



COMPETITION COMMISSION OF INDIA
Case No. 66 of 2015

In Re:

Shri Arpit Batra
GH 14 /13, Paschim Vihar
New Delhi-110087

Informant

And

- 1. Haryana State Co-operative Supply and Marketing Federation Limited (HAFED)**
HAFED Building, Sector-5,
Panchkula, Haryana-134018 **Opposite Party No. 1**
- 2. Capt. Chattar Singh, Chairman, HAFED**
House No. 907-P, Sector 3, Rohtak **Opposite Party No. 2**
- 3. Shri Jagjit Singh Sangwan, Vice Chairman, HAFED**
Paintawas House
Loharu Road, Charkhi Dadri (Bhiwani) **Opposite Party No. 3**
- 4. Shri Sudhir Rajpal, IAS**
Principal Secretary to Government of Haryana
Cooperation Department,
Haryana New Secretariat, Room No. 430,
4th Floor, Sector-17, Chandigarh **Opposite Party No. 4**
- 5. Shri Wazeer Singh Goyat, IAS**
Registrar Cooperative Societies,
Sahkarita Bhawan, Sector-2, Panchkula
Haryana **Opposite Party No. 5**
- 6. Shri C. R. Rana, IAS,**
Director General
Food & Supplies, Haryana,
Chandigarh **Opposite Party No. 6**
- 7. Shri Ramesh Krishan, IAS,**
Director General
Agricultural, Panchkula
Haryana **Opposite Party No. 7**



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8. Smt. Kiran Lekha Walia, Finance Advisor
Finance Deptt, Haryana,
Chandigarh
Opposite Party No. 8
9. Shri Ashok Kumar Yadav, IAS
Managing Director, HAFED
HAFED Corporate Office, Sector-5
Panchkula, Haryana
Opposite Party No. 9
10. Shri Karam Raj Khatana, Director, HAFED
Vill. & P.O.: Kherla,
Distt.: Gurgaon-122102
Opposite Party No. 10
11. Shri Narender Kumar Bhayana, Director, HAFED
Vill. & P.O.: Lohari Ragho
Distt.: Hisar
Opposite Party No. 11
12. Shri Ram Chander, Director, HAFED
Vill. & P.O.: Jadoula,
Distt. Kaithal
Haryana
Opposite Party No. 12
13. Shri Daya Nand, Director, HAFED
Vill. & P.O.: Dumarkha Kalan,
Distt. Jind
Haryana
Opposite Party No. 13
14. Smt. Saroj Devi, Director, HAFED
Vill. & P.O.: Kanhari Kalan,
Distt.: Yamuna Nagar
Haryana
Opposite Party No. 14
15. Shri Raj Kumar Goyal, Functional Director, HAFED
H. No. 469, Ward No. 9
Gali Khari Kui, Babra Mohalla
Rohtak
Haryana
Opposite Party No. 15

CORAM

Mr. Ashok Chawla
Chairperson

Mr. S. L. Bunker
Member



Mr. Sudhir Mital
Member

Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Justice (Retd.) Mr. G. P. Mittal
Member

Appearances: Shri Manish Kumar, Advocate for the Informant.

Shri Piyush Hans and Bhavishya Sharma, Advocates for the
Opposite Parties.

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

1. The present information has been filed by Shri Arpit Batra ('Informant') under section 19(1) (a) of the Competition Act, 2002 ('Act') against Haryana State Co-operative Supply and Marketing Federation Limited & some of its officials ('HAFED'/ 'the Opposite Party No. 1'/ 'OP-1'), alleging inter alia contravention of the provisions of sections 3 and 4 of the Act. The Informant has also impleaded various officers of the different Departments of the Government of Haryana as Opposite Parties in the present case.
2. Shorn of details, the Informant in the present case Shri Arpit Batra is an individual stated to be a resident of Delhi.
3. The Informant has alleged that certain anti-competitive practices including abuse of dominant position, creation of entry barriers, foreclosure of competition, *etc.*, have been undertaken by HAFED at the time of procurement of operation and maintenance ('O & M') services for its



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sugar factory located in Assandh of Karnal District in the State of Haryana ('HAFED Sugar Mill').

4. In this regard, the Informant has stated that from the year 2010-11, HAFED adopted the practice of outsourcing O & M services for HAFED Sugar Mill and since then the same are being provided by one consultancy firm namely, Integrated Casetech Consultants Pvt. Ltd. ('Integrated Casetech').
5. The Informant has alleged that Integrated Casetech was handpicked for providing O & M services in the year 2010-11. The Informant has also alleged that O & M services contract envisaged that the contract was valid for a period of one year and after completion of the first year, a fresh tender would be issued for procuring these services. However, no new tender was issued and Integrated Casetech continued to provide these services. This, according to the Informant, was done not only to favour Integrated Casetech; but also to manipulate the future tendering process so as to ensure that the said service provider continued to remain the lone qualified bidder for provision of these services.
6. Further, the Informant has alleged that HAFED rigged the tendering process by introducing tender conditions that favoured Integrated Casetech thereby, creating entry barriers and foreclosing competition. The Informant has alleged that HAFED abused its position as a dominant procurer by imposing unfair conditions. In order to substantiate this claim, the Informant has made a reference to two tenders issued by HAFED in 2015.
7. The first tender was issued on 01.05.2015. Two companies namely Integrated Casetech and Global Canesugar Services Pvt. Ltd. ('Global Canesugar') participated in the tendering process. However, Global Canesugar's bid was rejected by HAFED in the technical rounds without assigning any reasons for the same. Consequently, the tendering process



was challenged in the High Court of Punjab and Haryana and upon issuance of notice by the High Court the first tender of 2015 was withdrawn.

8. A second tender by way of e-tendering was issued on 06.07.2015. This tender notification included a condition requiring the tender participants to have prior work experience in the provision of O & M services to sugar factories having cane crushing capacity of 2500 Tons of Cane per Day (TCD) and exportable power cogeneration facilities in the same unit. This tender condition, according to the Informant, was tailor-made to ensure that Integrated Casetech was the lone qualified bidder.
9. The Informant has also alleged that the aforementioned condition requiring participants to have prior work experience in O & M Services in sugar factories having specified cane crushing capacity and exportable power cogeneration facilities located within the same unit of a sugar mill was included for the first time in the second tender of 2015 and no such condition was included in any of the previous tenders.
10. The Informant has further alleged that apart from HAFED Sugar Mill there is hardly any sugar factory, having cane crushing capacity of 2500 TCD and exportable cogeneration facilities in the same unit, which outsources O & M services. Accordingly, the question of any other player (apart from Integrated Casetech) having experience of providing O & M services in a sugar factory having cane crushing capacity of 2500 TCD and exportable power cogeneration facilities in the same unit does not arise. As a result, Integrated Casetech was the only bidder fulfilling the tender condition.
11. Based on the above averments, the Informant has filed the instant information alleging *inter alia* that HAFED has manipulated the tender conditions in favour of one consultancy firm *i.e.*, Integrated Casetech thereby, excluding competition from other consultancy service providers.



This, according to the Informant, violates the provisions of sections 3 and 4 of the Act.

12. The Commission has perused the material available on record besides hearing the counsel for the parties.
13. The gravamen of the information is essentially centred around and emanates out of the impugned condition in the e-tender dated 06.07.2015 issued by HAFED requiring the bidders to have prior work experience in the provision of O & M services in sugar factories having cane crushing capacity of 2500 TCD and exportable power cogeneration facilities in the same unit. This, according to the Informant, is a tailor-made condition in the e-tender to ensure that Integrated Casetech remains the lone qualified bidder.
14. At the outset, it may be mentioned that though the Informant has made various allegations against HAFED which have been described as anti-competitive and in contravention of the provisions of sections 3 and 4 of the Act; the essence thereof, however, relates to the issue highlighted in the preceding para for the purposes of the present proceedings in the light of the material available on record.
15. The Commission observes that HAFED is one of the apex co-operative institution operating under the Co-operation Department, Government of Haryana. Further, the Commission observes that HAFED is engaged in diversified activities with the following main objectives:
 - a) supplying agricultural inputs such as fertilisers, insecticides, pesticides, certified seeds *etc.*;
 - b) making arrangement for marketing, processing of agricultural and allied products; and
 - c) facilitating the functioning of affiliated co-operative societies.



16. The present dispute relates to a co-operative sugar factory operated by HAFED, *i.e.*, HAFED Sugar Mill located at Village Phaphrana near Assandh District of Karnal, Haryana having cane crushing capacity of 2500 TCD with power cogeneration facilities to export 2 of MW power to the State Grid.
17. It may be noted that bagasse (a waste product remaining after crushing of sugar cane) based power cogeneration has emerged as a key by product in the sugar industry. Generally, bagasse generated by a sugar mill enables the mill to export power after meeting its captive power and steam requirements.
18. HAFED sugar mill has been operational since 2008-09. The Commission notes that the practice of outsourcing the activities related to operation, repair and maintenance of the Sugar Mill was adopted by HAFED from 2010-11. It appears that initially the consultant was selected by HAFED on a private-placement basis and this practice was continued till 2015 when the tendering process was put in motion to select the consultancy service provider.
19. In view of the foregoing, the relevant product market in the instant case appears to be the market of '*procurement of services relating to operation and maintenance of sugar mills with exportable power cogeneration capacities*'.
20. The Commission further notes that services relating to operation and maintenance of sugar mills (*i.e.*, O & M services) comprise of a host of services, including, managerial, technical and engineering services which may be grouped together as consultancy services. By their very nature, these services entail a heavy local nexus with the place of operation. For instance, the managers have to intensely engage with the labourers who



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work in the mills. Besides, location of a sugar mill may necessitate the knowledge of the local language, laws and other attendant regulatory regime. This distinguishes one sugar producing state from another as the conditions of competition may vary depending upon the afore-delineated factors.

21. In view of the above and further considering the fact that the allegations in the present case pertain to HAFED Sugar Mill which is located in Haryana, it would be appropriate to consider the '*State of Haryana*' as the relevant geographic market.
22. Accordingly, the Commission notes that the relevant market appears to be the market of '*procurement of services relating to operation and maintenance of sugar mills with exportable power cogeneration capacities in the State of Haryana.*'
23. Before advertng to the issue of dominance in the relevant market adumbrated above, it may be observed that sugar mills in India are operational in co-operative, public and private sectors. It may be further noted that the operation and maintenance services may be availed by any sugar mill irrespective of the ownership structure. At the same time, these services may be provided in-house as well.
24. In order to assess the market position of HAFED Sugar Mill in the relevant market, the Commission has used the cane crushing capacity details of sugar mills to determine the potential market size.
25. As per the information available in the public domain, 14 sugar mills are presently operational in the State of Haryana with a total crushing capacity of 48250 TCD. Of these, 11 are operational in the co-operative sector with a total crushing capacity of 26250 TCD; and 3 are operational in the



private sector with a total crushing capacity of 22000 TCD. The details of the same are summarized in the following table:

S. No.	Mills (Sector wise)	Crushing Capacity (TCD)	%
1.	Cooperative	26250	54.4
2.	Private	22000	45.6
Total		48250	

Source: http://agriharyana.nic.in/sugarcane_millwise.htm

26. Further, it may be noted from the tender conditions that the crushing capacity of HAFED Sugar Mill is 2500 TCD which is only 5.18% of the total installed crushing capacity of all the sugar mills operational in the State of Haryana.
27. Thus, looking at the percentage share of HAFED Sugar Mill in terms of total crushing capacity in the State of Haryana, the same does not appear to command any significant market share which can enable it to operate independent of market forces.
28. Even if the analysis is confined to the sugar mills with exportable power cogeneration facilities in Haryana, it appears that there are 6 sugar mills (including HAFED Sugar Mill) with such capacities having total crushing capacity of 17250 TCD and total exportable power cogeneration capacities of 32.60 MW as shown in the table below.

S. No.	Name of Mill	Crushing capacity (TCD)	Exportable energy (Season) Capacity in MW
1.	Ch. Devilal Coop. Sugar Mills Ltd., Ahulana, Gohana, Sonipat	2500	2.00
2.	The Shahabad Coop. Sugar Mills Ltd., Shahabad, Kurukshetra	5000	24.00
3.	The Meham Coop Sugar Mills Ltd., Meham, Rohtak	2500	1.80



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4.	Haryana Coop. Sugar Mills Ltd., Rohtak	3500	1.80
5.	HAFED Sugar Mills, Phaphrana, Assandh, Karnal	2500	2.00
6.	The Sonipat Coop. Sugar Mills Ltd., Sonipat	1250	1.00
Total		17250	32.60

Source: http://agriharyana.nic.in/sugarcane_millwise.htm

<http://www.indiansugar.com/PDFS/Cogenerators.pdf>

29. It is clear from the above that even in this segment the crushing capacity of HAFED Sugar Mill is 2500 TCD which is only 14.5% of the total installed crushing capacity of the sugar mills having exportable power cogeneration facilities. Further, even in terms of exportable energy capacity, the share of HAFED Sugar Mill stands at 6.13% with 2MW exportable energy capacity out of the total exportable energy capacity of 32.60MW of such sugar mills.
30. In view of the above detailed market construct and data, the Commission is of the considered opinion that HAFED does not appear to be in a dominant position in the relevant market of '*procurement of services relating to operation and maintenance of sugar mills with exportable power cogeneration capacities in the State of Haryana.*'
31. As OP-1 is not dominant in the relevant market, it is not necessary to examine the alleged instance of abuse of dominant position.
32. Based on the above analysis, no case of contravention of the provisions of section 4 of the Act is made out against the Opposite Parties.
33. The allegations of bid rigging by the Informant against OP-1 and Integrated Casetech are misconceived so far as the contravention under the



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provisions of section 3(3) of the Act is concerned as the same are not operating at horizontal level in the market.

34. In view of the above, the Commission is of the view that no case is made out against the Opposite Parties for contravention of either the provisions of section 4 or the provisions of section 3 of the Act and the information is ordered to be closed forthwith in terms of the provisions contained in section 26 (2) of the Act.
35. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M. S. Sahoo)
Member

Sd/-
[Justice (Retd.) G. P. Mittal]
Member

New Delhi
Date: 17/11/2015