



COMPETITION COMMISSION OF INDIA

Case No. 43 of 2021

In Re:

Private Entrepreneurs Godowns Association
House No. 8888, Sector – 79, Mohali,
Punjab – 140 308.

Informant

And

Punjab State Warehousing Corporation
S.C.O. 74-75, Bank Square,
Sector – 17B, Chandigarh – 160 017.

Opposite Party No.1

State of Punjab
Department of Food, Civil Supplies & Consumer Affairs,
Government of Punjab, Anaaj Bhawan Building,
Sector – 39C, Chandigarh – 160 036.

Opposite Party No. 2

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

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

1. The present Information was filed by Private Entrepreneurs Godowns Association ('Informant') under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') against Punjab State Warehousing Corporation ('OP-1') and State of Punjab ('OP-2') (hereinafter 'OPs'), alleging, *inter alia*, contravention of the provisions of Sections 3(3) and 4 of the Act.



2. The Informant is stated to be a registered association of private entrepreneurs in the State of Punjab which provides storage space for storage of foodgrains to various procurement/warehouse agencies in the state.
3. OP-1 is stated to be a statutory body established for the purposes of warehousing of agriculture products under the Warehousing Corporations Act, 1962. It is stated to have two shareholders OP-2 and Central Warehousing Corporation ('CWC') with 50% share each. It is stated to be a public sector enterprise entrusted with the responsibility of storage, handling and warehousing of agricultural produce and notified commodities by offering warehouses as scientific storage structures especially constructed for protection of quantity and quality of stored products. These warehouses may either be constructed by it or may be hired from private godown owners. OP-1 is stated to be the largest procurer of warehouses from private godown owners in the State of Punjab as well as the largest State Warehousing Corporation ('SWC') in India which accounts for more than one-third of the total combined storage capacity of all SWCs in India.
4. OP-2 is the state government for the State of Punjab and is stated to be the majority shareholder in OP-1. It is stated to appoint the major decision makers in OP-1 and also the other state agencies which undertake procurement of goods for storage through Department of Food Civil Supplies and Consumer Affairs, Government of Punjab ('DFSC'). DFSC is stated to have various wings including two major wings i.e. Punjab Grains Procurement Corporation Ltd. ('PUNGRAIN') and Punjab State Civil Supplies Corporation Ltd. ('PUNSUP') which are stated to undertake procurement of goods for storage in the State of Punjab.
5. As per the Informant, in 2000-01, there was a significant requirement of storage capacity by Food Corporation of India ('FCI') for storing foodgrains; however, there was a storage gap. Thus, the Government of India decided to rope in private investors for building of storage capacity. Accordingly, FCI was advised to direct building of storage capacities by private investors in the States of Punjab and Haryana. Therefore, OP-1 and to some extent, other state agencies directed private parties to construct foodgrains storage godowns for a fixed rent under Ten Year Guarantee Scheme ('TYGS') in 2000-01 and Seven Year Guarantee Scheme ('SYGS') in 2002.



6. In furtherance of the same, private godown owners including members of the Informant, invested substantial amount for building godowns (running into crores of rupees) in the State of Punjab for a capacity of over 25 LMT as per the requirements stipulated by FCI, and a majority of these godowns constructed were leased by OP-1. However, the guarantee periods under TYGS and SYGS expired in 2011 and 2009 respectively. Thereafter, the private godowns owned by members of the Informant are being hired by OP-1 on General Hiring Basis ('GHB') i.e. on annual basis.
7. As per the Informant, the amount of rent receivable by the godown owners for hiring of their godowns is fixed for each year of hiring by OP-1 based on the amount sanctioned and received by it from the FCI for the said hiring. FCI revises the charges which are to be paid to godown owners from time to time. The storage charges payable by FCI to SWC are at par with the charges payable to CWC. However, the Informant alleged that despite revision of charges by the FCI from time to time, the OPs have not taken any steps to increase the charges to be paid to the godown owners in the State of Punjab post expiry of TYGS and SYGS.
8. In this regard, the Informant stated that it has also addressed several representations to the concerned authorities in the State of Punjab, whereupon several meetings have been held. Pursuant to the same, when Haryana State Warehousing Corporation ('HSWC'), the counter-part statutory organisation of OP-1, increased the rent with effect from 01.01.2012, the same was duly followed by the OPs also. However, as per the Informant, HSWC increased rent rates multiple times thereafter also, on 01.01.2014, again on 01.01.2017 and 01.07.2020, and thereafter in April 2021, but the OPs did not follow suit post 01.01.2012. The Informant stated that HSWC is following the pattern of CWC with regard to revision of storage charges with some modifications. However, the same is not being done by OP-1.
9. Hence, the Informant stated that it again approached the OPs in this regard, but to no avail.
10. The Informant averred that FCI regularly pays storage charges to the OPs to be disbursed to the private godown owners. It is a matter of record that such charges are being revised by the FCI from time to time. However, as per the Informant, the OPs are not revising the rents paid to the private godown owners in the State of Punjab in



accord with the amounts disbursed by the FCI. In this regard, the Informant provided the following tabular data showing the unreasonable and meagre rent paid by OP-1 to the members of the Informant in comparison to the storage charges paid by FCI to OP-1 over the years:

(Amount in ₹/quintal p.m.)

Year	Storage Charges paid by FCI to PSWC	Rent paid by PSWC to Godown Owners	Difference	%age of share of rent paid to Godown Owners vis-à-vis Storage Charges received from FCI	%age of share available with PSWC
2009-2010	5.46	1.52	3.94	27.83	72.17
2010-2011	5.84	1.52	4.32	26.03	73.97
2011-2012 (upto 31.12.2011)	6.14	1.52	4.62	24.76	75.24
2011-2012 (w.e.f. 01.01.2012)	6.14	1.70	4.44	27.69	72.31
2012-2013	6.76	1.70	5.06	25.15	74.85
2013-2014	7.40	1.70	5.70	22.97	77.03
2014-2015	8.30	1.70	6.60	20.48	79.52
2015-2016	8.60	1.70	6.90	19.77	80.23
2016-2017	9.36	1.70	7.66	18.16	81.84
2017-2018	10.42	1.70	8.72	16.31	83.69
2018-2019	10.78	1.70	9.08	15.77	84.23

- As per the Informant, in recent times, FCI foodgrains stock has exceeded the buffer norms which has resulted in huge shortage of storage spaces. Thus, further directions have been issued to private godown owners to store additional quantity of foodgrains in excess of ascertained capacity, but without any provision for additional rent. Such shortage has even been acknowledged by state agencies. However, though several meetings have been convened over a period of time to consider enhancement of rent, despite agreeing in such meetings that the rent payable by OP-1 will be at par with HSWC, there has been no increase in rent post 2012. Therefore, as per the Informant, it is evident that both OP-1 and OP-2 are availing the benefit of revision of rent from FCI, that too on basis of actual storage capacity; however, the rate of rent has remained stagnant for private godown owners whose godowns are hired by OP-1. At the same time, in fact, further burden has been imposed upon the godown owners to store additional quantity of foodgrains in absence of any additional rent for the same. Hence,



the members of the Informant are eligible for enhancement of rent, as well as additional rent for excessive storage and compensation for faster deterioration of their godowns' premises.

12. Further, it was alleged that several members of the Informant have asked for vacation of storage spaces in desperation from OP-1 despite having no other use for godowns because the charges being paid by OP-1 are very low and cannot even make for the basic subsistence; however, OP-1 is neither increasing the rent nor vacating the godowns, clearly bringing out that the Informant and other godown owners are trapped and have no way out as the Informant's members have incurred sunk costs to enter a market which are not recoverable upon exit from the market.
13. As per the Informant, the collusive decision of OP-1 and OP-2 of not increasing the rent payable to private godown owners since 2012, amounts to an anti-competitive agreement between them in contravention of the provisions of Section 3 of the Act. As per the Informant, the common object of both the OPs is to refuse increase in price and to keep payments made by FCI in their pockets. The understanding/agreement between the OPs of not increasing private godown prices is alleged to be in violation of the provisions of Section 3(3) of the Act as such services are being provisioned by OP-2 through DFSC (with its different wings) and OP-1, who are at the same level of market, *i.e.* both are engaged in availing the services of godowns for storage of food-grains in the State of Punjab. Further, as per the Informant, such agreement between the OPs directly/indirectly determines the purchase price/rentals of godown services through overt means, and results in limitation and/or control of supply of services.
14. In addition, the Informant also levelled allegations pertaining to violation of the provisions of Section 4 of the Act by OP-1. Regarding the relevant market, the Informant submitted that the services being provided by godown owners in the State of Punjab are not substitutable with any other services because the godown services are provided by the members of the Informant and other similarly situated godown services providers at non-urban centres in almost all districts of the State of Punjab where foodgrains are procured by various procurements agencies and stored in such godowns. As per the Informant, the godowns of its members cannot be used for any other purpose and have been erected, established and maintained only for the purposes of storage. As these godowns were built under the guarantee schemes of FCI, they are meant for



storage of agricultural produce only (a village activity) and are mostly located in village areas and *mufassil* towns where no produce other than foodgrain is available. Thus, these godowns are wholly dependent on foodgrains and cannot be used for storage of any other goods. The characteristics of godown services being provided by members of the Informant are unique and different from godowns for other services, which in any case have no market presence in the rural areas in the State of Punjab where most of godowns of Informant's members are located. The price of Informant's services is also unilaterally decided by the OPs which is unrelated and independent of any other product. Therefore, according to the Informant, the relevant product market in the present matter ought to be *"the market for availing godown services for storage of food-grains"*.

15. Regarding the relevant geographic market, the Informant submitted that the godown services are availed subsequent to procurement of foodgrains at a rate decided by the state agencies throughout India. There are 19 SWCs in India apart from the CWC. OP-1 caters to the State of Punjab while other SWCs cater to the respective states. Similarly, there are other warehousing corporations which have been established at the state level, which are responsible for the procurement and storage of grains. These are mostly administered at the state level. Thus, procurement as well as conditions for availing storage services are decided at the state level by the procurement agencies. In Punjab, the same is done under the administrative control of the DFSC of OP-2 which regulates the pricing of such services. The pricing of procurement and regulations for such requirement differ from state to state. It is only with the State of Punjab that the conditions of competition for supply or provision of storage services for foodgrains (for example pricing) are distinctly homogenous and can be distinguished from the conditions outside the State of Punjab. Therefore, the relevant geographic market in the present case ought to be *"territory of State of Punjab"*.
16. Thus, as per the Informant, the relevant market in the present case ought to be *"the market for availing godown services for storage of foodgrains within the territory of State of Punjab"*.
17. In such relevant market, the Informant submitted that OP-1 is the dominant player. OP-1 has the widest network consisting of 120 warehouses in Punjab, having a total storage capacity of approximately 55 LMT (29 million sq. ft.). OP-1 is the largest procurer of



warehouses in the State of Punjab from private godown owners. As per its own website, OP-1 is the largest SWC in India which accounts for more than one-third of the total combined storage capacity of all SWCs in India. According to the market share reports, OP-1 holds a market share of about 90% in the State of Punjab in availing godown services for storage of foodgrains. Further, OP-1 has collaborations with other foodgrain procurement agencies in Punjab such as PUNGRAIN, PUNSUP (controlled by OP-2) etc., for the purposes of warehousing. Moreover, there is no private market for availing the godown services for foodgrains in the State of Punjab. In fact, the godown spaces are located in non-urban centres in remote locations and cannot be used for any other purpose except storing foodgrains. Therefore, in view of the unique nature of the market and the size of the market cornered by OP-1, OP-1 is the dominant enterprise in the delineated relevant market.

18. As per the Informant, OP-1, in exercise of its market power and dominance, is imposing unfair conditions in the purchase (pricing in availing) of godown storage space for foodgrains which is in violation of the provisions of Section 4(2)(a) of the Act. Further, as per the Informant, the conduct of OP-1 limits/restricts the provision of services in the relevant market, in violation of the provisions of Section 4(2)(b) of the Act.
19. In view of the foregoing facts and allegations, the Informant sought the following reliefs from the Commission: (a) To call upon the Informant for a hearing and pass an order under Section 26(1) of the Act to inquire into the practices of the OPs which are in violation of the provisions of Sections 3 and/or 4 of the Act; (b) to direct the OPs to cease and desist from indulging in anti-competitive practices in violation of Sections 3 and/or 4 of the Act; (c) to direct the OPs to pay rent to the godown storage space providers (including the members of the Informant) at par with the rent paid by HSWC with effect from 01.01.2014 till date (in terms of the revisions made by HSWC from time to time) with an interest of 18% per annum or in alternative at a fair rental value under *extant* circumstances with an interest of 18% per annum; (d) to impose highest level of penalties upon the OPs in accordance with the provisions of the Act so as to have a deterrent effect and ensure fair competition; (e) to direct the OPs to pay all of the Informant's costs; and (f) to pass the interim directions under Section 33 of the Act pending investigation and inquiry by the Commission to the OPs to pay rent to the



godown storage space providers (including the members of the Informant) at par with the rent paid by HSWC, as may be revised from time to time, from the date of passing of Section 26(1) order under the Act, and to not take any coercive action against the members of the Informant.

20. The Commission considered the Information in its ordinary meeting held on 11.01.2022, and *vide* order of even date, forwarded an electronic copy of the Information to the OPs asking them to file their response thereto, if any, and the Informant to file its rejoinder to such response(s), if any.
21. In its response dated 12.04.2022 to the Information, OP-1, at the outset, submitted that the Informant has the alternative remedy of arbitration available to it under the rent agreements entered into and between the members of the Informant and OP-1. As such, the present Information is not tenable. It also submitted that it is not an 'enterprise' within the meaning of Section 2(h) of the Act. It is performing 'sovereign functions'. Hence, its activities are beyond the jurisdiction of the Commission.
22. OP-1 further submitted that it does not hold a dominant position *vis-à-vis* godown owners as alleged by the Informant as it is only one of the several State Procuring Agencies ('SPAs') responsible for procurement and storage of foodgrains in the State of Punjab, the others being PUNGRAIN, MARKFED, PUNSUP, Punjab Agro *etc.* When it comes to the yearly allocation made by OP-2 of responsibility for procurement of foodgrains from the market, OP-1 has consistently ranked much below than other SPAs like PUNGRAIN, PUNSUP and MARKFED. In fact, the current division of shares of SPAs in the storage capacity hiring market in the State of Punjab is as follows:

S. No.	SPA	Storage Capacity hired (In lac MT)
1.	PUNGRAIN	50.85
2.	OP-1	22
3.	MARKFED	7
4.	PUNSUP	8
5.	FCI	0.8

23. OP-1 submitted that the Informant picked and chose to file the present case only against OP-1 as it has a motive to exert undue pressure on OP-1 to work as per its whims and fancies. OP-1 submitted that the present Information has been filed by Shri K.C.



Sharma, Chairman of the Informant and certain others with *mala fide* motive as they have disputes with OP-1 since their lease deeds were terminated by OP-1. In fact, some unknown persons have even forged signatures of some godown owners on documents annexed with the present Information.

24. As per OP-1, the Informant has falsely submitted that OP-1 has been consistently getting increased amounts of financial grants from FCI under the garb of rental expenses and not forwarding the said financial benefit to the Informant. OP-1 explained that the annual grant received by it from FCI is primarily on account of factors like chemical and materials, insurance, wages, salary and travelling allowance, repair and maintenance and other printing and stationery, bank charges, auditor's fee and expenses *etc.* The primary reason behind the marginal annual increase in the financial grant of FCI is because OP-1 is incurring increasing amount of expenditure on the account of aforesaid expenses, which are being completely borne by OP-1. Hence, despite the increased grant, the amount received is not sufficient to meet the expenses of OP-1 and it has been incurring net loss for past several years. OP-1 has been consistently representing to FCI to substantially increase the annual grant, but to no avail. In fact, the same has rather been reduced. Hence, OP-1 is finding it very difficult to accede to demands of the Informant. In fact, FCI has not, for past several years, even paid the entire amount of grant to OP-1 and has been annually deducting substantial amounts by citing deficiencies in hired godowns infrastructure of private parties. Further, in all cases where OP-1 hires godowns from private parties for storage purposes as allocated by OP-2 during Rabi season, FCI pays to OP-1 on Actual Utilisation Basis ('AUB'); however, OP-1 pays to godown owners on GHB. Such extra expenses for vacant space are borne by OP-1.
25. Further, as per OP-1, the Informant has failed to disclose to the Commission that its members have entered into and are currently operating several other lease deeds with other SPAs on rates of rent similar to those being paid by OP-1.
26. OP-1 has also submitted that to not bring true facts on record, the Informant has deliberately not made FCI a party in the present case.



27. OP-1 stated that pursuant to numerous representations made by members of the Informant to OP-1 regarding enhancement of rent, the matter was duly taken up by the Board of Directors of OP-1 in the meeting held on 06.11.2017 under the Chairmanship of Additional Chief Secretary (Development). However, after detailed consideration of all relevant factors, it was consciously decided that the demand for rates of rent at par with HSWC cannot be accepted as OP-1 annually manages storage capacities way over capacities managed by HSWC. However, at the same time, it was fairly recommended that rent be enhanced by a certain amount, provided that the godown owners fulfil certain conditions. When the recommendations were placed before Hon'ble Chief Minister of Punjab, directions were issued to Managing Director of OP-1 to formulate a policy for revision of godown rent which was duly formulated on 05.11.2018 which was submitted for approval of Hon'ble Chief Minister who on 28.05.2019 decided to place the same before State Level Coordination Committee ('SLCC') comprising of top level officials from various departments of the Government of Punjab. To consider the same, SLCC, over the years, held several meetings under the Chairmanship of Additional Chief Secretary (Development) as well as appointed several committees and sub-committees; however, matter got delayed due to COVID-19 lockdowns. Thereafter, SLCC meeting was scheduled for 24.09.2021 but the same had to be postponed on account of letter dated 13.09.2021 issued by FCI decreasing annual financial grant. This reduction was duly taken cognizance in the meeting held on 21.12.2021 wherein it was decided that in view of the financial impact of the decision of FCI, the matter regarding revision of rent required re-assessment. Thereafter also, necessary steps were undertaken; however, then election Code of Conduct was imposed meanwhile which, the present case was filed.
28. As per OP-1, it is constantly making efforts to work with relevant departments for betterment of godown owners with regard to the issue of enhancement of rent, and it is hopeful that an informed decision in this regard will soon be arrived at by SLCC.
29. Lastly, OP-1 submitted that majority of the godown owners working with OP-1 are highly satisfied with the prevailing rates of rent (especially having regard to the recent reduction of storage charges by FCI) and fair and transparent business practices of OP1.
30. As far as OP-2 is concerned, no response to the Information was received from it.



31. On 17.05.2022, the Informant filed its rejoinder to the response filed by OP-1. In its rejoinder, the Informant majorly reiterated the submissions made by it in the Information filed.
32. However, with regard to the specific pleas taken by OP-1 in its response, the Informant submitted that there is no alternative remedy available to it in the present circumstances as arbitration in an agreement is limited to *in personam* disputes arising out of the agreement between the parties and arbitration clause cannot be invoked for seeking increase of rentals.
33. Further, the Informant submitted that a government department (including statutory corporation) is expressly covered within the definition of 'enterprise' under the Act. OP-1 is a statutory body carrying out statutory commercial functions without any concern with sovereign functions, therefore, it cannot be equated with a sovereign body. The Commission has in the past also ordered various investigations against statutory corporations carrying commercial functions.
34. Regarding dominance of OP-1, the Informant submitted that the grievance of the Informant relates to storage capacity hired by OP-1 under TYGS of 2000-2001 and SYGS of 2002. For procurement of godowns constructed in 2001-2002 and now being hired on GHB post expiry of the guarantee periods, OP-1 has no basis to deny its position as a market leader. It was only later on to fill the gap of storage capacity to store the stocks of foodgrains of FCI that the government of India through the State Nodal Agency which was PUNGRAIN, got built new godowns by private entrepreneurs on 7 years guarantee basis in 2011 and 2012 and on 10 years guarantee basis in 2012-13. Under these two schemes known as Private Entrepreneurs Godowns (PEG) Schemes, only new godowns were got built, which are operated through a different rental scheme and the present Information is not concerned with godowns under the PEG Scheme. The godown rentals under these schemes are quite high and range between ₹4.00 to ₹5.00 per quintal per month without perseverance. Hence, a distinction must be made between the godowns of private entrepreneurs which are being hired on GHB on year to year basis for which rental is ₹1.70 since 2012 and others under PEG Schemes which are under guarantee at much higher rates. Under the GHB hiring, the market share of other SPAs like PUNGRAIN, MARKFED etc. is miniscule. The Informant submitted that OP-1 has presented wrong facts by comparing



its hiring capacity under the GHB which is 22 LMT (hired capacity) with other SPAs total hiring capacity. It may be noted that the share of OP-1 under PEG is *nil* or negligible and it takes godowns only on GHB with which the present Information is concerned. Hence, it ought to have given figures of other SPAs with respect to GHB only. Out of the alleged total storage capacity available with PUNGRAIN *i.e.* 50.85 LMT, approximately 41 LMT is under PEG Schemes and only around 10.28 LMT is presumably on GHB as against the storage capacity of 22 LMT of OP-1. The storage capacities on GHB with other SPAs like MARKFED, PUNSUP and FCI are also much lesser or miniscule as compared to OP-1. Hence, OP-1 is clearly in a dominant position *vis-à-vis* private godowns hired on GHB.

35. The Informant also submitted that as rentals for godowns on GHB were already fixed and paid by OP-1 before they were given on hire to other SPAs, and hence, the other SPAs, who are also constituents of OP-2, followed suit to pay rentals for hiring of private godowns on GHB on same rates *i.e.* ₹1.70 (in some cases ₹1.72 per quintal per month).
36. With regard to the abusive conduct of OP-1, the submissions made in the response of OP-1 were denied and contrary facts to the same were presented.
37. Regarding efforts being made by OP-1 to decide increase in rentals, the Informant submitted that OP-1 has placed on record many sporadic documents with long gaps between them, all of which relate to rental increase and completely overrule each other. This clearly shows that the intent is to buy time and not act on its obligation to pay a fair market value. As per the Informant, such conduct of OP-1 and OP-2 is possible only because OP-1 is acting independent of the market forces by continuing to delay the decision on rental increase, as it is very well aware that there are no competitive constraints on its, given the structure of the market.
38. Regarding anti-competitive agreement between the OPs, the Informant submitted that all SPAs are being controlled by OP-2 and are hand in glove with each other as there has been no increase in rentals for the godowns despite many promises to the contrary.
39. Averments made against Shri K.C. Sharma were also categorically denied by the Informant. It was rather stated that even after repeated notices and requests, OP-1 had, for more than 2 years now, failed to vacate the godown of Mr. K.C. Sharma. It was also



highlighted that OP-1 has been constantly pressurising Mr. Sharma to sign addendum agreement, terms of which are not acceptable to him. Likewise, other members of the Informant have also been coerced to sign the addendum agreement as not signing the same on dotted lines would result into withholding of rent by OP-1. In certain cases, where even on paper godowns have been de-hired, they are still in possession of OP-1, and from the date of alleged de-hiring to till this date, rent is being paid to the godown owner on AUB.

40. Making such submissions, the Informant reiterated the prayers made by it in the Information filed.
41. In its ordinary meeting held on 25.05.2022, the Commission considered the Information and the response and rejoinder thereto filed by OP-1 and the Informant respectively, and decided to pass an appropriate order in due course.
42. The Commission, at the outset, notes that in the present matter, allegations have been made with regard to (i) abuse of dominant position by OP-1; and (ii) existence of an anti-competitive agreement between OP-1 and OP-2. As such, the Commission shall analyse these two sets of allegations made by the Informant *w.r.t.* contravention of Section 4 and contravention of Section 3, one by one.
43. However, before adverting to such analysis on merits of the matter, the Commission notes that a preliminary objection has been raised by OP-1 regarding existence of an alternative remedy of arbitration with the Informant. In this regard, the Commission observes that the Informant has rightly pointed out that only disputes between the parties to the agreement *i.e.* OP-1 and the Informant's members, can be resolved under such arbitration clause. The matter of statutory contravention by the OPs, if any, cannot be decided under such arbitration agreement. Hence, the Commission shall now proceed to analyse the matter on merits.

Section 4

44. Before examining the conduct of OP-1 in terms of the provisions of Section 4 of the Act, the Commission first proceeds to determine whether OP-1 is an 'enterprise' within the meaning of Section 2(h) of the Act.



45. In the Information, OP-1 is stated to be a statutory body engaged in warehousing of agricultural products. It is stated to have two shareholders OP-2 and CWC with each having a shareholding of 50%. It is stated to be a public sector enterprise entrusted with the responsibility of storage, handling and warehousing of agricultural produce and other notified commodities. Hence, it is clear that OP-1, being a public sector enterprise engaged in the activities of procuring and storing foodgrains and other commodities, as well as in the activities of hiring godowns for storage of the same and paying rent for such hiring, is engaged in economic activities which are not sovereign in nature. As such, in terms of Section 2(h) of the Act which excludes only government departments engaged in activities relatable to sovereign functions of the government, OP-1 is an ‘enterprise’ and its conduct may be analysed under Section 4 of the Act.
46. Once OP-1 is established to be an ‘enterprise’, the Commission, for the purposes of examining the allegations of abuse of dominance against OP-1 under Section 4 of the Act, shall adopt the following step by step approach:
- (a) Defining a ‘relevant market’;
 - (b) Assessing whether OP-1 is in a position of dominance in the delineated relevant market; and
 - (c) Determining if the conduct of the dominant party is abusive in nature (exclusionary or exploitative).
47. Delineation of a relevant market is the most crucial element for assessing dominance and abuse of dominance by an enterprise. As per Section 2(r) of the Act, “*relevant market means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.*”
48. With regards to the relevant product market, the Commission observes that in the Information, the relevant product market is stated to be “*the market for availing godown services for storage of food-grains*”. However, in its rejoinder, the Informant stated that the godown services availed under GHB ought to be distinguished from the godown services availed under other schemes like PEG.



49. In terms of Section 19(7) of the Act, while determining a relevant product market, the Commission shall have due regard to certain factors mentioned in the said provision. Thus, analysing the relevant product market in the present case based on such factors, the Commission opines that in the present matter, the relevant product market cannot be determined scheme wise as new schemes may be launched by various state governments from time to time. For each and every scheme, a separate market cannot be defined. Even the godowns presently hired under PEG may, after expiry of their guarantee periods, fall under GHB. As such, no distinction can be made amongst the godown services hired under GHB and those hired under PEG or any other scheme. The godowns of members of the Informant being hired under GHB, cannot be placed in a separate relevant product market, from the other godowns given for hire under other schemes. Further, from the information available in the public domain¹, the Commission notes that a tender for hiring of various categories of covered godowns for storage of foodgrains was issued by OP-2 and PUNGRAIN on behalf of all the SPAs in the State of Punjab. Any godown owner meeting the criteria laid out in the tender document may submit bid to the appropriate authorities for the said tender irrespective of whether the godowns offered for hiring were covered in various SYGS or TYGS floated by different SPAs from time to time or not covered at all. Apart from the above, the Commission notes that once the scheme period is over, there does not appear to be any difference between the godowns built under the schemes and other godowns available for hire under GHB. The Commission also notes that the relevant product market is an exercise to determine other products/services, as the case may be, which compete with/constrains the product/service in question. Hence, it appears that all godown owners, irrespective of the scheme (on the basis of year and SPA which launched the scheme) under which they were constructed, compete against each other for getting their godowns hired for storage of foodgrains. Therefore, the Commission agrees with the relevant product market originally proposed by the Informant and opines that the relevant product market in the instant case may be delineated as the market for 'hiring of godown services for storage of foodgrains'.

¹ <http://foodsuppb.gov.in/sites/default/files/Expression%20of%20Interest%20for%20hiring%20of%20Covered%20Godowns.pdf>



50. As far as the relevant geographic market is concerned, the Commission, based on the factors mentioned in Section 19(6) of the Act, again agrees with the contentions raised by the Informant and opines that as for every state, the hiring agencies of godowns are separate, every state may be treated as a separate relevant geographic market in itself. It is noted that while OP-1 caters to the State of Punjab, other SWCs cater to other respective states. Even other warehousing corporations which may have been established at the state level and are responsible for procurement and storage of grains, are mostly administered at the state level. Thus, procurement as well conditions for availing storage services are decided at the state level by the procurement agencies. The pricing of procurement and regulations for such requirement differ from state to state. Therefore, the Commission observes that it is only within the State of Punjab that the conditions of competition for supply or provision of storage services for foodgrains are distinctly homogenous and can be distinguished from the conditions outside the State of Punjab. Therefore, the Commission is of the view that the relevant geographic market in the instant case may be delineated as “the State of Punjab”.
51. Hence, in the present matter, the Commission delineates the relevant market as the “*market for hiring godown services for storage of foodgrains in the State of Punjab*”.
52. In such delineated market, the Commission shall ascertain the position of dominance, if any, held by OP-1.
53. From the material available on record, it is evident that under the current division of shares of SPAs in the storage capacity hiring market in the State of Punjab, PUNGRAIN had hired 50.85 LMT of storage capacity while OP-1, in comparison, had hired just 22 LMT of storage capacity. Though the Informant has submitted that approximately 41 LMT of hired capacity of PUNGRAIN is under PEG Scheme and only around 10.28 LMT may be on GHB as against the storage capacity of 22 LMT of OP-1 under GHB, the Commission notes that as scheme wise distinction is not being made while determining the relevant product market, the plea raised by the Informant of defining the relevant product market scheme-wise is misconceived. Based on the above information, in the relevant market for hiring of godown services for storage of foodgrains in the State of Punjab, OP-1 cannot be called to be in a dominant position.



54. In the absence of dominant position of OP-1 in the delineated relevant market, the allegations of abuse made against it need not be examined. Therefore, the Commission finds no contravention of the provisions of Section 4 of the Act by OP-1 in the present matter.

Section 3

55. As far as the allegations of there being an anti-competitive agreement in violation of competition law amongst OP-1 and OP-2 are concerned, the Commission observes that the Informant, besides making bald allegations, has placed on record no material, which may even *prima facie* hint at there being an ‘agreement’ between OP-1 and OP-2, for not increasing the rates of rent for hiring of godowns from private parties, in the State of Punjab.
56. Further, OP-1 is stated to be a statutory body entrusted with the responsibility of storage, handling and warehousing of agricultural produce and other notified commodities. On the other hand, OP-2 is the state government for the State of Punjab. Though it is also stated to be, *inter alia*, engaged in procurement of goods for storage through DFSC, in view of the Commission, OP-2 indulging in procurement and storage of foodgrains through other agencies like PUNGRAIN, PUNSUP *etc.* does not put OP-1 and OP-2 to be engaged in identical or similar trade of goods or provision of services. Further, they also cannot be said to be in products/services at different levels in the production chain.
57. As such, in the opinion of the Commission, any agreement between OP-1 and OP-2 with regard to procurement of foodgrains for storage and hiring of godowns from private entrepreneurs for such storage purposes, cannot be analysed under the provisions of Section 3(3) of the Act. In view of the above, the Commission finds that no case of contravention of even the provisions of Section 3 of the Act, is also made out against the OPs, in the present matter.
58. Thus, based on the foregoing observations, the Commission is of the considered opinion that no case of contravention of any of the provisions of the Act is made out against either OP-1 and/or OP-2 in the present matter. As such, the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.



59. The Secretary is directed to forward a certified copy of the present order to the parties/their legal counsel(s), accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 16.06.2022

Sd/-
(Bhagwant Singh Bishnoi)
Member