

Competition Commission of India

Case No. 53/2011

Dated : 30.11.2011

Pitambra Books Private Limited, Delhi

- Informant

1. Primary Education Department, Office of the Director, Andhra Pradesh Open School, Andhra Pradesh
2. Sh. S.V Prasad, Chief Secretary and Chairman, Andhra Pradesh Open School, Govt. of Andhra Pradesh, Hyderabad
3. Dr. D. Sambasiva Rao, Principal Secretary and Vice Chairman, Andhra Pradesh Open School, Govt. of Andhra Pradesh, Hyderabad

- Opposite Parties

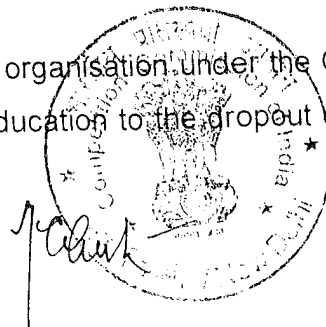
Order under Section 26(2) of the Competition Act, 2002

The present information has been filed under Section 19 (1)(a) of the Competition Act, 2002 (the Act) on 06.09.2011 by Pitambra Books Private Limited, Delhi (Informant) against Primary Education Department, Office of the Director, Andhra Pradesh Open School, Andhra Pradesh (Opposite Party-1), Sh. S.V Prasad, Chief Secretary and Chairman, Andhra Pradesh Open School, Govt. of Andhra Pradesh, Hyderabad (Opposite Party-2) and Dr. D. Sambasiva Rao, Principal Secretary and Vice Chairman, Andhra Pradesh Open School, Govt. of Andhra Pradesh, Hyderabad (Opposite Party-3) (collectively called as Opposite Parties) alleging that the conduct of the Opposite Parties is in violation of Section 3 and Section 4 of the Act.

2. The facts and allegations as mentioned in the information, in brief, are as under:

2.1 The Informant is a private limited company duly registered under the Companies Act, 1956. The Informant is engaged in the business of printing and publication of books and is an ISO 9001: 2000 certified company and has done various printing jobs which are supplied/exported outside India. As per the information, the informant is one of the leading enterprises in the trade in the country.

2.2 The Opposite Party-1 is an autonomous organisation under the Government of Andhra Pradesh to provide non-formal education to the dropout children and to



the neo-literates. The Opposite Parties- 2 and 3 are government functionaries in the State of Andhra Pradesh.

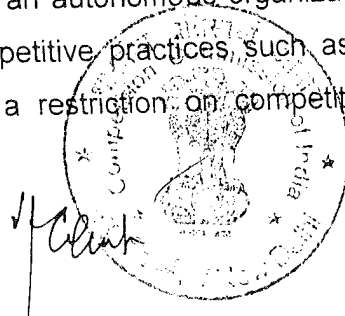
2.3 The Informant has submitted that it has printed various books including text books for a number of States in India including UP, MP, Maharashtra, Karnataka, AP, Rajasthan, Punjab, Jharkhand and Assam in various languages like Hindi, Marathi, Tamil, Telugu, Kannada, Bodo etc. As per the informant the text books of the various States are printed after obtaining orders through tenders floated by the state governments through their concerned departments.

2.4 As per the information, on 24.08.2011, the Opposite Party-1 floated a tender notice on behalf of Primary Education Department, Govt. of Andhra Pradesh. The said tender was to close on 09.09.2011. Under the tender notice, the Opposite Party-1 invited sealed tenders under two cover systems from the eligible ISO approved registered firms situated in the States of Andhra Pradesh, Karnataka, Tamil Nadu and Kerala.

2.5 The Informant has emphasized that the qualifying criteria set by the Opposite Party for the printers for the aforesaid tender is biased and anti-competitive as it has allowed to participate printer firms situated only in the State of Andhra Pradesh, Karnataka, Tamil Nadu & Kerala in the said tender.

2.6 The informant has stated that the Andhra Pradesh Government Text Book Press in 2008 for the academic year 2009-10 and also in 2009 for academic year 2010-11, floated tenders for printing, binding and supply of books, on an All India basis. In these tenders, the Opposite Party-1 considered the eligible bids of all printers who met the prescribed specification and qualification irrespective of their geographical location. The Informant has mentioned that on these two occasions it was a successful bidder and had also got orders from the Andhra Pradesh Textbook Press.

2.7 The Informant has alleged that by putting such qualifying conditions in the current tender notice, the Opposite Party-1, an autonomous organization of the State government, is indulging in anti-competitive practices, such as collusive bidding and the said condition would be a restriction on competition in the



market for the sale and provision of children's textbooks. As per the informant, the Opposite Party-1, by restricting the scope of potential bidders is preventing free and fair competition in the relevant market of printing of books in the State of Andhra Pradesh. Further, the conditions laid down in the tender by the Opposite Party-1 are in violation of Section 3 & 4 of the Act.

2.8 It is also alleged by the Informant that by prescribing the above said conditions, Opposite Party-1 is creating barrier to entry, foreclosing competition, driving out the Informant and adopting unfair and discriminatory conditions against Informant qua the prospective bidders in the relevant market of the printing of books in the State of Andhra Pradesh.

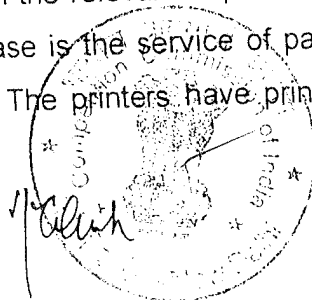
3. The Informant has prayed for the following reliefs:-

- (a) To direct the Opposite Party-1 to withdraw the said tender notice immediately.
- (b) To direct the Opposite Party-1 to cease and desist the practices of limiting geographical scope of prospective bidders.
- (c) To pass any other order which the Commission may deem fit.

4. The Informant also moved an application under Section 33 of the Act for an interim order. The information filed by the informant was considered alongwith the application under Section 33 of the Act on 08.09.2011. It was decided in the meeting dated 08.09.2011 of the Commission that the application for interim order under Section 33 of the Act would be considered only once an opinion regarding existence of a prima facie case had been formed.

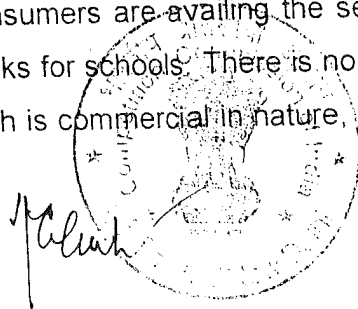
5. The information was subsequently considered by the Commission in its meeting held on 15.09.2011. Shri Manas K. Choudhary, Advocate appeared and explained the case before the Commission and also requested to allow him to file additional information which was acceded to. The matter was again considered by the Commission in its meeting held on 29.09.2011 and was deferred to 04.10.2011. The additional information was filed by the Informant vide letter dated 11.10.2011.

6. The Commission on a careful consideration of all the relevant aspects in the matter notes that the relevant product market in this case is the service of paper printing, distribution and supply of the printed materials. The printers have printing facilities



and any interested party may avail their services for getting any material paper printed, distributed and supplied. In this case, Opposite Parties intend to avail the services of printers for getting SSC and Intermediate text books printed, supplied and distributed as per its requirements. However, any other agency, person or an enterprise can also avail their services for printing any other material on paper. Further, since the printers are free to provide their services all over India and there is no restriction over the same, the relevant geographic market is the entire territory of India. Therefore, the relevant market in the case happens to be the service of printing, distribution and supply of the paper printed materials in India.

7. The Commission also notes that the Opposite Parties named in the matter are not engaged in any activity identical or similar to that of the prospective parties to the bid. While the office of Director, Andhra Pradesh Open School is entrusted with the responsibility of providing a flexible type of non-formal education to the drop out children and the neo-literates and has floated a tender for printing, supply and distribution of text books for intermediate and SSC (APOSS) courses on behalf of Primary Education Department, Govt. of Andhra Pradesh(OP-1) and OP-2 and OP-3 are the officers of Govt. of Andhra Pradesh responsible for administration and supervision of affairs of Andhra Pradesh Open School among their other responsibilities concerning state administration, the prospective bidders are providing the services of printing, supplies and distribution of the printed material including the services of printing, supplies and distribution of the text books for open schools. Therefore, there cannot be construed a case of any agreement of a horizontal nature covered under Section 3(3) of the Act in the matter.
8. The Commission further notes that the activity of procuring services of printing and supply and delivery of the text books for open schools through printers also do not fall within the mischief of Section 3(4) of the Act. The Opposite Parties belonging to the Govt. of Andhra Pradesh and prospective printers of text books cannot be said to be operating at the different stages or levels of production chain in different markets in respect of provision of services of paper printing. From the facts on record, the Commission notes that Opposite Parties as consumers are availing the services of printers to meet out the requirements of text books for schools. There is no evidence to say that they are performing any activity which is commercial in nature, by adding



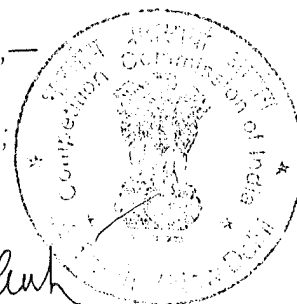
some value to the text books after getting them printed, distributed and supplied through the printers and thereafter passing them on for the purpose of selling the same in the market to the end consumers in competition with some other similarly placed market player. It is also not a case that the Opposite Parties are providing raw materials, labour or any other capital in the normal course of business to a particular printer to enable that printer to provide any goods or service in the market. The Opposite Parties therefore, do not appear to be part of value chain in provision of services of printing. Since the Opposite Parties are not a part of value chain in provision of services, the Commission notes that the provisions of different clauses of Section 3(4) are not applicable in the matter.

9. In view of foregoing, the Commission holds that there is no prima facie case of violation of Section 3 of the Act in the case.
10. As regards alleged violation of Section 4 of the Act, the Commission notes that for determining whether there is any prima facie case made out under the said Section, it is necessary first to determine whether Opposite Parties are 'enterprises' within the purview of the Act, and if so, whether they are abusing their position of dominance in a relevant market to the detriment of competition.
11. The Commission observes that Section 2(h) of the Act defines enterprise as under;
"Enterprise means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space."

Explanation.—For the purposes of this clause,—

(a) "activity" includes profession or occupation;

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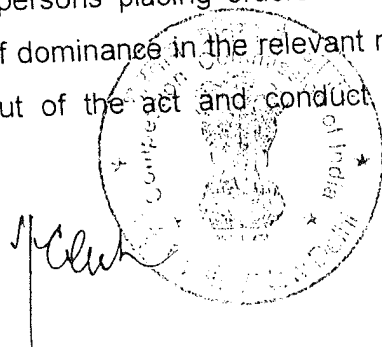
(b) "article" includes a new article and "service" includes a new service;

(c) "unit" or "division", in relation to an enterprise, includes—

(i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;

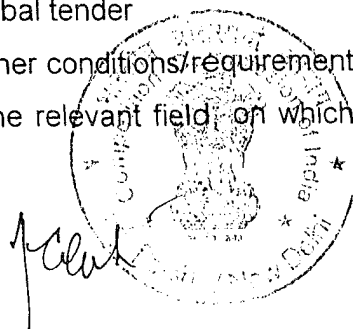
(ii) any branch or office established for the provision of any service;"

12. The Commission observes that as per the information in the instant matter the Opposite Parties named in the allegation are associated with the invitation of tender for procuring the services of printing, supply and distribution of text books. With regard to this activity of inviting tender for procurement of services of printing, supply and distribution of text books, they would fall under the definition of 'enterprise' within the meaning of Section 2(h) of the Act and their conduct is therefore liable for examination under Section 4 of the Act.
13. The Commission, as regards alleged violation of Section 4 of the Act by the Opposite Parties observe that in order to find out whether there is any contravention under the said Section, it would be incumbent to determine that they are enjoying position of dominance in a relevant market and are using their position of strength as a buyer to act independently of competitive forces prevailing in that relevant market or have the ability to affect their competitors or consumers or the relevant market in their favour.
14. The Commission notes that Opposite Parties in this case are operating as consumers as defined in Section 2(f) of the Act. They are not engaged in providing services of printing, supply and distribution of printed materials. They are only getting the text books printed for the purposes of distributing and supplying them to the schools.
15. The Commission observes that there is no convincing evidence put forward by the informant to establish how Opposite Parties as procurer are enjoying position of dominance in the relevant market. It is not that Opposite Parties are the only procurer of services of printers.
16. There would be a large number of enterprises/persons placing orders for buying services of printers all over India. The question of dominance in the relevant market and its abuse thereof would arise, if at all, out of the act and conduct of the



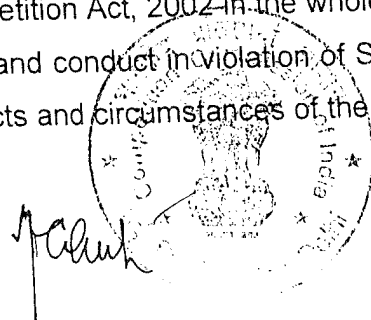
competing printers vying to expand their consumer base. The informant as a printer, on its own admission, is providing its services all over India. There is no competitive restraint placed by the Govt. of Andhra Pradesh to make it unable to operate in the relevant product market in India. Even in the state of Andhra Pradesh, it can compete with other printer firms for getting orders from other parties since the business of printing is not only restricted to school text books. There could be large demand of printing in the state of Andhra Pradesh and by Govt. of Andhra Pradesh in some other matters or for that matter by any other person. Opposite Parties as procurers of printing services cannot eliminate competition or the competitive forces from the relevant market because there is no evidence that even as a consumer they are dominant.

17. The Commission further observes that even if it is assumed that Opposite Parties are dominant consumers in the relevant market, abuse of their alleged position of dominance within the meaning of Section 4 of the Act does not get established.
18. The Commission notes that the informant has submitted that Opposite Parties are abusing their dominant position by laying down unfair and discriminatory conditions in the tender notice and this stipulation has barred the informant from participating in the tender process. As per the informant, the pre-qualification criteria that a prospective bidder must be based in one or more of the four (4) States of Andhra Pradesh, Karnataka, Tamil Nadu and Kerala is not in any way objectively justifiable.
19. The Commission observes that it is correct that in this matter Opposite Parties in order to procure services of printing, distribution and supply of text books have chosen to invite bids from the eligible prospective bidders who are based only in the said four (4) States. The tender has prescribed conditions regarding the geographical location of the parties who can submit bids. However, there may be some valid and justifiable reasons behind imposing such a condition. A conscious choice of Opposite Parties as a procurer as regards mode of selection of a vendor through a process of open tender cannot be termed as anti-competitive only for the reason that it has chosen to invite tenders from parties belonging to certain specific geographic areas. Even if the Opposite Parties had invited All India Tenders, there could still be an issue that tender was not a global tender
20. Further, there could be issues in respect of other conditions/requirements of tenders like capacity, EMD, turnover, experience in the relevant field, on which any firm or



concern might have felt aggrieved, if left out. The fact that the Opposite Parties have issued a tender for procurement of text books itself shows an attempt of market discovery. It is not possible to determine as to how many bidders would be sufficient to satisfy the requirement of ensuring maximum competition for optimum value for money in a tender. Whether or not a consumer is getting value for money in course of selection of a product or service will depend on the supplying firms in the market and quality of product/services offered by them at the finally accepted price.

21. The competing firms will strive to compete for various markets and consumers. At the same time, procurer of goods or services will also endeavour to select the best product or service as per their preference, at the lowest price. The real issue to be examined in competition law is whether there is restraint on competition due to the act and conduct of competing firms in a relevant market. In a market place, a procurer or a consumer endeavours to select the best product or service keeping its value and worth in mind. Towards that end, a procurer or a consumer may exercise choice in any manner it feels would be most suited for it. Every competing firm will try to get all the consumers in the market. However, it may not get all. It is possible that a set of consumers might show preference to a particular set of suppliers of goods or services in preference over others. This could be because of a number of reasons. However, this exercise of consumer choice per se will not mean that any harm has been caused to the competition in the market. In fact, one of the goals of competition laws is to protect free exercise of consumer choice.
22. The Commission observes that the act of Opposite Parties cannot be construed as anti-competitive since they are not competing with the printers to get orders from any consumer nor are they competing with any other person to further sell some goods or services. They are acting as consumers and in the process are buying required services from the service providers through a mode of selection of their choice. They are neither in any anti-competitive agreement with competitors nor in position of dominance in the relevant market. Nor are they abusing their position to harm their competitors or consumers.
23. Based upon given facts of the case, the Commission is of the view that there is no harm to competition within the meaning of Competition Act, 2002 in the whole matter and no *prima facie* case of anti-competitive act and conduct in violation of Section 3 and/or Section 4 of the Act is made out in the facts and circumstances of the case.



24. In view of the foregoing, the Commission is of the considered view that the allegations made in the information do not fall within the mischief of either Section 3 or Section 4 of the Act and prima facie no case is made out for making a reference to the Director General (DG) for conducting investigation into this matter under Section 26 (1) of the Act.
25. Accordingly, the Commission deems it fit to close the proceedings of the case under Section 26(2) of the Act.
26. The Secretary is directed to communicate the decision of the Commission to the informant accordingly.

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