



Case No. 35 of 2013

**IN THE MATTER OF:**

Advertising Agencies Guild .....Informant  
E-170, Lower ground Floor, East of Kailash, New delhi-110065

And

Indian Broadcasting Foundation & its members ...Opposite Parties (OPs)  
B-304, Third Floor, Ansal plaza, Khelgaon Marg, Andrewsganj, New Delhi-110049

**CORAM:**

Mr. Ashok Chawla  
Chairperson

Dr. Geeta Gouri  
Member

Mr. Anurag Goel  
Member

Mr. M. L. Tayal  
Member

Mr. Justice (Retd.) S. N. Dhingra  
Member

Mr. S.L.Bunker  
Member

Through: Lakshmikumar & Sridharan, Advocates (New Delhi)



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

Informant was an association of small and medium sized advertising agencies set up to look after the interest of small and medium sized agencies besides interacting with professional bodies such as the Indian Newspaper Society (INS), Government, advertising agencies and associations. Indian Broadcasting Foundation (IBF) (OP 1) was a section 25 company, claimed to be India's premium apex organization of television broadcasters. OP 1 was stated to consist of major broadcasters with more than 250 TV Channels enjoying a unique position as the accredited spokesman of the broadcasting industry.

2. Informant alleged formation of a cartel by the members of IBF through the medium of OP 1. It further alleged that OP 1 and its members had been acting as a cartel for a long time and even during the MRTP regime OP 1 was suspected of acting as a cartel. The informant association averred that the members of OP 1 wanted to shift from the time tested and industry wide practice of gross billing basis to a net billing to the advertising agencies and were forcing the advertising agencies to agree to the new mechanism. They collectively boycotted and did not broadcast advertisements on their Channels for two days viz. 01.05.2013 & 02.05.2013.

3. The informant stated that the Advertising agencies had no other option but to agree to the demands of OP 1 as it directed all its members to stop screening advertisements during the aforementioned period and thereby forced the advertising agencies to shift to the new billing system. This act of OP 1 was described in the information as a classic case of a group boycott/ cartel where all the channels boycotted the advertisement agencies.

4. It was alleged that the agreement amongst the members of OP 1 and the decision taken by OP 1 to switch to a net billing method are agreements in violation of sections 3(1) and 3(3) of the Act and has an appreciable adverse effect on competition. The informant further alleged that the decision taken by OP 1 to drop advertisements from TV on 01.05.2013 & 02.05.2013 and the action of the broadcasting companies to follow the decision of IBF in dropping



advertisements were anti-competitive in violation of sections 3(1) and 3(3) of the Act.

5. Based on the above averments and allegations, the informant, *inter alia*, prayed to the Commission to hold that the decision of IBF and the agreements amongst its members to boycott advertisements of the advertisers as anti-competitive under section 3 of the Act. The informant also prayed to hold that the decision of IBF and the agreement amongst the various members of IBF to shift to the net billing method as an anti-competitive agreement under section 3 of the Act.

6. The Commission has perused the information and heard the counsel for informant at length. The informant highlighted two grievances against the opposite party association of broadcasters. Firstly, the agreement amongst the members of IBF and the decision taken by IBF to switch to a net billing method and; secondly, the decision taken by IBF to drop advertisements from TV on 01.05.2013 & 02.05.2013—both of which were alleged to be anti-competitive agreements having appreciable adverse effect on competition

7. Undoubtedly, there has been a collective action by OP 1 and its members but primarily the trade associations are for building consensus among the members on policy/other issues affecting the industry and to promote these policy interests with the government and with other public/private players. Such activities may not necessarily lead to competition law violation. To perceive otherwise will render the trade association bodies as completely redundant, being opposed to competition law. The trade association provide a forum for entities working in the same industry to meet and to discuss common issues. They carry out many valuable and lawful functions which provide a public benefit e.g. setting common technical standards for products or interfaces; setting the standards for admission to membership of a profession; arranging education and training for those wishing to join the industry; paying for and encouraging research into new techniques or developing a common response to changing government policy. Therefore, membership and participation in the collective activities of a trade association cannot by itself amount to violation of competition law as such.



However, when these trade associations transgress their legal contours and facilitate collusive or collective decision making with the intention of limiting or controlling the production, distribution, sale or price of or trade in goods or provision of services as defined in section 2(c) of the Act, by its members, it will amount to violation of the provisions of the Act.

8. In the present case the OPs collectively took the decision to shift from the gross billing method to net billing method. The reason given by the OPs (as stated in the information) related to the Income Tax department's mandate which requires the members of OP 1 to deduct TDS on the 15% Discount (which amounts to commission to the advertising agencies) given to the advertising agencies (which include members of the informant association). Since OPs were not deducting TDS on the 15% discount/commission, they decided to start billing at net 85% instead of showing gross bill as 100% reduced to 85% after showing discount on the invoice.

9. The Commission does not find any competition issue involved in the change of this billing system. In the net billing method, only the net bill or the charges of the broadcaster are to be indicated and the trade discount which was reflected in the bills is no longer to be mentioned in the invoices. The informant alleged that this decision would significantly affect the members of the advertising agencies industry and the advertisers as it would result in a sudden stoppage of a practice that was well established and running without any problem. This contention seems to be without any logical basis and lacks existence of any competition issue involved in which the Commission should interfere.

10. The informant alleged violation of section 3(1) read with 3(3) of the Act. At this juncture, it may be stated that section 3(3) of the Act is applicable when there is a horizontal agreement between players operating at the same level in a particular market. Such agreement may be in the form of price fixation, market sharing, collusive bidding etc. which will have an appreciable adverse effect on competition within the market in which they are operating. Collective action of the members of a trade association *per se* does not fall in the categories of agreements contravening section 3(3) of the Act. Simply, a



collective action taken at the level of the trade association to change the billing system *prima facie* does not amount to any contravention under the Act.

11. On the basis of aforesaid, the Commission is of the view that there does not exist a *prima facie* case for directing DG to investigate the matter. The case deserves to be closed under section 26 (2) of the Act and is accordingly hereby closed.

12. The Secretary is directed to communicate the decision of the Commission to all concerned accordingly.

New Delhi

Dated: 01/07/2013

Sd/-  
(Ashok Chawla)  
Chairperson

Sd/-  
(Dr. Geeta Gouri)  
Member

Sd/-  
(Anurag Goel)  
Member

Sd/-  
(M. L. Tayal)  
Member

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