



COMPETITION COMMISSION OF INDIA

Case No. 48 of 2021

In Re:

**Mr. Dushyant,
House No. 19, Type-2, Varun Kunj, Rohini Sector -5,
Near Rithala Metro Station,
New Delhi-110085**

Informant

And

**National Accreditation Board for Testing and
Calibration Laboratories (NABL)
NABL House, Plot No. 45, Sector 44,
Gurugram, Haryana - 122003**

Opposite Party No. 1

**Central Public Works Department (CPWD)
Ministry of Housing and Urban Affairs,
Government of India,
A-Wing, Room No. 101,
Nirman Bhawan, New Delhi**

Opposite Party No. 2

**Food Safety and Standards Authority of India
(FSSAI)
3rd & 4th Floor, FDA Bhawan, Kotla Road,
Near Bal Bhawan, New Delhi - 110002**

Opposite Party No. 3

**Ministry of Health & Family Welfare
Room No. 348, 'A' Wing, Nirman Bhawan,
New Delhi-110011**

Opposite Party No. 4

**Department of Commerce
Ministry of Commerce and Industries,
Government of India,
Udyog Bhawan,
New Delhi-110011**

Opposite Party No. 5

**Consumer Industry Section,
Department of Industrial Policy and Promotion,
Ministry of Commerce and Industries,
Government of India
Udyog Bhawan, New Delhi-110011**

Opposite Party No. 6



**Ministry of Road Transport and Highways
Government of India,
Transport Bhawan,
1, Parliament Street, New Delhi-110011**

Opposite Party No. 7

**Water Quality Section
Ministry of Drinking Water and Sanitation,
Government of India, C Wing, 4th Floor,
Pandit Deendayal Antyodaya Bhawan,
CGO Complex,
Lodhi Road, New Delhi – 110003**

Opposite Party No. 8

**Delhi Development Authority (DDA)
D-Block, Vikas Sadan, INA,
New Delhi – 110023**

Opposite Party No. 9

**Indian Council for Medical Research
V. Ramalingaswami Bhawan,
P.O. Box No. 4911, Ansari Nagar,
New Delhi – 110029**

Opposite Party No. 10

**Regional Ayurvedic Research Institute for Skin
Disorders
Ministry of Ayush, Government of India
Jawahar Lal Nehru Bhartiya Chikitsa Avum
Homeopathy Anusandhan Bhavan No.61-65,
Institutional Area, Opp. 'D' Block, Janakpuri,
New Delhi – 110058**

Opposite Party No. 11

**WAPCOS Limited
5th Floor, Kailash Building,
26, Kasturba Gandhi Marg,
New Delhi – 110001**

Opposite Party No. 12

**National Capital Region Transport Corporation
Limited
Gati Shakti Bhawan, INA,
New Delhi – 110023**

Opposite Party No. 13

**Water Resources Department,
Government of Madhya Pradesh
Jal Sansadhan Bhawan,
Tulsi Nagar, Bhopal (M.P.) – 462003**

Opposite Party No. 14

**Delhi Metro Rail Corporation (DMRC)
Metro Bhawan Fire Brigade Lane,
Barakhamba Road, New Delhi – 110001**

Opposite Party No. 15



**Research Design and Standard Organization,
Ministry of Railways, Government of India,
Manak Nagar, Lucknow (U.P.)-226011**

Opposite Party No. 16

**Ministry of Railways, Government of India
Room No. 301, Railway Board,
New Delhi -110001**

Opposite Party No. 17

**Container Corporation of India Limited
CONCOR Bhawan, C-3, Mathura Road,
Opposite Apollo Hospital,
New Delhi – 110076**

Opposite Party No. 18

**Ministry of New and Renewable Energy,
Government of India, Block-14,
CGO Complex, Lodhi Road,
New Delhi – 110003**

Opposite Party No. 19

**Government e-marketplace, Ministry of Commerce
& Industry, Government of India,
2nd Floor, Jeevan Tara Building,
5, Sansad Marg, New Delhi – 110001**

Opposite Party No. 20

**Ministry of Consumer Affairs
Food and Public Distribution, Government of India**

Opposite Party No. 21

**Ministry of Health and Family Welfare
Government of India Room No. 348;
'A' Wing, Nirman Bhavan,
New Delhi-110011**

Opposite Party No. 22

**New Delhi Municipal Corporation
Palika Kendra, Parliament Street,
New Delhi – 110001**

Opposite Party No. 23

**Delhi Jal Board
Room No. 306, 3rd Floor, Varunalaya Ph-II,
Jhandewalan, Karol Bagh,
New Delhi-110005**

Opposite Party No.24

**Airport Authority of India
Corporate Headquarter, Rajiv Gandhi Bhawan,
Safdarjung Airport, New Delhi- 110003**

Opposite Party No. 25

**Power Grid Corporation of India Limited
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110016**

Opposite Party No. 26



**North Central Railway
Ministry of Railways, Government of India,
Room No. 301, Railway Board,
New Delhi -110001**

Opposite Party No. 27

**Atomic Energy Regulatory Board
Niyamak Bhavan, Anushakti Nagar,
Mumbai – 400094**

Opposite Party No. 28

**Solar Energy Corporation of India
06th Floor, Plate B, NBCC Office Block Tower-2,
East Kidwai Nagar, New Delhi,
South West Delhi,
Delhi – 10023**

Opposite Party No. 29

**Chief Engineer, Bhopal Zone,
Sultania Infantry Lines,
Bhopal**

Opposite Party No. 30

**Public Health Department
Government of Madhya Pradesh,
Directorate of Health Services,
6th Floor, Satpuda Bhawan,
Bhopal (MP)**

Opposite Party No. 31

**Engineers India Limited,
Engineers India Bhawan
Bhikaji Gama Place
New Delhi – 110066**

Opposite Party No. 32

**National Highway Authority of India
G-5, G-6, Sector 10, Dwarka,
New Delhi – 110075**

Opposite Party No. 33

**Indian Roads Congress
Kama Koti Marg, Sector 6, R. K. Puram,
New Delhi – 110022
Ministry of Environment and Forests,
Government of India,
Parivesh Bhawan,
East Arjun Nagar,
Delhi – 110032**

Opposite Party No. 34

Opposite Party No. 35

**Quality Council of India,
Institution of Engineers Building,
2nd Floor, 2 - Bahadur Shah Zafar Marg,
New Delhi – 110002**

Opposite Party No. 36



**Central Council for Research in Ayurvedic
Sciences,
Ministry of Ayush, Government of India,
Anusandhan Bhawan 61-65, Industrial Area,
Opp. 'D' Block, Janakpuri,
New Delhi - 110058**

Opposite Party No. 37

**CORAM:
Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

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

1. The present information has been filed by Mr. Dushyant (**Informant**) under Section 19(1)(a) of the Competition Act, 2002 (**Act**) alleging contravention of the provisions of Sections 3 and 4 of the Act by National Accreditation Board for Testing and Calibration Laboratories (**NABL/OP-1**), Central Public Works Department (**CPWD/OP-2**), Food Safety and Standards Authority of India (**FSSAI/OP-3**), Ministry of Health & Family Welfare (**OP-4**), Department of Commerce, Ministry of Commerce and Industries (**OP-5**), Consumer Industry Section, Department of Industrial Policy and Promotion (**OP-6**), Ministry of Road Transport and Highways (**OP-7**), Water Quality Section, Ministry of Drinking Water and Sanitation (**OP-8**), Delhi Development Authority (**DDA/OP-9**), Indian Council for Medical Research (**ICMR/OP-10**), Regional Ayurvedic Research Institute for Skin disorders (**RARISD/OP-11**), WAPCOS Limited (**OP-12**), National Capital Region Transport Corporation Limited (**OP-13**), Water Resources Department, Government of Madhya Pradesh (**OP-14**), Delhi Metro Rail Corporation (**DMRC/OP-15**), Research Design and Standard Organization, Ministry of Railways (**OP-16**), Ministry of Railways (**OP-17**), Container Corporation of India Limited (**OP-18**), Ministry of New and Renewable Energy (**OP-19**), Government e-marketplace, Ministry of Commerce &



Industry (**OP-20**), Ministry of Consumer Affairs, Food and Public Distribution (**OP-21**), Ministry of Health and Family Welfare (**OP-22**), New Delhi Municipal Corporation (**OP-23**), Delhi Jal Board (**OP-24**), Airport Authority of India (**OP-25**), Power Grid Corporation of India Limited (**OP-26**), North Central Railway, Ministry of Railways (**OP-27**), Atomic Energy Regulatory Board (**OP-28**), Solar Energy Corporation of India (**OP-29**), Chief Engineer, Bhopal Zone, Sultania Infantry Lines (**OP-30**), Public Health Department, Government of Madhya Pradesh Directorate of Health Services (**OP-31**), Engineers India Limited Engineers India Bhawan (**OP-32**), National Highway Authority of India (**OP-33**), Indian Roads Congress (**OP-34**), Ministry of Environment and Forests, Government of India (**OP-35**), Quality Council of India Institution of Engineers Building (**OP-36**), and Central Council for Research in Ayurvedic Sciences, Ministry of Ayush (**OP-37**) (OP-2 to OP-37 are collectively referred to as **OPs**).

2. NABL is stated to be an accreditation body, with its accreditation system established in accordance with ISO/IEC 17011, and OPs are either Department of Government/ Government-affiliated bodies or Public Sector Undertakings.
3. The Informant has alleged that NABL has formed various exclusive supply agreements (**ESAs**) in violation of Section 3(4)(b) of the Act with OPs where no other accreditation service other than that of NABL is allowed. The formation of such ESAs is claimed to be deduced from various Tender/ Notices/ Guidelines/ Expression of Interest/ Letters/ Provisions of the Act *etc.* issued by OPs wherein it is, *inter alia*, mentioned that suppliers to the said OPs are required to obtain testing or accreditation services from NABL/ labs accredited by NABL.
4. The Informant has averred that the outcome of the above-mentioned ESAs is that it results in complete monopolisation of power in the hands of NABL abetted by OPs to the detriment of other accreditation bodies, contractors, laboratories, and end-consumers.
5. It is averred by the Informant that the said ESAs have led to the deprivation of market



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access to various accreditation bodies competing with NABL and driving them out of the market, thus causing appreciable adverse effect on competition (AAEC). Resultantly, due to the creation of entry barriers, there is foreclosure of competition in the market of accreditation services, as it is completely controlled by the OPs through such agreements.

6. It is also alleged that the imposition of such unfair terms and conditions has resulted in the denial of market access for all other accreditation boards operating in the country except NABL. The Informant has further submitted that such preferential treatment and imposition of conditions by OPs through various documents has brought the businesses of various accreditation bodies in the country except NABL to a grinding halt, thereby resulting in insurmountable damages to the Indian economy through stifling of competition. This, as per the Informant, is in violation of Sections 4(2)(a) and 4(2)(c) of the Act.
7. The Informant has averred that OPs are 'enterprises' in their respective areas as they carry out economic activities. The Informant has submitted that the specific clauses/ paragraphs mentioned in Tender/ Notices/ Guidelines/ Expression of Interest/ Letters *etc.*, wherein the OPs have suggested bidders/ suppliers to obtain accreditation services from NABL and its accredited laboratories, make it clear that the activity undertaken is economic in nature and the conduct is covered under the ambit of Section 2(h) of the Act.
8. The Informant has defined separate relevant markets depending on the nature of activities undertaken by a particular OP-2 – OP-37 and the nature of alleged agreement, deduced from various Tender/ Notices/ Guidelines/ Expression of Interest/ Letters *etc.*, which OPs have with NABL.
9. The Commission considered the information/ documents filed by the Informant on 02.02.2022 and decided to pass an appropriate order in due course.



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Analysis of the Commission

10. The Commission has considered the averments and allegations made in the information and notes that the Informant has alleged contravention of Sections 3(4) and 4 of the Act. It is noted that the Informant is primarily aggrieved by the acts of OPs, wherein OP-2 – OP-37 have allegedly prescribed, in one manner or the other, the requirement of testing laboratories being accredited by NABL in the various Tender/ Notices/ Guidelines/ Expression of Interest/ Letters *etc.* issued by them. In effect, the OPs thus want the materials/ services being procured by them to be tested in a lab accredited by NABL. The Informant has also claimed that NABL's accreditation mandated by OP-2 to OP-37 provides virtual monopoly to NABL insofar as the supply of products/ services of granting accreditation certificate to laboratories is concerned.
11. As regards alleged violation of Section 3(4), it is the case of the Informant that NABL has entered into agreement/s with OP-2 to OP-37 as the outcome of the terms/ clauses mandated by them is leading to accreditation only by NABL when there are other accreditation agencies existing as on date in India.
12. The Commission is of the view that for the applicability of Section 3(4) of the Act and the examination of contravention for the same, the existence of an agreement/ arrangement between the parties is a *sine qua non*, which aspect is neither captured in the Information nor any evidence given in relation thereto. The Informant has not provided an iota of evidence about NABL having an agreement/ arrangement with OPs in relation to some exclusive arrangement in favour of NABL. Further, a majority of the OPs have issued Tender/ Notices/ Guidelines/ Expression of Interest/ Letters *etc.* wherein the terms and conditions appear to be framed by the respective OPs and in any case it cannot be deduced that NABL has a role in deciding such terms and conditions, giving it some preference. Thus, the Commission, *prima facie*, does not find contravention of Section 3(4) of the Act by any of the OPs.
13. In relation to the alleged contravention of the provisions of Section 4 of the Act, the Informant has claimed that NABL's accreditation mandated by OP-2 to OP-37



provides virtual monopoly to it insofar as the supply of products/ services of granting accreditation certificate to laboratories is concerned. This, as per the Informant, is not only driving existing competitors out of the market but also creating entry barriers in the market, as obtaining accreditation from NABL or laboratories accredited by NABL is a mandatory condition as per the Tender/ Notices/ Guidelines/ Expression of Interest/ Letters *etc.* in question, thereby foreclosing competition.

14. The Commission notes that a majority of the allegations emanates from the terms and conditions as appearing in the respective documents of OPs, which is within the autonomy of a procurer. According to the Commission, the procurer, in its wisdom and based on its specific requirements, ought to have the autonomy to decide as to what goods/ services it intends to procure. However, this shall be subject to safeguards laid down under the relevant rules of procurement that may be applicable to that entity, besides it complying with the provisions of the Act, to the extent are applicable and having regard to the position of such entity in the market, the product/ service it seeks to procure, and without such entity acting in any unfair or discriminatory manner, in this process.
15. With respect to the examination of allegations pertaining to Section 4 of the Act, the Commission notes that the Informant has delineated separate relevant markets for all OPs, depending on the nature of product/ service being procured by such OPs and has claimed that each such OP is dominant in its relevant market. However, the Informant has not supplied any data/ information to support his claim in respect of market share or dominance of each of the OPs. For brevity, the product/service in question, for which the OPs have issued/ published Tender/ Notices/ Guidelines/ Expression of Interest/ Letters *etc.* during various periods is tabulated below:

OP	Products/ Services
OP-2	Steel products
OP-3	Food products
OP-4	Food products
OP-5	Agricultural and processed food products and marine products
OP-6	Toys
OP-7	Steel products



OP-8	Supply of water
OP-9	Physical materials
OP-10	Test for COVID-19
OP-11	Test for skin disorder
OP-12	Water and soil
OP-13	Construction work material in Regional Rapid Transit System
OP-14	Construction material used in irrigation systems'
OP-15	Material for construction of metro
OP-16	LED equipment used in Indian Railways
OP-17	Services of laboratories for pathological investigations
OP-18	Cement and steel
OP-19	Power conditioners for setting up power grid
OP-20	Procurement of goods through GeM
OP-21	Calibration of weights and measures
OP-22	Diagnostic services
OP-23	Construction material
OP-24	Material used in the production and supply of water
OP-25	Material used in airport work
OP-26	Transmission lines/ sub-stations
OP-27	Material used in railway works
OP-28	Services of laboratories for X-rays
OP-29	PV modules
OP-30	Soil testing
OP-31	Material used in construction of water taps
OP-32	Testing services for measuring devices
OP-33	Material used in highway works
OP-34	Material used on construction of roads
OP-35	Laboratories for testing air, water, soil, and biota
OP-36	Materials used in construction
OP-37	Laboratory investigations on CGHS approved rates

16. The Commission notes that the allegations pertain to grant of preference to NABL or laboratories accredited by NABL in relation to accreditation/ certification services sought by other OPs (OP-2 to OP-37) which are procuring different/distinct goods and services. In this regard, it is observed that each of the OPs, being OP- 2 to OP-37, operate in a varied and wider market which comprises different/distinct goods and services, both in the public and private sector. Furthermore, the goods/ services being sought to be procured by each OP-2 to OP-37 is available for procurement by other procurers too, both in public as well as private sector. Thus, on the basis of the above, the Commission is of the view that it may not be germane to define the precise relevant market *qua* each of the 37 OPs and assess the dominance of OPs individually in each



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of such relevant market.

17. The Commission, based on the above, notes that, with the existence of such large avenues of procurement which may entail the requirement of testing by laboratories if so required by procurers, a broader market does exist for the suppliers of laboratory testing service, and there may not be a foreclosure, as contended by the Informant, for other accreditation agencies, which may grant accreditation to laboratories. Further, the Commission notes that there is no hint to suggest that procurers other than OPs are also imposing similar conditions as the present OPs (*i.e.*, OP-2 to OP-37). Therefore, it belies the allegation of foreclosure of the market for other accreditation agencies desirous of their services.
18. The Commission has, in some previous cases, recognising the autonomy of the procurer, stated that the procurer is the best judge of what and how it wants. At the cost of repetition, the Commission notes that every consumer/ procurer must have the freedom to exercise its choice freely in the procurement of goods/services and such a choice is sacrosanct in a market economy. While exercising their choice, OPs are free to stipulate standards for procurement, and the same cannot be held to be out-rightly anti-competitive and will depend, *inter alia*, on factors such as the nature of the procurement, the size of procurer, the goods/ services sought to be procured by it, and whether such buying will result in foreclosure for other sellers operating in the market who are competing to sell and are substantially dependent on such buying process. Further, the autonomy to specify the requirements of procurement is inherent in the procurers. When the procurer is a dominant buyer in its sphere of economic activity and its unilateral conduct in the buying process can tend to distort competition on the supply side of such market, then there is reason to be circumspect.
19. In the present case, as regards OP-2- OP 37 seeking NABL's accreditation (based on their policies/ guidelines/ rules of procurement/ some enactments governing their functioning), there is nothing to suggest that NABL had any role in framing the same.
20. Before parting with the order, the Commission would like to reiterate that, for effective



competition in the market, it is apposite that procurers should specify only the standards that they desire to be adhered to by suppliers of goods and services, rather than specifying names/ nominations or prescribing any conditions/criteria that may lead to certain competitors being ousted from the market.

21. In view of the foregoing, the Commission is of the considered opinion that no *prima facie* case of contravention of any of the provisions of Section 3 and/or 4 of the Act is made out against the OPs for causing an investigation into the matter, and therefore, the matter is ordered to be closed forthwith under Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises, and the same is also rejected.
22. The Secretary is directed to forward a certified copy of this order to the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Dated: 24.02.2022