



(Case No. 93/2013)

Mr. Arun Anandagiri

....Informant

And

**The Institute of Chartered Accountants of India
(ICAI)**

...Opposite Party

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice S. N. Dhingra (Retd.)
Member

Mr. S. L. Bunker
Member

Present: Alok Prassana, Advocate for Informant and Informant in person.

Order under Section 26(1) of the Competition Act, 2002

The information in the present case has been filed under Section 19(1)(a) of the Competition Act, 2002, (“**Act**”) alleging abuse of dominant position by Opposite Party (“**OP**”) under Section 4 of the Competition Act, 2002 (“**the Act**”) by imposing unfair and discriminatory conditions with respect to its Continuing Professional Education (“**CPE**”) scheme of OP.

2. The Institute of Chartered Accountants of India (“**ICAI**”), i.e. OP, is a Statutory Body established under the Chartered Accountants Act, 1949 (“**CA Act**”)



for the regulation of the profession of Chartered Accountants in India. OP is governed by the Central Council, which is the apex decision making body consisting of 32 elected members and 8 government nominees. There are about 2,16,459 members (including fellows and associates) of OP. In addition to Central Council, there are 5 Regional Councils (North, South, East, West and Central Regions) which have their own elected bodies. Each region is further divided into several branches (over 100 branches at present), with each Branch having its own elected Managing Committee.

3. OP's primary function is to regulate the profession of Chartered Accountants ("CAs") in India and for this the CA Act empowers OP to approve academic courses, conduct examination of candidates for enrolment, prescribe qualifications, prescription on levy of fees, etc. OP is a member of the International Federation of Accountants ("IFAC") and following up with the best practices of IFAC, OP had introduced the concept of CPE for its members to maintain high standards of excellence in the professional activities. As per the OP's CPE Policy, the CAs in practice have to annually attain 20 hours of structured CPE credits and 10 hours of un-structured CPE credits. CAs not holding certificate of practice, have to attain 15 hours of unstructured CPE credits annually. It is stated by the informant that the structured CPE credits can be attained by attending seminar/conferences/workshops organized by any of the ICAI organs, or being a faculty at the seminar organized by ICAI organs or by writing an article for the ICAI Journal. The unstructured CPE credits can be obtained by reading professional journals, business literature, attending internal training programs of CA firms with 7 or more partners, etc.

3. With a view to enable its members to maintain the requisite professional competence and to ensure high quality and standards in the professional services they render, the OP has identified Continuing Professional Education Scheme ("CPE") as a major area of focus for the members. It is this CPE policy of OP which has been challenged by the informant in the present matter being discriminatory and abusive in terms of Section 4 of the Act. The Informant is a qualified Chartered Accountant and is aggrieved by the discriminatory CPE policy of the OP which does not allow any other organization to provide the service of organizing CPE seminars other than the OP's recognised Program Organising Unit ("POU").



4. The Commission perused the information and also heard the informant in the matter besides examining the entire material on record including the CPE policy of OP in detail.

5. The first question which falls for consideration before the Commission is that whether OP is an ‘*enterprise*’ within the meaning of Section 2(h) of the Act, and if it is so, whether it is rendering ‘*service*’ of any description in terms of Section 2(u) of the Act. The term ‘*enterprise*’ has been defined in Section 2(h) of the Act *inter alia* as a person or a department of the Government, engaged in any activity relating to provision of services, of any kind. In the present case, it can be seen that though OP exercises a regulatory function under the CA Act, it also carries out other commercial/economic activities like conducting professional courses including the CPE programs and publication of books relating to profession of CAs apart from conducting the examinations for CAs. These economic activities of OP can be differentiated from the regulatory activity of regulating the CA profession in terms of prescribing educational qualification, maintenance of status and standard of professional qualifications of members of institute, etc. OP, due to its non-regulatory activities, shall fall within the definition of ‘*enterprise*’ under the Act. It cannot be said that organizing of CPE seminars is a ‘*sovereign function*’ which qualifies for an exemption under the definition of ‘*enterprise*’ under Section 2(h) of the Act.

6. The present case focuses upon the structured CPE credits and organization of the seminars/conferences/workshops for obtaining these credits. In view of the aforesaid, the relevant product market in the present case would be “*the market for organizing recognised CPE Seminars/Workshops/Conferences*”. As conditions for these product/services from demand and supply aspects are distinctly homogenous throughout India, relevant geographic market would be pan India. As such, relevant market would be “*organizing recognised CPE Seminars/Workshops/Conferences in India*”.

7. It is stated by the informant that OP was dominant in the relevant market of organizing CPE Seminars as it, through the CPE Policy, had allowed only the Program Organising Units (“**POU**”) recognized by OP to conduct the seminars which carry CPE credits. OP has entrusted the task of setting strategic directions and overseeing CPE activities of POU to the Continuing Professional Education Committee (“**CPEC**”), a non-standing committee of the Council of OP. Informant



further states that while the Council has the power to grant recognition to any other unit for conducting CPE seminars, not a single external organization has been accorded recognition for the same. Informant alleges that the POU's are the CPE study circles which are nothing but an extended arm of ICAI as the OP has full control over them, right from granting the approval to submission of accounts to transfer of surplus, etc. There are over 100 study circles in India that currently organize CPE seminars.

8. It is stated by the informant that ever since obtaining CPE credits was made mandatory by ICAI around 10 years ago, several reputed organizations applied to OP seeking permission to organize CPE seminars, but the same were rejected by OP. This issue has been debated at the OP's Council as well as CPEC, but finally a decision was taken by OP not to grant recognition to any outside organization for holding CPE seminars. It is alleged by the informant that one of the reasons that OP has refused accreditation to any independent organisation for conducting CPE seminars was to further the self-interest of its 600+ elected members as these members run the show at the CPE seminars either as conference directors or conference coordinators or speakers. The aforesaid information shows that OP through its CPE Study Circles was the sole provider for organizing CPE Seminars for CPE credits required by its more than 2 lakh members to move up in their professional ladder. As such *prima facie*, OP appeared to be a dominant player in the relevant market.

9. There seems to be force in the allegations of the informant that the restriction put in by OP in not allowing any other organization to conduct the CPE seminars for CPE credits, created an entry barrier for the other players in the relevant market. Further, the choice of the consumer (members of OP) in this case was being limited. The members of OP had no option, but to attend the seminars organized by OP (whatever be the quality of seminars) to get the requisite CPE credits. The restriction put on by OP does not meet the objectives sought to be achieved by the policy. There are hundreds of seminars and conferences organized every month across India by reputed chambers of commerce like CCI, FICCI, ASSOCHAM, NASSCOM, etc. However, these seminars/conferences are not recognised by OP for CPE credits. *Prima facie*, it appears to be an unreasonable restraint and the members CA of OP are left with no option but to compulsorily attend seminars organized by OP and its organs. Commission observes that while OP, as a regulator of the accounting



profession, has all the powers to prescribe a policy for continuous upgradation of its membersthrough the CPE Policy and recognition of POUs, however, on its non-regulatory function of organising CPE Seminars, restricting the same only to itself and its organs, *prima facie* appears to be an arbitrary exercise of its powers and thus in contravention of the provisions of Section 4 of the Act.

10. The Commission further observes that, it is not the case that the activity of OP in organizing CPE seminars is a not-for-profit exercise. Informant has pointed out in his information that the 64th Annual Report of OP for the Financial Year 2012-13 shows that the OP earned gross revenues of Rs. 45 crores from organizing seminars and conferences, which is around 8% of the OP's total revenue. Informant also pointed out there were no similar restrictions imposed by other accounting bodies of the world, i.e. in US, UK, Singapore, Australia, etc.

11. Accordingly, the Commission directs the Director General (DG) to cause an investigation to be made into the matter and to complete the investigation within a period of 60 days from receipt of this order. If during the course of investigation, involvement of any other party is found, the DG shall investigate the conduct of such other parties including the conduct of group companies, if any, in terms of the proviso to section 27 of the Act.

12. The DG is also directed to investigate the role (if any) of the persons who were in charge of, and were responsible to the companies for the conduct of the businesses of such companies, after giving due opportunity of hearing to such persons.

13. It is, however, made clear that nothing stated herein shall tantamount to an expression of final opinion on the merits of the case and the DG shall conduct the investigation without being influenced by any observation made herein.

14. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of DG forthwith.

15. It is ordered accordingly.



New Delhi
Date: February 28, 2014

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L. Tayal)
Member

Sd/-
(Justice (Retd.) S.N. Dhingra)
Member

Sd/-
(S.L. Bunker)
Member