



**COMPETITION COMMISSION OF INDIA**

**Case No. 38 of 2021**

**In re:**

**Pranav Gupta**

B-10, Greater Kailash Part I, New Delhi – 110 048.

**Informant**

**And**

**Federation of Publishers' and Booksellers' Association in India**

84, Second Floor, Daryaganj, New Delhi – 110 002.

**Opposite Party**

**CORAM**

**Ravneet Kaur**

**Chairperson**

**Anil Agrawal**

**Member**

**Sweta Kakkad**

**Member**

**Deepak Anurag**

**Member**

**Present:**

For the Informant Shri Pranav Gupta

: Shri Rahul Goel, Advocate  
Ms. Anu Monga, Advocate  
Shri Vikas Ashwani, Advocate  
Ms. Aditi Sharma, Advocate  
Shri Pranav Gupta, Informant in-person

For the Opposite Party Federation of Publishers' and Booksellers' Association in India and its former President, Shri Pradeep Arora

: Shri Karan Chandhiok, Advocate  
Ms. Deeksha Manchanda, Advocate  
Ms. Aileen Aditi Sundardas, Advocate  
Shri Jai Hindocha, Advocate  
Shri Pradeep Arora, former President, FPBAI in-person

For Shri S.C. Sethi, former President, and Shri Prashant Jain, former Honorary Secretary, of Federation of Publishers' and Booksellers' Association in India

: Shri Vaibhav Arora, Advocate



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## ORDER UNDER SECTION 27 OF THE COMPETITION ACT, 2002

### Facts:

1. Information in the present matter was filed by Shri Pranav Gupta (**'Informant'**) under Section 19(1)(a) of the Competition Act, 2002 (the **'Act'**) against 25 Opposite Parties (**'OPs'**) alleging, *inter alia*, contravention of the provisions of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act. These 25 OPs included the Federation of Publishers' and Booksellers' Associations in India (**'FPBAI'**) which is an umbrella body/ association of publishers and booksellers in India, 07 publication houses who are active participant members of FPBAI, 10 individuals who are past members/ office-bearers of FPBAI, and 07 regional associations of publishers and booksellers in India who have membership in FPBAI.
2. The Informant is stated to be the Managing Director of Prints Publication Pvt. Ltd. (formerly, Prints India) which is a member of FPBAI, and a Director of Swets Information Services Private Limited and Omlogic Consulting Private Limited, as well as Co-Founder of PragatiE.
3. The Informant alleged that FPBAI provides its platform to cartelise and dictate/ facilitate fixing of prices and also limits and controls the supply of books and journals within the territory of India. The Informant levelled threefold allegations – (i) fixing of currency exchange rates by FPBAI for import/ export of books/ journals, which rates are higher than the Reserve Bank of India's (**'RBIs'**) published rates; (ii) capping of discounts which may be offered by members of FPBAI to Indian libraries/ institutions *etc.*; and (iii) limiting and controlling supply of books and journals in India by fixing terms of supply, regulating credit period, fixing re-sale prices and issuing advisories to libraries and other institutions to not engage in business with vendors/ distributors who are not empanelled with FPBAI. The Informant submitted that the duration of such cartel is from at least 2013 till June 2021.
4. Based on such allegations, the Commission, *vide* order dated 23.12.2021 passed under Section 26(1) of the Act, formed an opinion that a *prima facie* case of (i) fixing of inflated currency exchange rates in relation to supply of books, journals and periodicals in India, in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act; (ii) fixing discounts in contravention of the provisions of Section 3(3)(a) read



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with Section 3(1) of the Act; and (iii) issuing terms and conditions with respect to credit period, interest rates and verification of prices, and issuing advisories/ appeals to libraries, booksellers and/ or Institutions for not dealing with non-members of FPBAI, in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act, is made out against FPBAI in the present matter. However, the remaining OPs were removed from the array of parties. The Commission accordingly, referred the matter to the Director General ('DG') for causing an investigating and directed the DG to submit an investigation report.

5. The investigation report was submitted by the DG on 29.11.2022 along with case record. In the investigation report, the DG, *inter alia*, concluded as under:

5.1 Good Offices Committee ('GOC'), a committee of FPBAI, under its mandate, determined exchange conversion rates for ten foreign currencies. Such rates were 3-5% higher from the bank rates, disseminated every month on a regular basis, benefitted only a few booksellers who are importers, but resulted into losses to majority of booksellers. The same were mandatorily followed by the booksellers across India and such conduct amounts to price fixation in terms of Section 3(3)(a) read with Section 3(1) of the Act.

5.2 With regard to fixing of discounts, the conduct of FPBAI of not withdrawing its earlier circulars containing discount clause from public domain and not issuing advisory to sensitise its members in this regard, pursuant to Commission's order dated 23.02.2021 passed in *M/s International Subscription Agency v. FPBAI*, Case No. 33 of 2019, is in contravention of provisions of Section 3(3)(a) read with Section 3(1) of the Act.

5.3 The act of FPBAI of prescribing terms and conditions in GOC circulars which are not only circulated to all bookseller members and member state associations but also followed by the book industry in general, has the effect of controlling the market for book trade in India, in contravention of provisions of Section 3(3)(b) read with Section 3(1) of the Act.

5.4 The act of FPBAI of neither withdrawing the appeals and advisories previously issued to libraries and institutions for dealing with members only nor issuing any communication that such appeals/ advisories ceased to be in force which



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led to a large number of libraries still insisting on the condition of a book supplier being a member of any state association or FPBAI, coupled with regular circulation of approved vendor list, was in contravention of provisions of Section 3(3)(b) read with Section 3(1) of the Act.

5.5 For such conduct of FBPAI, Shri Pradeep Arora, President of FPBAI in 2020-21 and 2021-22, Shri S.C. Sethi, President of FPBAI in 2019-20 and Chairman of GOC in 2020-21 and 2021-22, and Shri Prashant Jain, Honorary Secretary of FPBAI in 2020-21 and 2021-22, are found to be liable under Section 48 of the Act.

6. The aforesaid investigation report submitted by the DG was forwarded by the Commission to the Informant and the OP, as well as its three individuals found liable by the DG under Section 48 of the Act ('parties'), *vide* order dated 16.06.2023, with an opportunity to file suggestions/ objections, if any, to the same. Further, FPBAI and its individuals were directed to file their financial statements (Balance Sheet and Profit and Loss account) and Income Tax Returns ('ITRs') respectively, for the Financial Years ('FYs') 2019-20, 2020-21 and 2021-22. Thereafter, the parties through their respective counsel(s) were heard on 27.11.2024 and 15.01.2025 and the Commission decided to pass an appropriate order in the matter in due course. The parties were also allowed to file post-hearing short written submissions within a period of one week. During the course of hearing, the learned counsel for FPBAI had adduced certain additional evidence before the Commission. The Informant was given liberty to include its arguments on such additional evidence as well in its short-written submissions.

### **Submissions of Parties:**

7. Through written objections/ suggestions to the investigation report, oral averments, and post hearing submissions, FPBAI and its three individuals submitted, *inter alia*, as under:

7.1 Preliminary objections: (a) selective reliance placed by the DG on statements of FPBAI members and office bearers which supports its conclusions; (b) the DG foreclosed the opportunity of FPBAI for cross-examination of witnesses deposed, despite heavily relying on submissions made by third-parties; and (c) the DG failed to include in the investigation report all documents collected and statements



recorded during investigation, in breach of Regulation 20(4) of the erstwhile Competition Commission of India (General) Regulations, 2009 (**‘General Regulations, 2009’**).

- 7.2 Fixation of exchange rates by GOC is a legacy practice as GOC was formed long back under the guidance of Ministry of Culture and Human Resource Development (**‘HRD’**) for stabilising supply of books and journals, terms and conditions, ensuring fair margin to suppliers and resolution of grievances of libraries such as non-supply *etc.* Later, it came under the umbrella of FPBAI as one of its sub-committees. There is a lag between payment and supply and exchange rate fluctuation makes it difficult to reconcile accounts. Therefore, uniform monthly conversion rates supplied to libraries across India directly or through booksellers/publishers facilitate ease in reconciliation of accounts.
- 7.3 GOC conversion rates are merely ‘suggestive’ in nature and not ‘mandatory’. The findings of investigation clearly demonstrate that GOC conversion rates are not mandatory and are merely suggestive. Specifically, the evidence on record reveals that (i) all office bearers of FPBAI in their statements recorded by the DG state that GOC conversion rates are not mandatory, (ii) several members of FPBAI also stated that they do not follow the GOC conversion rates, and (iii) tenders floated by a significant majority of libraries require RBI rates to be followed.
- 7.4 Arguendo, even if it is assumed that FPBAI fixes GOC conversion rates, there is no contravention of Section 3(1) read with Section 3(3) of the Act because: (i) GOC conversion rates are merely suggestive, not mandatory and there is no punitive measure taken against members for not using the GOC conversion rates. Publication of GOC conversion rate is a legacy practice. It can neither be seen as an ‘agreement’ nor a ‘decision’ which can be covered within the scope of Section 3 of the Act; (ii) GOC conversion rates do not lead to any determination of price as members are free to choose prices irrespective of whether that price is based on GOC conversion rates, or any other rate determined by them basis their commercial strategies. Also, GOC conversion rates constitute an insignificant proportion of the overall price; (iii) Publishing of GOC conversion rates by FPBAI does not result in any appreciable adverse effect on competition (**‘AAEC’**) as there is no proof of harm to competition and consumers. It is evident that as GOC



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Circulars are not mandatory, members are not penalised for not following GOC Circulars; (iv) GOC conversion rates do not create any entry barriers as they impact an insignificant portion of price; and (v) No existing competitors are driven out of the market and there has been no foreclosure in the supply of books and journals in India by members of GOC as the members neither succumb to such pressure nor face expulsion for not following GOC conversion rates.

7.5 There is no mandatory condition to follow GOC Circulars, and many libraries in fact, do not follow GOC conversion rates. The decision of some libraries to follow GOC conversion rates reflects their independent commercial decision, which cannot be attributed to FPBAI. Libraries have included such terms basis their commercial strategies and commercial decisions and not because FPBAI has directed them to do so.

7.6 No action has been taken against members that do not comply with GOC conversion rates. In fact, only six (06) out of nineteen (19) deponents were asked if they have ever been penalised for not following GOC circulars. Five (05) out of such six (06) deponents have stated that no action is taken against members who do not follow GOC conversion rate.

7.7 Regarding fixing discounts, office bearers of FPBAI and other relevant stakeholders have consistently confirmed that FPBAI used to prescribe discounts in GOC Circulars, but it has discontinued this practice. The DG has also concluded that physical copies of GOC Circulars that were examined did not contain the clause relating to fixing of discounts after February 2021 and even on GOC Circular published on FPBAI's website, no discount clause was found. Despite concluding that FPBAI did not recommend any discount to its members, the DG has concluded that FPBAI did not take appropriate steps to remove discounts from circulars published on various websites. The DG has solely placed reliance in this regard on third party websites *i.e.* website of Delhi State Book Sellers and Publishers Association ('DSBPA') and standardsmedia.com, to conclude that FPBAI did not comply with the Commission's order passed in Case No. 33 of 2019 (*supra*) and that it did not remove the discounts published on these websites. There is no proof that GOC circulars on DSBPA's website and standardsmedia.com were published at the behest of FPBAI or on its instructions. Absent such proof, FPBAI



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cannot be held liable for conduct of independent third parties. In so far as GOC Circulars containing discount clause published on standardsmedia.com are concerned, statements of various individuals examined by the DG make it clear that the said GOC Circulars are potentially fraud or incorrect.

7.8 FPBAI had no obligation to intimate its members about order dated 23.02.2021 passed under Section 27 by the Commission in Case No. 33 of 2019 (*supra*) or the fact that the discount clause does not apply anymore, as there were no additional directions in the said order except to cease and desist, which constitutes an obligation on FPBAI to only refrain from continuing certain practices found anti-competitive by the Commission. Based on the Commission's decisional practice, if the Commission expects a party to fulfil certain additional obligations such as communicating its order or ensuring competition compliance, such obligations are specifically laid down in the order passed by the Commission. Reliance in this regard is placed on the Commission's decisions in *T.R. Chandran and Another v. National Egg Co-ordination Committee*, order dated 14.01.2022 passed in Case Nos. 09 and 36 of 2017, and *Santuka Associates Pvt. Ltd. v. All India Organization of Chemists and Druggists (AIOCD) and Others*, order dated 19.02.2013 passed in Case No. 20 of 2011.

7.9 Regarding terms of supply, FPBAI reiterated that the same are suggestive and not mandatory. In fact, out of nineteen (19) deponents examined, question about terms of supply and whether they are mandatory was posed only to nine (09) of them out of which eight (08) confirmed that the terms of supply are not mandatory. Further, it is within the mandate of GOC to ensure fair working margin for booksellers as well as to provide proper efficient services to libraries for which such terms and conditions are put in place.

7.10 These terms of supply serve as a guide to members in their negotiations with libraries and also assist small/ new members having no bargaining power or new to trade during the course of such negotiations. Providing certain suggestive terms of supply is beneficial for the booksellers and helps improve distribution of books and journals. The terms are provided to protect the legitimate interests of the members of FPBAI and they provide guidance to the members about their rights. For instance, payment to be made within 10 days ensures that the booksellers are



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compensated in a timely manner. Such supply terms serve as a reference point and base for its members. However, final terms depend upon the customer (library/ institution).

7.11 GOC/ FPBAI is in no way trying to impose the terms of supply for books on its members. The DG has not provided any basis for arriving at the finding that FPBAI is substituting its commercial decision for independent decisions that should be taken by its members.

7.12 The DG, on the basis of wide circulation of GOC circulars, concluded that the market is being controlled by FPBAI; however, it did not ask the libraries/ institutions as to how the same affected their negotiations/ influenced their terms.

7.13 The DG concluded that even though FPBAI has stopped issuing appeals or advisories to libraries after the Commission's order passed in Case No. 33 of 2019 (*supra*), it continued to circulate a list of approved suppliers with GOC Circulars. Furthermore, since FPBAI never withdrew the earlier advisories or appeals, the publication of such list of approved suppliers is akin to issuing appeals to libraries. The DG also noted that many libraries still require membership of a national/ state level association to participate in tenders. Based on these, the DG concluded that FPBAI has violated Section 3(3)(b) read with Section 3(1) of the Act by providing the list of approved suppliers. In this regard, earlier, FPBAI used to issue appeals to libraries to procure journals only from members of national/ state level associations or federations, but it has stopped doing so since January 2020. The DG has also observed during investigation that FPBAI's latest newsletter did not contain any such appeals. It is also clear from the statements of various individuals examined by the DG that FPBAI has stopped the practice of issuing appeals to libraries to procure journals only from its members or member of state/national level associations. However, as stated earlier, FPBAI was under no obligation to withdraw the earlier appeals.

7.14 Libraries and institutions procure journals through issuance of tenders to vendors and some of them insist on vendors being members of FPBAI or any state association as an eligibility criterion to participate in such tenders. Any library that decides to include such conditions is exercising their own personal choice and discretion, and without any kind of coercion, influence or imposition from FPBAI.



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FPBAI does not have any role in the decision of libraries to include such condition in their tenders. The DG did not investigate if inclusion of this condition was at the behest of FPBAI. Libraries have stated in their response that such condition in tender indicates seriousness of supplier/ vendor. The libraries and institutions face the risk of defect in supply of books and journals against advance payment. Membership of FPBAI provides guarantee of genuineness of supplier they are dealing with as in such case, FPBAI will be available as grievance redressal forum.

7.15 FPBAI has been providing the list of approved suppliers and subscription agents since October 1999. Circulation of list of approved suppliers included in GOC circulars simply records the membership of GOC and in no way restricts choice/ability of the buyers (libraries or institutes) to deal with suppliers of their choice. Therefore, publication of list of approved suppliers is not the same as issuing appeals to libraries to procure journals from only members of state or national level associations.

7.16 Moreover, there is no entry barrier for obtaining membership of FPBAI, which is open to all-publishers' /booksellers' associations, individuals, firms, companies or corporations that may be publishers, wholesalers, library suppliers, retailers or subscription agents.

7.17 FPBAI is not duty-bound to publicly withdraw the earlier appeals. The same does not amount to controlling supply in the market as concluded by the DG.

7.18 The conduct of prescribing non-binding terms of supply and circulation of approved list of vendors is not causing any AAEC in terms of the parameters laid down under Section 19(3) of the Act as there is no proof of creation of any barriers to new entrants in the market, of driving existing players or competitors out of the market, or foreclosure of competition, due to such conduct.

7.19 FPBAI has always been compliant with competition law. Within the same set of facts and information, in Case No. 33 of 2019 (*supra*), the DG did not deem it necessary to broaden the scope of investigation and examined only (i) the functioning and policies of GOC; (ii) its discount policy; and (iii) issuance of advisories and terms of supply by it. The Commission also examined the terms of



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- supply in Case No. 33 of 2019 (*supra*) but did not find any illegality that time in mentioning the terms of supply to safeguard the legitimate interest of its members.
- 7.20 Liability has been wrongly attributed to the three named individuals of FPBAI under Section 48 of the Act considering them to be in-charge of and responsible for the conduct of affairs of FPBAI. The practices examined are legacy practices and there is no active decision making by such members in implementing such practices. Further, decisions are jointly/ consensually taken by the President, Executive Committee and other office bearers of FPBAI and therefore, these individuals alone cannot be held vicariously liable. These individuals are holding honorary positions with no remuneration involved. Shri S.C. Sethi and Shri Pradeep Arora are senior citizens; imposition of liability upon them may tarnish their reputation.
- 7.21 Regarding imposition of penalty, the principle laid down by the Apex Court in *Excel Crop Care Ltd. v. CCI, (2017) 8 SCC 47* may be followed and penalty if any, be imposed only on relevant turnover of FPBAI. There is no profit motive of the association.
- 7.22 The Commission may confine itself to issue directions to FPBAI under Section 27(g) of the Act to develop competition culture.
8. On the other hand, by way of oral and written submissions, the Informant, *inter alia*, submitted as under:
- 8.1 Information was also provided about 24 more parties apart from FPBAI, but the DG did not investigate them. The conduct of the members of FPBAI including of OP-2 to OP-8 which are competing companies/ enterprises and use FPBAI as a platform, to collectively fix price and limit and control the market for books and journals in India, squarely falls under the definition of 'cartel' in terms of Section 2(c) of the Act. Further, OP-19 to OP-25 are regional associations of FPBAI and are controlled and managed by competitors in publishing and book-selling industry. Since FPBAI's platform is being used by its members for anti-competitive conduct including fixing of GOC foreign exchange rates and other terms of supplies of books to libraries, the DG ought to have expanded the investigation despite the Commission's directive of investigating only one party. In several other cases, the



DG has investigated parties who were not originally named in the information and/ or made opposite parties in the *prima facie* order of the Commission. Reliance in this regard is placed on the Commission's decisions in *Shamsher Kataria v. Honda Siel Cars India Ltd. and Others*, order dated 27.07.2015 passed in Case No. 03 of 2011, and *Jyoti Swaroop Arora v. Tulip Infrastructure Ltd. and Others*, order dated 03.02.2015 passed in Case No. 59 of 2011 .

- 8.2 The DG has recorded statements of nineteen (19) persons who are among the office-bearers of seven state associations of FPBAI, members of Executive Committee of FPBAI and members of FPBAI in different zones *etc.* However, the DG has relied only on the statements of six (06) of them and rest of the statements have not been annexed with the investigation report. The statements of (a) Shri Sunil Sachdev of Allied Publishers, Chairman of Export-Import Committee of FPBAI, deriving benefit of GOC rate, (b) Shi Raj D Mirchandani, Co-chairman of Export-Import Committee, (c) Shri Arunjit Singh, Joint Secretary of FPBAI and also a book publisher, importer and distributor, are not part of the investigation report.
- 8.3 Further, the statement of Shri Prateek Ahuja, Treasurer of OP-1, is not made part of the investigation report. Shri Prateek Ahuja is a Director of Delhi Book Store Imprints, one of the largest exporters of books and exclusive distributor of foreign publishers. The purported foreign publishers for which DBS claims to have exclusive distributorship are companies owned by Shri Ashish and Shri Ayush Vaidya and are printed/ published in India. DBS makes money by claiming books to be imported from overseas territories, making profits from GOC conversion rates. The overlapping business, inter-locking directorships and role played by them in FPBAI/ GOC meetings should have been investigated. Indica Technology, in which Shri Prashant Jain is also a Director, was the only company engaged in imports since 2017.
- 8.4 All documents and material collected by the DG should have been provided in terms of Regulation 20(4) of the erstwhile General Regulations, 2009 to enable the Informant to file additional response and/ or seek cross-examination.



- 8.5 FPBAI not only discussed the order dated 23.02.2021 passed by the Commission in Case No. 33 of 2019 (*supra*) in the 2<sup>nd</sup> Executive Committee Meeting ('ECM') for FY 2020-21, but also justified the discount policy.
- 8.6 The circulars dated 01.11.2021 and 01.12.2021 referred to in the Commission's *prima facie* order dated 23.12.2021, which were alleged to have been forged by FPBAI during the oral hearing, were not provided by the Informant but rather gathered by the Commission on its own. FPBAI failed to explain as to how these circulars which were earlier available on its website were subsequently removed from its website which is under its control. Proceedings ought to be initiated against FPBAI under Section 45 of the Act for deletion of evidence.
- 8.7 FPBAI argued that circulars dated 01.02.2022 and 01.03.2022 containing discount clause were published on the website of third parties (DSBPA and Infotech Standards Media Pvt Limited owning the website [www.standardsmedia.com](http://www.standardsmedia.com)), for whose conduct it cannot be held liable. Here, FPBAI failed to mention that DSBPA is its affiliated state-level association and Shri Kartik Raj Khushwaha, Vice-President of DSBPA, is also a Director of Infotech Standards Media Pvt. Limited.
- 8.8 The DG did not consider the membership certificate provided by the Informant. Membership certificate states that "*abide by the terms of supply as fixed by GOC*". The members of FPBAI are required to follow the circulars/ terms of membership certificates which are decided by a few individuals. The membership certificate itself states in no uncertain terms that each member shall "*abide by the terms of supply as fixed by GOC*". Note must be taken of the words 'abide', 'terms of supply' 'fixed by GOC'. For enrolment as approved subscription agent, an applicant requires approval of the Chairman of GOC. Further, membership of GOC requires membership of FPBAI. All members of FPBAI are not members of GOC. Therefore, only a few entities are privy to decision making process of GOC.
- 8.9 About the summons received from the DG, Shri Pradeep Arora, President FPBAI talked to Shri S.C. Sethi, Chairman of GOC and Shri Prashant Jain, Secretary FPBAI talked to Shri Pradeep Arora, President of FPBAI. Informant, *vide* email dated 02.08.2022, and subsequently through letter dated 08.08.2022, brought to the notice of the DG that FPBAI has called for a meeting of all parties/ persons who have been summoned by the DG to formulate a common strategy. Agenda for 3<sup>rd</sup>



ECM intimated *vide* e-mail dated 12.08.2022 was to discuss the summons received from CCI (DG) purportedly to devise some strategy. As such, proceedings under Section 43(b) of the Act must be initiated against such individuals as summons are privileged document not to be shared/ discussed with anyone except legal representative.

- 8.10 Statements of sixteen (16) out of nineteen (19) deponents are similar in stating that the terms in the GOC Circulars were suggestive and not mandatory, and indicate that such statements were given after discussion/ meetings/ calls with other office-bearers of FPBAI and other state level associations. The said fact is also not refused by FPBAI.
- 8.11 FPBAI in its 5<sup>th</sup> ECM on 21.07.2023 unanimously decided to discontinue GOC rates and communicated the same *vide* e-mail dated 24.07.2023. Thereafter, on 29.07.2023, FPBAI issued a circular calling Extraordinary General Meeting on 01.08.2023. After the meeting dated 01.08.2023, FPBAI unanimously decided to reverse the decision taken in 5<sup>th</sup> ECM dated 21.07.2023 regarding the disbandment of GOC committee and discontinuance of GOC conversion rates. All those who attended the Extraordinary General Meeting on 01.08.2023 should be held liable under Section 48 of the Act.
- 8.12 In the Extraordinary General Meeting held on 01.08.2023, amongst other things, identity of the Informant and its entities were discussed due to which the Informant is finding it difficult to procure books on usual/ favourable terms. Section 26(4) of the Act requires circulation of the investigation report with the parties concerned, but FPBAI disclosed the details of the case, including the identity of the Informant, as well as allegations and issues dealt with in the investigation report in its July and August, 2023 meetings.
- 8.13 In the similar vein, an e-mail dated 31.07.2023 was shared by the President, DSBPA, proposing to follow conversion rates followed by Indian Customs to bring uniformity of billing rates for foreign currency. This was however, later withdrawn *vide* e-mail dated 04.08.2023.
- 8.14 FPBAI, *vide* e-mail dated 08.08.2023, circulated a survey form to its members to seek their opinion regarding continuation or discontinuation of GOC rates.



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- 8.15 One of the mandates of GOC, as stated in the monthly circulars, pertained to fixation of GOC rates and also widely circulating them amongst libraries all over India either directly or through booksellers.
- 8.16 FPBAI members insist on charging GOC rates and refuse to charge bank rates. Reliance is placed in this regard on certain e-mails exchanged between an entity named Print Publications and certain sellers of imported books, exchanged during November 2022 wherein the institution (Print Publications) is requesting for charging bank rates stating GOC rates to be suggestive in nature but the booksellers have been insisting on only GOC rates.
- 8.17 Book publishing industry and imported book market in India is of considerable size and has high growth potential. Only ten (10) percent members benefit from fixation of GOC conversion rates.
- 8.18 The DG did not examine Association of Publishers in India ('API'), members of which consist of Indian subsidiaries of multi-national publishing companies, who sell publish books and journals in India and also import foreign publications from their parent/ holding companies at prevailing bank rates but sell at GOC rates. Most of the members of API are also members of FPBAI, and beneficiaries of GOC rates.
- 8.19 Shri S.C. Sethi and Shri Pradeep Arora failed to provide the material (WhatsApp chats) which they undertook to provide in reference to the question (pertaining to objections raised by some members regarding declaration of GOC rates) posed to them during recording of their respective statements before the DG.
9. In its rejoinder to the Informant's submissions, FPBAI, *inter alia*, submitted as under:
- 9.1 The Informant itself is an office bearer of Federation of Indian Publishers, and has been a member of FPBAI for the past thirty (30) years without having any issues earlier. The Informant is deliberately misrepresenting the details of ECM dated 21.07.2023 and Extraordinary General Meeting dated 01.08.2023 to allege that FPBAI disclosed details of ongoing investigation and identity of the Informant. FPBAI has the responsibility to keep its members informed regarding ongoing litigation against it. Also, the summons were discussed to the extent required for obtaining information/ genuine queries such as Certificate of



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Incorporation and other relevant information from FPBAI. FPBAI did not reveal the identity of the Informant and disclosed what was necessary to keep the members informed. Such arguments are only an attempt by the Informant to deflect from the core issue.

9.2 The Informant isolates seven (07) out of around 800 members of FPBAI and raises unrelated issues with respect to members of FPBAI claiming that two (02) companies with common owners are indulging into collusion without any evidence to support such contentions. Reliance is placed in this regard on the observations of the Commission in *Meru Travel v. ANI Technologies*, order dated 20.06.2018 passed in Case Nos. 25–28 of 2017. The Informant is launching unfounded personal attacks on individual members of FPBAI and seeks to expand the scope of investigation.

9.3 The allegation that competing members used FPBAI as platform for collusion is baseless. FPBAI is a trade association and all of its members will be competitors in the same market. One of the core characteristics of any trade association is a shared or common interest between members that operate in the same sector or industry, and the trade association works towards serving such common interest. Much like other trade associations, FPBAI works for the promotion and betterment of book trade. As part of this, FPBAI designs and develops non-binding policies with the members and for the members. However, these are not mandatory and it is up to each member to decide whether they want to follow such policies or not.

9.4 The Informant has misconstrued FPBAI's independent decisions taken during July and August, 2023 meetings. On 21.07.2023, members of FPBAI unanimously noted that a significant number of libraries/ institutions are buying books and journals at bank rates, due to which the purpose of publishing GOC rates was becoming redundant and hence, arrived at the decision to disband the GOC conversion rates. However, following opposition from numerous members, the Extraordinary General Meeting on 01.08.2023 was called for and in the larger interest of book trade, the members arrived at the decision to reinstate the GOC circulars only to the extent of publishing GOC conversion rates, though the list of approved suppliers was withdrawn.



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9.5 Though the OP is in agreement with the assertion of the Informant that the DG has not enclosed all material collected during investigation with the investigation report in terms of Regulation 20(4) of the erstwhile General Regulations, 2009. However, at the same time, it is noted that the Commission did give opportunity to the parties to inspect and seek certified copies of all such material which has been availed by the OP.

9.6 FPBAI formulates non-binding policies for its members; non-binding policies which are not mandatory but it is up to each member to follow such practice or not.

**Analysis by the Commission:**

10. The Commission has perused the material available on record including the Information, the investigation report, the written submissions/ responses filed by the parties and also heard the oral arguments addressed by the respective learned counsel(s) representing the Informant, FPBAI and its individuals.
11. Before proceeding on merits, the Commission deems it appropriate to deal with the preliminary issues raised by the parties. The Commission notes that both the Informant and FPBAI have alleged that the DG has not annexed all material collected during investigation as part of its investigation report but rather selectively assessed evidence and that the DG has based its findings on conjectures and suppositions rather than credible evidence.
12. In this regard, the Commission first of all notes that all material collected during investigation that has been relied upon by the DG to reach its conclusions in the investigation report has been made a part of the investigation report by the DG. In addition, all other material collected during the course of investigation by the DG has also been given access to the parties in terms of the *extant* regulations. The *extant* legal framework allows the parties to seek inspection of and obtain certified copies of all non-confidential case records. Requests in this regard were received from the parties during the course of inquiry of the present matter, and the Commission has granted them additional time to inspect the case records as and when sought. Accordingly, the parties have filed their respective objections/ suggestions to the investigation report.



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Therefore, one cannot deny that all material available on record has been made accessible to all parties in the present matter.

13. *Secondly*, as far as the allegation of selective assessment of evidence is concerned, it is noted by the Commission that it is the prerogative of the investigation to decide upon the methodology of conducting investigation and collection of evidence. Nonetheless, the Commission makes an independent assessment of the evidence collected by the DG and other material placed on record while analysing the matter on merits. As such, the argument raised regarding selective assessment of evidence or basing findings on non-credible evidence does not hold ground and have no merit.
14. *Thirdly*, coming to the allegation of FPBAI that the DG foreclosed its opportunity for conducting cross-examination which adversely affected its right to defence, the Commission notes that it is on record (as can be seen in para 5.8 of the investigation report) that no party asked for cross-examination of any witness. Similarly, the request for cross-examination by the Informant was received by the Commission only after receipt of the DG Investigation Report, which was general in nature and did not specify the names of witnesses sought to be cross-examined. As such, the Commission proceeds further in the matter.
15. The Informant has asserted that the DG has only examined the conduct of FPBAI and has not analysed the role and conduct of other parties such as publisher/ bookseller members of FPBAI, who have entered into an agreement amongst themselves to restrict competition among other member booksellers.
16. In this regard, it is noted that the Commission itself had, at the time of referring the matter to the DG for causing an investigation, taking into account the fact that allegations were *majorly levelled against FPBAI only*, and that member publishers/ officials and member regional associations *had only implemented the mandate and directions of FPBAI*, amended the cause title of the present matter making FPBAI the sole OP in the matter and categorically directed the DG to examine the conduct of FPBAI only. Accordingly, the DG has committed no error in not expanding the scope of its investigation.
17. The Informant has further stated that the DG has failed to examine even the conduct of competing entities including publishing houses and entities owned by the office-



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bearers/ members of the Export-Import committee of FPBAI, *etc.* who are allegedly engaged in the anti-competitive conduct using FPBAI as platform to cartelise. In this regard, it is noted by the Commission that every trade association is formed with entities engaged in similar activities and by their very nature, competing enterprises, with the mandate of taking up their trade related issues. Accordingly, FPBAI merely providing its platform to booksellers and publishers to discuss their common grievances cannot be faulted with. Without their being any *prima facie* evidence or direction to the DG to investigate any such alleged cartel, the scope of investigation could not have been expanded by the DG to investigate such allegations.

18. The Informant has also highlighted the aspect of investigation lacking into inter-locking directorships, overlapping businesses, deceptive practices of certain booksellers/ publishers. Again, the Commission is of the view that the scope of the present matter was limited to the alleged anti-competitive conduct practices/ decisions of FPBAI *viz.* fixation of exchange conversion rates, discount control, dictating terms of supply and issuance of advisories not to deal with non-members, by FPBAI, into which the DG was directed to cause an investigation. Investigation into alleged overlapping businesses, inter-locking directorships *etc.* did not form part of the Commission's order forming a *prima facie* opinion and could not have been included as part of the present investigation unless the Commission had reasons to believe that the same had the potential to distort the level playing field and directed investigation in this regard.
19. *Lastly*, the Commission also takes note of the averments of the Informant that action must be taken against office-bearers of FPBAI for meeting and discussing the summons received from the DG in the present matter. In this regard, the Commission finds substance in the response of FPBAI that being the trade association, it has the responsibility to keep its members informed regarding ongoing litigations against it and disclose what was necessary to keep the members informed. Also, it has been submitted by FPBAI that the summons were discussed to the extent required for obtaining information/ genuine queries such as Certificate of Incorporation and other relevant information from FPBAI. Accordingly, the Commission finds no merit in this contention of the Informant as well.
20. Having dealt with the preliminary issues, the Commission now proceeds to examine the matter issue-wise on merits.



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### **Issue 1: Fixing of inflated foreign currency exchange rates by GOC**

21. The Commission notes that GOC is one of the twelve sub-committees of FPBAI which, at present, *via* its Circulars published on monthly basis, publishes conversion rates for ten (10) major currencies at which booksellers/ publishers can import books and journals in India. These circulars are published on FPBAI website and also sent to the members of FPBAI regularly. These ten (10) major currencies are Australian Dollar, Canadian Dollar, British Pound Sterling, Japanese Yen, Singapore Dollar, Swedish Kroner, Swiss Franc, U.S. Dollar, Euro, and Taka.
22. It is further noted that such conversion rates for foreign currencies are being declared by FPBAI since 1980. As per the submissions of former office-bearers of FPBAI *viz.* Shri S.C. Sethi and Shri Pradeep Arora before the DG, declaration of such rates by GOC was started in collaboration with the Indian Library Association ('ILA') and Book Promotion & Copyright Division, Ministry of HRD, and conversion rates of around 15-16 currencies used to be published during the 1980's and 1990's. However, the Ministry of HRD as well as ILA are no longer involved in the working of GOC.
23. It is also noted that GOC conversion rates are calculated by taking into consideration monthly average rates published by the RBI (except Saturday, Sunday and other holidays). Earlier, the decided markup from RBI rate was 5% which was reduced to 3% in January 2017. Since January 2017, FPBAI started adding 3% mark up on all currencies except USD, as fluctuations in USD are usually higher than other currencies. Hence, 4% markup was added on USD and 3% on other currencies. Later, it was noticed that fluctuation in USD also stabilised. Hence, from August 2022 markup in USD has also been reduced from 4% to 3%. Thus, currently 3% markup is added on all ten (10) currencies.
24. The Commission takes note of the examination by the DG of the contents of the GOC monthly circulars effective from 01.02.2021 to 01.08.2022 which shows that the conversion rates for the above-referred ten (10) major currencies were declared by GOC regularly under the heading "*Terms of Supplies to Booksellers, Libraries and Institutions*", which are effective from the first day of that particular month for which GOC circular was published. The DG has also found that GOC circulars also clearly specify the role of GOC in the fixation of foreign exchange conversion rate to ensure fair working margin to booksellers, and states that it has monthly meetings to decide the



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conversion rate for the ten (10) foreign currencies. The relevant part of one of such GOC circulars is reproduced below:

“...

*The Good Offices Committee is a voluntary organization formed to establish uniform terms of book supplies to libraries, and to ensure a fair working margin to booksellers and an efficient service to the libraries. The GOC meets at regular intervals and after taking into consideration the fluctuations in the currency rate, decides on the rates of conversion governing sale of books and periodicals. These rates are widely circulated amongst the libraries all over India either directly or indirectly through booksellers.*

....”

25. The DG has also relied on a circular of FPBAI bearing number Fed.GOC/3.2016 dated 14.12.2016 to state that these GOC conversion rates are mainly beneficial to a few importer booksellers and other booksellers have to suffer losses since they are forced to purchase imported books at GOC determined conversion rates and have to sell these books to libraries/ institutions at bank rates. The contents of the said circular are reproduced below:

*“It is to inform you that so far while calculating conversion rates are concerned, we had given a markup of 5%. Whereas during our discussions with various booksellers and regional associations, it was felt that mark up on 5% or average rate of 30 days is on the higher side. It is only helping 10% members of our association who are importers and there is a need to reduce the mark up as booksellers are suffering. It will also help industry discuss with librarians that now a very nominal margin is there with the bank rates and that will help the GOC also. There was a demand that the mark up should be 2.5% only but it was unanimously agreed that the mark up of 3% only will be acceptable which will be applicable from January 01, 2017.”*

26. During investigation, upon being asked about whether the practice of buying of imported books by booksellers on GOC conversion rates while procuring institutions demanding application of bank rates is beneficial for his business activities, Shri Prashant Jain, Secretary, FPBAI stated that “No. I am actually incurring losses due to this practice. I have verbally complained about this many times to FPBAI. I never raised this issue in writing but discussed this issue verbally with office bearers of FPBAI many times but no changes were made. This was also corroborated by the statement of Shri S.C. Sethi, Chairman, GOC that he came across such occasions when



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people complained about such conversion rates being published in GOC circulars. Upon being asked by the DG about the intent and purpose of GOC circulars issued by FPBAI, Shri A.N. Ramachandra, President of Bangalore Booksellers and Publishers Association, stated that FPBAI decides conversion rates for the protection of importer booksellers. The relevant extract from the statement of Shri A.N. Ramachandra is as follows:

*“It is decided by FPBAI for the protection of importers. Importers are mainly located in Delhi. Booksellers are sometimes badly affected due to exchange rates declared by GOC. Clients, especially Government clients, do not accept GOC rates. They demand bank rates/RBI rates. Thus, booksellers are forced to purchase at GOC rates and forced to sell at bank rates. Therefore, booksellers are incurring losses.”.*

27. The Commission, considering the oral and written submissions of FPBAI, notes that FPBAI did not refute publishing of GOC conversion rates, rather it stated the same to be a legacy practice as GOC was formed under guidance of ILA and Ministry of HRD and later moved under the umbrella of FPBAI as one of its sub-committees. Such rates are stated to be published for ease in reconciliation of accounts, and for the convenience of members. Moreover, it is stated that these rates are merely suggestive and not mandatory and that no coercive action has been taken by FPBAI for non-compliance with GOC rates. FPBAI also asserted that GOC conversion rates are not commonly accepted or followed by its members and even third-parties such as libraries, do not procure at GOC conversion rates. The Commission observes that even during investigation, the DG found only some but not all booksellers/ regional associations and institutions following GOC conversion rates.
28. The Commission observes that this submission of the OP corroborated by investigation, strengthens the grievance of the Informant and of the other booksellers that being a member of FPBAI, they have to buy from importer booksellers at GOC conversion rates but sell to libraries and institutions at bank rates which do not accept GOC conversion rates. This in turn leads to financial losses to the booksellers. In this regard, the Commission also take notes of the statement of Shri Prashant Jain, Secretary, FPBAI, that he himself has incurred losses due to this practice and had complained verbally/ discussed with the office-bearers of FPBAI but to no avail. Even Shri S.C. Sethi, Chairman, GOC, confirmed receipt of verbal complaints about such conversion rates being published in GOC circulars.



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29. The Commission also notes the finding of the DG that none of the circulars published by GOC before March 2022 states that the conversion rates are not mandatory but merely suggestive.
30. From the above, the Commission is of the view that fixation of GOC conversion rates, substantially higher than bank rates to ensure fair margins to importer booksellers is not disputed by FPBAI. Before assessing the mandatory or suggestive nature of such GOC rates, it is important to understand the nature of the transaction – if the transaction is happening between an importer bookseller and another bookseller, GOC rate is followed in such purchase transaction, both being members of FPBAI. However, when this bookseller sells the imported book/ journal to the final consumers libraries, universities, institutions *etc.*, some procuring institution may accept the GOC rates while others may insist on bank rates. In this regard, FPBAI cannot take any coercive action against the buying institution even if they insist bank rates as the same are neither FPBAI’s member nor bound by its circulars. Thus, fixation of such rates appears to be in the interest of a small group of importer booksellers while impacting the larger strata of booksellers. The plea taken by the FPBAI of it being a legacy practice cannot absolve them from the liability of indulging in anticompetitive practices. Despite grievances, FPBAI remained oblivious to the difficulties faced by majority of the bookseller members in this regard. Also, the investigation did not find the circulars issued prior to March 2022 as *suggestive* in nature and mention of this term on the circulars post March 2022 *i.e.* post initiation of the present matter, by FPBAI, appears to be an afterthought.
31. The Commission also takes note of the emails pertaining to November 2022 provided by the Informant in its response to the investigation report wherein various booksellers can be seen insisting on GOC conversion rates despite being informed by the buying agency that GOC rates are suggestive and not mandatory. Same are produced below for ease of reference:



E-mails shared between Print Publications and Scientific International on 07-08 November, 2022

**From:** Scientific International <info@siplind.com>  
**Sent:** 07 November 2022 15:59  
**To:** 'GANGA RAWAT'  
**Subject:** RE: Conversion rates difference

Sorry, we follow GOC Rate.



**Scientific International Pvt. Ltd.**  
4850/24, Ansari Road, Daryaganj, New Delhi-110002  
91-11-23287580, 91-11-23287584-, 91-11-43512984  
Fax: 91-11-23286096  
Email: [info@siplind.com](mailto:info@siplind.com),  
Website: [www.siplind.com](http://www.siplind.com)

Our bank Details are given below.

**Scientific International Private Limited**  
Account No. 19541132000300  
Punjab National Bank  
IFSC Code: PUNB0195410  
Banshankari Branch  
Bangalore 560 070

**From:** GANGA RAWAT <info@printpublications.com>  
**Sent:** 07/11/2022 3:32 PM  
**To:** info@siplind.com  
**Cc:** 'GANGA' <info@printpublications.com>; 'Pranav Gupta' <pranav@printpublications.com>  
**Subject:** Conversion rates difference

Dear Sir,

Please find enclosed the proforma Invoice (SI/891/2022-23 ) raised by Scientific International (Pvt) Ltd to us by today for an amount of Rs. 16322.00.

We understand that these titles are priced in USD/GBP and have been converted by a conversion rate of 85.60/96.90 which seems to be the GOC rate issued by the Federation of Publishers and Booksellers Associations in India. Please note the rates mentioned by the GOC circular are suggestive and not mandatory, the circular is enclosed here for your reference.



E-mails shared between Print Publications and Best Medical on 10-11 November, 2022

**From:** bestmedicalbooks distributor <bestmedicalbooksdistributor@gmail.com>  
**Sent:** 11 November 2022 09:20  
**To:** GANGA RAWAT  
**Cc:** Pranav Gupta; bestmedicalbooks distributor  
**Subject:** Re: GOC Conversion

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Madam,  
It is not possible to provide a bank rate but we will increase 1% discounts for you on all the titles.

Thanks & Regards

Nectu

On Thu, Nov 10, 2022 at 3:40 PM GANGA RAWAT <[info@printspublications.com](mailto:info@printspublications.com)> wrote:

Dear Sir,

Please find enclosed the Proforma Invoice raised by Best Medical Distributors to us dated 09.11.2022.

We understand that these titles are priced in USD and have been converted by a conversion rate of 85.60 which seems to be the GOC rate issued by the Federation of Publishers and Booksellers Associations in India. Please note the rates mentioned by the GOC circular are suggestive and not mandatory, the circular is enclosed here for your reference.

The current bank rate by the reserve bank of India at the moment is Rs. 82/- I am enclosing the screen shot from the website of the RBI.

Please understand that the customers who work with us deals with us on the current bank rates. Therefore, I would request you to please amend in your Proforma Invoice with current bank rate and send to us.

Thanks & Regards,

Ganga Rawat



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E-mails shared between Print Publications and Viva group on 7-8 November, 2022

**From:** Manju.IN <manju@vivagroupindia.in>  
**Sent:** 08 November 2022 14:57  
**To:** GANGA RAWAT  
**Cc:** 'Sujit Dey .In'  
**Subject:** Re: Conversion rates difference

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ganga,  
Sorry we bill on GOC rates only.  
Regards  
Manju

**From:** GANGA RAWAT  
**Sent:** Tuesday, November 08, 2022 2:52 PM  
**To:** 'Manju.IN'  
**Cc:** 'Sujit Dey .In'  
**Subject:** RE: Conversion rates difference

Dear Manju Ma'am,

As discussed over the phone yesterday, we are waiting for your reply on the below:

With Regards  
Ganga Rawat

**From:** GANGA RAWAT [mailto:info@printspublications.com]  
**Sent:** 07 November 2022 15:32  
**To:** 'Sujit Dey .In' <sujit@vivagroupindia.in>  
**Cc:** 'Manju.IN' <manju@vivagroupindia.in>  
**Subject:** FW: Conversion rates difference

**From:** GANGA RAWAT [mailto:info@printspublications.com]  
**Sent:** 07 November 2022 15:26  
**To:** 'Sujit Dey .In' <sujit@vivagroupindia.in>  
**Cc:** 'Manju.IN' <manju@vivagroupindia.in>; 'Pranav Gupta' <pranav@printspublications.com>  
**Subject:** Conversion rates difference

Dear Sir,

Please find enclosed the proforma Invoice (SQVB-30-22-22-00200 ) raised by Viva Books Private Limited to us by today for an amount of Rs. 21037.08.

We understand that these titles are priced in USD/GBP and have been converted by a conversion rate of 85.60/96.90 which seems to be the GOC rate issued by the Federation of Publishers and Booksellers Associations in India. Please

1

32. Further, from the statement of Shri. Jugal Dedhia, Secretary, Bombay Booksellers and Publishers Association and member of FPBAI, DG has noted that it is mandatory to use GOC conversion rates for imported books and in case anyone does not follow GOC rate for conversion, his membership can get cancelled.
33. FPBAI has argued that fixation of GOC conversion rates does not amount to determination of price and GOC conversion rates constitute an insignificant proportion



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of the overall price of a book/ journal. In this regard, the Commission notes that fixation of exchange rates of currency have a direct bearing on the price as higher GOC conversion rate means higher final price to be paid by the buyer. For instance, a book with the price 100 GBP, with GOC conversion rate of 1 GBP = INR 104, will cost INR 10,400 to the consumer, while with bank conversion rate of 1 GBP = INR 101, the same book will cost INR 10,100 to the consumer. As can be seen, the quantum of impact of GOC conversion rate is also directly proportional to the book value; higher the book price, larger the impact of GOC conversion rate will be. Therefore, the Commission does not find any substance in the plea taken by FPBAI that fixation of GOC conversion rate does not amount to price fixation and it constitutes an insignificant proportion of the price of the book/ journal.

34. From the responses received to the investigation report, the Commission also takes note of the series of incidents that took place during 24.07.2023 to 02.08.2023 *i.e.* after sharing of investigation report with the parties, with respect to publication of such conversion rates. FPBAI *firstly* decided in its 5<sup>th</sup> Executive Committee Meeting ('ECM') with majority opinion that *no GOC rates will be announced or published henceforth now most of the libraries/ institutions are buying books and journals on Bank rates* through a communication dated 24.07.2023. However, purportedly, after facing backlash from some booksellers/ subscription agents, FPBAI, through another notice dated 29.07.2023, called for an Extraordinary General Meeting on 01.08.2023 to discuss the issue at length, wherein it unanimously decided to withdraw the earlier communication dated 24.07.2024 thereby deciding to continue to announce and circulate GOC conversion rates. Thereafter, it issued a communication dated 02.08.2023 withdrawing its earlier communication dated 24.07.2023 thereby reinstating GOC and continuing to publish GOC conversion rates in the larger interest of book trade. *Vide* communication dated 02.08.2023, it was also decided by FPBAI to obtain the wider perspective of all the members of FPBAI from all over India regarding continuation of GOC rates and accordingly, it issued a communication dated 08.08.2023, circulating a survey form to its members seeking their opinion regarding continuation or discontinuation of GOC conversion rates. However, the outcome of this exercise is unknown.



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35. Meanwhile, DSBPA, one of the regional bookseller associations affiliated with FPBAI, had also issued instruction *vide* e-mail dated 31.07.2023 to follow the rates followed by Indian customs, to bring in uniformity of billing rates for foreign currency. However, it withdrew the same *vide* e-mail dated 04.08.2023 post GOC communication dated 02.08.2023.
36. It may be noted that such conduct of FPBAI, after completion of investigation in the present matter, does not mitigate its guilt and as such, the above chronology of events presented may not be of much relevance and consequence.
37. During the course of oral hearing, FPBAI also presented before the Commission certain additional evidence in the form of copies of four bills pertaining to June 2024, July 2024, August 2024 and November 2024 depicting sale of books by DBS Prints and Publication purportedly to the Informant at bank rates with 50-60 percent discount, approximately, to demonstrate that GOC rates are not mandatory but recommendatory in nature.
38. The Informant objected to the same stating that such additional evidence is being produced by FPBAI at the time of final hearing despite it being in possession of FPBAI even prior to the date of hearing. It was further agitated by the Informant that copies of invoices were handed over during the hearing and were not given on affidavit raising doubts on admissibility of the same. Furthermore, the Informant also indicated misrepresentation on the part of FPBAI that the discount offered by seller (*i.e.* DBS Prints and Publication) was not 60 percent as stated by FPBAI but 60 percent in case of bank rates and 65 percent in case of GOC rates. The Informant asserted that higher discount on GOC rates is offered in order to create natural preference for adherence/ adoption of GOC rates instead of bank rates. Lastly, the Informant stated that merely allowing the Informant to reply to additional evidence by way of written submissions without supplementing the same with oral arguments, will be in violation of the principles of natural justice.
39. In this regard, the Commission *firstly* notes that FPBAI did file such additional evidence on affidavit along with its post hearing submissions which dispels the concern of the Informant regarding credibility of such additional evidence. Further, upon conclusion of the hearing, the Commission had given liberty/ opportunity to the Informant to include its submissions with respect to additional evidence within its post



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hearing submissions, which opportunity the Informant has duly availed. The settled principles of natural justice require fair chance of presenting one's case, to respond to accusations, and defend one's interest before a decision is taken affecting one's interest. Nonetheless, as the copies of bills produced by FPBAI demonstrating supply of imported books at bank rates to the Informant pertain to 2024 *i.e.* post conclusion of investigation in the present matter, the same may again, not be of much consequence.

40. In view of the foregoing, the Commission finds publication of conversion rates for ten (10) currencies by GOC higher than usual bank/ RBI rates, to be followed by its member booksellers/ publishers which constitute the bulk of all booksellers/ publishers in the industry, amounting to price fixation, in contravention of the provisions of Section 3(1) read with Section 3(3)(a) of the Act.

**Issue 2: Declaration of discounts to be offered by member booksellers/ publishers, by GOC, post February 2021**

41. In this regard, at the outset, it is noted that the Commission, *vide* order dated 23.02.2021 passed in Case No. 33 of 2019 (*supra*), had found discount control by FPBAI, anti-competitive in violation of the provisions of Section 3(3)(a) read with Section 3(1) of the Act, and had directed FPBAI to cease and desist from indulging in such anti-competitive conduct.
42. Nonetheless, similar allegations of continuing controlling discount by FPBAI were levelled by the Informant in the instant matter. Accordingly, the Commission, at the time of referring the instant matter to the DG for investigation, perused the GOC circulars for the months of November 2021 and December 2021 from the website of FPBAI, and *prima facie* noted FPBAI to be continued to be engaged in controlling of discounts. Para 23 of the order dated 23.12.2021 passed by the Commission in the present matter (***prima facie order***) is produced below for reference:

*“23. However, from the website of FPBAI, it is gathered that, in the two latest circulars of GOC, viz., (i) circular dated 01.11.2021, which contains “Terms of Supplies to Libraries and Institutions by Booksellers, as decided in Meeting No. 262/2021” and (ii) circular dated 01.12.2021 containing “Terms of Supplies to Libraries and Institutions by Booksellers, as decided in Meeting No. 263/2021”, discounts were again fixed by FPBAI. Relevant paragraphs of the said terms of supply are as follows:*



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## **“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 or the library supplier is expected to work on a margin of 15% on net landed cost. The invoice is to be prepared on the following terms:*

*Published price minus (-) discount earned plus (+) 15% handling charges plus (+) actual freight, clearance, bank and postal charges, Documentary evidence to be submitted by the supplier to the library on demand.*

### **TERMS OF SUPPLY: JOURNALS**

#### **1. No Discount**

#### **2. Conversion rates as per latest GOC Circular ...”**

*As is evident from the above, FPBAI has failed to comply with the order passed by the Commission in Case No. 33 of 2019 (supra) and continues to engage in the practice of fixing of discounts for its members post February 2021 also.”*

43. However, during investigation, the DG found that neither the physical copies of GOC circulars published and circulated by FPBAI to its members nor the GOC circulars published on the website of FPBAI included the discount clause after February 2021. FPBAI stated November 2021 and December 2021 circulars extracted in the *prima facie* order to be forged/ sham.
44. In this regard, the Informant submitted that it filed the Information in July 2021 and it was not the Informant who submitted the aforesaid circulars accessed by the Commission at the *prima facie* stage. As per the Informant, FPBAI failed to explain how the said circulars were earlier available on its website as accessed by the Commission and subsequently removed therefrom.
45. The Commission is of the view that this aspect has not been examined by the DG as part of its investigation and as such, no finding on whether FPBAI had a role in



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removing the aforesaid circulars containing terms regarding discount control from its website, can be given by the Commission at this stage.

46. Nonetheless, the investigation has found that website of DSBPA and standardsmedia.com published discounts in GOC circulars uploaded on their websites. In this regard, Shri Himanshu Chawla, President, DSBPA, clarified that GOC circulars were not updated on DSBPA websites as per the latest versions circulated by FPBAI, and hence, inadvertently mentioned discount rates. Shri Kartik Raj Kushwaha, Director, Infotech Standards India Pvt. Ltd. and Vice-President of DSBPA, owning website www.standardsmedia.com, also stated that he did not update the other written material apart from conversion rates in GOC circulars uploaded on its website. The DG found that FPBAI has not made a public declaration that discount control policy is no more applicable despite the Commission having issued a cease-and-desist order in this regard in Case No. 33 of 2019 (*supra*). The DG has found such conduct of FPBAI to be in contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act as well as amounting to non-compliance of the order of Commission.
47. FPBAI has however, contended that the DG has fixed liability on it for anti-competitive conduct based on conduct of third-parties. In this regard, the Informant has asserted that DSBPA and Infotech Standards Media Pvt. Ltd. are not third-parties, rather the former is its state-level member association while the latter is an entity run by Shri Kartik Raj Khushwaha who held the position of Vice-President of DSBPA.
48. The Commission notes that in case of delay in receiving physical GOC circulars, the booksellers across the industry access websites for immediate use. It cannot be argued that the website of DSBPA and Infotech Standards Media were not monitored by FPBAI, neither can FPBAI be allowed to feign ignorance of existence of its erstwhile circulars which continued to display discount control terms on such websites. Therefore, with regard to the contention of FPBAI that it cannot be held responsible for not taking appropriate steps to get removed discount circulars displayed on various third-party websites, the Commission is of the view that being the apex association, the conduct of FPBAI has a significant bearing on more than 4000 members and overall book publishing industry. Thus, FPBAI cannot escape the duty it embodies for circulation on its behalf, of incorrect directions, by its own member association(s). FPBAI office-bearers are well aware of usage of websites for accessing GOC circulars



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by members at large in case of urgent need/ delay in receipt of physical copies *etc.* and thus, the impact which would be caused by circulation of its old circulars on its members' websites.

49. Further, the Commission notes the reliance placed by the DG on the minutes dated 16.03.2021 of the 2<sup>nd</sup> ECM held on 12.03.2021 wherein FPBAI, at agenda item 12, discussed the order dated 23.02.2021 passed by the Commission in Case No. 33 of 2019 (*supra*). It is noted that on one hand, FPBAI has contended that it even discussed the summons issued by the DG in the present matter because it had the responsibility to inform its members about ongoing litigations against it, but on the other hand, it did not take steps to inform its members about the verdict of the Commission regarding its anti-competitive conduct. The Informant has also mentioned that FPBAI though discussed the aforesaid order in the 2<sup>nd</sup> ECM which was attended by its office-bearers and executive committee members, but it chose not to mention/ update/ circulate the Commission's direction of non-continuation of any policy to fix/ control discount to the members. The relevant excerpts of the minutes of the said meeting are as under:

*“Agenda item 12: To inform about the CCI's final order.*

*The president informed the house that on the complained lodge by one of our members to Competition Commission of India (CCI), New Delhi; 20.11.2019 pertaining to GOC matter, a final order dated 23.02.2021 has been passed by the CCI. The president informed that chairman GOC, Mr S.C. Sethi is out of station; hence requested Shri Sunil Sachdev to brief the house in this regard.*

*Shri Sunil Sachdev said that it is very unfortunate that one of our members wrote to us that M/s. International Subscription Agency, Lucknow has violated the term of the tender as prescribed by GOC and is giving discount to parties disproportionately. On August 5, 2019, Chairman-GOC sent them a letter to clarify whether they have given discount to the party or not? However, instead of communicating with GOC, M/s. International Subscription Agency, lodged a complaint against GOC before CCI thereby, making myself and Chairman GOC party to the case matter. On January 02 2020, myself and chairman GOC appeared before the Commission. Whereas on February 23, 2021, the Commission in its order handed out a fine of Rs. 1 lakh each on Chairman GOC and Chairman- Subscriptions and Periodicals Subscription Committee and Rs 2 lakh on federation. I feel it necessary to clarify that there is a cut throat competition in our books/ journals industry and by giving excessive discount means*



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*that the suppliers will have to suffer resulting in of non-profitability or zero profitability.”*

50. The Commission notes that FPBAI merely informed its members about the order passed by the Commission in Case No. 33 of 2019 (*supra*) in its 2<sup>nd</sup> ECM, but it did not discuss in detail the nature of its conduct which was held anti-competitive by the Commission. Moreover, an office-bearer of FPBAI can be seen justifying the discount control policy. The Commission also took note of the plea of FPBAI that there was no specific direction given in the Commission’s order to give wide publicity to the final order passed in Case No. 33 of 2019 (*supra*). In this regard, the Commission is of the view that pursuant to issuance of its decision finding certain conduct to be anti-competitive, it is upon the wisdom of the contravening party to determine the manner in which the order of the Commission has to be implemented in letter and spirit. It is upon the party to devise a mechanism to apprise its members about the mode/ manner of complying with the mandate. Failure of FPBAI to give wide publicity to the directions contained in the said order amongst its members defeated the very objective of the direction of ‘cease and desist’ from controlling discounts.
51. The presence of such erstwhile circulars in the public domain which were followed by its members meticulously, even post Commission’s decision in Case No. 33 of 2019 (*supra*), indicates lackadaisical attitude on part of FPBAI. However, given the ambiguity perceived by FPBAI in terms of the course of action to be followed in pursuance of the order dated 23.02.2021 passed in Case No. 33 of 2019 (*supra*), the Commission refrains from initiating proceedings under Section 42 of the Act against FPBAI. Instead, the Commission now specifically directs FPBAI to spread awareness about the conduct held as anti-competitive by the Commission in its earlier order dated 23.02.2021 as well as the present order amongst its members including its regional associations and submit a compliance report in this regard before the Commission within a period of two (02) months from receipt of the present order. However, no contravention on this count is being held by the Commission.

**Issue 3: Issuing terms and conditions with respect to credit period, interest rate and verification of prices**

52. It has been stated by the Informant that GOC of FPBAI issues monthly circulars with specific terms of supply, which include commercial terms like price, credit period and



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interest rates, which its members must mandatorily follow while supplying books, journals and e-resources to libraries, schools and other consumers. The Informant has alleged that stipulating such commercial terms and conditions through such circulars creates entry barriers for new companies to enter the publishing and bookselling market.

53. During investigation, the DG examined the GOC circulars issued during February 2021 to August 2021 by FPBAI and found that such circulars do contain terms and conditions relating to credit period, interest rate, verification of prices, *etc.*, though most of the office-bearers have stated such terms to again be suggestive in nature and not mandatory. The office-bearers of FPBAI *viz.* Shri Pradeep Arora, Shri S.C. Sethi and Shri Prashant Jain, have also stated that GOC does declare terms of supply of books such as credit period to be given, interest rates to be charged in case of default, and that clause suggesting that prices should not be verified from supplier site is introduced to safeguard the interest of libraries as well as publishers.
54. The Commission notes that FPBAI has not denied publishing of terms and conditions relating to credit period, interest rate, verification of prices, *etc.* in GOC circulars issued by it. As per FPBAI, the core mandate of GOC is to ensure uniform terms of supply for libraries, fair working margin for booksellers, and to provide proper and efficient services to libraries. In furtherance of its objectives, GOC publishes certain terms of supply for books, relating to various issues such as payments, interest on delayed payments and price verification in its circulars, which are merely suggestive and not mandatory. FPBAI asserted that terms of supply are, in fact, dictated by buyers *i.e.* libraries and institutions, who are not members of FPBAI, and members are free to follow whatever terms of supply they deem fit. Further, FPBAI asserted that these terms and conditions serve as a guide to its members in their negotiations with the libraries and institutions and also assist new members having no bargaining power. Therefore, the same are akin to functions discharged by other trade associations.
55. In this regard, the Commission, at the outset, looks at the terms and conditions contained in the GOC circulars, alleged to be anti-competitive, which are as follows:

*“(i) “Books on approval should be finalized/returned within 30 days. The payment for the books approved should be made within 60 days of the receipt of the bill. The bill is to be raised by the supplier at the*



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*conversion rate prevailing on the date when the books are finally invoiced against order or procured from abroad.*

*(ii) Payment of outstation suppliers should preferably be made through RTGS NEFT or Bank Drafts, after deducting bank charges. Moreover, the supply of books is strictly subject to the payment made to the supplier by the customer after getting the material within 90 days from the date of receipt. Whereas, in the absence of payment made within 90 days, the supplier shall have the right to charge interest as per the prevalent bank rates from the customer on the outstanding net amount. Whereas, the interest amount shall have to be paid by the customer to the supplier alongwith the principal amount to be paid to the supplier. Terms are suggestive not mandatory.*

*(iii) The Supplier shall append the following declaration on the bills:-*

*(a) Only latest editions have supplied and these are not remainder titles.*

*(b) Income Tax Permanent Account No. (PAN) of supplier to be provided.*

*(c) The prices have been correctly charged in accordance with the Publisher's/Importer's Invoices and Publishers' catalogues.*

*(d) As far as the price verification of books is concerned it should be "only from the publisher's catalogue", "original invoice of the publishers" or "publisher's website". Price verification should not be done from the supplier site.*

56. The Commission observes that the spirit conveyed by the aforesaid terms and conditions does not appear to be recommendatory. These terms and conditions appear to cast an obligation on the suppliers to necessarily provide for 60-days or 90-days credit period for making payments, provide for payment of interest beyond stipulated time, and also stipulate a declaration from the supplier, details of PAN *etc.* to be included in the bills.

57. The Commission observes that stipulation and circulation of these terms and conditions every month in GOC circulars have reinforced and integrated these into the industry practice over the years leaving little or no room for negotiations or innovation. It is an admitted position that FPBAI is an apex level association of publishers, booksellers and subscription agents having various affiliated state and regional associations and membership of over 4000 booksellers, publishers and subscription agents spread across the country. Its circulars, though claimed to be suggestive and recommendatory in



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nature, have got wide circulation as well as acceptance. A new entrant bookseller may not be able to give such long credit period or the buying institution may require an early delivery or payment on a staggered basis *etc.* As such, stipulation of these commercial terms, in a way, has the potential of taking away the commercial wisdom/ liberty of the parties to a transaction *i.e.* member bookseller and the purchasing institution, as commercial terms need to be negotiated/ decided by the parties to the transaction themselves and need not be superimposed by an industry association.

58. In light of the long-existing established practice of terms and conditions, the members of FPBAI have no/ little incentive to deviate. Accordingly, the Commission finds the act of prescribing such terms and conditions by FPBAI in GOC circulars which are not only circulated to all its members, member state associations, but also followed by book industry in general, having the effect of limiting or controlling the market for book trade, in contravention of the provisions of Section 3(1) read with Section 3(3)(b) of the Act.
59. With regard to the assertion of FPBAI of the Commission not finding any illegality in the terms of supply in Case No. 33 of 2019 (*supra*), the Commission makes it clear that the issue for determination in that matter was limited to *restriction on quantum of discounts that may be offered by its members and issue of advisories to members to refrain from participation in advertisements which have conditions not in accord with the conditions expected by FPBAI*. A party can be investigated more than once in case the nature of conduct varies. The Commission hence, dismisses such objection of FPBAI being devoid of merit.

**Issue 4: Issuing Advisories/ Appeals to libraries, booksellers and/ or institutions to not deal with members of FPBAI**

60. The Informant has alleged that issuance of Advisories/ Appeals by FPBAI to libraries and other institutions to purchase books only from its approved vendors, has the effect of foreclosing competition in the market. The newsletter of FPBAI for the months of November 2019 to January 2020 contained specific appeal to Vice Chancellors, Head of Institutions and librarians to purchase books only from registered members of GOC and FPBAI. Relevant extract of the newsletter is reproduced as follows:



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“APPEAL

Before VICE-CHANCELLORS,

HEADS OF INSTITUTES, LIBRARIANS

*... We therefore request you to kindly purchase the books/journals from the registered members of the GOC and FPBAI, in the best interest of fair and safe dealings ... You are advised to purchase the books/journals from our approved vendors only so that in the event of any deficient service, you may seek our help in addressing your problem.*”

61. On the other hand, FPBAI has stated that such advisories/ appeals are no longer issued but were issued earlier so that intervention of FPBAI may be sought by the procurer, in case of deficiency in service by the bookseller/ publisher.
62. In this regard, the Commission, at the outset, notes that the aforesaid appeal/ advisory has been issued by FPBAI prior to the final order dated 23.02.2021 passed in Case No. 33 of 2019 (*supra*). However, the same was not examined in that case but rather the issue examined in that matter was appeals/ advisories issued by FPBAI to its members to not participate in certain procurement advertisements having conditions not in consonance with that of FPBAI and also entailed penal action to be inflicted on members for defying such appeals/ advisories.
63. The Commission takes note of the submission of FPBAI that it has stopped issuing even such appeals/ advisories (as extracted above) post February 2021 which is also corroborated by the DG’s findings as well as the statement of various individuals recorded during investigation. However, since the instant appeals/ advisories being examined in the present matter are different than those examined and condemned in Case No. 33 of 2019 (*supra*), the Commission finds merit in the contention of FPBAI that it was under no obligation to withdraw the aforesaid appeal post Commission’s order in Case No. 33 of 2019.
64. The investigation has found that nonetheless, most of the libraries and institutions insisting upon membership of national/ state level book association as one of the mandatory conditions to be eligible for participation in the tenders/ procurement process. FPBAI has argued that it has no role in the conduct of the libraries or the institutions’ insistence on membership of national or state level association for taking part in the tender/ procurement process. The Commission however, notes that though



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FPBAI may not have issued any new appeal to the libraries or institutions, it has not also withdrawn the advisories issued earlier as extracted above, and as such, the insistence on membership by procuring institutions could be attributed to these appeals which are in force even till date. The Commission is hence, not inclined to accept the plea of FPBAI that it has no role in reinforcing dealings with its members only. This is corroborated by the finding of the DG based on examination of GOC circulars for the period January 2021 to August 2022 that FPBAI used to provide a list of *Approved Suppliers of Journals/ Subscription Agents* with their GOC circulars. During investigation, the office bearers of FPBAI viz. Shri Pradeep Arora, Shri S.C. Sethi and Shri Prashant Jain have stated that it is convenient for the libraries to contact and purchase journals from the list of approved vendors circulated in GOC circulars which act as assurance of no default and they will be safeguarded from any malpractice by the members; and in case of default, appropriate remedy will be provided by FPBAI. On the other hand, FPBAI, in its written submissions, has stated that list of approved suppliers included in GOC circulars merely records membership and does not interfere with the choice of the buyers; and circulation of such list cannot be equated to issuing appeals.

65. In this regard, the Commission finds it difficult to agree with the contention of FPBAI that the list circulated has no role to play in the choice of the libraries/ procuring institutions. Given the presence of earlier advisories, coupled with circulation of approved vendor list from time to time, has the effect of communicating to the buyers to purchase from the list of approved vendors only thereby interfering with the independent choice of buyers. Had only the approved vendor list been circulated without any such appeal/ advisory been in place, the contention of FPBAI may have some footing. However, presence of an appeal/ advisory asking procurer to purchase only from FPBAI or other national/ regional booksellers' association's members and circulating a list of approved members subsequently, has the effect of sending an indirect message and such conduct of FPBAI distorts the level playing field and tilts it in the favour of the approved vendors/ members of FPBAI by foreclosing participation of non-members. The Commission therefore, finds such conduct to be in contravention of the provisions of Section 3(1) read with Section 3(3)(b) of the Act.

### AAEC



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66. FPBAI has also argued that its alleged anti-competitive practices of (i) fixation of exchange conversion rates, (ii) prescribing terms and conditions for supply, and (iii) circulation of approved vendor list in furtherance of existing appeals requesting procurers to buy from approved vendors only, do not cause any AAEC in India and as such, cannot be held violative of the provisions of Section 3 of the Act. As per FPBAI, legacy practice cannot be termed as agreement or decision taken by members, no proof of harm based on conversion rates can be seen, there has been no foreclosure in supply of books, no existing competitor has been driven out of the market, the nature of conversion rates and terms of supply are merely suggestive, proportion of conversion rates in overall price is insignificant, and there is absence of any coercive action for non-compliance. Therefore, any such alleged activity on part of FPBAI did not cause any AAEC in any market in India.
67. In this regard, the Commission notes that by virtue of the provisions contained in Section 3(3) of the Act, any practice or decision of a party, which directly or indirectly determines the sale or purchase price of any goods in India *viz.* books and journals in the present case, or limits or controls supply in the market by stipulating terms of supply or creating barriers to new entrants by facilitating dealings with members only, are presumed to have an AAEC in India. Undoubtedly, such presumption of AAEC, is rebuttable in nature and the parties are at liberty to adduce evidence to rebut the said presumption of law. However, the burden of rebutting such presumption lies upon the allegedly contravening party.
68. Within this legal backdrop, the arguments of FPBAI regarding its alleged practices having no AAEC and as such, being non-violative of the provisions of Section 3(3) of the Act, shall now be examined.
69. The Commission notes that as per its own website, FPBAI *was at first registered under the Companies Act, 1955 and then later registered as a Society under the Societies Act in 1969-1970.* FPBAI is also stated to be the *largest representative body of the Indian Book Industry and has a membership of around 930 establishments spread all over the country and works in close cooperation with several Associations of publishers and booksellers in different states, affiliated to it.* Also, seven regional/ state associations are stated to be affiliated with FPBAI. Given long standing and wide spread market presence of FPBAI, the practices of FPBAI are deeply imbibed in the industry. Thus,



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any direction contained in the monthly circulars of FPBAI relating to conversion rates, terms of supply, or approved member list, has wide and strong impact on the book industry in India.

70. As per the information available in public domain and also asserted by the Informant, book publishing industry is estimated at more than 500 billion in 2019 with growth potential of INR 800 billion by 2024. As per the Informant, import of books in 2015 was INR 3.7 billion, growing at the rate of 19%, estimated to be INR 10.6 billion by 2021. This has not been controverted by FPBAI. Further, it is also an admitted fact in FPBAI minutes of meetings that only 10% of its members are engaged in import of books and journals into India.
71. The Commission hence, is of the considered view that fixation of conversion rates imposed upon the rest of members of the book industry has resulted in higher prices to the end consumers where such rates were accepted by the procuring libraries/institutions. Needless to mention that non-acceptance of GOC rates by the procuring institutions resulted in gains to the importer booksellers at the cost of the remaining bookseller members. Therefore, either ways, one community or the other had to face the brunt. Moreover, circulation of approved vendor lists along with the monthly circulars coupled with non-withdrawal of earlier advisory (pertaining to deal with members only) has the potential to foreclose opportunity for non-member booksellers, thereby distorting level playing field, thus resulting in entry barriers for new entrants as well as the risk of driving existing competitors out of the market.
72. In view of the foregoing, 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 conduct relating to fixation of conversion rates, stipulating terms of supply, circulation of list of approved members along with monthly circulars, 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.
73. Therefore, the Commission finds FPBAI guilty of contravention of the provisions of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act.



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### **Liability under Section 48**

74. Now that contravention of the provisions of the Act on part of FPBAI stands established, the Commission proceeds to determine the liability of the individuals of FPBAI, if any, in terms of the provisions of Section 48 of the Act, for the anti-competitive conduct of FPBAI.
75. In this regard, it is noted that the DG has found the former and present Presidents of FPBAI/ Chairman of GOC and Secretary of FPBAI viz. Shri Pradeep Arora, Shri S.C. Sethi and Shri Prashant Jain respectively, liable for the anti-competitive conduct of FPBAI, in terms of Section 48 of the Act.
76. The Commission notes from the evidence available on record that the GOC conversion rates were fixed by GOC, GOC circulars containing the conversion rates, terms of supply for books and journals *etc.* and minutes of meetings of GOC as well as Executive Committee were signed by the Chairman, GOC and Secretary, FPBAI. FPBAI has argued that the practices examined in the instant matter are legacy practices and implementation of such practices was a result of joint decision making by President, Executive Committee and office-bearers of FPBAI. It is further stated that Shri S.C. Sethi and Shri Pradeep Arora are both senior citizens and imposition of penalty upon them may tarnish their reputation.
77. The Commission however, is not convinced by such submissions advanced by FPBAI. It has been deposed by office-bearers of FPBAI itself Shri Pradeep Arora and Shri Prashant Jain that GOC circulars are not presented before the Executive Committee of FPBAI for approval in normal course. Further, Shri Pradeep Arora, being President of FPBAI, also cannot escape liability under Section 48(1) of the Act. Various provisions under the Articles of Association ('AOA') of FPBAI provides specific rights to the President, such as, Article 32 empowers the President to call for Extraordinary General Meeting whenever he thinks fit; Article 39 provides that the President shall preside as the Chairman of every General Meeting; Article 15(1) makes the President part of the Executive Committee; and Article 15(2) empowers him to appoint members of the Executive Committee in consultation with the elected officers. Moreover, Shri Pradeep Arora has failed to demonstrate that the anti-competitive conduct established was



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committed without his knowledge or that he exercised due diligence to prevent commission of such contravention. In the event of anything contrary to this, the Commission notes that President and Secretary of FPBAI and Chairman GOC had active role and participation in formulating as well as enforcing the anti-competitive practices carried on by FPBAI. As such, in the opinion of the Commission, Shri Pradeep Arora, Shri S.C. Sethi and Shri Prashant Jain, are liable for the anti-competitive conduct of FPBAI, in terms of the provisions of Section 48 of the Act, as has been concluded by the DG as well.

### **Conclusion:**

78. 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.
79. Further, the Commission holds the following individuals of FPBAI liable for its anti-competitive conduct, under Section 48 of the Act:

S. No.	Person	Designation
1	Shri Pradeep Arora	President of FPBAI in 2020-21 and 2021-22
2	Shri S.C. Sethi	President of FPBAI in 2019-20 and President and Chairman of GOC in 2020-21 and 2021-22
3	Shri. Prashant Jain	Hony. Secretary, FPBAI in 2020-21 and 2021-22

### **Penalty:**

80. In terms of the provisions contained in Section 27(b) of the Act, the Commission is empowered to impose upon contravening parties, appropriate penalties.
81. FPBAI has submitted with regard to penalty that: (i) FPBAI and its office bearers has extended full cooperation throughout the investigation, (ii) the office bearers are respected members of society and honorary members of FPBAI and imposition of penalty may result in tarnishing their reputation; (iii) to consider relevant turnover of FPBAI in line with the Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024 ('**Penalty Guidelines 2024**') and the principles laid down by the Hon'ble Supreme Court in *Excel Crop Care* (supra).
82. With regard to the quantum of penalty, the Commission notes that FPBAI contended to consider relevant turnover in terms of the Penalty Guidelines 2024 and Apex Court decision in *Excel Crop Care* matter. From the financial statements submitted by FPBAI before the Commission, it is noted that FPBAI earns revenue from the subscription fee



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paid by its members which forms a major part of its income and it is upon these members that the anti-competitive decisions are made applicable. Besides member subscriptions, GOC receipts, News-letter and directory sale/ advertisements etc. also contribute to its revenue from operations. In terms of the Competition Commission of India (Determination of Turnover or Income) Regulations 2024 (**‘Turnover Regulations, 2024’**), turnover includes value of sales and other operating revenue. Therefore, the Commission considered the revenue from operations as per the financial documents submitted by FPBAI, excluding the miscellaneous income like bank interest, interest on FD and donations, for the purpose of imposition of penalty.

83. With regard to the argument of FPBAI that contravention, if any, was inadvertent in nature, the Commission notes that the FPBAI cannot feign ignorance of Competition Law as it has once been penalised in Case No. 33 of 2019 (*supra*) by the Commission.
84. Keeping in view the above facts and circumstances of the present case and the repetitive anticompetitive conduct of FPBAI, the Commission decides to impose upon FPBAI, penalty to the tune of ₹2,56,649/- (Rupees Two Lakh Fifty-Six Thousand Six Hundred and Forty-Nine Only), in terms of Section 27 (b) of the Act.
85. Further, with regard to imposition of penalty on the individuals, *viz.* Shri Pradeep Arora, Shri Prashant Jain and Shri S.C. Sethi, it has been argued they are honorary members and earn no income from FPBAI. Shri S.C. Sethi and Shri Pradeep Arora are both senior citizens and imposition of penalty may tarnish their reputation.
86. In this regard, the Commission notes that the conduct of the individuals have been adequately discussed in preceding paras and need not be deliberated again here for the sake of brevity. In terms of the Turnover Regulations, 2024 and Penalty Guidelines 2024, the gross total income of these individuals as per the ITR filed has been considered excluding income from house property and capital gains. The Commission considered that Shri Pradeep Arora and Shri Prashant Jain have been found in contravention of the provisions of the Act for the first time and for 2 years only unlike Shri S.C. Sethi who has been earlier also found to be in contravention of the provisions of the Act and has now been found to be in contravention for a period of 3 years. Hence, the Commission observed that there is no mitigating factor in respect of Shri S.C. Sethi. Given the facts and circumstances of the present case and the mitigating factors, the Commission decides to impose upon Shri S.C. Sethi, Shri Pradeep Arora,



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and Shri Prashant Jain penalty to the tune of ₹1,76,305/- (Rupees One Lakh Seventy-Six Thousand Three Hundred and Five Only), ₹1,00,000/- (Rupees One Lakh Only), and ₹1,00,000/- (Rupees One Lakh Only) respectively, in terms of Section 27 (b) of the Act.

87. Therefore, in terms of Section 27 of the Act, the Commission passes the following order.

### Order

88. FPBAI and its individuals, viz. Shri Pradeep Arora, Shri. S.C. Sethi and Shri Prashant Jain, 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.

89. Under the provisions of Section 27(b) of the Act, the Commission imposes upon FPBAI and its individuals viz. Shri Pradeep Arora, Shri. S.C. Sethi and Shri Prashant Jain, the following amounts of penalty:

(In INR)

S. No	Name of the Party	Penalty imposed	Penalty imposed in words
1	FPBAI	₹2,56,649/-	Rupees Two Lakh Fifty-Six Thousand Six Hundred and Forty-Nine Only
2	Shri Pradeep Arora	₹1,00,000/-	Rupees One Lakh Only
3	Shri S.C. Sethi	₹1,76,305/-	Rupees One Lakh Seventy-Six Thousand Three Hundred and Five Only
4	Shri Prashant Jain	₹1,00,000/-	Rupees One Lakh Only

90. In the past, the Commission had proscribed the anti-competitive practices of FPBAI pertaining to controlling of discounts and issuance of appeals/ advisories to prevent members from participating in tenders whose terms are not in line with that of FPBAI. The Commission notes that though FPBAI may have ceased and desisted from indulging in such conduct, it has not retracted its earlier circulars in this regard, nor brought the order of the Commission to the knowledge of its members in detail to enable them to take wiser decisions in future.

91. In the instant matter, the Commission has found the fixation of GOC conversion rates by FPBAI and stipulations of terms of supply by it to be anti-competitive. Further, the



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Commission has found that due to existence of earlier advisories/ appeals to procurers, the library and institutions insist on membership of FPBAI or its affiliated regional association for participation in tenders. In furtherance of the same, when FPBAI issues a list of its approved members, it signals the procurers to make purchases from such listed and approved members only.

92. The Commission further notes that the issue of discount capping emerged once again due to lack of awareness among the member associations of FPBAI. Therefore, the Commission is of the view that it is important for FPBAI to give wide publicity to the present order of the Commission and bring the same to the knowledge of various stakeholders in the book industry, specifically its members and its member associations.
93. The Commission is of the view that the FPBAI, being the apex trade association in the book industry in India, should play an active role in educating its members about principles of fair competition so as to avoid such conduct(s) which obstructs free and fair play of market forces, in future.
94. Accordingly, the Commission, in terms of Section 27(g) of the Act, directs FPBAI to:
  - a) circulate a copy of the present order to all its members, as well as to all its state/ regional associations and their members;
  - b) withdraw all earlier circulars/ appeals/ advisories mentioning currency conversion rates, discount control, specifying terms of supply, or requiring libraries and institutions to deal with members only, not only from its own website, but also websites of all other associations/ entities affiliated to it, as and when the same comes to its knowledge;
  - c) publish a brief summary of the present order as well as the order dated 23.02.2021 passed by the Commission in Case No. 33 of 2019 with specific focus on what conducts/ activities have been found anti-competitive, in its Annual Report for FY 2024-25;
  - d) upload as part of its upcoming circulars, the present order of the Commission describing specifically what activities have been found to be anti-competitive;
  - e) organize competition awareness and compliance programmes from time to time for all its state/ regional associations across India.



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95. FPBAI is directed to submit a compliance report on affidavit upon enforcement of the above directions of the Commission, within a period of 60 days from date of receipt of the present order.
96. The Commission also directs FPBAI and the above-stated persons to deposit their respective penalty amounts within a period of 60 days from the receipt of the present order.
97. The Secretary is directed to inform the Informant, FPBAI and the three (03) individuals, accordingly.

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

Sd/-  
**(Anil Agrawal)**  
**Member**

Sd/-  
**(Sweta Kakkad)**  
**Member**

Sd/-  
**(Deepak Anurag)**  
**Member**

**New Delhi**  
**Date: 01.07.2025**