 48 of the Act as he had no independent decision-making authority, was not a signatory to the MoU, and merely discharged administrative functions under the directions of the association. The submissions additionally addressed the issue of penalties, arguing that even if liability was assumed, the evidentiary record against OP-2 ended by 2011–12, when the MoU had formally been terminated. Accordingly, it was submitted that any penalty should be confined only to FYs having a temporal nexus with the alleged conduct and should not extend to subsequent years.

Summary of submissions made on behalf of OP-3

22. OP-3 contested the DG's findings on the ground that they were contrary to earlier decisions of the Commission and were based on a misinterpretation of the role played by OP-3 in relation to the MoUs executed with OP-1. OP-3 submitted that it had terminated all MoUs with OP-1 by 2009 after obtaining legal advice, pursuant to enforcement of the Competition Act, and there was no evidence of continuation of any anti-competitive arrangement thereafter. Reliance was placed on earlier decisions of the Commission in cases such as Case Nos. 20 of 2011 and 30 of 2011, where OP-3 had not been found liable under Section 3(3) of the Act. OP-3 further contended that its member companies operated

independently and that stockist appointments, trade margins and product launches were decided by individual pharmaceutical companies without any binding directions from OP-3.

23. According to OP-3, the MoUs were voluntary industry arrangements intended to facilitate operational coordination and regulatory compliance, rather than coercive or binding agreements. It was emphasized that the DG had failed to establish any evidence of compulsion, coercion, market foreclosure, or denial of stockist appointments. Accordingly, OP-3 prayed that the findings against it be rejected and the allegations under Section 3 of the Act be dismissed.

Summary of submissions made on behalf of OP-5

24. OP-5 submitted that, as an affiliated State association of OP-1, it had adopted the compliance framework accepted by the Commission and amended its Constitution in 2014 by deleting provisions relating to LOC/NOC. It was further argued that the evidence relied upon by the DG pertained only to the period 2009–2010 and that no post-termination conduct had been established.

25. With respect to allegations concerning NOC/LOC, OP-5 submitted that the DG had misinterpreted internal constitutional provisions and administrative communications as establishing a mandatory market-facing NOC system. On the issue of PIS charges, OP-5 relied upon the DG's own findings that there was no evidence showing that OP-5 had mandated PIS approvals or obstructed product launches, and contended that discussions concerning PIS merely related to the dissemination of product information.

26. OP-5 also disputed the findings relating to boycott and refusal to deal, contending that the DG had relied on isolated communications and misattributed documents issued by the Punjab Chemist Federation ('**PCF**'), an independent organisation having no administrative relationship with OP-5. It was submitted that no evidence had been brought on record to establish actual supply disruption, coordinated boycott, or AAEC. OP-5 further argued that it was a non-profit voluntary association and that no liability or penalty could be imposed

in the absence of evidence establishing continuing contravention or personal involvement under the Act.

Summary of submissions made on behalf of OP-6 and its individual

27. OP-6 challenged the DG's findings by contending that the entire case rested on the historical MoU framework between OP-1, OP-2 and OP-3, which admittedly stood terminated in 2011 and had already been considered in earlier proceedings before the Commission and Competition Appellate Tribunal ('**COMPAT**'). OP-6 further contended that allegations of coercion were unsupported by evidence and that no material existed to establish any compulsory or coercive mechanism relating to NOC/LOC practices. It was argued that the DG relied only upon isolated communications issued during 2008–2010, which neither demonstrated any continuing implementation of a mandatory NOC/LOC framework nor established denial of supply, market foreclosure, or restrictions on stockist appointments.

28. OP-6 argued that the evidence relied upon consisted largely of complaint-based communications issued by rival associations and lacked any independent verification or direct evidence linking OP-6 to supply disruptions or coordinated refusal to deal. It was further submitted that no pharmaceutical company, stockist, distributor, or other market participant had confirmed any supply stoppage attributable to OP-6. Accordingly, OP-6 contended that no continuing contravention, market harm, or AAEC had been demonstrated and that no penalty or individual liability under Section 48 of the Act could be attributed to its office bearers.

Summary of submissions made on behalf of OP-7

29. OP-7 submitted that the allegations against it were related only to historical material from 2009–2010 and that no evidence of post-2011 conduct or continuing contravention had been identified. It was further argued that the MoU framework emerged from mutual consultations and consensus among industry participants and was not the result of coercive or unilateral conduct attributable to OP-7.

30. With respect to NOC/LOC practices, OP-7 argued that the documents relied upon by the DG were advisory and administrative in nature and did not establish a mandatory or enforceable mechanism restricting appointment of stockists or market access. With regard to PIS charges OP-7 contended that no evidence linked it to any mandatory levy or enforcement mechanism. OP-7 also disputed the allegations relating to boycott and refusal to deal, contending that the evidence relied upon by the DG consisted of conciliatory communications and unverified internal correspondence, which did not establish coordinated anti-competitive conduct, denial of supply, or actual market impact. On penalty, OP-7 submitted that no penalty is warranted, particularly in the absence of continuing contravention, market harm, or evidence of anti-competitive conduct.

Summary of submissions made on behalf of OP-8

31. OP-8 contended that the findings relating to mandatory NOC/LOC requirements and compulsory PIS approvals were based on insubstantial evidence and that no material had been produced to demonstrate that OP-8 had issued NOCs/LOCs, mandated PIS charges, or restricted market access. It was argued that the presumption of AAEC stood rebutted and, consequently, no basis existed for imposition of any penalty. OP-8 further submitted that voluntary PIS practices facilitated dissemination of product information, improved distribution, and promoted consumer welfare and economic development.

32. Without prejudice to its primary contention, OP-8 submitted that any penalty, if imposed, should be restricted to FYs having a direct nexus with the alleged period of contravention and should not be calculated on the basis of financial statements of later years, as such an approach would violate principles of proportionality and settled jurisprudence.

Summary of submissions made on behalf of OP-10

33. OP-10 argued that the allegations against it are based entirely on historical conduct under MoUs executed in 2003 and 2009, which had already ceased in 2011. It was emphasised that the investigation report identifies no instance of anti-competitive conduct after 2011 and relies solely on pre-2011 evidence, thereby providing no factual or legal basis for alleging a continuing contravention against OP-10.

34. It was submitted that the Commission had previously accepted compliance undertakings from OP-1 and its affiliated associations, including OP-10, confirming discontinuation of practices relating to NOC/LOC and PIS charges. It was further contended that no manufacturer, stockist, or distributor had been examined to establish denial of stockist appointments or restriction of supply attributable to OP-10, and therefore no mandatory NOC/PIS mechanism had been demonstrated. Accordingly, OP-10 contended that no post-2011 violation or coercive conduct had been established and that no adverse finding or penalty is warranted against it.

Summary of submissions made on behalf of OP-11and its individual

35. OP-11 challenged the findings of the DG by contending that the entire investigation was founded on the historical MoU framework executed between OP-1, OP-2 and OP-3, which had admittedly stood terminated in 2011 and had already been considered in earlier proceedings before the Commission and COMPAT. OP-11 further contended that no evidence existed of any continuing or enforced LOC/NOC mechanism after 2011 and that the DG had relied only upon isolated historical communications rather than any material demonstrating implementation of a coercive framework.

36. OP-11 emphasised that the DG itself had recorded no violation relating to PIS charges, boycott practices, or trade margin fixation against it and that evidence on record showed that LOC/NOC requirements were optional rather than mandatory. It was also submitted that PIS functioned as a voluntary information dissemination mechanism facilitating circulation of product and pricing information, particularly in rural and semi-urban markets, and therefore could not by itself establish an anti-competitive arrangement. OP-11 further submitted that its conduct promoted legitimate objectives relating to distribution and dissemination of information in the pharmaceutical sector and that no continuing contravention, market harm or AAEC had been demonstrated. Accordingly, it was contended that no penalty is warranted in the facts of the case.

Summary of submissions made on behalf of OP-12

37. OP-12 *vide* submission dated 27.05.2026 submitted that the proceedings against it are legally unsustainable and that it has challenged the Commission's order dated 31.05.2024 and the DG's investigation report before the Hon'ble Telangana High Court in WP/25689/2024, where the matter has been reserved for orders. It therefore urged the Commission to defer any final determination pending the outcome of the writ proceedings.

38. On merits, OP-12 contended that it was merely a pharmaceutical manufacturer and a victim of the anti-competitive practices of OP-1 and its affiliates, which allegedly compelled manufacturers to comply with their diktats regarding stockist appointments. OP-12 argued that a manufacturer acting under coercion or pressure from trade associations cannot be said to have entered into an anti-competitive agreement under Section 3 of the Act. It further submitted that the DG's finding regarding NOC-based stockist appointments was contrary to the Commission's earlier decisions, which had recognised that its distributor and stockist appointment process was independent, transparent, and compliant with law. OP-12 maintained that it never required an NOC from OP-1 and that appointments were based solely on commercial and regulatory considerations.

39. OP-12 also challenged the validity of the investigation, alleging substantial procedural irregularities. On penalty, it submitted that any direction to furnish financial statements for FYs 2021–24 was contrary to law since the alleged conduct pertained to a period prior to 2012. Relying on the principle of relevant turnover, it argued that, if at all financial information were required, only the turnover for the period corresponding to the alleged contravention could be considered. It further contended that retrospective application of the Penalty Guidelines, 2024 would be impermissible and highly prejudicial. Accordingly, OP-12 sought closure of proceedings and setting aside of the DG's findings.

Summary of submissions made on behalf of OP-13

40. OP-13 challenged the DG's finding of contravention under Section 3(1) of the Act and contended that the DG had failed to establish AAEC, which is a necessary requirement for

sustaining such a finding. It was argued that the investigation report contained no independent AAEC analysis or assessment of factors under Section 19(3) of the Act and relied upon allegations without demonstrating any actual or likely adverse impact on competition.

41. OP-13 further argued that DG had relied on OP-1's letter dated 11.08.2009 to its state affiliates, discussing trade margin which was merely a unilateral communication by OP-1 and neither addressed nor involved OP-13.

42. OP-13 additionally contended that the investigation report suffered from inconsistencies and selective treatment of evidence, as similarly placed pharmaceutical companies with comparable or stronger evidence against them had either not been impleaded or had been exonerated. On the issue of penalty, OP-13 submitted that any financial assessment should be confined only to the relevant period and geographical scope of the alleged conduct, *i.e.*, FY 2009–10 and 2010–11, concerning a limited division operating in Namakkal, Tamil Nadu. It further relied on mitigating factors including full cooperation during investigation, absence of prior adverse findings, the coercive conduct of OP-1, and the absence of evidence establishing any market-wide anti-competitive effect.

Summary of submissions made on behalf of OP-14

43. OP-14 argued that no agreement existed between it and OP-1, OP-2, or OP-3 concerning stockist appointments and that the DG had failed to conduct any analysis under Section 19(3) of the Act to establish AAEC. OP-14 further submitted that any alleged conduct occurring in an environment of coercion created by trade associations could not amount to a voluntary agreement under the Act.

44. OP-14 further contended that it maintained an independent policy for appointment of stockists based solely on commercial considerations and not subject to any directions or guidelines of trade associations. It was emphasised that OP-14 had appointed 352 stockists without obtaining NOCs and that the DG had relied only upon a solitary communication concerning M/s Suraj Traders, which was stated to be an isolated instance undertaken for additional verification of credentials and not reflective of company policy.

45. OP-14 additionally submitted that DG had adopted an inconsistent approach by treating similarly situated pharmaceutical companies differently. It was argued that evidence of comparable or stronger evidence against other pharmaceutical companies had either resulted in exoneration or no adverse findings. OP-14 also challenged allegations relating to the termination of stockists and submitted that such decisions were based on objective commercial reasons and consumer welfare considerations rather than anti-competitive motives. On penalty, OP-14 submitted that no penalty should be imposed or any penalty if imposed should be confined to the relevant period and turnover associated with the alleged conduct.

Summary of submissions made on behalf of OP-15 and its individual

46. OP-15 challenged the DG's findings by contending that the allegations against it were based on a fundamentally erroneous premise and that it was not a participant in any anti-competitive arrangement but rather a victim of coercive conduct by OP-1. It was argued that the discontinuation of its arrangement with M/s Spring Associates was not a result of collusive conduct but of economic compulsion arising from boycott tactics allegedly adopted by OP-1 after OP-15 attempted to expand its distribution network by appointing an additional Consignee and Forwarding Agent ('**C&FA**') in Orissa. OP-15 further submitted that it neither mandated NOCs for appointment of stockists nor consulted trade associations for such appointments.

47. OP-15 also argued that no agreement or consensus as contemplated under Section 3(1) of the Act existed, as conduct undertaken under coercion could not constitute voluntary agreement. OP-15 additionally submitted that its membership in OP-2 did not impose any obligation to comply with MoUs entered into by OP-2. On the issue of liability and penalty, OP-15 contended that no liability could be fastened either upon the company under Section 27 of the Act or upon its Managing Director under Section 48 of the Act , particularly in light of the absence of voluntary conduct, prior findings recognising OP-15 as a victim of boycott practices, and the alleged lack of specific findings regarding consent, connivance, or active involvement.

Summary of submissions made on behalf of OP-18

48. OP-18 contended that the conclusion against it was based on a single isolated incident in Punjab, which was wrongly extrapolated to infer a broader practice of mandating NOCs in certain States. It was submitted that OP-18 had consistently maintained that it neither mandated NOCs nor required consultation with OP-1affiliated associations for stockist appointments, and the said stockist itself had been appointed without any NOC. OP-18 also relied upon COMPAT decisions to argue that mere acquiescence by pharmaceutical companies under pressure from trade associations could not establish an agreement under Section 3(1) of the Act.

49. Further, OP-18 contended that the DG ignored evidence demonstrating that the alleged anti-competitive practices had ceased by 2012 and failed to re-examine prevailing market conditions after the stay imposed by the Hon'ble Karnataka High Court was lifted. OP-18 additionally submitted that the DG had failed to establish AAEC, which is a mandatory requirement under Section 3(1) of the Act. It was argued that the DG had adduced no evidence showing rejection of stockists for failure to obtain NOCs or any restriction on market access. Without prejudice, OP-18 also sought consideration of mitigating factors for imposition of penalty.

Summary of submissions made on behalf of OP-20

50. OP-20 submitted that the DG had erroneously concluded that it mandated NOCs prior to appointment of stockists by relying upon a single isolated instance involving M/s Shree Choudhary Medical Centre without examining whether any NOC was actually obtained or whether such conduct represented an established practice. OP-20 emphasized that the same stockist had subsequently been appointed on multiple occasions without obtaining any NOC, demonstrating that there was no mandatory requirement or company policy insisting upon NOCs for stockist appointments.

51. OP-20 further submitted that the DG had ignored the broader findings in the investigation report itself showing that pharmaceutical companies were often subjected to pressure, diktats and boycott threats from OP-1 and affiliated associations. It was argued that OP-

20 was not a party to the MoU between OP-1, OP-2 and OP-3 and had not entered into any agreement to restrict competition. OP-20 relied upon the COMPAT decision in *M/s Alkem Laboratories Ltd. v. CCI (Appeal No.09/2016)*to contend that where pharmaceutical companies acted under coercion or diktats of associations, the element of agreement required under Section 3 of the Act disappeared. Without prejudice, OP-20 argued that if the Commission nevertheless found a contravention, mitigating circumstances such as boycott threats and coercive conduct by associations should be considered. It was also submitted that any penalty, if imposed, should be based only on the relevant turnover during the relevant period in accordance with the principle of proportionality and the law laid down in *Excel Crop Care Ltd. v. CCI, (2017) 8 SCC 47.*

Summary of submissions made on behalf of OP-21

52. OP-21 contended that the findings against it were arbitrary and unsupported by evidence, arguing that the DG had held it liable on the basis of only three pieces of evidence, namely its reply dated 02.05.2012, the statement of Ms. Aniruddha Rajurkar, and a trade margin communication. It was further submitted that two of these documents pertained to Cadila Healthcare Ltd. ('**CHL**'), a separate legal entity distinct from OP-21, and therefore could not be relied upon against it. OP-21 also argued that the DG had failed to confront it with the alleged material or seek clarification during the investigation, thereby violating principles of natural justice.

53. OP-21 additionally argued that pharmaceutical companies had followed such practices only due to threats of boycott and coercive measures adopted by associations and that no agreement or meeting of minds, which is a prerequisite under Section 3(1) of the Act, existed between OP-21 and the associations. OP-21 also submitted that the DG had failed to undertake any analysis of AAEC and had not identified a single instance where a stockist or distributor was denied appointment due to absence of NOC/LOC. On penalty, without prejudice to its submissions, OP-21 contended that no penalty should be imposed and alternatively sought consideration of mitigating factors including termination of the MoU in 2011, absence of evidence of wrongdoing, cooperation during investigation, and implementation of competition compliance measures.

Summary of submissions made on behalf of OP-22

54. OP-22 submitted that the DG's findings were factually and legally unsustainable and contended that no agreement or meeting of minds existed between OP-22 and OP-1 as required under Section 3(1) of the Act. It was submitted that pharmaceutical companies, including OP-22, acted under coercion and boycott threats imposed by OP-1 and its affiliated associations, and therefore their conduct could not be treated as voluntary participation in any anti-competitive arrangement.

55. OP-22 further contended that the DG had failed to establish implementation of the alleged anti-competitive practices and had not produced evidence demonstrating that OP-22 ever mandated LOC/NOC requirements, fixed trade margins at the behest of OP-1, or denied appointments or supplies on such basis. It was argued that the DG relied upon isolated communications and historical MoUs without examining whether they continued after the Act came into force or whether they had any actual effect in the market. On penalty, OP-22 argued that if liability were nevertheless established, mitigating factors such as its passive role, absence of coercive conduct on its part, termination of the MoU in 2011, lack of prior contraventions, cooperation with the investigation, and implementation of competition compliance measures should be considered while determining penalty.

Summary of submissions made on behalf of OP-23

56. OP-23 challenged the investigation report as being legally unsustainable, factually incorrect, self-contradictory, and suffering from non-application of mind. It was argued that similarly placed pharmaceutical companies such as OP-16, OP-17, OP-19, OP-24, OP-27, OP-29 and OP-31 had been treated as victims of coercion and exonerated, whereas OP-23 was singled out without any reasoning or analysis.

57. It was argued that there was no agreement, understanding, concurrence, meeting of minds, or concerted practice between OP-23 and OP-1 or any other OP. OP-23 submitted that its own response dated 26.04.2012 clearly stated that it did not follow OP-1's guidelines, did not consult it for stockist appointments, and did not require NOCs from distributors or

wholesalers. According to OP-23, conduct arising from coercion cannot constitute an agreement under Section 2(b) or Section 3 of the Act.

58. OP-23 additionally raised procedural objections and argued that the investigation violated principles of natural justice. It was submitted that after proceedings resumed following the Hon'ble Karnataka High Court stay, the DG merely sought verification of earlier submissions and did not provide OP-23 with a proper opportunity to explain changes in circumstances or respond comprehensively to allegations. According to OP-23, despite seeking clarification and additional information, it received no response from the DG and the investigation report was issued without meaningful engagement. OP-23 argued that the findings were therefore based on outdated material and caused serious prejudice. Accordingly, it prayed for rejection of the DG's findings and closure of proceedings against it.

Summary of submissions made on behalf of OP-25

59. OP-25 submitted that the DG's findings alleging that it mandated NOC/LOC requirements for appointment of stockists and discontinued supplies at the behest of chemists' associations are unsupported by evidence. It was contended that there is no material on record showing that OP-25 required an NOC/LOC for appointing stockists or refused any appointment in the absence of such approval. OP-25 further submitted that the DG disregarded its responses clarifying that stockist appointments were made independently and failed to examine any representative, stockist or distributor of OP-25 who could have verified the same.

60. With respect to the allegation of supply stoppage, OP-25 submitted that the DG relied solely on certain letters exchanged between chemists' associations and regulatory authorities concerning the alleged non-supply to Kesari Nandan Pharma. According to OP-25, these documents merely indicate pressure exerted by local associations and do not establish any agreement or concerted practice on its part. It was also pointed out that several other pharmaceutical companies named in the very same correspondence were either exonerated or not proceeded against, despite being supported by identical evidence.

61. OP-25 further submitted that the DG failed to establish AAEC, a necessary ingredient for finding a contravention under Section 3(1) of the Act. It was argued that the alleged non-supply was temporary, lasted for less than 45 days, and could not have affected competition given OP-25's limited market presence and the availability of alternative suppliers. Accordingly, OP-25 prayed that no contravention or penalty be imposed. In the alternative, it submitted that any penalty, if considered, should be proportionate and restricted to the relevant turnover in Punjab, taking into account the age of the allegations and the absence of any continuing effects.

Summary of submissions made on behalf of OP-26

62. OP-26 argued that a standalone finding under Section 3(1) of the Act could not be sustained in the absence of an AAEC analysis under Section 19(3) of the Act. OP-26 submitted that unlike previous cases where the Commission relied upon direct evidence such as emails, recordings and actual supply stoppages, the investigation report contained no such evidence or competitive assessment in relation to OP-26.

63. OP-26 further submitted that there was no agreement between it and OP-1, as any alleged arrangement was the result of coercion and pressure exerted by OP-1 and its affiliated associations. Relying on the COMPAT decision in *M/s Alkem Laboratories Ltd. v. Competition Commission of India and Others (Appeal No. 09 of 2016) and Lupin Limited v. CCI and Ors (Appeal No. 40 of 2016)*, OP-26 argued that coercion negated the element of concurrence necessary for establishing an agreement under Section 3(1) of the Act . It was also contended that there was no evidence showing that OP-26 fixed trade margins with OP-1 and that the DG's conclusion rested solely upon a unilateral letter dated 30.12.2009 issued by OP-1 to its members claiming a "mutual agreement" with OP-26. OP-26 additionally argued that the investigation report suffered from inconsistencies and selective treatment of evidence, as similarly placed pharmaceutical companies against whom stronger or comparable evidence existed were either not impleaded as OPs or had been exonerated. Without prejudice, OP-26 submitted that any penalty should be confined only to the relevant period of alleged conduct and should take into account mitigating circumstances.

Summary of submissions made on behalf of OP-28

64. OP-28, in its objections/suggestions to the investigation report, denied the allegations and contended that stockists were appointed solely on the basis of commercial requirements and that it did not consult any association while making such appointments. It was submitted that NOCs, where obtained, were sought only as a precautionary measure to safeguard against potential financial and commercial risks and were not mandatory prerequisites for stockist appointments. OP-28 further emphasized that stockists had also been appointed without obtaining NOCs and that it was not a member of OP-1.

65. OP-28 argued that PIS charges, where paid, were intended only to facilitate dissemination of information relating to newly launched products to chemists and druggists on a large scale, which otherwise would have involved significant cost and time. OP-28 also asserted that it independently determined the pricing of its products and had never engaged in any conduct causing or likely to cause AAEC in India. Without prejudice, OP-28 highlighted that its domestic business constituted only a small portion of its overall operations and furnished its financial details in compliance with the Commission's directions.

Summary of submissions made on behalf of OP-30

66. OP-30 challenged the DG's finding that it had mandated NOCs for appointment of stockists and contended that the conclusion was based only on four documents relating to two stockists, namely United Stores and Patil Pharmaceuticals, from Belgaum. It was argued that these documents, properly interpreted, actually demonstrated that OP-30 had no policy requiring NOCs from OP-1 or its affiliated associations. OP-30 submitted that despite communications from local associations seeking stoppage of supplies, it had continued regular commercial dealings and supplied medicines to both stockists during the relevant period, thereby showing that NOCs were not mandatory prerequisites for appointment or continued supply.

67. It was submitted that a purported letter dated 15.07.2010 allegedly issued by OP-30 had already been denied by its former employee, and even the DG had found that the signatures appearing thereon did not match. OP-30 argued that the DG failed to examine relevant

parties such as United Stores and Patil Pharmaceuticals or verify the authenticity and delivery of the impugned communications. It also relied upon purchase orders, invoices and delivery records showing continued supply of products to the concerned stockists, thereby contradicting the allegation that stockist appointments or supplies depended upon NOCs. Accordingly, OP-30 sought setting aside of the findings against it and, without prejudice, requested consideration of mitigating factors in relation to the imposition of penalty.

Summary of submissions made on behalf of OP-32

68. OP-32 submitted that the DG had wrongly concluded contravention under Section 3(1) of the Act based on allegations that it implemented the MoU executed between OP-1, OP-2 and OP-3 by mandating NOCs for stockist appointments and determining trade margins with OP-1. OP-32 argued that no agreement existed because the factual record itself showed a coercive environment, and conduct arising from coercion or pressure could not constitute an agreement under the Act. Reliance was placed on prior COMPAT decisions holding that coercion negates the element of concurrence necessary for establishing an agreement.

69. OP-32 further contended that the DG's conclusions were based on only two pieces of evidence, both of which were insufficient. First, the DG relied on OP-32's reply dated 19.04.2012, wherein it had stated that it followed the MoU framework and generally sought NOCs. OP-32 argued that the DG selectively relied on portions of its response without conducting any follow-up investigation or examining company officials, and ignored that the reply pertained to a period when the MoU had already been terminated. Secondly, the DG relied on a letter dated 15.07.2011 issued by OP-1 concerning the launch of OP-32's FEMIDENT division and continuation of existing trade margins. OP-32 submitted that the letter was merely an internal communication of OP-1, was neither authored nor addressed to it, and therefore could not establish any bilateral agreement on trade margins. It maintained that its trade margins were determined strictly in accordance with the Drugs (Prices Control) Order ('**DPCO**'), norms. OP-32 submitted that any penalty, if imposed, should be confined to the relevant period around 2011 and only to the

turnover of the FEMIDENT division. It further argued that the FEMIDENT division had generated no revenue during FY 2009–2011.

Summary of submissions made on behalf of OP-33

70. OP-33 challenged the findings as being based on incorrect facts, misinterpretation of evidence, and improper application of competition law principles. It submitted that it independently appointed stockists and never required distributors to obtain LOCs/NOCs from OP-1 or its affiliated associations. OP-33 relied upon its replies before the DG, lists of stockists appointed without NOCs, and supporting communications to demonstrate that its stockist appointment process functioned independently and without dependence on AIOCD approval mechanisms. With respect to trade margins, OP-33 argued that its margins were determined independently on the basis of market conditions, commercial considerations, industry norms, and internal business strategies.

71. It submitted that the DG had wrongly inferred collusion from isolated communications and unilateral letters issued by AIOCD. According to OP-33, such letters were neither approved, signed, nor accepted by OP-33 and could not establish any agreement or coordinated conduct. It submitted that the DG's findings lacked proper reasoning, failed to establish any causal link between its conduct and market harm, and violated principles of natural justice. OP-33 also raised procedural objections regarding prolonged delays in the investigation following the Hon'ble Karnataka High Court proceedings and contended that such delays caused regulatory uncertainty and prejudice. Accordingly, OP-33 prayed for rejection of the DG's findings and closure of proceedings against it.

Analysis

72. The Commission has carefully perused the investigation report and the evidence relied upon therein, along with the objections/suggestions filed in response to the investigation report, the oral submissions advanced by the parties, the written synopsis of arguments subsequently submitted, and all other material available on record.

73. Before proceeding to examine the merits of the matter, the Commission considers it appropriate to address the preliminary objection raised by certain parties that the present

investigation is barred by principles analogous to *res judicata* owing to previous proceedings involving similar issues. The said contention is not tenable in light of the statutory framework of the Act. The scheme of Section 26 of the Act demonstrates that conduct involving different parties and factual circumstances requires independent examination.

74. The present proceedings concern a broader investigation involving multiple OPs, distinct factual allegations, and extensive evidence gathered by the DG, including conduct of parties not specifically adjudicated in earlier proceedings. Having addressed certain issues relating to NOC/LOC practices, PIS charges, or MoUs in previous proceedings, which are pending adjudication in appeals before the Hon'ble Supreme Court, does not preclude the Commission from examining whether the conduct under investigation in the present matter resulted in contravention of the Act. Therefore, the Commission finds no merit in the objection that the present investigation is barred by principles analogous to *res judicata*, and the same is liable to be rejected.

75. Having dealt with the preliminary objection, the Commission proceeds to determine the issue on merits. The following issues arise for determination in the present matter:

Issue 1. Whether the chemist associations have implemented NOC/LOC for appointment of distributor/wholesaler/C&F agent and PIS charges from drug manufacturers for launch of new product and issued directions to boycott the pharma company in case it does not follow the instructions, thus violating provisions of Section 3 of the Act?

76. The Commission noted that the DG had found the practice of requiring NOCs/LOCs as a mandatory precondition for appointment of stockists which had the effect of limiting and controlling the supply of pharmaceutical products in the market. Accordingly, OP-1, OP-5, OP-6, OP-7, OP-8, OP-10, and OP-11 were held to have contravened Section 3(3)(b) of the Act by mandating such NOC/LOC requirements before stockist appointments. Further, the DG also concluded that PIS approval had been treated as a compulsory requirement for launching new products and that pharmaceutical companies were not permitted to introduce products without obtaining such approval. Consequently, OP-1, OP-5, and OP-

8 were found to have violated Section 3(3)(b) of the Act by enforcing PIS approval as a precondition for the launch of new products.

77. The Commission now proceeds to analyse the evidence collected by the DG.

Evidence with respect to NOC/LOC requirements

78. The DG, while examining the issue of NOC/LOC requirements, relied upon various documents pertaining to the period 2009–2011, along with the oral statements of Mr. J.S. Shinde, President of OP-1, Mr. Rajesh Soi, President, OP-6 and Mr. Parsan Kumar Singh, former General Secretary of OP-1, to conclude that the NOC/LOC mechanism had been institutionalised and coordinated through OP-1 and its affiliated State and District associations. The investigation noted that although NOCs/LOCs were issued by affiliated associations, the governing framework, procedures, and guidelines for such practices were formulated and disseminated by OP-1. In support of this finding, reliance was placed on communications dated 10.12.2010 prescribing guidelines and procedures for grant of LOC/NOCs, as well as several letters issued by OP-1 to pharmaceutical companies concerning appointment of stockists and referring to NOC requirements in that context.

79. The DG further relied on correspondence exchanged during the period from 2009 to 2011 indicating OP-1's involvement in stockist appointment processes, including communications seeking favourable action for appointment of stockists, references to requirements of obtaining consent or clearance from State associations, and requests for stockist details for grant of approval. Reliance was also placed on the minutes of the OP-1Executive Committee meeting dated 17.01.2010, wherein concerns were recorded regarding pharmaceutical companies appointing stockists without obtaining NOC from State associations.

80. In addition, the DG relied upon documentary material from the period 2009–2012 to support its findings regarding implementation of NOC/LOC practices by OP-5, OP-6, OP-7, OP-8, OP-10, and OP-11. Such material included communications indicating that LOCs could only be issued by authorised district or wholesale chemist associations affiliated with OP-1 and that supplies were to be made only to stockists possessing such approvals. The DG also relied upon letters issued by these associations advising pharmaceutical

companies to recall products, suspend or discontinue supplies to stockists appointed without obtaining LOCs, or refusing issuance of LOCs owing to pending disputes with the association.

Evidence with respect to mandating PIS approval

81. The DG, while examining the issue of PIS approvals, relied upon documentary evidence and meeting records pertaining to the period 2009–2012 to conclude that PIS approval operated as a mandatory requirement for launching new pharmaceutical products in the market. Reliance was placed on communications issued by OP-1 to pharmaceutical companies directing that advertisements relating to newly launched products be routed through State associations.

82. The DG also relied upon OP-3's response dated 13.04.2012, wherein it was stated that although the PIS mechanism had initially been introduced to facilitate the dissemination of price and product-related information, the same had subsequently been misused through delay in approvals, excessive charges, boycott threats, and other coercive practices.

Evidence with respect to practice of boycott

83. The DG, while examining allegations relating to boycott of pharmaceutical manufacturers, observed that although direct evidence of boycott was limited, the material on record indicated the existence of coordinated actions by associations. The DG relied upon various communications issued by OP-1 to State and District associations directing them to "co-operate" with particular pharmaceutical companies after resolution of pending issues at pan India level. According to the DG, such communications implied that prior instructions of non-cooperation or restrictions had existed against those companies. In this regard, reliance was placed on letters issued in relation to M/s Comed Chemicals Pvt. Ltd., M/s Life Medicare & Biotech Pvt. Ltd., and M/s Alembic Ltd., wherein State associations were informed that pending issues had been resolved and were requested to extend cooperation to such companies.

84. The DG also noted that some pharmaceutical companies themselves had referred to instances of boycott or boycott threats in their replies submitted during the investigation. OP-15 stated that it had encountered an instance of boycott towards the end of 2009; OP-22 stated that its products had been subjected to boycott by OP-1 or its affiliated associations; OP-23 referred to threats of boycott and also noted that proceedings had been initiated before the MRTP Commission against OP-10; and OP-24 stated that it had received indirect verbal boycott threats from affiliated associations of OP-1. Although OP-30 stated that it had not experienced any actual boycott, it submitted that it had received representations from trade associations concerning appointment or termination of stockists and C&FAs. Based on such material, the DG inferred the existence of practices suggestive of coordinated non-cooperation and boycott mechanisms operating through the association framework.

85. The Commission perused the evidence/facts collected by DG on the issues of NOC/LOC for appointment of distributor/wholesaler/C&F agent, PIS charges from drug manufacturers for launch of new products and issue of boycott directions.

86. The Commission observes that the evidence relied upon by the DG in support of the findings substantially pertains to the period 2009–2012. In this regard, it is pertinent to note that in *Case No. 20 of 2011, Case No. 30 of 2011 and Case No. 41 of 2011,* wherein OP-1 was also one of the OPs, the Commission had, *inter alia*, directed OP-1 to furnish an undertaking confirming discontinuation of practices concerning grant of NOC for appointment of stockists, fixation of trade margins, collection of PIS charges, and boycott of pharmaceutical products within sixty days (60) from receipt of the order. The Commission had also directed OP-1 to communicate to OP-2 and OP-3 that there existed no requirement for obtaining NOCs for appointment of stockists and that pharmaceutical companies, stockists and wholesalers were free to extend discounts to customers. Further, OP-1 was directed to issue a circular clarifying that PIS charges were not mandatory and that PIS services could be availed on a purely voluntary basis.

87. The Commission further notes that OP-1, through an Affidavit of Compliance and Undertaking dated 03.01.2014, categorically affirmed that practices relating to NOC/LOC requirements, fixation of trade margins and collection of PIS charges, were not mandatory

and that the MoUs dated 16.08.2003 and 03.07.2009 executed between OP-1, OP-2 and OP-3 stood terminated. Pursuant thereto, OP-1 issued a communication dated 18.04.2013 to OP-2 and OP-3 specifically clarifying that no NOC was required for appointment of stockists and that companies, stockists and wholesalers were at liberty to provide discounts to customers. On the same date, OP-1 also circulated communications to members, chemists, druggists, and affiliated associations clarifying that PIS charges were not mandatory and that such services were entirely voluntary. In these circumstances, the Commission observes that reliance placed by the DG on historical correspondence and material predating such compliance measures would require examination in light of the subsequent undertakings and compliance actions undertaken by OP-1.

88. The Commission also notes that in the present matter several pharmaceutical companies had placed material on record indicating that stockist appointments were made even in the absence of NOC/LOC requirements. In this regard, OP-14 furnished before the DG a list of 352 stockists appointed without NOCs. Similarly, OP-16 stated that stockists were appointed on the basis of commercial requirements without consultation with OP-1 and that NOCs were sought only in certain instances as a safeguard against possible financial risks. In support thereof, OP-16 furnished details of 34 stockists appointed without obtaining NOCs. Further, OP-29 expressly submitted that it did not follow any practice of insisting upon NOCs and produced a list of 60 stockists appointed without such approvals.

89. The Commission further notes the contention that despite such material being available on record, the DG had not examined any stockist to establish that obtaining NOC/LOC was in fact a compulsory requirement or that appointments were denied due to the absence of such approvals.

90. It is observed that in the last few years, the Commission has dealt with several cases concerning practices such as mandating of PIS approval carried out by chemists and druggists' associations in various parts of India. PIS charges are in the nature of a fee charged by chemists and druggists associations for introducing a new product/drug launched by the pharmaceutical companies in the bulletins/ newsletters published by such associations and in return, the said associations are ideally required to publish the information and circulate it amongst all the dealers, distributors, *etc*. Based on the past precedence, the decisive factor of whether PIS charges are anticompetitive depends upon

whether such charges are being paid voluntarily by the pharmaceutical companies or are mandatorily payable prior to the launch of their drugs. If the same are mandatory, *i.e.* non-payment will lead to new drugs not being introduced in the market, then the practice is anti-competitive. However, where pharmaceutical companies or manufacturers choose to avail such services voluntarily and without any compulsion or adverse consequences for non-participation, the arrangement, by itself, is not anti-competitive.

91. The Commission notes from the submissions made by OP-1 and its affiliated associations that PIS charges were stated to facilitate the dissemination and advertisement of information relating to newly introduced pharmaceutical products in the market. It was further submitted that the collection of such charges was linked to compliance with the requirements under the DPCO, which mandates pharmaceutical companies to furnish price lists and related product information to wholesalers, retailers, and dealers in the prescribed format.

92. The Commission observes that the evidence relied upon by the DG, particularly communications issued by OP-1 to pharmaceutical companies, does not conclusively establish that PIS charges were mandatory in nature. The material available on record indicates divergent practices and does not support an inference that payment of PIS charges was a compulsory precondition for market entry or product launches. In this regard, certain pharmaceutical companies themselves clarified the nature of PIS practices. OP-16 stated that PIS approvals were obtained in certain districts merely as a precautionary measure and not as a mandatory requirement. Similarly, OP-33 described PIS as a mechanism intended for product advertisement and awareness rather than a compulsory levy. While OP-32 submitted that PIS payments were made only during the operation of the MoU framework and clarified that no continuing obligation subsisted after termination of the MoU in 2011. Further, reliance was placed on the instance of Blue Cross Laboratories, which made payment towards PIS services voluntarily for circulation and awareness purposes, and not pursuant to any compulsory requirement.

93. The Commission notes that several affiliated associations categorically denied engaging in any anti-competitive practices concerning PIS charges. OP-4 denied issuing any guidelines or circulars relating to PIS charges. Similar denials were also recorded from OP-6, OP-7, OP-8, OP-9 and OP-10, none of which admitted to any mandatory PIS-related

practices or anti-competitive conduct. The Commission also notes that Mr. J.S. Shinde, in his statement before the DG, stated that PIS was never mandatory and had merely evolved as an industry practice or custom.

94. The Commission further notes that OP-1, through its undertaking dated 03.01.2014, specifically affirmed that practices concerning collection of PIS charges had been discontinued. Further, by way of a circular dated 18.04.2013 issued to its affiliated members and associations, OP-1 expressly clarified that PIS charges were not mandatory and that such services could be availed by pharmaceutical companies and manufacturers on a purely voluntary basis. The DG has not brought on record any instance subsequent to the issuance of the said circular demonstrating that payment of PIS charges was insisted upon as a mandatory condition or enforced through coercive measures

95. In view of the foregoing, the Commission concludes that no cogent evidence has been brought on record to establish that the collection of PIS charges by OP-1 and its affiliated associations from pharmaceutical companies was mandatory in nature. This conclusion assumes greater significance in light of statements made by pharmaceutical companies themselves, being directly affected stakeholders, indicating absence of compulsion in payment of such charges.

96. The Commission also notes from the replies and statements of various pharmaceutical companies, that the allegations relating to boycott practices are not substantiated by consistent evidence on record. While a few entities referred to isolated instances of indirect verbal threats or specific disputes, such assertions were not supported by documentary evidence establishing any organised or systematic boycott mechanism. A number of pharmaceutical companies, including OP-18, OP-30, OP-31, OP-32 and OP-33, expressly denied having experienced boycott practices or interference from associations in the conduct of their business operations.

97. The Commission notes the submissions of OP-1 and its affiliated associations that the DG had not undertaken any independent analysis regarding AAEC and had proceeded on the basis of a statutory presumption under Section 3(3) of the Act without first establishing the foundational facts necessary for the invocation of such presumption.

98. The Commission further notes that the DG, in the investigation report, had observed that once practices such as mandatory NOC/LOC requirements prior to stockist appointments, fixation of trade margins, compulsory PIS approvals, and boycott practices by associations are established as falling within the ambit of Section 3(3) of the Act, a presumption of AAEC would arise. However, as discussed above, the material available on record does not conclusively establish that practices relating to NOC/LOC requirements and PIS approvals were mandatory or uniformly enforced. Consequently, the evidence available on record does not establish any consistent pattern of coercive, organised, or systematic boycott practices against pharmaceutical companies to sustain the findings recorded in the investigation report.

99. In the facts and circumstances of this case, the Commission is unable to concur with the findings of the DG that the practices relating to NOC/LOC requirements and PIS approvals operated as mandatory preconditions having the effect of limiting or controlling the supply of pharmaceutical products in the market. The material available on record does not conclusively establish that appointment of stockists was dependent upon obtaining NOCs/LOCs or that pharmaceutical companies were prevented from launching products in the absence of PIS approvals after 03.01.2014. Further, the evidence on record also does not establish any consistent or systematic boycott mechanism against pharmaceutical companies for failure to obtain NOC/LOCs or for non-payment of PIS charges after 03.01.2014. Consequently, the findings recorded by the DG against OP-1, OP-5, OP-6, OP-7, OP-8, OP-10 and OP-11 for alleged contravention of Section 3(3)(b) of the Act cannot be sustained on the basis of the evidence available on record.

Issue 2. Whether OP-2 and OP-3, being pharmaceutical manufacturers' associations, contravened the provisions of Section 3 of the Act in concert with OP-1 by entering into and implementing the MoUs containing provisions relating to NOC/LOC requirements for appointment of distributors/wholesalers/C&F agents, fixation of trade margins, and PIS charges for introduction of new pharmaceutical products?

100. The Commission noted that the DG had found that MoUs entered into between OP-1, OP-2 and OP-3 were anti-competitive in nature and OP-1, along with OP-2 and OP-3 have contravened the provisions of Section 3 of the Act by following the MoU even after the Act was enforced.

Evidence with respect to the MoU

101. The DG observed that the MoU framework between the chemists' association and pharmaceutical manufacturers' associations had evolved over several decades through a series of agreements. In this regard, reliance was placed on the first MoUs executed on 27.02.1982 between OP-1 and OP-2 and on 28.05.1982 between OP-1 and the Joint Association Group, of which OP-3 was a constituent. Thereafter, further agreements were executed on 06.10.1984 between OP-1, OP-3 and Pharmaceutical and Allied Manufacturers and Distributors Association ('**PAMDAL**'), on 14.12.1990 between OP-1, OP-2, OP-3 and PAMDAL, and subsequently on 27.01.1999 between OP-1, OP-2 and OP-3. The DG further noted that the latest MoU was entered into on 12.09.2003 between OP-1, OP-2 and OP-3.

102. The DG noted that the various MoUs executed between OP-1, OP-2 and OP-3 over the years contained anti-competitive provisions relating to stockist appointments through NOC/LOC mechanisms. The DG relied upon clauses in the MoUs of 1999 and 2003 which provided that appointment of additional stockists would be subject to concurrence of State associations and that such stockists should be bona fide members of the associations. The DG also relied upon statements of Mr. J.S. Shinde and Mr. Parsan Kumar Singh to infer that NOC/LOC were part of the MoU framework and that pharmaceutical companies, at times, approached associations in relation to appointment of additional stockists.

103. The DG observed that the MoU framework provided for fixed trade margins in respect of non-controlled/non-scheduled products, generally prescribing margins of 10% for wholesalers/stockists and 20% for retailers. The DG further relied upon communications, meeting minutes, and oral statements of office bearers of OP-1 to conclude that trade margins for non-scheduled drugs were discussed with pharmaceutical companies and that deviations from agreed margins were objected to by the associations. Particular reliance was placed on the correspondence and meeting records relating to OP-26, wherein discussions were held regarding reduction of trade margins and objections were raised by State associations against such reduction. The DG inferred from such material that pharmaceutical companies were required to engage with OP-1 regarding trade margin policies and that OP-1 exercised influence in relation to implementation of such margins.

104. On the issue of PIS charges, the DG relied upon provisions contained in the MoUs executed between OP-1, OP-2 and OP-3. In particular, the MoU dated 27.01.1999 provided that OP-1 would implement the PIS system at the State level throughout India. Further, the MoU dated 12.09.2003 prescribed specified PIS charges for publication of entries in PIS bulletins in different categories of States.

105. The DG relied upon various communications, Executive Committee meeting minutes, and correspondence pertaining largely to the period 2009–2011 to conclude that OP-1, OP-2 and OP-3 had continued to follow and implement the MoU framework even after enforcement of the Act. The DG relied on material relating to compilation and circulation of draft MoUs, meetings with representatives of OP-2 and OP-3, and communications indicating continuation of earlier trade norms, distribution policies and Statement of Purposes ('**SOPs**') agreed under previous MoUs. Reliance was also placed on discussions concerning appointment of stockists, institutional sales, direct supplies, trade margins and launch of new products.

106. The Commission has carefully considered the evidence relied on by the DG and submissions advanced by OP-1, OP-2 and OP-3 regarding the nature and operation of the MoU framework. The parties consistently contended that the MoUs were historical industry arrangements intended to facilitate coordination in pharmaceutical distribution, dissemination of product information, maintenance of quality standards, and regulation of trade practices, rather than to impose anti-competitive restrictions. It was submitted that the MoUs evolved pursuant to recommendations of the Mashelkar Committee and were aimed at ensuring orderly functioning of the pharmaceutical supply chain, preventing proliferation of unviable stockists, discouraging circulation of spurious medicines, and facilitating the dissemination of product and price information amongst dealers and retailers. According to the OPs, provisions relating to concurrence of associations for appointment of additional stockists, PIS dissemination mechanisms, and trade margins were intended to address operational and regulatory concerns within the pharmaceutical distribution network and did not amount to coercive restrictions on market access.

107. The Commission further notes the consistent stand taken by OP-1, OP-2 and OP-3 that the MoU framework had ceased to operate after enforcement of the Act and stood formally

terminated by 2011. In this regard, reliance was placed on replies submitted before the DG confirming termination of the MoUs, as well as the Affidavit of Compliance and Undertaking dated 03.01.2014 filed by OP-1 before the Commission, wherein it was categorically affirmed that practices relating to NOC/LOC requirements, fixation of trade margins, collection of PIS charges and boycott of products had been discontinued.

108. The Commission also notes that such undertaking was taken on record in earlier proceedings concerning substantially similar allegations against OP-1 and affiliated associations, namely *Case No. 20 of 2011: M/s Santuka Associates Pvt. Ltd. v. All India Organization of Chemists and Druggists and Ors., Case No. 30 of 2011: M/s Peeveear Medical Agencies, Kerala v. All India Organization of Chemists and Druggists and Ors. and Case No. 41 of 2011: M/s Sandhya Drug Agency v. Assam Drug Dealers Association and Ors* . It was further contended that no violation of the said undertaking had been reported thereafter and that the DG had nevertheless relied almost entirely upon pre-2013 correspondence and material, largely pertaining to the period from 2009 to 2011.

109. The Commission further notes that statements recorded during investigation reflected differing explanations regarding the role of associations in trade margin practices. While representatives of OP-1 submitted that margins in respect of scheduled drugs were governed by the DPCO and National Pharmaceutical Pricing Authority ('**NPPA**') framework, it was also acknowledged that discussions took place with pharmaceutical companies in relation to margins for non-scheduled products. At the same time, certain deponents stated that associations merely requested continuation of prevailing margins and that pharmaceutical companies retained discretion regarding implementation of trade policies.

110. In view of the foregoing discussion, the Commission notes that the DG's findings regarding the continued operation of the MoU framework are not supported by the evidence available on record. The Commission takes cognisance of the consistent position maintained by OP-1, OP-2 and OP-3 that the MoU framework had ceased to operate following the termination of the MoU in 2011. The Commission further notes that, notwithstanding the aforesaid position and the compliance measures and undertakings accepted by the Commission in earlier proceedings, the DG's conclusions are founded predominantly on correspondence and material pertaining to the period 2009–2011. In

these circumstances, the material on record does not establish the continued operation of the MoU framework post the compliance undertakings of parties.

Issue 3. Whether pharma companies (OP-12 to OP-33) have violated the provisions of Section 3 of the Act as they have been implementing the policy / MoU of seeking No Objection Certificate ("NOC")/ Letter of Cooperation ("LOC") for appointment as a distributor/wholesaler/C&F Agent with a manufacturer of pharmaceutical products and fixing of trade margins as adopted by OP-1?

111. The DG found that pharmaceutical manufacturers, namely OP-12, OP-13, OP-14, OP-15, OP-18, OP-20, OP-21, OP-22, OP-23, OP-25, OP-26, OP-28, OP-30, OP-32 and OP-33, being members of either OP-2 or OP-3, had followed and implemented the provisions of the MoU framework entered into between OP-1, OP-2 and OP-3 during the period largely between 2009–2012. In support of such findings, the DG relied upon replies submitted by the concerned pharmaceutical companies, internal correspondence, communications exchanged with OP-1 and affiliated associations, minutes of meetings, and statements of company officials recorded during investigation. According to the DG, such entities had, through their respective conduct relating to stockist appointments, trade margins, PIS practices and related trade arrangements, participated in and complied with the alleged anti-competitive arrangements embodied in the MoUs, thereby resulting in contravention of the provisions of Section 3(1) of the Act.

112. In relation to stockist appointments, the DG relied upon evidence showing that certain companies either insisted upon NOC/LOCs directly or recognised such approvals as part of the appointment process. For instance, OP-12 admitted obtaining recommendations or verification from OP-1 while appointing stockists, whereas OP-14 stated that NOCs were generally sought as part of prevailing industry practice. Similarly, OP-20 stated that distributors were appointed only if they were members of OP-1 or its affiliates and supplies commenced only after confirmation from the association. OP-21 acknowledged that stockists were appointed in accordance with the MoU requirement relating to NOCs, while OP-28 admitted that stockists were generally appointed only after obtaining NOCs from OP-1 or affiliated associations. The DG also relied upon letters issued by companies such as OP-13, OP-14, OP-18, OP-23 and OP-30 requiring prospective stockists to obtain NOCs

from local or State associations before appointment. Statements of company officials were further relied upon to infer that such practices formed part of the prevailing industry arrangements during the relevant period.

113. On the issue of trade margins, the DG relied upon material indicating that several companies followed margins in accordance with industry practice or arrangements under the MoUs. Various pharmaceutical companies, including OP-12, OP-15, OP-20, OP-21, OP-22, OP-26 and OP-32, acknowledged that trade margins were determined according to prevailing industry norms, DPCO practices, or understandings between OP-1, OP-2 and OP-3.

114. The DG further relied upon evidence relating to alleged stoppage or refusal of supplies to stockists and wholesalers upon intervention by associations affiliated to OP-1. Reliance was placed upon complaints, letters and representations issued by various chemist federations and associations alleging that pharmaceutical companies had suspended or stopped supplies pursuant to objections raised by affiliated associations of OP-1. Such evidence was relied upon particularly against OP-15, OP-16, OP-18, OP-22, OP-23, OP-25, OP-28, OP-29 and OP-31. The DG also relied upon statements suggesting that pharmaceutical companies followed the MoU framework to avoid trade disruptions and maintain smooth business operations.

115. The Commission considered the aforesaid evidence as well as the submissions advanced by the concerned pharmaceutical manufacturers. The Commission notes that the findings of the DG against OP-12, OP-13, OP-14, OP-15, OP-18, OP-20, OP-21, OP-22, OP-23, OP-25, OP-26, OP-28, OP-30, OP-32 and OP-33 are primarily founded upon isolated correspondence, internal communications, replies furnished during investigation and references to prevailing industry practices during the period from 2009 to 2012. However, the Commission finds that such material, when examined in entirety, does not conclusively establish that the pharmaceutical companies had entered into or implemented any coercive or binding anti-competitive arrangement with OP-1, OP-2 or OP-3. On the contrary, several pharmaceutical companies consistently maintained that stockist appointments, trade margins and product launches remained matters of independent commercial decision-making and that any interaction with associations was only consultative, facilitative, precautionary or based on prevailing trade practices rather than compulsion.

116. The Commission notes that several pharmaceutical companies had specifically placed material on record demonstrating that stockists were appointed even without insistence upon NOC/LOC requirements. The Commission further notes that the DG did not examine any stockist to establish that appointments were denied in the absence of NOC/LOC or that pharmaceutical companies were compelled to follow association approvals as a mandatory precondition. In these circumstances, isolated references in correspondence to NOCs or recommendations issued by associations cannot, by themselves, establish that the pharmaceutical manufacturers had implemented a coercive arrangement restricting appointment of stockists.

117. The Commission also notes that many of the pharmaceutical manufacturers explained that trade margins were determined either in accordance with prevailing market conditions, DPCO requirements, internal commercial policies or business negotiations with distributors and retailers. Several companies clarified that any discussions with associations regarding trade margins were part of routine industry interactions and did not amount to collective price fixation. Similarly, in relation to PIS, pharmaceutical companies such as OP-16 and OP-33 stated that PIS functioned primarily as an informational or advertising mechanism intended to disseminate product and pricing information to dealers and retailers, and not as a compulsory approval mechanism for launch of products. Certain companies further clarified that PIS payments, where made, were voluntary in nature and linked to circulation or publication of product information.

118. The Commission further notes that the DG's findings largely rely upon evidence pertaining to the period prior to 2011 and do not adequately account for the compliance measures and undertakings accepted by the Commission in earlier proceedings involving substantially similar allegations. It has already been noted that OP-1 had categorically undertaken, before the Commission in 2014, that practices relating to NOC/LOC requirements, fixation of trade margins, collection of PIS charges and boycott had been discontinued, and no subsequent violation of such undertaking has been demonstrated on record. The Commission also notes the submissions of several pharmaceutical companies that the MoU framework had ceased to operate after 2011 and that no evidence exists, showing continued implementation of any anti-competitive arrangement thereafter.

119. The Commission also observes that the material on record indicates that several pharmaceutical companies themselves complained of boycott threats, supply disruptions and pressure exerted by associations affiliated to OP-1, thereby suggesting that such companies were, at best, passive recipients or victims of prevailing trade practices rather than willing participants in any anti-competitive arrangement.

120. In the absence of cogent evidence establishing active participation in the alleged anti-competitive practices by the pharmaceutical manufacturers, the Commission is unable to sustain the findings of contravention recorded by the DG against OP-12, OP-13, OP-14, OP-15, OP-18, OP-20, OP-21, OP-22, OP-23, OP-25, OP-26, OP-28, OP-30, OP-32 and OP-33 under Section 3(1) of the Act.

121. The Commission notes that OP-12 had sought deferment of the present proceedings on the ground that it had challenged the Commission's order dated 31.05.2024 and the DG's investigation report before the Hon'ble High Court of Telangana in WP No. 25689/2024. The said writ petition has since been dismissed by the Hon'ble High Court *vide* judgment dated 10.06.2026. While dismissing the writ petition, the Hon'ble High Court granted liberty to OP-12 to raise all contentions available to it before the Commission and left all issues open on merits. Having duly considered the submissions of OP-12 dated 27.05.2026 on merits, the Commission has, for the reasons recorded in the foregoing paragraphs, found no contravention of the Act by OP-12. In view thereof, no further directions survive for compliance insofar as OP-12 is concerned in the present proceedings.

Issue 4: Whether certain individuals identified for their role in the alleged conduct are liable under Section 48 of the Act?

122. In this regard, the Commission is of the considered view that since none of the concerned OPs have been found to be in contravention of the provisions of Section 3 of the Act, the question of examining the liability of their office bearers or individuals under Section 48 of the Act does not arise in the facts and circumstances of the present case.

123. Before parting with the present order, it is made clear that no confidentiality claim shall be available in so far as the information, data that might have been used/ referred to in this order in terms of the provisions contained in Section 57 of the Act for the purposes of the

Act. Further, all pending interlocutory applications, if any, in the present matter stand disposed of accordingly.

ORDER

124. In view of the foregoing discussion and findings recorded hereinabove, the Commission is of the considered opinion that no case of contravention of the provisions of Section 3 of the Act is made out against any of the OPs. Accordingly, the present matter stands closed forthwith.

125. The Secretary is directed to communicate to the parties, accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

New Delhi
Date:29.06.2026