



COMPETITION COMMISSION OF INDIA

Case No. 22 of 2017

In Re:

**Flyash Based Bricks Manufacturers & Promoters Association
5, Swapan Lok Apartment,
IVRI Road, Izzat Nagar,
Bareilly 243122, Uttar Pradesh**

Informant

And

**Chief Secretary, Government of Uttar Pradesh Sachivaliya,
Vidhan Sabha, Road, Lucknow 226001, Uttar Pradesh**

OP-1

**Principal Secretary, Department of Environment,
601, Bapu Bhawan, Secretariat,
Vidhan Sabha Marg, Lucknow 226001, Uttar Pradesh**

OP-2

**Secretary, UP Brick Manufacturers Samiti
87/15 Risaldar Park, Lal Kuan,
Lucknow 226001, Uttar Pradesh**

OP-3

**The Director, Directorate of Environment Uttar Pradesh,
Vinnat Khand-1, Gomtinagar, Lucknow 228010, Uttar Pradesh**

OP-4

**Member Secretary, UP Pollution Control Board,
Building No. TC-12V, Vibhuti Khand, Gomti Nagar, Lucknow
226010, Uttar Pradesh**

OP-5

**Chairman (Principal Secretary Environment, Govt. of Uttar
Pradesh), State Monitoring Committee for Fly Ash Utilisation,
Department of Environment,
601, Bapu Bhawan, Secretariat,
Vidhan Sabha Marg, Lucknow 226001, Uttar Pradesh**

OP-6

**Chairman, State Environment Impact Assessment Authority,
2/90, Viram Khand-2, Gomti Nagar,**



Lucknow 226010, Uttar Pradesh	OP-7
Member Secretary, State Level Expert Appraisal Committee, Director (Environment), Environment Directorate, Govt. of Uttar Pradesh, Dr. Bhimrao Ambedkar Paryavaran Parisar, Vineet Khand-1, Gomtinagar, Lucknow-226010, Uttar Pradesh	OP-8
Engineer in Chief, Public Works Department, Nirman Bhawan, 96 MG Road, Opp. Raj Bhawan, Lucknow 226001, Uttar Pradesh	OP-9
Managing Director, UP. State Bridge Corporation Ltd, 16 Setu Bhawan 16, Madan Mohan Malviya Marg, Lucknow, Uttar Pradesh	OP-10
Chief Executive Officer, UP State Highways Authority, 4th Floor, Mandi Bhawan, Vibhuti Khand Gomti Nagar, Lucknow 226010, Uttar Pradesh	OP-11
Managing Director, Uttar Pradesh Rajkiya Nirman Nigam Ltd., Near Bank of Baroda, R.M.L. Hospital, Picup Bhawan Rd, Vibhuti Khand, Gomti Nagar, Lucknow 226010, Uttar Pradesh	OP-12
Principal Secretary, Department of Housing and Urban Development Government of Uttar Pradesh, IIIrd Floor Phase II, Babu Bhawan, Lucknow 226001, Uttar Pradesh	OP-13
Executive Director, Awas Bandhu, Department of Housing and Urban Planning, 1st Floor, Janpath Market, Hazrat Ganj, Lucknow, Uttar Pradesh	OP-14
Housing Commissioner (Head Quarters), Uttar Pradesh Housing and Development Board, 104, MG Road Lucknow 226001, Uttar Pradesh	OP-15



Director, Directorate of Local Urban Bodies, 8th Floor, Indra Gandhi Bhawan, Lucknow 226001, Uttar Pradesh	OP-16
Commissioner, Department of Rural Development, 10th Floor, Jawahar Bhawan, Askok Marg, Lucknow 226001, Uttar Pradesh	OP-17
Commissioner, MGREGA, Office of Commissioner Rural Development, 10th Floor, Jawahar Bhawan, Lucknow 226001, Uttar Pradesh	OP-18
Director, Panchayati Raj Directorate, Department of Panchayati Raj, Government of UP, Purania, Aliganj, Lucknow, Uttar Pradesh	OP-19
Chief Engineer / Director Rural Engineering Department Room No. 625 6th Floor, Jawahar Bhawan, Lucknow 226001, Uttar Pradesh	OP-20
Managing Director, Madhyanchal Vidyut Vitran Nigam Limited, Head Office 4-A, Gokhale Marg, Lucknow 226001, Uttar Pradesh	OP-21
Managing Director, Dakshinanchal Vidyut Vitran Nigam Ltd. Urja Bhavan, NH - 2 (Agra - Delhi Bypass Road), Sikandra, Agra 282007, Uttar Pradesh	OP-22
Managing Director, Purvanchal Vidyut Vitaran Nigam Ltd. DLW Bhikharipur, Varanasi 221004, Uttar Pradesh	OP-23
Managing Director, Paschimanchal Vidyut Vitran Nigam Ltd., Urja Bhawan, Victoria Park, Meerut 250001, Uttar Pradesh	OP-24



- Managing Director,
Kanpur Electricity Supply Company Limited.
Headquarter, Kesa House, 14/71 Civil Lines,
Kanpur, Uttar Pradesh** OP-25
- Principal Chief Conservator of Forest,
Rana Pratap Marg, Lucknow 226001, Uttar Pradesh** OP-26
- Engineer in Chief (Irrigation) and HOD,
Irrigation and Water Resource Department,
Government of Uttar Pradesh,
Sinchai Bhawan, Cantt Road, Udaiganj,
Lucknow 226001, Uttar Pradesh** OP-27
- Chief Executive Officer, State Level Nodal Agency,
IWMP Department of Barren Land Development,
Government of Uttar Pradesh, ELDECO Corporate Tower,
Vibhuti Khand, Gomti Nagar, Lucknow 226010, Uttar Pradesh** OP-28
- Chairman and Administrator,
Sharda Sahayak Samadesh Shetra Vikas evam Jal Prabhandan
Priyojna, Government of Uttar Pradesh,
23C Ghokhale Marg, Lucknow, Uttar Pradesh** OP-29
- UP Bhumi Sudhar Nigam,
T.C/19V, Vibhuti Khand, Gomti Nagar,
Lucknow 226010, Uttar Pradesh** OP-30
- Director, State Agriculture Produce Market Board,
Mandi Parishad, Kisan Mandi Bhawan, Vibhuti Khand,
Gomti Nagar, Lucknow 226010, Uttar Pradesh** OP-31
- Managing Director,
UP Vidhayan evam Nirman Sehkari Sangh Nigam,
G – 4/5 B Sector 4, Gomti Nagar Vistar,
UP PACCFED, Lucknow 226010, Uttar Pradesh** OP-32



UP Jal Nigam, 6 Rana Pratap Marg Lucknow 226001, Uttar Pradesh	OP-33
Managing Director, Construction and Design Services, UP Jal Nigam, TC-38V, Vibhuti Khand, Gomti Nagar, Lucknow 226010, Uttar Pradesh	OP-34
Managing Director, UP Projects Corporation, Left Bank, Gomti Barrage, Gomti Nagar Lucknow 226010, Uttar Pradesh	OP-35
Managing Director, Uttar Pradesh Construction and Infrastructure Development Corporation, TC- 46V, Vibhuti Khand, Gomti Nagar, Lucknow-226010, Uttar Pradesh	OP-36
Commissioner, Cane Development and Sugar Industries Department, Government of UP, 17 Newberi Road, Dalibagh, Lucknow 226001, Uttar Pradesh	OP-37
Managing Director, Uttar Pradesh State Industrial Development Corporation, UPSIDC Complex, A-1/4 Lakhanpur, Kanpur 208024, Uttar Pradesh	OP-38
Commissioner and Director of Industries, 117/53, G T Road, Sarvodaya Nagar, G T Road, Kanpur 208005, Uttar Pradesh	OP-39
Managing Director, UP State Warehousing Corporation, New Hyderabad, Lucknow 226007, Uttar Pradesh	OP-40
Managing Director, Uttar Pradesh Cooperative Federation Limited, 32, Station Road, PCF Building, Lucknow 226001, Uttar Pradesh	OP-41



UP Police Awas Nigam Ltd, Near Bank of Baroda, Picup Bhawan Rd, Vibhuti Khand, Gomti Nagar, Lucknow 226010, Uttar Pradesh	OP-42
Samaj Kalian Vibhag, Government of Uttar Pradesh, Narayan Road, Lucknow 226018, Uttar Pradesh	OP-43
State Urban Development Agency (SUDA), Navchetna Kendra, 10 Ashok Marg, Lucknow 226001, Uttar Pradesh	OP-44
General Manager, Northern Railway Head Quarters, Baroda House, Kasturba Gandhi Marg, New Delhi 110001	OP-45
General Manager, NE Railway Head Quarter, 11, NH 29, Betiahata, Gorakhpur Uttar Pradesh	OP-46
NR-ADG(NR)II-CA(NR)II-SA (Lucknow) Circle Office, SA (Lucknow), CPWD, Kendriya Bhawan, Sector H, Aliganj, Lucknow 226024, Uttar Pradesh	OP-47
Regional Executive Director-NR Regional Headquarters, NR, Airport Authority of India, Ops Offices, Gurgaon Road, New Delhi 110 037	OP-48
NABARD, 11, Vipin Khand, Gomti Nagar, Lucknow 226010, Uttar Pradesh	OP-49
UP Cooperative Bank Ltd, Farmers Cooperative Building, 2, Mahatma Gandhi Marg, Lucknow 226001, Uttar Pradesh	OP-50
Allahabad Bank, 2, N.S. Road, Kolkata 700001, West Bengal	OP-51
Andhra Bank, Door No 5-9-11, Dr Pattabhi Bhavan, Secretariat Road, Saifabad Khairatabad, Hyderabad 500004, Andhra Pradesh	OP-52



Bank of Baroda, Suraj Plaza-1, Sayaji Ganj, Vadodara 390020, Gujarat	OP-53
Bank of India, Star House C - 5, G Block, Bandra Kurla Complex Bandra (East), Mumbai 400 051, Maharashtra	OP-54
Bank of Maharashtra, 1501, Lokmangal, Narveer Tanaji Wadi, Shivaji Nagar, Pune 411005, Maharashtra	OP-55
Canara Bank, No.112, Jc Road, Bangalore 560002, Karnataka	OP-56
Central Bank of India, Chander Mukhi, Nariman Point Mumbai 400 021, Maharashtra	OP-57
Corporation Bank, Mangaladevi Temple Road Pandeshwar Mangalore 575 001, Karnataka	OP-58
Dena Bank, Dena Corporate Centre C-10, G Block, Bandra-Kurla Complex Bandra [E], Mumbai 400 051, Maharashtra	OP-59
IDBI Bank Ltd., IDBI Tower, WTC Complex, Cuffe Parade, Colaba, Mumbai 400005, Maharashtra	OP-60
Indian Bank, 66 Rajaji Salai, Chennai 600001, Tamil Nadu	OP-61
Indian Overseas Bank, Central Office, 6th Floor, Annex Building, 763, Anna Salai, Chennai 600 002, Tamil Nadu	OP-62
OBC, Plot No. 5, Institutional Area, Sector – 32, Gurgaon 122001, Haryana	OP-63
Punjab National Bank, Bhikaji Cama Place, Delhi - 110066	OP-64



**Syndicate Bank, Door No. 16/355 and 16/365A
Udupi District, Manipal 576104, Karnataka** **OP-65**

**UCO Bank, Head Office,10, B T M Sarani,
Kolkata 700 001, West Bengal** **OP-66**

**Union Bank of India, Union Bank Bhavan, 239,
Vidhan Bhavan Marg Nariman Point,
Mumbai 400 021, Maharashtra** **OP-67**

**Vijaya Bank, 41/2, Trinity Circle,
M.G. Road, Bangalore 560001, Karnataka** **OP-68**

**The Pradeshiya Industrial and Investment Corporation of U.P.
Ltd., Picup Bhawan, Vibhuti Khand, Gomti Nagar,
Lucknow 226010, Uttar Pradesh** **OP-69**

**UP Finance Corporation (UPFC),
14/88, Civil Lines, Kanpur 208 001, Uttar Pradesh** **OP-70**

(Hereinafter, OP-1 to OP-70 are collectively referred to as the OPs)

CORAM

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

**Justice Mr. G.P. Mittal
Member**



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

1. The information in the present case has been filed by Flyash Based Bricks Manufacturers & Promoters Association (hereinafter, the ‘**Informant**’) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against the OPs, alleging contravention of Sections 3 and 4 of the Act.
2. The Informant is stated to be an association constituted and established for the welfare of fly ash based brick manufacturers and for promotion of fly-ash bricks and green technology in the construction industry. The Informant is stated to be registered under the Societies Registration Act, 1860.
3. The Informant has averred that the OPs include Departments of Government of Uttar Pradesh and Government of India and enterprises owned by them, which are involved in building and construction activities. Some of the OPs are involved in construction of buildings as well as in regulation of construction related activities like approval of plans, sanction of maps, *etc.* It has also been submitted that (a) the area of operation of OP-1 to OP-44 is exclusively the State of Uttar Pradesh; (b) OP-45 to OP-48 are enterprises under the Government of India which are *inter alia* engaged in civil construction activities in the State of Uttar Pradesh; and (c) the remaining OPs *i.e.* OP-49 to OP-70 are financial institutions which *inter alia* finance public and private sector enterprises in building and construction activities.
4. The Informant has submitted that the Ministry of Environment, Forests and Climate Change (MoEF&CC) issued two notifications *i.e.* S.O. 763(E) dated 14/9/1999 subsequently amended *vide* S.O. 979(E) dated 27/8/2003 and S.O. 2804 dated 3/11/2009 subsequently amended *vide* S.O. 254 (E) dated 25/1/2016 (hereinafter, “**Fly Ash Notifications**”) which made it mandatory for every construction agency engaged in construction of buildings built within a radius of



300 kilometers from lignite/coal based thermal power plants to use only fly ash based products for construction.

5. It has been further averred that for violation of the mandate as contained in the above stated Fly Ash Notifications, the jurisdiction of the National Green Tribunal, Principal Bench, New Delhi (“NGT”) was invoked in O.A. No.102/2014 titled *Sandplast (India) Ltd. and Others v. MoEF and Others*. In the said matter, the Hon’ble NGT passed the following order on 24.9.2014 –

“In the meanwhile, we direct all the State Government/Public Authorities and Corporations to ensure that the aforementioned two notifications should be adhered to strictly and every tender for construction works issued by any of the State Government/Public Authorities shall contain stipulations and specifications as contemplated under these two Notifications.”

6. Further, as per the orders issued by the Government of Uttar Pradesh in 2016, it is mandatory for every agency involved in construction activity within a radius of 300 kilometres from coal based thermal power plants to use only fly ash based products. However, even after passage of 17 years since the Fly Ash Notifications have come into force, these notifications are still at infancy and the OPs have not taken any concrete action to implement these notifications.
7. It has been alleged by the Informant that the OPs have an un-written understanding and anti-competitive agreement with the lobby of clay brick kiln owners and registered contractors due to which the OPs are defying mandatory provisions for use of fly ash products in construction activities.
8. The Informant has also alleged that the OPs are enjoying absolute monopoly and dominance in civil construction activities in the State of Uttar Pradesh as they control more than 90 per cent of all public sector construction activities across the State of Uttar Pradesh. Further, these OPs are abusing their dominance by not implementing the above stated Fly Ash Notifications and the judicial orders of the Hon’ble NGT.



सत्यमेव जयते



9. The Informant has also alleged that OP-49 to OP-70 are dominant enterprises in the loan sector in the State of Uttar Pradesh as more than 75 per cent of loans for civil construction projects are financed by these OPs. Further, these OPs are abusing their dominance by not including a mandatory clause in the loan sanction documents that advocates for necessary use of fly ash products in construction activities in the State of Uttar Pradesh, in accordance with the Fly Ash Notifications.
10. On the basis of above, the Informant has alleged contravention of Sections 3 and 4 of the Act by the OPs.
11. The Commission has perused the information and the material available on record. From the facts and circumstances of the case, it appears that the Informant is aggrieved by the non-compliance of Fly Ash Notifications issued by MOEF&CC and orders of Hon'ble NGT in relation to use of fly ash based construction material in the State of Uttar Pradesh by various state agencies involved in civil construction activities. The Informant has also made financial institutions, financing building and construction activities in the State of Uttar Pradesh, as OPs for failure on their part to enforce implementation of Fly Ash Notifications in their loan sanctioning documents. The Informant has alleged that there is an un-written anti-competitive agreement amongst the OPs to restrict the use of fly ash bricks in civil construction activities, which is alleged to be violation of Section 3 of the Act.
12. In this regard, the Commission observes that the Informant has not placed any material on record to suggest that non-implementation of Fly Ash Notifications is because of any concerted action or agreement /understanding between the OPs *inter se* or between the OPs on one hand and the lobby of brick kiln manufacturers and contractors on the other. Further, there is no evidence available in the public domain to suggest any such concerted action in respect of non-implementation of Fly Ash Notifications on the part of the OPs. Mere allegations are not sufficient to form a *prima facie* view that non-implementation



of Fly Ash Notifications is due to concerted action on the part of OPs. No agreement of the nature prohibited under Section 3 of the Act is discernible from the facts and allegations levelled by the Informant.

13. In addition to violation of Section 3 of the Act, the Informant has also alleged that the OPs are enjoying dominance in civil construction activities in the State of Uttar Pradesh and non-compliance of Fly Ash Notifications by the OPs amounts to abuse of their dominant position in violation of Section 4 of the Act.
14. For the purpose of analysis under Section 4 of the Act, the first requirement is to delineate the relevant market as per Section 2 (r) of the Act. The next step will be to assess the dominance of the OPs in the defined relevant market as per the factors enumerated under Section 19 (4) of the Act and once the dominance of the OPs is established, the final step would be to look into the allegations of abuse of dominance.
15. The Informant has not specifically delineated the relevant market in the information and plainly submitted that the OPs are dominant players and are abusing such position to deny market access to bricks manufactured from fly ash. The allegations in the instant matter relate to procurement of fly ash based bricks for construction activities. As per the Informant, fly ash is a by-product from coal based thermal power plants and is considered a hazardous waste material; in the past, its disposal had posed numerous ecological and environmental problems. However, due to their pozzolanic property, fly ash bricks and blocks are considered a solution to preserve the fertile lands and to fulfil the ever increasing demand for bricks in the construction industry. The other kind of brick that is primarily used in construction activities is the red coloured clay based brick.
16. The Commission observes that both kind of bricks can be used in construction activities interchangeably. However, use of fly ash based bricks is recommended over clay based bricks due to certain properties of the former like higher strength, uniform size of bricks, lower water penetration, *etc.* Further, the price of two types of bricks are very close to each other. Thus, the two types of bricks seem



to be substitutable with each other. Therefore, the relevant product market in the instant matter would be '*market for procurement of bricks for construction activities*'.

17. In relation to the relevant geographic market, the Informant has submitted that the area of operation of the OPs is primarily the State of Uttar Pradesh. Further, it is observed that members of the Informant are manufacturers of bricks/blocks made out of fly ash located in the State of Uttar Pradesh. The Commission notes that bricks are a high volume and low value product and as the proportion of transportation cost in the total cost of bricks is high, bricks cannot be sold in distant markets. Further, the Informant has also submitted that in case of OP-1 to OP-44, the area of operation is limited to the State of Uttar Pradesh. Therefore, they would procure bricks only from kilns spread across the state for their requirements. Thus, the relevant geographic market would be the '*State of Uttar Pradesh*'.
18. Accordingly, the Commission is of the view that as far as OP-1 to OP-48 are concerned, the relevant market is the "*market for procurement of bricks for construction activities in the State of Uttar Pradesh*".
19. The Informant has submitted that OP-1 to OP-48 are operating and are involved in civil construction activities in the State of Uttar Pradesh in a significant manner and together they control more than 90 per cent of the public sector construction activities across the State of Uttar Pradesh. From the submissions given in the information, it appears that the Informant has alleged collective dominance of OP-1 to OP-48 in the relevant market whereas Section 4 of the Act stipulates that only one enterprise or one group can hold dominant position. Further, the Informant has also not provided any information regarding procurement of bricks establishing dominance of any of OP-1 to OP-48 in the relevant market. Hence, the present argument of the Informant regarding collective dominance of the aforementioned OPs cannot be entertained under the provisions of the Act.



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20. The information available in public domain also does not indicate dominance of any of the aforementioned OPs in the relevant market. The Commission also notes that the Informant has taken into account the construction activities undertaken only by the departments/public sector while alleging abuse of dominance by the OPs, completely overlooking the construction activities undertaken by the private sector in the State of Uttar Pradesh. The Informant has submitted that OP-1 to OP-48 are consuming more than 60 per cent of the total bricks production in the State of Uttar Pradesh indicating that 40 per cent of brick procurement/consumption is done by private entities. Based on the foregoing discussion, it can be concluded that none of the aforementioned OPs appear to be dominant, individually, in the relevant market. Further, the aforementioned OPs are also not part of one group, which can be construed as dominant in terms of Section 4 of the Act.
21. As far as OP-49 to OP-70 are concerned, the Informant has alleged that these OPs are dominant in the market for financing of construction activities in the State of Uttar Pradesh. Thus, the relevant market may be considered as the “*market for provision of financing services in the State of Uttar Pradesh*”. In relation to dominance of OP-49 to OP-70 also, the Commission notes that the Informant has not alleged dominance of one single OP in the relevant market and has not provided any information establishing dominance of any of these OPs in the relevant market. The information available in public domain also does not indicate dominance of any of the aforementioned OPs in the relevant market. Moreover, there are a number of private sector institutions also, engaged in similar activities in the relevant market apart from the aforementioned OPs. In view of the above, it can be inferred that none of the aforementioned OPs appears to be dominant, individually, in the relevant market. Moreover, they cannot be also considered as a part of a group as required under Section 4 of the Act.
22. In the absence of any dominant position being enjoyed by any of the OPs in the relevant market(s), the alleged abuse cannot be examined under the Act.



23. In the light of the above analysis, the Commission finds that no case of contravention of the provisions of Sections 3 and 4 of the Act is made out against the 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 Informant accordingly.

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi

Dated: 16/08/2017