



Case No. 62/2013

In Re:

Federation of Indian Publishers

...Informant

And

1). M/s A.H. Wheeler and Co. Pvt. Ltd.

... Opposite party -I

2). Ministry of Railways, Government of India.

...Opposite Party - 2

CORAM:

Dr. Geeta Gouri
Member

Anurag Goel
Member

Mr. M. L. Tayal
Member

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

Mr. S. L. Bunker
Member

Present: Shri Balbir Singh, Shri Abhishek Baghel, Advocates and
Representatives of Informant.

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

The present information was filed by the Federation of Indian Publishers (“the Informant”) under Section 19(1)(a) of the Competition Act, 2002 (the Act) against M/s A.H. Wheeler and Co. Pvt. Ltd. (the Opposite Party-I) alleging *inter-alia* abuse of dominant position in contravention of Section 4 of the Act in the market of the retail sale of books, newspapers, magazines, periodicals etc. in different languages at different railway stations in India. The Ministry of Railways has been made a formal party (Opposite Party-2).

2. The Informant claims to be a society registered under the Societies Registration Act, 1860 the representative body of publishers in India. The



members of the Informant are engaged in publication of books and journals of various subjects including literature, history, children books, fiction, national integration, religion etc. in all languages including English, Hindi and regional languages. The Opposite Party – I, a company incorporated under the provisions of the Companies Act, 1913 has been engaged in the business of retail sale of books, newspapers, magazines, periodicals etc. in all Indian languages and some European languages at different railway stations in India.

3. The Informant submitted that the book stalls operating at various railway stations in India were regulated by the OP - 2. As per the Bookstall policy, the book stalls set up at railway platforms were classified into Category A to Category E, depending on annual earnings of the stalls. The market share of the Opposite Party 1, in terms of total bookstalls on railways stations in India, was more than 50% while in terms of share of royalty paid to OP 2, its market share was 80%. It was therefore alleged that the Opposite Party 1 was in a dominant position in the market of retail sale of books, newspapers, magazine, periodicals etc. in all Indian languages and other European languages at the railway stations in India.
4. The Informant argued that the sale of books, news papers, magazines, etc at railway stations comprised of a different market in comparison to the general books & periodicals market of a city. It was submitted that the bookstalls set up at railway stations catered to a different set of consumers *i.e.* the travelling public. Currently major railway stations in India falling under Category A to C catered to almost 60% of the travelling public. The Informant submitted that the bookstalls at railway stations contribute 10% to 40% of sales to the different publishers. The bookstalls at railway stations, were being operated by the agents appointed by the Opposite Party 1 on revenue sharing basis. All the purchases of books and other reading materials, for railway book stalls were made by the Opposite Party –I by entering into purchase contracts with various publishers.



5. The Informant alleged that Opposite Party- I was a dominant player in the books market at Railway platform and was abusing its position of dominance in the relevant market in the following manner :
 - (i) Imposing unfair condition in purchase of goods, namely, not accepting purchases till the time goods are sold by it resulting in non-payment of any consideration to the publishers at time of delivery of books.
 - (ii) Imposing unfair conditions on publishers to accept unsold damaged books and printed material.
 - (iii) Imposing unfair conditions of payment after a period of 90 days from the date of sale (and not from the date of supplies).
 - (iv) Imposing unfair condition of affixing the identification mark i.e stamps of holograms on the books and reading materials supplied by the publishers solely with the object to misuse its dominance by renting the books to consumers and thereafter returning the same to the publishers. The said condition further resulted in denial of market access as in event of goods once being identified as the Opposite Party1's goods, the same could not be sold in the open market.
 - (v) Unilaterally closing the accounts of such publishers who refused to observe abusive conditions.
6. On the basis of above submissions, the Informant alleged contravention of provisions of Section 4(2)(a)(i)&(ii), (b)(i) and (c) of the Act by the Opposite Party No. 1.
7. The present information relates to the controversy between the members of the Informant society and the Opposite Party- I with respect to conditions of purchases of books, newspapers, magazines, periodicals etc. in different languages by OP –I for its stalls at Railway stations. Thus the relevant market in the matter cannot be as proposed by the informant before the commission.



8. The market for sale of books, newspapers, magazines, periodicals, cannot be a market restricted to only railway stations and has to be a market of books & periodicals throughout and anywhere in India. A publisher can sell its publications to any distributor or retailer anywhere in India without impediments. Market for books periodicals cannot be limited to one particular place of sale of books. Publishers are not restricted, in any way, to sell their publications only to some specified locations like railway stations. Therefore, the relevant market in this case would be ‘ *the market of sale /purchase of books, newspapers, magazines, periodicals, etc in different languages in India* ’
9. Based on the information provided by the Informant and available in the public domain, the Opposite Party 1 cannot be said to be a dominant purchaser of books, newspapers, magazines, periodicals, etc in different languages in India. The Opposite Party 1 is procuring books, newspapers, magazines, periodicals, etc from the members of the Informant only for its 258 bookstall agents operating at different railway stations. Compared to the total shops selling books, newspapers, magazines, periodicals, etc, the number of railway stalls of the Opposite Party 1 would be insignificant. There is a huge segment of market outside railway stations where many large distributors are operating. As per the information available in the public domain, there are many large well known publishers and distributors of general books, magazines, periodicals, newspapers, etc such as India Book House (IBH) Books & Magazines Distributors Pvt. Ltd., India Book Distributors (Bombay) Limited, International Book House Private Limited, Krishna Magazine Distributions, etc. operating in India.
10. With the presence of above mentioned equally significant players in the relevant market, *prima facie*, OP1 was not in a dominant position in the relevant market. Since OP1 was not in a dominant position in the relevant market, the question of abuse of dominant position by OP –I in that market does not arise.



11. In view of the above discussion, the Commission finds that there does not appear to exist a *prima facie* case for causing an investigation to be made by the Director General under section 26(1) of the Act. It is thus a fit case for closure under section 26(2) of the Act and the same is hereby closed.

12. The Secretary is directed to inform the parties accordingly.

New Delhi

Date 12.12.2013

Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

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