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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 08 of 2023

In Re:

**Prem Prakash
Proprietor, Venus Testing and Research Laboratory,
Industrial Area, Khurai Road, Bina,
Distt. Sagar, Madhya Pradesh-470113.**

Informant

And

**Director General, CPWD, Headquarter, A-Wing, Nirman
Bhawan, Maulana Azad Marg, New Delhi-110011.**

Opposite Party No. 1

**Managing Director, National Capital Region Transport
Corporation, Gati Shakti Bhawan, INA, New Delhi-110023.**

Opposite Party No. 2

**Engineer Member, Delhi Development Authority,
Vikas Sadan, INA, New Delhi -110023.**

Opposite Party No. 3

**Chief Engineer, Public Health Engineering Department,
Government of Madhya Pradesh, Jal Bhawan, Banganga,
Bhopal -462003.**

Opposite Party No. 4

**Engineer in Chief, Water Resources Department,
Government of Madhya Pradesh, Jal Bhawan, Tulsi Nagar,
Bhopal- 462003**

Opposite Party No. 5

**Chairperson, Madhya Pradesh Police Housing and
Infrastructure Development Corporation Ltd., Bhadbhada
Road, Bordi Kalan, Bhopal -462002.**

Opposite Party No. 6

CORAM:

**Ms. Ravneet Kaur
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**



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

1. The present information has been filed by Mr. Prem Prakash (**‘Informant’**) under section 19(1) (a) of the Competition Act, 2002 (**‘Act’**) alleging contravention of the provisions of section 3(4) and section 4 of the Act by Director General, CPWD (**OP-1**); Managing Director, National Capital Region Transport Corporation (**OP-2**); Engineer Member, Delhi Development Authority (**OP-3**); Chief Engineer, Public Health Engineering Department, Government of Madhya Pradesh (**OP-4**); Engineer in Chief, Water Resources Department, Government of Madhya Pradesh (**OP-5**); and Chairperson, Madhya Pradesh Police Housing and Infrastructure Development Corporation Ltd. (**OP-6**) (OP-1 to OP-6) are collectively referred to as **‘OPs’**).
2. The Informant is proprietor of Venus Testing and Research Laboratory located at Industrial Area, Khurai Road, Bina, Madhya Pradesh and is providing engineering material testing laboratory services. The Informant’s laboratory is stated to be ISO 17025:2017 accredited.
3. The Informant has submitted that International Organization for Standardization (ISO) is an independent, non-governmental international organization that develops voluntary, consensus-based, market relevant international standards that support innovation and provide solutions to global challenges. The Informant has also submitted that ISO standards are voluntary in India.
4. The issue involved in the present case is related to ISO/IEC 17025:2017 which is followed by engineering material testing laboratory. As per the information, ISO-17025:2017 allows laboratories to implement a sound quality system and demonstrate that they are technically competent and able to produce valid and reliable results.
5. The Informant submits that if a laboratory wishes accreditation to ISO 17025: 2005 standards for part or all of its testing and calibration activities it should select an accreditation body that operates in accordance with ISO/IEC 17011.



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6. Further, it is submitted that there is no requirement mentioned nor are there any rules passed by Bureau of Indian Standards (BIS) or any authorised appropriate body which mandates accreditation from a single accreditation body or any single agency. However, the Informant has submitted that OPs through their circulars or through clauses in their Tender/ Expression of Interest prescribe to avail services for testing of materials through laboratories which are accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL). Informant has submitted that such conditions create an anti-competitive situation in favour of NABL. This is causing Appreciable Adverse Effect on Competition (AAEC) in the market as the conducts of OPs are directly creating an entry barrier for the new player. Further, existing player, if any, in the market would be forced to close their operations.
7. Based on the above and conclusion in earlier order of the Commission in Case No. 50 of 2014, the Informant has stated that each of the state/central authorities named as OPs in the present information falls within the definition of the term 'enterprise' under Section 2(h) of the Act. Further, it is stated that each of the enterprises are dominant in their respective relevant product which would be the work allocated to them and geographical markets would be their territorial jurisdiction.
8. The Informant has relied on previous order of the Commission in Case No. 50 of 2014 for defining relevant market and assessing dominance of OP-1 as the same entity was also arrayed as one of the OP in Case No. 50 of 2014. The relevant product market for OP-1 has been stated as *"market for procurement of services of laboratories for testing materials used in the construction of roads and bridges, etc. in India."* The Informant further submits that dominance of OP-1 has already been adjudicated in Case No. 50 of 2014.
9. With respect to OP-2, the Informant has stated that the relevant market would be *"market for procurement of services of laboratories for testing materials used in the implementation of Regional Rapid Transit System (RRTS) project across the National Capital Region (NCR)."*



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The Informant has further stated that NCRTC is dominant in the relevant market, for construction of RRTC as it is the only agency authorized to do so.

10. With respect to OP-3, the Informant has stated that the relevant geographical market would be same as that of the territorial jurisdiction of DDA. Therefore, the relevant market for DDA would be *“the market for procurement of services of laboratories for testing materials used in the development of Delhi.”* Further, with respect to dominant position, the Informant has *inter alia* stated that no other player in the market is comparable to position of DDA in the overall development of Delhi.
11. With respect to OP-4, the Informant has stated that the relevant market would be *“market for procurement of services of laboratories for testing materials used in the implementation of drinking water scheme in the state of Madhya Pradesh.”* Further with respect to dominance of OP-4, it is submitted that OP-4 is the sole department which executes water supply scheme in the state of Madhya Pradesh. Hence the unique position of OP-4 makes it dominant enterprise in the relevant market.
12. With respect to OP-5, the Informant has stated that the relevant market would be *“market for procurement of services of laboratories for testing materials used in the implementation of water resources projects for irrigation in the state of Madhya Pradesh.”* As regards dominance, the Informant submits that it is in unique position by virtue of being the sole enterprise implementing the water resource projects for irrigation in Madhya Pradesh making it dominant in the relevant market.
13. With respect to OP-6, the Informant has stated that the relevant market would be *“the market for procurement of services of laboratories for testing materials used in the construction of building for police station and houses for the police officials in Madhya Pradesh.”* Further, it is the only body responsible for building police stations and residential buildings for the police department in the state of Madhya Pradesh.



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14. Informant has submitted that NABL and the OPs are at different level of production chain. Thus, the aforementioned conditions which allegedly favours only NABL violate provisions of Section 3(4) of the Act read with Section 3(1) of the Act.
15. Further, the Informant has submitted that the above conditions imposed by the aforesaid dominant enterprises in their respective relevant market are in clear violation of sections 4(2)(a)(i), 4(2)(b), 4(2)(c) of the Act.

Analysis of the Commission

16. At the outset, the Informant is primarily aggrieved by the acts of OPs wherein, all the OPs have sought accreditation by NABL in their respective Tenders/Expression of Interests (EoIs)/Circulars as necessary condition for procurement of services of laboratories. It is the case of the Informant that OPs have some sort of co-ordination or arrangement with NABL to outcast the laboratories accredited by other accreditation bodies. To make its case, the Informant has referred to various clauses of Tenders/ EoIs/ Circulars issued by OPs, suggesting/mandating their suppliers to obtain laboratory testing services only from NABL accredited laboratories.
17. The Commission has considered the averments and allegations made in the information and notes that the Informant has alleged contravention of section 3(4) and 4 of the Act. As regards alleged violation of Section 3(4), it is the case of the Informant that NABL has entered into agreement(s) with OPs as the outcome of the terms/ clauses mandated by them is leading to accreditation by NABL only.
18. In this context, the observation of the Commission in its earlier order dated 24.02.2022, passed in Case No. 48 of 2021, is reproduced below:

“12. The Commission is of the view that for the applicability of Section 3(4) of the Act and the examination of contravention for the same, the existence of an agreement/ arrangement between the parties is a sine qua non, which aspect is neither captured in the Information nor any evidence given in relation thereto. The Informant has not provided an iota of evidence about NABL having an



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agreement/ arrangement with OPs in relation to some exclusive arrangement in favour of NABL. Further, a majority of the OPs have issued Tender/ Notices/ Guidelines/ Expression of Interest/ Letters etc. wherein the terms and conditions appear to be framed by the respective OPs and in any case it cannot be deduced that NABL has a role in deciding such terms and conditions, giving it some preference. Thus, the Commission, prima facie, does not find contravention of Section 3(4) of the Act by any of the OPs.”

19. The Commission notes that the Informant has not provided any cogent evidence to suggest any agreement between the OPs and NABL. Accordingly, from the above observation of the Commission and based on the available information in the present case, the Commission does not find any contravention of Section 3(4) of the Act by any of the OPs/NABL.
20. In relation to the alleged contravention of the provisions of Section 4 of the Act by OPs, the Informant has also claimed that NABL’s accreditation mandated by OPs provides virtual monopoly to NABL insofar as the supply of products/ services of granting accreditation certificate to laboratories is concerned. This, as per the Informant, is not only driving existing competitors out of the market but also creating entry barriers in the market.
21. With respect to the examination of allegations pertaining to Section 4 of the Act, the Commission notes that the Informant has delineated separate relevant markets for all OPs, depending on the nature of product/ service being procured by such OPs and has claimed that each such OP is dominant in its relevant market. In this context, the observation of the Commission in its earlier order dated 24.02.2022, passed in Case No. 48 of 2021, is reproduced below:

“16. The Commission notes that the allegations pertain to grant of preference to NABL or laboratories accredited by NABL in relation to accreditation/ certification services sought by other OPs (OP-2 to OP-37) which are procuring different/distinct goods and services. In this regard, it is observed that each of the OPs, being OP- 2 to OP-37, operate in a varied and wider market which



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comprises different/distinct goods and services, both in the public and private sector. Furthermore, the goods/ services being sought to be procured by each OP-2 to OP-37 is available for procurement by other procurers too, both in public as well as private sector. Thus, on the basis of the above, the Commission is of the view that it may not be germane to define the precise relevant market qua each of the 37 OPs and assess the dominance of OPs individually in each of such relevant market.”

22. Form the above observation of the Commission, it appears that market of services of laboratories for testing materials are not majorly dependent on works from the OPs, as use of such testing services of materials are not limited to OPs alone in a geographic area. There could be several other entities/players which would be needing laboratory services and may have procured on similar terms and condition as the current OPs. Therefore, it cannot be established that all the OPs are dominant in the relevant market. The Commission therefore believes that it may not be appropriate to define precise relevant market qua each of the OPs and evaluate the dominance of OPs separately in each of such relevant markets based on the foregoing.
23. Based on the foregoing, the Commission notes that there exists a much broader market than as delineated by the Informant for the providers of laboratory testing services, and there may not be a foreclosure, as contended by the Informant. Further, in the present case, as regards OPs seeking NABL's accreditation, there is nothing on record to suggest that NABL has any arrangement with OPs in framing conditions in their respective Tenders/ EoIs/ Circulars seeking procurement of laboratory services from NABL accredited laboratories.
24. The Commission notes that the aforesaid allegations emanate from the terms and conditions as appearing in the respective documents of OPs. While the Commission believes that the procurer ought to have the autonomy to decide as to what goods/ services it intends to procure, however, this shall be subject to safeguards laid down under the relevant rules of procurement that may be applicable to that entity, besides it complying with the provisions of the Act, to the extent are applicable and having regard to the position of such entity in the market, the product/ service it seeks to procure, and without such entity acting in any unfair or discriminatory



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manner, in this process. The Commission would also like to reiterate that, for effective competition in the market, it is apposite that procurers should specify only the standards that they desire to be adhered to by suppliers of goods and services, rather than specifying names/nominations.

25. In view of the foregoing, the Commission is of the considered opinion that no *prima facie* case of contravention of any of the provisions of Section 3 and/or 4 of the Act is made out against the OPs for causing an investigation into the matter, and therefore, the matter is ordered to be closed forthwith under Section 26(2) of the Act.
26. The Secretary is directed to communicate to the parties accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 07.08.2023

New Delhi.