



## COMPETITION COMMISSION OF INDIA

Case No. 43 of 2020

**In Re:**

**Inguran Sorting Technologies LLP  
23, Floor - 2,  
Plot No. 59/61, Arsiwala Mansion  
Nathalal Parikh Marg, Colaba,  
Mumbai – 400005**

**Informant**

**And**

**Genus Breeding India Private Limited  
406, Amar Neptune,  
4th Floor, Plot # 45A & 46,  
Baner Road, Baner,  
Pune – 411045**

**Opposite Party No. 1**

**Indian's Pharmacare Private Limited  
246, Punjabi Pura,  
Transport Nagar,  
Meerut – 250002**

**Opposite Party No. 2**

**Truвет Animal Nutrition Company  
12/1, SL Complex, First Floor,  
Muniappankoil St,  
Erode – 638001**

**Opposite Party No. 3**

**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 is filed by Inguran Sorting Technologies LLP (hereinafter, the “**Informant/ ST India**”) under Section 19(1) (a) of the Competition Act, 2002



(hereinafter, the “**Act**”) against Genus Breeding India Private Limited (hereinafter, “**OP-1/Genus ABS India**”), Indian’s Pharmicare Private Limited (hereinafter, “**OP-2**”) and Truвет Animal Nutrition Company (hereinafter, “**OP-3**”) alleging contravention of provisions of Section 3(3)(d) of the Act.

2. The Informant is a limited liability partnership registered with the Registrar of Firms, Maharashtra and its first semen sex sorting lab was established in Pune, Maharashtra. The Informant is stated to be the Indian affiliate of Inguran, LLC dba Sexing Technologies (hereinafter, “**ST**”), a limited liability company having its registered office in the United States of America. ST is stated to be a global leader in sex sorting technology for bovine semen; and both ST and the Informant are engaged in the business of sorting and freezing of bovine semen into X (female) chromosome bearing and Y (male) chromosome bearing sperm populations, for use in artificial insemination (“hereinafter, “**AI**”) of cattle with primary and secondary gender selection options.
3. The Informant has elaborated about the Sex-Sorted Semen Technology (hereinafter, “**SS Technology**”). It is stated in the information that the reproduction system of cattle is similar to humans. Cows carry XX chromosomes while bulls carry both X and Y chromosomes. If the egg fertilizes with an ‘X’ chromosome, a female calf is born and if with a ‘Y’ chromosome then a male calf is born. Sexed sorted semen is specially processed from semen of bulls from which ‘Y’ chromosomes bearing sperms, which lead to the birth of a male calf are removed through a ‘sorting’ process. Sex Sorted Semen which has more than 90% ‘X’ chromosome bearing sperms which ensures (more than 90% probability) that a female calf is born when used in AI. The Informant has submitted that male calves in India often become a financial burden on owners as they do not give milk and are either abandoned on the roads or not taken care of well. The use of this technology reduces the number of male calves born to less than 10% whereas in normal cases, the probability of male and female birth is 50:50.
4. OP-1 is stated to be engaged in the production of sexed semen of bovines in India and is a part of the UK-based company Genus PLC. The Informant has asserted that OP-1 is the only company in India other than the Informant that markets itself as a producer of sexed bovine semen.



5. As per the Informant, OP-2 does not appear to be engaged in production of sexed semen and does not have any technology to produce sex sorted bovine semen and related services and does not even have a website. The Informant has claimed that OP-2 has a nexus with OP-1 as OP-2's name finds mention in the list of distributors of OP-1 for the State of Uttar Pradesh as per OP-1's official website.
6. The Informant has averred that like OP-2, OP-3 also does not appear to have any footprint in the market for production of sex sorted bovine semen and related services and does not have a website. The Informant has stated that OP-3 also has an evident connection with OP-1 because as per the LinkedIn page of Dr. Gnana Sekar R, who is Managing Partner of OP-3, he was OP-1's former employee. Moreover, as per the Informant, OP-3 does not find mention in the Company/LLP Master Data of the Ministry of Corporate Affairs ("MCA").
7. As per the Informant, the Government of India decided to establish facilities for production of sex sorted semen from different breeds of cattle and buffaloes in different states including Uttar Pradesh. Uttar Pradesh Livestock Development Board ("**Uttar Pradesh Board**") invited Expression of Interest ('EOI') for the purpose of establishing a facility for producing and supplying sexed semen of indigenous, crossbred cattle and buffalo breeds in the State of Uttar Pradesh ("**Impugned Tender**") in June 2018.
8. It is stated that the Government of Uttar Pradesh notified Uttar Pradesh Procurement Manual, 2016 (hereinafter, "**Procurement Manual**") which contains comprehensive set of rules to be followed in procurement of goods and services by government departments in the State of Uttar Pradesh. The Informant pointed out that clause 8.11(2) of the Procurement Manual contemplates that Request for Quotations (RFQ) shall be requested from as many potential bidders as practicable, subject to a minimum of three vendors. The Informant avers that though only OP-1 appeared to be an eligible bidder yet all the OPs participated in the Impugned Tender.
9. The Informant claims that it has strong reasons to believe that OP-2 and OP-3 participated in collusion with and at the instance of OP-1 to create a façade of



competition and mislead the Uttar Pradesh Board into believing that the process in the Impugned Tender was competitive in nature. As per the Informant:

- a) Both OP-2 and OP-3 have no prior experience/ presence in the field of sex sorting of semen, based on publicly available information.
  - b) OP-2 has nexus with OP-1 as it is an existing distributor of OP-1.
  - c) OP-3 does not find mention in Company/LLP master data maintained by Ministry of Corporate Affairs (MCA) on its website. On the contrary, the name of a company called “Truvel Animal Nutrition Private Limited” was found in the said database of MCA and as per the information available on MCA its name has been struck off from the records of the Registrar of Companies (**RoC**).
  - d) Little to no information is available in respect of OP-2 and OP-3 and their respective businesses.
  - e) The OPs have created a façade of competition by creating sham bids to mislead the Uttar Pradesh Board into believing that the tendering process of the Impugned Tender was competitive in nature and to fraudulently satisfy Clause 8.11(2) of the Procurement Manual.
  - f) Proxy/ cover bids have been submitted by OP-2 and OP-3 to enable OP-1 to emerge as L-1 bidder which constitutes contravention of provision of Section 3(3)(d) of the Act.
  - g) The OPs have blatantly violated Clause 18.2 of the Procurement Manual as it prohibits any collusion, bid rigging or anti-competitive behaviour to impair the transparency, fairness and progress of the procurement process.
  - h) The OPs have distorted the competitive process of price discovery and have contaminated the market with a price which perhaps has no connection with market realities.
10. The Informant also stated to have made a representation dated 26.08.2020 to the Uttar Pradesh Board highlighting the alleged miscarriage of the competitive process by the Opposite Parties. No response to the aforementioned representation was received by the Informant till the date of filing of the present information. The Informant also requested



to be granted confidentiality over the aforesaid representation which was later on waived by the Informant on the directions the Commission.

11. Based on the above, the Informant has alleged that the OPs colluded and manipulated the tender process in contravention of provisions of Section 3 of the Act and has, *inter alia*, prayed to the Commission to direct the Director General to cause an investigation into the matter and to ban the OPs from any future public tenders for two years.
12. The Commission carefully perused the information in its ordinary meeting dated 25.11.2020 and sought additional information from the Informant which was filed by the Informant *vide* email dated 18.12.2020.
13. The Commission in its ordinary meeting dated 04.01.2021, considered the additional information filed by the Informant and decided to seek comments and documents pertaining to the relevant EOI and RFQ issued by the Uttar Pradesh Board. In pursuance of the directions of the Commission, the Uttar Pradesh Board filed certain documents pertaining to the EOI and RFQ *vide* its letter dated 13.03.2021.
14. The Commission considered the response of the Uttar Pradesh Board in its ordinary meeting held on 06.04.2021 along with the Information and additional information filed by the Informant and decided to pass an appropriate order in due course. In the said meeting, the Commission further considered that the Uttar Pradesh Board had, *inter alia*, submitted bid documents submitted by the bidders in response of the EOI and RFQ. Having considered the commercially sensitive nature of the documents and the fact that the same are not available in public domain, the Commission decided to accord confidentiality to the response/ documents dated 13.03.2021 filed by the Uttar Pradesh Board, in terms of Regulation 35 of the Competition Commission of India (General) Regulations, 2009, subject to the provisions of Section 57 of the Act.
15. The Commission has carefully perused the Information, additional information and documents filed by Uttar Pradesh Board and notes that the gravamen of allegations in the present matter is that the Informant suspects bid rigging/cover bidding in the aforementioned EOI invited by the Uttar Pradesh Board for setting up a facility for



provision of bovine sexed semen based on the fact that apart from the Informant, only OP-1 has the requisite technology/expertise to carry out the tendered work/assignment. The Commission also notes that the Informant appears to be aggrieved from the fact that the award of the Impugned Tender was made in OP-1's favour by alleged distortion of tendering process by OP-1 through cover bidding by OP-2 and OP-3, who were otherwise not competent to participate in the impugned tender.

16. At the outset, the Commission notes that in pursuance of the directives of Government of India under National Project for Cattle and Buffalo Breeding, Uttar Pradesh Livestock Development Board was formed under Societies Registration Act, 1860. The Uttar Pradesh Board invited a Global Expression of Interest (**EOI**) on 19.06.2018 for setting up a laboratory/facility at Babugarh, Uttar Pradesh. The scope of work included the production of a minimum of 3,50,000 gender specified sexed semen doses every year for a period of five years from raw semen harvested from indigenous bulls of cattle and buffaloes by the said Board. The scope of work also included a consent from the vendor to transfer technology and required equipment for such processing at the option of the Uttar Pradesh Board at mutually agreed terms including prices at the end of five-year period of contract. The Commission further notes that the Procurer/ Uttar Pradesh Board received documents from Genus Breeding India/ABS India (OP-1), Indian's Pharmacare Pvt. Ltd. (OP-2) and Truвет (OP-3) in response to the aforesaid EOI. The Commission also notes that based on the EOI received from these three entities, the Uttar Pradesh Board sent the Request for Quotation (**'RFQ'**) involving technical and financial bid, to only these three entities on 28.08.2018 with the last date of submission of RFQ being 11.09.2018.
17. In this regard the Commission notes the allegations of the Informant casting doubts on the existence and competence of OP-2 and OP-3 as well as their nexus with OP-1 in placing the bids. Upon perusal of the bid documents, the Commission observes that OP-2 is a company established in 2011 and deals in all kinds of veterinary products and medicines and genetic needs of dairy farmers in India with an idea to provide one stop solution to dairy farmers and is stated to have presence across Western Uttar Pradesh. Similarly, OP-3 is stated to have been set up as a partnership firm in 2015 to cater to the genetic and nutritional needs of the progressive dairy farmers. From the bid



documents submitted by OP-2 and OP-3, the Commission notes that both OP-2 and OP-3, while submitting their EOI to Uttar Pradesh Board, amply disclosed that they did not own technology and were authorized distributors of OP-1. The Commission further notes that the fact that OP-2 and OP-3 did not own technology and were acting as authorized representatives of OP-1 in the said EOI was well within the knowledge of the procurer *i.e.* Uttar Pradesh Board. The Commission also takes cognizance of the fact that the committee constituted for technical evaluation of the bid documents received in response to the RFQ carried out the assessment of the technical evaluation of these three bidders and upon finding all the three bidders to be technically qualified, the financial bid of those bidders was opened on the scheduled date and award of contract was made to the L-1 bidder *i.e.* OP-1.

18. The Commission also notes that the said EOI was widely published<sup>1</sup> as well as placed on the tender portal of the State Government apart from its own website. Also, a pre-EOI conference/ meeting was also held for clarification of queries. Moreover, the EOI, being widely publicized and global in nature, participation was open to all, including the Informant. The Commission notes that in case the Informant had any apprehensions on the dilution of the EOI terms *etc.*, it should have taken up its concerns with the procurer who in the first instance is best suited to understand its requirements.
19. In many decided cases, the Commission has given due consideration to the autonomy of the procurer to determine and customise the terms and conditions of the tender to suit its requirements. In the present case, the Commission notes that the nature of goods and services procured by the U.P. Board are not of a general nature procured in ordinary course, therefore it necessitated issuance of an EOI, followed by RFQ. It deals with a much-specialized activity using semen sorting technology which understandably is still evolving in India. The Commission gives due consideration to the fact that despite wide publicity only three bidders participated, one of them actually owned the technology and the other two were its authorized agents. There is no material on record to suggest that the procurer has either, overtly or covertly allowed OP-2 and OP-3 to participate in

---

<sup>1</sup> in all editions of Indian Express and Financial Express, Delhi, Mumbai, Chennai, Kolkata and Lucknow edition of Hindustan Times



the tender process, which ultimately led to the selection of OP-1 and that the said OPs acted at the behest of OP-1 and manipulated the bid process. The Commission finds no substance in the contention of the Informant that though it was technically qualified to participate in the Impugned Tender, but it took a strategic commercial decision not to participate in the Impugned Tender as the technical requirements in the EOI were significantly diluted and at the same time it is aggrieved that the procurer allowed OP-1 to be selected.

20. In view of the foregoing, the Commission finds that no *prima facie* case of contravention of the provisions of Section 3(3)(d) of the Act is made out against OP-1, OP-2 and OP-3 in the facts and circumstances of the present case. Accordingly, the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
21. The Secretary is directed to communicate to the Informant and Uttar Pradesh Board, accordingly.

**Sd/-**  
**Mr. Ashok Kumar Gupta**  
**Chairperson**

**Sd/-.**  
**Ms. Sangeeta Verma**  
**Member**

**Sd/-**  
**Mr. Bhagwant Singh Bishnoi**  
**Member**

**New Delhi**  
**Dated: 20/05/2021**