



**COMPETITION COMMISSION OF INDIA**

**Case No. 05 of 2023**

**In Re:**

**Mrs. Kanwaljeet Kaur Soni  
D- 91, 4<sup>th</sup> Floor,  
Sushant Lok-2, Sector 56,  
Gurgaon, Haryana 122 011**

**...Informant**

**And**

**1. The Association of Certified Fraud Examiners Inc.  
716 West Avenue Austin,  
TX 78701**

**...Opposite Party No. 1**

**2. Netrika Consulting India Private Limited  
N-161, Saira Tower, Ground Floor,  
Gautam Nagar, Near Green Park Metro Station,  
New Delhi South, Delhi 110 049**

**...Opposite Party No. 2**

**3. The Open Thinking Academy  
Office # 208 Block #19  
King Salman Bin Abdul Aziz Al Saud Street,  
Near Cosco, Dubai**

**...Opposite Party No. 3**

**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 Mrs. Kanwaljeet Kaur Soni (hereinafter, the “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against the Association of Certified Fraud Examiners Inc., (hereinafter, ‘**ACFE/ OP-1**’), M/s Netrika Consulting India Private Ltd. (hereinafter, ‘**NCIPL/ OP-2**’), the Open Thinking Academy (hereinafter, ‘**OTA/ OP-3**’), (hereinafter OP-1, OP-2 and OP-3 collectively referred to as ‘**Opposite Parties**’ / ‘**OPs**’) alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. It is stated that the Informant is engaged in service of providing study resources and coaching / training to potential candidates pursuing certification for a course, Certified Fraud Examiner (‘CFE’), conducted by ACFE/OP-1. It also offers consulting in the area of forensic accounting as well as fraud prevention.
3. It is stated that ACFE / OP-1, an association of persons, is a private, independent, organisation based in USA. The main objective of ACFE/OP-1 is reducing the incidence of fraud and white-collar crimes. ACFE/OP-1 conducts a certification course named Certified Fraud Examiners (‘CFE’) which can be earned by passing an examination. The qualifications required to be eligible for the CFE exam are set by the ACFE/ OP-1 through its Board of Regents. Further, the CFE credentials so earned by a person are required to be renewed every year by paying a certain amount of fee to ACFE/OP-1. The CFE accreditation has gained recognition and acceptability all over the world as an accreditation in the prevention, detection, and deterrence of fraud.
4. It is stated that NCIPL/ OP-2 is a private consulting and investigating agency that provides services *inter alia* in the area of forensic investigation, background checks, due diligence, general data protection regulation (‘GDPR’) compliance, security and risk consulting and Training and Certification. In 2019, OP-1 appointed OP-2 as its Authorised Training Partner (‘ATP’) for providing training and assistance for CFE certification in India.



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5. It is stated that OTA / OP-3 is ATP of OP-1 for four countries, namely, the United Arab Emirates (UAE), Qatar, Oman, and Malaysia, since 2015. OP-3 provides services for two courses, namely, the CFE course as authorised by the ACFE and the Certified Internal Auditor (CIA).
6. It is averred that OP-1, being the first mover had the opportunity to partner with some of the biggest organizations and government agencies in the area of fraud detection and prevention. Further, as there were no new entrants, OP-1 remains the only fraud detection and prevention certification provider in the world owing to multifarious factors such as ecosystems, anti-fraud training and education which have helped it to increase its reach all over the world.
7. It has been stated that with the increase in the number of aspirants for the CFE course, the Informant had started helping in the examination to the candidates aspiring to become a certified member of OP-1 in the examination preparation.
8. In around 2009, the OP-1 started providing study support in the form of the 'CFE Exam Prep Course' through virtual and in-person training and subsequently also started appointing ATPs to help those candidates / aspirants preparing for the CFE exam. In 2019, the OP-1 appointed OP-2 as its ATP for the first time in India. This resulted in the creation of an ecosystem to trap down CFE aspirants and influence their decisions.
9. It is stated that Informant was one of the first independent study support providers and in running preparatory courses for CFE certification in India after she cleared the CFE exam in 2013. However, the Informant delivered the course material of OP-1 by explaining it more lucidly and at a price significantly less than that charged by OP-1.
10. It is further averred that there were communications between Informant and OP-1 in form of e-mail exchanges till 09.05.2019. OP-1, *vide* its e-mail dated 28.07.2014, had indicated to the Informant to become its ATP for India. However, in 2019, OP-1 communicated to the Informant that it is not possible to enter into a relationship of ATP with it as they have already signed an agreement with OP-2.



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11. The Informant has delineated two relevant product markets, primary market and secondary market. *'Expertise and credentials in fraud detection and prevention'* as primary relevant market and *'preparation for clearing CFE exam'* as secondary relevant market. Informant has defined the Relevant Geographic Market as *'whole world'*.
12. The Informant has stated that OP-1 is the only entity which is providing CFE certification all over the world and there is no other entity that imparts an overall expertise in fraud detection and prevention. Further, OP-1 commands anywhere between 55% to 76% of the market share in the Relevant Markets.
13. The Informant has alleged that OP-1 is abusing its dominant position in the primary market by imposing unfair and discriminatory conditions through Section 5.07: Suspension and Expulsion in its Byelaws (14<sup>th</sup> Amended Byelaws of OP-1 membership Inc.) *'Section 5.07 Suspension and Expulsion. The Board of Regents, in its sole discretion, shall have the authority to expel, suspend, or discipline a Member for the following. C. Engaging in deceit in pursuit of becoming an ACFE Member, obtaining the CFE credentials, (including submitting the false exam application information or receiving or providing improper assistance in relation to any person taking the CFE Exam), renewing ACFE membership (including the false reporting of Continuing Professional Education or failure to disclose character issues as required upon renewal), and any similar misconduct established by the disciplinary body of another professional organization to which the Member belongs.'* According to Informant, aforesaid Section 5.07 of the byelaws restricts the supply of preparatory services offered by third parties who are not ATPs of ACFE/OP-1, to aspirants preparing for CFE exams.
14. The Informant has stated that OP-1 has been alleging infringement of its copyrights and trademarks by Informant. According to Informant, OP-1 has issued various 'cease and desist' notices over trademark rights or protection that it didn't possess, and has made the Informant to remove contents. The Informant has alleged that OP-2 threatened as well as defamed her by making false allegations of unauthorized use of the study material of OP-



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- 1 and giving unauthorized coaching of the CFE course as she was not the ATP appointed by OP-1 in India.
15. It is also alleged that the OP-1 has appointed OTA/ OP-3 as its ATP for UAE, Oman, Saudi Arabia, Malaysia, and Qatar. OP-3 had also issued a legal notice to the Informant to stop delivering the online CFE coaching in UAE, Saudi Arabia, Oman, and Qatar. The said notice of OP-3 also included allegations of copyright infringement and unauthorized use of the OP-1 material by the Informant.
  16. The Informant thus has alleged that OP-1 is abusing its dominant position by imposing unfair and discriminatory conditions through its byelaws which restricts the supply of services for preparing the CFE aspirants to clear the exam and providing its own service at an exorbitant price and is trying to abuse its dominant position by restricting market access for the Informant and leveraging its dominant position in the primary market to protect its position in the secondary market and this amounts to a violation of Section 3(4), Section 4(2)(a), Section 4(2)(b), Section 4(2)(c) and Section 4(2)(e) of the Act.
  17. In addition, it is stated that OP-1 has appointed only one ATP in each country to provide coaching for preparation of the CFE exam. The agreement between the OP-1 and ATPs has made it impossible for any other potential tutor or institute to provide similar services leading to entry barriers and foreclosure of competition causing Appreciable Adverse Effect on Competition (AAEC) under Section 3(4) of the Act.
  18. Based on the above submissions, the Informant has requested the Commission for the following relief(s):
    - a. direct the Director General to cause an investigation into the matter under Section 26(1) of the Act;
    - b. pass an interim order directing the OP-1 to re-instate the membership of Informant and to remove her name from the list of expelled members in the Fraud Magazine, published by the OP-1,
    - c. pass an interim order under Section 33 of the Act, directing OP-1 to immediately restore the credentials of CFE to the Informant and till the completion of the



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investigation, stop coercing the Informant not to participate in the secondary market and

d. pass any other order as the Commission deems fit.

19. The Commission has perused the Information and material available on record. The Commission observed that gravamen of Informant's allegations relates to violation of the provisions of Section 3 as well as Section 4 of the Act and arises from the restriction on the supply of preparatory services for CFE examination offered by Informant.
20. The Commission is of the view that, for examination of the allegations relating to Section 4 of the Act, it may be axiomatic to define a relevant market(s) and assess the dominance of the entity alleged to be abusing its dominant position in such market(s). However, considering the facts, circumstances and allegations levelled in the case, the Commission does not find it necessary to define relevant market and establish dominance in the instant matter.
21. In this regard, the Commission noted that as per Information, ACFE/OP-1 has been issuing notices to the Informant for using its study material for CFE examination in an unauthorised manner by infringing copyrights and trademarks of ACFE/OP-1. Similarly, notices were also issued by the OP-2 and OP-3 for providing coaching services in the countries for which they are the ATPs. The Commission noted that ACFE/ OP-1 through its email dated 07.10.2015 had contacted the Informant and communicated the cease-and-desist notice with attached images of infringement, and had also stated that *"one can create material for CFE exam but without infringing the copyright or trademark of ACFE/ OP-1"*. In this regard, the Commission noted from the Information and documents filed therewith that in its communication dated 07.10.2015 with the Informant, ACFE/OP-1 further stated that, *"Our position is not that no one else can create study materials for the exam, but rather that they may not infringe on our copyright or trademarks while doing so"*. The Informant in her response through email dated 08.10.2015, had agreed to remove the contents to which ACFE/ OP-1 had an objection. The same was removed by the Informant in pursuance of cease-and-desist notice. The



Commission also noted that ACFE/OP-1 through its e-mail dated 13.10.2016 again communicated to the Informant to cease-and-desist infringement of its copyright/trademarks.

22. With respect to the Informant's allegation that ACFE/OP-1 in its email dated 17.03.2022 had asked the Informant to stop teaching any course for preparation for clearing the CFE examination. The Commission noted that in the aforesaid communication, OP-1 brought to the notice of Informant that *"it continues to commit trademark infringement by using ACFE's logo and identical terminology of the CFE Exam Prep Course which are registered trademarks of ACFE...ACFE's legal counsel has had over dozen communication with you since 2015 related to misuse of ACFE's intellectual property. The repeated and flagrant violations of ACFE's intellectual property rights leaves us to conclude that KAPP Edge (Informant's firm) is unwilling or unable to offer a lawful CFE Exam training course"*.
23. The Commission noted that OP-1 had approached the Informant to become its ATP for India around 2014, and communication in this regard continued until 2016. Pertinently, in an email dated 20.08.2014, ACFE/OP-1 communicated to the Informant that, *'we are not ready to move forward in India and I believe we are seeking a partner with a larger footprint'*. Furthermore, in 2019, in the course of communications between OP-1 and the Informant, however, it was conveyed that OP-1 had appointed another entity *i.e.* OP-2 as its ATP. In this regard, in an email dated 08.05.2019, ACFE/OP-1 communicated to Informant that, *'Our legal counsel also advised me that over several years, KAPP edge (Informant's firm) has repeatedly misused ACFE copyrights and trademarks and engaged in misleading advertising, which ACFE sent cease and desist letters regarding. This includes trademark, misuse of the ACFE Seal as recently as December 2018, despite being previously warned not to use trademarks. These repeated instances are concerning to us when considering someone who wishes to be an ACFE partner'*.
24. In view of the above, the Commission is of the view that it is unnecessary to dwell any further on the issues stated in the Information, by examining the matter on merits, and



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accordingly, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out and the Information filed against OPs is directed to be closed forthwith in terms of the provisions of Section 26(2) of the Act. Consequently, no case for grant of relief(s) as sought under Section 33 of the Act arises and the prayer for the same is also rejected.

25. It is however, made clear that nothing stated in the present order shall preclude the Informant to approach appropriate forum and from taking / availing any other remedy(s) available to her in accordance with law.
26. Needless to state, in the event the Informant moves appropriate forum for seeking redressal, the cause of the Informant would be determined in accordance with the law and nothing stated herein, shall be construed as an expression of opinion on the merits of the case.
27. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-  
(Ravneet Kaur)  
Chairperson**

**Sd/-  
(Sangeeta Verma)  
Member**

**Sd/-  
(Bhagwant Singh Bishnoi)  
Member**

**Date: 07/08/2023  
New Delhi**