

COMPETITION COMMISSION OF INDIA

Case No. 51/2012

Date: 07/11/2012

In re:

Accreditation Commission for Conformity Assessment Bodies Pvt. Ltd.

... Informant

V.

1. Quality Council of India/National Accreditation Board For Certification Bodies (OP.1)
2. National Accreditation Board for Testing and Calibration Laboratories (OP.2)
3. Secretary, Ministry of Commerce and Industry (OP.3)
4. Secretary, Department of Industrial Planning and Policy (OP.4)
5. Secretary, Department of Science and Technology (OP.5)
6. Secretary, Ministry of Micro, Small and Medium Enterprises (OP.6)
7. Secretary, Ministry of Food Processing Industries (OP.7)
8. Secretary, Ministry of Railways (OP.8)
9. CEO, Food Safety and Standards Authority of India (OP.9)
10. Secretary, Ministry of Environment and Forest (OP.10)
11. Secretary, Ministry of Petroleum and Natural Gas (OP.11)
12. Ministry of Infrastructure and Road Transport (OP.12)
13. Secretary, Department of Consumer Affairs (OP.13)
14. Secretary, Ministry of Health and Family Welfare (OP.14)

... Opposite Parties

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002.

1. The informant is a private limited company, incorporated to undertake the business of accreditation of certification bodies, inspection bodies, product certification bodies, personnel certification bodies, medical laboratories, diagnostic centres, blood banks etc. operating in India. It states that it provides third party voluntary accreditation services against the accreditation standards ISO 17020, ISO 17021 etc. for conformity assessment bodies such as certification bodies, inspection bodies, product certification bodies, test and calibration laboratories.

2. According to the informant, OP.1 was a body set up jointly by Government of India and industry associations such as ASSOCHAM, CII and FICCI, to establish and promote quality through national quality campaign. The DIPP, Ministry of Commerce and Industry is the nodal Ministry for OP.1. OP.2 is an autonomous body under the aegis of Department of Science and Technology, established to provide the Government, Regulators and Industry with a scheme of laboratory accreditation through third party assessment for formally recognizing the technical competence of laboratories in accordance with International Organisation for Standardization (ISO).

3. According to the informant, OP.1 and OP.2 were engaged in the business of accreditation and conformity assessment in India. Accreditation is a process by which certification of competency, authority or credibility is presented. The accreditation process ensures that the conformity assessment practices of the accredited company are acceptable, typically meaning that they are competent to test and certify third parties, behave ethically and employ suitable quality assurance. For instance, accreditation of testing laboratories and certification specialists permitted to issue official certificates according to ISO/IEC 17011, on compliance with established technical standards. An accreditation entry is to provide evidence that they confirm to other standards in the same series also.

4. The informant alleged that the OP.1 was falsely claiming that it was carrying out business under the aegis of International Accreditation Forum (IAF), an

association, incorporated in USA and as a policy, IAF does not allow more than one accreditation body offering same scope of accreditation from each country. Due to this claim of OP. 1, the competition between different accreditation bodies was hindered. This, according to the informant, was a restrictive practice. It was stated that out of 150 certification bodies, only 40 had been accredited by OP.1 demonstrating its dominance in the relevant market.

5. The informant further alleged that the OP.1 falsely claimed that membership of IAF was a mandatory requirement for services to be recognized globally and the non-members of the IAF lacked credibility as accreditation/conformity assessment service provider. While on enquiry, IAF wrote to the informant saying that IAF membership was not mandatory for an accreditation service provider.
6. The informant alleged that OP.1 was enforcing its relevancy and dominance in the accreditation market by entering into agreements /understandings with various departments and agencies of government to issue notifications, circulars, directives etc. recommending OP.1 as the sole and exclusive accreditation service provider. Such treatment by Government agencies/departments brings with it the advantage of being treated favorably in government purchases, incentives, subsidies thereby expanding OP.1's dominance. The practice of incorporating a condition of OP.1's accreditation in various government notifications/ circulars/ directions etc. acted as a trade barrier. The informant alleged that OP.1 had been spreading malicious and misleading propaganda against the operations of the informants against which it raised concerns with OP.1 who did not forth come with a reply.
7. Further, with respect to OP.2, it was made out that it provided third party voluntary accreditation service to testing and calibration laboratories according to the International Standards (ISO 17025 and ISO 15189). It was also stated that most government notifications for voluntary accreditation, prescribed accreditation only by OP.2, as under, the Food Safety and Standards Act, 2005 only those laboratories/institutes were notified for

analysis of samples which were accredited by OP.2. Presently, there was no competition to OP.2 and it enjoyed dominance in the relevant market.

8. Like the OP.1, OP.2 also had entered into agreements/understanding with the government agencies, influencing the government agencies to issue notices, circulars etc. recommending OP.2 as the sole and exclusive accreditation service provider. This system, according to the informant, maintained the dominance of OP.2 and did not allow other competitors to enter the market, contravening the provisions of the Act. The advantage received by OP.1 and OP.2 from government departments gave an impression that the certification bodies/laboratories were to be accredited by OP.1/OP.2 causing entry barriers and dominance of the OPs hindering competition.
9. The informant alleged contravention of sections 4(2)(a), 4(2)(b)(ii), 4(2)(c) of the Act on the part of the OP.1 and OP.2. The informant also alleged that the OP.1 and 2, operating under the umbrella of OP.3 and OP. 4 also influenced OPs. 5 to 14 and contravened sections 3(1), 3(2) and 3(3) of the Act. The grievance of the informant was that the OPs. did not respond to the informant's application dated 23.01.2012 for recognition of certification bodies/laboratory accreditation services of the informant.
10. The grievance of the informant stems from the fact that the government agencies were not considering it as an accreditation service provider and only promoting the OPs.1 and 2 which were like any other private organization. This way, not only the dominance of the OPs was being maintained but the actions of OP.1 and OP.2 acted as an entry barrier.
11. The informant got recently incorporated as a private limited company for the business of accreditation. The documents placed on record by the informant show that as late as 20th December, 2011, the informant had been corresponding with IAF regarding permission to use IAF published documents by the informant for the purpose of its business. IAF permitted the informant to use APG and AAPG vide its letter dated 20th December, 2011 provided informant gave due acknowledgement about use and there was no change made. Similarly, the informant received a letter dated 19th January, 2012

- from Secretary to ISO 9001 Auditing Practices Group permitting informant use of ISO 9001 data practices documents and the Accreditation Auditing Practices.
12. Several certification bodies doing the accreditation business are active in this country. A list of Certification agencies placed on record by the informant shows that there were around 34 accreditation agencies which were notified by National Accreditation Board for certification bodies.
 13. From the information furnished by the informant, the relevant market appears to be *service of granting accreditation certification to the companies who satisfy certain minimum standards known internationally*. The accreditation is granted in different fields and different standards are there for each field. The geographic market in this case would be entire India since accreditation business is not confined to any particular geographic area and those who are engaged in granting accreditation, do so throughout India. Thus, the relevant market in this would be providing service of granting accreditation certification to the companies after verifying the standards followed by them.
 14. Accreditation is not merely required by agencies dealing with the government. The accreditation certification these days is sought by almost every company engaged in any business. In fact the business enterprises in order to raise their acceptability among the consumers acquire these certificates to assure the consumers that they were following international standards.
 15. The applicant alleged OP. 1 and OP. 2 as dominant players in the relevant market. However, he has not given any basis as to how OP 1 and OP2 were dominant. He has not given data in respect of the clients of other certification agencies, how much was their business, who all were getting accreditation. In the absence of any such data base about the market in which the applicant has recently entered, the allegation made by the applicant for dominance of OP 1 and OP2 cannot be gone into. The allegation made by the applicant regarding violation of section 3 of the Competition Act, 2002 because of insisting certification from OP1 and OP2 by other OPs is also equally baseless. The informant was not even in the field and was not even known to

the business circles when circulars were issued. No one could have approached the informant, who till February, 2012 was setting its house in order and was getting permission from different agencies to use their literature, authentication standards etc. If OP1 or other agencies have chosen a particular agency for accreditation, that cannot be a ground for violation of section 3. Competition Act, 2002 does not warrant that the government has to equally distribute its work among all the accreditation agencies. The soul of competition lies in survival of the most competent. If certain agency is considered by OP3 to OP 14 as an appropriate and proper agency for accreditation, the Competition Act does not warrant that action should be taken against OP3 to OP14.

16. In the light of the above facts and situation, the Commission finds that no *prima facie* case was made out against the opposite party. It is a fit case for closure under section 26(2) of the Act and is hereby closed. It is ordered accordingly.

Secretary is directed to inform all concerned accordingly.

Sd/-

(H.C.Gupta)
Member

Sd/-

(Geeta Gouri)
Member

Sd/-

(Anurag Goel)
Member

Sd/-

(M.L.Tayal)
Member

Sd/-

(Justice S.N.Dhingra)
(retd.)
Member

Sd/-

(Ashok Chawla)
Chairperson