

Competition Commission of India

Case No. 34/2011

Dated: 11.10.2011

Kshitij Ranjan

Informant

Indian Newspaper Society

Opposite Party

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

The case under consideration relates to information filed on 30.06.2011 under Section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as "the Act") by Shri Kshitij Ranjan, Proprietor of Vistar Add.Com (hereinafter referred to as "Informant") against the Indian Newspaper Society – INS (hereinafter referred to as "Opposite Party" or OP).

2. The facts, in brief, as contained in the information are as under:

2.1 The Informant is proprietor of Vistar Add.Com., which is an INS accredited advertisement agency, having its office at Dr. Mukherjee Nagar, Delhi. The Informant offers advertisement services and books space in various newspapers for the publication of advertisements as per the requirements of his clients.

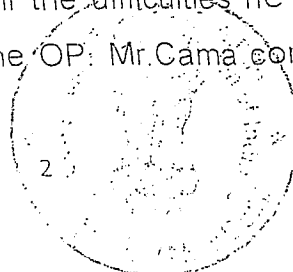
2.2 As per the Informant, the OP is a society registered within the meaning of Section 25 of the Companies Act, 1957, which has various publications (Newspapers) as its members. The OP also grants accreditation to the advertising agencies.

2.3 The informant has submitted that in the month of October 2010, the OP granted him provisional accreditation. He complied with the requisite formalities and supplied all the documents required by the OP in that regard. He also deposited a bank guarantee amounting to Rs. 25 Lac (Rupees Twenty Five Lac only) issued by the Bank of India with the OP as well as furnished the list of assets for the purpose of executing the personal guarantee.

2.4 According to the Informant, the OP sought his personal guarantee, although it was not authorised to do so as per its rules and regulations. As per the Informant, the policy of the OP as regards the amount required under the personal guarantee is unclear and inexact.

2.5 The Informant has submitted that the office of the OP informed him that a personal guarantee equal to Rs. 25 Lac (Rupees Twenty Five Lac only) was required for which only his immovable asset would be considered. Thereafter, he furnished the details of the 'under-construction' flat at TDI, Kundli, Sonipat along with his other movable assets to the OP. However, the OP declined to consider his immovable property situated at TDI, Kundli Sonipat since the sale deed was not executed. The OP also did not consider his movable properties such as shares, jewellery and FDs for the purposes of personal guarantee, an act, which was discriminatory and unfair, as the OP had considered it favourably in other cases. As per the Informant, he submitted the details and documents of another property belonging to him at 'A' Block, Sant Nagar, Village Burari, Delhi, which too was not considered by the OP.

2.6 According to the Informant, since there was no relief in sight, he approached Mr. H.N Cama, Chairman, Advertisement Committee of INS via e-mail and explained all the difficulties he had been facing in getting the accreditation from the OP. Mr. Cama considered the said e-



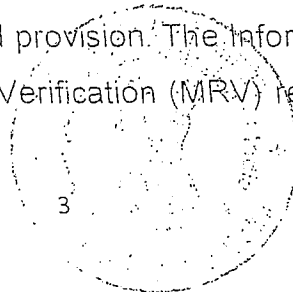
mail, though he also persisted that the personal guarantee was necessary. On his intervention, finally the OP agreed to consider the 'under construction' flat at TDI, Kundli, Sonipat in lieu of personal guarantee. Subsequently, the OP granted the provisional accreditation to the Informant and the Informant also executed an agreement. The OP granted a time of six months to the Informant to submit the sale deed of the property at TDI, Kundli, and Sonipat.

2.7 The Informant has further submitted that on 03.05.2011, the OP sent a letter to the Informant to submit the sale deed in respect of the property at TDI, Kundli, Sonipat. In reply to the said letter, the Informant requested the OP to grant some more time for the submission of the sale deed as the developer had not completed the construction. Thereafter, the OP vide letter dated 20.06.2011 requested him to provide an additional bank guarantee of Rs. 25 lac (Rupees twenty five lakh) in lieu of the personal guarantee.

2.8 The Informant has alleged that the said letter is unfair, discriminatory and unsustainable in the eyes of law as the OP has no right to ask for personal guarantee from the Informant even as per its articles of association. The Informant has mentioned the INS Press Handbook 2010-11 containing the principles governing the policy of the OP relation to personal guarantee, which is as under:

"INS will have the right to ask for personal guarantee from defaulting agencies and from agencies, which have collected advertisement dues but not paid to member publications within the credit period."

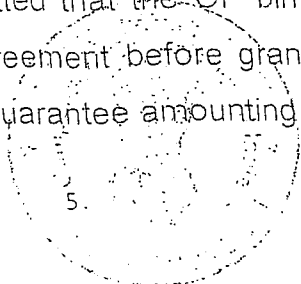
2.9 According to the Informant, it does not fall into any of the category mentioned in the above quoted provision. The Informant has also stated that the Monthly Review and Verification (MRV) report maintained and



circulated by the OP shows that he has never defaulted in making the payments to the members of the OP.

- 2.10 The Informant has alleged that the action of the OP in seeking personal guarantee from the informant is arbitrary and discriminatory. Further, deed of guarantee in lieu of the personal guarantee executed between the informant and the OP is non-est and has no validity in the eyes of law. The informant has also alleged that the agreement (deed of guarantee in lieu of personal guarantee) is illegal and is like to cause an appreciable adverse effect on competition (AAEC) within India. Further, the demand of the OP in asking to furnish the bank guarantee in lieu of the personal guarantee is restrictive of the freedom of trade and profession as enshrined in the Constitution of India.
3. The Commission considered the information in its meeting held on 12.07.2011 and decided to call the Informant either in person or through authorised representative to explain the case on 03.08.2011. Accordingly, Mr. Naveen Kumar Raheja, Advocate appeared along with the Informant on 03.08.2011 and made oral submissions.
4. The Informant later on also filed written submissions dated 16.08.2011 in order to substantiate his case. In his written submissions, the Informant has inter-alia alleged the following :
 - 4.1 That the OP has abused its dominant position in the relevant market pertaining to the Print Media. The OP enjoys position of dominance in Print Media as approximately 100% of the recognized/leading daily, weekly, fortnightly and monthly newspapers and magazines are its members. The business practices between the different advertisement agencies and the members of the OP are regulated and controlled by the OP in India.

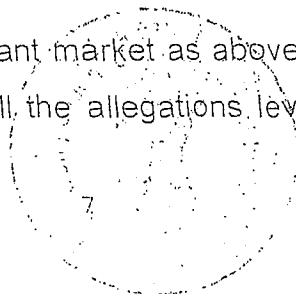
- 4.2 That different advertisement agencies including the Informant, carry out business transactions on commission basis with the members of the OP. The advertisement agencies book space for their clients for publishing the advertisement in the different newspapers i.e. members of the OP. The member newspapers grant certain benefits in their business transactions to those advertisement agencies which have been granted accreditation by the OP. For example, INS accredited advertisement agencies are entitled for a benefit of a credit period by the member newspapers in lieu of the services availed by the advertisement agencies on behalf of their clients. As per the credit period, the advertisement agencies book the space and get the advertisement published in the newspapers and thereafter get another 50 days to make the payment to the newspapers in lieu of the same. Further, government organisations engage only those advertisement agencies for the purpose of publication of their advertisement which are accredited by the OP i.e. the INS.
- 4.3 That due to the above facts, only those advertisement agencies that are granted accreditation by the OP can survive competition in the market in India pertaining to Print Media.
5. In his written submissions, the informant has also submitted that the OP has made a cartel by making almost 100% of the Newspapers as its members and is also abusing its dominant position by adopting pick and choose method in granting the accreditation to the different advertisement agencies.
6. The informant has also submitted that the OP binds the advertisement agencies to enter into an agreement before granting the accreditation and also to submit the bank guarantee amounting to Rs 25 lac and also



the personal guarantee or the bank guarantee in lieu of personal guarantee amounting to another Rs.25 lac in case of the grant of the provisional accreditation. It has further been alleged that the rules pertaining to the assets (whether movable or immovable) being considered for the personal guarantee are unclear and are nowhere defined in the rules and by-laws of the OP.

7. The Informant has further submitted that he has been illegally asked by the OP to furnish the sale deed of an immovable asset and his other personal assets such as gold and fixed deposits have not been considered. According to the informant, he has been treated in a selective manner as the OP has not asked for the similar kind of compliance from all the advertisement agencies to whom it has granted the accreditation.
8. The informant has alleged that such kind of agreements are anti-competitive agreement as contemplated under Section 3(1) of the Act which are likely to cause AAEC within India. It has been alleged by the Informant that the OP has formed cartel and directly and indirectly determines the business relations between the advertisement agencies and its member newspapers. By virtue of such an agreement, the OP is creating barriers to the new entrants in the market and driving the existing competitors out of the market. Further, the fact that 100% of the newspapers are members of the OP makes it dominant in the market.
9. The informant has also alleged that even otherwise as per the by-laws and regulations and as per articles of association, the OP can seek personal guarantee only from those advertisement agencies which have either defaulted or have collected advertisement dues but not paid to member publications within the credit period. The informant does not fall into any of these categories.

10. The informant based upon above facts and allegations has prayed that the Commission may pass an order declaring the deed of guarantee (personal Guarantee) executed between the informant and the respondent as null and void being violative of Section 3 (1) of the Competition Act, 2002 and/or order the OP to modify the deed of guarantee (personal guarantee) to include the movable assets to be considered for the purpose of personal guarantee.
11. The informant also filed an application under Section 33 of the Act for passing an interim ex-parte order to restrain the OP from issuing any direction to its member publications which may cause an adverse impact upon the business/reputation of the informant, more specifically to restrain the OP from issuing any communication to its member publications in regard to the withdrawal of accreditation of the informant.
12. The Commission has carefully considered the facts of the case and has also examined the relevant materials available on record. The Commission notes that the issue for consideration in the present case is to examine whether the alleged acts and conduct of the OP is in violation of any of the provisions of the Act.
13. On the basis of the information in the case, the Commission observes that the relevant product in the present case would be the advertisement in Print Media. Further, since the area of the operation of OP encompasses entire country, the relevant geographic market would be the whole of India. In view of the determination of the relevant product market and relevant geographic market as above, the Commission observes that the relevant market for the purposes of the present matter may be considered as "the market of advertisement in Print Media in India."
14. Having determined the relevant market as above, the Commission has considered and examined all the allegations levelled by the Informant



with regard to violation of provisions of Section 3 and Section 4 of the Act, based on the materials and evidences available on record.

15. The Commission notes that for applicability of any provisions of Section 3 (3) of the Act, it is required that there must be an agreement between parties who are competitors and who are engaged in identical or similar trade of goods or provision of services which either has the effect of determining the prices or limiting the market or supply of goods and services. However, there is no evidence on record to establish the same. There is no case of agreement among the competitors either which has the effect of allocating the market among them, causing Adverse Appreciable Effect on Competition (AAEC) in India.
16. The Commission observes that in the present case, it is a fact that most of the newspaper publications are the members of the OP and also that such publications give certain benefits to the advertisement agencies having accreditation from the OP. However, the said act cannot be said to be violative of Section 3 (3) of the Act. The Informant has also not been able to give any concrete evidence to substantiate his allegations of violation of provisions of Section 3(3) of the Act by the OP and its member publications.
17. The Commission also observes that for applicability of Section 3(4) of the Act it is required that there should be an agreement between the parties who are at different stages or levels of the production chain, which is violative of different clauses mentioned therein and which causes AAEC in the relevant market in India. Considering the facts involved, however, the Commission feels that none of the provisions mentioned in Section 3 (4) of the Act have been violated in the present matter.
18. The Commission notes that along with the allegations that the OP has acted as a cartel, the informant has also alleged that the OP has abused its position of dominance as well. In this regard, the

Commission observes that no evidence has been furnished by the informant to establish or suggest as to how the OP while abusing its position of dominance has also acted as a cartel. There is no argument advanced by the Informant to establish how the OP as an enterprise is abusing its dominant position within the meaning of various provisions of Section 4 of the Act in the relevant market.

19. In the light of above facts, the Commission holds that neither there is violation of any of the provisions of Section 3 nor of Section 4 in the instant case. The Commission notes that the grievance of the informant relates to requirements laid down by the OP for granting accreditation in terms of personal guarantee which do not raise any concern for competition in the relevant market.
20. The Commission after giving a careful consideration of all the facts and evidences produced before it holds that there is no case made out to establish violation of provisions of either Section 3 or Section 4 of the Act in the matter. The Commission, therefore, is of considered opinion that there is no need to pass an order directing the Director General to conduct an investigation in the case and the matter deserves to be closed forthwith under Section 26(2) of the Act.
21. The Secretary is directed to inform the parties accordingly.

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Member (CG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Chairperson

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