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COMPETITION COMMISSION OF INDIA

Case No. 28 of 2020

In Re:

**Gujarat Paper Mills Association
138, Varun Complex, Gunjan Road
GIDC Housing Board Colony - Phase 2
GIDC, Vapi - 396195, Gujarat**

Informant

And

**Indian Corrugated Case Manufacturers' Association
(ICCMMA)
314, V. K. Industrial Estate
10/14, Pais Street, Byculla West
Mumbai-400011, Maharashtra**

Opposite Party No. 1

**Federation of Corrugated Box Manufacturers' of India
(FCBMI)
138, Mittal Industrial Estate No. 3
M. Vasanji Road, Andheri (E), Mumbai 400059**

Opposite Party No. 2

**Western India Corrugated Box Manufacturers' Association
(WICBMA)
138, Mittal Industrial Estate No. 3
M. Vasanji Road, Andheri (E), Mumbai 400059**

Opposite Party No. 3

**Karnataka Corrugated Box Manufacturers' Association
(KCBMA)
12, Sri Lakshmi Venkateshwara Industrial Estate
8th Main Road, Peenya 2nd Stage
Bangalore – 560058, Karnataka**

Opposite Party No. 4

**North India Corrugated Box Manufacturers' Association
(NICBMA)
F-2, 2nd Floor, Shopping Complex,
Mansarovar Garden, New Delhi - 110015**

Opposite Party No. 5



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CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed under Section 19(1)(a) of the Competition Act, 2002 (“Act”) by Gujarat Paper Mills Association (“**Informant**”) against Indian Corrugated Case Manufacturers' Association (“**OP-1**”), Federation of Corrugated Box Manufacturers Association of India (“**OP-2**”), Western India Corrugated Box Manufacturers Association (“**OP-3**”), Karnataka Corrugated Box Manufacturers' Association (“**OP-4**”) and North India Corrugated Box Manufacturers' Association (“**OP-5**”), alleging, *inter alia*, contravention of the provisions of Section 3 of the Act. Hereinafter, OP-1 to OP-5 are collectively referred to as the OPs/Opposite Parties.
2. The Informant is stated to be an association of kraft paper mills with a membership of 45 mills situated in the territory of the State of Gujarat. OP-1 is stated to be a trade association of corrugated box manufacturers representing automatic board plants and its membership comprises 250 corrugators on an all-India basis. OP-2 is stated to be a federation of trade associations of corrugated box manufacturers with 13 regional affiliated trade associations representing different regions. These regional associations have membership comprising 2500 corrugators on an all-India basis which are indirectly members of OP-2. OP-3 is stated to be a trade association of corrugated box manufacturers spread across western India. OP-4 is stated to be a trade association of the corrugated box manufacturers located in the State of Karnataka. OP-5 is stated to be a trade association of corrugated box manufacturers



based in the States of Uttar Pradesh, Haryana and other northern States. OP-3 to OP-5 are stated to be affiliated to OP-2.

3. The Informant averred that its members are manufacturers of kraft paper, and the majority of the kraft paper manufactured by the paper mills is purchased by the corrugated box manufacturers, as kraft paper is the primary raw material for manufacturing corrugated boxes. These boxes are most commonly used for packaging goods, particularly fast moving consumer goods (FMCG), pharmaceuticals, fruits and vegetables, consumers durables such as electronics, *etc.*
4. The Informant alleged that the OPs have formed a cartel to stop purchase of kraft paper from members of the Informant and also to close down their manufacturing units in a coordinated manner to create artificial shortage of supply of corrugated boxes, so as to push for the low price of kraft paper (raw material) and high price for corrugated boxes (finished product) from the corrugated box users. The Informant also alleged that the intention of the OPs behind the closure of deliveries was to pressurise the members of the Informant to reduce prices of kraft paper. Thus, such conduct of the OPs is alleged to be in violation of the provisions of Section 3 (3)(a) and Section 3 (3)(b) of the Act.
5. The Informant further alleged that OP-1, through its members, unanimously passed a resolution dated 10.09.2016 to discourage the practice of paper distributors/traders/agents/paper mills directly approaching the end users of corrugated boxes, *i.e.* brand owners. The Informant averred that by deliberately restricting or stopping the members of the Informant to directly deal with the end-users/ brand owners, OP-1 limited and restricted the market for sale of kraft papers and thus, has tried to foreclose competition by hindering entry of the members of the Informant into the market. Consequently, it has denied benefits to the consumers that would have accrued to them owing to such competition, which has been termed as a blatant contravention of the provisions of Section 3(3)(b) of the Act. Also, by doing so, OP-1 is alleged to have regulated / increased the prices of corrugated boxes to gain higher



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profit margin for its members and thus, violating the provisions of Section 3(3)(a) of the Act.

6. The Informant further alleged that *vide* letter dated 30.03.2017, OP-2, *inter alia*, asked the Informant to hold the prices of kraft paper for at least six months, *i.e.* OP-2 tried to influence the Informant to collaborate with it to fix the price of kraft paper and maximise profits of its members by raising prices of corrugated boxes for end users/ brand owners. As per the Informant, agreeing to such proposal would have amounted to fixing of the price of raw material of corrugated boxes and affected the interest of end consumers/ brand owners, in contravention of the provisions of the Act.
7. Based on the above averments and allegations, the Informant has, *inter alia*, prayed the Commission to pass an order under Section 26(1) of the Act directing the Director General (DG), to conduct an investigation into the matter with regard to contravention of the provisions of Section 3 of the Act.
8. The Commission considered the Information in its ordinary meeting held on 09.09.2020 and decided to seek response(s) of the Opposite Parties thereon. The Informant was also allowed, thereafter, to file its rejoinder, if any, to such reply filed by Opposite Parties, with an advance copy to the Opposite Parties. Such reply and rejoinder thereto have since been received.
9. Before advertng to the issues on merit, the Commission takes note of the preliminary submission made by some of the Opposite Parties whereby it has been stated that presently, an investigation is on-going against the Informant along with 5 other trade associations of kraft paper manufacturers, in Case No. 24 of 2017 (“**2017 Information**”) which was filed by OP-2, *i.e.* Federation of Corrugated Box Manufacturers’ of India. It has been averred that the allegations in the 2017 Information pertain to the time-period from January 2017 to May 2017, which is the same time-period covered by the present Information and as such, the present



Information is claimed to be an afterthought which raises doubt regarding the authenticity of the allegations made as well as the intentions of the Informant.

10. In this regard, the Commission notes that Case No. 24 of 2017 was referred to the DG for investigation *vide* order dated 17.08.2017, in terms of order passed under Section 26(1) of the Act. The primary grievance of the informants against the opposite parties in the said case is that the latter have been increasing the prices of kraft paper in a coordinated manner in various regions across the country. In addition, it was also alleged that the OPs therein and their members were also limiting the production of kraft paper by orchestrating coordinated closures of kraft paper mills located within a region on same days, leaving the corrugated box manufacturers with no other option but to buy kraft paper at higher prices. After considering the evidence placed on record, the Commission *prima facie* opined that the said conduct of the Opposite Parties (including the Informant in the present matter) and their member paper mills was in contravention of the provisions of Section 3(3) of the Act read with Section 3(1) of the Act and ordered an investigation into the matter.
11. In the above backdrop, the Commission has examined the Information and the documents filed therewith, as detailed in the succeeding paras, in light of the fact that the instant Information has been filed on 06.08.2020 in respect of the purported conduct of the OPs which dates back to 2017.
12. The gravamen of allegations made by the Informant essentially relate to alleged infraction of the provisions of Section 3 of the Act by the Opposite Parties.
13. The Informant has alleged that the OPs have formed a cartel to stop purchase of kraft paper from members of the Informant and also to close down their manufacturing units in a coordinated manner to create artificial shortage of supply of corrugated boxes, so as to push for the low prices of kraft paper (raw material) and high prices for corrugated boxes (finished product) from the corrugated box users.



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14. In this regard, the Informant has placed reliance on various documents which include letter dated 21.02.2017 issued by OP-1 wherein OP-1 allegedly issued directions to all its members to not take deliveries of kraft paper from the paper mills. The relevant part of the letter has been reproduced as hereunder:

“Dear ICCMA members

You may be aware that ICCMA West Zone had meeting on 4th March, 2017 at Mumbai during which it was agreed that if the mills persist in closures as announced by them then ICCMA would also join WICMA in support of closure for deliveries from 23^d March, 2017 to 26th March, 2017. The mills opted for closure from 11th to 15th Feb. Not only that, they also announced that they would close similarly from 11th to 15th March 2017.

*In view of this ICCMA has advised its members in Western & Southern Zones **NOT TO ACCEPT ANY DELIVERIES OF KRAFT PAPER** from any paper mills between 23^d and 26th Feb, 2017. We are pleased to inform that both WICMA & KPCBMA (Regional Associations of FCBMA) have also decided to join on the same dates to reflect solidarity on this burning topic of Kraft Paper price hikes & monthly closures by the mills. All the members are sincerely requested to support the initiative whole heartedly to convey our protest to Mills and at the same time keep our clients' abreast of these supply chain disruptions.”*

(emphasis supplied)

15. The Informant alleged that from the said letter, it is expressly clear that not only OP-1 but also OP-3 and OP-4 which are regional affiliated associations of OP-2, agreed for such closures of deliveries. The Informant also averred that OP-3 and OP-4 being regional associations affiliated to OP-2, cannot take such decisions without concurrence of OP-2.
16. The Informant has also placed reliance on the message written by Shri Anil Gupta, the then President of OP-3 while writing 'President's Desk' in Volume 8 Issue 4 (January – March 2017) of the magazine 'Industry Insight' which is published regularly by OP-3. The relevant part of his message is being reproduced as below:



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“An Emergency meeting was held on 3rd March 2017 at Hotel Suba International, Mumbai and was attended by over 55 Corrugators. It was decided that as a mark of protest, corrugators would not unload deliveries for specific dates after the mills shut down. At our request ICCMA also joined the protest. Joint Press Release by WICMA & ICCMA was issued. Circulars with articles in over 35 print and over 50 digital editions of newspapers were shared with members. The FCBM, PMCC met in Mumbai on 10th March at Hotel Atithi, Mumbai to discuss the current market scenario and how to deal with it. On their invitation, the Office Bearers and Past Presidents also attended the meeting. At the meeting, it was decided that FCBM & ICCMA would jointly issue ads and press releases.”

17. It is further submitted that again in Volume 9 Issue 2 (July - September 2017) of the above-mentioned magazine, Shri Anil Gupta wrote the following:

“An emergency meeting was held across Maharashtra which was attended by over 55 corrugators. It was decided that as a mark of protest, corrugators, would not unload deliveries for specified dates after the mills shut down. At our request ICCMA also joined the protest. Joint Press Release by WICMA & ICCMA was issued. All our efforts helped most of our members to get commensurate price increase. The situation continues to be volatile and we will keep taking all possible steps to safeguard the interests of the members.”

18. It is further alleged that OP-5, which is also one of the affiliated regional association of OP-2, passed and adopted a resolution, as per which all members were advised not to purchase, place any order or not to take any delivery for 5 days. The said resolution is claimed to be sent by Mr. Rajkamal Jindal, President of OP-5 on the WhatsApp group of 'Pan India corrugators-I'. The text of the resolution, as supplied by the Informant, is reproduced as hereunder:

“Resolved that all members be advised not to purchase, place any order or not to take any delivery for 5 days.”

19. The Informant, in its rejoinder, also provided copies of certain e-mails cancelling purchase orders and refusal to take deliveries by the members of the OPs. As per the Informant, the above conduct of 'closure of deliveries' of OPs, targeted indirectly towards determining the purchase price, is in contravention of the provisions of



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Section 3(3)(a) read with Section 3(1) of the Act. Further, it also resulted in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act read by limiting or controlling production, supply, markets.

20. In this regard, the Commission observes that the present allegations are against five different associations of corrugated box manufacturers. Before examining the impugned conduct of the OPs within the framework of the Act, it would be apposite to note from the order of the Commission passed in *Advertising Agencies Guild v. IBF & its Members*, Case No. 35 of 2013 wherein the Commission highlighted the legitimate activities and role of trade associations. For felicity of reference, the relevant para therefrom is excerpted below:

“7. Undoubtedly, there has been a collective action by OP 1 and its members but primarily the trade associations are for building consensus among the members on policy/other issues affecting the industry and to promote these policy interests with the government and with other public/private players. Such activities may not necessarily lead to competition law violation. To perceive otherwise will render the trade association bodies as completely redundant, being opposed to competition law. The trade association provide a forum for entities working in the same industry to meet and to discuss common issues. They carry out many valuable and lawful functions which provide a public benefit e.g. setting common technical standards for products or interfaces; setting the standards for admission to membership of a profession; arranging education and training for those wishing to join the industry; paying for and encouraging research into new techniques or developing a common response to changing government policy. Therefore, membership and participation in the collective activities of a trade association cannot by itself amount to violation of competition law as such.”

(Emphasis added)

21. In the present matter, OP-1 in its reply has averred that kraft paper mills associations and their members have been operating a cartel since 2017. The paper mill associations, including the Informant, by way of periodical meetings and correspondences, direct their members to (i) collectively increase the prices of the kraft paper to be sold to the buyers, *i.e.* the corrugated box manufacturers; and (ii) shut operations for 4-5 days every month on predetermined dates in a coordinated manner



to create an artificial shortage of kraft paper in the market to enforce such arbitrary and coordinated price increase. OP-1 has further averred that plagued by the anti-competitive practices of the kraft paper industry, it invited representatives of paper mill associations (including the President of the Informant) for a meeting on 04.02.2017 to discuss the anti-competitive practices of the paper mills. However, the discussions failed, and it was decided that ICCMA, as a trade association, must engage with various stakeholders including the Government to curb the anti-competitive practices of the kraft paper mills. Accordingly, OP-1 sent a communication to its members, in protest against the kraft paper mills' anti-competitive actions, for not accepting deliveries of kraft paper between the period 23.02.2017 – 26.02.2017. In relation to such a communication, OP-1 has submitted that:

- a) the protest was conditional upon the kraft paper mills continuing their coordinated shutdowns.
- b) the communication was not a mandate/direction and there was no agreement amongst the members to refuse acceptance of deliveries.
- c) it did not follow-up with its members to ensure that all or any of them actually refused deliveries on the abovementioned dates and accordingly, there was no penalty mechanism for members who did not refuse deliveries; it was left to each member to decide whether they actually wanted to refuse deliveries or not.
- d) members of OP-1 as a fact, accepted deliveries which established that its communication was not a decision or directive but only a communication to demonstrate protest and each member had the freedom to decide whether to accept or reject deliveries.

22. Before examining the rival submissions, it is appropriate to note from the order of the Commission in *Advertising Agencies Guild (supra)* wherein the Commission had the occasion to examine the legal contours of the working of the trade association within which they can legitimately operate. It was observed in the said case that “....when these trade associations transgress their legal contours and facilitate collusive or



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collective decision making with the intention of limiting or controlling the production, distribution, sale or price of or trade in goods or provision of services as defined in section 2(c) of the Act, by its members, it will amount to violation of the provisions of the Act...”. In this backdrop, when the impugned conduct of the OPs is examined, it appears that the impugned conduct was essentially guided and actuated in protest against the conduct of kraft paper mills so as to ensure uninterrupted supply of raw material rather than to enter into an agreement to determine prices or limit supplies. This is also borne out from the submissions of the Informant itself wherein the following has been averred:

“..... However, the corrugated box manufacturers and their industry associations did not accept the increase in the price and since they take orders from brand owners/ end users in advance at an agreed rate and then purchase the kraft paper. If, in the meantime, the prices of kraft papers get changed, the same affect the profit margin of members of OPs. Therefore, OPs used many tactics to influence and adversely affect the kraft paper manufacturers and put immense pressure on them to reduce the prices despite knowing that India is a net importer of recycled paper and there is price rise in the international market...”

(emphasis added)

23. It is also pertinent to note that the Informant has equated the conduct of OPs with that of buyers’ cartel. The Commission had the occasion to examine buyers’ cartel in its order passed under Section 26(2) of the Act in Case No. 05 of 2018 (*In Re. XYZ And Indian Oil Corporation & Othrs*) wherein the following was observed:

“.....generally cartels are comprised of the sellers who agree to fix prices and/or output and since such agreement is to raise the price above the competitive levels or bring the output below the competitive levels, the same is considered to be anti-competitive. It needs to be recognised that the creation of ‘buyer power’ through joint purchasing agreements may rather lead to direct benefits for consumers in the form of lower prices bargained by the buyers. Thus, though the Act covers buyers’ cartel within the purview of Section 3(1) read with Section 3(3) of the Act, treating buyers’ arrangement/cartel at par with sellers’ cartel may not be appropriate. For assessment of such cases, it is imperative to first, look at the potential theories of harm and then the conditions necessary for infliction of competitive harm need to be examined.”

(emphasis added)



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24. The Informant, in its rejoinder, has averred that once an action is covered under Section 3(3) of the Act, it is deemed to have an adverse effect on competition (AAEC) and there is no need to separately prove the effect of such a concerted action on the market. There can be no quarrel with this proposition. However, for the reasons mentioned above and to be detailed in the succeeding paras, the stage of raising of presumption does not arise in the absence of establishment of an agreement in terms of the specified activities in Section 3(3) of the Act. As shown earlier, the impugned conduct appears to be guided to protest against the alleged conduct of paper mills and therefore, it cannot be said to be an anti-competitive activity to determine prices or to limit supplies.
25. OP-1 has also referred to decision of the Commission in *International Air Transport Association v. Air Cargo Agents Association, Case No. 29 of 2017*, wherein it was observed that,

“The Informant has also submitted that pursuant to the e-mails circulated by OP 1, several members of OP 1 have sent letters to the two member airlines of the Informant, incorporating the exact same language, as recommended by OP 1. These letters are alleged to be a clear evidence of concerted action and confirm withdrawal of support to airlines seeking to implement CASS. In this regard, the Commission observes that though three members of OP 1 wrote similar letters to the airlines but the Informant has not provided any additional evidence to prima facie establish that this is a result of any concerted action on their part. The only additional evidence, which may be considered in this regard, is the emails written by OP 1 to its members circulating the draft letter. However, as already stated, the said emails are only recommendatory in nature and there is no direction from OP 1 to its member agents to mandatorily write to the airlines. Thus, it appears that OP 1 is not forcing its member agents to send the emails but has left the decision to the free will of the member agents. On the basis of available documents, it cannot be concluded that the letters written by member cargo agents of OP 1 was the result of a collective decision. The Informant has itself admitted in the information that the consequences of not participating in the boycott call are not known.”

(emphasis added)



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“...Further, Section 3(3)(b) of the Act provides that any agreement entered between enterprises or decision take by an association which limits or controls provision of services is presumed to have an appreciable adverse effect on competition. To assess the alleged conduct of the OPs, it is important to analyse whether the emails written by OP 1 has limited the provision of services. In the instant case, the Informant has not provided any data which shows the negative impact on the business of the two-member airlines of the Informant which can be attributed to the activities of the OPs. This is despite the fact that the alleged conduct happened in 2014 while the information has been filed in 2017.”

(emphasis added)

26. Based on the aforesaid observations of the Commission, OP-1 has averred that the communications sent by it were in relation to refusal to accept deliveries in protest against the cartelisation by the kraft paper mills and the increase in the prices of kraft paper and the resultant impact on corrugated box manufacturers. The same were sent to create awareness regarding the market conditions and the impact upon the industry. Such communications were not decisions of the trade association and its members but were only shared for information purposes. OP-1 has further averred that its communication has had no impact on the functioning of the industry and the Informant has failed to show any adverse impact of the alleged conduct.
27. For the reasons already detailed, it is unnecessary to further dilate on these aspects and suffice to note that the material on record does not establish an ‘agreement’ which can be said to be a cartel resulting in fixing prices or limiting supplies. In this regard, the Commission takes on record the submissions of OP-1 that its members continued to accept deliveries of kraft paper and operated their business as usual even between 23.02.2017 to 26.02.2017.
28. OP-2 has also separately averred that it has not taken any decision in respect of either of the two alleged actions, *i.e.* influencing its members to refuse deliveries or directly or indirectly determine purchase price of kraft paper in India. Further, the Informant has not adduced any evidence to demonstrate that OP-2 directed its members to refuse



to accept deliveries and the Informant has implicated OP-2 merely on the fact that OP-3 and OP-4 are regional associations of OP-2. In this regard, OP-2 has asserted that regional associations have their own governing bodies and office bearers and take their decisions independently. Further, there is no requirement or a practice of consultation with OP-2 for taking any decision or prior to issuing any circular to its members. OP-3 and OP-5 in their submissions also reiterated the same and stated that decisions taken by OP-2 are not binding on them and also do not influence their actions.

29. The Informant also alleged that the communication dated 21.02.2017 issued by OP-1 advising its members not to take deliveries also mention that OP-4 has also decided to join others in refusal of deliveries and therefore, OP-4 was also made an opposite party in the matter. OP-4 in its submissions has, however, averred that *“Informant has incorrectly made KCBMA an opposite party in the present case. None of the conduct highlighted in the Information can be attributed to KCBMA and the only allegation levelled against it by the Informant is with respect to a mention of KCBMA in a communication by OP 1, which is appended as Annexure 3 to the Information. KCBMA vehemently denies having issued any communication to its members in relation to refusal of deliveries as indicated in the abovementioned communication. Further, besides the communication by OPI relied upon by the Informant, the Informant itself has failed to provide any evidence directly attributable to KCBMA regarding the alleged conduct. Separately, KCBMA’s membership comprises corrugators based in Karnataka whereas the Informant’s members are primarily situated in the area of Vapi, Gujarat. As such, on account of the logistical issues such as freight charges, the members of KCBMA do not procure kraft paper from members of the Informant. As such, in any case KCBMA could not have refused to accept deliveries from members of the Informant”*.

30. OP-4 has further averred that as none of the conduct highlighted in the present information is attributable to it, no relief can be granted against it. Therefore, its name be struck out as an unnecessary party to the present case in terms of Regulation 26 of the Competition Commission of India (General) Regulations, 2009. The Informant in



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its rejoinder averred that OP-4 is a regional affiliate of OP-2 and the evidence supplied in the Information suggests that OP-2 in connivance with OP-1 is indulging in the issuance of Press Releases/ Directions, etc. to advocate for increase in prices of corrugated boxes and artificial reduction in the prices of the Kraft Paper. The Informant has also relied on a press release issued by OP-4 advocating increase of price of corrugated boxes.

31. In this regard, the Commission observes that in light of the order proposed by the Commission, it is unnecessary to pass any separate order on the application of OP-4 seeking striking off its name from the array of parties.
32. At this stage, it would be appropriate to deal with another allegation made by the Informant to the effect that OP-1 through its members unanimously passed a resolution dated 10.09.2016 during its Annual General Meeting (AGM) held at Mumbai. The contents of the said resolution are as follows:

"Resolved unanimously by all members present in AGM of ICCMA on 10th September 2016 that the practice of paper distributors/traders/ agents/ paper mills to approach directly 'end-clients/brand owners of corrugated boxes be discouraged & stopped immediately. ICCMA's General Body of members felt strongly that such practices will render the entire corrugated box industry sick & unviable as the end clients/ brand owners are not paying fair & viable conversion cost to the box makers. Till that happens, such practices by paper distributors/ paper mills will be detrimental to the survival of the box industry as it restricts the freedom of Box Makers to choose appropriate Paper grades."

(emphasis added)

33. As per the Informant, by deliberately restricting or stopping the members of the Informant to directly deal with the end-users/ brand owners, OP-1 (ICCMA) has limited and restricted the market for sale of kraft papers and has thus, tried to foreclose the competition by hindering entry of the members of the Informant into the market and consequently, has denied benefits to the consumers that would have accrued to them owing to such competition, which is a blatant contravention of the provisions of



Section 3(3)(b) of the Act. Also, by doing so, OP-1 is alleged to have regulated / increased the prices of corrugated boxes to gain higher profit margin for its members, thus violating the provisions of Section 3(3)(a) of the Act.

34. OP-1 in its submissions pointed out that ICCMA or its members are in no position to control who the kraft paper mills do business with and while this practice of the kraft paper mills to try and deal directly with end consumers of corrugated boxes adversely affected the corrugated box manufacturers, no action could be taken to prevent such practices.
35. In this regard, the Commission firstly notes that the resolution was passed in 2016 and the Informant has impugned the same in 2020 without even bothering to explain the reasons for bringing the same to the attention of the Commission after such delay. Further, the Informant has not explained as to how a resolution passed by the OPs acted as a restriction on the members of the Informant to deal directly with the clients of OPs. The resolution passed by the OPs is not binding on the members of the Informant or for that matter on the end users/ brand owners. They are free to communicate and do business with each other. The Informant has not placed any information or material on record to show any coercive action on the part of OPs to stop the members of the Informant from dealing with their clients/ brand owners of corrugated boxes or selling such products in the market; it has merely produced the resolution passed by OP-1 wherein the OP-1 has resolved to discourage and stop the direct interaction between paper mills and their clients.
36. The Informant has further alleged that *vide* letter dated 30.03.2017, OP-2, *inter alia*, asked the Informant to hold the prices of kraft paper for at least six months, *i.e.* OP-2 tried to influence the Informant to collaborate with it to fix the price of kraft paper and maximise profits of members of OP-2 by raising prices of corrugated boxes for end users/ brand owners. The relevant extract of the said letter is reproduced below:



“Further the frequent price increase is disturbing situation at our end. It is desired by our members that you should at least hold the price for six months.

We sincerely hope that you will understand the difficulties faced by our members and extend cooperation by not resorting to such frequent and concentrated closures and maintain price for six months.”

37. As per the Informant, agreeing to such proposal would have amounted to fixing of the price of raw material of corrugated boxes and affected the interest of end consumers/ brand owners, in contravention of the provisions of the Act. However, the Informant did not submit to such pressure of OP-2 and rejected to be part of the cartel and fixing of the price of kraft paper.
38. In this regard, it is firstly observed that the said letter was not written to the Informant, rather the same was addressed to Northern India Paper Mills Association (NIPMA). Further, OP-2 in its response has submitted that by way of this letter, it only sought to engage in a dialogue with NIPMA regarding the hardships being faced by the corrugated box industry on account of the frequent price increases as well as the coordinated monthly closures resulting in artificial scarcity of kraft paper.
39. In relation to the said allegation also, the Commission observes that as a trade association representing corrugated box manufactures, OP-2 raised issues concerning the industry in the said letter, *i.e.* coordinated closure of paper mills as well as frequent price increase. From the language of the letter, it is clear that there is no invitation on the part of the OP-2 to collude with the Informant and fix prices of kraft paper. The relevant extract of the letter is as follows:

“We are not able to understand the rationale behind such frequent and concentrated closures. We also fail to understand the logic of All the Mills closing on the same time and same date.

We would once again request you to shun the closures and avoid creating supply disruptions which lead to ARTIFICIAL SCARCITY SITUATION.”



40. The Informant has also alleged that the intention of OPs behind the closure of deliveries was to pressurise the members of the Informant to reduce the prices of kraft paper and was thus in violation of the provisions of Section 3 (3)(a) and Section 3 (3)(b) of the Act. In this regard, the Commission observes that as per the Information and the material available on record, it seems that the purpose behind the closure of deliveries by OPs appeared to protest against the alleged price rise in kraft paper by kraft paper mills, apart from the periodic shutting down of paper mills which led to artificial supply deficiency. In this regard, it is also noted that OP-1 issued a letter dated 27.03.2017 to the Informant, communicating the following:

“let the prices of kraft paper, like any other commodity, be determined by dynamics of demand and supply in the market. We have no issues with that.”

41. From the above, it is evident that the OPs have merely requested for the prices of kraft paper to be determined by the demand-supply dynamics in the markets. The aforesaid letter is of 2017 and also contemporaneous to the impugned conduct of the OPs.
42. The Informant has also alleged that in furtherance of their concerted and continuous effort to manipulate the price in the market, the members of OPs circulated WhatsApp messages regarding the decrease of kraft paper prices in the market. The Commission has perused the messages and noted that group members were inquiring about the ongoing price and not colluding to fix the prices.
43. Lastly, the Commission notes that the Informant, in its rejoinder, has made certain additional allegations against 1200 members of Himachal Pradesh Corrugated Box Manufacturers’ Association and also against the existing OPs in relation to alleged anticompetitive practices by acting in concert for pressurising the end users of corrugated boxes to increase the price of corrugated boxes, without which supply would be disrupted. The Commission is not inclined to entertain such fresh allegations made in the rejoinder, which were not part of the original Information and which, in turn, was itself filed belatedly.



44. In view of the foregoing discussion, the Commission is of the view that no case is made out against the Opposite Parties for contravention of the provisions of Section 3 of the Act and the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26 (2) of the Act.
45. The Secretary is directed to communicate to the Parties, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 19 / 03 / 2021