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COMPETITION COMMISSION OF INDIA

Case No. 28 of 2021

In Re:

Hiveloop Technology Pvt. Ltd.

No. 1090 G, 18th Cross,
14th Main Sector 3, HSR Layout,
Bengaluru – 560102

Informant

And

Parle Products Private Limited

North Level Crossing,
Vile Parle East,
Mumbai – 400057

Opposite Party

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Order under Section 26(2) of the Competition Act, 2002

1. The present information has been filed by Hiveloop Technology Private Limited (hereinafter, '**Informant**'/'**Udaan**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, '**Act**'), in confidential and non-confidential versions, alleging contravention of provisions of Sections 3(4) and 4 of the Act by Parle Products Pvt. Ltd. (hereinafter, '**Opposite Party**'/'**OP**'/'**Parle**').

Facts and Allegations as Stated in the Information

2. The Informant is stated to be a network-centric Business-to-Business (B2B) trade platform/marketplace engaged in buying, selling and trading in different product categories,



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including Fast Moving Consumer Goods (FMCG), electronics, pharmaceuticals, lifestyle, home and kitchen appliances, fruits and vegetables, toys, and general merchandise of different brands. It brings traders, wholesalers, retailers, manufacturers and brands in India on to a single platform. It allows retailers and businesses to source merchandise from manufacturers, brands, white labels, importers, *etc.* It claims to be the largest B2B platform leveraging the use of technology and bringing innovation and efficiencies in the digital B2B market, with a coverage of 50 cities. The Informant is also stated to provide credit through Udaan credit system, which facilitates smooth working of the operations on its platform, and therefore, retailers perceive it as a reliable partner for their business.

3. The OP is stated to be the manufacturer of one of the world's largest selling biscuits, 'Parle-G' and is India's leading manufacturer of biscuit and confectionary. While Parle owns established brands across a wide range of products, 'Parle-G' is its bestseller, contributing to the major portion of the company's total revenues. With a large portfolio of biscuit brands like Parle-G, 20-20, KrackJack, Hide & Seek, *etc.*, the demand for Parle's branded biscuits, particularly its Parle-G biscuits, in India is very high, and they drive a significant amount of the demand for biscuits in India.
4. Based on the following considerations, the Informant has delineated the relevant market as '*market for glucose biscuits in India*'.
 - 4.1. Biscuits can be distinguished from other products such as bakery and dairy products on the basis of their nature, characteristics, taste, price, and shelf-life. As per the Informant, Parle-G commands brand loyalty and has developed into a 'legacy brand' by virtue of extended periods of very effective marketing by Parle.
 - 4.2. To draw a distinction between the glucose and the non-glucose market, the Informant states that the non-glucose biscuit market comprises mid-premium segment (valued at Rs. 100/- per kg) and premium segment (valued at more than Rs. 100/- per kg). Non-glucose type of biscuit has outpaced glucose type biscuits, which consists of mass-segment biscuits (valued at below Rs. 100/- per kg), suggesting that a consumer in the market for non-glucose biscuits would not find glucose biscuits to be a consistent alternative and vice-versa, making the two market segments clearly distinguishable in terms of Section 19(7)(b) of the Act.



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4.3. The Informant further states that Parle-G biscuit falls in the category of ‘must have’ stock for distributors and retailers. Parle-G is available in Rs. 2, Rs. 5, Rs. 10, Rs. 20, and Rs. 40 packets. The Informant suggests that, where strong brand loyalty propels such biscuits to the status of a ‘must-stock’ item for retailers, they must be considered to fall in a separate market than a more diluted market for all biscuits in general, which is also consistent with Section 19(7)(c) of the Act. Parle-G exhibits a high degree of brand loyalty, and, in case of unavailability of Parle-G, it is unlikely that a consumer would buy a different type of biscuit (like cookie or digestive). It is more likely that a consumer would look for alternate avenues to buy Parle-G. It is also stated that the notion of ‘must stock’ or ‘must have’ essentially refers to the idea that a dominant firm does not face any significant competitive constraints over at least a certain part of its demand. This could happen because some of its customers have no choice but to buy from the dominant firm (due to lack of alternative suppliers) or because they are forced by commercial considerations such as consumer preferences to purchase from Parle, to meet at least some of their requirements.

4.4. Further, given the homogenous conditions of competition in the market for biscuits across the country, the relevant geographic market is ‘whole of India’.

Market share/market power of Parle

5. Parle derives the majority of its revenue from Parle-G and it has a market share of 83% in the relevant market of glucose biscuits in India for FY 2019-20. In FY 2020, the glucose biscuit market size was Rs 5,444 crore, where Parle with the aforementioned market share, was dominating the market, and the next player had a meagre share of 10.4%. Relying on a news article published in the Mint, the Informant states that Parle has had more than 80% share of the glucose biscuit market in India since 1990.
6. While the specific brands are the highest drivers of demand, from an end-consumer perspective, certain categories of biscuits (Stock Keeping Units - SKUs) within these brands are demanded more compared to other variants of the same brands. Given this, the downstream customers of the Informant, i.e. the retailers, register maximum demand for the aforementioned brands as well as the popular smaller package variants of Parle.
7. Parle is the dominant player in the relevant market for glucose biscuits in India considering its market share and market power in the relevant market.



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Allegations under Section 4 of the Act

8. All Parle's SKUs have a high consumer demand in the market and therefore, Parle-G, in general, is part of a 'must- have' stock for distributors and retailers. Parle's high market share is driven by these fast-moving SKUs. Retailers using Udaan's platform, in turn, demand more of such products. Thus, Udaan has no option but to trade in such products by procuring them from Parle's existing distributors in the open market (secondary market) or risk the chance of rapidly losing out its retailers.
9. While the products of Parle have been made available on Udaan's platform since September 2019 and the Informant (through its affiliated companies) used to procure the same from Parle's distributors in open market, Parle never supplied these products directly to the Informant to be made available on its platform. Thus, the conduct of Parle is a clear case of refusal to deal, which is a prohibited conduct under Section 4(2) of the Act. Parle even refuses to engage in negotiations with Udaan, thus fortifying the abusive/anti-competitive conduct. Parle has a special responsibility to deal with downstream players in a fair manner, which is absent in the present case.
10. It is stated that this was in stark contrast to Parle's arrangement with its other distributors who are competing with Udaan. Udaan was, thus, relegated to purchase Parle's products from the open market, thereby increasing its input-costs and causing a competitive disadvantage to Udaan compared to other existing distributors of Parle. This severely restricts Udaan's freedom to engage with SMEs on its platform. In the process, the margin of Udaan gets squeezed and the entire market is affected, as the fast innovation and efficiencies which Udaan possesses is not able to be passed on to retailers. The Informant states that shortage of supply cannot be an objective justification for this behaviour of a dominant entity.
11. Despite Udaan's consistent efforts and attempts to deal in good faith on terms at par with general market practices, it has been unable to secure any treatment, act alone fair treatment and parity from Parle.
12. To improve the trading relationship with Parle, Udaan wrote an email dated 18.03.2021 and expressed its desire to build a direct relationship with Parle. However, Parle did not respond its request. Udaan thereafter sent follow-up emails on 19.05.2021, 08.06.2021 and 18.06.2021, to which Parle, once again, did not respond. Therefore, despite making such efforts, Udaan had been unable to secure terms of trade that are comparable to other



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distributors and Parle's refusal to deal with Udaan continued unabated. Despite repeated efforts, Parle continued to refuse supply of Parle-G to Udaan, which makes it a clear case of refusal to deal and thus, an abuse of dominance under Section 4(2) of the Act. Further, owing to the high market share of Parle and admission by other competitors that Parle is strong player in the glucose market, the conduct of Parle is in stark violation of Section 4(2)(c) of the Act.

Allegations under section 3(4)(d) of the Act

13. Despite protracted negotiations, Udaan has been unable to secure terms of trade at par with other distributors. Parle has been dealing under an agreement with other distributors who are then selling in the open market. But, Udaan has been forced to procure Parle's product in the open market and is not able to deal directly with Udaan. Such conduct of Parle is nothing but constructive refusal to deal, which is borne out of the agreement between Parle and its distributors. It is noteworthy that 115 of 235 vendors from whom the retailers of Udaan could purchase on Udaan's platform are Parle's distributors. The Informant further states that this is being done to ensure that the existing distributorship network remains insulated from the competitive effects brought by Udaan.

Impact of alleged refusal to deal with the Informant

14. Parle's refusal to deal has the effect of creating and strengthening barriers in the market for distribution of its goods, thereby softening intra-brand competition to the detriment of retailers and end-consumers. If Udaan is not given access to the said market adequately in the same terms as its competitors, it may have to exit the market altogether, since they would not be able to compete effectively, implying it would remain foreclosed for 83% of the relevant market. As existing retailers of the Informant would be forced to procure Parle products from the incumbent distributor network of Parle, such retailers may altogether shift from the Udaan platform and align with traditional distributors to avoid dealing with multiple upstream suppliers in the market.
15. The existing arrangement inflicted upon Udaan is therefore a clear case of refusal to deal and causes appreciable adverse effect on competition in India, which is in contravention of Section 4(2) and Section 3(4)(d) read with Section 3(1) of the Act.
16. While assessing the conduct of Parle regarding the alleged vertical restraint, the Informant has placed reliance on Section 19(3) factors to highlight the negative impact on competition. The Informant emphasised on the fact that it has brought efficiency in the market by



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leveraging the use of emerging technology, trustworthy payment systems, and its strong and reliable logistic network. It has emerged as an innovator and disrupted the market for good by creating a level playing field for both manufacturers and retailers. This positive effect is lost due to the alleged conduct of Parle.

17. The Informant elaborated on purchasing behaviour named '*point of purchase myopia*', wherein, due to brand loyalty, consumers and retailers make up their minds about what product to procure prior to their metaphorical point-of-purchase. Thus, retailers may, in fact, choose to go to another procurer rather than searching for competing and identical products. This will impair market efficiency and again widen the supply-demand gap. The Informant operating in the e-commerce space, which is prone to network effects and continuously increasing null searches on its platform, will start a negative feedback loop, with an increasing number of retailers/traders leaving the platform altogether. Therefore, the foreclosure may cause Udaan to exit the market.
18. Accordingly, the Informant has prayed for the following reliefs:
 - 18.1. Direct the Director General to investigate the matter;
 - 18.2. Direct the Opposite Party to cease and desist from indulging in anti-competitive activities under the provisions of Sections 3 and 4 of the Act;
 - 18.3. Direct Parle to supply all SKUs across all cities to Udaan at prevailing terms and at par with Parle's existing distributors,
19. *Vide* order dated 12.10.2021, the Commission directed Parle to file its response to the non-confidential version of the Information. After seeking due extensions, Parle filed its response belatedly on 15.02.2022. The Informant filed its rejoinder in confidential and non-confidential version, to the response filed by Parle, pursuant to the directions of the Commission *vide* order dated 31.03.2022.
20. On 10.05.2022, the Commission considered the Information, the response, rejoinder, and documents on record and decided to pass an appropriate order in due course.

Response of Parle

21. The response of Parle has been succinctly, *inter alia*, stated as under:



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21.1. Parle submitted that the Information filed is misconceived and does not raise any competition related issues. This is a misguided attempt by a disgruntled enterprise to settle a commercial grievance by blatantly abusing the machinery of the Act to interfere with the independence of Parle to deal with companies in its own commercial wisdom and compel it to appoint the Informant as distributor/wholesaler when it is not obliged to do so. The Information filed is unnecessarily repetitive and prolix and appears to have been drafted in the manner as if there are competition issues when none exists.

Relevant market and absence of dominance of Parle

21.2. Parle states that the definition of the relevant product market as delineated by the Informant is self-serving, unsubstantiated, and contrary to industry practice and settled jurisprudence. Parle relied upon the prior decisional practice of the Commission and of other competition courts and authorities and submits that the correct definition of the relevant market to be considered in this matter is ‘Market for biscuits in India’ or alternatively, taking the narrowest possible relevant market, could be ‘Market for sweet biscuits in India’ or ‘Market for non-sweet/savoury biscuits in India’. Parle, thus, submits that the market as delineated by the Informant fails the test of substitutability or interchangeability.

21.3. According to Parle, biscuits are one of many snacks available for consumption and are perfectly substitutable with many other varieties of snack items such as namkeens, chips, or extruded snacks like *kurkure* or fryums, street food like *vad pav*, samosa, *etc.* Thus, they form part of the very large snacking universe. Further, if there were any sub-classifications they include, but are not limited to occasions of consumption, taste, consumer age group, absolute affordability, *etc.* all of which are relevant considerations in terms of Section 19(7) of the Act.

Categorisation on the basis of physical characteristics and taste

21.4. The most commonly accepted industry classification of biscuits is between sweet and non-sweet/ savoury biscuits. Glucose biscuits are only a sub-category in the total market of sweet biscuits. There is no rationale for differentiating between glucose biscuits and other sweet biscuits in terms of either physical characteristics or consumer preference. Parle has relied upon market study of sweet/non-sweet biscuits by Nielsen and contended that, in the narrowest possible reasonable product market definition, Parle-G accounts for 16% of the market share in the sweet biscuit category for FY



2020-21 and further accounts for 13% of the total biscuit market (sweet and salty) in India. Thus, in the market for sweet biscuit in India, the evidence on record does not support the contention of Informant that Parle is dominant; rather, there are several competitors in that market capable of constraining its operations and ensuring it does not distort the ordinary functioning of the market.

Categorisation on the basis of price and affordability

21.5. It is submitted that Parle-G is available in different packs of price ranging from Rs. 2/- to Rs. 50/-. Based on comparison of market share of Parle-G with other competing products and taking a cut off of Rs. 10/- depicts that Parle-G has a market share of only 3% in the category of biscuit packs of above Rs. 10/- and a share of 18% in the category of biscuit packs of Rs. 10/- and below. Thus, Parle submitted that its market share is quite limited.

Categorisation on the basis of mass and premium biscuit segmentation

21.6. Parle has submitted that, when categorised into premium segment (retailed at price above Rs. 150/- per kg.) and mass segment (retailed at price below Rs.150/- per kg), the market share and market power of Parle-G (that falls into the mass segment category) would not reach levels that can be said to be dominant. It is submitted that, out of total biscuit market of Rs. 36,558 crore, mass segment constitutes Rs 24,529 crore, which is nearly 67%. Further, out of the mass biscuit segment market of Rs 24,529 crore, the share of Parle G is Rs. 4,782 crore, which is nearly 19.5%, and in the total biscuit market of Rs. 36, 558 crore, share of Parle G is Rs. 4,782 crore, which is nearly 13%.

Categorisation on the basis of age of consumers

21.7. According to Parle, consumers of different age groups have different purchasing capacities and preferences for its products under mass segment. It is submitted that its share in the Children's category of consumers is nearly 19% (Rs. 4782 crore out of Rs. 25633 crore). However, Parle has not provided any data relating to its revenue share with respect to adult consumers.

21.8. Based on the above, Parle has submitted that regardless of the metric adopted for segmentation, viz., sweet/non-sweet, price, or premium/mass market, Parle cannot be considered a dominant player in terms of market share or market power, and there is



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also presence of competing products by other manufacturers, which pose competitive constraints. Parle also relied upon the study conducted by market research firm IMRB to substantiate its contention on its dominance. Accordingly, Parle submits that it is not dominant in either in the ‘*market for biscuits in India*’ or in the ‘*market for sweet biscuits in India*’.

No abuse of dominance by Parle (assuming it is dominant)

21.9. According to Parle, the averments of the Informant, which is admittedly a B2B platform and not in retail sales, suffer from several fallacies and are unsustainable. Parle has invoked Article 19(1)(g) of the Constitution of India, the Competition Act, 2002, and various pronouncements to emphasise upon its inalienable freedom to decide with whom it would trade and to what extent. It is stated that, for alleged refusal to deal/supply tantamount to abuse, three criteria should be fulfilled; *firstly*, refused input (Parle-G) is indispensable for the Informant; *secondly*, refusal to supply (Parle-G) will eliminate competition in the downstream market; *thirdly*, refusal will harm consumers. The Informant has failed to even plead any of these essential conditions.

21.10. Parle has submitted that the alleged refusal to supply contemplates a higher intervention threshold. There must be severe exclusionary effect to the extent that the Informant is entirely foreclosed from competing in that product in the downstream market and not merely suffering increased cost of business or facing general difficulty. In the present case, as admitted by the Informant, it has not been entirely foreclosed from the market and can purchase Parle-G from the wholesaler market (alternative source) and thereafter, sell the product on its online platform. The only responsibility of Parle, as a potentially dominant player, is to ensure that the Informant is not entirely excluded or foreclosed from the market through imposition of conditions on distributors not to deal with the Informant or by compelling distributors from denying the Informant any benefits available to the third parties. It is not even the allegation of the Informant that Parle has indulged in any such anti-competitive actions. It is not responsible for maximising the Informant’s profits.

21.11. By allowing the present Information, no benefit accrues to any consumer, since the ultimate consumer would continue to pay the same Maximum Retail Price (MRP) on the product as they are paying presently. This would only entail the effect of compelling Parle to deal with the Informant, against its wishes, to maximise the profits of the



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Informant and temporarily increase the retailer's margins, with the loss-making model of the Informant. AAEC is absent and there is no consumer harm caused by the alleged refusal to deal with the Informant. Parle further states that for evaluation of harm to the Informant, the term/nature of existence of relationship with the Informant is also to be appreciated. It is stated that Parle has no pre-existing relationship with the Informant, and thus, the burden to ensure supply to the Informant is lower than it would be to its long existing customer. It is averred that the said submission may be considered in conjunction with the averment regarding the reservations of Parle that the Informant is a possible distributor. Thus, none of the three conditions exist in the present case.

Objective justification

21.12. Parle has submitted that its refusal to deal/supply is based on objective business justification. Parle submitted that it has a well-established network of distributors, who further sell its products, including Parle-G, to retailers who, in turn, sell the products to end consumers. As a part of FMCG, Parle is very particular about the appointment of distributors as they have to deal with mass market products and have a good understanding of both the competence of retailers and the preferences and habits of the end-consumers. Parle highlights the following attributes/role of the distributors:

- 21.12.1. They stock bulk inventory, despatch goods in small quantities to shops in their area, collect cash, and offer retailers unsecured credit at zero interest;
- 21.12.2. They provide value added service to the company by visiting the retailers regularly, briefing them about the company products, helping them maintain the right inventory by placing appropriate order, collecting money for products sold, ensure proper display and merchandising of company goods, educate them about genuine company products and help them to understand about duplicate or cheap quality imitation/pass off products, educate them on company plans in terms of advertising and promotions so as to appropriately stock products to maximise visibility and sales, receive unsold goods/spoilt stock/broken stock back and, maintain and provide retailer-wise buying/billing in terms of packs/volume/value to understand market trends.



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21.12.3. They take the onus of compliance with existing rules and regulations for the company, as distributors are the ones dealing directly with the last-mile outlet, known as '*kirana*'.

21.12.4. Distributors also assist in buying decisions. Distributors can often give advice about the salient features of several company products, and new product launches and can help retailers in decision making.

21.12.5. Distributors can anticipate need since they know the local market and are closer to consumers and often able to guess what retailers and customers need, advising the company accordingly.

21.13. Parle holds these attributes as essential as a distributor with a real-world presence, informed of ground realities, and does not appoint all and sundry as its distributor for its products. The careful maintenance of the distributorship channel by Parle has been a key ingredient in its commercial success and profitability. Parle has stated that the Informant, through the present Information, wishes to compel Parle to appoint it as a distributor and thereby disrupt the distribution chain created carefully by Parle over a period of time, with due consideration to the above factors. Parle at its own independent discretion, does not feel that the Informant has satisfied its requirements for inclusion in the distribution channel.

21.14. The Informant is unable to provide the above stated services presently provided by Parle's brick-and-mortar distributors. It is submitted that the business model of the Informant is based on accumulating massive debts through raising funds from venture capitalist and other markets and, as per publicly available information, it is a massive loss-making enterprise year on year. For Parle, it is important that its distributors are entities capable of surviving in the long term and are further capable of honouring their payment obligations. Thus, in view of such precarious financial position and risky debt driven business model of the Informant, Parle has legitimate business justifications and concerns about the long-term viability of the Informant as a reliable partner in the distribution channel.

21.15. Parle states that it has a legitimate interest in protecting and ensuring its distribution network remains healthy and diverse, so that its products may reach all parts of India at competitive prices. The business model of the Informant entails no actual benefit to



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the end consumer and would only have a short-term effect on possibly increasing retailers' margins. However, Parle has a legitimate fear that, in the medium to long term, the Informant may damage the existing distributors of Parle by enticing retailers through lower prices, which the Informant can only offer as it is debt driven and well-funded by foreign entities. After disrupting the distribution network, there would be nothing to prevent the Informant from raising prices and even compelling Parle to accept its terms, which would be harmful to consumer welfare and would be anti-competitive.

21.16. It is submitted that Parle has genuine and justifiable business concerns about the effect on its considerable goodwill in the market if counterfeit products are sold on the unregulated platform of the Informant. Thus, there are sufficient objective business justifications that would merit dismissal of the Information at the outset.

No agreement between Parle and its distributors

21.17. Parle has submitted that, where only one party refuses to deal with another, the critical element of 'agreement' under Section 3(4)(d) of the Act is missing, and such unilateral conduct can only be examined under Section 4 of the Act. There is no allegation that, in the agreements with the so-called favoured distributors, there is any provision requiring Parle to refuse to deal with the Informant. Thus, there is absence of any anti-competitive agreement, and the allegation is based on conjectures and surmises.

21.18. Parle has submitted that there exists no vertical agreement of refusal to deal with its distributors to restrict them from dealing with any other entity. Parle has itself refused to deal by reason of its choice.

No restriction on distributors from dealing with any other entities

21.19. Parle cannot be held liable under Section 3(4) of the Act as it has not restricted the distributors from dealing with any entity. It is stated that, if the Informant wanted to claim that the distributors are restricting Parle, then such distributors ought to have been impleaded as parties to the Information and their market power assessed.

21.20. Based on the above submissions, Parle submitted that no case is made out either under Section 3(4) or Section 4 of the Act and the matter be closed.



Informant's Rejoinder to the Response of Parle

22. In response to the averments made by Parle, the Informant filed its rejoinder reiterating its averments contained in the Information along with further submissions, which are, *inter alia*, briefly as under:

22.1. The threshold for ordering a *prima facie* order for investigation has been met by the Informant.

Existence of vertical anti-competitive agreement

22.2. Vertical anti-competitive agreement exists between Parle and its existing distributors, which aims to restrict the Informant. On the one hand, Parle has agreed that it will not deal or engage with the Informant and on the other, its distributors have agreed that they will not supply Parle's products to the Informant. This is a self-serving arrangement to protect and insulate the existing distributorship network. The understanding can be gauged from public statements from key players of FMCG that they will not engage with online players like the Informant.

Varanasi incident in July 2021

22.3. The distributorship of an agency was terminated by Parle as it was supplying Parle's products to the Informant. In this regard, the Informant has submitted an audio clip containing a recording of a certain Parle official, whereby the vehicle transporting products of Parle to the Informant's godown was seized by a separate distributor in the presence of Parle officials. These goods were procured from another distributor of Parle. The incident at Varanasi led both the Informant and Parle's officials to the police station, where a compromise was recorded on 17.07.2021. Subsequently, the distributorship of the agency for having supplied Parle's products to the Informant was cancelled. This incident shows that there exists vertical anti-competitive arrangement/agreement between Parle and its distributors to effect refusal to deal against the Informant by creating an exclusive distribution network, which cumulatively leads to denial of market access by systematically restricting supply of Parle's products to the Informant directly and indirectly. This is in breach of Sections 3(4)(c), 3(4)(d), and 4(2)(c) of the Act. Also, Parle's conduct ought to be examined under Section 4(2)(b)(i) for limiting and restricting the provision of services, and Section 4(2)(b)(ii) of the Act for limiting and restricting technical and scientific



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development in the market. Based on the foregoing, there is a vertical arrangement/agreement between Parle and its existing distributors, and many of the distributors of Parle are willing to undertake steps to sustain refusal to deal and denial of market access against the Informant.

Relevant market and market power

- 22.4. The Informant reiterated its submissions as to segmentation of the biscuits market. There was no evidence laid down before the Commission in *Tamil Nadu Consumer products case* and *Distributors Association case* that the market should be delineated narrowly. Parle G is a 'must stock' item for all retailers and is available at small kirana stores and branded supermarkets. It exhibits a high degree of brand loyalty. Parle G biscuits fall within the mass segment of the biscuits market and lead the market, with a market share of 83%. The Informant also relied upon public statements by executives of Parle and other market players to support its proposed relevant market.
- 22.5. Parle has placed incorrect reliance on cases as enumerated in Parle's response. The factors under Section 19(6) of the Act need to be taken into consideration. Cases of foreign jurisdiction should not be relied upon due to differences in commercial and cultural background of consumption of biscuits which widely differ in eating habits, consumer preferences, consumption patterns, and cultural dynamics. With regard to market definition, Parle has mechanically borrowed from jurisprudence unconnected to India, and therefore, any reliance on the same is unwarranted.

Incorrect segmentation of market based on taste, absolute price and age

- 22.6. Parle's segmentation is incorrect, since there is a stark disparity in terms of physical characteristics and consumer preference if one considers sweet biscuits to be a separate segment. The Informant drew a comparison between Parle G and other biscuits to state that the price/affordability of biscuits is the most accurate method to segment the market for biscuits. No link or copy of the Nielsen market study has been annexed to the response of Parle, therefore, no reliance can be placed upon the same. The Informant provided a sample comparison between different biscuit brands to state that it is incorrect to say that different types of biscuits fall within the segmentation based on a cut-off price point. Therefore, the most accurate metric is price per kg, which is mass segment or market for glucose biscuits (less than Rs. 100/- per kg); mid-premium or 'Maries' (at Rs. 100/- per kg); and premium or cookies valued above Rs. 100 per kg.



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Parle in its response has segmented the market as above and below Rs. 150 per kg, which is incorrect. It is self-serving and divorced from market realities. The Informant's market segmentation is based on Draft Red Herring Prospectus of Mrs. Bectors' Food Specialties Ltd. in December 2020.

- 22.7. As regards age, it stated that the segmentation as provided by Parle is unsustainable since it is arbitrarily divided without providing any age threshold or any rationale behind it, and thus, the same is not in alignment with consumer choice/preference for glucose. The metrics provided by Parle for segmenting the market are completely unrealistic. Parle has not provided market share inclusive of all its products for each specific segment suggested by itself. Further, Parle has cited market report by IMRB to contend that Indian households that buy Parle G buy other biscuits as well, which shows high degree of substitutability. This report has neither been annexed nor a link provided to access it. The veracity of data cannot be determined. The Informant has stated that such representation by Parle is fallacious, since the concept of complementarity and substitutability are different. It is stated that just because the consumer buys other brands of biscuits does not mean all the biscuits are substitutable.
- 22.8. It is stated that it is important to note that end-consumers treat different categories of biscuits as separate product market. Therefore, platforms like Udaan have to be responsive to needs of consumers, i.e., retailers, since retailers' demand is a derived demand of the end-consumer.

Parle has market power

- 22.9. Parle has market power in the relevant market for glucose biscuits (mass segment) in India and is *ex facie* significant and durable. The Informant reiterated its submissions and stated Parle's biscuits to be the key driver of its growth and Parle G contributes major portion of the company's total revenues. In FY 2020, Parle had a market share of 27% in the broad market for biscuits in India, and its closest competitor Britannia had a market share of approximately 28%. On the Informant's platform, the share of Parle's biscuits is about 35 -40% each month. The percentage of sales of Parle's biscuits out of total sales of biscuits on the Informant's platform is consistent, wherein Parle-G accounts for 20-25% of total sales of biscuits on the platform. This justifies dealing directly with Parle in light of high demand of its biscuits. However, in the glucose market, Parle has about 83% market share by value. Multiple entities can have market



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power in a single market. Moreover, Parle-G and Parle-G Gold are included in ‘must stock’ categories of retailers, especially in the relevant market, which makes it an unavoidable trading partner. Parle-G has been the most sought after, especially during 2020 and 2021, and it has managed to retain 75-80% of the relevant market through its flagship product Parle G. Direct engagement with Parle will enable it to satisfy the demand of its consumers, i.e., retailers.

22.10. Denial of market access need not be absolute or complete in nature. Therefore, by virtue of significant market power, Parle is in violation of Sections 3(4)(c), 3(4)(d), and 4(2)(c) of the Act.

22.11. The superior position of Parle-G with its customer is based on its strong distribution network, which accounts for almost 6 million stores in India, compared to rival Britannia, which has a presence in over 5 million stores. Parle-G is more preferred in rural areas. Various market reports indicate that consumer preference for Parle’s products is high, with Parle-G as its major driver of growth.

AAEC in the market

22.12. Parle’s conduct creates entry barriers, foreclosure of significant part of the market, impending efficiency and innovation brought by the Informant in the retail distribution/supply chain, and is devoid of bringing efficiency.

22.13. Due to absolute refusal to deal and denial of market access in the relevant market, the Informant is unable to procure glucose biscuits at competitive prices, and open market purchase from Parle’s existing distributors is unreliable, replete with inefficiencies, and of higher price. Recent evidence also shows the *modus operandi* of Parle’s refusal to deal. The market is severely impacted, as price and non-price efficiencies which the Informant can bring is unable to reach either retailers or end-consumers. The Informant is being driven out of the market.

22.14. The Informant is not given access to Parle’s product in the relevant market on the same terms as its competitors (existing distributors of Parle), and it will eventually become foreclosed from servicing more than 83-85% of relevant market. The retailers will fall back on the traditional way. The whole value chain of efficient supply and distribution network would come to a halt, which has produced good results and has bridged the supply-demand gap for the market, especially during the pandemic.



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22.15. From April 2021 to January 2022, approximately 30% of search queries for Parle products on Udaan returned null results. Even after extensive procurement, the Informant is not able to meet retailers' demands.

22.16. There is no benefit to consumers. Directly sourcing from other biscuit manufacturers (specifically, large FMCG companies) gives the Informant a bigger margin compared to sourcing from local procurement/distributors of Parle. Thus, the Informant is not able to achieve margins similar to existing distributors of Parle and is not able to compete effectively. Consequently, retailers using Udaan to purchase Parle's products are not receiving adequate margins. Additionally, in the event of not being able to deal directly with Parle, the Informant is also unable to avail the same promotional schemes /discounts that other distributors are getting, and therefore, it is not able to pass the benefits to retailers.

22.17. Given the Informant's wide geographic reach, online presence and logistical capabilities, the Informant can contribute towards convenience to retailers and end-consumers. Parle's conduct has relegated the Informant to purchase Parle's products from the open market through Parle's existing distributors. This not only increases input costs, but such procurement is also unreliable and leads to out-of stock situations at multiple retail and kirana stores. The procurement is done on an *ad hoc* basis, which fluctuates monthly. It provided details of Parle's monthly procurement from all over India from April 2021-March 2022. With the present distribution system, retailers receive stock fortnightly or weekly and leads to out-of-stock situations owing to the retailer's inability to invest its working capital for the entire period. The Informant's model addresses both aspects of daily delivery and extension of credit, helping retailers service end-consumers efficiently.

22.18. Parle's conduct does not promote any technical, scientific, and economic development of the relevant market and has prevented accrual of benefits to consumers as well as possible improvement in the distribution of products or innovation in the relevant market, thus causing Appreciable Adverse Effect on Competition (AAEC) in the market.



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Parle is dominant

22.19. The Informant, on the basis of factors laid down in Section 19(4) of the Act, namely, market share, size and resources, size and importance of competitors, advantages over competitors (severe margin undercutting over years), dependence of consumers, and entry barriers effected (large conglomerates find it difficult to enter relevant market owing to Parle's dominance, brand loyalty, and low margins), stated that Parle enjoys a 'super dominant' position in the relevant market as delineated by it.

22.20. Parle is able to exert its dominance on players throughout the value chain and can operate independently of competitive forces prevailing in the relevant market, affecting its competitors and downstream entities like the Informant.

Abuse of dominance

22.21. Parle-G's SKUs are part of a 'must stock' for distributors and retailers. Retailers demand the supply of such products be made available on Udaan. Parle refused to supply Parle-G's SKUs to Udaan, which amounts to abuse of dominance under Section 4(2)(c) of the Act. Parle has also created barriers to ensure that its distributors are prohibited from providing relevant SKUs to the Informant. It need not be proved that denial of market access to the Informant is absolute in nature, whether the said denial is partial or complete. Denial of market access need not be with respect to the competitors of the dominant entity but can happen throughout the value chain.

22.22. Parle has a special responsibility to deal with the downstream player. It is engaging in conduct which is exclusionary in nature by refusal to deal with the Informant.

22.23. Parle's 'non-grant of market access', coupled with higher costs incurred by the Informant while purchasing Parle's products from the open market and absence of promotional schemes, discounts, and support which are available to Parle's existing distributors further aggravates the issue and impedes the passing on of reduced procurement costs/better margins and other efficiencies to retailers and, ultimately, end-consumers. Parle's refusal is to ensure that the Informant cannot engage in price competition with existing distributors of Parle. Refusal to deal and denial of market access insulates and ring-fences the existing distributor network from the pro-competitive impact of Udaan, thus diluting the incentives of market participants from developing breakthrough technologies, restricting provision of services, and limiting



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technical or scientific development of FMCG sector that can positively transform the sector and supply chain.

22.24. The Informant stated that refused input (Parle's products) is indispensable, and if the Informant is not provided access to the relevant market on fair and equitable terms (at par with Parle's existing distributors), the Informant may have to exit the market, since existing retailers would shift from Udaan platform and hence, the foreclosure. Absent any competition from the Informant, existing distributors would not have the incentive to improve upon the current competitive environment or match innovation.

22.25. Refusal to supply Parle's products would eliminate competition in the downstream market, especially in light of the Varanasi incident, where Parle clearly instructed the distributors not to deal with the Informant or else their distributorship would be terminated. This indicates its dominance over all entities in the value chain.

22.26. The refusal would harm consumers. The definition of 'consumer' is expansive as per the Act, which includes retailers as well. Parle's refusal to supply to the Informant will definitely harm retailers, since many of them are entirely dependent upon Udaan for regular supply of goods to their retail/kirana stores. MRP of a product is flexible and depends upon the margins available to a particular retailer. If the Informant can procure Parle's products directly from Parle, it can pass on the cost benefits to the retailers who, in turn, can pass on the benefits to end-consumers. End-consumers will benefit from last mile connectivity to retail stores to avoid out-of-stock situations. Thus, Parle, by way of its conduct, is causing harm to the entire supply chain ecosystem.

22.27. Parle is discriminatory in its conduct by prioritising its existing distributors with respect to the new customer. The Informant plans on dealing with Parle on a long-term basis and not as an occasional customer.

22.28. Parle has provided no business justification for its refusal to supply its products to the Informant. In the present matter, Parle has simply refused to deal and denied the Informant access to the relevant market without any rationale. Parle has wrongly placed reliance on past precedent. Parle has not provided any evidence in support of its concern that the Informant has indulged in listing duplicate products on the platform. Thus, there is unnecessary diversion towards counterfeit products. The Informant has in place



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its anti-counterfeiting policy and infringement policy. In arguendo, if presumed counterfeit products of Parle being sold on Udaan platform, it is commercially impossible and unfeasible to cross check. Thus, the issue of counterfeit would not persist if the Informant is allowed to directly deal with Parle.

22.29. Parle is only engaging in fearmongering with no proof/evidence that the Informant will not be able to perform as well as its existing distributors. The Informant relied upon its market study in Bengaluru conducted in March 2021 to imply that Udaan helped two leading FMCG companies reach additional retail stores. This increased the value proposition offered by the Informant both to FMCG companies and the retailers. The Informant's business model is devoid of any concerns. The Informant showed that it honours its payment obligations, with a success rate of more than 99%. Thus, the Informant and other distributors can coexist. The Informant's platform provides an omnichannel/multichannel approach, whereby companies can sell their products online as well directly to the retailers.

22.30. The Informant qualifies as a distributor on the qualitative criteria it extends distributorship to new entities. The entry of the Informant will not substitute the physical distributors but will function as another distributor in the supply chain. Thus, the Informant stated that Parle is indulging in anti-competitive activities under Sections 3(4)(c), 3(4)(d), 4(2)(b), and 4(2)(c) of the Act.

Observations and Analysis of the Commission

23. The Commission has perused the Information, Parle's response and the rejoinder of the Informant thereto, and information available in the public domain in this context.
24. The Commission notes that the present Information arises out of the alleged grievances of the Informant pertaining to non-dealing of Parle with it in relation to its glucose (Parle-G) biscuits, which the Informant contends is the 'relevant product' itself owing to its huge popularity, and Parle commands approximately 83% of market share in the glucose biscuit market segment. This, according to the Informant, is a must stock item on the platform of the Informant. Parle has refused to supply its Parle-G biscuits to the Informant and has spurned all advances made by the Informant seeking a relationship with it. Further, it is also stated to have threatened its distributor to not supply these biscuits to the Informant and provided an



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instance where Parle terminated the distributorship of one of its agencies in UP which was found to be dealing with the Informant. The Informant is prejudiced by this conduct of Parle which, according to it, is anti-competitive and in violation of Sections 3(4) and 4 of the Act. The Informant has contended that retailers receive null searches for Parle-G biscuits on its platform, which has the potential to drive those retailers away from the platform and ultimately prove detrimental to the business interest of the Informant, which may have to close shop. The Informant has claimed that, in the market of glucose biscuits, Parle, through its brand Parle-G, has substantial market power and dominance, which it is abusing by refusing to supply to the Informant, and therefore, the conduct of Parle needs to be investigated. The Informant has also stated that denial of market access need not be absolute or complete in nature. Parle's conduct does not promote any technical, scientific, and economic development and innovation in the market and prevents accrual of benefits to customers. Further, Parle has a special responsibility to deal with the downstream player, whereas Parle's conduct shows an exclusionary approach.

25. *Per contra*, Parle, while vehemently opposing the contentions of the Informant, has stated that such a narrow market of glucose biscuits as has been claimed by the Informant cannot be delineated. It has stated that relevant market in the present case should be '*market for biscuits in India*' and even at the narrowest level could be only '*market for sweet biscuits in India*'. Parle has submitted certain data, *etc.*, to buttress its position that it holds no market power, leave alone dominance in such market. It has also placed reliance on decisions of competition courts and authorities in foreign jurisdictions to exhibit that a narrow market of glucose biscuits cannot be defined. Parle has also asserted its right of choice to deal with any business entity as per its own requirement and not merely on the asking. It has also sought to give justification on the criteria that it has evolved over the years for appointment of distributors to deal with its products pan-India and has affirmed that it does not appoint any sundry entity that do not fulfil such criteria. In the eyes of Parle, the Informant does not satisfy such criteria, and it has expressed its uneasiness with the business model of the Informant, which Parle thinks is unviable and incompatible with its own model. Parle has also denied the existence of any agreement between itself and its distributors within the meaning of Section 3(4) of the Act, and therefore, it has contended there is no conduct on its part that can be examined within the realm of that provision, much less when no distributors of Parle have been arrayed as parties to the present proceedings to prove the existence of any agreement, which is a *sine*



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qua non. It also expressed some concern over the lack of genuineness of its products sold on the Informant's platform.

26. Before delving into the merits of the rival contentions of the parties, one aspect that deserves special mention is the introduction of new facts by the Informant in its rejoinder, post the reply of Parle having been filed. In this regard, the Commission observes that the alleged incident of Varanasi, whereby Parle is stated to have prevented its distributor from dealing with the Informant which resulted in some fracas between the officials of the Informant and Parle on 17.07.2021, while mentioned in the rejoinder, has not been mentioned in the Information which was filed before the Commission on 14.09.2021, *i.e.*, after the alleged incident. If, according to the Informant, these facts were relevant for the attention of the Commission, that should have been brought before the Commission at the earliest available opportunity. The Informant chose to place reliance on the same post filing of the reply by Parle, and the Commission at this stage does not have the benefit of the submissions of Parle on this aspect. The Commission expresses its displeasure on the conduct of the parties, who play hide and seek with facts and adopt a truant approach.

27. Adverting to the merits of the matter, the Commission places reliance upon its recent decision in the Case No. 18 of 2021 titled *In Re: Hiveloop Technology Pvt. Ltd. and Britannia Industries Ltd.* (decided on 16.06.2022), which involved similar issues and where the Informant is the same. Relevant excerpts are as under:

'42. Before proceeding further in examining the allegations raised under the provisions of Section 3(4)(d) of the Act, the Commission notes that the allegations have been made pertaining to the biscuits market. The Commission in the past had the occasion of examining the relevant market under Section 4 of the Act, in case pertaining to this market, in Case No. 106 of 2015 In Re: Tamil Nadu Consumer Products Distributors Association and Britannia Industries Ltd. (decided on 29.03.2016) and had observed the following

8. The Informant has not provided any information or description about the relevant market. However, the allegations pertain to the products manufactured/produced by OPs. As per the details available on their website, OPs are engaged in manufacture/production of a variety of bakery and dairy products such as biscuits, breads, cakes, rusk, milk,



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butter and cheese. It is observed that the biscuits segment constitutes the major component of the business of OPs and hence has been considered from the perspective of defining relevant market. The nature of other products manufactured and supplied by OPs under the categories of dairy products, breads and cakes could be distinguished from biscuits in terms of their characteristics, taste and price. More particularly, these products have lesser shelf-life than that of biscuits. Accordingly, the market for biscuits appears to constitute a separate and distinct relevant product market. As regards the relevant geographic market, it appears that the conditions of competition are homogeneous across India. In the absence of any material on record brought by the Informant to suggest heterogeneity in the conditions of competition across India, the whole of India is considered as the relevant geographic market. Resultantly, the relevant market in the instant case is the 'market for biscuits in India'.

43. The Commission has noted that the Informant has painstakingly deliberated on the segmentation of biscuits market comprising many brands and then defining the relevant market, subsequent thereto. On the contrary, Britannia has stated that relevant product ought to be the market for manufacturing of packaged snack food items. Alternatively, it has submitted that a narrower market could be market for biscuits. The Commission has perused the reasons given by the Informant to segment the market into mid-premium and premium biscuits. For the purpose of an analysis under Section 3(4) of the Act, defining a precise relevant market is not necessary. Nevertheless, the Commission, in the facts and circumstances of the case, does not find a requirement to depart from its decision in the Tamil Nadu Consumer Product Distributors case; when, at the distributors' and retailers' level, all kinds of biscuits, are available in a price/quality continuum, there is no occasion to segment the market further merely because some sub-brands of biscuits are more popular across consumers and, in the view of the Informant, are SKUs. Defining a narrow product market merely on the factors of popularity of a few sub brands may not be appropriate to the facts and circumstances of the case. The Commission is, thus, not inclined to agree with the Informant on the segmentation of the biscuits market. Therefore, in view of the facts and circumstances of the instant case, the Commission is of the prima facie view that, broadly, the market can be stated as the market for biscuits in India.



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28. Based on the above the Commission observes that it does not find any reason to depart from the said finding in the facts and circumstances of this case, and that a narrow segmentation as countenanced by the Informant is not warranted.
29. Broadly, as per the material available on record, Parle has a market share of approximately 27% in the overall biscuits category, and it cannot be said that it does not have market power. But the existence of other big competitors like Britannia, ITC, Cremica, Patanjali, *etc.* who also offer products similar to Parle, do pose competitive restraints on it. Though Parle has not commented on the size of its distribution network, it can be reasonably inferred that it has wide reach throughout India and a robust distribution and sales network. Parle has mentioned in its reply that it carefully chooses its trading partners and has not evinced interest in a technology platform like the Informant, which itself has wide reach. This again tends to show that it possesses some degree of market power.
30. Adverting to whether there exists an agreement in the nature of those covered by Section 3(4)(d) of the Act, *i.e.* , refusal to deal and whether it causes or is likely to cause AAEC in the market, the Commission notes that Parle has vehemently refuted the same. It has mentioned that the Informant is free to obtain its products from the open market and it does not place any embargo on its distributors on dealing with the Informant. On the other hand, the Informant has cited an instance whereby Parle prevented one of its distributors from dealing with the Informant. This fact, however, remains unsubstantiated in the absence of Parle not having had a chance to respond, due to the Informant's reticence in placing facts on record at the opportune time. There is nothing credible on record to suggest that the Informant is not able to deal in Parle's products till date. Even if it were to be assumed for a moment that Parle has placed active vertical restraint on one of its distributors not to deal with the Informant, no retailer or end consumer appears to have been affected. In this regard, the Commission notes the averment contained in the Information, that 115 out of 235 vendors from whom retailers of Udaan can purchase on its platform are Parle's distributors. The Informant has raised apprehension that this type of abusive conduct on the part of Parle may have a foreclosure effect and lead to the exit of Informant's customers from its platform, although no evidence has been given that some retailers have indeed stopped dealing with the Informant for want of supply of Parle's products. The Commission observes that an investigation as sought by the Informant is not merited based on unsubstantiated apprehensions and further, when the Commission tends to agree with the submission of Parle in the facts and circumstances of the



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case that it is under no absolute obligation to deal with the Informant. Against this background, the averment that the Informant is not offered terms of trade that are *pari materia* to that offered by Parle to its other distributors pales into insignificance, inasmuch as the Informant has not been able to establish a business relationship with Parle in the first place. The obligation to treat equally arises amongst parties that are equally placed. An entity which is yet to be accepted as a trading partner either expressly or impliedly may not be entitled to claim a same or similar right as available to an existing distributor. Further, even amongst distributors, it may not be out of place to subject them to different terms of trade when the same is stated to be based on sound commercial logic and not in derogation of any governing laws, and therefore, equal treatment is not any bounden obligation cast in iron and stone.

31. The Commission notes that, in respect of the assertion of the Informant of ‘must stock’ items, an attempt has been made to show that the stock of a particular type of biscuits of Parle is akin to ‘essential’. It is further claimed that it is necessary to secure direct access to procure the same. In this regard, the Commission is of the view that free exercise of right of manufacturer may only be limited to the extent of making competition prevail in the market. Further, the Commission is not inclined to agree with the Informant that one brand’s biscuits are ‘must stock’ or so indispensable that not directly dealing with Parle would pose an existential threat to the Informant in the biscuits market. The Commission also takes note of the averment contained in the Information, that 115 out of 235 vendors from whom retailers of the Informant can purchase on its platform are Parle’s distributors. Based on the above, the Commission notes that the Informant is dissatisfied with not being able to deal with the products of Parle on its platform to the extent it thinks it should and not that it is not able to deal at all in such products. In this regard, the Commission does not find any obligation on the part of Parle to satisfy the complete demand for its products on the Informant’s platform in view of the discussions in this order.
32. With regard to the contention of Parle that it has the freedom to choose its business partners, the Commission agrees with the said assertion in the facts and circumstances of the present case. The Commission has dealt with this submission in the Britannia case (*supra*). The relevant extract is as under:

“49. The Commission observes that, in the present case, resolution of two competing rights has been posited. On the one hand, the Informant is seeking a right to do business with Britannia with respect to certain products, and on the other hand,



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Britannia has asserted its right not to engage with the Informant on the premise that no such positive right rests with the Informant. According to Britannia, it has the autonomy to choose its partners in the vertical chain and it has freedom of choice as to whom to contract with as well as its level of engagement. In the realm of competition law, it is widely understood that firms have an autonomy to choose their trading partners as long as the exercise of such autonomy does not affect the fair functioning of the markets. Depending upon the market power held by entities, their conduct on refusal to deal may lead to foreclosure of market for other players. This, thus, is a mixed question of law and fact. Further, refusal to deal need not be absolute and ought to be seen in the context of the factual setting coupled with the factors under Section 19(3) of the Act. A refusal, either total or partial, could also have underlying valid justifications with commercial consideration, especially in the backdrop that it makes little economic sense for businesses to take a restrictive approach when it comes to expanding their horizon and reach. Though refusal to deal may be, inter se, two or more parties, its anti-competitive effect would have to be seen in the context of the overall market conditions that exist at the relevant point of time. Distribution networks are built and strengthened over a period of time, with sound underlying commercial consideration, trust, adequacy and performance, and a manufacturer cannot be forced to onboard any person/entity in the chain on an asking. It is also no ground that can be forcefully argued that, but for entry into the network, the new entrant will likely perish. What would tend to weigh is the impact actual or likely on existing competition and the benefit, if any, that accrues to the stakeholders upon a new entrant entering the market. A careful balanced approach is, thus, required to deal with the issue, having regard to the fact that what is the ill (perceived or actual) that can be likely remedied. From a competition perspective, business decisions to engage or not to engage with a downstream entity such as the Informant has to be seen in the context of likely AAEC, should the upstream entity choose not to deal with the downstream entity. As discussed supra, the distribution network of Britannia appears to be quite wide and no foreclosure seems to have arisen in the facts and circumstances of the case.”

33. Parle, in its defence of not dealing with the Informant has, *inter alia*, stated that the services provided by its brick-and-mortar distributors cannot be effectively provided by Informant, which follows a business model, accumulating massive debts and is a loss-making enterprise,



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and that it desires distributors who are capable of surviving in the long run. The Commission in this regard observes that the type and nature of distributors a manufacturer desires to partner with is an essential part of the autonomy of its business, and the Commission cannot *ipso facto* substitute its regulatory wisdom to that of the commercial wisdom of the businesses, unless the commercial wisdom is palpably in the face of the provisions of the Act, and the criteria laid down are *ex facie* unfair and/or discriminatory and designed with a view to exclude/eliminate competition on merits.

34. The Commission observes that the alleged non-dealing of Parle with the Informant appears not to have any adverse effects on competition, as has been canvassed. In this regard, on an appreciation of provisions of Section 19(3) of the Act, the Commission is of the *prima facie* view that there entails no market foreclosure. There are no allegations that its existing distributors have exited the market on account of any anti-competitive conduct. In the present case, the overall competition is not getting or likely to get adversely affected in any of the markets at this stage. Further, it may also not be reasonable to assume that technological innovation and disruptive technology is introduced only by the Informant, as a similar model has been deployed by others as well. The Commission observes from the public domain that there is the presence of players like JioMart Partner¹, Arzoo², Flipkart Wholesale³, Amazon Business⁴, and other competitors in the online B2B segment. The Commission also notes that most B2B platforms apparently follow a similar business model as that of the Informant, and there appears to be no unique strategy followed by the Informant in terms of extending facilities like credit, logistics, *etc.*, similar to those claimed by the Informant as part of its B2B ecosystems.⁵ The Commission further notes that there are apparently no barriers to entry either in the manufacturers' market or in the distributors' market, considering the presence of large number of biscuit manufacturers (including foreign entrants in recent years) in the upstream as well as presence of Parle's distributors in the downstream market. Moreover, there appears to be no existential threat or foreclosure as regards the Informant, considering that the Informant is an online B2B platform catering to multiple product segments pan-India and is not significantly dependent on Parle's products. As per the news report, more than 5 lakh products are curated across 2500 brands that are available on the Informant's platform, and it

¹merchant.jiomart.com (mobile browser)

² <https://arzoo.com/>

³ <https://www.flipkartwholesale.com/>

⁴ <https://business.amazon.in/>

⁵ <https://economictimes.indiatimes.com/small-biz/entrepreneurship/from-credit-to-logistics-arzoo-gives-offline-retailers-the-edge-to-take-on-the-might-of-amazon-flipkart/articleshows/90970781.cms?from=mdr>



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delivers around 1.75 lakh orders daily (both food and non-food category).⁶ The Commission has already observed that similar B2B platforms are present in the B2B online segment as well. Thus, in the Commission's view, neither intra-brand nor inter-brand competition appears to be affected so as to cause or likely to cause any AAEC in the market.

35. Further, the Commission reiterates its decision in the Britannia case (*supra*), where it has been stated that:

57. [...] The Commission is mindful that a large distribution network provides more choices to retailers and consumers, but it cannot stretch this concept too far to support establishment and survival of every downstream entity in the fold, having regard to the underlying product and the existing conditions in the market. Moreover, selective distribution is an industry practice and one of the business strategies adopted by businesses. This falls within the domain of reasonable autonomy given to any trade participant, which autonomy, however, is not absolute. [...]

36. The Commission observes that there is nothing to indicate in this case that the autonomy of Parle needs to be curtailed. The Informant, *prima facie*, has not been able to demonstrate that non-dealing of Parle directly with the Informant has caused any AAEC or is likely to cause AAEC in the market, except the Informant getting lesser margins when not dealing directly with Parle for its products.

37. With regard to allegations of 'exclusive distribution agreement' being practised by Parle, the Commission observes that there is no evidence that agreements *inter se* Parle and its distributors places any embargo on Parle at the instance of such distributors in dealing with the Informant as has been alleged. In any case, with the existence of distribution network of Parle pan-India, there does not seem to arise any limitation, restriction, or withholding of output in the supply of goods. Even otherwise, alleged non-fulfilment of demand for Parle's products on the platform of the Informant cannot be taken as non-fulfilment of the demand in the market as a whole.

⁶ https://www.business-standard.com/article/companies/b2b-e-commerce-startup-udaan-to-tap-100-bn-opportunity-in-small-town-india-121071800431_1.html



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38. As far as allegations under Section 4 of the Act are concerned, the Commission does not find any abuse, more so as the Informant has failed to establish any right on its part. In any case, the Commission has observed that a narrow market, based on segmentation, may not be justified in the facts and circumstances of the case, thereby not warranting any further assessment of dominance.
39. The Commission is of the *prima facie* view that, in the present case, the Informant has not been able to demonstrate any exclusionary practice on behalf of Parle within the purview of the Act, which may hinder the development of a competing supply chain for the products of Parle. Thus, the Commission is of the opinion that there exists no *prima facie* case of contravention of the provisions of Sections 3(4) and Section 4 of the Act against Parle, and therefore, the matter be closed forthwith under Section 26(2) of the Act.
40. Before concluding this order, the Commission observes that the Informant has filed its submissions in confidential as well as non-confidential versions. Accordingly, confidentiality, as claimed, is granted for a period of 3 years from the passing of this order, subject to the provisions of Section 57 of the Act. It is, however, made clear that no such confidentiality claim shall be available in respect of the information that might have been referred to in this order.
41. The Secretary is directed to communicate to the parties by email/speed post, through their respective counsel, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 06/07/2022