



**COMPETITION COMMISSION OF INDIA**

**Case No. 19 of 2015**

**In Re:**

**Shri Ranbir Singh**

**G-1, Punjabi Colony, Narela,**

**New Delhi**

**Informant**

**And**

- 1. Department of Information and Public Relations,  
Government of Punjab, Ground Floor,  
Delux Building, Sector-9, Chandigarh                      Opposite Party No. 1**
- 2. Department of Information and Public Relations,  
Government of Tamil Nadu,  
Secretariat, Fort St. George,  
Chennai, Tamil Nadu    Opposite Party No. 2**
- 3. Department of Information and Public Relations,  
Government of Uttar Pradesh,  
Suchna Bhawan, Park Road,  
Opposite Civil Hospital, Hazratganj,  
Lucknow, Uttar Pradesh    Opposite Party No. 3**
- 4. Department of Information and Cultural Affairs,  
Government of West Bengal,  
Writers' Buildings, Kolkata, West Bengal                      Opposite Party No. 4**



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**CORAM:**

**Mr. Ashok Chawla**

**Chairperson**

**Mr. S.L. Bunker**

**Member**

**Mr. Sudhir Mital**

**Member**

**Mr. Augustine Peter**

**Member**

**Mr. V.S. Natha**

**Member**

**Mr. M.S. Sahoo**

**Member**

**Appearance:** Mr. G. R. Bhatia, Mr. Abdullah Hussain, Ms. Kanika Chaudhary Nayar, Mr. Rudresh Singh, Ms. Jahnani Mitra, Advocates for the Informant.

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

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the “Act”) by Shri Ranbir Singh (hereinafter referred to as the ‘**Informant**’) against the Department of Information and Public Relations, Government of Punjab (**OP 1**), the



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Department of Information and Public Relations, Government of Tamil Nadu (OP 2), the Department of Information and Public Relations, Government of Uttar Pradesh (OP 3) and Department of Information and Cultural Affairs, Government of West Bengal (OP 4), collectively referred to as OPs. It is alleged that OPs have contravened the provisions of section 4 of the Act by withholding publication of their advertisements and communications in certain newspapers in their respective states.

2. As per the information, OPs are the primary authorities which control the distribution of nearly all the advertisements and communications on behalf of their state government. These advertisements are intended to publicize the government's achievements and programs as well as to provide information about their respective state government's programs, schemes *etc.* It is stated that OPs empanelled certain publishing houses for advertisements and communications on behalf of their respective state governments. It is alleged that OPs did not follow any strict process of empanelment.
3. The Informant has contended that OPs have allegedly adopted a practice of withholding publication of advertisements and communications from those newspapers and publishing houses which have published articles critical of policies and practices of the government in power in the respective state. The Informant has stated that the following publishing houses got affected by the conduct of OPs:
  - i) The Times Group in Punjab
  - ii) The Hindu and Times Group in Tamil Nadu
  - iii) The Times Group in Uttar Pradesh
  - iv) The Anandabazar Patrika in West Bengal
4. The Informant has further submitted that the newspapers published by the above said publishing houses enjoy large circulation in the respective states and offer advertisement spaces at fairly competitive rates. As such, the



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suspension of publication of advertisements and communications by OPs does not appear to be based on business concerns but in retaliation to the articles published in these newspapers criticizing the actions/policies of the state governments. The Informant has alleged that withholding of such publications causes significant adverse impact on the readers as well as loss of revenue to the above said publishing houses.

5. The Informant has identified the relevant product market as “*advertisements through print media by the government of each state*”. In support of the same, the Informant has stated that the characteristics of advertisements through the print media are different from those on other media as the former operate only on basis of a visual and text-based element as against other mediums like television which have audio/visual element.
6. The Informant has also drawn a distinction between the advertisements published by the state governments, central government and private bodies in the print media. The rates at which these advertisements are published and the parameters on which these rates are determined are stated to be different. The Informant has stated that the government advertisement generally contain a ‘public element’ while the private advertisements focus on selling their products or improving the brand value.
7. The Informant has also made a distinction between the advertisements published by the central government and the state governments. The central government through its advertisements is stated to generally convey information of importance to the country while state governments advertise information which are fairly localized in nature. Also, according to the Informant, there exists discretion in the hands of OPs at the state level in absence of any guidelines regarding the circulation of advertisements which shows the differences in the condition of demand and supply of government advertisements at the central level and for various state governments. The Informant has also stated that government advertisements published through



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print media differ greatly from advertisements broadcast through other media as some of the communications published through print media such as information about tenders, map routes showing traffic diversions *etc.* cannot be published through other forms of media and the cost of publication in print media is lower.

8. As regards the relevant geographic market, the Informant has stated that given the localized content of advertisements, the manner of their supply, authority of OPs, selection of media houses present in their respective state and targeting local audience, the relevant geographic market would be the area of their respective state.
9. As regards the dominance, the Informant has submitted that OPs are the primary and sometimes the sole authority in their respective state which are entrusted with the task of publishing of advertisements and communications through different media. In view of this and in the absence of any competitors in their respective relevant market, OPs are stated to enjoy a virtual monopoly in the market. It is also stated that they enjoy unfettered discretion in adopting procedure for publishing of advertisements and communications of their respective state governments in print media. The Informant has submitted that there are high entry barriers with low countervailing buying power in the relevant market, which makes OPs dominant in their respective relevant market.
10. The Informant has alleged that the conduct of OPs in withholding the publication of advertisements and communications from the abovesaid newspapers amounts to restriction on the supply of information which is in contravention of the provisions of section 4(2)(a)(i) of the Act. The Informant has further alleged that OPs, by withholding the publication of government advertisements in certain newspapers, have abused their dominant position in violation of the provisions of section 4(2)(b)(i), 4(2)(c) and section 4(2)(d) of the Act.



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11. The Informant has submitted in his additional submissions that OPs fall within the definition of 'enterprise' in terms of section 2(h) of the Act. OPs, on behalf of the respective governments, are stated to be engaged in distribution and publication of communications and advertisements to various publishing platforms, including newspapers and hence control the publication of all the advertisements and communications of their state governments. As such, the activities of OPs is stated to be covered within the definition of 'service' under section 2(u) of the Act. The Informant has also placed reliance on previous orders passed by the Commission in order to impress upon the fact that the absence of motive of profit earning does not preclude activities of OPs from the realm of economic activities and are not exempted under the proviso of sovereign functions. The Informant has placed on record certain documents to highlight the difference in price charged from OPs and private advertisers for publishing their advertisements.
12. Based on the abovementioned allegations, the Informant has prayed for initiation of an inquiry under section 26(1) of the Act against OPs for their alleged abusive conduct.
13. The Commission has perused the material placed on record including the additional submissions made by the Informant. The Commission heard the counsels on behalf of the Informant on 12.05.2015.
14. Facts of the case reveal that the grievance of the Informant essentially relates to the alleged conduct of OP in withholding the publication of advertisements and communications from the above said newspapers in contravention of the provisions of section 4 of the Act.
15. The Commission observes that an advertisement proposed to be made by the government for a certain purpose which is to be communicated through a certain mode only like print, audio, video, digital etc. is not substitutable. For example, awareness programs such as consumer protection or family welfare



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are usually promoted through radio and television advertisements owing to their mass reach. At the same time, advertisements like applications for employment, highlighting government achievements *etc.* are best publicized through print media. Therefore, in case of government advertisements, it is the impact and content of the advertisements which is the key factor in deciding the appropriate mode of advertisement. Similarly, in private advertisements, choice of mode of advertising depends on cost and the targeted viewer. Thus, if a print media publisher increases the price of advertisement by a small but significant amount, the consumer is unlikely to switch to other forms of media since such an advertisement is suitable only for a particular mode of advertisement.

16. In the light of the above observations, the relevant product market in the instant case would be the “*market for procurement of advertisement space in print media*”. In this market, the producer is the print media publisher and the consumer of the product is the advertiser who pays for the service of publishing of its advertisements in the print media.
17. With regard to the relevant geographic market, it is noted that a consumer will prefer to buy advertisement space in print media which is in circulation in that particular state. It may not opt for advertisement outside the contours of that state. Thus, the Commission is in agreement with the delineation of the relevant geographic market made by the Informant. Thus, all the four OPs will have different relevant market as the “*market for procurement of advertisement space in print media in the state of Punjab/ Tamil Nadu/ Uttar Pradesh and West Bengal*”.
18. Having identified the relevant market, the Commission proceeds to examine the dominance of OPs in their respective relevant market. Assessment of dominance of an enterprise is inextricably connected with the concept of market power of the enterprise (being examined) which allows the same to act independently of competitive constraints.



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19. The dominance of OPs in their respective relevant market may be assessed on the basis of the figures relating to collective expenditure on print advertisements by the state governments on a national level. As per the information available in the public domain, the Commission observes that the print media's revenue, in the financial year 2013, from advertisement in India stood at Rs.163 billion. (Source: *FICCI-KPMG Indian Media and Entertainment Industry Report 2014*, Pg. 50). Out of this, expenditure on print advertisements by the state government was Rs.20 billion.
20. It is further observed that, at the national level, the state government contribute only about one-eighth of their total print advertisement expenditure. As per the information available in the public domain, the largest contributors in print media advertising are Fast Moving Consumer Goods (FMCG) (13.6%), Automobile (11.9%), Education (9.4%), Real Estate (8.1%), Fashion (6.1%) and Retail (5.3%). (Source: *Pitch Madison Media Advertising Outlook 2015*).
21. From the above data, it is noted that the government advertising at central or state level, does not feature in top 6 spenders on advertising. It contributes only Rs.24 billion (Rs.4 billion at the central and Rs.20 billion at the state level) out of Rs.163 billion of print media advertisement revenues. Therefore, Commission is of the considered opinion that OPs are not dominant in their respective relevant market in procuring the advertising space in print media. It would be farfetched to say that the survival of print media is dependent on the advertisement of the government. Furthermore, there is no dearth of source of advertisement from the private sphere also.
22. The Informant has also not produced any cogent material to show the dominance of OPs in their respective relevant market. Thus, *prima facie*, OPs do not appear to be in a dominant position in their respective relevant market. In the absence of dominance of OPs in their respective relevant market, their conduct need not be examined under the provisions of section 4 of the Act.





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23. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against OPs in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.
24. The Secretary is directed to inform the parties accordingly.

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**

**Sd/-**  
**(S. L. Bunker)**  
**Member**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**New Delhi**  
**Date: 05/08/2015**

**Sd/-**  
**(M. S. Sahoo)**  
**Member**