



COMPETITION COMMISSION OF INDIA

Case No. 33 of 2019

In re:

**M/s International Subscription Agency
Flat No. 2, Nirala Market, Nirala Nagar,
Lucknow, Uttar Pradesh – 226 020**

Informant

And

**Federation of Publishers' and Booksellers' Associations in India
84, Second floor, Darya Ganj, Delhi – 110 002**

Opposite Party

CORAM

**Ashok Kumar Gupta
Chairperson**

**Sangeeta Verma
Member**

**Bhagwant Singh Bishnoi
Member**

Present:

For M/s International Subscription Agency:

Mr. Himanshu Mehra and Ms. Brinda Ajmani, Advocates, alongwith Mr. Sanjay Malhotra, Proprietor of Informant in person

For Federation of Publishers' and Booksellers' Associations in India (FPBAI) and Mr. Sunil Sachdev, former President of FPBAI and Chairman of GOC of FPBAI:

Mr. Karan Chandhiok, Ms. Deeksha Manchanda and Ms. Ruchi Khanna, Advocates, alongwith Mr. Sunil Sachdev in person

For Mr. S.C. Sethi, President of FPBAI and Chairman of GOC of FPBAI:

Mr. Vaibhav Arora, Advocate



ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002

Facts

1. The present Information was filed by M/s International Subscription Agency (the '**Informant**'), under Section 19 (1) (a) of the Competition Act, 2002 (the '**Act**'), against Good Offices Committee ('**GOC**'), through Chairman of the Federation of Publishers' and Booksellers' Associations in India ('**FPBAI**'), alleging contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act.
2. The Informant is a subscription agent engaged in the business of procuring various foreign and Indian journals from national and international publishers and supplying the same to its clients in India. It filed the present Information stating that FPBAI which is a federation of publishers, booksellers and subscription agents based in India, founded to provide a forum for various segments of book industry in the country to discuss their problems at national and international levels, and having membership of around 4000 and almost every prominent publisher, subscription agent and bookseller of the country, has constituted a Committee named 'GOC', under the Chairmanship of FPBAI's President, to establish uniform terms for supply of books and journals to libraries, ensure fair working margin to booksellers, and provide efficient service to libraries.
3. As per the Informant, this GOC, acting beyond its mandate, took upon itself the power to issue direction to all the members who deal in print journals and e-resources, to not give discounts on the publishers' prices to the Indian subscribers. In fact, in the Terms of Supply issued by GOC, the very first term states that no such discount will be offered to Indian subscribers. The Informant alleged that GOC threatens to take coercive actions against those members, who refuse to comply with its such direction, by expelling them from FPBAI. As per the Informant, membership of FPBAI is an eligibility condition in the advertisements for supply of books/ journals/ periodicals, *etc.*, issued by many governmental subscribers and is also a relevant consideration for many private subscribers. Therefore, expulsion from FPBAI renders a vendor ineligible for such supply contracts. As per the Informant, most members of FPBAI are willing to extend discount to their clients as the nature of business is such that



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discounts are a necessary part of any contract. Usually, GOC turns a blind eye if the discounts are offered by its prominent members; however, it resorts to harassment of other members and compels them to withdraw from contracts in case they have offered discounts to the clients.

4. Based on the above, the Informant alleged that the direction of GOC, issued under the mandate of FPBAI, to not offer discounts beyond what has been prescribed by GOC, to Indian subscribers, is illegal and violative of the provisions of the Act having adverse effect on competition in India. Also, coercive action taken by FPBAI against its members, who refuse to comply with its direction regarding discount, is also illegal and violative of the provisions of the Act. As per the Informant, the concerted collusive and coercive activities of FPBAI, which is an 'association of enterprises', have prevented price competition between one vendor and the other. The same has resulted in fixation of selling prices as prices are not allowed to be determined by independent market forces. Therefore, such conduct of GOC of FBPAI is in contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act, which causes or is likely to cause an appreciable adverse effect on competition ('AAEC') in India, especially when almost all the booksellers and subscription agents of the country are members of FBPAI.
5. Upon consideration of the above Information, the Commission formed an opinion that a *prima facie* case of contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act is made out in the present matter, and passed an order dated 20.11.2019 under the provisions of Section 26 (1) of the Act directing the Director General ('DG') to cause an investigation to be made into the matter and submit an investigation report. The Commission noted that though the Information has been filed against GOC of FPBAI and not against FPBAI, however, in light of the fact that GOC does not seem to be a separate legal entity, but rather only a Committee formed and working under the *aegis* of FPBAI, in the present matter, FPBAI be considered as the Opposite Party instead of GOC of FPBAI.



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Investigation by the DG

6. After conducting investigation, the DG submitted investigation report on 31.03.2020. Based on evidences consisting of Minutes of Annual General Meetings of FPBAI, Minutes of Meetings of GOC of FPBAI, Minutes of Meetings of Executive Committee of FPBAI, Advisory letters issued by GOC of FPBAI to its members, statements given by individuals, procurement advertisements issued by 10 institutions, GOC Terms of Supply, Membership Form of FPBAI, and Membership Form of GOC alongwith Affidavit, the DG gave its findings as follows:
- i. FPBAI is an association of enterprises.
 - ii. Its acts and conduct can be analysed in terms of Section 3 (3) of the Act.
 - iii. By restricting discounts, FPBAI indirectly determined sale prices of books, journals, *etc.*, sold by FPBAI members which is in contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act.
 - iv. By issuing Advisories directing members to refrain from participating in procurement advertisements, which have conditions not in accord with the conditions expected by FPBAI, FPBAI indirectly limited and controlled supply of books, journals, *etc.*, in the market for supply of books, e-resources and print journals in India which is in contravention of the provisions of Section 3 (3) (b) read with Section 3 (1) of the Act.
 - v. President of FPBAI and Chairman of GOC, both former (Mr. Sunil Sachdev) and current (Mr. S.C. Sethi), are liable for the conduct of FPBAI, in terms of Section 48 of the Act. The GOC Terms of Supply and Advisories have been signed and approved by the President. Minutes of Meetings of FPBAI also reveal that the Presidents have been adamant for ensuring compliance with the policies and forced their decision on the members of the Executive Committee.

Proceedings before the Commission

7. Upon consideration of the investigation report submitted by the DG in its ordinary meeting held on 19.05.2020, the Commission decided to forward an electronic copy of the same to the Informant, FPBAI, and 2 individuals of FPBAI who had been



identified by the DG to be liable in terms of Section 48 of the Act ('parties'). The Commission directed the parties to file their objections/ suggestions, if any, to the DG's investigation report and the financial statements/ income tax returns ('ITRs') of FPBAI and its 2 individuals for the Financial Years ('FYs') 2016-17, 2017-18 and 2018-19, with advance copies to each other. The Commission further directed the parties to file their replies, if any, to each other's objections/ suggestions, with advance copies to each other.

8. FPBAI and its individuals filed their objections/ suggestions to the DG Report on 10.08.2020. In response thereto, the Informant filed its objections/ suggestions to the DG Report and reply to the objections/ suggestions filed by FPBAI on 27.08.2020. Thereafter, oral hearing on the DG Report was held through video conferencing on 28.10.2020 and the Commission decided to pass an appropriate order in the matter.

Submissions of the parties

9. In their objections/ suggestions to the DG Report and during oral hearing, FPBAI and its 2 individuals, submitted as follows:
 - i. The DG's investigation suffers from various procedural infirmities. The DG has carried out pre-determined investigation. It has done selective assessment of Minutes of Meetings of FPBAI and advertisements submitted by the Informant and has cherry picked evidence. The DG has made no independent verification of such facts. No library or educational institution or other procurer of books/ journals, or even a bookseller/ publisher/ subscription agent was approached by the DG to verify the facts alleged by the Informant. Only ten advertisements given by the Informant were reviewed by the DG.
 - ii. The Annexures dated 06.01.2020 could not have been filed by the Informant alongwith its submission and Affidavit dated 03.01.2020 before the DG. Discrepancy in dates makes such Annexures legally inadmissible as evidence; and this is the sole evidence upon which the DG's entire investigation is based.



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- iii. Discount policy of FPBAI is only recommendatory in nature and members continue to give discounts without any hindrance. Same is evident from Minutes of Meetings of Executive Committee of FPBAI and Minutes of Annual General Meetings of FPBAI as well as from letters issued by members of FPBAI to FPBAI.
- iv. Such discount policy was never imposed on the members. In fact, members of FPBAI are supplying books to the Commission's library only at discounts ranging from 15-30% without any interference from FPBAI. No action has been taken by FPBAI against members for defaulting on discount policy. Since 2014-15, no member has been expelled by FPBAI on ground of providing excessive discount or violating discount policy, not even the Informant.
- v. Discount policy was introduced with the objective to prevent suppliers from offering heavy discounts through malpractices and illegal activities, and to hold those suppliers providing heavy discounts causing considerable commercial harm to other members of FPBAI, accountable. Given the razor thin margins that booksellers operate on, huge discounts by any seller often imply that the seller is resorting to piracy or unfair means of paying from their own deep pocket thereby affecting small and honest competitors. Thus, Terms of Supply by FPBAI included guidance on discounts to be offered. Specifically, approved subscription agents/ booksellers are advised not to give any discount on journals and not to allow discount of more than 10% on books.
- vi. Discount policy was adopted by members with consensus (including the Informant playing an active role being member of Executive Committee from 2015 to 2019). Thus, if FPBAI or any of its individuals were to be held responsible for such policies, all members of FPBAI including the Informant ought to be held guilty.
- vii. Advisories issued by FPBAI advising members against participation in any particular advertisement were also non-binding and members continued to participate in such advertisements and compete against one another. These were only 'advisories'.



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- viii. There was no interference from FPBAI in the ability of members to participate in any advertisement and this is evident from the fact that such ‘advisories’ have not been enforced against any member till date. Only explanations from six members were sought which the DG has relied upon.
- ix. Advisories were only issued when terms of certain advertisements were found to be non-conducive for healthy trade practices; for instance, conditions in an advertisement requiring suppliers to make huge bank deposits/ bank guarantees, requiring suppliers to complete supply order by end of the year and penalty for non-completion, requiring delivery through air-mail free of cost, *etc.*
- x. Membership of FPBAI is not a mandatory criterion to participate in most advertisements (Illustrative list of 58 such advertisements whereby membership of FPBAI is not mandatory and 12 whereby membership of FPBAI is mandatory, as collected from public domain, has been given). Only two out of ten advertisements submitted by the Informant and analysed by the DG made membership of FPBAI mandatory.
- xi. Out of around 4000 booksellers, publishers, subscription agents registered across the country, only around 800 are members of FBPAI. If membership of FPBAI would have been mandatory in most of the institutional advertisements, FPBAI would have had much more members.
- xii. There are no barriers to entry in the market. No competitors have been driven out of market because of discount policy or ‘Advisories’ of FPBAI. No losses have been suffered by consumers. In fact, discount policy of FPBAI allowed GOC members to negotiate terms favourable to them, thereby making improvement in distribution of goods. As such, there is no AAEC leading to contravention of the provisions of Section 3 (3) of the Act.
- xiii. Named individuals cannot be held responsible under Section 48 of the Act as FPBAI has not contravened Section 3 (3) of the Act. Decisions of FPBAI were consensual in nature and not solely taken by Presidents; hence, Presidents cannot be vicariously liable under Section 48 (1) of the Act. Further, DG Report has also failed to prove their liability under Section 48 (2) of the Act which



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requires specific proof of consent, connivance or neglect on part of the Individuals while they discharge their functions.

- xiv. Anyhow, FPBAI appreciates that discount policy and issuance of advisories may in certain circumstances raise concerns under the Act. Hence, as of July 2020, FPBAI has amended membership forms and GOC Circular to remove all recommendations of discount control. Further, going forward, FPBAI will not issue any such advisories.
 - xv. FPBAI does not monetise from supply of journals, books and e-resources in India. Thus, its relevant turnover/ profit is *nil*. Similarly, Presidents/ Chairman are honorary members. They earn no income from FPBAI. Thus, their relevant income is also *nil*. As per the decision of the Hon'ble Supreme Court in *Excel Crop Care Ltd. v. Competition Commission of India and Others, (2017) 8 SCC 47*, penalty, if any, to be imposed, should be calculated on the basis of 'relevant income' of the individuals only.
 - xvi. If penalty is to be imposed, these mitigating factors may be considered: (i) alleged contravention is purely inadvertent and was undertaken in interest of its members; (ii) FPBAI has ceased its such practices; (iii) FPBAI and its Individuals have extended full and complete cooperation during investigation; (iv) Individuals are honorary members who work for welfare of book industry without any remuneration, salary or fees for the same. Actions taken by them were under the belief that practices followed by FPBAI were for the welfare of the industry and in compliance with the law; and (v) Individuals are both senior citizens (aged above seventy) suffering from various health conditions and ailments.
10. In reply thereto, the Informant in its objections/ suggestions and during oral hearing, submitted as follows:
- i. It is incorrect to state that the DG Report suffers from any infirmity or affirmation bias. The DG Report is based on conclusive, comprehensive and widespread evidence on record and the stated position of FPBAI published in its circulars, newsletter and on its website. The DG gave all documents



submitted by the Informant to FPBAI and gave ample opportunity to it to submit its reply; however, FPBAI did not contradict/ submit any objection to the submissions of the Informant.

- ii. It is the admitted position of FPBAI that it has a published discount policy whereunder its members are restrained from giving discounts to their clients above the limits permitted. It is also FPBAI's admitted position that the Informant was served a show-cause notice and was threatened with action on account of its alleged non-compliance with the said discount policy. Even when the Informant pointed out to FPBAI that the discount policy violates the provisions of the Act and the orders passed by the Commission and threatened to take action for violation thereof, FPBAI defended its discount policy and reiterated its threat of coercive action against the Informant. Infact, FPBAI even questioned the correctness of the Commission's rules and legal pronouncements in this regard by invoking Article 21 of the Constitution of India. Hence, the discount policy of FPBAI as well as the show-cause notices issued by it and subsequent correspondence, by itself establish beyond doubt that FPBAI acted in contravention of the Act and is liable to be punished for the same.
- iii. The evidence provided by the Informant is definitive, comprehensive and stretches over a period of 10 years where FPBAI contravened every rule book and is guilty of consistently flouting the Commission's Rules over a period of more than 10 years. In almost every meeting, internal as well as external, the stated position of FPBAI was reiterated and rules of the Commission were violated. FPBAI published fixed rates, issued advisories to boycott legal government advertisements, threatened members, issued show-cause notices, worked as a cartel and subjugated competition.
- iv. FPBAI is incorrectly stating that its discount policy and advisories are non-binding. Same are in fact, enforced with threat of expulsion from FPBAI membership. The Informant was threatened with expulsion in specific cases of DRDO, NML, ERMED Consortium and Solid State Physical Laboratory advertisements.



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- v. In its objections/ suggestions to the DG Report, FPBAI has cherry picked part of its Minutes/ Advisories, *etc.*, to misinform and mislead the Commission. Such Minutes, *etc.*, are to be read as a whole for making a fair assessment.
- vi. Membership of FPBAI is a mandatory criterion to participate in most procurement advertisements (List of 40 and 27 additional advertisements has been given). Certain advertisements out of the list of advertisements given by FPBAI, relying upon which it is stated by FPBAI that membership of FPBAI is not mandatory, also mandates membership of local trade federation. In fact, FPBAI is the only federation at State or National Level for a subscription Agent like Informant.
- vii. Discount on journals is between 0 to 10% and on books, is between 40 to 60%. New and small members of FPBAI have lower overheads and are in a position to offer discounts from their margin allowed by various publishers. This freedom cannot be denied by FPBAI and it cannot be allowed to exert its authority and force others to accept its terms and conditions. Constitutional rights of individual members with respect to freedom of trade and commerce in the country are well preserved. In absence of any legal/ statutory authority, FPBAI is trying to justify its illegal acts with malicious alibi of being concerned about pirated journals. To the best of Informant's knowledge, not a single member has ever been found selling pirated journals to any library in the country. In case FPBAI has any knowledge or suspects any case of piracy, it should report the matter to the nearest police station. To the best knowledge of the Informant, FPBAI has not issued a single notice to any of its members for any illegal activity/ piracy, while on the other hand, notices have been issued to members who have participated in advertisements against the wishes of FPBAI or have given discount not found suitable by it.
- viii. FPBAI has no librarian/ government official as an office-bearer or even as its member and is not a party to contract of supply between the Informant and its customers. To the best of Informant's knowledge, FPBAI does not possess any orders from the government or judicial authorities that empower it to dictate



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terms for finalising discount or terms of trade or impose its terms and conditions.

- ix. The Informant though was a member of Executive Committee of FPBAI for some period, however, it was an only a decorative post with neither any power nor any participation in decision making. During the said period between 2015-2019, despite being in Executive Committee, the Informant received notice from FPBAI for participation in advertisement of NML, against participation in which, FPBAI had issued the Advisory dated 06.04.2017.
- x. The activities of FPBAI have caused AAEC. The Informant could not participate in a lot of advertisements wherein FPBAI had issued advisories. It even suffered financially due to cancellation of NML advertisement because of lack of participation due to advisory of FPBAI, as it had already imported the journals for supply from abroad. Activities of FPBAI drive competitors out of the market. Even NML suffered in terms of loss of research and knowledge. Research journals contain cutting edge latest and state-of-the-art scientific and medical information and their non-receipt is detrimental to the interest of research work being conducted across the country. To the best knowledge of the Informant, most advertisements wherefor advisories were issued by FPBAI had to be cancelled or did not get desired response.
- xi. The Informant has taken grave risk by filing Information against FPBAI. It anticipates harm and collective boycott from big players in the market. No complaint has ever been received from a procurer against the Informant by FPBAI.
- xii. With regard to liability of individuals in terms of Section 48 of the Act, the conduct of Mr. Sunil Sachdev is *mala fide* as he is the partner of a subscription agency, *namely* Allied Publishers which is India's leading subscription agency; hence, he has a vested interest in excluding competitors like the Informant from the market.
- xiii. Though FPBAI has pleaded certain mitigating factors, it has indulged in such conduct since a very long period of time and it cannot feign ignorance of the



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Competition Law, as the Informant itself had bought the same to the notice and knowledge of FPBAI, on at least two occasions.

Analysis

11. The Commission has perused the Information, the investigation report and the evidence collected and analysed by the DG, the objections/ suggestions/ responses filed by the parties and also heard the oral arguments addressed by the respective learned counsel representing the Informant and FPBAI and its individuals.
12. At the outset, the Commission notes that FPBAI has taken a few preliminary objections alleging that firstly, the DG's investigation suffers from various procedural infirmities. FPBAI has alleged that the DG has not contacted any third-party library or educational institution or other procurer of books, journals, *etc.*, for verification of the facts alleged by the Informant and that the DG has made selective assessment of the evidence collected by it. Secondly, FPBAI has objected to the legal admissibility of the Annexures submitted by the Informant as part of its submission dated 03.01.2020 filed before the DG, as evidence in the present matter.
13. Regarding the first objection raised by FPBAI, the Commission observes that it is the prerogative of the investigating officer to decide upon the methodology of conducting investigation and the best sources to consider for collection of evidence. Since in the present matter, the *diktats* of FPBAI were found by the DG to be clearly established from the material available on the website of FPBAI, its Terms of Supply, Minutes of its Annual General Meetings, Minutes of Meetings of its GOC, Minutes of Meetings of its Executive Committee, Advisory letters issued by its GOC to its members, *etc.*, there remained no reason for the DG to approach any third-party for gathering further evidence in this regard.
14. In any case, while analysing the matter on merits, the Commission makes an independent assessment of the evidence collected by the DG and the other material placed on record. As such, the argument of FPBAI regarding selective assessment of evidence by the DG is not found to have any merit.



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15. Regarding objection raised against the admissibility of the Annexures made part of the submission dated 03.01.2020 by the Informant, the Commission observes that the Informant, during the oral hearing held on 28.10.2020, had clearly explained that the discrepancy in dates arose due to the fact that while making the filing of the submission dated 03.01.2020 before the DG, the Informant was asked to put signatures on the Annexures as well. Hence, though it had signed the submission and Affidavit therewith earlier on 03.01.2020, it signed the Annexures then and there while filing and put the date of filing, *i.e.* 06.01.2020 alongwith its signatures on the Annexures. It has also been verified from the record that the submission dated 03.01.2020 was indeed filed by the Informant before the DG 'by hand' on 06.01.2020.
16. Now, the Commission proceeds to analyse the matter on merits. The Commission notes that in the present matter, the DG has found that the following two types of anti-competitive conduct were being indulged into by FPBAI:
 - (a) FPBAI, in its Terms of Supply for the Booksellers and Subscription Agents, restricted the quantum of discounts, which may be offered by its members who are booksellers/ publishers/ subscription agents to various institutional buyers, which amounted to FPBAI indirectly determining sale prices of books, journals, *etc.*, sold by its members in contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act; and
 - (b) By issuing 'Advisories' directing its members to refrain from participating in advertisements which had conditions not in accord with the conditions expected by FPBAI, FPBAI indirectly limited and controlled supply of books, journals, *etc.*, in the market for supply of books, e-resources and print journals in India which is in contravention of the provisions of Section 3 (3) (b) read with Section 3 (1) of the Act.
17. The Commission notes that FPBAI, neither in its objections/ suggestions to the DG Report nor during the oral hearing, refuted that such restrictions were not imposed by it as have been found by the DG. Rather FPBAI argued that its such restrictions, *i.e.* discount policy as well as 'advisories' issued directing members not to participate in certain advertisements, do not violate the provisions of the Act. FPBAI stated that its



discount policy and ‘advisories’ for non-participation were only recommendatory in nature and no action was taken against any member for non-compliance with the same. Further, it was contended by FPBAI that the introduction of such discount policy had an objective justification behind it and ‘advisories’ for non-participation were also issued only when the advertisement conditions were found to be non-conducive for healthy trade practices. It was averred that it was in the interest of the booksellers/ subscription agents/ publishers only that such discount policy and ‘advisories’ were there and despite such discount policy, FPBAI members continued to give discounts without any hindrance from FPBAI.

18. In regard to FPBAI’s discount policy, the Commission notes that FPBAI, through its Terms of Supply prescribed for the members, revised from time to time, stated as follows (extract taken from Terms of Supply dated 01.01.2020):

“TERMS OF SUPPLY: BOOKS

...

DISCOUNT

- (vi) *All books in English, Hindi and other Regional languages, whether of Indian origin with the exception of those covered by the following special categories, will carry a uniform discount of 10% of the published prices in respect of Indian or converted into Rupee prices in the case of imported titles.*

SPECIAL CATEGORIES

- (vii) *Central and State Government publications – no discount.*
(viii) *Short/ No discount titles procured from abroad against specific order or Indian Publications. The importer of the library supplier is expected to work on a margin of 15% on net landed cost. ...*

Terms of Supply for print journals and e-resources by approved Indian vendors of GOC

- (1) *No discount on publishers’ prices fixed for Indian subscribers.*
(2) *...”*

Further, for acquiring membership of FPBAI, the Affidavit which was mandatorily required to be given by the vendors, had to state as follows:

“...

Undertaking to be provided by the Approved Vendors of GOC and who are submitting Affidavits for print and online resources



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(1) *As an approved vendor of the Good Offices Committee, we or any of our associated companies shall not offer any discount on the publishers' price fixed for customers in India, to institutional customers.*

...

(7) *As an approved vendor of the GOC, we will strictly follow the guidelines on the terms of supply and will also abide by the directives issued from time to time by the Chairman of GOC.*

...”

19. FPBAI, in its objections/ suggestions to the DG Report or during the oral hearing, did not refute these Terms of Supply or the requirement of such an Affidavit. It only argued that its discount policy was only recommendatory in nature and no member was ever expelled by FPBAI from its membership for violation of such policy. However, in the opinion of the Commission, the evidence collected by the DG point to the contrary. The Commission observes that the notices were, in fact, issued by FPBAI to its members, including to the Informant, for non-compliance with FPBAI's discount policy. As such, evidently, the discount policy of FPBAI was not merely recommendatory but rather coercive in nature.
20. Further, though FPBAI has tried to justify its discount policy by stating that it was introduced to control the alleged malpractices of taking advances and non-supplying, or supplying of pirated and second copies, the Commission observes that such justification given by FPBAI appears to be an afterthought. FPBAI has placed nothing on record before the Commission which shows that there was any relation between controlling discounts, and controlling such alleged malpractices. Further, as brought out by the Informant, FPBAI has not placed on record instance of a single notice issued to any of its members for indulging in any illegal activity/ piracy. In any case, if any FPBAI member was supplying pirated and second-hand copies of books, journals, etc., it could always keep supplying the same at undiscounted prices also, keeping larger profit margins to itself. As concluded by the DG in its investigation report, FPBAI “*has failed to satisfy as to how the control of discount will control the illegal and malpractice of supplying pirated books and journals*”. There could have been various other means for FPBAI to curb such alleged malpractices including making rules in this regard. However, in view of the Commission, restricting



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discounts could not have been one of them. As such, the Commission observes that the justification given by FPBAI for coercing its members to follow a discount policy, under the garb of alleged piracy, is not acceptable.

21. Also, FPBAI has argued that such policy was adopted by FPBAI with the consensus of all of its members including the Informant and as such, all members of FPBAI ought to be held guilty for such conduct. The Commission is dismayed by such submission advanced by FPBAI. The discount policy was admittedly adopted by FPBAI on its platform and as such, it is egregious that the platform is now shifting the onus for its such decision, upon its individual members. Be that as it may, it has to be appreciated that FPBAI comprises of a large number of booksellers/ publishers/ subscription agents across India and in this set up, the individual members would have no option but to comply with the decisions taken by FPBAI. It is trite that an illegal act cannot be justified or become legal merely because some others may have also been involved in the decision making. It was rather the responsibility of FPBAI to ensure that its practices are competition compliant and that its platform is not used by any of its members to indulge in any anti-competitive behaviour.
22. With regard to the ‘advisories’ issued for non-participation in certain advertisements also, the Commission notes from the DG Report that FPBAI, from time to time, issued letters to its members, directing them to not participate in certain procurement advertisements, conditions of which were not in accordance with GOC Guidelines. Some of such advisories/ letters examined by the DG, are as follows:

Letter dated 08.04.2016 w.r.t. advertisement of Delhi University:

“Whereas, all members are hereby informed either to quote only as per GOC guidelines if at all it is required or else they should restrain themselves to respond the call of the Delhi University. It may be pointed out that the violation of these guidelines shall be treated severely as Per the prescribed rules of the Federation and GOC.”

Letter dated 04.11.2015 w.r.t. advertisement of National Medical Library:

“On going through the terms and conditions put forth by the customer, the terms and conditions put forth by National Medical Library under the



following heads have been found to be in contravention of the guidelines of the Good Offices Committee:

- 1. Payment*
- 2. Discount*
- 3. Penalty for delays*

The terms are detrimental to the trade and not in line with the terms and conditions laid down by the GOC.

GOC would like to advise its members to refrain from accepting the above terms in their present form and refrain from participating in this tender process, if these terms are not modified by the institution.

Any violation of the above directive would be viewed seriously by the GOC.”

23. In this regard, the Commission notes that again FPBAI, in its objections/ suggestions to the DG Report or during the oral hearing, has not refuted its such ‘advisories’. It has only argued that the same were ‘advisories’ which were merely recommendatory in nature. However, in the other vein, FPBAI has also itself admitted that it sought explanations from at least six members for not abiding with FPBAI’s such ‘advisories’, which is self-contradictory in nature. In view of the Commission, even if FPBAI viewed the terms and conditions of any particular procurement advertisement to be non-conducive for its members, it should not have resorted to forcing its members to boycott/ not participate in such procurement process. This was clearly coercive in nature.
24. Hence, from the aforesaid paras, it is clear that the practices of FPBAI of (i) discount control policy; and (ii) issuing ‘advisories’ directing members to not participate in certain procurement advertisements, were not merely recommendatory in nature, but rather FPBAI coerced its members to abide by the same by issuing notices/ seeking explanations, for violating such policy and advisories. FPBAI has been unable to satisfactorily provide to the Commission any reasonable justification for adopting such coercive practices.
25. As such, once the coercive nature of such practices being carried on by FPBAI is established, the Commission now proceeds to discern whether such practices of FPBAI were in contravention of any of the provisions of the Act.



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26. In this regard, the Commission notes that the DG has concluded that the discount policy of FPBAI is in violation of the provisions of Section 3 (3) (a) of the Act and the practice of FPBAI issuing ‘advisories’ directing its members to not participate in certain procurement processes is in violation of the provisions of Section 3 (3) (b) of the Act.
27. In this regard, FPBAI has argued that such alleged practices of FPBAI did not cause any AAEC in India and as such, are not violative of the provisions of Section 3 (3) of the Act at all. As per FPBAI, the membership of FPBAI is not a mandatory criterion to be able to supply books/ journals, *etc.* to most institutional buyers, and merely 800 out of over 4000 booksellers, publishers, subscription agents registered across India, are members of FPBAI. Therefore, any such alleged activity on part of FPBAI could not have caused any AAEC in the market.
28. Section 3 (3) of the Act, reads as follows:

“Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which –

- (a) directly or indirectly determines purchase or sale prices;*
- (b) limits or controls production, supply, markets, technical development, investment or provision of services;*
- (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;*
- (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition;*

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.”

(emphasis supplied)



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29. By virtue of the provisions contained in Section 3 (3) of the Act, any practice or decision in the nature of discount control policy, which directly or indirectly determines the sale or purchase price of books and journals in India, or ‘advisories’ issued by an association directing its members to boycott/ not participate in certain procurement advertisements which limit or control the supply of books and journals in the market, is presumed to have an AAEC in India. No doubt, such presumption of AAEC, is rebuttable in nature and the parties are at liberty to adduce evidence to rebut the said presumption of law.
30. In this statutory backdrop, the arguments of FPBAI regarding its alleged practices being non-violative of the provisions of Section 3 (3) of the Act, shall now be examined.
31. Firstly, with regard to the membership of FPBAI, FPBAI has submitted that out of around 4000 booksellers, publishers, subscription agents registered across the country, only around 800 are members of FBPAI. If membership of FPBAI had been mandatory in most of the institutional advertisements, FPBAI would have had much more members.
32. In this regard, the Commission notes that the DG in its report, has observed that FPBAI, on its website <http://fpbai.org/about-us/>, claimed that *“The Federation is the largest representative body of the Indian Book Industry. The activities and areas of operations of the Federation extend all over the country. It has a membership of around 4,000 establishments spread all over the country, and works in close cooperation with 13 State Associations of Publishers and Booksellers affiliated to it, who have been a source of strength and inspiration to it.”*
33. On the basis of the aforesaid content written on the website of FPBAI, the DG has observed that FPBAI holds the characteristic of an association, wherein it has membership of around 800 establishments spread all over the country and affiliation of 13 state associations with whom it works in close cooperation. As such, the DG has observed that FPBAI maintains its federal character with affiliation of regional associations from various states in the country. Such observations made by the DG have not been denied by FPBAI during the proceedings before the Commission.



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34. Further, the Commission notes that Mr. S.C. Sethi, in his submission dated 14.03.2020 before the DG, annexed the 'Directory of GOC Members, 2019 Edition', Part 2 of which talks about FPBAI. On Page 88 of this Directory, it is stated that "*The Federation is the largest representative body of the Indian Book Industry. The activities and areas of operations of the Federation extend all over the country. It has a membership of around 4000 establishments including 10 State Associations of Publishers, spread all over the country, and works in close co-operation with State Associations and Booksellers affiliated to it, who have been a source of strength and inspiration to it*".
35. From the aforesaid, it appears that FPBAI, in fact, indirectly has membership of all 4000 booksellers, publishers and subscription agents, who are members of these 13 affiliated state associations. As such, its practices shall apply to all the 4000 booksellers, publishers and subscription agents spread across India. Therefore, in view of the Commission, the contention raised by FPBAI that its membership is confined only to 800 booksellers, publishers, subscription agents registered across India, cannot be accepted.
36. Further, with respect to the argument of FPBAI that its membership is not mandatory for participation in most institutional advertisements for supply of books and journals, the Commission notes that the DG, in its report, has analysed various procurement advertisements including that of renowned institutions like Indian Institute of Technology, Mandi (Himachal Pradesh), All India Institute of Medical Sciences, Raipur (Chhattisgarh), All India Institute of Medical Sciences, Rishikesh (Uttarakhand), National Medical Library, New Delhi, National Institute of Technology, Rourkela (Odisha), etc., whereby membership of either specifically FPBAI, or of some national/ state level association/ federation of publishers/ booksellers, was mandated for participation. Further, the Commission notes that even in some of the 58 illustrative advertisements annexed by FPBAI alongwith its objections/ suggestions to the DG Report, membership of some national/ state level association/ federation of publishers/ booksellers was mandated for participation. So is the case with the multiple illustrative advertisements annexed by the Informant alongwith its response to the objections/ suggestions of FPBAI to the DG Report.



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37. In the light of the above, FPBAI being an apex level association of publishers, booksellers and subscription agents, having affiliation of 13 state association and membership of 4000 booksellers, publishers and subscription agents spread across India, most booksellers, publishers, subscription agents would necessarily seek membership of FPBAI to enable their participation in such institutional advertisements for supply of books, journals, periodicals, *etc.* Consequently, FPBAI has a very widespread market presence and any directions/ restrictions issued by it upon its members would encompass all the 4000 establishments who are directly and/ or indirectly members of FPBAI.
38. FPBAI has been unable to rebut the presumption of AAEC raised under Section 3 (3) of the Act by showing any pro-competitive effects of its discount control policy or ‘advisories’ in terms of the factors stated in Section 19 (3) of the Act like leading to accrual of benefits to consumers, leading to improvement in production or distribution of books, journals, *etc.*, or their supply, or leading to promotion of technical, scientific or economic development.
39. In view of the above, it stands established that the restrictive trade practices directed or even recommended by FPBAI, *i.e.* its discount control policy and its practice of issuing coercive ‘advisories’ directing members to not participate in certain procurement advertisements, are in contravention of the provisions of the Act, as follows:
- (a) FPBAI, by restricting the quantum of discounts, which may be offered by its members booksellers, publishers, subscription agents to various institutional buyers, in its Terms of Supply for the Booksellers and Subscription Agents, indirectly determined the sale prices of books, journals, *etc.*, sold by its members in India, which is in contravention of the provisions of Section 3 (3) (a) read with Section 3 (1) of the Act; and
- (b) FPBAI, by directing its members to refrain from participating in advertisements, which have conditions not in accord with the conditions expected by FPBAI, indirectly limited and controlled the supply of books, journals, *etc.* in the market for supply of books, e-resources and print journals in India, which is in



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contravention of the provisions of Section 3 (3) (b) read with Section 3 (1) of the Act.

40. Once contravention of the provisions of the Act on part of FPBAI is established, the Commission now proceeds to determine the liability of the individuals of FPBAI, who have been held liable in terms of the provisions of Section 48 of the Act by the DG, for the anti-competitive conduct of FPBAI.
41. The DG has found the former and present Presidents of FPBAI/ Chairman of GOC, Mr. Sunil Sachdev and Mr. S.C. Sethi, respectively, liable in terms of Section 48 of the Act.
42. From the evidence available in the investigation report, it is noted that the GOC Terms of Supply containing the discount policy and the 'Advisories' restricting participation in certain procurement advertisements, bear signatures of the President of FPBAI. Further, several Minutes of Meetings of GOC as well as letters issued pursuant thereto to members for non-compliance with *diktats* of GOC also bear signatures of the Chairman of GOC/ President of FPBAI. This clearly shows that the President of FPBAI had active role and participation in formulating as well as enforcing such anti-competitive practices carried on by FPBAI. Hence, in the opinion of the Commission, the DG has correctly found such individuals, *i.e.* Mr. Sunil Sachdev and Mr. S.C. Sethi, liable for the anti-competitive conduct of FPBAI, in terms of the provisions of Section 48 of the Act.

Conclusion

43. In view of the foregoing, the Commission holds FPBAI guilty of contravention of the provisions of Section 3 (3) (a) and 3 (3) (b) read with Section 3 (1) of the Act.
44. Further, the Commission holds the following individuals of FPBAI, liable in terms of Section 48 of the Act, for the acts of contravention of the provisions of the Act committed by FPBAI:



Table 1

Person	Designation
Mr. Sunil Sachdev	President of FPBAI from 2016-17 till 2017-18
Mr. S.C. Sethi	President of FPBAI from 2012-13 till 2015-16 and from 2018-19 till 2019-20 and Chairman of GOC from 2012-13 till 2019-20

45. Therefore, in terms of the provisions contained in Section 27 (b) of the Act, the Commission is empowered to impose upon FPBAI and its individuals, appropriate penalties.
46. FPBAI has submitted with regard to penalty that: (i) as of July 2020, FPBAI has amended its membership forms and GOC Circular to remove all recommendations of discount control and going forward, FPBAI will also not issue any advisories; (ii) FPBAI does not monetise from supply of journals, books and e-resources in India and hence, its relevant turnover/ profit in terms of the decision of the Hon'ble Supreme Court in *Excel Crop Care (supra)*, for the purposes of penalty, is *nil*; and (iii) if penalty is to be imposed, mitigating factors like alleged contravention being purely inadvertent and undertaken in interest of members, FPBAI and its individuals extending full and complete cooperation during investigation, *etc.*, be considered.
47. With regard to the argument of FPBAI that contravention, if any, was inadvertent in nature and amendment of conduct being undertaken in July 2020, it is noted that the Informant has submitted that FPBAI cannot feign ignorance of the Competition Law as the Informant had itself brought the same to the notice and knowledge of FPBAI, on at least two occasions. Keeping in view such submission made by the Informant, the plea of FPBAI regarding inadvertence, cannot absolve FPBAI of the contravention.
48. Further, with regard to the quantum of penalty, the Commission notes that FPBAI's contention that it does not monetise from supply of journals, books and e-resources in India and as such, its relevant income is *nil*, is not acceptable. From the financial statements submitted by FPBAI before the Commission, it is noted that FPBAI earns revenue from the subscription fee paid by its members, which forms a major part of its income and it is upon these members that the anti-competitive decisions are



coerced. As such, the argument of FPBAI that its relevant turnover/ profit in terms of the decision of the Hon'ble Supreme Court in *Excel Crop Care (supra)* is *nil*, cannot be accepted.

49. Keeping in view the above facts and circumstances of the present case and the anti-competitive conduct of FPBAI, the Commission decides to impose upon FPBAI, penalty to the tune of ₹2,00,000 (Rupees Two Lacs Only), in terms of Section 27 (b) of the Act
50. Further, with regard to imposition of penalty on the individuals, *viz.* Mr. Sunil Sachdev and Mr. S.C. Sethi, it has been argued that they are both senior citizens and that since they are honorary members and earn no income from FPBAI, their relevant income as per the decision of the Hon'ble Supreme Court in *Excel Crop Care (supra)* is also *nil* and hence, no penalty be imposed upon them.
51. In this regard, the Commission has perused the judgment of the Hon'ble Supreme Court of India in *Excel Crop Care (supra)*. A bare perusal of the judgment shows that the argument raised regarding the concept of 'relevant income' been laid down by the Hon'ble Supreme Court in the said case, is misconceived. However, given the facts and circumstances of the present case, the Commission decides to impose upon such individuals, penalty to the tune of ₹1,00,000 (Rupees One Lac Only), in terms of Section 27 (b) of the Act.
52. Therefore, in terms of Section 27 of the Act, the Commission passes the following

Order

53. FPBAI and its individuals, *viz.* Mr. Sunil Sachdev and Mr. S.C. Sethi, are directed to cease and desist from indulging into any conduct/ practice, which has been found in the present order to be in contravention of the provisions of Section 3 of the Act, as detailed in the earlier part of the present order.
54. Under the provisions of Section 27 (b) of the Act, the Commission imposes the following amounts of penalty upon FPBAI and its individuals, *viz.* Mr. Sunil Sachdev



and Mr. S.C. Sethi identified above in terms of the provisions of Section 48 of the Act:

Table 2

(In ₹)

Sl. No.	Name of the Party	Penalty Imposed	Penalty Imposed in Words
1.	Federation of Publishers' and Booksellers' Associations in India	2,00,000	Rupees Two Lacs Only
2.	Mr. Sunil Sachdev	1,00,000	Rupees One Lac Only
3.	Mr. S.C. Sethi	1,00,000	Rupees One Lac Only

55. The Commission directs FPBAI and the above-stated persons to deposit the respective penalty amounts within 60 days of the receipt of this order.
56. The Secretary is directed to inform the parties accordingly.

**Sd/-
(Ashok Kumar Gupta)
Chairperson**

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

**New Delhi
Date: 23.02.2021**

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