



**COMPETITION COMMISSION OF INDIA**

**Case Nos. 50 of 2014**

**In Re:**

**XYZ..**

**Informant**

**And**

**Principal Secretary,  
PWD, Govt of Madhya Pradesh  
Vaalabh Bhawan, Mantralaya,  
Bhopal (M.P) – 462004**

**Opposite Party No. 1**

**Director General,  
Central Public Works Department  
Nirman Bhawan,  
New Delhi - 110001**

**Opposite Party No. 2**

**CORAM**

**Mr. M. L. Tayal  
Member**

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



**Mr. Sudhir Mittal**

**Member**

**Mr. Augustine Peter**

**Member**

**Mr. U. C. Nahta**

**Member**

Present: Informant appeared in person before the Commission.

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

1. The Informant has filed the instant information under section 19(1) (a) of the Competition Act, 2002 (the “Act”) against the Principal Secretary, PWD, Govt of Madhya Pradesh (**OP 1**) and the Director General, CPWD, New Delhi (**OP 2**) alleging, *inter alia*, contravention of the provisions of Section 3 and 4 of the Act in the matter.
2. Facts of the case, as stated in the information, may be briefly noted:
  - 2.1 The OP 1 is the Principal Secretary of the Public Works Department (PWD) in Government of Madhya Pradesh. PWD is the principal agency of the Government of Madhya Pradesh responsible for the Architecture survey, design, construction, improvement and maintenance of roads & bridges of the State; Design construction & maintenance of public buildings of the State and carrying out works assigned in the Command Area Development.



- 2.2 The OP 2 is the Director General of the Central Public Works Department (CPWD) in New Delhi. It is the comprehensive construction management department, which provides services from project concept to completion and maintenance management.
- 2.3 The Informant alleged that OP 1, vide its orders dated 03/09/2012 & 16/09/2012, imposed an unfair condition that 10-20% samples be tested from the National Accreditation Board for Testing and Calibration Laboratories (NABL) accredited Laboratory. Similarly, OP 2, vide its office memorandum dated 18/12/2013, imposed a condition in the course of approving the outside private laboratories that the laboratory must be NABL approved.
- 2.4 The Informant has submitted that that there is nothing as NABL accreditation. NABL is an autonomous body, registered under the Society Act and is an Accreditation Body accrediting the laboratories as per ISO/IEC-17025-2005 (General and Calibration Laboratories). The Informant alleged that NABL is neither statutory nor a constitutional body.
- 2.5 The Informant has also highlighted an ISO note which states that laboratories seeking accreditation should approach to that accreditation body, which operates their system as per O.M. ISO/IEC-17011. Thus, as per the Informant, any organization that operates its system as per ISO/IEC-17011 can be an accrediting laboratory as per ISO/IEC-1705-2005.
- 2.6 The Informant has alleged that there are three accreditation bodies in India but the abovesaid orders of the Opposite Parties are promoting a single accreditation body, consequently, affecting the business of those laboratories which are not accredited with NABL.



2.7 Accordingly, it is alleged that the conduct of the Opposite Parties is anti-competitive and in contravention of the provisions of section 3 and 4(2)(a)(i) of the Act in the matter.

2.8 Based on the above averments and allegations, the Informant has prayed, *inter alia*, for the issuance of an appropriate direction to the Opposite Parties to remove the discriminating condition of promoting a trade name from their abovesaid orders.

3. The Commission has perused the information.

4. Facts of the case reveal that the grievance of the Informant is primarily against the Principal Secretary, PWD and the Director General, CPWD for imposing the alleged abusive condition in their abovesaid orders in contravention of the provisions of section 4 of the Act. The said condition alleged to have promoted a single accreditation body consequently affecting the business of those laboratories which are not accredited with NABL.

5. For examination of the alleged abusive conduct of the Opposite Parties, it is required first to delineate the relevant market where the Opposite Parties are operating and then to assess its position of dominance in the relevant market so delineated and finally, examination of conduct in case it is found to be in a dominant position in the relevant market.

6. The relevant product market may be defined as the “*services of accreditation of laboratories*” in the instant case. In case of a small but significant increase in the price of accreditation, there is no broader market to which a laboratory can shift to. It will have to avail of accreditation services by the authorized agency within the parameters of services of accreditation of laboratories. The laboratories throughout India can avail of accreditation services through the accreditation body authorized for the same in the territory of India. Thus, the



geographic area of “*India*” appears to be the relevant geographic market in the instant case.

7. Accordingly, “*services of accreditation of laboratories in India*” is considered as the relevant market in the instant case.
8. For the applicability of the provisions of Section 4, the Opposite Parties must be an enterprise in terms of section 2(h) of the Act. In the instant case, the allegation of the Informant is primarily against the Principal Secretary, PWD in the Government of Madhya Pradesh and the Director General, CPWD in New Delhi. CPWD, as an attached office of the Ministry of Urban Development, has been entrusted with the execution of Public Works of all Central Government Organizations (except Defence and Railways). It is also charged with the responsibility of maintaining the building assets of the Central Government. PWD is the premier agency engaged in planning, designing, construction and maintenance of Government assets in the field of built environment and infrastructure development. Assets in built environment include Hospitals, Schools, Colleges, Technical Institutes, Police Buildings, Prisons, Courts etc. and assets in infrastructure development include Roads, Bridges, Flyovers, Footpaths, Subways etc.
9. NABL is an autonomous body under the aegis of Department of Science & Technology, Government of India, and is registered under the Societies Registration Act, 1860. NABL has been established with the objective to provide Government, Industry Associations and Industry in general with a scheme for third-party assessment of the quality and technical competence of testing and calibration laboratories. Government of India has authorised NABL as the accreditation body for Testing and Calibration Laboratories. Government of India has authorized NABL as the sole accreditation body for Testing and Calibration laboratories.



10. NABL provides laboratory accreditation services to laboratories that are performing tests / calibrations in accordance with NABL criteria based on internationally accepted standard for laboratory accreditation ISO/IEC 17025.
11. According to the information on NABL's website, these services are offered in a non-discriminatory manner and are accessible to all testing and calibration laboratories in India and abroad, regardless of their ownership, legal status, size and degree of independence. It has established its Accreditation System in accordance with ISO/IEC 17011:2004, which is followed internationally. NABL also complies to the requirement of APLAC MR001 for the fulfilment of APLAC MRA and ILAC Arrangements.
12. NABL is the sole accreditation body authorised by the Government of India for Testing and Calibration laboratories.
13. The activities being performed by the Opposite Parties do not come under the definition of 'enterprise' in terms of Section 2(h) of the Act as they are not directly engaged in any economic and commercial activities. The Opposite Parties have no existence in the relevant market, except for laying down norms as to the authorization of accreditation bodies for specific purposes. Their role is limited to planning, designing, construction and maintenance of Government assets, as such provisions of section 4 of the Act are not attracted against them. The Opposite Parties have issued circulars only and they are not operating in the relevant market. Therefore, the conduct of the Opposite Parties does not give rise to any competition concern.
14. In the light of the above analysis, no case of abuse of dominant position can be made out against the Opposite Parties.



15. The Commission finds that *prima facie*, no case of contravention of the provisions of section 4 of the Act is made out against the Opposite Parties in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

16. The Secretary is directed to inform all concerned accordingly.

**Sd/-**  
**(Mr. M. L. Tayal)**  
**Member**

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**(Mr. S. L. Bunker)**  
**Member**

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**Member**

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**Member**

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**(Mr. U. C. Nahta)**  
**Member**

New Delhi  
Dated: 29/10/2014