

COMPETITION COMMISSION OF INDIA

Case No. 51/2012

7th November, 2012

In re

Accreditation Commission for Conformity Assessment Bodies Pvt. Ltd .
... Informant

Vs.

1. Quality Council of India/National Accreditation Board for Certification Bodies (OP.1)
2. National Accreditation Board for Testing and Calibration Laboratories (OP.2)
3. Secretary, Ministry of Commerce and Industry (OP.3)
4. Secretary, Department of Industrial Planning and Policy (OP.4)
5. Secretary, Department of Science and Technology (OP.5)
6. Secretary, Ministry of Micro, Small and Medium Enterprises (OP.6)
7. Secretary, Ministry of Food Processing Industries (OP.7)
8. Secretary, Ministry of Railways (OP.8)
9. CEO, Food Safety and Standards Authority of India (OP.9)
10. Secretary, Ministry of Environment and Forest (OP.10)
11. Secretary, Ministry of Petroleum and Natural Gas (OP .11)
12. Ministry of Infrastructure and Road Transport (OP .12)
13. Secretary, Department of Consumer Affairs (OP.13)
14. Secretary, Ministry of Health and Family Welfare (OP.14)

... Opposite Parties

ORDER UNDER SECTION 26(1) OF THE COMPETITION ACT, 2002.

As per R. Prasad (Minority)

I had the opportunity to look into the majority's order so I am not repeating the facts of the case as facts are already given in that order. However, I would like to differ from the majority's view that there is no case of contravention of the Competition Law. The reasons for the difference are given below:-

1. The main grievance of the informant is that the OPs have created entry barrier for the Informant as OPs, being the Government departments, are in a dominant position and as such they have abused their dominance by not allowing the Informant to provide accreditation service to the government departments. In the majority's order it has been held that the Informant has failed to prove that the OPs are holding dominant position. In this regard my view is that the onus is not on the Informant to prove that the OPs are holding dominant position. It is the job of the Commission to find out whether the OPs are holding dominant position in the relevant market. Informant is merely an information provider. He is not supposed to be expert on the Competition Law. His job is to bring it to the notice of the Commission that some anti competitive act is being committed and then it is for the Commission to find out whether that act is prima facie anti competitive.
2. Further government departments are required to act fairly and in a transparent manner. They cannot deny market access to a person if a person was well qualified. Such exclusionary practices are not authorized under law. This has to be kept in mind when dealing with the behaviour of government department.
3. Explanation to section 4 of the C.A states "dominant position means a position of strength enjoyed by an enterprise in the relevant market in India, which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour." In the present case, all the OPs are holding a dominant position because they are government departments and as such they are operating independently of competitive forces prevailing in the relevant market and affecting their competitors, the relevant market and ultimately the consumers.

4. The paper/document submitted by the Informant show that the informant had the requisite qualification for providing the accreditation service like any other accreditation agencies including OP1. So if the Informant is otherwise qualified for providing this service, his entry into the government department cannot be denied on the ground that only Quality Council of India/National Accreditation Board for Certification Bodies, the OP-1 is competent to provide this kind of service to the government departments. This is clearly a denial of market access as per the provisions of section 4(2)(c) of the Competition Act. I cannot subscribe to the majority's view that the Informant has failed to supply data in respect of the other certification agencies about how much was their business, who all were getting accreditation etc. It is for the Commission to collect these data through DG.
5. In the cases where government departments have been made opposite parties, it is important to go into the philosophy of Competition Law. The Parliament has enacted a law to ensure that a level playing field is created to all market players irrespective of their size, resources, market position, economic strength etc. The intention of the statute is very clear that there should not be any discrimination between a private player and a government player and all players should be treated equally so that they can operate independently and freely in a given market. This is the reason why in section 2(h) of the Act even government departments are included. So, if the Informant or any enterprise for that matter is being denied a market access, it is against the basic philosophy of Competition Law. This mind set has to be changed. This is the reason why government is contemplating to bring National Competition Policy to create a competition culture in the country. Needless to say about the positive relation between the Competition Law and the GDP.
6. Thus, in my opinion prima facie it is a fit case where DG shall be directed to cause an investigation in this matter.
7. Secretary is directed to inform all concerned accordingly.

R. Prasad

Sd/-