

Fact Sheet

1. The history of man is relatively new. Our planet is 4.5 billion years old. Still, He achieved more in little time. His progress is commendable in the field of science and technology. He executed great precision on the distance to hit the target. But with achievement comes some sacrifice. He bears some part of this sacrifice. The planet bears the other part. The International Society on Global Governance on Climate Change (ISGGCC) had warned him against the irreversible damage done to the climate. Unfortunately, the man never anticipated extreme wildfire, heatwave, rainfall, or flood. Along with various Nations, Colomo adopted guidelines issued by ISGGCC.
2. In March 2019, Colomo reported a fever of an unknown cause. The symptoms are high fever, headache, joint pain, nausea, and blur vision. Scientists all over the world could not find its cause. Soon it spread at a rapid pace to other countries. It killed an exceptionally high proportion of the population. The Global Health Organization (GHO) declared it a pandemic. It chose to call it White Fever. It advised everyone to put on a mask and maintain social distance. It further advised that people should not gather in large numbers at one place because White Fever is highly contagious.
3. Bream is the second-largest developed country in the world. It has the best medical infrastructure. Despite its dynamic economic growth since the last decade, during the pandemic, it remained fragile. Often Bream government gives credit to its entrepreneurs for its economic prosperity. The entrepreneurs in turn give credit to their government which based its governance on policies enhancing competition in a free market.
4. The unanticipated pandemic situation compelled the country to face a time difficult for the government as well as its citizens. Due to this on 24th March 2020, the President announced a nationwide lockdown. On one hand, this drastic measure turned out to help break the chain of White Fever. But on the other hand, it showed the nation a time that can only be called a nightmare. Bream was not prepared for the negative repercussions of the lockdown.
5. Many people lost their jobs. It severely affected everyone financially, especially the labor class. None imagined, but the million-dollar companies were also not immune to the situation. They came to a standstill in a single moment. This costed the economy of the country. More than 10 lakh crores were lost in a short time. The dairy industry was specifically impacted. The lockdown cost the milk producers of Bream more than 112.3 crores each day.
6. Amidst the dark, one company remains unaffected. The Pure Moo Dairy Union Limited (PMDUL) smoothly navigated through this impassable road. They strategically dealt with this frightening situation with such zeal that they managed to minimize their losses. On the contrary, the revenue was increased by 689 crores.
7. All the other companies of the same kind struggled to maintain the continuity of their supply chain. Intriguingly PMDUL was operating at its full capacity. It produced 35 lakh liters of milk every day. It introduced 33 new products during this period of nationwide quarantine. It also paid 800 crores extra to the milk producers of Bream.
8. The PMDUL showcased extraordinary management of its supply chain. The milk fell under the category of essential goods. Therefore, the dairy industry was allowed to operate restrictively throughout the country.
9. Owing to lockdown, several businesses were compelled to shut down. It included restaurants, catering, and hotel businesses. Naturally, there was a decline in the sale of

dairy products. But these businesses accounted for 20% of revenue for the organized dairy sector. The sales of PMDUL also saw a decline of 10-12%. This substantial downfall in the dairy sector forced companies to quickly cut down on the procurement of dairy products. It decreased its logistics and production to a large extent.

10. Since milk procurement was scanty the farmers and milk producers were left vulnerable. Also, the reduction in milk procurement led to nonnecessity of transportation and reduced operation of factories. This paralyzed the fate of laborers and truck drivers whose livelihood was dependent on the dairy industry. The entire country was preparing for the loss of demand. But paradoxically PMDUL prepared for a surge in demand.
11. There was one variable that very few people took into consideration. That was the change in consumer behavior. Every time there is a crisis of any kind, there is a paradigm shift in consumer behavior. Though there was no demand from the restaurant yet the sales increased within the household. Under lockdown, people had to stay at home. This gave rise to the homemade food trend. As a result, the demand for groceries and milk products increased. Also, people became extremely health conscious. The packaged milk took over the sale of loose milk.
12. Various companies underestimated the situation and decreased the supply. On the other hand, the Managing Director of the PMDUL conserved the supply chain in its complete capacity. A peak in the demand for dairy products was noticed during the lockdown. The demand for cheese increased by 80%, cottage cheese increased by 40%, and condensed milk increased by 100%. Hence PMDUL prepared to operate at 115% capacity.
13. The demand was so high that it hired other plants of varied companies which lied vacant. Except for the ice cream plant the company was functional in its full capacity throughout the lockdown.
14. Given restrictions and a shortage of labor, the movement of trucks was difficult. Therefore, it made use of a railway to transport products throughout the country. The Supply chain of PMDUL is comprised of 18700 societies, 5000 milk tankers, 10,000 distributors, 1 million retailers, and 3.6 million farmers. It managed to coordinate a huge supply chain and resources accurately.
15. It was possible because of a strategic partnership with Faith Business Solution (FBS). They entered into an IT service agreement in 2009 to propel future growth.
16. PMDUL invested a hefty 80 crore into transforming the technology landscape of the company. FBS developed a sophisticated digital system called "Trakk" to trace details of operations executed within the supply chain. Also, an enforceable patent is vested with FBS for "Trakk".
17. PMDUL utilized "Trakk" to check plants working in full capacity, the number of engaged trucks, the reachability of trucks in an area, and idle tracks or plant. Duly the workload was distributed to optimize every aspect of the supply chain. The end-to-end digitalization made the process efficient. The company was able to give direct incentives to the ground staff. It also made stay arrangements of their staff so that the precautions concerning White Fever were maintained. It also realized that the cattle fodder was not sufficient. Thus, it entered into exclusive agreements with local farmers to provide cattle fodder.
18. Additionally, it entered into agreements with e-commerce sites too like Groceries Now, FruDiary and Health Basket, etc. While other dairies were shut down, PMDUL was operative in its adequate capacity. It gently thumped the market share. Post lockdown

consequently the compies level down its advertisement, but PMDUL increased its Ad volume by 316% since 2019. When Bream National Television (BNT) re-broadcasted old shows, it went aggressive with its old campaigns to reminiscent the nostalgia created by BNT. This created a better impact on the consumer.

19. The Competition Commission of Bream (CCB) had passed an order on 13th January 2021. The impugned order was passed under Section 27 of the Fair Competition Act, 1999 (herewith referred to as Act). It states that the Pure Moo Dairy Union Limited (PMDUL) had used its dominant position and contravened Section 4 of the Fair Competition Act, 1999. It also states that PMDUL indulged in anti-competitive agreements with other market players, thus violating Section 3(4)(e) of the Act.
20. The Commission acknowledged the dominance of PMDUL in the market for dairy and milk products. The PMDUL entered into exclusive agreements with Faith Business Solution (FBS) which specializes in creating a digital system to track the supply chain of a company. Some clauses of these exclusive agreements monitored the rights of FBS to do business with other entities. The emphasis was put on clause 10.1.3. The clause is as follows:
 - *"The Faith Business Solution shall not organize, sanction, recognize or support any other domestic dairy company, which is competitive to PMDUL, for 15 years."*
21. Accordingly, the CCB decided that PMDUL contravened Section 4(2)(c) and Section 3(4)(e) of the Act.
22. The PMDUL found itself aggrieved by the impugned order and preferred an appealed to Competition Appellate Tribunal (CAT). The CAT observed that the CCB violated the principles of natural justice. Thus it ordered CCB to hear the matter again. The reason iterated by the CAT is as follows:
 - "36...I hold that the finding recorded by the Commission on the issue of abuse of dominance is legally unsustainable and is liable to be setaside because the information downloaded from the net and similar other material do not have any evidentiary value and, in any case, the same could not have been relied upon by the Commission without giving an effective opportunity to the appellant to controvert the same.
 - 37. The discussion made by the Commission in the context of clause 10.1.3 of the agreement is also vitiated due to breach of principles of natural justice because the same was neither referred in the order passed under Section 26(1) nor the Director General recorded any finding *qua* its validity or otherwise and on this count the appellant did not get an opportunity to defend the said clause."
23. Therefore the matter is ordered to be disposed afresh.

Issues:

- Whether the DG is correct in concluding that the relevant market is the diary sector?

- Whether the DG is correct in concluding that the PMDUL is dominant in the relevant market?
- If the answer to Issue No. 2 is affirmative, whether PMDUL has abused its dominant position in the relevant market?
- Whether agreements entered into by PMDUL with other market players are anti-competitive?

Note: The Laws of Bream are to be presumed *pari-materia* to the laws of India.