



COMPETITION COMMISSION OF INDIA

Case No. 04 of 2019

In Re:

**Ashokbhai M. Mehta
1042, Jivan Pole, Sankadi Sheri,
Raipur, Ahmedabad – 380001
Gujarat**

Informant

And

**Gujarat State Board of School Textbook
Sector 10/A, Gandhinagar
Gujarat - 382010**

Opposite Party

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Mr. U.C. Nahta
Member**

**Ms. Sangeeta Verma
Member**

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

1. The present information has been filed by Mr. Ashokbhai M. Mehta (hereinafter, the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') alleging contravention of the provisions of Section 4 of the Act by Gujarat State Board of School Textbook (hereinafter, '**Opposite Party**').
2. As per the Informant, the Opposite Party was established on 21.10.1969, with the objective of publishing school textbooks in various languages such as Hindi, English, Marathi, Sindhi, Urdu, Sanskrit, Tamil and Gujarati, which are provided to all the students studying in Std. 1st to 12th. The syllabus for textbooks, which are published by the Opposite Party, is prescribed by the Gujarat Council of Educational Research and



Training ('GCERT') and is accepted by the Government of Gujarat. It is stated by the Informant that the Opposite Party is under the administrative control of the Education Department of Government of Gujarat. The Minister of Education, Government of Gujarat, is the President of the Opposite Party.

3. The Informant submitted that the Opposite Party, since its inception, has been entrusted with the responsibility of publishing various study materials in the State of Gujarat. Further, till 2018, work of printing and binding of the textbooks was outsourced by the Opposite Party on a contractual basis, to the printers established or based in the State of Gujarat and registered with it, which were empanelled after having completed legal and procedural formalities. The rates for printing and binding work were fixed by the Department of Education, Government of Gujarat. Therefore, the registered presses with the Opposite Party were required to perform the allotted work at such rates. The paper was specifically provided for the printing and binding by the Opposite Party. As per the Informant, allotted work was guided by strict timelines, non-adherence to which involved huge penalties.
4. As per the Informant, till 2010, the work of printing and binding, by most of the printers, was done by using the sheet-fed offset printing technology. From 2010, the Opposite Party, without any stipulation in the terms of the contract, started discriminating between the printers by allotting more work to printers using web offset printing with 578 mm cut off than those who were using sheet-fed offset printing machines. Therefore, in order to procure more work from the Opposite Party, various printers decided to upgrade their machinery from sheet-fed offset to web offset with 578 mm cut-off. The Informant and similarly placed printers were stated to be totally dependent upon the work given by the Opposite Party as upgradation was customised by them for the work of the Opposite Party.
5. On 01.04.2017, a contract, for the period from 01.04.2017 to 31.12.2019, was allegedly executed between the Opposite Party and the registered printers including the Informant. It is alleged by the Informant that the Opposite Party, for the first time, asked for the specifications with respect to the machinery. On account of this, a number of printers



upgraded their machinery and incurred huge capital expenditure in the year 2016-17, just before signing the aforesaid contract. However, after execution of contract and placement of book allotment orders, the Opposite Party, in the month of March 2018, unilaterally terminated the said contract but later on extended it for three months upto 30.06.2018.

6. The Opposite Party introduced a new system *vide* its Tender No. 01/2018-19 dated 06.04.2018 (hereinafter, '**Tender**'). As per the Tender, the bidders provided rates for the different types of category for the following printing & binding jobs:

a. **Web Offset Printing along with Binding (Category (i))**

Slab 1 – Up to 5000 Copies

Slab 2 – 5001 or more Copies

b. **Sheet-fed Offset Printing along with Binding (Category (ii))**

Slab 1 – Up to 5000 Copies

Slab 2 – 5001 or more Copies

7. As per the Informant, the Tender was for procurement of same services *i.e.* printing and binding of the textbooks, by using different techniques of web offset printing with 578 mm cut off and sheet-fed offset printing, whereas 90% of the allotment of work was, generally, under the web offset printing category.

8. As per the Tender, the bidders were required to quote their bids either in percentage increase or decrease of the base rate *i.e.* the rate which existed prior to the introduction of the Tender, last revised in 2004. The commercial bids were opened on 02.07.2018, by the Opposite Party. After opening of the commercial bids, it was discovered that 21 bidders had quoted identical bids of minus 31% of the base rate. The Informant alleged that the said price was collusively decided by the said 21 bidders, forming a cartel.

9. As stated by the Informant, all the other bidders, except the above 21 bidders, quoted their respective bids as per their cost structure. On finding the price L1 to be abnormally low, the bidders made various representations by writing letters to the Opposite Party to



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apprise it about the non-feasibility of the rate quoted by the 21 bidders in a clandestine manner.

10. Consequently, the Informant filed an information before the Commission alleging formation of cartel by certain bidders. The said information is presently a subject matter of investigation.

11. Through the present information, the Informant has alleged that the Opposite Party is a dominant enterprise for printing of textbooks in the State of Gujarat and is, thus, solely responsible for publishing of study material. It is claimed that this responsibility of getting the printing work done, confers a monopsonistic power on the Opposite Party in respect of procurement of printing and binding services from the printers and the Opposite Party has abused its dominant position by imposing unfair and discriminatory price and conditions in purchase of such services in the following manner:

11.1. Unilateral Termination of Contract

11.1.1. It has been alleged that the Opposite Party, arbitrarily, unilaterally and without any basis, terminated the contract for printing work, executed in 2017 with the printing units. This contract was to remain in force for a period of about 02 years and 09 months *i.e.*, till 31.12.2019 but was terminated in March 2018 only, without assigning any reason. This resulted in huge losses to the printing units which upgraded their machinery just before entering into the contract, in order to meet the Opposite Party's stipulation, which was a mandatory condition, prior to entering into the contract. Thus, it has been alleged that the Opposite Party indulged in abuse of the dominant position by way of denying market access to the printing units.

11.2. Arbitrary Allotment of work

11.2.1. It is alleged by the Informant that allotment of printing work by the Opposite Party pursuant to the Tender, had not been done in a fair manner, unlike it was done prior to introduction of the Tender, wherein,



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work was allotted by the Opposite Party to the printers on an equal basis. As stated in the Information, the allotment was now done as provided in Tender Term No. 4.16 of General Terms No. xxiv which states, *“After the opening commercial bid successful, L1 bidder will be announced. Bidder who technically qualified and wants to work with GSBSTB must give written consent that they would work as L1 rate along with the terms and conditions of tender. Then only board will empanel those bidders.”*. The Opposite Party, however, decided to issue Letter of Acceptance to 68 bidders, as opposed to 100 bidders who were technically qualified, as decided in its Executive Committee meeting held on 13.07.2018 and recorded in the respective Minutes of Meeting No. 241. In addition to this, the Opposite Party specifically stated that *“... it has been decided that all the printers who agree to work at the L1 rates may be empanelled...”*, as per the letter dated 30.07.2018.

- 11.2.2. The Informant submitted that the Opposite Party decided, on 13.07.2018, that a panel would be made comprising bidders offering L1 rates and other bidders whose bid was in range between L1 and L1 + 10%, provided the latter matched L1 price. It was further submitted by the Opposite Party before the Commission (in the previous case) that the work was allotted amongst L1 bidders and other bidders who agreed to work at L1 price in the ratio of 60:40. The Informant alleges that the minutes of the meeting dated 13.07.2018 do not mention the above criteria of allotment of work and further, this aspect was not highlighted by the Opposite Party. The Informant further alleged certain discrepancies in the Minutes of the Meeting dated 13.07.2018 and the submissions made by the Opposite Party before the Commission in the earlier information.

11.3. Unfair Price in Purchase of Service

- 11.3.1. It is submitted by the Informant that the commercial bid, invited by the Opposite Party in the Tender, is required to be quoted in terms of



percentage increase or decrease of the base rate. The commercial bids quoted were opened and the L1 price turned out to be (-) minus 31% *i.e.* 31 % lower than the base rate which was fixed in 2004. This L1 price, which was allegedly a result of cartelization by 21 bidders, was found to be unfeasible by various aggrieved printers who made a representation to the Opposite Party. Despite the representations, the Opposite Party went ahead with this L1 price, resulting in an unfair imposition of price upon the printers. The Informant, in this regard, has compared the prices prevailing in different State boards to show variance in prices.

11.4. Charging of Earnest Money

11.4.1. The Informant has alleged that charging of Earnest Money Deposit ('EMD'), from the small scale industries, specifically exempted under the Gujarat State Procurement Policy 2016, is an avoidable financial burden on the printing units and hence, is a direct imposition of an unfair condition in purchasing the services. The Informant relied upon the relevant Clause 2 of the abovementioned policy and sought for an exemption from the Opposite Party from paying EMD. However, no response from the Opposite Party with respect to its request was received. Thus, in order to avoid the risk of disqualification from participating in the Tender, the Informant submitted the tender fee and the EMD with the Opposite Party.

11.5. Imposition of Exorbitant Penalty

11.5.1. The Informant has alleged that the imposition of penalty on the bidders for delay in supply of quantity is calculated by the Opposite Party on the basis of book value, whereas, in the tenders floated by the other boards, for instance, the Maharashtra Board, it is calculated on the basis of bill payable to the printer. The book value of a textbook constitutes the cost of raw material *i.e.* paper, storage cost, loading cost, printing cost, distribution cost, administrative cost, and a little margin of profit. As



printing cost is only a part of the book value, charging penalty on the basis of value of book and not at the L1 rate is unfair condition in purchase of services. As per the Informant, this unfair condition has resulted in eroding approximately entire profit margin of the printing units.

11.6. No Reasonable Exit Clause for Bidders

11.6.1. It is submitted that as per the terms and the conditions of the Tender, once a printing unit is empanelled with the Opposite Party, only the Opposite Party has the right to terminate or cancel the work order. Further, if a printing unit fails to fulfil / honour its obligations, as stipulated in the terms of the Tender, due to unforeseeable and contingent circumstances, then, instead of affording a reasonable opportunity to exit from the panel and refund of security deposit, the Opposite Party imposes unfair and abusive conditions upon the printers such as, cancellation of the work order; forfeiture of the security deposit; imposition of exorbitant penalties; and blacklisting for a minimum of 2 years.

11.7. Discriminatory Conditions

11.7.1. It is submitted that as per the '*General Term 4.16 no. (xxiv)*' of the Tender, every bidder who is technically qualified, is eligible to get the work, provided the bidder gives a written consent to work at L1 rate. Contrary to the said term of the Tender, the Informant has alleged that, the Opposite Party only issued 'Acceptance of L1 Rate' letter to selective 68 bidders out of 100 qualified bidders and thus discriminated with the remaining 32 bidders, by not issuing the said letter as they were also technically qualified for the allotment of work. As per the Informant, the only source of work for all the printing units is the Opposite Party and these printing units have incurred huge expenditure in last 5 years to upgrade their machinery to provide good quality books in due time and



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to match the specification of the machinery as prescribed by the Opposite Party.

11.7.2. The Informant has, thus, alleged that the Opposite Party, first, terminated the contract, executed in the year 2017 for a period of about 3 years unilaterally, by disregarding the provisions of the said contract. Thereafter, the Opposite Party created a panel of 68 bidders out of 100 qualified bidders and denied the market access to the 32 technically qualified bidders and later also did not accept the consent letter dated 16.08.2018 and 06.09.2018 given by 7 qualified bidders, who, as per the terms of the Tender were eligible to get the work. Hence, these 32 bidders have been a victim of the abuse of the dominant position by the Opposite Party.

12. Based on the above, the Informant has alleged abuse of dominant position by the Opposite Party and has prayed for an investigation under Section 26 (1) of the Act and direct the Director General ('DG') to cause an investigation into the matter.
13. The Informant has also filed a separate application under Section 33 of the Act praying for an interim relief in the nature of an interim order/direction to the Opposite Party to immediately stop the discriminatory practice of excluding the Informant, a technically qualified bidder, from the parties to whom orders for printing have been given, at the L1 rates; or pass an order staying or cancelling the Tender and maintain status quo till the pendency of investigation.
14. The Commission considered the matter in its ordinary meeting held on 20.03.2019 and directed the Opposite Party to explain the procedure followed by it for empanelment of qualified bidders as per its Tender and the reasons for excluding 32 qualified bidders for the allotment of work by it. In response, the Opposite Party filed its reply on 26.04.2019.



15. In the meantime, the Informant filed an interim application dated 10.04.2019 for an urgent hearing of his application filed under Section 33 of the Act, which was submitted alongwith the Information. The Commission directed to relist the said application as the same could not be taken up on 18.04.2019 due to paucity of time.
16. The Opposite Party filed its reply on 26.04.2019 and the main submissions are briefly noted hereinbelow:
 - 16.1. The Opposite Party is not a commercial organization but is under the administrative control of the Education Department of Gujarat Government. It has been solely tasked with the mandate of publishing high quality textbooks for school students which cater to all economic strata of the society. The main object of the Opposite Party is to make basic education affordable. Since the printing cost will directly affect the cost of text books which are made available to the students, the Tender cannot be termed as anti-competitive considering that the requirement of printing textbooks is for making basic education affordable.
 - 16.2. The Informant is the owner of Gujarat Book Store who has been a service provider to the Opposite Party for printing school textbooks and is venting his personal grievance in guise of the present information to coerce the Opposite Party to empanel him for the work of textbook printing.
 - 16.3. In the prior information filed by the Informant, involvement of the Opposite Party was not held to be in violation of the provisions of the Act and its role was only limited to act as a facilitator for the purpose of enquiry and hence, the present case deserves to be dismissed at the very outset.
 - 16.4. The price for printing of web-offset is actually a more cost effective way of printing as there is major reduction in labour cost due to advanced technology and is more economical and is in the interest of students who are end customers.
 - 16.5. The preferred method of printing post-2010 has been web-offset printing as it is a more precise printing technique and the specifications laid down by the



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Opposite Party are merely a catalyst to help achieve the object of printing quality books. The Opposite Party has never specified any contractual condition with regard to upgrading of machinery which was in fact a voluntary conduct on the part of printers to procure majority work against their competitors. Printers get associated with the Opposite Party at their sole discretion without there being any pressure by the Opposite Party to do so. Web offset machine as per the required specifications is capable of doing any other printing work throughout the country. Moreover, there is alternative market for provisions of services of printing as the number of government schools have reduced to 76 % in the State of Gujarat.

- 16.6. The contract that has been alleged to be for the period 01.04.2017 to 31.12.2019, never even subsisted. In fact, the contract was only for the period 01.04.2017 to 31.03.2018 and there existed a renewed contract from 01.04.2018 to 30.06.2018. The Informant signed extended contract without contesting, either at the time of signing of the renewed contract, or after the completion of the tender process and hence, has waived his right to raise any such contention. Moreover, grievance as regards termination of contract can be raised before an appropriate forum.
- 16.7. The Opposite Party received a total of 103 qualified bids for web offset and sheet offset printing and it resolved to make a panel of bidders offering L1 rates and other bidders whose bid was between L1 and L1+10%, provided they matched the L1 prices. The estimated volume of work for 2018-19 was to be completed in 3 to 4 months. The total production capacities as declared by respective L1 bidders (26 bidders - deriving common L1 bidders for sheet-fed and web offset) were not found to be sufficient by the Opposite Party to complete the estimated requirement in the given timeline.
- 16.8. The basis of selection of bidders and decisions taken in that behalf were recorded in the minutes of the Working Committee Meeting held on 13.07.2018. As per Clause 4.16 xxiv of the Tender, it was decided (in the 241st Executive Meeting)



to allow qualified bidders willing to work at final respective L1 price and accordingly the Opposite Party approached 42 more qualified bidders to fulfil the estimated requirements. Out of these 42 additional bidders, 28 bidders gave confirmation to execute respective work at the finalised L1 prices, which constituted the panel of 54 empanelled printers. It further clarified that only 38 bidders had agreed to work on L1 rate until 20.07.2018 but the printing requirements were not met. In order to formulate the panel, the time was extended till 03.08.2018, wherein 16 more printers consented to work at L1 rates. Work was distributed to the qualified bidders after receiving Letter of Acceptances ('LoAs') from them and fulfilment of other conditions and individual contracts were entered into with 52 bidders.

16.9. The L1 price was determined on the basis of previous year's pricing and industry standards and it was learnt that web offset technique cuts down labour cost thus, reducing overall costs of printing and binding. There were 21 identical bids received offering a price that was 31% lower than the base rate which seemed like a fair price for printing textbooks using the web offset technique. The purpose of issuing a tender for determining the actual and viable price for printing work was thus achieved. It was further submitted that the EMD and the Tender Fee requirements were as per the provisions of Gujarat State Purchase Rules and Regulations and the Informant made incorrect averment of having submitted any letter seeking exemption of EMD with the Opposite Party. The Tender contained standard conditions which were within the purview of the Gujarat State Purchase Policy, 2016.

16.10. The Opposite Party had a fixed requirement to award printing work each year. After receiving the bids, it was decided that 68 bidders to whom LoAs were sent would suffice to complete the printing work. Since, there was no positive response received from all the printers to whom these letters were sent, the Opposite Party decided to extend the deadline of Acceptance Letters and sent out emails to 15 units amongst the 68 printers who were initially shortlisted to work at L1 rates.



- 16.11. Empanelled printers were required to submit a certain bank guarantee as per the stipulated terms. However, most printers were not able to furnish the required bank guarantee as per the stipulated terms and hence, 60% work was allotted to those who could furnish it and remainder were allotted 40%. The division of allotment of work was discussed in the Minutes of the 200th Production Committee Meeting dated 04.09.2018.
17. The Commission, after considering the information and the urgent hearing application of the Informant and the reply received from the Opposite Party, decided on 08.05.2019, to pass an appropriate order in due course. The Informant filed another application dated 30.05.2019, praying for urgent passing of an interim order as sought in his interim application dated 10.04.2019.
18. The Commission has carefully perused the material available on record and other information available in public domain.
19. According to the Informant, the Opposite Party, by virtue of its position, is a dominant enterprise in the relevant market, which as per the Informant, is '*market for procurement of web offset printing (578 mm cut off) of school textbooks in the State of Gujarat*'.
20. At the outset, the Commission deals with the preliminary objection of the Opposite Party that since no contravention was found against it in the previous information, therefore, the present case is liable to be dismissed. The Commission, having gone through its direction given under Section 26(1) of the Act in respect of the earlier information filed by the Informant, observes that the alleged contravention of Section 4 of the Act by the Opposite Party was not covered by the scope of the earlier information. Therefore, this objection is found to be without any merit and is thus, rejected.



21. The Commission observes that the Opposite Party is, *inter alia*, engaged in the activity of publishing textbooks, for which, it procures the services of the printers/printing units. As per reply dated 26.04.2019, filed by the Opposite Party, it had provided certain number of books, to the students, free of cost while others were priced. Given its functions, the Commission notes that the Opposite Party qualifies to be an 'enterprise' as defined under Section 2 (h) of the Act.
22. From the information available in public domain, the Commission observes that web-offset is a form of offset printing in which a continuous roll of paper is fed through the printing press. Pages are then separated and cut to size after being printed. This is used for high volume publications such as books, magazines, newspapers, catalogues and brochures *etc.*
23. For printing of books/textbooks, various state boards, state bureau of textbooks, National Council of Educational Research and Training ('NCERT') *etc.* invite tenders largely on pan-India basis from both web-offset and sheet-fed offset printers/printing units. Various procurers lay down machine specifications in their respective tenders to achieve the purpose of getting the intended work done as per their requirement. The printing units/printers who are in the business of printing of books/textbooks and interested in such tenders, participate by satisfying the eligibility conditions as prescribed in the tender. Such tenders are available as business opportunities in the market for them. Therefore, the tender issued by the Opposite Party is one of the many available opportunities in the market for provision of offset printing services by these printers. As correctly pointed out by the Opposite Party, neither there is any guarantee for award of any contract by the Opposite Party nor can there be any legitimate expectation on the part of any printer on that account.
24. Moreover, the Opposite Party, in its reply, has categorically denied the assertion of the Informant that web-offset printing machine with cut-off 578 mm is absolutely specialised which cannot be put to any other use except the work provided by the Opposite Party. The Opposite Party further submitted that web-offset printing machine



comes in various sizes and is capable of printing in particular sizes of paper varying from A1, A3, A4 and A5 and is, thus, capable of providing offset printing services for other printing works without any limitation, as opposed to the claims made by the Informant.

25. From the aforesaid discussion, the Commission finds it difficult to accept the proposition given by the Informant that the Opposite Party is the only procurer seeking services for offset printing as there are various other procurers who require such services from time to time and it cannot be said that there is any dearth of business opportunities. It is further noted that the tenders brought out by procurers are in the nature of invitation to offer and not an offer and those bidders who can provide the goods or services are entitled to submit their offer. It is, thus, for the Opposite Party to accept the offer based on its requirements, terms and conditions of the tender and its assessment of the capability of the selected parties to provide the requisitioned services within the stipulated time as textbooks for students have to be provided in time and the Opposite Party has a social obligation to discharge without fail, as averred by it.
26. The Commission further finds merit in the submissions made by the Opposite Party as to the capability of the web-offset printing machine with 578 mm cut-off to do other works, apart from the work assigned by the Opposite Party. The argument of the Informant with respect to web-offset printing machine with 578 mm cut-off being the relevant product does not seem to have any merit. Had web-offset printing machines with cut-off 578 mm been used only for the work assigned by the Opposite Party, as alleged by the Informant, then bespoke machines with such exact specifications would have to be developed. This cannot be the case. Accordingly, the Commission delineates the relevant product market as the '*market for procurement of services of offset printing*'.
27. As far as the relevant geographic market is concerned, the Informant has submitted that the market be restricted to the State of Gujarat on the grounds of local specific requirement, transportation cost and regulatory barriers. However, the Opposite Party



in its reply, has stated that bidders from States other than Gujarat across the country were also eligible to apply and there were no standards laid down with regards to the previous experience of the printing books. Further, the Tender, floated by the Opposite Party is for offset printing of textbooks and not web-offset printing in particular. The Commission notes that as such there is no restriction on the printers/printing units from other states to bid for the tenders floated in the State of Gujarat and *vice versa*. However, given the transportation cost and other logistical requirements, it seems implausible that printers/printing units situated in far flung places would participate in tenders floated in the State of Gujarat. Thus, though printers/printing units based in Gujarat are not constrained to bid only within that State, they would generally not be incentivised to bid in tenders floated by the tenderers situated in other states owing to cost ramifications. Therefore, the Commission delineates the relevant geographic market as the “*State of Gujarat*”.

28. Accordingly, the relevant market for the purposes of assessment in the present matter is ‘*market for procurement of services of offset printing in the State of Gujarat*’.
29. After having delineated the relevant market, the next step is to assess the dominance of the Opposite Party in the relevant market. Assessment of dominance, as stated in Explanation to Section 4, is primarily a subjective test, though Section 19(4) of the Act lays down certain criteria/factors to guide such assessment. Based on the previous discussion, it is apparent that the relevant product market is broader than the one stated by the Informant. Within that market the procurer of services would include the Opposite Party as well as the other procurers. As submitted by the Opposite Party, the web-offset printing machine comes in various sizes and is capable of providing offset printing services for other printing works as well. Thus, it seems that the service sought by the Opposite Party is just one of the many business opportunities available to the Informant and similarly placed printers. In such a situation, it appears unlikely that the printers, including the Informant, were solely dependent upon the Opposite Party for business. There is nothing on record to suggest that the Opposite Party, by its conduct, has foreclosed the market for the Informant. Though the Opposite Party could have



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been a large procurer of such services, it cannot be unambiguously concluded that it holds a dominant position.

30. However, regardless of the fact as to whether the Opposite Party holds a dominant position or not, its conduct which is alleged to be abusive has been analysed in the succeeding paragraphs.
31. With respect to the alleged unilateral termination of the contract purportedly for the period from 01.04.2017 to 31.12.2019, as stated by the Informant, the Opposite Party submitted that contract with such time period never even subsisted and that the contract was only for the period 01.04.2017 to 31.03.2018 followed by a renewal thereof from 01.04.2018 to 30.06.2018. This contract, along with its renewal, was entered into by the Informant with the Opposite Party of its own volition. In these circumstances, no competition issue can be said to have arisen which can be looked into under the Act. The Informant may pursue other remedies, if available, in case of any wrongful termination of contract.
32. With regard to allegation of denial of market access and allocation of work to specific bidders, the Opposite Party has provided an explanation as to the criteria adopted for selection of qualified bidders and award of a part of the work to them. It has been submitted that the award of work to qualified bidders was made having due regard to the capacity of such bidders, *inter alia*, to deliver the service by adhering to the timelines, in view of the fact that the educational institutions cannot be left bereft of timely supply of books for the academic session as it affects the career of the students. The Commission finds merit in the explanation provided by the Opposite Party and does not find it appropriate to question the criteria adopted by the Opposite Party in selecting the qualified bidders, based on its requirements.
33. As regards unfair pricing, the Commission is not satisfied with the contention of the Informant. Based on the discussion in the foregoing paragraphs, there are several opportunities available for selling offset printing services at the rates as deemed fit by



the printers/printing units and such printers/printing units are not constrained to provide their services only to the Opposite Party.

34. Further, with respect to allegations on EMD and other discriminatory conditions in the Tender as stated by the Informant, the Opposite Party has submitted that the Tender contains the standard conditions which are as per Gujarat State Purchase Policy and the Rules and Regulations. The Commission observes that the reply submitted by the Opposite Party, indicates that the terms and conditions of the Tender were put in place to ensure timely availability of high quality books/textbooks at affordable rates and in some cases, even free distribution of books/textbooks was the ultimate objective behind calling for the Tender. To this extent, the Commission in the matter titled as *In Re: K.N. Choudhary and M/s Delhi Metro Rail Corporation Ltd. and Others* (Case no. 42 of 2014, decided on 03.09.2014) while emphasising on the Consumer's choice (Procurer), observed that:

“19. Further, a consumer must be allowed to exercise its consumer choice and freely select between competing products or services. This right of consumer's choice must be sacrosanct in a market economy because it is expected that a consumer would decide what is best for it and free exercise of consumer choice would maximize the utility of the product or service for the consumer. For an individual, that consumer's choice is based on personal assessment of competing products or services, their relative prices or personal preferences. For any other type of consumer, this process of decision making in exercise of consumer's choice is more structured and reflected in procurement procedures. Such a consumer may use experts or consultants to advise, do its own technical assessment, take advice of others it may trust or even purchase from known and reliable sources. The process of such decision making may result in purchase by nomination or limited tender or open tender. The consumer is the best judge. In case of public entities, the entity is a representative consumer on behalf of the public. There are administrative mechanisms in place for carrying on the due process of exercising consumer's choice on behalf of the public.”

35. Based on the aforesaid discussions, the allegations regarding abuse of dominant position under Section 4 of the Act, on the part of the Opposite Party, are not found to have been established.



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36. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case and the information filed is closed forthwith under Section 26(2) of the Act. Consequently, no case arises for consideration of interim relief claimed by the Informant under Section 33 of the Act and all other pending application(s) filed by the Informant are, therefore, dismissed.
37. Secretary is directed to communicate the order to the parties accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(U.C. Nahta)
Member

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 07/08/2019