Unknown vs Max Super Specialty Hospital on 21 May, 2026

COMPETITION COMMISSION OF INDIA

Case No. 77(1) of 2015

In re:

Vivek Sharma Infor

And

Max Super Specialty Hospital, Patparganj, Delhi Opposite P

CORAM

Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member

PRESENT

For Shri Vivek Sharma (Informant)	:	Shri Vivek Sharma, Informant in-person
For Max Super Specialty Hospital, Patparganj, Delhi (Opposite Party)	:	Shri Jayant Mehta, Senior Advocate along with Shri Abir Roy, Shri Vivek Pandey, Shri Aman Shankar, Shri Sasthibrata Panda, Ms. Biyanka Bhatia, Ms. Shreya Kapoor, Shri Om Shelat, and Shri Rajat Sinha, Advocates, along with Shri Gagan Palta, Director (Legal) and General Counsel and Shri Jitendra Sapra, Deputy General Manager (Legal)

ORDER

1. Information in Case No. 77 of 2015 was filed under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') by Shri Vivek Sharma (the 'Informant'), against Becton Dickinson India (P) Ltd. and Max Super Specialty Hospital, Patparganj, Delhi ('OP'), alleging contravention of the provisions of Section 3 and Section 4 of the Act.

2. The Informant, inter alia, alleged that Becton Dickinson India (P) Ltd., a manufacturer of disposable syringes, in collusion with the OP, a procurer of disposable syringes, deliberately printed a higher Maximum Retail Price ('MRP') on the disposable syringes of Becton Dickinson India (P) Ltd. being sold at the in-house pharmacy of the OP, in comparison to the MRP printed on the same

product of Becton Dickinson India (P) Ltd. being sold in the open market.

3. Based on such information, and after holding preliminary conference with the parties, the Commission, forming an opinion that there exists a prima facie case of contravention of the provisions of Section 4 of the Act by the 02 (two) alleged parties, passed an order dated 17.11.2015 under the provisions of Section 26(1) of the Act, directing the Director General ('DG') to cause an investigation to be made into the matter and submit a report.

4. Accordingly, the DG submitted its investigation report in confidential and public version. The Commission considered the investigation report submitted by the DG and vide order dated 31.10.2017, forwarded an electronic copy of public version of the same to the Informant, Becton Dickinson India (P) Ltd., the OP and 04 (four) individuals of the OP who were identified by the DG in the investigation report to be liable in terms of the provisions of Section 48 of the Act, giving them all an opportunity to file their suggestions/ objections, if any, to the investigation report. Further, the Commission directed Becton Dickinson India (P) Ltd. and the OP to furnish their audited balance sheets and profit and loss account/ turnover details for the last 03 (three) financial years ('FYs') i.e., 2014-15, 2015-16 and 2016-17 and the 04 (four) individuals to furnish their income details including Income Tax Returns ('ITRs') for the same FYs. The OP was also directed to furnish its audited revenue/ profit details arising from the business of provision of healthcare services/ facilities for the said FYs. Thereafter, the parties were heard on the investigation report on 26.04.2018.

5. Based on the observations and findings of the DG in the investigation report, and the submissions made by the parties on the same, the Commission, vide order dated 31.08.2018, observed that the allegation of the Informant that Becton Dickinson India (P) Ltd., in collusion with the OP, has printed a higher MRP on the disposable syringes to be sold in the in-house pharmacy of the OP in order to cheat the patients, has not been substantiated in the investigation report. It was reported by the DG that OP and Becton Dickinson have not entered into any exclusive agreement with respect to supply of disposable syringes as Becton Dickinson supplies its blister pack disposable syringes to OP through M/s Shobham Surgical Works and its flow wrap syringes through M/s Hindustan Surgicals. Thus, according to DG, the OP and Becton Dickinson have not contravened any of the provisions of Section 3(3) of the Act. The Commission confirmed the finding of the DG that these 02 (two) entities have not contravened any of the provisions of Section 3(3) of the Act.

6. However, the Commission also noted that the DG has considered the market for 'provision of healthcare services/ facilities by private super-specialty hospitals within a distance of about 12 kms from Max Super Specialty Hospital, Patparganj' as the relevant market and found the OP to be abusing its dominant position in the same. The Commission noted that the DG has observed that the OP is earning huge profit margins by sale of different syringes and also shifted its procurement/ purchase from flow wrap syringes to blister pack syringes. Further, the OP was found by the DG to be compelling its in-patients to purchase products only from its in-house pharmacy once they are admitted to the hospital. As such, the DG had concluded that such conduct of the OP amounts to contravention of the provisions of Section 4(2)(a)(ii) of the Act.

7. In light of the above, the Commission observed from the investigation report that while there is a reference to the conduct of the OP being akin to 'aftermarket abuse'; however, the DG has not investigated/ analysed the same in greater detail. Accordingly, the Commission, vide order dated 31.08.2018, in terms of Regulation 20(6) of the erstwhile Competition Commission of India (General) Regulations, 2009 ('General Regulations, 2009'), directed the DG to cause a supplementary investigation to be made into the matter.

8. Accordingly, the DG submitted the supplementary investigation report - confidential version on 24.12.2021, identifying 12 (twelve) super-specialty hospitals of Delhi including the OP for the purposes of its investigation, based on 05 (five) parameters, framing 05 (five) issues in the matter and concluding on each of them, as follows:

> 8.1 Issue No. 1: Whether the investigated hospitals are 'enterprise' within the meaning of Section 2(h) of the Act?

DG's Finding: Since revenue model of the investigated super-specialty hospitals show that they are involved in carrying out commercial activities i.e., providing medical services to patients in lieu of monetary consideration, they are 'enterprise' within the meaning of the Act.

8.2 Issue No. 2: What is the relevant market?

DG's Finding: Barring one hospital i.e., St. Stephen's Hospital, Delhi, all other 11 (eleven) hospitals do not allow purchase of consumables, medical devices, medicines and medical tests from outside the hospital. Thus, from point of view of providing medical services to their in-patients, these hospitals are self-contained and independent from each other. Therefore, relevant product market was delineated in terms of "market for provision of healthcare services/ facilities for in-patients admitted to the respective private super specialty hospital" and the relevant geographic market was taken as "Delhi". As such, 12 (twelve) separate relevant markets on these grounds were defined by the DG.

8.3 Issue No. 3: Whether the investigated hospitals are dominant in the delineated relevant market?

DG's Finding: All 12 (twelve) investigated hospitals are independent markets in themselves and no other hospital exercises any influence on control of management or policies of such hospitals; therefore, each investigated hospital is dominant in its respective relevant market.

8.4 Issue No. 4: If the answer to Issue No. 3 is in affirmative, whether the conduct of investigated hospitals is in contravention of the provisions of Section 4 of the Act?

DG's Finding: The conduct of all 12 (twelve) investigated hospitals is found to be in contravention of the provisions of Section 4 of the Act from 2015 to 2018 on the following 05 (five) parameters:

> 8.4.1 Room Rent: The DG found that all 12 (twelve) hospitals charged more room rent than nearby 3-star and 4-star hotels as well as other nearby hospitals.

8.4.2 Medical Tests: The DG compared prices for 13 (thirteen) routine medical tests charged by all 12 (twelve) hospitals with 04 (four) diagnostic labs viz. Dr. Lal Path Labs, Goyal MRI, Focus Imaging and House of Diagnostics ('H.O.D'), and found that for one or more tests, each hospital charged more price during some point of time between 2015 to 2018, than the 04 (four) diagnostic labs.

8.4.3 Medical Devices:

(a) The DG analysed the prices charged by all the hospitals for 02 (two) types of Stents Bare Metal Stents ('BMS') and Bioresorbable Vascular Scaffold ('BVS')/ Biodegradable Stents, Knee Implants (whose prices were fixed by National Pharmaceutical Pricing Authority ('NPPA') in 2017 and 2018) and Hip Implants as well as the prices charged for Knee and Hip Procedures by the hospitals and found that the prices charged by the hospitals for one or more of the same showed an increasing trend from 2015 to 2018.

(b) The DG also compared the prices charged by Dr. Lal PathLabs, Goyal MRI and Dr. Lal PathLabs for 03 (three) categories of X-Rays, 02 (two) categories of MRI and 02 (two) categories of Ultrasound respectively, with those charged by the OP, and found that for one or more of such tests, the hospital charged more price during some point of time between 2015 to 2018, than the respective diagnostic lab.

8.4.4 Consumables: The DG compared the procurement prices (at which hospital procured the consumables) and selling prices of 20 (twenty) specific consumables as well as of 20 (twenty) top consumables of each hospital in terms of volume and value and noted that significant profit margins were registered by all the 12 (twelve) hospitals for multiple consumables during 2015 to 2018.

8.4.5 Medicines: Similarly, the DG compared the procurement prices (at which hospital procured the medicines) and selling prices of 19 (nineteen) specific medicines as well as of 20 (twenty) top medicines of each hospital in terms of volume and value and noted that significant profit margins were registered by all the 12 (twelve) hospitals for multiple medicines during 2015 to 2018.

8.5 Issue No. 5: If the answer to Issue No. 4 is in affirmative, who are the individuals of these hospitals liable in terms of Section 48 of the Act for the anti-competitive conduct of the respective hospitals?

DG's Finding: The DG held several individuals of each hospital liable in terms of Section 48 of the Act.

9. Thereafter, the Commission received confidentiality requests under the then existing sub-regulation (10) of Regulation 35 of the erstwhile General Regulations, 2009 from multiple hospitals.

10. On 11.01.2022, the Commission considered the supplementary investigation report (confidential version) submitted by the DG and the confidentiality appeals received. The Commission, considering that no contravention of any of the provisions of the Act had been found to have been committed by Becton Dickinson India (P) Ltd. in the investigation report and that no supplementary investigation had been ordered against it, decided to delete Becton Dickinson India (P) Ltd. from the array of Opposite Parties in Case No. 77 of 2015. Further, noting that the DG, in the supplementary investigation report, had investigated 12 (twelve) super-specialty hospitals in Delhi and given a finding of contravention against them, the Commission decided to implead the 11 (eleven) other super-specialty hospitals as Opposite Parties in Case No. 77 of 2015, along with the OP as originally impleaded. Accordingly, the cause title of Case No. 77 of 2015 was amended.

11. Further, the Commission noted that the investigation conducted by the DG in respect of each of the 12 (twelve) hospitals was separate and independent, and accordingly, information and data pertaining to a hospital, would have no relation to the inquiry conducted vis-a-vis the other hospitals. As such, the Commission was of the view that no purpose would be served by sharing the information and data submitted before the DG by 01 (one) hospital, with the other hospitals. Accordingly, the Commission directed the DG to prepare and submit 12 (twelve) separate non-confidential qua each Opposite Party Reports and correspondingly 12 (twelve) separate Public Version Reports keeping in mind that in every non-confidential qua specific Opposite Party Report and Public Version thereof, all information and data pertaining to the remaining hospitals be redacted. It was made clear that for all intent and purposes, the present matter shall be treated as 12 (twelve) separate sub-cases and hearings of the parties also, at the appropriate time, shall take place separately and accordingly.

12. The DG accordingly, submitted 12 (twelve) non-confidential qua respective Opposite Party versions and 12 (twelve) public versions of the supplementary investigation report on 04.07.2022.

13. The Commission considered the supplementary investigation report(s) and vide order dated 12.07.2022, forwarded electronic copies of the respective non-confidential qua respective Opposite Party version(s) to the respective Opposite Party and public version qua the OP, to the Informant. The Commission gave an opportunity to the parties to file their suggestions/ objections, if any, to the supplementary investigation report, and also directed the 12 (twelve) Opposite Parties to file their audited Financial Statements including Balance Sheets and Profit & Loss Accounts for FYs 2018-19 to 2020-21.

14. In the meantime, Regulation 35 of the erstwhile General Regulations, 2009 stood amended. Accordingly, under the amended Regulation 35, multiple applications were received from various hospitals seeking creation of a confidentiality ring.

15. As the Commission was of the view that the investigation conducted by the DG in respect of each of the 12 (twelve) hospitals in the present matter was separate and independent, and accordingly, information and data pertaining to one hospital, would have no relation to the inquiry conducted vis-a-vis the other hospitals, the Commission declined to form a confidentiality ring in the matter.

16. However, subsequently, vide order dated 24.04.2024, the Commission, considering, inter alia, the fact that multiple Opposite Parties had, time and again, sought confidential version of the supplementary investigation report, in the interest of justice, in exercise of the powers vested under Section 36(1) of the Act, directed the DG to prepare and submit 12 (twelve) separate unredacted supplementary investigation reports qua each Opposite Party along with corresponding public versions thereof. Each such report was to be complete vis-à-vis each Opposite Party and the same was to contain comprehensively, all information and data with respect to the said Opposite Party. It was again made clear that for all intent and purposes, the present matter shall be treated as 12 (twelve) separate sub-cases and hearings of the parties also, at the appropriate time, shall take place accordingly.

17. The DG accordingly, submitted 12 (twelve) revised unredacted supplementary investigation reports qua each Opposite Party and 12 (twelve) corresponding public versions thereof, on 18.09.2024.

18. The Commission considered the same in its ordinary meeting held on 29.01.2025, and forwarded electronic copies of the respective unredacted version of the supplementary investigation report(s) to the respective Opposite Party, and public version qua the Opposite Party to the Informant, giving them an opportunity to file their suggestions/ objections, if any, to the respective report received by them, along with brief synopsis thereof (in hard and in soft copy). The Commission also directed the 12 (twelve) Opposite Parties to file their audited Financial Statements including Balance Sheets and Profit & Loss Accounts/ Income & Expenditure Accounts, for the FYs 2018-19 to 2020-21, if not already filed.

19. Subsequently, the Commission heard the Informant and the Opposite Party hospitals on the respective supplementary investigation report(s) received by them, including on the quantum of penalty to be imposed in case contravention is found, on 28.08.2025, 02.09.2025, 29.10.2025 and 30.10.2025, and decided to pass appropriate order(s) in the matter. The present order is one of such orders passed.

20. The Parties, on their request, were also given liberty to file written submissions/ arguments which were filed and are taken on record. The OP had, in fact, submitted its written arguments after filing Interlocutory Application ('IA') No. 390 of 2025 seeking a one-week extension from the Commission. IA No. 390 of 2025 accordingly, stands disposed of.

21. At the outset, it is noted that 12 (twelve) separate investigation reports qua each investigated hospital have been received in Case No. 77 of 2015 and hearing for each hospital also took place separately. It had also been, time and again, made clear to the parties that for all intent and purposes, Case No. 77 of 2015 shall be treated as 12 (twelve) separate sub-cases and the information and data pertaining to one hospital, would have no relation to the inquiry conducted vis-à-vis the other hospitals and would not be shared with them.

22. As such, in light of the above, the Commission decides to segregate Case No. 77 of 2015 into 12 (twelve) separate sub-cases and assign numbers viz. Case No. 77(1) of 2015, Case No. 77(2) of 2015...

Case No. 77(12) of 2015 pertaining to each investigated hospital. The present matter i.e., Case No. 77(1) of 2015 relates to Max Patparganj. The cause titles of all matters stand modified accordingly.

23. Case No. 77 of 2015 pertains to a very imperative issue facing the Indian consumers i.e., whether private hospitals situated in the National Capital Territory of Delhi, like the OP, compel their in-patients to purchase medicines/ devices/ implants/ consumables from the hospital pharmacy only, and charge highly exorbitant prices for such items and earn supra normal profit margins.

24. The DG, after investigation, found that the hospitals abuse their dominant position in the after-market of admitted in-patients to the respective hospital.

25. Before delving into the specifics of the matter, the Commission notes the regulatory landscape governing the sale and purchase prices of medicines, medical devices, and medical procedures in India.

26. The regulatory landscape for medicines in India is governed by the Drugs and Cosmetics Act, 1940, which governs the manufacture, sale, and distribution of drugs, cosmetics, and medical devices in the country and ensures that only drugs meeting safety and efficacy standards are approved and sold in the market. Under the 1940 Act, the primary regulatory body is the Central Drugs Standard Control Organization ('CDSCO'), working under the Ministry of Health and Family Welfare ('MoHFW'). Though largely, the CDSCO does not interfere with or regulate the prices of medicines, medical devices, medical procedures etc., certain medicines that satisfy the priority healthcare needs of the majority of the population are brought within price control regulations by the government, through the medium of a National List of Essential Medicines ('NLEM'), which is a dynamic list, and is revised from time to time by the MoHFW. The list forms part of the Drug Price Control Order ('DPCO'), 2013 which is an order issued by the Government of India under Section 3 of the Essential Commodities Act, 1955, to regulate and cap the prices of certain drugs and medical devices (through Medical Devices Rules, 2017), with a view to ensure their affordability. The implementation of DPCO 2013 is overseen by the NPPA. Prices of such drugs are merely monitored by the NPPA and an annual increase in the MRP of up to 10% is permitted for such drugs.

27. The Hon'ble Supreme Court of India, in its recent judgment and order dated 04.03.2025 passed in Writ Petition (C) No. 337 of 2018 titled Siddharth Dalmia and Another v. Union of India and Others examined the issue as to whether the affairs of private hospitals, nursing homes, medical institutes, etc., with reference to fixation of prices of drugs, equipment, or other accessories sold from their pharmacies and/ or with whom they have some commercial agreement, can be regulated through administrative or legislative measures. The Hon'ble Apex Court noted that the issue primarily involves policy decisions for which policy-makers are best equipped to take a holistic view and formulate guidelines as may be required, to safeguard patients or their attendants from exploitation, while simultaneously ensuring that there is no discouragement and unreasonable restriction on private entities from entering the health sector, and hence, it did not express any opinion on the merits of the case.

28. In its objections/ suggestions to the supplementary investigation report, during the course of oral arguments, and in its written arguments, OP has, inter alia, made the following submissions:

28.1 Medical procedures offered by OP are healthcare services and not standalone sale of goods (like room rents, medical tests, medical devices, consumables and medicines). It is settled that the relevant market must be delineated from the perspective of customers' (in this case patients) point-of-view. Patients do not come to a hospital for goods (like medicines, consumables, medical devices etc.), but for medical treatment which is a healthcare service. Thereby, from the demand side, hospitals cannot be substitutable with hotels for room rents, diagnostic labs for medical tests, and manufacturers for consumables and medicines.

28.2 OP provides healthcare 'service' to the patients and the metric to determine fair price of services vastly differs from that of goods. The DG has arbitrarily conducted the analysis of excessive pricing of various components of the service like a standalone product. This analysis ignores the essential context that patients come to the OP seeking treatment for medical conditions, not to purchase individual goods such as medicines, consumables etc. The DG failed to consider that the OP is in the market consisting of a whole cluster of services to inpatients.

28.3 Regulation of pricing of services/ goods in hospitals comes within the exclusive domain of the State Government under List II of the seventh schedule of the Constitution of India. The Hon'ble Supreme Court in Siddharth Dalmia v. Union of India, [2025] 4 SCR 197, held that the regulation of pricing in hospitals comes within the exclusive domain of the State Government. The obligation is on the Government to make medical service accessible, not on private hospitals.

28.4 Prices of medical products cannot be regulated under the Act because it is settled that the Commission is not a price regulator. Prices of medical products are regulated under the DPCO, 2013 by NPPA.

28.5 There is no policy for capping/regulation of room rents by the Government. The prices of room rents may not be adjudicated by the Commission because it would be beyond the scope of the Act.

28.6 The overall cost of operation of the hospital includes a gamut of services. The OP provided services within ceiling price/ MRP. Hence, the selling price charged by the OP was neither unfair nor excessive. There is no other finding in the Report that the OP is selling consumables at a price higher than the MRP set by the manufacturers.

28.7 The DG incorrectly compared hospital prices of each standalone good separately with diagnostic labs, hotels, and manufacturers, while the latter do not even fall in the same relevant market.

> 28.8 The comparison of hospital room rents with neighbouring 3-star and 4-star hotels is erroneous as it compares enterprises operating in 02 (two) different markets.

This comparison is misplaced and disregards the highly specialized nature of healthcare services and the associated cost structures. Hospital rooms are not discretionary lodging facilities but are designed to cater to the clinical needs of patients, equipped with automatic patient beds, trained medical staff, emergency response mechanisms, etc. to provide immediate medical attention, which is entirely absent in hotel accommodations.

28.9 The delineation of the relevant market in the Investigation Report as "provision of healthcare services/facilities for in-patients admitted to Max Patparganj Hospital in Delhi", as an aftermarket for patients admitted to the OP is incorrect.

28.10 The DG has conducted an incorrect analysis of aftermarket. Delineation of primary market is a pre-requisite for aftermarket, but the DG proceeded to determine the aftermarket abuse without analysing the primary market and the number of hospitals operating in the primary market.

28.11 It is further submitted that patients are completely aware about the cost before taking healthcare services from the OP and are free to choose any hospital of their choice. Thus, aftermarket does not exist in this case because patients can estimate the treatment cost.

28.12 The DG ignored the well settled position of law which says that aftermarket exists only where (a) customer cannot analyse the life cycle cost of the service; and (b) reputation effects do not deter the manufacturer from setting supra competitive price for the secondary product.

28.13 It is settled that separate relevant markets for primary market and aftermarket are not required when the customer estimates the probable expenditure on aftermarket service. Thus, the aftermarket does not exist in the present situation because the OP provides estimation of costing and there is no lock-in of the patients to avail treatment from the OP only and they can seek treatment from other hospitals. In Shamsher Kataria v. Honda Siel and Ors., it was held that an aftermarket does not exist in an instance where the customer can easily switch to another competing primary product. For instance, an apartment and its maintenance costs, may not necessarily be in an aftermarket market structure. Similarly, in the present situation, the patients can leave the OP and seek medical treatment from other hospitals.

28.14 The finding of contravention is solely based on the observation that the OP charged 'higher prices' and had 'significant profit margins,' without any application of the legal standard governing excessive pricing as established by the Commission and other jurisdictions. Under Section 4 of the Act, it is not simply that excessive price is unlawful; Section 4(2)(a)(ii) makes unlawful the price which is 'unfair'. This means that unfairness is something beyond excessiveness, and that both have to be proven in a case of abusively high prices. In Case 27/76 United Brands v. Commission of the European Communities ('United Brands'), a two-stage test has been set out for ascertaining whether the price charged by a dominant enterprise for a product was abusive: stage one is the Excessive

Limb and stage two is the Unfair Limb. As per the test, the issue to be determined is whether the price is "unfair" in itself or when compared to competing products. However, the DG failed to apply the legal standards as laid down in United Brands (Supra) and incorrectly considered excessive pricing as unfair.

28.15 The labs of the OP cannot be compared with standalone labs because quality of medical tests done by the OP is superior to standalone diagnostic labs, as the OP ensures highest standards in terms of manpower and machinery. Further, cost of operation cannot be compared as the OP's labs operate 24 x 7, and turnaround time is faster. The DG has, recorded but not considered, that the quality of the medical test done by OP is superior to standalone diagnostic labs. It is submitted that standalone labs and hospitals are in different markets, hence cannot be compared.

28.16 The OP has reasonable justification for performing its own radiology tests to maintain quality and safety. Rather, in a number of cases, the treating doctor is also present in the medical labs to understand what angle, area is to be scanned. In such cases, an in-house facility is needed and lack of it would compromise patient diagnosis.

28.17 The DG incorrectly relied on the Clinical Establishments (Registration and Regulation) Act, 2010, which does not define super-speciality, and the said legislation is not applicable in Delhi. There is no distinction between 'super- speciality' hospitals and other hospitals as 'super-speciality' is merely a branding tactic used by convention and there is no distinct service provided by hospitals offering tertiary care.

Analysis of the Commission

29. The Commission has perused the Information, material available on record, the supplementary investigation report, the replies/suggestions/objections to the supplementary investigation report and the written submissions of oral arguments of OP, post hearing.

30. In the present matter, the DG, as a part of its supplementary investigation report, has found that the OP is an 'enterprise' within the meaning of sub-section (h) of Section 2 of the Act, is dominant in the relevant market of 'provision of healthcare services/ facilities for in-patients admitted to Max Super Specialty Hospital, Patparganj in Delhi', and has abused its dominant position by charging higher room rents and prices for certain medical tests, medical devices, consumables, and medicines from the in- patients admitted to the hospital.

31. Undoubtedly, since the OP is engaged in the economic activity of providing healthcare services to patients (in-patients as well as out-patients) in lieu of monetary consideration, it is an 'enterprise' within the meaning of sub-section (h) of Section 2 of the Act.

32. The Commission in its prima facie order dated 17.11.2015 was of the view that the relevant market in the instant case is the "market for provision of healthcare services by super speciality hospitals in Delhi".

33. After reviewing the DG investigation report, the Commission in its order dated 31.08.2018 inter-alia observed that while there is a reference to Max Patparganj's alleged conduct as being akin to 'aftermarket abuse'; however, DG has not investigated/ analysed the same in greater detail. The Commission is of the considered view that it would be desirable that a finding be given on the delineation of relevant product market considering the aspect of aftermarket abuse, if any.

Further, the Commission directed that the DG should focus on the following issues during re-investigation of the matter:

> i.The relevant market definition as provided in the DG's investigation report may be revisited. The concept of 'aftermarket abuse' referred to in the DG's report may be used to define the relevant market as the market for healthcare service/ facilities in the after-market for in-patients in super speciality hospitals. With regard to the relevant geographic market, instead of considering "a distance of about 12 kms from Max Super Specialty Hospital, Patparganj', the DG may consider Delhi as the relevant geographic market, as considered by the Commission in its prima facie order.
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> ii. Besides huge profit margin from the sale of syringes as pointed out in the DG's report, the scope of investigation should be broadened by covering all aftermarket healthcare products and services provided by super speciality hospitals across Delhi to their in-patients. The investigation may especially focus on the products sold by the super speciality hospitals to their inpatients which are not required on an urgent basis for any medical procedure / intervention or which do not involve any high degree of quality issue from the medical procedure point of view and for the purchase of which, the patients have the time and scope to exercise their rational choice to purchase such products from open market as well where such products may be available at lower rates.
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> 34. The DG in the main investigation report distinguished the healthcare services offered by the super speciality hospitals from the healthcare services offered by other hospitals.

The DG further distinguished between the services offered by government hospitals from the services of private hospitals. The DG concluded that healthcare services/facilities provided by Super-specialty hospitals, general hospitals and other smaller hospitals are not substitutes or even comparable. Further, the Commission observes that patients getting treatment from a hospital can be broadly divided into 02 (two) categories i.e. inpatient and outpatient. An in-patient is a person who is admitted to a hospital and required to stay for treatment that usually involves continuous medical care, monitoring, and use of hospital infrastructure. An out-patient, on the other hand, receives medical consultation, diagnosis, or treatment without being admitted. From an economic perspective, in-patient care generally leads to significantly higher out-of-

pocket expenses because it includes hospital bed charges, nursing services, diagnostic tests, procedures or surgeries, medicines, and other ancillary costs. In contrast, out- patient care entails

relatively lower out-of-pocket expenditure, as costs are limited to consultation fees, basic investigations, and medicines, making it financially less burdensome for patients and households.

35. In-patients can be further distinguished into 02 (two) categories i.e. those admitted for emergency or critical care and those admitted for elective treatment. Elective treatment refers to a planned medical treatment/ procedure that is scheduled in advance and is not performed in response to an immediate serious condition. In contrast, emergency treatment/procedure is performed urgently to address a sudden, serious, or life- threatening condition such as trauma, internal bleeding, or acute infections. The Commission in its order dated 31.08.2018 observed that the investigation may especially focus on the products sold by the super speciality hospitals to their inpatients which are not required on an urgent basis for any medical procedure / intervention or which do not involve any high degree of quality issue from the medical procedure point of view.

36. In view of the above, the issue under consideration is whether the OP has indulged in abusive conduct by mandating the inpatients admitted in their hospital for elective treatment to use in-house medical products and services (medicines, consumables, medical equipment and medical tests etc).

37. In the aforesaid context, the issue for consideration is whether there exist 02 (two) separate relevant product markets i.e.

(i) the market for provision of healthcare services/facilities for treatment of ailment by private super speciality hospitals (primary product) and

(ii) the aftermarket for post-operative treatment of inpatients, including medical consumables, medicines, medical equipment, medical tests etc. (secondary product) or the aforesaid markets are to be considered a unified systems market.

38. As per the decisional practice, following conditions are inter-alia taken into account for deciding whether an aftermarket can be said to exist separate from the primary market.

I. customers do not engage in whole life costing.
II. reputation effects do not deter the provider from setting competitive p
the secondary product.
III. cost of the primary product: If the owner of the primary product can ea

switch to another competing primary product, the primary product and secondary product may be clubbed to form a systems market.

39. In this regard, it is generally observed that patients opting for elective hospital treatment typically ascertain the cost of the procedure for treating the ailment and other expenses such as medical consumables, medicines, medical equipment, medical tests, room rent, visit charges of doctor etc. required in connection with the treatment of the ailment. The OP has stated that procedures offered by it are healthcare services and not standalone sales of components like room rents, medical tests, medical devices, consumables and medicines. As per the OP, patients do not

come to a hospital for goods (like medicines, consumables, medical devices etc.), but for treatment which is a healthcare service. Prior to admission, patients typically consult the doctors at the OP's premises and are provided with an estimate outlining the anticipated costs of their treatment, which is inclusive of the cost of relevant medical tests.

40. OP has further stated that the patients are always given the all-inclusive estimated cost. This disclosure ensures that patients are informed about the financial implications of their admission with the OP before making any commitment. At this stage, there is no obligation to proceed with treatment from the OP. Patients retain the freedom to accept or reject the estimated charges, seek a second opinion, or take treatment at another hospital. It is not a "take-it-or-leave-it" scenario, patients are under no compulsion to admit themselves to the OP if they find the costs or services unsatisfactory. It has been stated that several patients do not continue treatment with OP after taking the estimate. OP has submitted that patients are aware about the cost before taking healthcare services from them and the patients are free to choose any hospital of their choice. In this regard, the Commission notes that as stated by the OP, patients seeking admission are given an estimated cost based on the immediate apparent ailment and suggested line of treatment. From perusal of the documents containing the estimated cost, submitted by the OP, the Commission notes that it provides break up of charges towards various services required in the treatment viz, the procedure, drugs, medical consumables, room rent etc. Furthermore, from the instances submitted by the OP, it is noted that in most of the cases the actual bill amount was close to the estimated amount given before the admission. The DG in the investigation report fails to highlight inability if any, of the patients seeking treatment to undertake a holistic treatment cost analysis at the time of admission. The Commission is cognizant of the fact that the final cost of treatment may vary from patient to patient on the basis of health conditions, number of visits of doctors, tests undertaken and other diagnosis/complications that may arise during the treatment. There could be contingent expenses such as additional diagnostics, extended hospital stays, consumables, specialist consultations, or compulsory in-house services, which may accrue after admission. Accordingly, the estimated cost communicated ex ante may differ from the actual cost incurred ex post. Further, the estimated cost is based on broad heads and does not give granular cost of each consumable, which is known only during or after the treatment. However, from the perspective of the issue on hand, it emerges that the patients seem to have reasonable degree of information to undertake a comparative analysis of the total expenses relating to the treatment of the ailment and other incidental expenses and take an informed decision.

41. In view of the aforesaid, the Commission is of the opinion that the patients seeking elective treatment are able to take into account the approximate overall cost of the treatment, reasonably assess and compare the total cost he/she is likely to incur during the treatment including cost of the products and services, before seeking admission for treatment.

42. As regards the point whether reputation effects would deter the provider from setting competitive prices for the secondary product, the Commission finds that for well- established hospitals such as the OP, factors such as high demand, brand image, perception of high quality of their services, availability of expert and skilled/renowned doctors in their hospital, suggest that the risk of losing market share (in the primary market) may not effectively constrain hospitals from

acting independently of competitive forces (in the secondary markets such as in-house diagnostics, medicines, consumables, and ancillary services).

43. As regards patients being locked into the secondary market, it is noted from the supplementary investigation report that while there may be no specific embargo, the OP has acknowledged before the DG that in general practice, it encourages the use/ purchase of consumables, medical devices, medicines and medical test results from the hospital's in-house pharmacy and laboratories located within the premises of the hospital. Where required, consumables, medicines, medical equipment and medical test may be procured by in-patients from outside the hospital as well, provided that the hospital's 'protocol' is followed. The Commission notes that due to ease of convenience as well as the hospital's 'protocol' and declaration to the patients regarding potential risks associated, in-patients, almost always, resort to usage of the hospital's in-house pharmacy and laboratories for their respective needs. This creates a 'locked-in' effect upon the admitted patients and may invariably ensure that the concerned hospital supplies almost the entire consumables, medical devices, medicines and medical tests to the patients admitted to that hospital.

44. However, in this context another important relevant factor, that the Commission has considered is whether a consumer can shift to another primary market product, i.e., another competing service provider, without bearing substantial switching costs or financial burden.

In this regard, the Commission notes that the OP has stated that the patients are free to leave their hospital anytime during the treatment and seek medical treatment from other hospitals and thus there is no lock-in or switching cost for patients seeking treatment. The Commission is aware that certain switching costs may have to be borne by patients, in case they want to switch to another hospital to avoid high cost of secondary products. These may arise from procedural barriers to discharge such as process delays, disclaimers and waivers for liability, linked administrative requirements, information asymmetry, health risks in transition and the routine insistence by receiving hospitals on conducting fresh diagnostic tests leading to duplication of costs, etc. However, by and large there is sufficient flexibility with the patients to exercise choice of switching at various stages of the treatment subject to procedural requirements. Based on available facts, it does not appear to be the case that patients cannot switch to alternative service providers in the primary market without incurring significant switching costs.

45. On the basis of a holistic assessment of aforesaid facts and circumstances available on record, and in the absence of factors/evidence such as (a) consumer being not able to ascertain the life time cost of the product at the time of its availing the service and

(b) consumer not being able to switch the primary product without incurring substantial switching cost the Commission is therefore broadly inclined towards the view that it would not be appropriate to delineate separate primary and secondary market (aftermarket) for inpatients admitted with OP for elective treatment. Accordingly, a unified relevant product market in the instant matter is being delineated i.e. the "market for provision of healthcare services by super speciality hospitals".

46. As regards the relevant geographic market, the Commission in its prima facie order dated 17.11.2015, was of the view that "...owing to factors such as ease of access, language, lesser travel time, low transport cost, consumer's preference the geographic area of Delhi would be the relevant geographic market in the instant case. Further, the conditions of competition for the supply of relevant product are homogeneous throughout Delhi and can be distinguished from the conditions prevailing in adjacent areas of Delhi such as other regions of NCR. Furthermore, in normal circumstance, a person/ patient residing in Delhi will prefer to avail the healthcare services of a super speciality hospital located in Delhi, rather than from other regions of NCR. Accordingly, the Commission is of the view that the relevant market in the instant case is the market for "provision of healthcare services by super speciality hospitals in Delhi".

47. Further the Commission in its order dated 31.08.2018 inter alia directed the DG, instead of considering "a distance of about 12 kms from Max Super Specialty Hospital, Patparganj", the DG may consider Delhi as the relevant geographic market, as considered by the Commission in its prima facie order.

However, the DG in its supplementary report has stated that each hospital under investigation, is self-contained and independent market based out of Delhi and as a super speciality hospital renders specialized medical services to the patients. It has further been stated that the specialized medical services provided by the hospital selected for investigation are different from the other hospitals located in the neighbouring areas of Delhi. Therefore, the DG was of the view that Delhi may be treated as relevant geographic market for the present case.

48. The OPs in their objections and suggestions have submitted that delineating 'Delhi' as geographical market is incorrect because there is no basis for limiting the geographical market to Delhi alone. The actual relevant geographical market is India, or alternatively Delhi-NCR as patients are free to take services of any hospital. It has been stated that instances of patients travelling to other cities for treatment is very common and revenue share of the OPs from different geographical location shows that a significant number of patients come from all over India and abroad. As per the OP in the month of March 2025, 68% of its IPD revenue was from NCR, 24% from all over India and remaining 8% from other countries.

49. The Commission notes that the DG has not brought out any evidence in support of the finding that the geographic area of Delhi would be the relevant geographic market for the primary market in the instant case.

50. The Commission finds strength in the argument of the OP and tends to agree broadly with the submission that the patients do take services from super speciality hospitals across Delhi-NCR and there do not seem to be any regulatory or other constraints in doing so. Accordingly, the relevant geographic market in the instant matter is being considered as Delhi NCR. Thus, the relevant market in the matter could be the "market for provision of healthcare services by super speciality hospitals in Delhi NCR ".

51. Notwithstanding the view that in-patient services provided by the super-speciality hospitals are part of a unified market of provision of healthcare services by super speciality hospitals, the Commission is cautious that there may exist a case for aftermarket in some limited situations of elective treatment like post-surgical stay, etc. where the switching cost for patients outweigh the cost of continuing treatment at the same hospital, even when the patients have time and scope to exercise choice to get tests done in nearby labs or purchase medicines and consumables from open market. Therefore, the Commission proceeds to examine the conduct of the OP in "market for provision of healthcare services/ facilities for in-patients admitted for elective treatment to the respective super specialty hospital".

Assessment of Conduct

52. The Commission notes the submission of the OP that procedures offered by it were healthcare services and not standalone sales of goods (like room rents, medical tests, medical devices, consumables and medicines). Further, patients do not come to a hospital for goods (like medicines, consumables, medical devices etc.), but for treatment which is a healthcare service. Thereby, from the demand side, hospitals cannot be substitutable with hotels for room rents, diagnostic labs for medical tests and devices, and manufacturers for consumables and medicines.

53. Patients get admission in hospitals to avail healthcare services in case of scheduled surgery/treatment as well as emergency. After admission in hospital, they require Room, Medical tests, Medical equipment, Medicines, Consumables etc. These are complementary product/ services used with the healthcare service. However, they are not unique in nature to be used in hospitals only. These products/services are also sold separately in the market. Healthcare products or services like Medical tests, Medical equipment, Medicines, Consumables sold in hospital and open market are substitutable or interchangeable. OPD patients also purchase medicines, consumables medical equipments etc. and undergo medical tests/check-ups on the advice of a doctor.

54. However, the major question involved for consideration of the Commission in the present matter is whether the OP has indulged in abusive conduct vis-à-vis its in- patients by charging excessively higher prices from them for medicines, consumables, medical devices or medical procedures etc. Such abuse is what is termed under competition law as 'excessive pricing' by a dominant entity. Excessive pricing is there when a dominant entity charges exorbitant prices for any goods or services that bear no reasonable relation to their economic value. Such practice is considered as an 'exploitative' abuse because the dominant entity is seen taking advantage of its market power to extract maximum value from the customers.

55. As argued by the OP, the test for establishing 'excessive pricing' is well-settled in United Brands (Supra), where a two-stage test was set out for ascertaining whether the price charged by a dominant enterprise for a product is abusive. First, whether in relation to cost, the price for the product can properly be termed 'excessive', and second, whether the price charged is 'unfair' in itself or when compared to competing products.

56. The Commission shall apply the afore-said tests to all aspects investigated by the DG, in the succeeding paragraphs across the 05 (five) parameters i.e., Room rent, Medical Tests, Medical Devices, Consumables and Medicines.

57. Allegations with respect to abuse of dominant position are not sustainable in the present matter due to reasons mentioned below:

58. Room Rent 58.1 The first finding rendered by the DG is that the OP charges higher rents for its various categories of rooms. In this respect, the DG has firstly, nowhere compared the rents charged for various categories of rooms by the OP with the associated costs, and secondly, compared the rents charged for various categories of rooms by the OP with the rents charged by nearby (i) government hospitals and (ii) three- and four-star hotels providing similar facilities of boarding and lodging. The DG has observed that the nearby government hospitals either charge no rents from its admitted patients or different rates (quite nominal in nature) are charged from non- entitled patients. Further, the DG found that the rates charged by nearby compared hotels are also relatively cheaper than the OP.

58.2 The DG itself has excluded government hospitals from the scope of its investigation by categorising them as a separate class of hospitals altogether from private super-specialty hospitals, and three-star and four-star hotels can also not be said to provide services substitutable with those provided by a super specialty hospital.

58.3 Also, it is noted from supplementary investigation report that the comparison of room rents of neighbouring hospitals with some of the super speciality hospitals under investigation show mixed results.

58.4 The Commission is of the considered opinion that hospital rooms and three/four-

star hotel's rooms are different relevant product and they are not substitutable as the rooms of hospital are not mere discretionary lodging facilities but are designed to cater to the clinical needs of patients, equipped with automatic patient beds, trained medical staff, emergency response mechanisms, etc. to provide immediate medical attention, which are entirely absent in hotel accommodations.

58.5 In the absence of comparative analysis cost of hospital rooms across different hospitals, it can not be said that the OP is charging excessive price. Thus, no finding on 'excessive' and 'unfair' pricing can be rendered by the Commission on this count.

59. Medical Tests 59.1 The DG has compared the prices for 13 (thirteen) separate medical tests charged by the OP with the prices for the same tests charged by certain diagnostic labs during the same period (2015-2018), and came up with mixed results. The DG has concluded that the prices charged for these certain tests by the OP between 2015- 2018 were higher than those charged by certain diagnostic labs.

59.2 The Commission notes that the Government departments including MoHFW, DGHS of Delhi Government, NPPA and CDSCO do not regulate the prices of medical tests within the private super specialty hospitals in Delhi.

59.3 The Commission notes the DG's findings that the price of following medical tests of the OP were more than the diagnostic centres:

(I). LFT, Renal Biochemical Profile (Basic), Amylase, Reticulocyte Count and Bact/ Alert -2015-2018.

(II). CBC (2016 and 2018) and Prothrombin time (2016, 2017 and 2018) tests.

59.4 To examine whether the rates charged by the OP are excessive, the Commission compared the prices charged by OP with average rates charged by standalone labs.

Table 1: Comparison of rates of Medical tests in 2015

SL	Tests	Max PPG	Rate of Medical Tests in 2015 Dr. Lal Pathlabs (DLPL)	Goyal MRI	Focus Imaging	H.O.D.	Ave Ra
1	LIVER FUNCTION	903	700	780	700	Not provided	
2	RENAL BIOCHEMICAL PROFILE - BASIC	820	700	780	650	Not provided	
3	AMYLASE Test	479	400	N/A	450	Not provided	
4	LDH TEST	329	320	N/A	450	Not provided	
5	CBC - (COMPLETE BLOOD COUNT)	343	330	360	355	Not provided	
6	PROTHROMBIN TIME	372	330	380	250	Not provided	
7	RETICULOCYTE TIME	345	320	160	100	Not provided	
8	TOTAL LEUKOCYTE COUNT	121	100	160	75	Not provided	
9	ANTI HAV	1430	1120	N/A	2700	Not provided	1
10	BACT/ALERT AEROBIC	6010	950	N/A	450	Not provided	

	CULTURE(ASPIRATE)						
11	HBV MONITOR	1191	4050	N/A	8000	Not provided	6
12	ASMA TEST	1684	1600	N/A	2250	Not provided	1
13	ALKMA TEST	1600	1500	N/A	3200	Not provided	2

Table 2: Comparison of rates of Medical tests in 2016

SL	Tests	Rate of Medical Tests in 2016					Avera
		Max PPG	Dr. Lal Pathlabs	Goyal MRI	Focus Imaging	H.O.D.	Rate
1	LIVER FUNCTION	1082	700	780	700	350	63
2	RENAL BIOCHEMICAL PROFILE - BASIC	920	700	780	650	350	62
3	AMYLASE Test	523	400	N/A	450	200	35
4	LDH TEST	348	320	N/A	450	180	31
5	CBC - (COMPLETE BLOOD COUNT)	391	330	360	355	190	30
6	PROTHROMBIN TIME	440	330	380	250	190	28
7	RETICULOCYTE TIME	354	320	160	100	80	16
8	TOTAL LEUKOCYTE COUNT	141	100	160	75	90	10
9	ANTI HAV	1560	1120	N/A	2700	750	152
10	BACT/ALERT AEROBIC CULTURE(ASPIRATE)	7023	1000	N/A	450	N/A	72
11	HBV MONITOR	1236	4050	N/A	8000	N/A	602
12	ASMA TEST	1696	1600	N/A	2250	N/A	192
13	ALKMA TEST	1711	1500	N/A	3200	N/A	235

Table 3: Comparison of rates of Medical tests in 2017

SL	2017	Rate of Medical Tests in 2017 Max PPG (OP)	Dr. Lal Pathlabs	Goyal MRI	Focus Imaging	H.O.D.	Averag Rate
1	LIVER FUNCTION	1109	700	780	700	350	633
2	RENAL BIOCHEMICAL PROFILE - BASIC	908	700	780	650	350	620
3	AMYLASE Test	507	420	N/A	450	250	373
4	LDH TEST	346	350	N/A	450	200	333
5	CBC - (COMPLETE BLOOD COUNT)	403	350	420	355	190	329
6	PROTHROMBIN TIME	463	350	380	250	210	298
7	RETICULOCYTE TIME	342	350	160	100	90	175
8	TOTAL LEUKOCYTE COUNT	147	110	160	75	100	111
9	ANTI HAV	1341	1190	N/A	2700	750	1547
10	BACT/ALERT AEROBIC CULTURE(ASPIRATE)	6229	1100	N/A	450		775
11	HBV MONITOR	1208	4400	N/A	8000	4200	5533
12	ASMA TEST	1700	1700	N/A	2250	2275	2075
13	ALKMA TEST	1646	1600	N/A	3200	1750	2183

Table 4: Comparison of rates of Medical tests in 2018

SL	Tests	Rate of Medical Tests in 2018 Max PPG (OP)	Dr. Lal Pathlabs	Goyal MRI	Focus Imaging	H.O.D.	Aver Rat

1	LIVER FUNCTION	1175	700	780	700	420	65
2	RENAL BIOCHEMICAL PROFILE - BASIC	994	700	780	650	420	63
3	AMYLASE Test	552	420	N/A	450	240	37
4	LDH TEST	347	350	N/A	450	200	33
5	CBC - (COMPLETE BLOOD COUNT)	440	350	420	355	199	33
6	PROTHROMBIN TIME	500	350	380	250	210	29
7	RETICULOCYTE TIME	335	350	160	100	90	17
8	TOTAL LEUKOCYTE COUNT	165	110	160	75	100	11
9	ANTI HAV	1380	1190	N/A	2700	750	154
10	BACT/ALERT AEROBIC CULTURE(ASPIRATE)	5937	1100	N/A	450	500	68
11	HBV MONITOR	1317	4400	N/A	8000	4200	553
12	ASMA TEST	1735	1700	N/A	2250	2275	207
13	ALKMA TEST	1705	1600	N/A	3200	1750	218

59.5 From the above tables, it is observed that for the following medical tests, the OP charged not only more than 50 % of average rate of 04 (four) standalone labs but also charged more than 50 % of the highest rate charged amongst the 04 (four) standalone labs:

a. BACT/ALERT AEROBIC CULTURE(ASPIRATE) during 2015-2018 b. Liver Function Test in 2018 59.6 The table also indicates that for some medical tests (e.g. HBV Monitor, ASMA Test and ALKMA Test), the price charged by the OP is lower

than the average rate during the period from 2015-2018. Thus, a comparison of rates charged for medical tests by the OP with those charged by standalone labs shows mixed results.

59.7 In this regard, the Commission notes the submission of the OP that the cost of operation of hospital labs is not comparable with standalone labs due to the reasons mentioned below:

• Hospital's labs operate 24 x 7 • Turnaround time in the hospital's lab is faster in comparison to standalone labs, and • Quality of medical test by the hospital is superior to standalone diagnostic labs, as the hospital ensures highest standards in terms of manpower and machineries.

59.8 The Commission observed that the DG compared rates of medical tests charged by the OP with standalone labs and not with other hospitals providing similar services. In the light of the above submissions, the Commission is of the view that the price charged by the OP for certain medical tests may be termed as unfair only if it is significantly higher in comparison with prices charged by other hospitals providing similar services.

59.9 The finding of the DG that unfair prices were charged by the OP for medical tests cannot be conclusively established in the light of the facts brought out in the investigation report.

60. Medical Devices

60.1 With regard to medical devices, the Commission notes the DG's findings that the rates charged by OP were higher than that of a standalone lab for X-rays and MRIs:

• Details provided for X-Ray operations for Chest PA, Chest AP, Spine Lumbosacral (AP & Lateral), Knee (Any Joint- AP & Lateral) and Ankle (Any Joint- AP & Lateral) were found to be more than the prices charged by diagnostic lab (Dr. Lal Path Labs) for the period 2015-2018.

• Details provided for MRI operations charged for MRI Brain Plain, MRI Brain (Contrast) and MRI Spine (Lumbar) were found to be more expensive than the prices charged by Goyal MRI.

• Details provided for Ultrasound operations by the OP, operations for Whole Abdomen, KUB and Carotid Doppler Ultrasound have been found to be expensive than the diagnostic centre i.e. Dr. Lal Path Labs for the period 2015- 2018.

60.2 However, as far as procedural costs involved in Knee Implants and Hip Implants are concerned, the DG has found that the rate of operation costs charged by

the OP for both procedures increased from 2015 to 2018. In view of the Commission, mere increase in cost of operation year by year, without comparison with associated costs or accompanying inflation rate, is not sufficient to prove a case of 'excessive pricing' against the OP. The DG has not compared the prices charged for similar procedures by other hospitals before concluding that the prices charged by the OP were higher.

60.3 The DG has also compared the prices of certain medical implants and their procedural costs. Similarly, with respect to Bare Metal Stents and BVS stents, the DG has found that the OP did not make any purchases in 2015 and 2016, and purchases made in 2017 and 2018 were within the price cap of NPPA. With respect to Knee Implants, the DG has found that the purchases made in 2017 and 2018 were within the price cap of NPPA and with respect to Hip Implants, the DG has observed that though there is a difference between the prices charged from the patients and the procurement price of the hospital, the price variations are not large.

60.4 The DG has also made similar comparisons with respect to 03 (three) categories of X-Rays, 02 (two) categories of MRIs and 02 (two) categories of Ultrasound. The DG has compared the rates charged for the same by the OP with one diagnostic lab each during the same period (2015-2018), and concluded that the prices charged for such tests by the OP were higher than those charged by the compared diagnostic lab.

Table 5: Comparison of rates of X-Ray Operations during 2015-2018 Rate of X-Ray Operations 2015 2016 2017 2018 % % % % X-Ray Max higher Max higher Max higher Max higher Operations DLPL DLPL DLPL DLPL PPG than PPG than PPG than PPG than DLPL DLPL DLPL DLPL Chest PA 300 529 76% 300 577 92% 330 628 90 % 330 658 99% (CXR) Chest AP 300 529 76% 300 577 92% 330 628 90 % 330 658 99% Spine 300 826 175% 849 849 0% 330 864 162% 330 947 187% Lumbosacral (AP & Lateral) Knee (Any 300 826 175% 829 829 0% 330 839 154% 330 920 179% Joint-AP & Lateral) Ankle (Any 300 790 163% 799 799 0% 330 818 148% 330 909 175% Joint-AP & Lateral) 60.5 The OP charged more than 50 % in comparison to the standalone lab i.e. Dr. Lal Path Labs during 2015-2018 for all the 05 (five) X-Ray tests Chest PA, Chest AP, Spine Lumbosacral (AP & Lateral), Knee (Any Joint-AP & Lateral) and Ankle (Any Joint-AP & Lateral) for which data is provided in the supplementary investigation report. However, for Spine Lumbosacral (AP & Lateral), Knee (Any Joint-AP & Lateral) and Ankle (Any Joint-AP & Lateral) tests, the OP charged same rate as Dr. Lal Path Labs during 2016.

Table 6 : Comparison of rates of MRI Operations during 2015-2018 Rate of MRI Operations 2015 2016 2017 2018 % % % % MRI higher higher higher higher Goyal Goyal Goyal Goyal Operations Max than Max than Max than Max than MRI MRI MRI MRI PPG Goyal PPG Goyal PPG Goyal PPG Goyal MRI MRI MRI MRI MRI Brain 6000 7773 30% 6000 8539 42% 8000 8891 11% 8000 9178 15% Plain MRI Brain 9000 11679 30% 9000 12234 36% 11000 12529 14% 11000 12691 15% Contrast MRI Spine 8000 7748 -3 % 8000 8606 8% 8000 8882 11% 8000 8560 7% Lumbar 60.6 The OP has not charged more than 50 % price in comparison to the standalone lab i.e. Dr. Goyal MRI during 2015-2018 for any of the 03 (three) MRI Tests i.e. MRI Brain Plain, MRI Brain Contrast and MRI

Spine Lumbar which data is provided in the supplementary investigation report.

Table 7 : Comparison of rates of Ultrasound Tests during 2015-2018 Rate of Ultrasound Test 2015 2016 2017 2018 % % % % Ultrasound Max higher Max higher Max higher Max higher Test DLPL DLPL DLPL DLPL PPG than PPG than PPG than PPG than DLPL DLPL DLPL DLPL Whole 1100 2465 124% 1100 2711 146% 1250 2804 124% 1250 2853 128% Abdomen KUB (Kidneys, 800 1444 81% 800 1459 82% 900 1546 72% 900 1717 91% Ureters and Bladder) Carotid 2200 4045 84% 2200 4201 91% 2500 4398 76% 2500 4568 83% Doppler 60.7 The OP charged more than 50 % in comparison to the standalone lab i.e. Dr. Lal Path Labs during 2015-2018 for all the 03 (three) ultrasound tests i.e. Whole Abdomen, KUB and Carotid Doppler which data is provided in the supplementary investigation report.

60.8 In this regard, the Commission notes from the submission of the OP that the reason for charging comparatively higher prices than standalone diagnostic labs may be due to the higher cost of operations as the OP, being a hospital, has to provide 24 hours functional testing facility with available staff and infrastructure to support the same and ensure faster Turn Around Time ('TAT').

60.9 The Commission is of the considered opinion that the comparison of rate for X-

Ray/ MRI/ Ultrasound operations charged by the OP with only 01 (one) standalone lab each is inadequate. Further, the charges levied by the OP for certain X-ray and ultrasound procedures would qualify as unfair only where they are significantly higher than those charged by other hospitals for comparable services.

60.10 In view of the above, the finding of the DG that unfair prices were charged by the OP for certain medical devices is not sustainable.

61. Consumables and Medicines 61.1 The DG has also compared the procurement prices and selling prices of 20 (twenty) specific consumables, 20 (twenty) top consumables, 19 (nineteen) specific medicines and 20 (twenty) top medicines of the OP in terms of volume and value and noted that significant profit margins were registered by it from 2015 to 2018. The DG has further noted that no submissions were made by the OP to show that any of such profit margins realised by it were passed on to the patients admitted in the hospital in the form of any discount.

61.2 The Commission notes that the DG has compared the procurement price and selling price of consumables/medicines to ascertain profit margin w.r.t. Consumables and Medicines.

61.3 Also, it is noted from submission as well as supplementary investigation report that consumables and Medicines are sold as per MRP.

61.4 The Commission is of considered opinion that such methodology to ascertain profit margin is not relevant and appropriate as the procurement price does not cover overhead expenses including storage cost, supply chain management cost, operational cost, inventory management cost etc,. Further, price charged by the OP for certain consumables and medicines ought to be compared with

prices charged in other super speciality hospitals or at least nearby pharmacies rather than comparing with procurement prices, in order to arrive at any finding regarding unfair pricing.

61.5 The Commission is also aware of the fact that there is no obligation under any law upon any hospital to pass on the profits earned by it upon sale of any product to its patients. Also, as argued by the OP, the hospital also incurs various other expenses in providing 'healthcare services' which are not separately chargeable from the patients (24 hours doctors and staff availability, disposal costs, warehousing cost, inventory management, R&D, etc.) as well as provides subsidised CGHS services to numerous patients. Further, there is also no finding in the supplementary investigation report that the prices charged for any consumable or medicine by the OP went beyond the MRP for the said product fixed by the manufacturer. The sample size taken by the DG (of consumables and medicines) is also quite limited.

61.6 In view of the above, the finding of DG that the prices charged for certain consumables and medicines by the OP are excessive and unfair is not established against the OP.

62. In light of the above, the Commission is of the view that in the present matter, neither of the two tests laid down in the United Brands (Supra) stand established on any count, from the evidence gathered by the DG as part of its supplementary investigation.

63. Therefore, the Commission is of the view that no case of abuse of dominant position in contravention of Section 4 of the Act can be made out against the OP in the present matter, based on the material and evidence available on record. Accordingly, the present matter is directed to be closed. Pending IAs, if any, also stand disposed of.

64. Before parting, the Commission deems it appropriate to deal with the request of the parties seeking confidentiality over certain documents / data / information filed by them under Regulation 35 of the General Regulations, 2009 (as amended). Considering the grounds given by the OP for the grant of confidential treatment, the Commission grants confidentiality to such documents / data / information in terms of Regulation 36 of the General Regulations 2024, subject to Section 57 of the Act, for a period of 03 (three) years from the passing of this order. However, it is made clear that nothing disclosed in this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same have been used and disclosed for purposes of the Act in terms of the provisions contained in Section 57 thereof.

65. The Secretary is directed to communicate a certified copy of the present order to the Informant and the OP, accordingly.

Sd/-

(Ravneet Kaur) Chairperson Sd/-

(Anil Agrawal) Member Sd/-

(Sweta Kakkad) Member Sd/-

Place: New Delhi (Deepak Anur
Date: 21.05.2026 Mem