Public Version

COMPETITION COMMISSION OF INDIA

***Suo Moto* Case No. 07 of 2020**

***In Re*: Cartelisation amongst HP India and its resellers in the sale and supply of Personal System Products in India**

Against:

HP India Sales Private Limited
Tower D, Third Floor, Building No. 2, Cyber Green,
DLF Phase – III,
Gurugram, Haryana. **Opposite Party No. 1**

Delphi Infosolutions Pvt. Ltd
M D- 41 Eldeco Mansionz,
Sohna Road, Sector – 48,
Village- Fajilpur Jharsa,
Islampur(97), Gurgaon,
Haryana – 122018. **Opposite Party No. 2**

Comnet Vision (I) Pvt. Ltd.
Flat No. 706, Vishal Bhawan,
95, Nehru Place,
New Delhi- 110019. **Opposite Party No. 3**

Digitech Computers
G-1, Amar Plaza, 45,
C Main Hasanpur Road,
IP Extension, Patparganj,
New Delhi – 110092. **Opposite Party No. 4**

Softlabs Solution
304, Skyline House,
85, Nehru Place, New Delhi- 110019. **Opposite Party No. 5**

Orbit Techsol India Pvt. Ltd
A-8, FIEE, Okhla Phase-II,
New Delhi- 110020. **Opposite Party No. 6**

Thoughtsol Infotech Pvt. Ltd.
F-12, First floor, Kalkaji,
New Delhi- 110019. **Opposite Party No. 7**

Hind Technocare
C-15, Atrium floor, The Surya Hotel,
New Friends Colony,
New Delhi-110025. **Opposite Party No. 8**

Intensity Global Technologies Pvt Ltd.
408, Red Rose, Nehru Place,
New Delhi- 110019. **Opposite Party No. 9**

M Integraph System Pvt. Ltd.
A-99, DDA Shed, First Floor,
Okhla Industrial Area, Phase-II,
New Delhi- 110019. **Opposite Party No. 10**

Krishna Computer
731, Dhiman Lane, Jagadhri Road,
Yamuna Nagar, Haryana – 135001. **Opposite Party No. 11**

CORAM

Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member

Appearances during the hearings:

For OP-1	*Mr. Karan S. Chandhiok, Advocate* *Ms. Modulika Bose, Advocate* *Mr. Uday Bali, Advocate* *Mr. Shourya Mitra, Advocate* *Ms. Riddhika Dumane, Advocate* *Mr. Rajeev Nair, General Counsel, HP India* *Ms. Niyati Ojha, Legal Counsel, HP India*
For OP-2	*Mr. Arjun Krishnan, Advocate* *Mr. Ankur Singh, Advocate* *Ms. Pritha Banerjee, Advocate* *Mr. Abhijeet Singh, Advocate*
For OP-3 and its individual	*Mr. Vijay Pujari, Advocate* *Ms. Kajal Sonkar, Advocate* *Mr. Susheel Mahajan, Advocate* *Ms. C. Haritha, Advocate*
For OP-4	*Ms. Shalu Kapoor, Sole proprietor*
For OP-5	*Mr. Suman Raj, Advocate* *Mr. Praveen Kumar, Advocate*
For OP-6 and its individuals	*Mr. Avdhesh Bairwa, Advocate* *Mr. Kartik Nayar, Advocate* *Mr. Saurav Kakroda, Advocate* *Mr. Divyansh Rai, Advocate* *Mr. Anshul Jain, Advocate*
For OP-7 and its individuals	*Mr. Vaibhav Gaggar, Senior Advocate* *Mr. Abhishek Nair, Advocate* *Mr. Aniket Ghosh. Advocate* *Mr. Sarthak Miglani, Advocate*
For OP-8	*Mr. Sanjay Rajput, Sole Proprietor*
For OP-9 and its individual	*Mr. Gopal Jain, Senior Counsel* *Ms. Diksha Khullar, Advocate* *Ms. Swati Sharma, Advocate* *Mr. Shashank Gautam, Advocate* *Ms. Sreemoyee Deb, Advocate* *Mr. Aditya Narain Kakkar, Company representative*

For OP-10 and its individual	*Mr. M. M. Sharma, Advocate* *Mr. Ankit Singh Rajput, Advocate* *Mr. Rupesh Ratish, Manager*
For OP-11	*Mr. Pawan Dadhich, Sole Proprietor*

Order under Section 27 of the Competition Act, 2002

1. The present case pertains to cartelisation amongst HP India Sales Private Limited (‘**HP India’**/‘**OP-1**’) and its resellers *viz.* Delphi Infosolutions Pvt. Ltd. (‘**OP-2’/ ‘Delphi**’), Comnet Vision (I) Pvt. Ltd. (‘**OP-3**’/‘**Comnet**’), Digitech Computers (‘**OP-4**’/ ‘Digitech), Softlabs Solution (‘**OP-5**’), Orbit Techsol India Pvt. Ltd. (‘**OP-6**’/ ‘**Orbit**’), Thoughtsol Infotech Pvt. Ltd. (‘**OP-7**’/‘**Thoughtsol**’), Hind Technocare (‘**OP-8**’), Intensity Global Technologies Pvt Ltd. (‘**OP-9**’/‘**IGTPL**’), M Integraph System Pvt. Ltd. (‘**OP-10**’/ ‘**M Integraph**’) and Krishna Computer (‘**OP-11**’) in the sale and supply of personal system products laptops, desktops, workstations, thin clients, notebooks, mobility devices, retail Point of Sale systems *etc*. as well as related software and accessories such as monitors, keyboards, mouse and docks (‘**Personal Systems Products**’), to the commercial and retail customers in India. OP-2 to OP-11 are collectively referred to as reseller OP(s) for ease of reference.

2. This case is one among the two cases initiated on the basis of an application received by the Commission under the provisions of Section 46 of the Competition Act, 2002 (‘**Act**’) read with the erstwhile Competition Commission of India (Lesser Penalty) Regulations, 2009 (‘**LPR, 2009**’), from HP India. Based upon the said application, the Commission, forming an opinion that a *prima facie* case of contravention of the provisions of Section 3 of the Act is made out, passed an order dated 17.11.2020 under Section 26 (1) of the Act and directed the Director General (‘**DG**’) to cause an investigation into the matter with respect to all tenders floated on the Government e Marketplace (‘**GeM**’) platform by the procurers in Delhi for Personal System Products, the value of which exceeds ₹1 crore. During the pendency of investigation before the DG, Mr. Manoj Grover, a former official of HP India had also approached

the Commission by filing an application under the provisions of Section 46 of the Act read with the LPR, 2009 on 24.08.2021. Thereafter, on 19.05.2022, Delphi (OP-2) also approached the Commission with an application under the provisions of Section 46 of the Act. The Commission notes that though Mr. Manoj Grover, an ex-official of OP-1, filed a separate application during the pendency of investigation, he is also covered in the lesser penalty application which was filed by HP India on behalf of itself and its individuals. The Commission further observes that the DG has not found Mr. Grover to have acted in contravention of the provisions of the Act in the present matter. Accordingly, the Commission deems it appropriate to move Mr. Manoj Grover up in the priority status along with that of OP-1 and consequently, OP-2, also moves up to second marker in priority status.

3. The DG, after detailed investigation, had submitted its report in confidential and non-confidential version, on 26.03.2023 along with the records. The Commission considered the same in its ordinary meeting held on 15.11.2023 and *inter alia*, referred the matter back to the DG to cause further investigation in terms of Section 26(3A) of the Act.

4. In pursuance of the aforesaid directions of the Commission, the DG carried out supplementary investigation and submitted a supplementary (consolidated) investigation report (‘**Investigation Report**’), in confidential and non-confidential version, along with the records, on 06.03.2024.

5. The DG analysed 60 tenders floated on GeM out of which 41 met the criteria set out in the *prima facie* order *i.e.* Delhi based tender of value of 1 crore or more for procurement of Personal Systems Products. Out of 41, 30 tenders were shortlisted in which both HP India and its resellers, or HP resellers participated (excluding those in which only HP India or resellers for other OEMs participated). Out of these, the DG found incriminating emails in relation to 7 GeM tenders which established collusion among HP India and its resellers in contravention of Section 3(3) of the Act. The details of these 7 tenders are as under:

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Table 1: Details of seven tenders in which the OPs colluded as per Investigation Report

SI. No.	Tender No.	Tender Issued by	Tender/Bid Value in Rs.	List of colluding OPs and L-1
[redacted]		[redacted]	[redacted]	Delphi Infoslutions Pvt. Ltd. Thoughtsol Infotech Pvt. Ltd. **L-1 Corporate Infotech P Ltd (Acer)**
[redacted]				Obit Techsol Throughtsol Infotech Intensity Global Krishna Computer DigiTech Computer **HP India Sales Pvt. Ltd. (L-1)**
[redacted]				Thoughtsol M Intergraph **HP India Sales Pvt. Ltd. (L-1)**
[redacted]				Comnet Vision **L-1 Hitachi System Pvt Ltd (Acer)**
[redacted]				Hind Technocare Krishna Computers Softlabs Solutions Digitech Computers **HP India (L-1)**
[redacted]				Softlabs Krishna Computers Hind Technocare HP India **L-1 Sun Systems (Dell)**
[redacted]				**M Intergraph Systems Private Limited (L-1)** HP India

6. The DG found that in these 7 tenders, HP India emerged as L-1 in 3 tenders, and one of its reseller, M Intergraph (OP-10) emerged as L-1 in one tender, and resellers of other OEMs namely Acer and Dell won two and one tender respectively. The DG, based on emails exchanged between HP India and its resellers, and statements of their officials, found HP India and its 10 resellers named above in the cause title to have acted in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act. The DG also identified 20 individuals *i.e.* 10 individuals of HP India, 3 individuals of Orbit (OP-6), 2 individuals each of Delphi (OP-2) and Thoughtsol (OP-7), 1 individual each of Comnet (OP-3), IGTPL (OP-9) and M Integraph (OP-10), in terms of the provisions of Section 48 of the Act. In pursuance of the directions of the Commission *vide* order dated 15.11.2023, the DG also examined other 28 resellers, but could not find any evidence to establish their involvement in the anti-competitive conduct.

7. The Commission considered the Investigation Report and *vide* order dated 03.05.2024, directed the Secretary to forward a copy of the non-confidential version ('**NCV**') of the Investigation Report to the 11 OPs and their 20 respective individuals who had been identified by the DG in terms of the provisions of Section 48 of the Act, through the companies' counsel, giving the OPs and the individuals an opportunity to file their respective objections/ suggestions, if any, to the Investigation Report.

8. The Commission also directed the OPs to file their duly audited financial statements including balance sheets and profit and loss accounts for the Financial Years ('**FY**s') 2016-17 to 2022-23 along with details of turnover/ revenue generated from the sale of Personal System Products ('**relevant turnover**') by way of certificate from Statutory Auditor, or in his absence, from a Chartered Accountant, along with requisite affidavit, in terms of Competition Commission of India (Determination of Turnover or Income) Regulations, 2024 ('**Turnover Regulations**') and the Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024 ('**Penalty Guidelines**'). The OPs were also directed to serve a

copy of the order along with a copy of the Investigation Report to their respective individuals who have been identified by the DG to have acted on their behalf for the purposes of Section 48 of the Act under intimation to the Commission, and these individuals were required to file their income details including Income Tax Returns ('**ITRs**') for the FYs 2016-17 to 2022-23, in terms of Turnover Regulations and Penalty Guidelines.

9. Thereafter, the parties filed various applications pertaining to formation of confidentiality ring, extension of time for filing financial information and objection/suggestions to the Investigation Report, extension of time for serving the order dated 03.05.2024 upon the individuals *etc.*, which were duly considered and disposed of by the Commission from time to time.

10. On request of the parties, the Commission formed a confidentiality ring in the matter and allowed the parties access to the confidential version of the Investigation Report, *vide* order dated 28.08.2024 subject to filing of undertakings and in terms of erstwhile Regulation 35 of the Competition Commission of India (General) Regulations, 2009 (hereinafter, '**General Regulations**', replaced by Regulation 36 of General Regulations 2024). HP India (OP-1), Delphi (OP-2), Comnet (OP-3), Orbit (OP-6), Thoughtsol (OP-7), IGTPL (OP-9) and M Integraph (OP-10), along with their respective individuals (except [redacted] of HP India) formed part of the confidentiality ring. Despite several opportunities accorded to the remaining OPs, *viz.* Digitech Computers (OP-4), Softlabs (OP-5), Hind Technocare (OP-8) and Krishna Kapoor (OP-11), they did not apply for being part of the confidentiality ring. The OPs and their respective individuals (except [redacted] of HP India) filed their respective objections and/or suggestions to the Investigation Report.

11. The Commission heard the arguments of the OPs and their respective individuals on 25.02.2026, 12.03.2026 and 09.04.2026, including submissions on penalty and mitigating factors, and allowed the parties to file post hearing submissions which were duly filed.

Submissions of the Parties

HP India and its nine individuals

12. HP India filed objections/suggestions on 11.04.2025, in confidential and non-confidential version along with an application for confidentiality. Pursuant to oral hearing, HP India and its individuals filed their post hearing submissions on 07.05.2026, in confidential and non-confidential version.

13. By way of oral arguments and written submissions, HP India, *inter alia*, submitted as under:

[redacted]

13.2. Manufacturer's Authorisation Form ('**MAF**') is a document required by Institutional/Government entities from the prospective bidders as part of tender conditions. MAF is issued by Original Equipment Manufacturer ('**OEM**') to ensure that the products are genuine and to preserve warranty condition on the products delivered under a given tender/order. Government tenders for Personal Systems Products are managed by Account Managers and Zonal Managers. MAF requests were routed through Account Managers.

13.3. It is further stated that Transfer Price ('**TP**') is the price at which HP India sells inventories to its distributors. When a reseller intends to bid in a tender, it approaches HP India for a differentiated transfer price. So, after adding resellers' margin, the final bid remains competitive.

13.4. In pre-GeM era, the procurements were made by Government entities under rate-contract mechanism, whereunder certain HP resellers had developed legacy commercial relationships with Government customers and such accounts were termed as their Most Valuable Customer ('**MVC**') accounts. In 2016, the frame work of GeM was introduced, to facilitate competitive bidding. These dynamics disrupted the incumbent tier-2 established positions and created significant competitive pressure to preserve their legacy accounts.

13.5. Also, the reverse auction ('**RA**') process in GeM further incentivized HP India and its Tier -2 resellers to coordinate among themselves. HP India faced the risk if its resellers exited early due to unsustainable downward pricing pressure resulting in no sale for HP India. The coordination amongst HP India's reseller was accordingly designed to ensure that at least one HP reseller remained present in the final round.

13.6. To minimize the loss, certain resellers approached HP India to help facilitate an arrangement that would enhance their chances of securing Government supply contracts against other competing HP India resellers. These requests included: (a) restricting participation of resellers from other territories in local tenders; (b) seeking support in dividing the accounts/relevant tenders amongst themselves; (c) restricting the number of MAFs issued to other resellers or to issue MAFs to some designated resellers only; (d) addressing instances where bid prices offered by other resellers were below the GeM price or rate contract prices, through corrective action, and (e) facilitating 'cover' bids.

13.7. Resellers overstated dependence over it. For instance, Comnet, Delphi and Digitech computers submitted during the hearing that they are dealing with other OEMs also. There would be situations where a reseller would seek TP from OP-1 but end up quoting for another OEM.

13.8. It further stated to have only affected intra-brand competition with no impact on inter brand competition. OP-1 had no control over participation/bidding of other OEMs or over its own resellers dealing with competing brands.

Mitigating Factors

13.9. *Limited effect on overall competition*: It is stated that the disclosed arrangement only impacted the *intra-brand* competition for Personal Systems Products and had no impact on competition prevailing in the market vis-à-vis other OEMs.

13.10. [redacted]. Steps taken to separate sales teams and teams approving/issuing MAFs and SQs so as to mitigate possibility of anti-competitive coordination. It also introduced a centralized and streamlined MAF issuance process. HP India voluntarily submitted a consolidated version of its submissions on 21 February 2022, which explained each relevant evidence (including emails, WhatsApp chats, video transcripts of the meeting, etc.) and its significance from the perspective of the investigation. In the consolidated submission, HP India also provided details such as the names of the individuals, contact details of the resellers, etc.

13.11. *No Prior contravention under the Act and adherence to compliance*: HP India's conduct with its resellers is the first instance of where the company has contravened the provisions of the Act. HP India's status as a first-time offender under the Act, should be duly considered as a mitigating factor. HP Inc. has a longstanding record of being recognized as one of the 'World's Most Ethical Companies'. HP's primary compliance policy- 'Integrity at HP' and HP's 'Partner Code of Conduct' require the employees and the channel partners to comply with applicable competition laws. In line with its global policy, HP India has a robust competition compliance program in place and regularly conducts such programs for its employees.

13.12. The Commission in its decisional practice, has considered institution of active steps to end anti-competitive behaviour as a mitigating factor, in which case imposition of penalty would not be warranted. For example, in *Shri Suprabhat Roy, Proprietor, M/s Suman Distributors v. Bengal Chemists and Druggists Association and Others*, the Commission took note of the fact that the Bengal Chemists and Druggists Association (BCDA) had taken various steps to end the practice of requiring a no-objection certificate for being appointed as a stockist prior to commencing supply of drugs/medicines to such stockists.

13.13. In *Excel Crop Care Limited v. Competition Commission of India and Another*, Civil Appeal No. 2480 of 2014 ('**Excel Crop**'), the Hon'ble Supreme Court has enlisted factors the Commission must consider when setting penalties, including, nature, gravity, and extent of the violation, role and duration of participation, nature of involvement of the entity, loss/damage suffered as a result of contravention, market conditions, product characteristics, market share, entry barriers, company's bona fides, profit derived from the violation.

13.14. In the event that the Commission considers it necessary to impose any penalty and/or remedies, it should consider relevant turnover instead of global turnover of HP India and amended Section 27 should not be applied retrospectively as these provisions are penal in nature. Hence, it requested that penalty, if any to be imposed, must be calculated only on the relevant turnover and not on global turnover introduced by the amended Act.

[redacted]

[redacted]

Submissions of individuals of HP India (except [redacted])

14. The nine individuals of HP India *viz.* [redacted] filed objections/suggestions on 16.04.2025 and 17.04.2025, in confidential and non-confidential version. They adopted the arguments of HP India including submissions on mitigating factors. Their submissions in brief are as under:

14.1. Individual liability under Section 48(3) of the Act is attracted once the company is held to have contravened the provisions of the Act and it is proved that the contravention has taken place with the consent or connivance or negligence of any officer of the company. As in the present case the Commission is yet to find HP India in contravention of the Act, any proceeding determining vicarious liability against an individual for the conduct of HP India is premature.

14.2. The aforementioned individuals filed their respective ITRs in pursuance of the directions of the Commission given *vide* order dated 03.05.2024. They also cooperated with the DG during the investigation. Therefore, they have cooperated throughout the inquiry process.

14.3. [redacted] was the Managing Director of HP India from May, 2017 to August, 2019. As the MD, [redacted] was involved in making decisions relating to high-level policy matters, business goals, strategies, new product introduction, marketing and go to market strategies, coordinating between the global and India sales teams. The Managing Directors are not involved in the day-to-day operations carried out by the account managers and were not aware the arrangement that existed between Tier-2 resellers and HP India. Section 48(2) of the Act allows defense to the individual if due diligence is exercised on his part. As part of the highest governing body, [redacted] supported compliance framework and governance standards. He actively endorsed HP India's integrity policy, which includes competition law compliance and fair competition guidelines. Therefore, he should not be held liable under Section 48(1) read with Section 48(2) of the Act. It is requested to exonerate [redacted] from the aforesaid charges. [redacted]

14.4. It is stated that the following three individuals were not involved in designation of preferred sellers, communication of prices, coordination of price bids issuance/withholding of MAF etc. The DG implicated them based on the statement of resellers identifying them as recipients of routine correspondence, without adducing any material that constituted participation or facilitation in the cartel conduct. Owing to having no role in the arrangement existing between Tier 2 resellers and HP India officials and no evidence of them taking part in issuance/denial of MAF and bid prices, it is requested to exonerate the following officials:

14.4.1. [redacted] served as Zonal Manager, and was not part of the team handling Government tenders. His role was centered on supporting the sale team and handling large deals outside Delhi.

14.4.2. [redacted] serves as Enterprise Account Manager, and his role was limited to interacting with end consumers and aligning channel partners for order execution and customer satisfaction.

14.4.3. [redacted] served as Team Lead, with responsibilities confined to supervising the sale team, managing customer relationships, ensuing customer satisfaction and maintaining cordial relations between resellers and customers.

14.5. The individuals participating in the conduct did not act with the intent of violating competition law; and once HP India apprised the individuals of the illegality of the collusion facilitated by them, they ceased the contravening conduct with immediate effect. This also reflects in the statements made before the DG.

14.6. Reliance placed on Suo Moto Case No. 05 of 2017 titled *In Re: Cartelisation in Industrial and Automotive Bearings* and Reference Case No. 03 of 2016 *Chief Materials Manager, South Eastern Railway v. Hindustan Composites Limited and Others,* wherein the Commission did not impose any penalty on the opposite parties after observing that, among other things, the opposite parties cooperated in the investigations. In the instant matter, without prejudice to the individual's status as leniency applicant, the Commission may exercise its discretion to not impose penalties over individuals considering the disclosures, admissions and overall cooperation provided during the course of the investigation, especially during their respective depositions.

14.7. As per Penalty Guidelines, income from property and capital gains should also be excluded. Only the relevant income generated during their tenure with HP India should be considered for ascertainment of penalty amount.

14.8. In view of the foregoing, the aforesaid individuals requested to set aside the findings of the DG, rendering them liable under Section 48 of the Act, and [redacted].

14.9. [redacted]

[redacted]

<u>Submissions of Delphi InfoSolutions Pvt. Ltd. (OP-2)</u>

15. Delphi (OP-2) along with its individuals *viz.* [redacted], filed their common objections/suggestions to the investigation report on 25.07.2024, in confidential and public version. After conclusion of oral arguments, OP-2 filed its post hearing written submissions on 16.04.2026. By way of written and oral submissions, the submissions made by OP-2 and its individuals are as under:

Preliminary objections

[redacted]

15.2. The DG has not collected any independent evidence which implicates Delphi in bid rigging except the admission of [redacted] The admission by individuals of OP-2 cannot be used against it as Section 46(3) of the Act categorically provides that admission of the lesser penalty applicant cannot be used for the purposes of the Act. The findings against Delphi in the Investigation Report cannot be used against it.

15.3. DG findings themselves show that HP India is an OEM which sells its products through Tier 1 Authorised Distributors and Tier 2 resellers. Delphi, admittedly, is a Tier 2 reseller for HP, hence HP India, Tier 1 distributors, and Tier 2 resellers all operate at different levels of distribution chain, and therefore, are part of a vertical relationship which does not fall within the ambit of Section 3(3) of the Act.

15.4. [redacted]

15.5. Out of the 7 GeM tenders identified by the DG to have met the threshold, Delphi participated in only one tender *viz.* [redacted]. However, in the said tender neither HP India nor any of its reseller, including Delphi, emerged as successful bidders. The email dated [redacted] relied upon by the DG regarding this tender only shows that the prices were controlled by HP India and not through any collusion between Delphi and Thoughtsol. There is no evidence of collusion between Delphi and Thoughtsol for this tender. In furtherance of the above assertion, it is stated that no other finding *vis-à-vis* tenders above INR 1 crore has been recorded by the DG which demonstrates that no benefit accrued to Delphi in respect of tenders above INR 1 crore.

15.6. It is further stated that the DG has found Delphi to be in contravention of the provisions of the Act, with regard to three tenders *viz.* [redacted] which do not meet the threshold of INR 1 crore. The evidence relied upon by the DG in respect of these tenders do not meet the evidentiary threshold.

15.7. The inter-brand aspect of the tenders must be considered by the Commission. In many tenders, the issuer agency does not request a brand specific requirement, rather a broad specification in which any OEM such as Dell, Acer, Lenovo *etc.* can bid. Even assuming HP India controls the price amongst its distributors and that collusion between HP India and its resellers may not have any impact on the final award of tender. Hence, even assuming an agreement between Section 3(3) of the Act is made out, the presumption of Appreciable Adverse Effects on Competition ('**AAEC**') stands rebutted on account of fair competition between OEMs.

15.8. OP-2 is registered as a Micro, Small and Medium Enterprise ('**MSME**'). Given the overall size of the market and the number and quantity of orders sourced through GeM tenders, OP-2's participation was miniscule and insignificant. Furthermore, such a small enterprise is incapable of causing any AAEC in the market.

15.9. A perusal of the Investigation Report demonstrates that most of the key findings are based on oral statements of various parties. However, it is trite that where the DG directs evidence to be led by way of oral statements, an opportunity must be given to the party against whom such evidence is been given.

15.10. The total value of orders received by Delphi pursuant to GeM tenders, wherein Delphi admitted to seeking support bid comes to only around INR [redacted]. This amount is miniscule in relation to the overall size of the market in terms of volume sourced through GeM tenders and also below the limit of INR 1 crore. It is further submitted that it is not possible for OP-2 to give any accurate estimation of business affected on account of anti-competitive actions of HP and its resellers.

15.11. [redacted]

15.12. Delphi and its individuals have already suffered prejudice and irreparable injury due to disclosure of statement of [redacted] in the Investigation Report. [redacted]. Reliance is placed on *Excel Crop Care* matter (2017) 8 SCC 47, wherein the Hon'ble Supreme Court held that '*…It is in the public interest as well as in the interest of national economy that industries thrive in this country leading to maximum production. Therefore, it cannot be said that the purpose of the Act is to 'finish' those industries altogether by imposing those kinds of penalties which are beyond their means.*'

15.13. The present case is an instance where an [redacted] Delphi asserted that it had negligible role in the alleged conduct. It voluntary stopped and undertook not to engage in any cartel of bid rigging in future and had extended full cooperation during investigation. These aspects should be considered as mitigating factors.

15.14. It is further submitted that 2023 amendment to Sections 27 and 48 of the Act are inapplicable and so are the Penalty Guidelines. Nevertheless, it is requested to consider factors such as no role in orchestrating the cartel, no prior contravention of provisions of the Act, admission during investigation, involvement in the conduct in order to survive in the market, and provision of cogent evidence during investigation, by the Commission to exonerate OP-2 and its individuals from imposition of any penalty. In case the Commission decide to impose the penalty, the relevant turnover would be the turnover which falls within the parameters set by the Commission.

15.15. [redacted]

15.16. [redacted]

Submissions of Comnet (OP-3) and its individual

16. Comnet (OP-3) and its individual Mr. P.K. Sharma filed their common objections/suggestions to the investigation report on 16.12.2024. After conclusion of oral arguments, OP-3 filed its post hearing written submissions on 16.04.2026. By way of written and oral submissions, the submissions made by OP-3 are as under:

16.1. Comnet is engaged in manufacturing, assembling, designing, engineering, importing/exporting, installation, servicing, software licensing, and dealing in a wide range of electronic and IT products. Products are distributed *via* Tier-1 distributors and then to Tier-2 resellers like Comnet. Comnet procures products through both Business to Consumer (‘**B2C**’) and Business to Business (‘**B2B**’) channels.

16.2. Its revenue is diversified across products and services, mitigating risk from reliance on any single product line. Comnet has registered consistent growth in the non-Government sector. Revenue from the Government sector has steadily decreased over time and represents a minimal share of total turnover. [redacted]. If collusion existed, one would expect increased or stable revenue from the alleged arrangement. Instead, HP-related Government revenue diminished significantly over time.

16.3. Comnet operates with over 40 OEM brands including Canon, Dell, Lenovo, Acer, Asus, HP, HPE, Samsung, and Eaton. HP-related products constitute only 4.65% of Comnet's total revenue. This demonstrates that Comnet is not financially dependent on HP India and does not operate under its influence.

16.4. Based on industry practice, procurement is generally categorized into 3 types: (a) Standard Products which are commercial off-the-shelf goods such as laptops, desktops, and printers from brands like HP, Lenovo, or Dell, (b) Configurable Products which require customization such as adding RAM, storage, or altering specifications, and (c) Specialised or customized products which are built specifically for a client or project and cannot be configured through standard portals. Resellers must directly approach the OEM to obtain pricing. This demonstrates that OEM-reseller interactions for pricing are routine. Even when base pricing comes from OEM, the final bid price calculated by reseller include cost of goods sold, customization cost, logistics and delivery cost, margin, warranty, after-sales costs and risk factor.

16.5. One of the preliminary objections is that DG misunderstood routine business communications such as request for MAF and Smart Quotes

(‘**SQs**’) as evidence of collusion. The DG failed to properly appreciate that SQ is a standard OEM pricing mechanism for configurable products. The RITES Ltd. email relied upon was merely a product inquiry and part of legitimate procurement steps which is an industry practice in IT and electronics sector. Pricing obtained through SQ is procedural and not indicative of collusion. Similarly, MAF was requested to meet the document requirement under GeM framework.

16.6. The GeM process for procurement is very comprehensive in terms of documentary requirements and compliances. The GeM system’s audit trails and regulatory oversight make manipulation practically impossible.

16.7. From 2011 to 2021, [redacted] Importantly, none of these tenders were for HP products. In the instant matter, there is no case of Section 3(3) of the Act against Comnet as it did not bid in the impugned tenders and hence, there is no coordinated pricing by it.

16.8. Comnet has entered into [redacted] which define the nature of the relationship between HP (OEM) and Comnet (Tier-2 reseller). Comnet is an [redacted] The terms of agreement demonstrate that HP exercises substantial control over Comnet's actions, decisions, pricing, interactions, compliance requirements.

16.9. HP is an OEM manufacturer; Comnet is a reseller. Their roles in the supply chain are fundamentally different. HP manufactures and Comnet distributes. They are not competitors operating at the same level. Further, the relationship between HP India and Comnet is indirect, with Tier-1 distributors acting as intermediaries. Moreover, HP India and Comnet have a hierarchical relationship wherein, HP India has significant control over Comnet's actions. This reinforces that their commercial interactions are vertical in nature, not horizontal cartel arrangements. Hence, the phrase engaged in 'identical or similar trade' is also inapplicable.

16.10. On merits, with regard to email communication exchange between Comnet and HP India regarding the [redacted] tender no. bearing [redacted], it is submitted that [redacted] was published on 06.06.2020, with last date for submission being 19.06.2020 giving a narrow window of 14 days. The bid was a bundled tender requiring a single comprehensive submission covering: (i) Desktop computers (ii) Computer printers and (iii) Line Interactive UPS with AVR. Participation required quoting for all 3 items together. Partial bidding was not permitted. The bid contained extensive technical specifications spanning several pages. Due to the bundled and customized nature, close coordination with OEMs was essential. Resellers could not independently source such products without OEM support. Comnet became aware of the [redacted] tender on [redacted] when an [redacted] sent an email proposing collaboration for the UPS component. Given that desktops and printers were essential bundle components, Comnet needed pricing from HP India. On [redacted], Comnet emailed [redacted], HP India employee, seeking "suggest models & best prices for desktops and printers." This request was limited to product pricing and not overall bid price. When no response was received, follow-up email was sent on [redacted] attaching tender details. The request was internally forwarded within HP India across multiple personnel. On [redacted] of HP India informed Comnet that HP India was already aligned with another partner for this tender. With only 2 days remaining before the deadline *i.e.,* 19.06.2020, Comnet had insufficient time to obtain pricing from alternate OEMs. As a result, it did not submit any bid. Comnet only indulged in legitimate email communication for obtaining quote for customized products, which is mistaken by the DG as evidence of collusion. The product prices sought from HP India were necessary input for calculating final bid. Rather, this instance indicates that HP India deliberately delayed and ultimately rejected Comnet's request for pricing and MAF, to prevent its participation in the [redacted] bid. Accordingly, there is no evidence to suggest collusion between HP India and Comnet in [redacted] tender.

16.11. It is also relevant to note that during investigation, upon being questioned about non-issuance of MAFs to certain resellers, [redacted] of HP India had stated that prior to June 2020, MAFs were issued only to selected partners, because those partners were already working on specific accounts under the DGS&D regime and had requested continuation of that alignment. An internal email dated [redacted] from [redacted] directed HP India employees that they were working on the [redacted] and that the MAF should not be shared without discussion.

16.12. Regarding [redacted] it is stated that in the [redacted] several resellers of HP India including [redacted]. participated with HP India products. However, these entities are not parties to the present proceedings. Furthermore, it is also submitted that the Hitachi Systems, which participated using Acer products emerged as L-1 bidder. This also indicates that there is least probability of winning tender despite collusion between HP India and its resellers, given participation of other OEMs and/or their resellers.

16.13. All the communications were formal email exchanges which Comnet voluntarily shared with the DG, reflecting transparency. If collusion existed, such transparency would be unlikely. Besides, [redacted] emails are outside the scope of investigation as only tenders above INR 1 crore are shortlisted by the DG and there is no [redacted] in the said lists.

16.14. It is stated that Comnet has been unjustly implicated in tenders where it neither participated nor received MAF or transfer price from HP. The DG has relied upon email communications between Comnet and HP India to allege cartelization however such communications were limited to seeking pricing information for customized products and SQ requests, which are standard practices in government tender participation.

16.15. The aforesaid instances also demonstrates that the DG overlooked the dependency of resellers on OEM for pricing and MAFs, Bundles tender complexities, internal policies of HP India governing account allocation, and procedural compliance requirements in GeM tenders.

16.16. Comnet strongly denies the conclusion of the DG regarding cartel arrangement between HP India and Comnet, as Comnet never informed HP India of its bid prices and never received pricing direction from HP India. Communications were limited to seeking product pricing and authosiation, which HP India never provided despite multiple requests. Comnet's actions of requesting pricing and MAF, had no AAEC in India as these neither altered market conditions nor created barriers to entry. In fact, Comnet was itself prevented from participating due to HP India's refusal to provide authorization.

16.17. There is a serious and apparent inconsistency in the Investigation Report, wherein in Table D at entry No. 28 regarding [redacted], the name of resellers of HP *viz.* [redacted] appear under the heading "*entities authorized by HP India to quote HP products*". Whereas in Para 3.167, in Table F at entry No. 4 pertaining to [redacted], Comnet's name appears as HP Tier-2 participant, whereas Comnet did not participate in the said tender.

16.18. The DG investigated 28 Tier-2 resellers and found no incriminating evidence of cartelization or anti-competitive conduct against them as most were either disqualified at the technical stage or did not participate at all. Several resellers cited lack of MAF availability or inability to obtain competitive pricing from OEMs as reasons for non-participation. Comnet's position is identical. It did not participate in the impugned tenders and was unable to secure the necessary pricing or documentation from HP. Its non-participation was not due to collusion or strategic withdrawal, but because it was never placed in a position to bid.

16.19. It is further submitted that certain resellers among the 28 either failed to respond to notices of the Commission, provided false information, or did not comply with the Commission's directives, yet were not included as parties. In contrast, Comnet consistently cooperated and provided full and accurate disclosures but has been wrongly implicated. This inconsistency highlights selective inclusion.

16.20. Mr. P.K. Sharma was not involved in day-to-day operational correspondence concerning pricing inquiries. Such matters were handled by sales and operational staff. His role was supervisory and compliance-oriented. Section 48(1) and 48(3) impose liability on individuals only where anti-competitive conduct is established against the entity and where such individuals were directly responsible or complicit. Mr. Sharma's actions were consistent with industry practice, namely seeking product pricing and MAFs from HP to participate in Government tenders. There is no evidence that he participated in bid-rigging, price-fixing, or any collusive arrangement. The DG's conclusions are based on assumptions rather than proof of consent, connivance, or negligence, as no case of contravention exists against Comnet, or Mr P.K. Sharma.

16.21. In view of the foregoing, Comnet, *inter alia*, requested the Commission to take note of the inconsistencies in the Investigation Report and to remove it as an OP on account of no substantive evidence to suggest its involvement in the alleged cartel.

Submissions of Digitech Computers (OP-4)

17. Digitech Computers (OP-4) filed its objections/suggestions to the NCV of the Investigation Report on 09.03.2026 along with request for condonation of delay. The Commission condoned the delay and took the submissions on record during the hearing on 12.03.2026. OP-4 also filed post hearing written submissions on 16.04.2026.

18. By way of written and oral submissions, the submissions made by OP-4 are as under:

18.1. Findings of the DG of existence of collusion between HP India and Digitech are baseless. The DG's reliance on the statement of Ms. Shalu Kapoor, sole proprietor of OP-4 and [redacted] to conclude that OP-1 and OP-4 colluded in the GeM tenders is entirely misplaced. Ms. Kapoor only explained the routine process followed by OP-4 for obtaining TP by submitting Special Price Requisition ('**SPR**') which contained the specifications of the equipment and details of the tender. Digitech would add its logistics cost and margin to arrive at bid price. Such a process is a common industry practice in IT hardware distribution market. In post GeM era, the resellers need to interact with the OEM for obtaining TP and MAF. Such interactions were not intended at manipulating bids. The DG overlooked the market structure and standard industry practices of obtaining transfer prices and MAFs; and incorrectly concluded such communications to be commercially sensitive.

18.2. Regarding [redacted]) tender, Ms. Kapoor never stated that it submitted the bid as per the directions of HP India. The DG selectively interpreted the said response. It is further stated that the investigation report fails to identify the GGSIPU tender details such as bid number, tender reference, date of the tender, the particulars of the bidding processor and did not adduce any documentary evidence, email communications, or GeM portal records which could substantiate the observations made by the DG on the basis of the deposition.

18.3. Regarding the [redacted] tender, it is stated that Digitech got disqualified in the Tender No. [redacted] and its financial bid was not opened. Thus, it had no ability to affect the competitive outcome in respect of this tender. The DG must have considered this aspect which itself negates the possibility of bid rigging.

18.4. The investigation report lacks reasoned analysis against OP-4 in relation to Tender No. [redacted]. In relation to this tender, the DG relied on [redacted]between HP India and another reseller *viz*. Krishna Computers. The investigation report is conspicuously silent on any detailed examination or reasoned analysis of the said emails or statements to demonstrate how the same establishes any concerted action on the part of OP-4 in contravention of Section 3(3)(d) of the Act.

18.5. It is further submitted that unilateral email exchange sent by HP India, in the absence of any response from OP-4, cannot by itself establish an agreement to rig the bid. The DG relied on emails sent from HP India without there being evidence of response being received to infer a collusive relationship. It is a settled principle of law that the circumstantial evidence must be supported by corroborative material demonstrating concerted action. The DG has not established that the alleged communications resulted in synchronized manipulation of bid prices or suppression of competition.

18.6. The DG found existence of collusion without examining whether HP India and Digitech are in fact competitors in the market. Section 3(3) cannot be invoked against the manufacturer and its resellers since both are not in a horizontal relationship. The investigation report is silent on fundamental jurisdictional requirement of Section 3(3) of the Act, which requires the alleged parties to be competitors operating at the same level of the market. Mere participation of OEM and its reseller in the same tender cannot be construed as evidence of a horizontal arrangement. Any competitive concern arising out of interactions between HP India and its downstream resellers can at best be examined under Section 3(4) of the Act, which requires a rule of reason approach.

18.7. *Arguendo*, the conduct warranted examination under horizontal agreement framework, the DG failed to demonstrate any AAEC as a result of the alleged collusion between OP-1 and OP-4. The DG has not demonstrated any competitive harm to the procurer.

18.8. The DG failed to analyse the bidding process on the GeM portal, which involves independent participation by multiple bidders and price discovery mechanism such as competitive bidding or reverse auction.

18.9. It is imperative for the DG in cartel investigation involving MSMEs such as OP-4, to establish contravention through concrete and cogent evidence. As such MSMEs operate with limited financial and operational resources and are vulnerable to serious reputational and financial consequences arising out of unsubstantiated allegations of cartelisation.

18.10. In case the Commission considers imposing any penalty, factors such as full and continuous cooperation with the DG including furnishing of all information and documents, no history of anti-competitive conduct, being a small enterprise with limited resources and turnover, adverse impact of COVID-19 on OP-4's economic condition be considered as mitigating factors.

18.11. In view of the foregoing, OP-4 requested to remove its name from the array of parties, alternatively clear OP-4 of all the allegations and findings in the investigation report and considering its submissions, refrain from imposing any penalty on OP-4.

Submissions of Softlabs (OP-5)

19. Softlabs (OP-5) filed its objections/suggestions to the NCV of the investigation report on 09.03.2026 along with request for condonation of delay. The Commission condoned the delay and took the submissions on record during the hearing on 12.03.2026. It also filed post hearing written submissions on 16.04.2026.

20. The preliminary objections regarding, no horizontal arrangement existing between Softlabs and HP India, overlooking of standard business practices in the IT hardware industry, lack of AAEC analysis by the DG, OP-5 being an MSME, analysis of functioning of GeM Portal *etc*. are similar as discussed above in context of Digitech and are not reproduced here for the sake of brevity.

21. On merits, OP-5 denied findings of the DG against it. The submissions made by OP-5 are as under:

21.1. The DG have found Softlabs to have acted in contravention of provisions of the Act, in respect of two tenders *viz*. [redacted]. Regarding [redacted], Mr. Munish Pal of OP-5 stated to have quoted price lower than what was communicated by HP India based on his assessment of prevailing rates quoted by Tier-1 partners. This demonstrates that OP-5 exercised independent commercial judgment in determining bid price, thereby negating the assertion of it acting on directions of HP India in collusive arrangement. Also, the DG failed to analyse the actual bid price quoted by OP-5 in the said tender to determine whether the price quoted by it was merely replicating the prices suggested by HP India. Regarding this tender, the DG concluded collusive arrangement based on the email exchanges between [redacted] of HP India and [redacted] of OP-5. The investigation report is devoid of any substantive analysis demonstrating how such communication translated into a bid rigging arrangement.

21.2. Further, OP-5 was technically disqualified in tender no. [redacted], and could not participate in the financial bidding stage of the said tender. As such OP-5 had no role in the final price discovery process and could not manipulate the outcome of the tender. The fact that the said tender was won by Sun Systems who quoted Dell products further demonstrates that the bidding process remained competitive.

21.3. The Investigation Report lacks any analysis against OP-5 in relation to Tender No. [redacted]. The said tender involved RA process which the DG failed to analyse. Regarding this tender, the DG analysed three bids submitted on GeM Portal and observed that HP India colluded with its resellers to emerge as L-1 by influencing its Tier-2 resellers to quote the price as directed by it. Softlabs is alleged to have participated in the said tender; however, the investigation report does not identify any communication, document or other evidence demonstrating that OP-5 was directed by HP India to quote a particular bid price. Mere participation of OP-5 in this tender cannot be construed as evidence of collusion.

21.4. In case the Commission considers imposing any penalty, factors such as full and continuous cooperation with the DG including furnishing of all information and documents, no history of anti-competitive conduct, being a small enterprise with limited resources and turnover, adverse impact of COVID-19 on OP-5's economic condition be considered as mitigating factors.

21.5. In view of the foregoing, OP-5 requested to remove its name from the array of parties, alternatively clear OP-5 of all the allegations and findings in the investigation report and considering its submissions, refrain from imposing any penalty on OP-5.

<u>Submissions of Orbit Techsol (OP-6) and its individuals</u>

22. Orbit Techsol (OP-6) and its individuals *viz*. Mr. Sushil Kumar Jain, Mr. Hari Om Gupta and Mr. Anand Sharma, filed their separate objections/suggestions to the confidential version of the investigation report on 27.12.2024. OP-6 also filed post hearing written submissions on 16.04.2026.

23. On merits, OP-6 denied findings of the DG against it. The submissions made by OP-6 are as under:

23.1. Non-provision of investigation report dated 26.03.2023 constitutes violation of principles of natural justice.

23.2. The DG failed to take cognizance of the fact that GeM tenders were open to participation from across the country. Other OEM players such as Apple, Lenovo, Acer, Sony, Dell, etc., were active in the market and participated in GeM tenders. Out of 60 tenders examined, all were open to other OEMs. The DG, however, ignored participation of other OEMs and focused only on HP India and its resellers. There is no analysis of whether other OEMs submitted bids, no price comparison across OEMs, and no examination of whether Orbit's bids were independently determined. The DG failed to conduct investigation comprehensively and did not adjudicate upon all aspects of the matter. The DG arbitrarily narrowed the relevant market to HP India and its resellers without justification.

23.3. The DG relied mainly on deposition of Sh. Sushil Kumar Jain dated 14.11.2022 and 27.01.2023, which has been misread. There is no communication between Orbit and other HP resellers to indicate presence of any collusive arrangement between them.

23.4. None of the ingredients of bid rigging in terms of Section 3(3) of the Act, i.e., (a) existence of agreement (b) parties engaged in similar or identical trade and (c) having the effect of eliminating or reducing or manipulating bidding process, are satisfied in the instant matter. OP-6 and OP-1 are not engaged in identical or similar trade. The vertical nature of relationship between OP-6 and OP-1 has been ignored by the DG.

23.5. Even assuming bid rigging, presumption of AAEC is rebuttable. It is submitted that no appreciable adverse effect resulted from Orbit's conduct in terms of Section 19(3) of the Act. Reliance placed on *Automobiles Dealers Association v. Global Automobiles & Ors.* (Case No. 33/2011), where the Commission examined alleged contravention under Section 3(4) of the Act and held that even if an agreement exists, it must cause or be likely to cause AAEC. If parties have insignificant market presence, such agreement may not lead to AAEC.

23.6. The DG examined seven tenders; Orbit participated in 1 of them but did not emerge L-1 in the said tender. The DG has failed to examine specific tender-wise details to demonstrate alleged price parallelism or to provide evidence of bid rigging by OP-6.

23.7. Orbit is an insignificant player. It is one among 350 resellers of OP-1 in Delhi and among 1000 resellers across India. Orbit is a multi-product company and Government revenue constitutes a portion of overall revenue (less than 17 percent in FY 2019-20) and highlights limited influence on alleged market.

23.8. No reseller implicated Orbit into any collusive conduct. Sh. Jain also stated in his deposition that no supportive bids were placed.

23.9. The evidence provided by Orbit is misinterpreted by the DG. The said emails refer to price/ MAF provided by OP-1 or direction not to bid *etc*. The requirement of resellers of communicating with OP-1 for TP and MAF is ignored by the DG. Also, HP India, as OEM, may strategically allocate customers for supply chain efficiency. This does not equate to collusion between OP-1 and OP-6.

23.10. Till 09.05.2023 *i.e.* during the entire investigation period Orbit was classified as MSME. If the findings of the investigation report are accepted by the Commission, the same will severely impede the ability of OP-6 to operate its business in the industry.

23.11. Requested to impose penalty, if any, based on the relevant turnover only. It is further submitted that any alleged contravention caused by any action of

Orbit is purely inadvertent. Having no previous history of contravention, giving full cooperation during the proceedings, lack of benefit, limited financial capacity, MSME status during the period of contravention, negligible role, no supra normal profits earned, and conducting competition compliance program to prevent non-compliance may be considered as mitigating factors. It also requested that instead of proceeding under Section 27(2) of the Act, the Commission may consider guiding OP-6, in terms of Section 27(g) of the Act, in complying to the provisions of the Act and developing a strong competition compliance program.

23.12. In view of the foregoing, OP-6 prayed to dismiss the findings of the DG and dismiss all allegations against it.

23.13. With respect to the individuals of OP-6, it is submitted that they have been wrongly implicated under Section 48 of the Act. It is further submitted that the DG has not even examined Mr. Anand Sharma and Mr. Hari Om Gupta before returning finding of contravention against them. There is no specific communication or evidence against any of the individuals in the matter. It is requested to reject the findings of the DG against Mr. Sushil Kumar Jain, Mr. Hari Om Gupta and Mr. Anand Sharma.

Submissions of Thoughtsol (OP-7) and its individuals

24. Thoughtsol (OP-7) and its individuals *viz.* Mr. Vineet Kumar and Mr. Yogesh Pal filed its objections/suggestions to the confidential version of the Investigation Report on 26.06.2024. It also filed post hearing written submissions on 16.04.2026.

25. On merits, OP-7 denies findings of the DG against it. The submissions made by OP-7 are as under:

25.1. The DG has given a finding of collusion amongst HP India and its resellers which does not even meet the foundational elements of cartelization. The

DG inferred agreement among OP-7 and OP-1 from isolated emails which do not reflect *consensus ad idem* as there is no assurance, acceptance, or mutual understanding shown between OP-7 and HP India. Mere unilateral communication from the OEM cannot constitute an agreement in the absence of response, compliance, or conduct indicating acceptance.

25.2. Section 3(3) applies to horizontal agreement whereas OP-1 and OP-7, being OEM and reseller are in a vertical relationship.

25.3. Also, the DG failed to demonstrate AAEC which is required to be demonstrated for alleged contravention of provisions of Section 3(1) and 3(3) of the Act. Each GeM tender involved multiple OEMs such as Dell, Acer and Lenovo, and bidders quoted different prices, ensuring inter-brand competition.

25.4. On merits, with regard to [redacted] tender No. [redacted], it is submitted that it received an email [redacted] of OP-1 requesting participation *i.e.* less than an hour in closing of the bid tender expiring on [redacted]. OP-7 reluctantly participated in this tender on directions of [redacted] of HP India and did not submit requisite documents due to which it got technically disqualified.

25.5. With regard to Lok Sabha tender No.[redacted] for supply of [redacted] on behalf of HP India indicating [redacted] The said email was neither acknowledged nor acted upon by OP-7. OP-7 independently quoted IN[redacted] which was lower than the price suggested in the email. An RA was conducted, and OP-7 was ranked L-3. It is also relevant to mention that 18 bidders participated out of which 15 were non-HP resellers and the tender was won by another OEM (Acer).

25.6. With regard to [redacted], OP-7 received an email on [redacted] *i.e.*, shortly before bid closure, from [redacted] on behalf of HP India indicating a TP of INR[redacted]. The email was neither acknowledged nor acted upon by OP-7. OP-7 independently quoted IN[redacted]-. Despite quoting higher than the OEM's suggested margin, OP-7 was declared L-1. Accordingly, there is no evidence of bid rigging or collusive arrangement between OP-7 and the OEM, and the DG's findings remain unsubstantiated.

25.7. Accordingly, it may be noted that OP-7 and its officers never responded to any of the emails from OP-1; in two relevant tenders, it did not follow the directions of OEM and in another one it got disqualified, and lastly, a number of resellers who participated in these tenders represented OEMs other than OP-1. The DG's conclusions are based on conjecture and selective reading of material.

25.8. For remaining tenders also, OP-7 either followed its internal costing, did not bid as per directions of OEM or objected to HP India's participation.

25.9. OP-7 sought confidentiality over the ITRs of its individuals namely Mr. Vineet Kumar and Mr. Yogesh Pal.

<u>Submissions of Hind Technocare (OP-8)</u>

26. Hind Technocare (OP-8) filed its objections/suggestions to the NCV of the Investigation Report on 10.03.2026 along with request for condonation of delay.

The Commission condoned the delay and took the submissions on record during the hearing on 12.03.2026. It also filed post hearing written submissions on 16.04.2026.

27. The preliminary objections regarding, no horizontal arrangement existing between Hind Technocare and HP India, overlooking of standard business practices in the IT hardware industry, no AAEC analysis by the DG, OP-8 being an MSME, analysis of functioning of GeM Portal *etc.* are similar as discussed above in context of Digitech and are not reproduced here for the sake of brevity.

28. On merits, OP-8 denied findings of the DG against it. The submissions made by OP-8 are as under:

28.1. The DG has identified alleged contraventions by Hind Technocare in two tenders *viz.* [redacted] The DG relied on the deposition of Mr. D.S. Rajput, sole proprietor of OP-8, wherein he was confronted with certain emails to which, purportedly he gave vague replies.

28.2. Regarding [redacted], OP-8 participated but was technically disqualified and hence could not be part of the price discovery process. Also, Sun Systems emerged as L-1 bidder in the said tender.

28.3. It is further submitted that the investigation report lacks reasoned analysis against OP-8 in relation to [redacted]. In relation to this tender, the DG relied on [redacted] between HP India and another reseller *viz*. Krishna Computers. The investigation report is conspicuously silent on any detailed examination or reasoned analysis of the said emails or statements to demonstrate how the same establishes any concerted action on the part of OP-8 in contravention of Section 3(3)(d) of the Act.

28.4. It is further submitted that unilateral email exchange sent by HP India, in the absence of any response from OP-8, cannot by itself establish an agreement to rig the bid. The DG relied on emails sent from HP India without there being evidence of response being received to infer a collusive relationship.

28.5. Highlighted inconsistency in the investigation report in para 3.68, after analysing conduct of Hind Technocare, the DG recorded a finding of collusion regarding Orbit Techsol. Stating this inconsistency to be beyond a typographical mistake, cast aspersions on the credibility of the investigation report. The DG recorded the findings in the investigation report against the OPs in a casual manner.

28.6. In case the Commission considers imposing any penalty, factors such as full and continuous cooperation with the DG including furnishing of all information and documents, no history of anti-competitive conduct, being a small enterprise with limited resources and turnover, adverse impact of COVID-19 on OP-4's economic condition be considered as mitigating factors.

28.7. In view of the foregoing, OP-8 requested to remove its name from the array of parties, alternatively clear OP-8 of all the allegations and findings in the investigation report and considering its submissions, refrain from imposing any penalty on OP-8.

<u>Submissions of Intensity Global (OP-9) and its individual</u>

29. Intensity Global (OP-9) and its individual filed their common objections/ suggestions to the confidential version of the Investigation Report on 17.04.2025, in confidential version and nonconfidential version. It also filed post hearing written submissions on 17.04.2026.

30. The preliminary objections regarding existence of vertical relationship between OP-9 and OP-1, existence of no agreement of any sort, no horizontal arrangement existing between OP-9 and HP India, overlooking of standard business practices in the IT hardware industry, no AAEC analysis by the DG, *etc.* are not reproduced for the sake of brevity.

31. OP-9 submitted that the findings against it are entirely unfounded and unsupported by evidence. The submissions made by OP-9 are as under:

31.1. The DG failed to appreciate the commercial structure of OEM-reseller participation in tenders and misapplied competition law principles. Interaction of resellers with OP-1 owing to control of OP-1 over transfer prices and issuance of MAF depicts commercial compulsion rather than collusion.

31.2. The DG's finding based on statement of officials of OP-1 and OP-2, suffers from confirmational bias and the DG did not conduct a bid price analysis. The tenders examined are below the threshold of INR 1 crore as per the *prima facie* order. The DG failed to confront the statement of [redacted] to OP-9 wherein [redacted] stated taking support bids from OP-9 in favour of OP-2 in respect of [redacted] and [redacted].

31.3. OP-9 is an MSME. Its' sale of Personal System Products forms only about 10% of revenue, and Government tenders account for less than 1 percent of its turnover. HP India is one among many OEMs. OP-9's participation in GeM tenders declined sharply post-2019, contradicting any inference of cartel participation. The participation of OP-9 in GeM tenders has also reduced gradually. For instance, it participated in 3 tenders in 2019 and just one tender in 2021.

31.4. The DG failed to consider that upon receiving TP from OEM, OP-9 evaluates total cost, including EMD, GeM fees, delivery cost, and margin of approx. 3-5 percent to arrive at bid price.

31.5. In relation to [redacted], the DG failed to consider that OP-9 did not follow OP-1's suggested prices and treated the same as TP. The DG has erroneously construed routine email exchanges for transfer price, product specifications and MAF requirements as evidence of collusion. This is evident from the fact that Intensity Global applied its usual margins to the said price, which is consistent with customary industry practice. In any event, OP-9 was disqualified in this tender on technical grounds.

31.6. The email exchange between Intensity Global and HP India in relation to [redacted] pertained solely to the finalisation of the transfer price, which is a standard industry practice. In this tender, HP India provided a [redacted] whereas Intensity Global quoted [redacted] after adding applicable costs and margins. HP India, as an independent bidder, quoted a lower price of [redacted] and won the bid. The complete email trail submitted to the DG further shows that Intensity Global objected to OP-1's undercutting and expressly criticised such conduct as detrimental to small resellers, thereby negating any suggestion of *consensus ad idem* or collusive bidding.

31.7. OP-9 is a miniscule player in the overall market which neither enjoys market power nor is capable of affecting market outcomes.

31.8. OP-9 requested to consider factors such as no previous contravention, full cooperation during the course of proceedings, implementation of a robust competition compliance program be taken as mitigating factors.

31.9. OP-9 sought confidentiality over details of its business operations, participation in Government tenders, revenue sources, bid prices, and tender details contained in its objection to the investigation report as well post hearing submission. Also, OP-9 sought confidentiality with respect to ITR of its individual Mr. Aditya Naraian Kakkar.

Submissions of M Integraph (OP-10)

32. M Integraph (OP-10) and its individual filed their common objections/suggestions to the confidential version of the investigation report on 24.06.2024. It also filed post hearing written submissions on 17.04.2026.

33. OP-10 disagreed with the findings of the DG against it. The submissions made by OP-10 are as under:

33.1. Relying on a single email relating to a [redacted], the DG inferred close contact and exchange of vital information between OP-10 and OP-1.

33.2. The DG failed to take into account the sector specific nuances wherein the reseller need to consult and communicate with the OEM in relation to product/ model specifications, product availability, prices etc., at three stages: prebid, during RA and post RA final price approval. These price discussions relate to purchase price and not sale price and are vertical in nature, governed by Section 3(4) of the Act.

33.3. Any refusal by HP India to supply TP information or bid-related documents, or any instances of HP India directly competing with its resellers, cannot reasonably be attributed to allegations of anti-competitive conduct by MISPL. Rather, such unilateral conduct by HP India should be solely attributed to HP India itself, if found by this Hon'ble Commission that it was undertaken with the objective of reducing and stabilizing intra-brand competition and not inter brand competition *per se* to discourage its resellers from switching to competing brands.

33.4. Further, OP-10 and HP India maintained a dual relationship: first, as OEM and reseller; and second, as competitors in the tender process, subject to prior knowledge of HP's participation, which was absent. In the OEM-reseller context, seeking TP was in the normal course of a vertical relationship. In the competitive context, HP India was only aware of the TP provided to OP-10 and had no access to OP-10's final quoted price, which was independently determined after adding additional costs and margins. The DG has provided no evidence that pricing details were shared between them. The DG relied only on an email which was a standard SQ enquiry. This email cannot establish an agreement.

33.5. The statement of Mr. Malik that OP-1 refused MAF for participation in some tenders does not constitute evidence of collusion against OP-10. The decision whether to issue an MAF is an independent commercial decision of the OEM over which OP-10 has no control.

33.6. With regard to the observation in context of participation in seven tenders (besides those seven above 1 crore examined by the DG), the DG inferred that the price quoted by HP India is lower on all counts from price quoted by OP-10. This inference is contradictory to DG's own findings as OP-10 emerged as L-1 in [redacted], wherein HP India also participated. The DG erred in treating mere participation of both an OEM and its reseller in the same tender as incriminating evidence of cover bidding.

33.7. The DG erroneously recorded a finding of contravention against MISPL at Page 183, Serial No. 3 of the investigation report in respect of Tender [redacted], based solely on evidence of email exchanges between HP India and another reseller, Thoughtsol. There is no direct or indirect evidence suggesting that HP India wanted MISPL to bid deliberately higher as a cover bidder. The DG failed to consider that MISPL was never, directly or indirectly, in contact with any resellers participating in the bids in which MISPL intended to participate.

33.8. It is requested that factors such as full cooperation by OP-10, no previous history of contravention, MSME entity having small turnover where imposition of heavy penalties may result in economic viability of OP-10, economic situation due to COVID pandemic be considered as mitigating factors.

33.9. In view of foregoing, it is requested to clear OP-10 from the allegations, strike off the name of OP-10 from array of parties and refrain from imposing any penalty under Sections 27 and 48 of the Act.

<u>Submissions of Krishna Computers (OP-11)</u>

34. Krishna Computers (OP-11) filed its objection/suggestions to the NCV of the investigation report on 10.03.2026 along with request for condonation of delay. The Commission condoned the delay and took the submissions on record during the hearing on 12.03.2026. It also filed post hearing written submissions on 15.04.2026.

35. The preliminary objections regarding, no horizontal arrangement existing between Krishna Computers and HP India, overlooking of standard business practices in the IT hardware industry, no AAEC analysis by the DG, OP-11 being an MSME, analysis of functioning of GeM Portal *etc.* are similar as discussed above in context of Digitech and are not reproduced here for the sake of brevity.

36. On merits, the submissions made by OP-11 are as under:

36.1. The DG confronted certain emails pertaining to [redacted] to Mr. Pawan Kumar, sole proprietor of OP-

11 and concluded existence of collusive relationship between Krishna Computer (OP-11) and HP India in respect of three tenders *viz* [redacted]

36.2. With regard to [redacted], it is submitted that the DG failed to take into account the fact that OP-11 is the reseller of OP-1 and need to obtain the MAF and TP from the OEM *i.e.* OP-1, which is standard industry practice. Further, the DG failed to analyse the actual bid prices quoted in the said tender. Even *arguendo*, that OP-11 quoted bid price on directions of HP India, it must be noted that OP-11 had no knowledge that OP-1 itself would participate in the said tender. In the ordinary course of business, a reseller relies upon the pricing inputs and commercial guidance of OEM, particularly where the reseller is bidding for the supply of the OEM's products. Such reliance cannot be interpreted as evidence of collusion between OEM and its reseller. It may be noted that in certain procurement process, participation of multiple bidders is necessary to ensure that the tender process remains valid and is not cancelled for lack of participation.

36.3. Regarding [redacted] the DG concluded collusion based on the [redacted] from OP-1 to OP-11, which merely relates to the communication of product pricing required for participation in a tender. OP-11, being reseller of OP-1 was required to approach the OEM for pricing inputs, product information *etc*.

36.4. Apart from the aforesaid [redacted] sent to OP-11, the DG placed reliance on statements of Mr. Sushil Kumar of Orbit Techsol (OP-6), and [redacted], along with [redacted] sent by Intensity Global (OP-9) in relation to [redacted]. In this regard, it is stated that communications sent separately by OP-1 to each of its resellers cannot be construed at evidence of coordination between the two resellers. The mere fact that that the same OEM communicated with different resellers in relation to a common tender cannot by itself lead to the conclusion that the resellers were acting in concert. As already submitted that such communications are inherent feature of the OEM-reseller relationship, it is also worth mentioning here that the DG disregarded the response of Mr. Sushil Jain wherein he categorically denied having received any request for support bid from any Tier-2 reseller.

36.5. With regard to [redacted], OP-11 is stated to have been technically disqualified. Also, the said tender was awarded to another OEM. Its financial bid was not opened and it had no role in the price discovery mechanism or said to have influenced the outcome of the tender. It is further submitted that in any event, the participation of OP-11, in the context of the commercial requirements conveyed by HP India, and was intended merely to ensure adequate participation in the tender so that the procurement process was not cancelled due to insufficient bidders. This was also corroborated by [redacted], who stated that as per GeM rules, only top 50% of technically qualified bidders are permitted to proceed to the financial evaluation stage and participate in RA. And hence the request to participate by OP-1 was only to ensure that its reseller bidders could qualify for the RA stage and the tender process could proceed smoothly. Mere participation by OP-11 in the impugned tenders cannot be the evidence of collusion.

Analysis:

37. Before proceeding to decide the case on merits, the Commission notes that OPs have raised certain legal and procedural issues such as lack of horizontal agreement between HP India and its resellers, breach of confidentiality by the DG, admission of the LP applicant wrongfully used by the DG or the Commission, non-provision of previous investigation report, no examination of other OEMs *etc.* which are dealt as under:

38. Some of the OPs have contended that since the OEM and its resellers are in a vertical relationship, the same does not qualify to be called a horizontal arrangement which is a prerequisite for an arrangement under Section 3(3) of the Act. In this regard, it is imperative to look at the extant legal framework. In terms of the provisions contained in Section 3(1) of the Act, no enterprise or association of enterprises or person or association of persons can enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an AAEC within India. Section 3(2) of the Act declares that any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void. A plain reading of Section 3(3) of the Act shows that any agreement entered into between enterprises, including cartels, is amenable to the jurisdiction of the Commission if the parties engaged in identical or similar trade of goods or provision of services have directly or indirectly indulged in bid rigging/ collusive bidding, which demonstrate that they were competitors in the market.

39. The Commission notes that in the instant matter, both HP India and contravening resellers have participated and competed in various GeM tenders for supply of Personal Systems Products. There have been instances of communication between HP India and reseller OPs wherein not only the TP and MAF but also the bid prices are communicated by HP India and the resellers have participated on the directions of HP India to submit support/cover bid. Many reseller OPs have contended that they are in a vertical relationship with the OEM *i.e.* HP India and hence cannot be said to be engaged in similar or identical trade in terms of Section 3(3) of the Act. The Commission notes that both HP and these resellers have participated as bidders in the GeM tenders. This demonstrates that while bidding for a particular tender, they have stepped into the shoes of competitors and have emerged as L-1 in some or the other tender(s). While bidding in the tenders, both the OEM and the resellers were in competing horizontal relationship. Hence, the Commission rejects this argument being devoid of merit.

40. With respect to the contention of the OPs regarding collusion in tenders below the threshold of INR one crore, the Commission also notes that the DG has found evidence of collusion among the OPs in respect of the GeM tenders pertaining to Delhi region that fall below the monetary threshold of INR one crore. Although such collusive conduct may not fall within the narrow scope of monetary threshold set out in the *prima facie* order for administrative convenience, however it does come under the purview of provisions of Section 3(3)(d) of the Act. It is neither the intent of the legislature nor of the Commission to let administrative convenience be a defense to contravening entities for engaging in contravention of the provisions of the Act. Accordingly, the Commission considers the holistic evidence in terms of the provisions of the Act.

41. The Commission notes the argument of Delphi (OP-2) that [redacted] In this regard, at the outset, the Commission notes that the [redacted]

[redacted]

42. Besides, the Commission also observes that protection over the identity of the lesser penalty applicant is not perpetual and is available only during certain period of inquiry. In line with the decisional practice, the identity of the leniency applicant is disclosed in final orders. The objective of such disclosure is twofold- to ensure transparency and uphold due process/rights of other implicated parties. It is imperative that the final order explain factual legal basis of conclusions reached and fines imposed, reduced or waived in terms of evidence provided. At the same time the charged parties have the right to know the evidence and its source.

43. OP-2 also objected that the DG cannot use its admission in terms of provisions of Section 46(3) of the Act. The Commission finds that this argument of OP-2 is misplaced. Section 46(3) needs to be read in context of Section 46(2) of the Act, which refers to withdrawal of application by a lesser penalty applicant in the manner and within time specified under the regulations. As per Regulation 10 of LPR 2024, an applicant may withdraw the application any time prior to the receipt of investigation report by the Commission. In case of such withdrawal of application, Section 46(3) provides that the DG or the Commission shall be entitled to use, for the purposes of the Act, any evidence submitted by the applicant, except its admission. In the instant matter, the aforesaid provisions are not applicable and the Commission rejects this argument of OP-2 due to lack of merit.

44. Orbit (OP-6) has contended that the DG failed to examine pan-India GeM tenders and role of other OEMs who participated in such tenders for provision of Personal System Products. The Commission notes that the DG has acted in terms of the directions contained in the *prima facie* order wherein based on a lesser penalty application, *prima facie* opinion was formed with regard to existence of case of

contravention of provisions of Section 3 of the Act by HP India and its resellers. Accordingly, the DG was directed to investigate all tenders floated on GeM platform by the procurers in Delhi for HP India Personal Systems Products whose value exceeded INR one (1) crore. Further, *vide* order dated 15.11.2023, the Commission directed to cause further investigation into the matter with respect to other tenders (besides the 07 tenders already investigated) which met the threshold set out in the *prima facie* order *i.e.* tenders floated on GeM platform by the procurers in Delhi for Personal System Products, the value of which exceeds INR 1 crore, including the ones in which HP India itself competed with its resellers. It is abundantly clear that the thrust of the *prima facie* order dated 17.11.2020 passed under Section 26(1) of the Act as well as the order dated 15.11.2023 passed under Section 26(3A) of the Act, was examination of conduct of HP India and its resellers.

45. Having dealt with the preliminary objections above, the Commission proceeds to examine the matter on merits. The Commission has perused the Information, material available on record, the consolidated Investigation Report, the replies/suggestions/objections to the Investigation Report filed by the OPs and their respective individuals as well as the oral and written submissions of the parties. The Commission proceeds to examine the role of each OP and its individuals in the aforesaid arrangement:

<u>HP India (OP-1)</u>

46. The Commission notes that the DG found that some officials of HP India were involved in the cartel arrangement by way of exchange of emails wherein they used to communicate ‘bid price’ to reseller OPs. The DG also noted that OP-1 used to limit MAFs to restrict participation so that tender is won by the designated reseller. During investigation, all the Tier-2 resellers stated that they were directed to keep HP India in loop regarding the bid price to be quoted for specific GeM tenders.

47. The Commission observes that the DG also found that in the aforesaid seven tenders, HP India emerged as L-1 in 3 tenders ([redacted]) by

providing bid price to be quoted by the resellers. The DG examined 2 officials of OP-1 *viz.* [redacted] and [redacted] admitted, among other things, that after introduction of GeM, Tier-2 resellers requested for providing bid prices, supporting bids or exclusive support in particular bid over email or telephonically The DG confronted [redacted] with emails [redacted] sent by him to various reseller OPs *viz.* Digitech, Orbit Techsol, Hind Technocare, Intensity Global, Krishna Computers, directing the bid prices to be quoted in respect of [redacted] in which HP itself was a participant and it emerged as L-1 bidder. He also sent [redacted] to Delphi (OP-2) regarding price to be quoted in [redacted]. Besides, the DG found other emails from HP India officials either intimating the price to be quoted or directing them to not to bid due to alignment with other reseller. For instance, separate email dated [redacted]

48. The Commission notes that HP has admitted to the findings of the DG with the exception that the resellers overstated their dependency over HP India as some of them were dealing with multiple OEMs and that the GeM mechanism incentivized HP India to coordinate with its resellers so as to ensure that HP does not lose to other OEMs and it had some representation in the RA. The Commission also notes that HP India used to communicate bid prices to resellers and thus OP-1 was in a position to bid lower for such tenders which enhanced its possibility of emerging as L-1 bidder.

49. With regard to assertion of HP India that it indulged in such conduct on request of resellers who wanted to retain their designated/MVC account, the Commission notes that there is no evidence demonstrating that the resellers asked for support bid/cover bid. The email communications unearthed by the DG mostly indicates

that the reseller OPs sought product specifications, SQ, TP or MAF. No evidence of retention of any particular MVC account by any specific reseller OP has been noticed in the instant matter. There have been some instances of restriction of MAF due to tagged accounts. For instance, Mr. Sushil Jain of OP-6 submitted emails [redacted] showing OP-6's reliance on HP India for TP and MAF and inability to participate in two tenders as OP-1 was aligned with some other partners. However, the details of such tagged accounts have not been examined by the DG.

50. Being the OEM, the resellers were required to approach HP India for checking product availability, issuing authorisation in the form of MAF and TP for purchasing the required products from HP India for onward supply to the procurer.

51. The Commission notes the contention of OP-1 that owing to participation of other OEMs in the tenders for Personal System Products, there is no AAEC as a result of the conduct under examination except limited impact on intra-brand competition on the ground that in such tenders other OEMs/their resellers participate and OP-1 has no control over the bids of other OEMs or their resellers. In this regard, the Commission observes that on account of communication from a reseller seeking TP and/or MAF, OP-1 knew who intends to participate in a given tender. Besides, several email interactions have been found by the DG wherein, OP-1 is directing resellers to participate in bids, upload the documents and of restricting MAF on the pretext of tagged accounts. That's how, OP-1 is in a position to control/enhance the participation of resellers in a given tender so that its chances of succeeding in the RA increases. Regarding price, the Commission notes that OP-1 is in position to affect competition among resellers by giving a favourable TP to the one reseller having tagged account *vis-à-vis* other resellers. Needless to mention, email communications to resellers also indicate directions from OP-1 to resellers for quoting specific bid prices in certain tenders also. In some bids, HP India participated directly, and was aware of resellers' prices, communicated orally/ telephonically or in writing by it, which gave OP-1 an advantage to manipulate bid

outcome. It is noted that, in some cases, it is argued by reseller OPs that they were not aware if they are bidding competitively or indulging in cover bidding because being the OEM, OP-1 had information about which resellers are participating in a given tender as the reseller had to obtain MAF from HP India for participation. [redacted]

52. The Commission is of the view that HP has engaged in dictating bid prices to resellers, and manipulated participation of resellers in the GeM tenders by withholding MAFs in order to benefit itself, in contravention of Section 3(3)(d) read with Section 3(1) of the Act.

Delphi (OP-2)

53. The Commission notes that during investigation, the DG recorded the statement of [redacted] He informed about HP India's (OP-1) practice of support/cover bid mechanism, to ensure maximum participation of bidders and that the price quoted by bidders results in winning bid by a particular bidder as decided by OP-1. He also admitted to taking support bids from (a) Intensity Global (OP-9) in two tenders *viz.* [redacted] He also stated that *'….in case the TIER-2 seller has to support HP directly in the bidding process the bidding price is dictated by HP. In other cases only the Transfer Price (price at which TIER-1 bills to TIER-2) is dictated by HP. the TIER-2 seller can add its margin to the transfer price and quote the same*. In this regard, the Commission notes that the aforementioned statement of official of OP-2 is not confronted to OP-9 or OP-5 and lacks any corroborative evidence to implicate OP-9 and OP-5 of submitting cover bid in favour of OP-2 in the aforesaid mentioned tenders.

54. During deposition, he also admitted to submitting support bids in favour of HP India in five tenders bearing [redacted] In this regard, the Commission notes that the aforesaid tenders have not been independently examined by the DG, but the assertion of OP-2 stands corroborated with the submissions of OP-1, who admitted to coordinating bids with its resellers.

55. The said official of OP-2 also stated that OP-1 used to restrict the issuance of MAFs for GeM tenders to restrict participation. He also commented on the process of bidding in post GeM scenario and mechanism of support bidding. The excerpt of his statement is reproduced as under for ease of reference:

[redacted]

56. The DG relied on [redacted] to Mr [redacted] of OP-2 regarding [redacted]

wherein [redacted] communicated the TP as well as bid price (to quote @ Rs 54000) to [redacted]. A copy of the email is placed below for ease of reference:

Redacted information

57. The Commission notes the averment of OP-2 that the aforesaid email indicates that bid prices were controlled by OP-1 rather than any collusion between OP-1 and OP-2. Owing to dominant position of OP-1, it is able to dictate the bid prices to resellers including OP-2. There is no evidence unearthed by the DG indicating any collusion on the part of OP-2 except its admission. The Commission has already dealt with the argument of non-usage of OP-2's admission of involvement in anti-competitive conduct in preceding paras and reiterates that nothing prevents the Commission from taking into account the admission of wrongdoing by OP-2, given the fact that there was no withdrawal of leniency application by it. While, the Commission is

cognisant of the dependence of resellers on OEMs for MAF and TP, however, there is no material put forth by OP-2 to demonstrate that it did not follow the directions of OP-1 or it deviated from the bid price communicated by OP-1.

58. The Commission also notes the averment of OP-2 that the DG found OP-2 in contravention of the Act in respect of the tenders in which it sought support bids from Intensity Global (OP-9) and Softlabs (OP-5) but the said tenders being less than the monetary threshold of INR one crore, hence not relevant. In this regard, the Commission does not find substance in the said averment since there is no monetary threshold safeguard under the provisions of the Act as elaborated while dealing with preliminary objections in para 40. However, the Commission observes that there is no evidence brought forward by the DG to demonstrate submission of support bids by OP-5 and OP-9 in favour of OP-2.

59. In this regard, the Commission notes that both OP-1 and OP-2 have admitted to the collusive mechanism being followed in the GeM tenders as detailed in preceding paras. Accordingly, the Commission finds OP-2 to have acted in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act.

<u>Comnet Vision (OP-3)</u>

60. The Commission notes that the DG examined Mr P.K Sharma of OP-3, and confronted him with series of emails exchanged by officials of OP-3 with officials of OP-1 in respect of [redacted] tender [redacted], seeking product models and TPs. In this regard, the Commission notes the averment of OP-3 that being a reseller, it is routine business practice to seek the TP and product details from OEM, which is misconstrued by the DG as collusion. In the aforementioned tender, OP-3 sought required inputs from OP-1. However, the same were denied just two days before closing of tender, on the ground that OP-1 was already working with another partner in respect of the aforesaid tender. Due to paucity of time, OP-3 could not

approach another OEM and hence did not bid at all in the aforesaid tender. A copy of the email exchange between OP-1 and OP-3 is reproduced below for reference:

Redacted information

Redacted Information

Redacted Information

61. The Commission also noted that the DG found [redacted], wherein an official of OP-3 was seeking SQ regarding a [redacted] tender from official of OP-1. In this regard, the Commission takes note of the submission of OP-3 that seeking SQ for any tender requiring customised product was part of standard business communication and not of collusive arrangement. The Commission further notes the averment of OP-3 that the SQ was denied by the official of OP-1 on the ground that the said account is managed by another partner. A copy of the email exchange taken place between OP-3 and OP-1 is reproduced below for reference:

Redacted Information

Redacted Information

62. In view of the foregoing, the Commission finds no evidence to substantiate the findings of the DG against OP-3 of having colluded with OP-1 in contravention of the provisions of Section 3(3)(d) of the Act.

Digitech computers (OP-4):

63. The DG relied on the statement of Ms. Shalu Kapoor, proprietor of OP-4, who stated that in one of the tenders of [redacted] Digitech Computers had quoted bid as per directions of HP India. In the said [redacted] HP India also participated along with Digitech Computers and emerged as L-1 bidder. The relevant excerpt from the statement of Ms Shalu Kapoor is produced below:

> *"Q.7. Please state mode of communication between you and HP regarding providing TP for a specific bid?*
>
> *Ans. From 2017 to 2020 (approx.) we used to send SPR (special price requisition) in excel sheet mentioning details of the bid including specification of the equipment, to HP through email. Thereafter, we used to receive transfer price from HP, and after adding our logistic expenses and profit margin we used to participate in the said bid/tender. In urgent situation due to paucity of time we used to take the price from HP without sending SPR through email/over phone.*
>
> *Q.15 Please describe the process of bidding practised by Digitech Computer being a Tier-2 resellers of HP pre GeM and post GeM period.*

Ans: Pre-GeM process

i. *Digitech used to supply HP products on DGS&D rate for smaller quantity or through tender process.*
ii. *Digitech used to supply to private enterprises and small and medium companies.*
iii. *For tender process, in case MAF is required, Digitech Computer used to contact HP for the TP. In other cases, Digitech Computer would procure the product from the market or from HP depending on the price and availability of the product.*

Post-GeM process

i. *Digitech is a TIER-2 partner.*
ii. *For bidding, Digitech Computer requires MAF and TP (Transfer Price) which are only provided by HP*
iii. *Hence, the TIER -2 partners have to take HP into the loop in order to quote the price of the products after getting TP.*
iv. *After getting TP from HP we used to add logistic cost of our profit margin and there after quote the price on GeM.*

"Q.16. Please throw light about the bids where you quoted price as per direction of HP India Ltd, where HP itself was a bidder, but the bid was won by OEM other than HP.

Ans: As far as remember in one tender of [redacted]*, HP also took part in bidding process along with other resellers and ultimately won the bid. I will check from my record and will be able to communicate the Bid No. and other details pertaining to the stated bid".*

64. Besides, the DG also found an email dated [redacted] wherein HP India official communicated the price bid to Digitech for an [redacted]. With regard to tenders above INR 1 crore threshold, the DG found Digitech to be engaged in collusive bidding in one [redacted] tender bearing no. [redacted]. A copy of the [redacted] is produced below for reference:

Redacted Information

65. Ms Shalu Kapoor was questioned about the [redacted], *vide* notice [redacted], to which she, [redacted], replied that she could not find the said email despite best efforts. However, she was able to extract from GeM portal the details of its participation in the [redacted] Tender No [redacted], based on which she stated that OP-4 participated in the said tender, got disqualified by the customer on technical grounds and OP-4 could not find its quoted price as its financial bid was not opened.

66. In respect of [redacted], the Commission notes that the said tender appears to be a bundled tender and no other OEM apart from HP and its resellers took part in this tender. In the email dated [redacted], it can be clearly seen that HP India official stated that "*Pls do upload all the documents as per the tender document. Pls quote tax paid per unit price as follows:* [redacted]". OP-4 has submitted that one way email communication from HP India, in the absence of any response from it, cannot be viewed as evidence of collusion. In this regard, it may be noted that OP-4 itself has submitted that it participated in the said tender. There is an email from OP-1 to OP-4 on record indicating the price to be quoted by OP-4 in the said tender. The Commission also does not find the argument of technically disqualified in the said tender as relevant because technically disqualified bid is also counted for the purpose of minimum participation in a tender. However, there is no evidence to show that OP-4 submitted price bid upon directions of OP-1.

67. The Commission notes the admission of OP-4 that it bid in [redacted] tender on directions of OP-1 in which OP-1 won the bid.

68. In view of the foregoing, the Commission finds OP-4 to have acted in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act.

Softlabs (OP-5):

69. The DG relied on the statement of Mr Munish Paul, proprietor of OP-5 and email exchanges between Mr Munish and [redacted] of HP India regarding [redacted] bearing no.[redacted]. Relevant excerpt of the statement of Mr Paul is reproduced below for reference.

> *'Q 25: Could you please share the modus operandi of winning a bid by a HP reseller and role of interference of HP on those successful bids?*
>
> *Ans. <u>In case of quoting in bidding the TIER-2 partners have to take HP into the loop in order to fix the price of the products to be quoted</u>. No Tier-2 partner is*

able to win any tender in absence of consent from HP as for winning a bid MAF is mandatorily to be obtained from the OEM i.e. HP. Before bidding we check availability, end of life support and price from HP as well as from Tier-1 partners. In few cases HP suggest us to participate in the bid and the price to be quoted.'

70. In the email exchanges, it can be seen that official of HP India is directing Mr. Munish Paul to replicate a Stock-Keeping Unit ('**SKU**') in the [redacted] and also dictating to quote a price of INR [redacted]- tax paid. The emails are also reproduced below:

Redacted Information

Redacted Information

71. The Commission perused the above email and noted that HP India dictated the price to be quoted by OP-5 and not the TP as per standard practice. The Commission takes note of the submission of OP-5 that it did not quote the said price and instead quoted a different price (INR[redacted]-) based on its independent assessment. The Commission also noted that OP-5 was technically disqualified in the instant tender and the said tender was won by an OEM other than HP India. Further, regarding, [redacted], the Commission notes that there is no evidence on record to demonstrate any collusion on the part of OP-5.

72. In view of the foregoing, the Commission does not agree with the finding of the DG to hold OP-5 liable for contravention of the provisions of Section 3(3)(d) of the Act.

Orbit Techsol (OP-6)

73. During investigation, the DG recorded the statement of Mr. Sushil Jain, CEO of OP-6 who stated that Government tendering work is looked after by Mr Hariom Gupta (Govt. Business Head) and Mr. Anand Sharma, DGM. He stated that on the basis of prices received from the OEM, final price is decided based on logistics cost, finance cost and margin by Mr Anand Sharma. He also stated that Mr Sharma takes his confirmation in case the bid is at very low margin. He also confirmed that there are two types of orders, one involving standard specifications which is easily available and the other involving tailor-made specifications where it needs back-to-back price to be cleared by HP India. With respect to the query that it consults OP-1 before placing bids (Q 13) Mr. Jain stated that '*Yes, we discuss with HP on the specifications matching customer requirement before placing bids. We also discuss with them on the transfer prices (TP) informed by them for the subject tender. In some cases, HP used to inform us the bid price to be quoted.*' Regarding the modus operandi of winning a bid by HP India reseller and role of HP India in those successful bids, Mr Jain submitted that '*the modus operandi of winning a bid by HP reseller is mostly based on the prices received from OEM, which is HP in this matter, and the profit margin they put on the bid. The lower the profit margin the higher is the chances of winning a bid. Since the major factor for winning a bid is the TP from HP, the role of HP is vital on each bid. However, there may be some specific bids where HP asked my company to quote bid at a price fixed by it.*' In support, he submitted [redacted]) wherein an official of HP India directed OP-6 to participate in [redacted] and subsequent email [redacted]) intimating the bid prices to be quoted '*Pls bid @following prices* [redacted]'. A copy of the email is produced below for reference:

Redacted Information

Redacted Information

74. In another email dated [redacted], HP official communicated the bid price along with MAF.

Redacted Information

75. The Commission further notes that Orbit provided (a) [redacted] wherein HP India official directed Orbit not to quote as OP-1 was already working with another partner and (b) [redacted] asking not to bid as for this bid OP-1 was already aligned with other partners.

76. The Commission notes that during his deposition, Mr Sushil Jain mentioned that in few instances, HP India used to direct OP-6 to quote certain prices. The aforesaid [redacted] indicates that OP-1 communicated bid prices to OP-6. The Commission also notes the averment of OP-6 that it participated on the directions of HP India and had no knowledge that HP India also participated in the said tender and the aforesaid emails rather depict that HP India used the resellers to manipulate the GeM tenders and to enhance its chances of winning a given tender. In this regard, the Commission notes that the Commission is aware of the prominent role of OP-1 in the entire collusive arrangement. The Commission further notes that OP-6 admitted to have acted on directions of HP India and there

is nothing on record brought by OP-6 to demonstrate that it did not participate or participated but quoted price independently in [redacted].

77. In view of the foregoing, the Commission finds OP-6 to have acted in contravention of provisions of the Section 3(3)(d) read with Section 3(1) of the Act.

Thoughtsol (OP-7)

78. The Commission notes that during investigation, the DG recorded the statement of Mr Vineet Kumar Singh, CEO and Managing Director of OP-7. With regard to the query that OP-7 used to consult the OEM or its resellers before quoting in the GeM tenders, Mr Vineet Kumar stated that '*I emphatically like to state that my company never discuss with any of our competitors or Manufacturer, before placing bids in the tenders floated on GeM portal, for supply of HP personal System Products. However, in some cases OEM used to suggest proactively in writing/phone calls/ emails the price to be quoted against a particular bid.'* To support his assertion, he submitted certain emails [redacted]) and certain bid documents. The DG noted that there were emails in context of other tenders (probably below threshold), wherein [redacted] and [redacted] of HP India communicated bid prices to OP-7. The DG noted that OP-7 participated in [redacted] and [redacted]. Out of these, in respect of the [redacted], HP directed OP-7 to quote INR [redacted]- and in respect of [redacted], [redacted] of HP India directed OP-7 to quote INR [redacted]-vide email dated [redacted].

79. The Commission noted the submissions of OP-7 that in [redacted], OP-7 did not follow the price dictated by OP-1, and instead quoted Rs [redacted] and emerged as L-3. The said tender was won by other OEM (Acer). While, OP-7 was disqualified in the [redacted], it is worth noting that HP India emerged as L1 in [redacted].

80. The Commission also notes that besides the seven tenders, the emails submitted by OP-7 also indicated dictating of price by HP India in respect of certain other tenders such as [redacted] in respect of which, HP India directed to quote INR[redacted]- and [redacted], wherein HP India directed to quote INR [redacted]-. The Commission further noted that with respect to these tenders, OP-7 averred to have quoted price other than the one communicated by OP-1 based on its own independent assessment. The Commission is of the view that OP-7 participated in the impugned tenders and quoted price independent of OP-1. Hence, no case of contravention of provisions of Section 3(3)(d) of the Act is found to have been established against OP-7.

<u>Hind Technocare (OP-8)</u>

81. The Commission notes that the DG confronted Mr Sanjay Rajpoot with respect to two sets of emails, one regarding the [redacted] and another regarding [redacted]. The Commission also noted that Mr. Rajpoot denied any instance of refusal to provide MAF or TP in response to his email.

82. Regarding [redacted], the Commission notes that through [redacted] of HP India intimated the price to be quoted in the said tender '*Dear Sanjay, Pls do upload all the documents as per the tender document. Pls quote tax paid per unit price as follows:*[redacted]'. Upon confronting Mr. Rajpoot with the said email, he stated that OP-8 did not participate in the said tender. Moreover, the DG has not found contravention against OP-8 regarding the said tender. The Commission agrees with the same. The Commission further takes note of the averment of OP-8 that there is no evidence to suggest cartelization by OP-8 with regard to the [redacted].

83. Regarding [redacted], the Commission notes that the [redacted] sent by[redacted] of OP-1 to Mr. Rajpoot of OP-8,

states '*Dear Sanjay, please replicate this SKU'*. The subsequent [redacted] by [redacted] to Mr. Rajpoot, states '*Dear Sanjay, Please find attached authorization, please quote a price of INR*[redacted]'. Upon confronting the same, Mr. Rajpoot submitted that it was a typographical error and instead of communicating TP, [redacted] mentioned quote price. He stated that '*..we consider this price as transfer price and quote this bid but our bid got technical disqualify*.' The Commission notes that OP-8 is not able to discharge the burden of proof to demonstrate that it has not acted as per directions of HP India or that it quoted a price other than the one dictated by HP India based on its independent assessment. The Commission also noted that OP-8 did participate in the tender and was technically disqualified. However, it does not absolve OP-8 as it is observed that a technically disqualified bid is also considered for the purpose of minimum participation in any tender. The argument of unilateral directions without any response from OP-8 is not acceptable as participation by OP-8 implies its response through conduct.

84. Accordingly, the Commission finds the conduct of OP-8 in contravention of the provisions of Section 3(3)(d) read with Section 3(1) of the Act.

<u>Intensity Global (OP-9)</u>

85. The Commission noted that during investigation, the DG recorded statement of Mr. Aditya Narain Kakkar, Director of OP-9 who stated to oversee the activities of OP-9. With regard to the query of the DG about OP-9 quoting on directions of OP-1 in tenders where OP-1 or its resellers participated, Mr Kakkar submitted certain emails *vide* letter dated 16.02.2023. He stated to have participated in two tenders of value more than INR one (1) crore and being technically disqualified in both of them. He also stated to have no communication from HP India declining to provide MAF or TP. The DG found that [redacted] of HP India communicated the bid prices with respect to [redacted] (among the seven tenders) *vide* [redacted] '*Pls find attached docs and upload all. Pls bid at following prices per unit including taxes as below:* [redacted]

laptop'. In this regard, the Commission noted the averment of OP-9 that it did not quote as per directions of HP India, rather it quoted a higher price [redacted]*)* after adding its margin. The Commission also took note that OP-9 got disqualified in the instant tender.

86. The Commission further notes the finding of the DG that with respect to other two tenders: [redacted], and [redacted], wherein based on emails exchanged between OP-9 and OP-1 for seeking and providing product specification and/ or TP, the DG concluded collusion between the OP-1 and OP-9. OP-9 further stated that in [redacted], it quoted INR [redacted] based on the TP of INR [redacted] as communicated by OP-1 and in [redacted], it quoted INR[redacted] based on TP of INR [redacted]. The Commission also notes the averment of OP-9 that it bid more than the TP communicated to it by OP-1 in both the tenders.

87. In respect of[redacted]No. [redacted], the Commission also finds substance in the averment of OP-9 that the DG failed to appreciate the [redacted], from OP-9 to [redacted] of OP-1 wherein OP-9 criticised direct participation of HP India in the tender. In the said email, OP-9 stated that *'...please find the attached screenshot and it shows that HP (Direct) has quoted the lower price than our cleared price. Now HP direct has been L1 in this tender. Please look into this and let us know how we will quote directly lower price'*. The Commission notes that this email also indicates that resellers are generally not aware of OEM's direct participation in any given tender.

88. The Commission also notes the averment of OP-9 that the DG relied upon the statement of [redacted] of OP-2 of taking support bids from OP-9 without confronting the same to it, and rejects the same being devoid of merit as the DG has not given any finding against OP-9 based on the statement of [redacted] of OP-2.

89. In view of the foregoing, the Commission finds no evidence to suggest collusion between OP-1 and OP-9 in contravention of Section 3(3)(d) of the Act.

M Integraph (OP-10)

90. The Commission notes that during investigation, the DG recorded the statement of Mr. Ajay Malik, Director cum CEO of OP-10. With regard to the query pertaining to any discussion or consultation with other resellers of OEM for placing bids in the tenders floated on GeM, he stated to have never discussed with competitors, however, he needed to discuss with OEM in case of a large bid to give them feedback on competition pricing strategy. He also stated that bid price was decided on the basis of TP and other costs and on some rare occasions, HP India restricted OP-10 from participating by not issuing MAF for a particular bid. The DG, based on email exchange dated [redacted] between OP-1 and OP-10 regarding suggesting of models of AIO and desktops in relation to [redacted] for raising SQ, concluded collusion between OP-1 and OP-10. This tender was won by OP-10. As per Table F in the Investigation Report, OP-10 was also implicated in respect of [redacted]

91. With regard to [redacted], the Commission takes note of the averment of OP-10 that the email exchange between OP-10 and OP-1 was for obtaining details of product models of AIO and desktops for raising SQ and hence routine in nature. The Commission does not find the aforementioned email enough to indicate collusion between OP-1 and OP-10. A copy of the said email is produced below for reference:

Redacted Information

92. OP-10 submitted details of 7 such tenders in which both OP-10 and OP-1 participated and OP-1 emerged as successful bidder. The Commission notes that out of these 7 tenders, OP-10 was technically disqualified in one (1) tender and lost at the financial stage in the remaining six (6) tenders, whereas OP-1 emerged as L-1 in all these seven tenders. However, the Commission notes that there is no evidence found by the DG to suggest collusion on the part of OP-10 of participating

or submitting bid price as per directions of OP-1 in these seven tenders. The said table is produced below for reference:

Redacted Information

93. Regarding, [redacted], the Commission finds substance in the averment of OP-10 that there is no evidence, to implicate OP-10 as to have colluded with OP-1 or any other reseller.

94. In view of the foregoing, the Commission finds no evidence of collusion to hold OP-10 to have acted in contravention of provisions of Section 3(3)(d) of the Act.

<u>Krishna Computers (OP-11)</u>

95. The Commission notes that during investigation, the DG deposed Mr Pawan Kumar Dadhich, proprietor of OP-11, who admitted to discuss with HP India about the specification matters to match the customer requirements and to obtain TP from it. However, with regard to the query that OP-11 quoted bid price as per direction of HP India on tender-to-tender basis, he stated that '*Sometimes, it is yes. But not in maximum cases.*'. Regarding [redacted] the DG confronted him with [redacted] of

OP-1 to official of OP-11 stating '*Pls copy this product. Need to bid today with all attached docs'*, and in response, OP-11 *vide* [redacted] wrote '*Dear Sir, Pls give us the quoted price*'. With respect to [redacted] through [redacted] of HP India intimated the price to be quoted in the said tender '*Hi Prem, below are the product links for* [redacted] *bids. Pls do upload all the documents as per the tender documents. Pls quote tax paid per unit price as follows:* [redacted]'. Upon confronting during deposition, Mr. Pawan Kumar Dadhich only stated that the above correspondence took place for participation in the said tenders as per directions of OP-1.

96. The Commission noted that OP-11 has not disputed the receipt of emails from HP India for participation in [redacted]. The Commission also noted the averment of OP-11 that these emails were in the nature of routine communications between reseller and OEM seeking TP and MAF. It was further stated that OP-11 was technically disqualified in one of these tenders. In this regard the Commission observed that the aforesaid email exchange did not mention TP, rather referred to '*quoted price*'. This is also corroborated by the statement of Mr. Pawan Kumar Dadhich that in some specific bids, OP-1 asked OP-11 to quote bid price fixed by OP-1. The Commission notes that in both these tenders, OP-1 dictated the price bids to OP-11. There is also no material on record to suggest that OP-11 did not participate in these tenders or participated and quoted price based on OP-11's own independent assessment. The Commission finds that OP-11 acted on the directions of OP-1 and aided in manipulating the [redacted] and [redacted] With regard to [redacted], the Commission finds no evidence for holding OP-11 acting in collusion with OP-1 or other resellers.

97. Thus, the Commission finds that OP-11 acted in collusion with OP-1 in [redacted] in contravention of provisions of Section 3(3)(d) read with Section 3(1) of the Act.

Confidentiality

98. [redacted] However, the Commission does not accept the request of keeping confidential the identity of HP India and Delphi as lesser penalty applicants as it will be against previous precedent as well as global practice of disclosing the markers in the final orders.

Period of contravention

99. It is noted that, as per the *prima facie* order the cartelisation existed [redacted]. The DG has examined the tenders (above INR 1 crore) post introduction of GEM *i.e.* 2017 during which the emails were exchanged. As per the DG, the impugned conduct continued till at least June, 2020. The Commission notes that in order to optimize time and resources of investigation and for administrative reasons, the scope of investigation was narrowed to GeM tenders of value exceeding INR 1 crore in Delhi region. The oral testimonies of the key personnels of the OP resellers, including officials of HP India, establishes that HP India used to [redacted] to resellers, [redacted], HP India ensured that such resellers are able to retain their respective MVC accounts. Thus, HP India

seems to have indulged in customer allocation [redacted] when there was no e-tendering, and ensured that such allocation continues even after introduction of e-tendering at GEM portal. However, considering the scope of investigation, the Commission is inclined to consider the period from 2017 to 2020 as the relevant period of consideration for the purpose of imposition of penalty.

Conclusion:

100. In view of the foregoing, the Commission holds the conduct of OP-1, OP-2, OP-4, OP-6, OP-8 and OP-11 in contravention of the provisions of Section 3(3) read with Section 3(1) of the Act.

101. With regard to OP-4, OP-8 and OP-11, the Commission notes the observation of the DG that the liability under Section 48 of the Act arises in case of officer(s)/persons(s) of contravening company including partnership firms and is not applicable in case of proprietorship firms. The Commission agrees with the same.

102. The DG has found individuals of OP-1, OP-2 and OP-6 to be liable under Section 48 of the Act for contravention of the provisions of Section 3(3) of the Act by their respective companies. Individuals, who were in charge of and responsible for the affairs of the company are held liable under Section 48(1) of the Act and those individuals under whose consent, connivance or neglect, the contravention was committed are held liable under Section 48(3) of the Act. The details of individuals are as under:

Table 2: Details of individuals found liable by the DG under Section 48(1) and 48(3) of the Act

OP no.	OP name	Name of individual	Designation	Section charged
OP-1	HP India	[redacted]	Senior Vice President MD of OP-1.	48(1)
		[redacted]	Strategic Manager	48(3)

		[redacted]	Account Manager (Sales)	48(3)
			Account Manager (Sales)	48(3)
			Account Manager (Sales)	48(3)
			Account Manager (Sales)	48(3)
			Account Manager (Sales)	48(3)
			Zonal Manager	48(3)
			Accounts Manager (Sales)	48(3)
			Accounts Manager (Sales)	48(3)
OP-2	Delphi	[redacted]	Director	48(1) and 48(3)
			Senior Manager	48(3)
OP-6	Orbit	Mr. Sushil Kumar Jain	Chief Executive Officer	48(1)
		Mr. Hari Om Sharma	Government Business Head	48(3)
		Mr. Anand Sharma	Deputy General Manager	48(3)

103. Regarding [redacted] of OP-1, the Commission notes that he is not able to prove that the contravention was committed without his knowledge or he exercised due diligence to prevent the commission of such contravention, given the fact that post introduction of GeM, it was a conscious call of OP-1 to coordinate bids with Tier-2 resellers in order to enhance its chances of winning GeM tenders. The averments of [redacted] about introducing training and compliance programs for its officials can at best be considered as mitigating factor while imposing penalties. Therefore, the Commission finds [redacted] liable for acts committed by OP-1 under Section 48(1) of the Act.

104. With regard to other eight individuals of OP-1 *viz*. [redacted] the DG held them liable

on account of evidence of their involvement in coordination with resellers for support bids, and providing bid prices. With regard to [redacted] the Commission notes their submission of having no role in designation of preferred resellers, communication of bid prices, and coordination of cover bids or issuance or withholding of any MAF.

105. Despite opportunity being extended to [redacted] of HP India, he only preferred to file his financial documents/ ITRs on 29.11.2024 and did not file any response to the Investigation Report or avail the opportunity of oral hearing.

106. The specific roles of these individuals of OP-1 for the purpose of Section 48(3) of the Act are tabulated below:

Table 3: Role of individuals of OP-1

Sl. No.	Name of individual	Designation	Role
1.	[redacted]	Strategic Manager	The Commission notes that some resellers OPs *viz.* OP-2, OP-4, OP-5, OP-6, OP-7, OP-8 and OP-11 stated his name among HP officials with whom they used to communicate/ interact regarding bidding in tenders. The Commission further notes that there are various emails unearthed by the DG wherein [redacted] dictated the bid prices to the resellers. Accordingly, the Commission finds [redacted] to be liable under Section 48(3) of the Act.
2.	[redacted]	Account Manager (Sales)	The Commission notes that some resellers OPs *viz.* OP-2, OP-4, OP-5, OP-6, OP-7, OP-8 and OP-11 stated his name among HP officials with whom they used to communicate/ interact regarding bidding in tenders. The Commission further notes that he also communicated to OP-6, through email, price to be quoted in a tender.

			Accordingly, the Commission finds [redacted] to be liable under Section 48(3) of the Act.
3.	[redacted]	Account Manager (Sales)	The Commission notes that some resellers OPs *viz.* OP-4, OP-5, OP-7, OP-8 and OP-11 stated his name among HP officials with whom they used to communicate/ interact regarding bidding in tenders. The Commission further notes that he also communicated bid prices to OP-5 through emails in respect of GeM tender. Accordingly, the Commission finds [redacted] to be liable under Section 48(3) of the Act.
4.	[redacted]	Account Manager (Sales)	The Commission notes that some resellers OPs *viz.* OP-2, O-4, OP-5, OP-7, OP-8 and OP-11 stated his name among HP officials with whom they used to communicate/ interact regarding bidding in tenders. The commission notes that he was involved in communicating bid prices to OP-7 through emails. OP-9 also communicated with Mr. [redacted], objecting to the direct participation of OP-1 in respect of a tender. Accordingly, the Commission finds [redacted] to be liable under Section 48(3) of the Act.
5.	[redacted]	Account Manager (Sales)	The Commission notes that some resellers OPs *viz.* OP-2, OP-4, OP-5, OP-6, OP-7 and OP-11 stated his name among HP officials with whom they used to communicate/ interact regarding bidding in tenders. However, there is no evidence to indicate his involvement in the anti-competitive conduct examined in the instant matter. Accordingly, the Commission does not find [redacted] to be liable under Section 48(3) of the Act

6.	[redacted]	Account Manager (Sales)	The Commission notes that two resellers OPs *viz.* OP-2, and OP-11 stated his name among HP officials with whom they used to communicate/ interact regarding bidding in tenders. However, there is no evidence to indicate his involvement in the anti-competitive conduct examined in the instant matter. Accordingly, the Commission does not find [redacted]o be liable under Section 48(3) of the Act.
7.	[redacted]	Zonal Manager	The Commission notes that a reseller OP *viz.* OP-6 stated his name among HP officials with whom it used to communicate/ interact regarding bidding in tenders. However, there is no evidence to indicate his involvement in the anti-competitive conduct examined in the instant matter. Accordingly, the Commission does not find [redacted] to be liable under Section 48(3) of the Act.
8.	[redacted]	Accounts Manager (Sales)	The Commission notes that some resellers OPs *viz.* OP-2, OP-4, OP-6 and OP-8 stated his name among HP officials with whom they used to communicate/ interact regarding bidding in tenders. The Commission further notes that he also communicated through email, with respect to a tender query by OP-6 that OP-1 was working with some other partner on that tender. Accordingly, the Commission finds [redacted] to be liable under Section 48(3) of the Act.
9.	[redacted]	Accounts Manager (Sales)	The Commission notes that resellers OPs *viz.* OP-6 and OP-8 stated her name among HP officials with whom they used to communicate/ interact regarding bidding in tenders. The Commission further notes that she asked OP-6, through email, not to bid for

			a particular tender where OP-1 was aligned with another partner. Accordingly, the Commission finds [redacted] to be liable under Section 48(3) of the Act.

Individuals of OP-2

107. [redacted], Director of OP-2, was stated to be in charge of the affairs of OP-2 and the final authority in respect of bid prices for GeM tenders in respect of Personal Systems Products. In the absence of any material on record to demonstrate that he did not have knowledge of or have exercised all due diligence to prevent the commission of contravention, or did not commit the contravention of the provisions of the Act, the Commission finds him liable under the provisions of Section 48(1) of the Act.

108. [redacted], Senior Manager of OP-2 admitted to being in collusive relationship with officials of OP-1. He also stated himself to be responsible for decisions relating to bidding in tenders and used to take consent from his brother [redacted] at the time of taking such decisions. He also admitted to providing support bids to OP-1 in respect of 5 tenders. For playing a role in the cartel arrangement, the Commission finds [redacted] liable in terms of Section 48(3) of the Act.

Individuals of OP-6

109. Mr. Sushil Kumar Jain, CEO of OP-6, was stated to be in charge of the affairs of OP-6 and the final authority in respect of bid prices for GeM tenders in respect of Personal Systems Products. He also admitted that in some cases, OP-1 used to intimate it bid price to be quoted. He provided [redacted] wherein OP-1 communicated the bid price to be quoted by it for [redacted]. In the absence of any material on record to demonstrate that he did not have knowledge of or had exercised due diligence to prevent the commission of

contravention, or did not commit the contravention of the provisions of the Act, the Commission finds him liable under the provisions of Section 48(1) of the Act.

110. With respect to Mr. Hari Om Prakash Gupta and Mr. Anand Sharma, it is submitted that the DG found them liable under Section 48(3) of the Act based on the statement of Mr Sushil Kumar Jain that they used to look after the GeM tender work and [redacted] of OP-1 communicating bid price in respect of [redacted] tender were received by them. It is submitted by them that neither there is any evidence to indicate their involvement or connivance in the anti-competitive conduct to find them liable under Section 48(3) of the Act nor their statements have been recorded. They were merely the recipients of the emails sent by the HP officials. In the absence of any evidence regarding their consent or connivance in the anti-competitive conduct, the Commission does not find them liable under the Section 48(3) of the Act.

Order

111. On the basis of investigation and examination of the matter and considering all other material available on record, the Commission finds that OP-1, OP-2, OP-4, OP-6, OP-8 and OP-11 to have acted in contravention of provisions of Section 3(3) of the Act. Accordingly, the Commission, in terms of Section 27(a) of the Act, directs these contravening OPs and their respective officials who have been found liable in terms of provisions of Section 48 of the Act, to cease and desist in future from indulging in practices found in the present order to be in contravention of the provisions of the Act, as detailed in the earlier part of the present order.

112. In terms of the provisions contained in Section 27(b) of the Act, the Commission is empowered to impose appropriate penalty upon the contravening OPs.

113. In determining the quantum of penalty upon enterprises, the Commission is required to consider factors such as the nature and gravity of the contravention, role of the

enterprise in orchestrating the contravening conduct, recourse to retaliatory measures on other enterprises to participate in contravention, duration of involvement, admission of contravention, extent of cooperation during the proceedings, nature of the industry, and any other factor deemed appropriate. The Commission also notes that in the instant matter, since the period of contravention relates to 2017-2020, accordingly, for the purpose of imposing penalty, the average turnover/income shall be calculated based on the turnover/income for the FYs 2017-18, 2018-19 and 2019-2020.

114. With respect to imposition of penalty and submissions regarding mitigating factors, OPs put forth their oral arguments at the time of final hearing. OPs requested to consider relevant turnover of Personal Systems Products in India in light of principles laid down by the Hon'ble Supreme Court in *Excel Crop Care*. Therefore, the Commission takes into account the aforesaid contention of OPs which is in line with the Turnover Regulations and considers the relevant turnover from the sale of Personal System Products as per the certificates submitted by the OPs for the purpose of imposition of penalty on the contravening OPs.

115. Some reseller OPs, placing reliance on *Excel Crop Care* matter, have contended that penalty ought to be computed only on the turnover arising from the allegedly tainted transactions conducted through the procurement platform in question, and not on their entire turnover from the relevant product category. It is also averred by the parties that pursuant to 2023 amendment in Section 27 of the Act, the Commission ought not to consider the global turnover for imposition of penalty. In this regard, the Commission is cognisant of the rationale laid down in *Excel Crop Care* that penalty must bear nexus with the actual infringing product or service. Taking into account this principle, the Commission did not seek the details of the total turnover which could have included revenue generated products/services but only directed the OPs to file the turnover derived from the sale of Personal Systems Products. However, the OPs are stretching the principle to buyer or platform specific turnover *i.e.* revenue generated from GeM tenders or Government

departments. In this regard, it must be noted that the purpose of imposition of penalty is not only to penalise anti-competitive conduct that has occurred but also to create sufficient deterrence against recurrence in future. Accordingly, the Commission is of the view that restricting turnover only to specific tenders would undermine deterrence in cartel enforcement, particularly where enterprises systematically coordinate bidding behaviour across multiple procurements within a product segment. Hence, the Commission rejects this contention of OPs being devoid of merit.

116. Therefore, the Commission, in line with the Turnover Regulations, 2024 and in terms of the principles laid down in *Excel Crop Care* matter, considers the turnover from the sale of Personal Systems Products as per certificates submitted by the OPs for the purpose of imposition of penalty.

117. As per Section 27(b) of the Act, the Commission is empowered to impose such penalty, as it may deem fit which shall be not more than ten per cent of the average of the turnover or income, as the case may be, for the last three preceding FYs, upon each of such person or enterprise which is a party to anti-competitive agreement. Though in terms of *proviso* to Section 27(b) of the Act, the Commission, in case any agreement referred to in Section 3 of the Act has been entered into by a cartel, may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent of its turnover or income, as the case may be, for each year of the continuance of such agreement, whichever is higher. However, the Commission, considering the peculiar nature of cartel between resellers and OEM, decides not to invoke the aforesaid *proviso* for the purpose of imposing monetary penalty.

118. As per the Penalty Guidelines, for calculating average relevant turnover or average income, the Commission, subject to the facts and circumstances of each case, may consider a period of three years preceding the year in which the Investigation Report

is received by the Commission or in appropriate cases, the Commission may consider three years preceding the period of contravention. In the instant matter, the DG has examined the conduct of parties with respect to GeM tenders pertaining to the period from 2017 to 2020. Accordingly, the Commission considering the facts and circumstances of the instant matter, decides to take into account the average relevant turnover for the FYs 2017-18, 2018-2019 and 2019-2020 for the purpose of imposition of penalty.

119. Considering the prominent role played by HP India (OP-1) being the OEM who had control over issue of MAF and TP which are the foremost documents required by a reseller to participate in any GeM tender in the overall collusive arrangement with various resellers, its direct participation in tenders and dictating bid prices to resellers, the Commission decides to impose penalty @ [redacted] over OP-1 and its individuals as the basis for determination of penalty to be imposed upon the OP under Section 27(b) of the Act for contravening the provisions of Section 3 of the Act.

120. Considering the disclosures made by OP-1 to enable the Commission to form *prima facie* opinion of existence of contravention of provisions of the Act, as well as mitigating factors of admitting to the contravention, cooperation during investigation, first time contravention, nature and gravity of contravention, the Commission decides to grant a reduction in penalty @ [redacted] to OP-1 and its individuals found liable under Section 48 of the Act. Consequently, the penalty amount imposed and payable by OP-1 and its individuals are as under:

Table 4: Penalty on OP-1 and its individual liable under Section 48 of the Act

Name	**2017-18**	**2018-19**	**2019-20**	**Average turnover/ Income**	**Penalty imposed**	**Penalty after reduction**
HP India **(INR crores)**	[redacted]					126.87

[redacted] (INR crores)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	0.19
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	51,738
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	37,070
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	67,726
[redacted] (INR	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	12,403
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	30,067
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	42,234

121. Further, the Commission notes the dependency of resellers over OEMs and considering the role played by the contravening reseller OPs decides to impose a penalty @ [redacted] on OP-2 and its individuals as the basis for determination of penalty to be imposed upon the OP under Section 27(b) of the Act for contravening the provisions of Section 3 of the Act.

122. Considering the disclosures made by OP-2 during the pendency of the investigation, as well as mitigating factors of admitting to the contravention, cooperation during investigation, first time contravention, nature and gravity of contravention, the Commission decides to grant a reduction in penalty @ [redacted] to OP-2 and its individuals. Consequently, the penalty amount imposed and payable by OP-2 and its individuals are as under:

Table 5: Penalty on OP-2 and its individuals

OP Name	2017-18	2018-19	2019-20	Average turnover/ Income	Penalty imposed	Penalty after reductio n
Delphi Infosolution s (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	9,52,117
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	41,552
[redacted] (INR)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	62,666

123. Further, the Commission notes the dependency of resellers over OEMs and considering the role played by OP-4, OP-6, OP-8 and OP-11 determines penalty @ 3% upon OP-4, OP-6, OP-8 and OP-11 as the base penalty to be imposed upon the aforementioned OPs under Section 27(b) of the Act for contravening the provisions of Section 3(3) of the Act.

124. Considering the mitigating factors such as being an MSME, limited role, acting upon directions of OP-1, cooperation during investigation, first time contravention, nature and gravity of contravention, the Commission decides to impose penalty @ 2% upon OP-4, OP-6 including its individuals, OP-8 and OP-11. Consequently, the penalty amount imposed and payable by OP-4, OP-6 including its individual, OP-8, OP-11 and respective individual are as under:

Table 6: Penalty on OP-4, OP-6, individual of OP-6, OP-8 and OP-11

OP Name	2017-18	2018-19	2019-20	Average turnover/ income	Penalty imposed @2%
Digitech Computer (OP-4) (INR)	9,92,31,105	8,22,57,661	8,80,01,107	8,98,29,958	17,96,599
Orbit Techsol (OP-6) (INR)	37,30,24,181	50,68,42,985	41,48,93,701	43,15,86,956	86,31,739

Sh. Sushil Kumar Jain of OP-6 (INR)	[redacted]	[redacted]	[redacted]	[redacted]	1,52,770
Hind Technocare (OP-8)(INR)	25,25,131	4,75,46,929	5,07,92,177	3,36,21,412	6,72,428
Krishna Computer (OP-11)(INR)	20,63,076	75,16,103	1,90,99,672	95,59,617	1,91,192

125. Accordingly, the Commission directs the aforementioned OPs and their individuals to deposit the penalty amount within sixty (60) days of the receipt of this order.

126. The Commission, in terms of Section 27(g) of the Act, also directs the contravening OPs to organise a competition compliance training programme in order to spread awareness about competition laws and to promote a culture of competition compliance within their organisation and submit a compliance report within a period of sixty (60) days from the date of receipt of this order.

127. Before parting with the order, the Commission deems it appropriate to deal with the request of the parties seeking confidentiality over certain documents/information filed by it under Regulation 36 of the General Regulations, 2024. Considering the grounds given by the parties for the grant of confidential treatment, the Commission grants confidentiality to such documents / data / information in terms of Regulation 36 of the General Regulations, 2024, subject to Section 57 of the Act, for a period of three years from the date of passing of this order. It is however made clear that nothing disclosed in the public version of this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same have been used and disclosed for purposes of the Act in terms of the provisions contained in Section 57 thereof. Accordingly, the Commission directs that two versions of the present order may be issued *i.e.,* public version shall be served upon all the OPs and their respective individuals and a confidential version shall be shared with the OPs in the confidentiality ring *viz.* OP-1, OP-2, OP-3, OP-6, OP-7, OP-9 and OP-10, through members of the confidentiality ring. The public version of the order shall

be prepared keeping in mind the confidentiality requests and the provisions of Section 57 of the Act read with Regulation 36 of the General Regulations 2024. For convenience, it is directed that the confidential version of this order may be provided to such ring members/ individuals through one of the ring members, who may then share the same with the other ring members nominated by the concerned OP. OP-1, OP-2 and OP-6 are directed to serve a copy of the confidential version of this order upon their respective individuals upon whom penalty has been imposed for the purpose of compliance of this order.

128. Any pending application(s) filed by the parties shall be deemed to be disposed of in light of the above order.

129. The Secretary is directed to forward a copy of this order to the OPs and their respective individuals.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

New Delhi
Dated: 13/07/2026