

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

COMPETITION APPEAL (AT) NO.25 OF 2022

(Arising out of judgement/order dated 14.01.2022 passed by the Competition Commission of India, New Delhi in Cases No.9 of 2017 and 36 of 2017).

In the matter of:

People of Animals
Through its Trustee Gauri Maulekhi
4T DC Building
16 Barakhamba Road,
New Delhi-110001

Appellant

Vs

01 Competition Commission of India
Through its Secretary,
9th Floor, Office Block-1,
Kidwai Nagar (East)
New Delhi-110023

02.National Egg Coordination Committee,
Through its Chairperson,
MVL House, 16-A Gultekadi,
Near Nisarga Mangal Karyalaya,
Market Yard,
Pune 411037

03.Agrocorpex India Ltd,
Through its Director
3-5-823, IInd Floor,
Hyderabad Business Centre,
Hyderabad.

04.Anuradha Desai,
Venkateshwara House,
S.No. 114/A/2
Pune Sinhagad Road,
Vithlwadi,
Pune 411030

05.Gurram Chandrashekar Reddy,
APSB, 20/A, 16-2-835
Saidabad Colony,
Near Sri Ram Medical Shop,
Saidabad,

Hyderabad 500059

- 06.Ponnusamy Selvaraj,
31/10, Cooperative colony,
Gandhi Nagar,
Namakkal,
Tamil Nadu 637001
- 07.Parveen Garg,
H.No. 23,
Sector 2,
Panchkula 134112
- 08.M. Siva Ram Prasad,
#A-408, Sai Sri Pride Apartment 2 and 3,
Flower Garden Road,
Near Vinayaka Temple,
Babusapalya,
Bengaluru North,
Bengaluru,
Karnataka 560043
- 09.Moreshwar Bhagwant Desai,
Plot No.9, Bhakti Building,
Keluskar Road North,
Dadar West,
Mumbai 400028
- 10.Raj Kumar Jaipal
H.nO.1, Harvilas, Sharda Marg,
Civil Lines, ajmer,
Rajasthan 305001
- 11.Kutumba Rao T,
F.No.102, Venkat Heights,
Ashram road,
Patamata Lanka,
Vijawada,
Urban Krishna 520010
- 12.Godithi Gangadhara Rao,
4-42-15, TTD Kalyanamandapam Road,
7th Ward, P&T Colony,
Tadepalligudem, West Godavari,
Andhra Pradesh 534101
- 13.Karri Venkata Mukunda Reddy
2-1/1 RaManna Peta, Bikkavolu Mandeal
Komaripalem, East Godavari,

Andhra Pradesh 533346

14. Annapureddy Mohan Reddy,
16, sunrise Avenue, Akkarai,
East Coast Road,
Sholinganallur, Kanchipuram,
Tamil Nadu 600119
15. V Ramesh Babu
25-482/a, Sundar Nagar, Chittoor,
Andhra Pradesh 517001
16. Madan Mohan Maity,
Rabindra Nagar Ward No.-22.
Medinipur, Kotwali,
Paschim Medinipur 721101
17. B.R. Sainath,
312, 14th Main, RMV Extension,
Sadashivanagar,
Bangalore 560080
18. Ravindra Mishra,
284, Kunjeelal Dubey Marg,
Napier Town,
Jabalpur,
Madhya Pradesh 482001
19. Satish Babu M.P.
383, 11th Main, 9th Cross
Saraswathipuram,
Mysore 570009
20. Parmod Nagpal
L6 Hans Aptts
Delhi 110032
21. Miten Girishbhai Patel
Alkapuri Society
Sarsa, Anand, Gujarat 388365
22. Prasad Krishnaji Bhagat
Arun Shankar Socy, 6/22,
Unit No.1, S.B. Road,
Durga Nagar
Pune 411016
23. T.U. Bhaskar,
20.12.19 Chinnayatha Palem,

Duvvada Post, Duvvada Ward 57,
Bakkannapalem, Aganampudi,
Visakhapatnam,
Andhra Pradesh 530046

24.E. Pradeep Kumar Rao,
1-7-971, Ekasila Housing Society,
Hunter road
Warangal 506001

25.Interjit Singh Kang,
Kotla Shamaspur,
Ludhiana, Punjab 141114

26.Achin Banerjee
59/1, anand Nagar,
Ward 32
Raipur 492001

27.Ashwinkumar Ramanlal Patel,
15, Aangan, Bhagyoday Nagar,
Gandevi Road,
Viranjai Marg,
Navsari, Gujarat 396445

28.Suvenu Kumar Sahu,
Keranditolanarayanpur,
Tanganapalli,
Ganjam, Odisha 761003

For Appellant: Mr. Mihir Samson, Mr Asawari Sodhi, Mr Abir Roy,
Advocates.

For Respondent: Ms Shama Nargis, Dy. Director of Law, CCI, R-
1.
Mr Vikram Nankani, Sr. Advocate, Mr
Parthsoruthi Jha, Mr Param Tandon, Ms Ketki
Agrawal, Mr Sahil Khanna, Advocates for R2.

JUDGEMENT
(8th SEPTEMBER, 2022)

JUSTICE RAKESH KUMAR, MEMBER (JUDICIAL)

The present Appeal has been filed under Section 53B of the
Competition Act, 2002 (hereinafter referred to as the 'Act')

challenging the final order and judgement passed by Competition Commission of India (hereinafter referred to as 'CCI'), R1, vide its order dated 14.01.2022 passed in Case No.9/2017 and 36/2017. The said order was passed by the CCI under Section 27 of the Act.

2. In the Memo of Appeal, the Appellant has prayed for the following reliefs:

- i) Set aside the impugned final judgement and order of the Competition Commission of India dated 14.01.2022 in Case No.36 of 2017 to the extent that it found that the conduct of the Respondent Nos. 2-3 in limiting and controlling the supply and production of eggs was not in violation of Section 3(3)(b) read with Section 3(1) of the Act;
- ii) Direct the Respondent No.2, and all persons involved including the Respondent No.3-28, to cease and desist from fixing, discussing, coordinating and declaring the price of eggs in any manner whatsoever;
- iii) Direct the Respondent No.2, and all persons involved including the Respondent Nos. 3-28, to cease and desist from circulating the price of eggs and/or acting on, or re-entering into, any price fixation agreement;
- iv) Impose penalties under Section 27 read with Section 3 of the Act upon Respondent No.2, as well as upon Respondent Nos.3-28, and all persons responsible, under Section 48(1) and 48(2) of the Act;

v) Direct the dissolution of the Respondent No.2, National Egg Coordination Committee;

vi) Pass any other order or directions in favour of the Appellant that this Hon'ble tribunal may deem fit and proper under the present facts and circumstances.

3. The CCI on filing of the Information Petition by the Appellant registered Case No.36/2017 and another separate Case was registered as Case No.9/2017 on the information filed by one Mr. T.R. Chandran. The said information petitions were filed under Section 19 of the Act. After finding prima facie case, both the cases were clubbed together and direction was issued to the Directorate General to conduct investigation. After receipt of the Report of the Director General and hearing all concerned finally with detail reason in its order dated 14.01.2022 the Learned CCI concluded as follows:

“In the facts and circumstances of the case, the Commission in terms of Section 27 of the Act, holds that the impugned conduct of NECC in enforcing/ seeking to enforce its declared prices of eggs is in violation of the provisions of Section 3(3)(a) read with Section 3(1) of the Act, for the reasons adumbrated in this order. Accordingly the Commission directs as under :

- i) NECC, while declaring and disseminating egg prices, shall give sufficient and prominent disclaimers (including on its website) at all times that the prices so declared are only suggestive, and for the information of trade and industry;*
- ii) NECC shall cease and desist from issuing any directives/threats (verbal or in writing) that non adherence to the declared egg prices shall have any penal/other (non-monetary) consequences upon any of its members or constituents of trade or poultry industry and ensure that no such adverse action is taken on any person. The same shall be prominently disseminated on its website at all times; and*
- iii) NECC to foster a culture of competition compliance within*

its organization including its Zonal Committees and Local Committees and to sensitize its members/stakeholders by bringing into place a Competition Advocacy/Compliance Programme so as to ensure compliance with the provisions of the Act.

iv) NECC to file a compliance report with regard to (i) and (ii) above within 60 days from the date of receipt of this order by it. NECC to also file compliance report in respect of (iii) above within 180 days from the date of the receipt of this order.”

4. However, the Learned CCI taking holistic assessment considered that the direction issued hereinabove would serve the ends of justice.

5. After the order passed by the CCI i.e. order dated 14.01.2022 in Case No.9/2017 with Case No.36/2017 the informant of Case No.36/2017, i.e. People for Animals (PFA) has preferred the present appeal under Section 53B of the Act. In the present appeal even without issuance of formal notice to Respondents, Respondent NO.2 i.e. National Egg Coordination Committee entered appearance through Mr. Vikram Nankani, learned senior counsel assisted by Mr. P.K. Jha, learned Advocate. Ms Shama Nargis, Dy. Director, Law appeared on behalf of Respondent No.1/CCI.

6. When the appeal was taken up for hearing under the caption 'For Admission' at the very outset Mr. Abir Roy, learned counsel assisted by Mr Mihir Semson, learned counsel for the appellant on being asked as to when the appellant itself has claimed to be a Trust for welfare and safety of the animals, how he filed information petition before the CCI making allegations of

violation of provisions contained in section 3 and 4 of the Act, the Learned Counsel for the Appellant placed heavy reliance on a Judgement of Hon'ble Supreme Court passed in Samir Agarwal Case (2021) 3 SCC 136 submitted that as per the Scheme of the Act anyone can trigger information petition as well as can file appeal against an order passed by the CCI before this Tribunal under Section 53B of the Act.

7. The Appellant in its information application filed under 19 of the Act before the CCI had prayed for interim as well as main relief which are quoted hereinbelow:-

“Interim Prayers:

Pending the hearing and final determination of the present complaint, the informant most humbly prays that this Hon'ble Commission be pleased to:

- a) Direct the Opposite Parties and their members to cease and desist from fixing and declaring the price of eggs in any manner, circulating the price of eggs to their members and/or acting on any price fixation agreement;*
- b) Direct the Opposite Parties and their members to cease and desist from limiting or controlling the supply of eggs;*

Main Prayers:

In the aforesaid fact and circumstances, and in the interest of justice and fairness, the informant most humbly prays that this Hon'ble Commission be pleased to:

- i) *Institute an inquiry against the Opposite Parties and pass an order directing the Director General of Investigations to carry out an investigation into the violations of Section 3 of the Competition Act, and submit its report thereon to the Hon'ble Commission; and*
- ii) *Direct the Opposite parties to cease and desist from fixing and declaring the price of eggs in any manner; circulating the price of eggs to their members and/or acting on any price fixation agreement.*
- iii) *Direct the opposite parties and their members to cease and desist from limiting or controlling the supply of eggs;*
- iv) *Impose penalties and pass other appropriate directions against the Opposite parties and their members, including the VH Group, under Section 27 of the Act for contravention of Section 3 of the Act, and/or*
- v) *Pass any other order which this Hon'ble Commission may deem fit."*

8. In the Information Application, in paragraph 2, the Informant disclosed that it was a trust registered under the Indian Trust Act, 1882. Paragraph 2 of the Information Application is reproduced hereinbelow:-

"2. The Informant, People for Animals, is a trust registered under the Indian Trusts Act, 1882, its registered office is at

4T, DCM Building, 16, Barakhamba Road, New Delhi-110001. The Informant is represented through its Trustee, Gauri Maulekhi, resident of Delhi. The Information is a reputed animal welfare organisation in India, and is, in fact, the largest animal welfare organisation in the country. The Informant has worked to rehabilitate sick and needy animals, run shelters and sterilisation programmes, promote awareness and education on animal protection and welfare, advocate with Members of Parliament on animal rights and works with the government on animal policies, providing its expertise. The Informant is deeply concerned by the state of welfare of laying hens in battery cages, which is globally recognised as an inherently cruel practice. The Informant is not against the poultry industry per se. During the course of its work, the Informant came across the practices, which are the subject matter of the present information, and are illegal under the law and as a result, has filed the present information.”

At this juncture it would be appropriate to notice the details regarding the Respondent No.2. The Respondent No.2 i.e. National Egg Co-ordination Committee (hereinafter referred to as NECC) is a registered Society under the Societies Registration Act, 1860 and is a Public Charitable Trust registered under the Bombay Public Trusts Act, 1950. It has been noticed by the CCI that NECC was the largest association of poultry farmers in the

world since there were more than 37000 farmers as its Members. NECC is having a three-tier organisation consisting of 81 Local Committees at grass root level, 28 zonal Committees at all the important Egg production and consumption Centres and an Executive Committee at the Apex level, the members of which are elected once in 5 years.

9. From the nature of the appellant which is a Trust it is evident that the said organisation is basically animal welfare organisation in India. The Informant has himself claimed that it works to rehabilitate sick and needy animals, run shelters and sterilisation programmes, promote awareness and education on animal protection and welfare. However, against the nature of work of the Informant to the reasons best known to him he filed information mainly for the purposes of directing Respondents and their Members to cease and desist from fixing and declaring price of eggs etc. Anyhow the information was taken note of by the CCI. Brief case of Informant Appellant in its Petition which was numbered as 36/2017 are as follows:-

- i) The production of eggs on a commercial basis broadly takes place in the following manner: (a) commercial hatcheries artificially incubate and hatch chicks that have increased egg laying capacities; (b) day old female chicks are sold by hatcheries to individual farms-cost of these chicks include a mandatory contribution to NECC; (c) individual farms artificially brood chicks under heat lamps;

(d) at about 2-3 weeks, chicks are transferred to long line cages and are also de-beaked; and € at about 14-16 weeks, hens are transferred to cages for laying eggs.

ii) Although the supply chain may follow the traditional producer/wholesaler/retailer levels, there is a large amount of integration in the egg industry, which allow the integrators to participate and control the production process without owning or operating farms. These integrator companies control some of all of the aspects of egg production i.e. day old chicks required to produce eggs, antibiotics, fee, farm equipment, etc.

iii) Egg production in India is concentrated in Tamil Nadu, Andhra Pradesh and Telangana followed by Maharashtra, Haryana, West Bengal and Punjab. In general, the demand for eggs in India drops in summer months and during festive seasons such as Navratre, and increases in winter months. The production of eggs is fairly constant; however, due to their perishable nature and short shelf life, they cannot be stored at farms where they are produced.

iv) NECC and ACIL are indulging in activities to ensure that fluctuation of demand for eggs does not effect their price negatively.

v)The objectives of NECC outlined its website including “(i) *price declaration, (ii) to decide upon a reasonable price for eggs, which ensure a fair return to the farmers, decent*

margins to the middle men and a fair price to the customers, (iii) to monitor the egg stock levels in different production centers, (iv) manage stocks level and regulate the movement of stocks from surplus to deficit regions in order to maintain a balance between demand and supply, and (v) market intervention through ACIL”

vi) In furtherance of its objectives, NECC fixes and declares daily egg prices at various production and consumption centers. On its website, NECC publishes price information under two heads: firstly, ‘NECC Prices’ in production centers where price of egg is fixed and declared and secondly, ‘Prevailing Prices’ in places where no regional committee of NECC is present. The price declared by NECC is the de facto price in the market in as much as NECC represents interest of majority of the egg producers in the market.

vii) Without any statutory right being vested in it, NECC, a private association of egg producers is engaged in setting and disseminating egg prices to be charged by the egg producers. This is allegedly in contravention of Section 3(3)(a) of the Act.

viii) Simultaneously with the establishment of NECC, ACIL was incorporated in 1982 to support and execute the objectives of NECC. ACIL is projected to be a company owned by poultry farmers but it is actually owned and

controlled by NECC and its members. ACIL's management has always been from M/s Venkateshwara Hatcheries Group, which has been controlling NECC and ACIL. NECC uses ACIL to siphon surplus stocks of eggs by providing cold storage facilities for preserving and moving them to areas of high demand, in order to maintain higher prices.

ix) ACIL also exports eggs through M/s Bharat Egg Producers Association, either directly or through conversion of egg into egg powder to ensure that the prices of eggs in India are maintained at the decided level. These activities of ACIL are in line with the objectives of NECC outlined in its Memorandum of Association-monitoring and managing the egg stock levels in different production centers, and regulating its movement from surplus to deficit regions so as to maintain a balance between demand and supply of eggs. These deliberate limitations on supply of eggs to customers, to manipulate prices, is in contravention of Section 3(3)(b) of the Act.

x) PFA has also alleged that the functioning of NECC is opaque and controlled by large egg producers. Its management is a skewed representation of the seven founding members who are also permanent members of the Central Committee. NECC also has a restrictive membership policy wherein only poultry farmers having at

least 250 layer hens or traders handling a minimum of 12000 eggs a day can become members of NECC.

10. The CCI on considering the facts as indicated hereinabove as well as facts disclosed in Information Petition No.9/2017 directed the parties to furnish certain additional information. Subsequently date of preliminary conference was fixed wherein the Informant reiterated the facts and allegations presented in the information. The learned counsel for PFA argued that the information on record shows a prima facie case of contravention of Section 3(3) of the Act and thus, investigation is warranted in the matter. The learned counsel for Mr. Chandran relied upon the details of increase in egg prices during the tender of the Government of Tamil Nadu, to demonstrate the effects of NECC prices on the public exchequer and consumers.

11. On the other hand, the learned counsel for NECC contended that the NECC is a voluntary movement of poultry farmers to address their exploitation by egg traders during early 1980s and it is not involved in any anti-competitive practice. The major contentions of NECC were (a) NECC does not fix prices but merely provides a negotiation benchmark, which is also discovered by the process of interplay between demand and supply; (b) NECC provides for the guidance of farmers, only one price as eggs are not graded according to their weight or other characteristics but are sold by numbers; (c) NECC is a democratic society which has over 37000 members and works ceaselessly to

protect the interest of farmers and the elected committee members have no reason to act against small poultry farmers; (d) NECC members are largely, i.e. around 70 percent are small scale poultry farmers; (e) NECC provides a price which is only a farm gate price i.e. price at which farmer can sell eggs to the traders; and (f) NECC has no role on the fluctuations in egg prices which are due to forces of demand and supply.

12. The prime contention of ACIL was that it had procured a meagre share of 0.6 percent of the total eggs produced in 2015-16 and thus, there is no possibility of it limiting or controlling the supply of eggs, by providing storage facility or by exporting.

13. NECC and ACIL objected to the reliance placed upon the newspaper articles in Case No. 9/2017.

14. After examining the information/submission during preliminary conference and on the basis of material available on record, the Commission prima facie decided to determine as follows:

- i) Both the informations concern alleged fixation of egg prices by NECC. Additionally, in Case No.36/2017, it has been alleged that NECC and ACIL indulge in activities that limit and control supply of eggs in the market. Provision of egg storage facility and movement of eggs from low demand to high demand areas have been contended as activities that limit and control the supply of eggs.

ii) The objectives outlined in the Memorandum of Association of NECC, inter alia, include *“To ensure that poultry farmers are given a fair and reasonable price for their products namely.. egg and poultry meat”* and *“To bridge the communication gap that exists among poultry farmers which has led to exploitation of the poultry farmers in rural areas”*.

In line with these objectives, NECC seems to have been declaring the prices of eggs. Copy of rate lists issued by NECC, enclosed with the informations, shows that it disseminates price under the headings ‘NECC Prices’ for 19 places (Ahmedabad, Ajmer, Bangalore (CC), Chennai (CC), Chittoor, Delhi (CC) East Godavari, Hyderabad, Miraj, Mumbai (CC), Mysore, Nagpur, Nammakkal, Pune, Punjab, Vijayawada, Vizag, West Godavari and Warangal) and ‘Prevailing Prices’ for 11 places (Allahabad (CC), Barwala, Bhopal, Hospet, Indore, Jabalpur, Kanpur (CC), Kolkata (CC), Lucknow (CC) Raipur and Varanasi (CC). The term ‘CC’ used alongwith the name of some of the cities/towns apparently denotes that city/town to be a consumption center.

iii) NECC has stated in its response that it declares/announces egg price and publicises the same in newspapers and through other means. The relevant portion of the submission is extracted below:-

“The Zonal Committee of NECC located in the surplus production zones, coordinate and consult with the Zonal Committees located in the deficit zones (Consumption centers), as well as other production centers-and, after a thorough analysis of the prevailing market conditions and the demand-supply situation, arrive at a consensus regarding a reasonable price-and announce and publicize the same through newspapers and other means, for the benefit of producers as well as the consumers. The price suggestion, as explained above merely seeks to provide a recommended starting point for price negotiations between the farmers and the traders. It must, however, be emphasised here that the price so announced by NECC is not mandatory or binding upon either the farmers or the traders. It is purely suggestive and in the nature of a guidance to enable informed negotiations between traders and farmers who are invariably handicapped owing to information asymmetry...”

15. Thereafter, the Director General was directed to investigate and submit report. The Director General in compliance with the order of the CCI conducted investigation wherein a statement of number of persons was recorded and documents were also taken on record. After conducting investigation the Director General

submitted its report on 04.12.2020. In the investigation the Director General examined four issues which are as follows:-

- i) Whether NECC has indulged in determination and declaration of prices of eggs?*
- ii) Whether the egg price determined and declared by NECC is implemented and followed?*
- iii) Whether NECC is engaged in limiting and controlling the production and supply of eggs?*
- iv) Whether the declaration of price by NECC adversely affects the price discovery process of tenders floated by different state governments and other public procurement agencies?*

16. Those issues are elaborately discussed by the CCI in the following manners:-

“Issue I: Whether NECC has indulged in determination and declaration of prices of eggs?”

13. According to the DG Report, NECC has been publishing egg prices on its official website on a daily basis. The declared egg prices, since January 2009 are available on the NECC website, and accordingly, the DG has taken the period from January 2009 till the completion of its investigation i.e. 2020 into consideration for the purposes of investigation. As per the DG, the organisational structure of NECC consists of three-tier committees, viz. the Central Committee/Executive

Committee at the apex level, Zonal Committees at the middle level and Local Committees at the bottom level.

14. The Central Executive Committee has all the powers to manage and run its business and affairs. At the intermediate level, there are 28 Zonal Committees at important egg production and consumption centres. The bottom tier consists of Local Committees at important poultry pockets.

15. NECC has zonal offices at major production/ consumption centres. NECC's Zonal Committees, including the Committees located in surplus production zones, consult with the Zonal Committees located in the deficit zones (consumption centres) as well as other production centres, and after a thorough analysis of the prevailing market condition and the demand-supply situation, recommends daily prices for eggs. Production centres are centres with surplus production, and they cater to the demand of other deficit zones. Consumption centres are centres where demand or consumption is more than production. Generally, production centres cater to the demand of consumption centres.

16. The price determination mechanism is similar in production centres and consumption centres. The Zonal Chairmen have the responsibility to decide and declare the price. In most cases, they consult with a few major farmers of the zone while fixing egg prices. The most important factor while fixing the egg rate of a particular zone is the prevailing

egg rates of other zones. It was also found that there is strong coordination amongst the Zonal Chairmen of the different zones for the determination and declaration of egg prices.

17. NECC has developed a mechanism of WhatsApp groups, through which information about egg rates of a particular zone are disseminated to all other zones. Teleconferences are held amongst the major Zonal Chairmen for facilitating the exchange of information regarding egg prices. Accordingly, the egg rate of a particular zone is not dependent upon the demand and supply situation of that zone; rather, it depends upon the egg prices declared by other NECC zones. During the deposition of Mr. B. Samara Reddy, a largescale poultry farmer having egg production of approximately 3.3 lakhs per day, the DG found that NECC rates are arbitrarily decided by the Zonal Chairmen of each zone along with other committee members without any basis or calculation of costs or other factors to decide egg prices.

18. Further, in certain zones, NECC egg prices are neither determined nor declared. The Zonal Chairmen of these zones simply follow the prices of neighbouring zones. These zones are Ambala (Haryana), Sangroor (Punjab) and Lucknow (Uttar Pradesh). Further, the statements of the Zonal Chairmen of these zones categorically show that NECC

prices in their zones are not independently determined; rather, they follow the prices of other zones only.

19. The DG found that NECC has been determining and declaring egg prices on a daily basis through coordination among different Zonal Chairmen. The coordination is facilitated by weekly teleconference calls between different Zonal Chairmen, which are moderated by senior persons in the Central Committee of NECC. DG also found that the Central Executive Committee of NECC controls the process of determination and declaration of prices of eggs by active intervention through its three-tier structure and reporting by Zonal Chairmen. As per the DG, the explanation given by NECC, that the egg prices are declared on the basis of demand and supply conditions was untenable and the DG found that the determination of egg prices was a result of collusion at the zonal level between the Chairmen of Zonal Committees and at the national level by the Central Executive Committee.

20. On the basis of the evidence/materials/statements of parties, the DG concluded that the determination of sale price of eggs by NECC amounts to contravention of Section 3(3)(a) of the Act.

Issue II: Whether the egg price determined and declared by NECC is implemented and followed?

21. NECC submitted before the DG that the declared egg price is not mandatory or binding upon the farmers or traders, and the poultry farmers and traders are under no compulsion to follow the price declared by NECC. However, it did not submit any evidence to substantiate its claim, as stated by the DG.

22. From the statement of Mr. B. Rajendar, who is a partner in Sun Foods and Feeds, which has a daily egg production of around 1.5 lakh eggs, and has been a special invitee to the National Executive Committee of NECC since 2013, it was seen by the DG that farmers in each zone are informed not to sell below the NECC declared price and are liable to a penalty in case of non-compliance.

23. As per the DG, in addition to coordination between zones, the stock and supply situation at different zones was monitored via different platforms of NECC to maintain a certain price.

24. The DG, from various statements of OPs officials, its members and farmers, noted that NECC declares the egg prices in various zones and also directs its members to follow it. It is stated that such decisions regarding the implementation are taken at teleconferences which witness the participation of various Zonal Chairmen of NECC. Further, the DG stated that certain practices such as the imposition of penalties on farmers for nonadherence to NECC

declared egg prices and other measures are proposed and sometimes used by the NECC at zonal levels. For example, in the meeting dated 29.09.2016, it was decided that under the leadership of the NECC Chairperson, all Zonal Chairmen and prominent egg traders of various zones were required to take responsibility to see that no farmer sells eggs below the minimum price of Rs. 3.75 and/or the price fixed by NECC. It was further decided that the NECC Chairperson may appoint a committee to oversee the strict implementation of the same.

25. The DG also found that, contrary to the claim that prices declared by NECC are only suggestive, efforts were made both at the central level and zonal level of NECC for strict implementation of the declared price. DG also stated that advisories and directions were issued to the farmers and stakeholders to implement the declared price by cooperation and coordination.

26. Further, after the investigation commenced, NECC started using the term 'NECC suggested egg price' in order to make it look like as though the prices fixed are only suggestive for facilitating trade and are not mandatory. In a WhatsApp message dated 20.04.2019 of the Zonal Chairman, Chandigarh, it was mentioned to other members of the group that a penalty of Rs. 0.25/ per egg shall be imposed on farmers and traders each in case the prices

declared by NECC are not adhered to. Thus, the DG concluded that the practice of determination and declaration of egg prices and implementation of these declared prices amounted to contravention of Section 3(3)(a) of the Act.

III: Whether NECC is engaged in limiting and controlling the production and supply of eggs?

27. As per the DG, NECC ensured that the declared price is duly followed and implemented in the market by limiting and controlling the production and supply of eggs, which is as under:

i) Early bird culling

(a) As per the Food and Agricultural Organisation (FAO), the typical production cycle of birds in case of layer eggs lasts about 72 weeks and involves three phases. Birds typically lay eggs for twelve months, starting when they are about 21 weeks old and lasting until they are about 72 weeks old. Post their laying period, layer birds are culled and their meat is sold in the market. On 26.02.2015, the Chairperson of NECC, Ms. Anuradha Desai, sent an email to the Zonal Chairmen of five major production zones, viz., Namakkal, Barwala, Hyderabad, Hospet and Vijaywada, directing them to advise the farmers to cull birds above the age of 65 weeks as this would have an immediate, positive impact on the demand-supply

situation, and consequently, the price, and also directed them to take other measures required to not let the prices of eggs decrease in the market. Subsequently, the email was forwarded to numerous stakeholders by Mr. Sanjeev Chintawar, an executive of NECC.

(b) The statements of the Zonal Chairmen and other functionaries of NECC who received the email dated 26.02.2015, were recorded on oath by DG. The statements of Mr. M. S. R. Prasad, Chairman of Hospet Zone of NECC, Mr. Praveen Garg, Chairman of Chandigarh/Barwala zone of NECC, Mr. V. S. Balasubramaniam, Senior Manager (Co-ordination) of NECC stationed at Namakkal, Mr. Sanjeev Chintawar, Business Manager of NECC Hyderabad, Mr. Ajit Singh, Chief Executive of NECC, Mr. M. B. Desai, Chairman of NECC Mumbai zone and Mr. Satish Babu, Zonal Chairman of the Mysore zone of NECC, revealed that for controlling the excess supply of eggs, NECC directs farmers for early culling of flocks. The standard age to cull a layer bird is 72 weeks and the same is lowered to 65 weeks to control supply of eggs in the market as it helps to stabilize the egg price by controlling the production of eggs.

(c) Further, it was noted that the decision of bird culling is made to restrict supply of eggs, which is also discussed in the Annual General Meetings of NECC in the presence of the zonal heads and Central Executive Members, including the Chairperson. The DG, from the minutes of the meeting dated 16.12.2016 of the Central Executive Committee, found that the Chairperson of NECC requested that the farmers be educated to cull the birds in order to have remunerative egg price and to take the prices to the desired level.

(d) DG also found that some of the NECC zones also declare the bird cull rates i.e., the rate at which the meat of aged layer birds is sold. Such declared rates were communicated to various stakeholders through WhatsApp messages or email. From the WhatsApp messages and email of Mr. Balasubramaniam, an employee of NECC at Namakkal, the cull bird rate at Namakkal was Rs. 53/- per kg and the same was increased to Rs. 59/- per kg on 21.03.2019 and again increased to Rs. 64/- per kg on 23.03.2019.

ii) Cold storage subsidy

(a) For maintenance and due implementation of its declared price, NECC provides cold storage subsidies to farmers. This measure is adopted when there is

lower demand or surplus supply in the market and farmers are unable to sell eggs on the NECC declared price. As a countermeasure, the farmers are asked to store their eggs in cold storage so that they do not sell the egg below NECC price. Further, the cold storage expenses incurred by the farmers are also compensated by NECC.

(b) In this regard, various emails were exchanged amongst the officials of NECC, which have been investigated by the DG. One such email, dated 27.07.2015, was found to have been sent by the Chairman of Ahmedabad zone asking for the approval of the subsidy amount.

(c) In the statement of Mr. M. B. Desai, Zonal Chairman of Mumbai zone and Vice Chairman of Central Committee, recorded on oath, it was noted that a subsidy is given by NECC to the farmers for keeping their eggs in cold storage. This is done when there is lower demand or surplus supply in the market and in order to maintain the NECC declared price of eggs. BEPA and All India Poultry Development Services Pvt. Ltd. (AIPDS) are related entities of NECC, having cold storage facilities which are provided on rent to poultry farmers at a subsidized rate.

iii) Restricting supply through co-ordination and creation of check posts

(a) Evidence was found by the DG that NECC indulged in restricting egg supply between different zones. A meeting was arranged by NECC on 06.08.2015 at Rajahmundry in order to regulate the Kolkata egg market, wherein it was unanimously agreed that all the flow of eggs between West Bengal and Odisha should be monitored and regulated in a way that all farmers can get good prices of eggs.

(b) Mr. Gurram Chandrashekar Reddy, Chairman of Hyderabad zone in his statement before the DG, admitted that movement of trucks loaded with eggs is monitored through border check posts created by NECC. Mr. Praveen Garg, Chairman of Chandigarh/ Barwala zone of NECC, also mentioned in his statement about the existence of check posts at Hyderabad zone. Another evidence was an email dated 23.01.2018 sent by the Vizag zone of NECC to Ms. Anuradha Desai, Chairman NECC, seeking approval to shift NECC check-post.

iv) Controlling supply of eggs through ACIL

As per the Information and DG findings, ACIL is formed and managed by the members/functionaries of NECC. The Chairperson of NECC is also one of the directors on the Board of ACIL. Further, ACIL is used by NECC as an alternative source for controlling the supply of the eggs in the market so

as to stabilize and implement its declared price. As per the DG, the intention behind the incorporation of ACIL was nothing but to limit the supply of eggs in the market and maintain and implement the NECC declared price. DG also found during investigation that ACIL operates mostly in Andhra Pradesh and Northern India and in cities like Vijayawada, Hyderabad, Ajmer, Ludhiana and Ambala. It procures eggs from farmers and depending on the market situation, stores eggs in cold storages or transports the produce to places from high supply to low supply areas. The eggs are then stored in the cold storage for such time when the demand is low and sold when demand increases. Thus, the DG found that the role played by ACIL substantiates the fact that NECC indulged in controlling and limiting the production and supply of eggs in the country.

28. The DG found that NECC was indulging in limiting and controlling the production and supply of eggs through practices including early culling of layer birds, storage of eggs in cold stores, restricting the inter-zonal supply of eggs and procurement through ACIL, all of which amounted to contravention of Section 3(3)(b) of the Act.

Issue IV: *Whether the declaration of price by NECC adversely affects the price discovery process of tenders floated by different state governments and other public procurement agencies.*

29. The Govt. of Tamil Nadu was procuring eggs through district wise monthly tendering system up to April 2013, and vide order dated 17.10.2012, the Govt. of Tamil Nadu decided to introduce a state-level annual tendering process for procurement of eggs and also decided that quotations received through the open tender system should be compared with the average NECC rates and the reasonableness of the quoted rate should be ascertained. Further, in August 2018, the Govt. of Tamil Nadu modified the procurement process and introduced a state-level zone wise (six zones) tendering system.

30. For the purpose of analysis, the DG procured information about the tenders floated by the Tamil Nadu Government for the procurement of eggs from 2012 to 2018, details of the participants and copies of their respective price bids. Notices were issued to the Zonal Chairmen of Namakkal, Chennai and Chittoor Zones, and details of average NECC egg price in their zones during tender months were also gathered. The same is tabulated below:

Table: Trend of Average Egg Price in Tender Month

S. No.	Year of tender	Tender submission date	Finalised rate per 100 eggs in rs	Price trend in the tender month	Average egg price in the tender month		
					Chennai	Namakkal	chittoor

1	2012-13	10.12.2013	Tender cancelled				
2	2013-14	25.03.2013	319	Downward	312.83	310.16	305.83
3	2014-15	25.04.2014	451	Upward	291.00	244.83	284.00
4	2015-16	25.05.2015	435	Upward	336.45	313.51	329.45
5	2016-17	25.07.2016	431	Stagnant	460.00	435.00	453.00
6	2017-18	14.07.2017	434	Downward	372.00	360.00	365.00
7	2018-19	11.06.2018	Tender cancelled				

31. The 2012-13 tender was cancelled and, therefore, the Government of Tamil Nadu, through a single tender system, decided the egg price for the first time in 2013-14. The date of tender opening was 25.03.2013 and in March 2013, NECC declared egg price was showing a downward trend in almost all zones including Namakkal, Chennai and Chittoor. The average price of all three relevant zones on 25.03.2013 was Rs. 309.60 and the finalised rate through tender was Rs. 319/-. On 01.03.2013, the price of 100 eggs in Namakkal

was Rs. 375/. It gradually fell and reached Rs. 290/ on 25.03.2013 and Rs. 270/ on 31.03.2013.

32. During the tender month in the State of Tamil Nadu, the NECC price trend was upward in 2014-15 and 2015-16, downward in 2013-14 and 2017-18 and almost stagnant in 2016- 17. However, the NECC declared price is taken as the benchmark price and even in case of open tender, the reasonability of the quoted price is assessed by comparing it with the NECC price. A similar trend of egg price was found in Chennai and Chittoor. The information received from other state governments and institutional buyers also revealed that the procurements are made either at NECC declared rate or NECC rate is used as the benchmark rate for procurement.

33. In another instance, it was found that under the Govt. of Andhra Pradesh, eggs were procured by the District Level Purchasing Committee (DLPC) on NECC declared rate plus transportation charges from 2010 onwards. In 2013, the Govt. of Andhra Pradesh estimated the procurement cost of an egg to be Rs. 3.50, including transportation charges.

However, in case the NECC rate is higher than the estimated cost of Rs. 3.50, the eggs were procured by paying the differential cost from the savings. The Govt. of Andhra Pradesh further submitted that during 2017, e-procurement was introduced and tenders were floated through which eggs were procured at Rs. 4.68 per egg. In 2019, by a circular

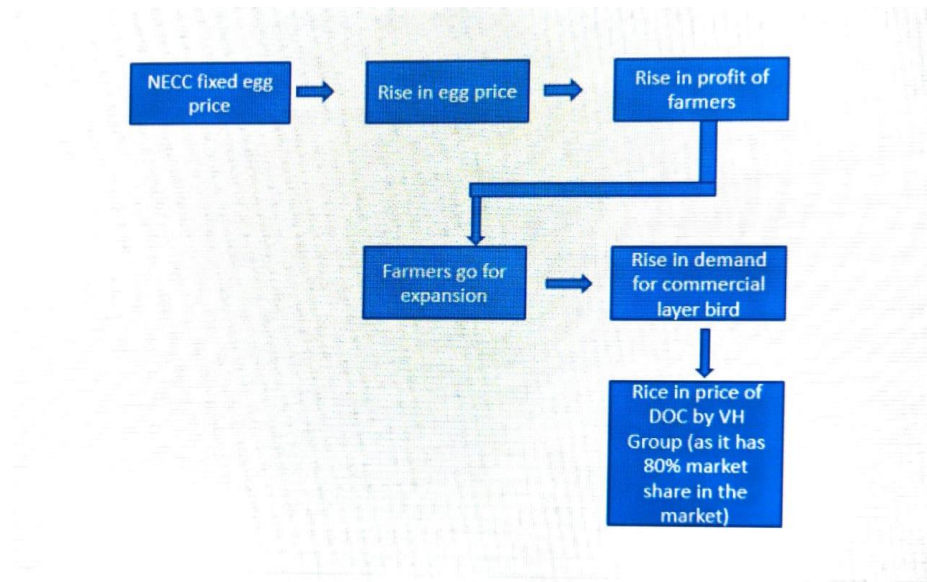
dated 12.02.2019, the Government of Andhra Pradesh finalized procurement and supply of eggs to the Anganwadi Centres (AWC) through district-wise tenders at NECC rate plus transport charges.

34. The Government of Telangana, vide reply dated 03.08.2019, furnished a copy of a circular dated 09.12.2014, fixing the procurement price of eggs as Rs. 3.50 per egg, subject to the condition that the procurement of eggs shall be made from NECC registered poultry farmers only. The Government of Tamil Nadu has been procuring eggs through a tendering process, and vide order dated 17.10.2012, it mandated that the quotations received through the open tender system should be compared with average NECC rates and the reasonableness of the rate quoted should be ascertained. The Director General of Supplies and Transport (DGST), Ministry of Defense, vide reply dated 01.07.2019 informed the DG that NECC declared rates were used by the authorities to set a benchmark for the procurement of eggs.

35. Accordingly, while some government departments procure eggs on NECC declared rate, some use NECC declared price as the benchmark price. The DG found that even the procurement price discovered through open tenders is compared with the NECC declared price for reasonableness. Therefore, the DG concluded that NECC

declared price is treated as a benchmark in the public procurement of eggs.

36. During the DG investigation, evidence was found showing the involvement of VH Group in the alleged anti-competitive activities of NECC. Mrs. Anuradha Desai, Chairperson of NECC is also the Chairperson of the VH group. From emails and other evidences, DG found that there is a commercial relationship between VH Group and NECC. The VH Group of companies utilises NECC's platform for its commercial interest and based on the NECC declared egg price, VH Group determines the price of its layer Day Old Chicks which are also referred to as BV-300 (DOCs). Relationship between NECC and VH Group as depicted by the DG is under:



37. As per the DG Report, high egg price induces a hike in demand for DOC, thereby facilitating VH Group to increase the DOC price and sometimes, the officials of the VH Group directly intervene in increasing and/or maintaining the NECC egg price. A certain employee of NECC was issued salary slip by All India Poultry Development Services and Private Limited (AIPDS), which has been formed by the promoters of the VH Group.

38. The Chairperson of VH group, also being the Chairperson of NECC, utilizes the infrastructure, network and market-related information and data of NECC for the commercial benefit of the VH group. The DG also found that VH Group financially assists NECC by collecting contributions on its behalf from farmers purchasing its BV 300 layers chicks. Furthermore, VH Group collects Re. 1 from all farmers who buy BV 300 layer chicks from it and transfers the same to NECC, regardless whether those farmers are NECC members or not. Apart from NECC, companies like BEPA, AIPDS and ACIL have been formed by the promoters/directors of the VH group with objects similar to that of NECC. Although ACIL, BEPA, AIPDS and NECC are separate legal entities, all of them are under the management and control of Ms. Anuradha Desai, the Chairperson of the VH Group, and work in unison in the business interest of the VH group.

39. Based on the evidences gathered, the DG identified the following persons who have been implicated in terms of provisions of Section 48 of the Act:

S.No.	Name	Relationship with NEDD
1	Ms Anuradha Desai	Chairperson NECC
2	MR Gurram Chandrashekar Reddy	Zonal Chairman, Hyderabad
3	Dr Ponnusamy Selvaraj	Zonal Chairman, Namakkal
4	Mr Parveen Garg	Zonal Chairman, Chandigarh/ Barwala
5	Mr M Siva Ram Prasad	Zonal Chairman, Hospet
6	MR M.B. Desai	Zonal Chairman Mumbai
7	Mr Raj Kumar Jaipal	Zonal Chairman, Ajmer
8	MR. Kutumba Rao	Zonal Chairman, Vijaywada
9	Mr. G Gangadhar Rao	Zonal Chairman, West Godavari Zone
10	Mr V Mukunda Reddy	Zonal Chairman, East Godavari Zone

11	Mr A Mohan Reddy	Zonal Chairman, Chennai
12	Mr V Ramesh Babu	Zonal Chairman, Chittoor
13	Mr Modan Mohan Maity	Zonal Chairman, Kolkata/Midnapur
14	Mr B.R. Sainath	Zonal Chairman, Bangalore
15	Mr Ravindra Mishra	Zonal Chairman, Jabalpur
16	MR Satish Babu	Zonal Chairman, Mysore
17	MR Parmod Nagpal	Vice Chairman, Delhi
18	Mr Miten Grishbhai Patel	Zonal Chairman, Ahmedabad
19	Mr Prasad Krishnaji Bhagat	Zonal Chairman, Pune
20	Mr T.U. Bhaskar	Zonal Chairman, Vizag
21	Mr E Pradeep Rao	Zonal Chairman, Warangal
22	Mr Inderjit Singh Kang	Zonal Chairman,, Ludhiana/Amritsar

23	Mr Achin Banerjee	Zonal Chairman,, Chhattisgarh/ Raipur
24	Mr Ashwin Kumar R Patel	Zonal Chairman, Surat
25	Mr Suvendu Kumar Sahu	Zonal Chairman, Berhampur

40. Based on the above mentioned evidences, materials and statements of the parties, the DG found NECC and its 25 persons/officials to have contravened Section 3(3)(a) and Section 3(3)(b) of the Act. The DG, however, did not find any contravention against ACIL.

41. It is mentioned in the DG Report that Mrs. Anuradha Desai, Chairperson of NECC, never joined the DG investigation, and the DG Report has been prepared based on the depositions of different Zonal Chairmen, farmers and certain employees of NECC, besides all the documents and records collected by the DG. On this reticence on part of Mrs. Desai to attend the investigation before the DG, the Commission issued a showcause notice under Section 43 of the Act upon her. In view of Mrs. Desai's submissions to such notice, that she would cooperate with the DG, the Commission gave her one more opportunity to join the

investigation before the DG, vide order dated 09.01.20. Upon disregard of the said order, the Commission imposed a fine of Rs.15 lakhs on her under Section 43. Of the Act.

17. The said report of Director General was forwarded to all the concerned parties identified by the Director General as being Respondents under Section 48(1) and 48(2) of the Act. All concerned were asked to file their suggestions/reply to the Director General Report. The parties filed their respective replies/objections/written submissions to the DG Report which are as under:-

Submissions of NECC and its officials

44. Pursuant to the directions of the Commission given vide its order dated 24.02.2021, the counsel of OPs and their individuals identified by the DG as being responsible under Section 48 of the Act filed a common reply dated 08.07.2021, as aforementioned. OP-2 did not file any specific comments/objections to the DG Report.

45. NECC in its submission stated that the DG has not undertaken an objective investigation and erred in recording its findings in the DG Report and has (i) failed to consider all the submissions/explanations, including the rationale and need for daily price declaration of eggs by NECC and the reasons for advising on early culling of birds and storage of eggs in cold storages; (ii) cherry-picked evidence or

statements of certain officials of NECC while ignoring certain exculpatory evidence on record; and (iii) failed to seek relevant information from stakeholders, including information on actual transaction prices between the farmers and traders to assess if the NECC declared prices were indeed followed by farmers. It was averred by the OPs that the DG has failed to undertake an objective and comprehensive investigation.

46. NECC, through its submissions during the course of the investigation, explained the rationale behind cold storage of eggs and early culling of birds. It stated that during certain periods of every year, such as the winter months, the demand for eggs increases considerably, and in certain instances, may be higher than the production capacity of poultry farmers in the country. Further, during festivals or summer months, the demand for eggs and other poultry products dips considerably, and poultry farmers, due to the downward spiralling demand and considering the perishable nature of the eggs, are forced to sell eggs at significantly lower prices and, at times, below the cost of production of eggs. As per NECC, this causes poultry farmers, especially smaller poultry farmers, to suffer huge losses, and therefore, during such periods, OP-1, in the interest of farmers, issues advisories such as keeping egg stocks in cold storage for future use and early culling of birds

in order to ensure that smaller poultry farmers do not suffer losses caused by the cyclical demand of egg/poultry products.

47. NECC submitted that the DG did not adduce any evidence to demonstrate that the farmers indeed culled birds on the basis of OP-1's advisories and has not stated how many birds have been culled and whether such culling had resulted in short supply of eggs when compared to the demand. It stated that the DG approached the entire investigation in an unfair and non-objective manner and has not only engaged in selective reliance on evidence/statement of the officials of OP-1 but has also failed to investigate the economic rationale underlying the practices of OP-1. In this regard, NECC submitted that the different geographic markets for eggs are not fragmented such that one zone could not consider the prices of the neighbouring zone. NECC claimed that it would be logical that the prices of one zone will be impacted by the prices of neighbouring zones.

48. NECC stated that the DG has failed to consider that publishing suggestive/benchmark prices are routine in several commodity and metal industries, and publication of the rates in the relevant industry sectors have a purpose, including facilitating transactions and addressing the issues of volatility and information asymmetry. In this regard, NECC submitted an example of Indian Bullion and Jewellers

Association (IBJA) which determines the daily prices for gold, which are published on its website and are not only followed by its members but also by the Reserve Bank of India.

49. With respect to the DG finding that NECC takes several steps to ensure that the price declared by it is followed by farmers across India, NECC claimed that the same is erroneous and the DG has selectively relied on the statements of few deponents while ignoring statements by other deponents. Further, according to NECC, DG made no efforts to explain what incentives a farmer has to strictly abide by the prices declared by NECC. NECC stated that the DG did not produce any evidence to demonstrate that any farmer was penalised for not adhering to NECC declared prices, and the transactions between the farmers and traders were given effect to at NECC prices and not any other price. Moreover, there were some zones viz., Vizag, Vijayawada, Jabalpur, Ambala, Namakkal, East Godavari zone, West Godavari zone, Raipur zone, Surat zone and Ahmedabad zone, where NECC declared price is not followed.

50. NECC averred that neither it nor its Zonal Chairmen have entered into any agreement or arrangement for fixation of price of eggs or limiting or controlling supply of eggs in the sense that is prohibited under Section 3(3) of the Act. It claimed that its Zonal Chairmen do communicate and share

relevant information such as prevailing prices in a zone and available stock position, however, there is no price coordination amongst them. Further, the prices of each zone are mostly determined by the zonal committees of such zones under the guidance of the respective Zonal Chairmen in consultation with farmers and traders and taking into account several factors, including demand supply gap, local market conditions, availability of stock, transport costs, etc.

51. NECC stated that the DG concluded that NECC engaged in the implementation of egg prices declared by it through various measures, including levying of monetary penalty on poultry farmers, inter-zonal coordination among Zonal Chairmen to ensure implementation of egg prices and incentivizing farmers who assist in implementation of prices. However, the DG made no effort to investigate whether poultry farmers in each zone adhered to the price declared by NECC.

52. NECC has placed reliance on past orders of the Commission in *Shri Nirmal Kumar Manshani vs. Ruchi Soya Industries Ltd.* (Case No. 76 of 2012) and *Re: Alleged Cartelisation in Flashlights Market in India* (Suo Motu Case No. 01 of 2017) to demonstrate that mere collusion or coordination is not enough to hold a party in contravention of provisions of Section 3(3) of the Act. 53. NECC submitted that a mere agreement to declare/suggest a price or mere

advisories issued by NECC to cull birds without evidence does not suffice a violation of Section 3(3) of the Act. It further submitted that there are several instances where the Zonal Chairmen have categorically stated that the prices at which the farmers transact with traders is different than NECC suggested prices and, there is nothing on record to show that any farmer has been penalised for deviating from NECC prices.

54. As per NECC, it does not have actual transaction prices for all farmers and the DG ought to have investigated and called for this information from the sample of poultry farmers and the DG has only cherry-picked statements and did not address those statements which were contrary to the predetermined conclusions of the DG.

55. With respect to the instances of advisories pertaining to early bird culling issued by NECC in certain years (e.g. in 2015 and 2016), it was submitted that the advisories issued in 2015 (i.e. culling of 65 week old birds) were aimed to assist the farmers in minimizing their losses in the face of declining demand for eggs. In relation to 2016, advisories pertaining to the culling of overaged birds, NECC stated that in order to discourage farmers from engaging in forced moulting, a practice which is controversial and banned in many countries and also prohibited in India, these advisories were issued.

56. NECC averred that poultry farmers themselves may not be able to foresee the market dynamics, including fall in demand for eggs, and many small farmers were not well informed to take decisions pertaining to shutdown point. NECC, being an industry body of poultry farmers, was well within its rights to perform an educative or information providing role for its members and issue advisories suggesting that farmers may examine the impact of continuing with production of eggs. Further, the advisories/communications issued by NECC were only recommendatory in nature and not enforced on the famers.

57. NECC further submitted that while the DG concluded that NECC is engaged in limiting and controlling the production and supply of eggs, the DG has not produced any evidence to demonstrate if, at any time during the period of investigation, there was a shortage of supply of eggs or consumers could not purchase eggs because of short supply. Moreover, NECC membership accounts for approximately 37,000 members and a cartel amongst thousands of poultry farmers cannot and does not exist.

Practice of NECC has not caused AAEC:

58. On the basis of various reports such as the 20th Livestock Census - All India Report; Economic Survey 2021, National Action Plan for Egg & Poultry-2022 etc., NECC submitted that it facilitated the growth of the poultry industry

by making it economically viable, running campaigns on the nutritious value of eggs and educating poultry farmers and assisting them with new technologies including feed formula, recent innovations and trends in poultry farming. As per NECC, the number of backyard poultry birds rose by a staggering 46 per cent between 2012 to 2019, whereas per capita availability of eggs increased from 58 to 66 percent during the same period. Accordingly, NECC concluded that NECC's practices have not created any entry barriers.

59. On the issue of market foreclosure, NECC stated that there is nothing on record to show that NECC's practices such as price declaration of eggs or cold storage subsidies or advisories to cull birds in certain situations, have driven any poultry farmer (whether engaged in backyard or commercial farming) out of the market.

60. Further, as per NECC, its practices resulted in benefits to consumers as the daily price declaration addresses the information asymmetry between farmers and traders and these suggestive prices provide guidance to the farmers to bargain a fair price for their produce, i.e. eggs. Moreover, the subsidy towards cold storage allows farmers to increase the shelf life of an otherwise perishable commodity, and thus, prevents eggs from being wasted and helps farmers to avoid losses. Furthermore, advisories for culling birds were aimed to help farmers take suitable decisions to avoid losses, and

all these activities made the poultry industry economically viable for farmers and thus, the industry saw rapid growth ever since NECC was established.

61. NECC submitted that the underlying hypothesis of cartelization is also incorrect in this case as poultry farmers could not have maximized profits. Indeed, the NECC suggested price on many occasions was below the cost of production of eggs. It stated that the cost of production per egg was in the range of Rs. 3.80 to Rs 4.09 in 2019, whereas the average NECC suggested prices stood at Rs. 3.66, which was significantly lower than the cost of production.

62. As per NECC, it improved the production and distribution of eggs across India and stated that regular deliberations between the Zonal Chairmen and weekly teleconferences took into account demand-supply gap and stock availability in each zone. Further, these deliberations were aimed to ensure that farmers and traders are able to move eggs from surplus zones to deficit zones efficiently, thereby making them available to the ultimate consumer across different zones.

63. It stated that NECC's practices resulted in staggering growth in the poultry industry and contributed about Rs.70000 crores to the national GDP and provided employment to more than 4 million people either directly or

indirectly. According to NECC, in the absence of NECC's practices, the poultry industry would have died.

64. NECC submitted that the DG has mechanically applied Section 48(2) without assessing the evidence relied upon in the DG Report and concluded that various officials of NECC are liable to be proceeded under Section 48(2) of the Act. It stated that the DG does not explain how the Zonal Chairmen had consented or connived to act in violation of Section 3(3) of the Act or that alleged contravention is attributable to any neglect on part of the Zonal Chairmen. It further submitted that the Commission may grant an opportunity to the named officials to submit their views both in writing and through an oral hearing.

65. NECC prayed that the Commission may take into account the facts of the present case in order to arrive at its final conclusions with respect to the liability of all named officials under Section 48(1) and / or 48(2) of the Act. It further stated that the Commission should consider the objective of NECC. It also stated that the Zonal Chairmen and Ms. Anuradha Desai have acted in good faith to address the concerns of poultry farmers and the poultry farmers have not sought to amass profits at the cost of consumers. Furthermore, in most instances, poultry farmers sold their produce below their cost of production.

66. NECC stated that during the course of investigation, the DG initially issued summons dated 30.08.2019, 11.09.2019 and 18.09.2019 to Mrs. Anuradha Desai to appear in person before the DG to record her statement, to which Mrs. Desai had duly responded through communications dated 04.09.2019 and 17.09.2019, respectively requesting the DG to carry out the deposition either by way of a questionnaire sent to her or by way of video conferencing. Mrs. Desai, through these responses, made every effort to engage with the DG and cooperate in the then ongoing investigation. Mrs. Desai did not appear before the DG for examination. Accordingly, on request of the DG, the Commission vide its order dated 10.10.2021, directed to issue a show cause notice to Mrs. Desai for noncompliance of the notices issued by the DG.

67. With respect to the show-cause notice issued to Mrs. Desai on 17.10.2019, by the Commission for contravention of Section 43 of the Act, NECC stated that Mrs. Desai had explained that she did not fail to comply with the directions of the DG and did not have any role within the zonal committee which was responsible for price declaration. Further, Mrs. Desai had explained that she was not involved in the day to day operations of NECC, and all such functionaries who were in-charge of the said functions or were likely to have knowledge of the subject matter under

investigation had already deposed before the DG as and when summons were issued to them.

68. It was submitted that the DG issued additional summon vide notice dated 15.01.2020 to Mrs. Desai with a direction to appear in person for deposition on 23.01.2020. However, Mrs Desai did not appear before the DG on the scheduled date and time. As stated by OP1, Mrs. Desai gave her response through emails dated 11.03.2020 and 18.03.2020 and as she had clarified her position on the issue of non-compliance, she did not reply to each and every summon as there was nothing new which she could have added to assist the DG in his investigation. Further, NECC stated that the non-appearance of Mrs. Desai before the DG has not impeded the investigation in any manner.

69. Further, NECC submitted that all DG findings regarding the nexus between NECC and VH Group were baseless and NECC could not speak for VH Group and NECC's platform has never been used by any other entity including VH Group for their commercial interests. Further, the DG did not produce any data with respect to the prices of day-old chicks as determined by VH Group and the NECC declared prices to support his baseless conclusion.

70. It was stated that from the year 2000 till 2020 there were only few instances of chick price increase and there was no correlation with average egg price fluctuations in the

Hyderabad zone. It was also stated that from 2001 to 2008 egg prices increased, however, VH Group increased chick price only two times.

71. In addition to the above, the OPs also filed an application dated 08.07.2021 requesting the Commission to grant confidentiality to certain data regarding cost of production and price of eggs in accordance with Section 57 of the Act read with Regulation 35 of the Competition Commission of India (General) Regulations, 2009. The same is separately dealt with.

18. After receipt of the DG Report the Informant who is appellant herein also submitted his comments and elaborated regarding existence of cartel, price declared at a specified time which was followed by other, frequent information exchanged among various zones to maintain price coordination etc.

19. After examining the entire issue and noticing the submission of the parties the Learned CCI analysed the issue which has been dealt with in paragraphs 108 to 208 of the judgement which are reproduced hereinbelow:-

Commission's analysis

108. The Commission considered the above responses and decided to hold an oral hearing of the parties on 26.08.2021. The hearing took place via video conferencing on the said date, wherein the Commission heard the counsel for both IPs and OPs at length and decided to pass an appropriate order

in due course. The parties were also directed to file their respective brief written submissions/synopsis of arguments by 10.09.2021. The same were filed by IP-2 and OPs on 10.09.2021.

109. The Commission has carefully perused the information, replies filed/submitted before it, the DG Report, the replies/suggestions/objections to the DG Report, the written arguments filed by all the parties and the oral submissions made by the learned counsel(s) representing IP-1, IP-2 and OPs.

110. The Commission notes from the DG Report that poultry in India is largely confined to chickens and to some extent, ducks. According to the 'National Action Plan for Egg and Poultry – 2022,' the poultry population in India is 729 million as per the 19th Livestock census, released by Department of Animal Husbandry, Government of India. The DG investigation suggests that according to the Basic Animal Husbandry Statistics 2019, egg production in India has increased from 63.024 billion in 2010-11 to 103.318 billion in 2018-19 making it evident that both demand and supply of eggs is increasing in the country. The same statistical data of 2018-19 also shows that the following eight states account for bulk egg production in India, having a surplus over demand and are supplying to some of the large urban

agglomerations. The data as mentioned in the DG Report states as follows:

Table: Share of Egg production in Major States of India (%)

S.No.	State	% share in production
1	Andhra Pradesh	18.7
2	Tamil Nadu	18.3
3	Telangana	13.3
4	West Bengal	8
5	Maharashtra	6
6	Haryana	5.9
7	Karnataka	5.8
8	Punjab	5.5

111. The Commission proceeds to examine whether NECC declares egg prices on a daily basis and whether such determined/declared price of eggs is followed by farmers and poultry stores. To understand the issue, it would be appropriate for the Commission to first examine the NECC's status. At the outset, the Commission notes that NECC, as per information in public domain, is the world's largest association of poultry farmers, with a membership of more than 37,000 farmers. As per NECC's website, it plays a significant role in the betterment of egg industry in India. The

NECC's idea, conceived by its founding Chairman, Mr. B. V. Rao, was based on cooperative spirit and simple conviction, which is the right to determine its own selling price. Purportedly, NECC is a movement of farmers, which is democratically run by them. NECC's website also avers that, due to its efforts, the difference in farmers' selling rate and consumer's buying rate is not more than 35-40%, which is the lowest in the world. NECC's membership is open only to those farmers who have at least 250 layer hens or traders handling a minimum of 12000 eggs a day.

112. The Commission notes from the DG Report that NECC's objectives outlined in its website includes "(i) price declaration, (ii) to decide upon a reasonable price for eggs, which ensure a fair return to the farmers, decent margins to the middle men and a fair price to the customers, (iii) to monitor the egg stock levels in different production centers, (iv) manage stock levels and regulate the movement of stocks from surplus to deficit regions in order to maintain a balance between demand and supply, and (v) market intervention through ACIL...." Further, Mr. C. Jagapati Rao, Treasurer of NECC made a statement at a meeting of the Central Executive Committee on 24.12.2014 that, "in 1982 there was a big debate on the selection of the name for this organization. We were almost consensus in deciding the

name as National Egg Price Co-ordination Committee, as the main activity of NECC is price declaration.”

113. It is an undisputed fact that NECC has established zonal offices at major production centres, i.e., centres with surplus production and consumption centres and the same was admitted by NECC before the DG vide its reply dated 20.06.2018. It acknowledged that its Zonal Committees, including the Committees located in the surplus production zones consult with the Zonal Committees located in the deficit zones (consumption centres), as well as other production centres and after undertaking a thorough analysis of prevailing market conditions and the demand-supply situation, recommends a reasonable price for eggs. Thus, as per the DG, in furtherance of its objectives, NECC fixed and declared daily egg prices at various production and consumption centres.

114. Based on the evidences on record, Commission notes that NECC while displaying daily egg prices, zone wise, on its website, also monitors the monthly/annual egg prices at various NECC production and consumption centres. The declared egg prices, since January 2009, are available on its website. The price information is published under two heads; firstly, ‘NECC Prices’ in production centres where price of egg is fixed and declared, and secondly, ‘Prevailing Prices’ in places where no regional committee of NECC is present. To

this, NECC clarified that the places mentioned under ‘NECC Prices’ are major production and consumption centres of eggs in India and zonal offices of NECC exist at these places, which determine and declare the egg prices and the same are published under ‘NECC Prices’. It further stated that at other places which are mentioned under the heading ‘Prevailing Prices’, NECC does not determine the prices but displays the prices of surplus/production zones at these places to address information asymmetries and assist farmers.

115. The Commission, thus, notes that the price declared by NECC is the de facto price in the market in as much as there is no other body in India other than NECC which declares the prices of eggs, as discussed in the subsequent paragraphs.

116. The Commission notes that NECC declares egg prices on a daily basis with the help of its committees, both at central and zonal levels. For the same, the DG investigated zonal functionaries of NECC and statements of the Chairmen of NECC’s 27 Zonal Committees was recorded by the DG.

<i>S.No.</i>	<i>Name</i>	<i>Name of NECC Zone</i>
<i>1</i>	<i>Mr Gurram Chandrashekar Reddy</i>	<i>Hyderabad Zona</i>
<i>2</i>	<i>Mr Anil Shahi</i>	<i>Ambala Zone</i>
<i>3</i>	<i>Dr. P. Selvaraj</i>	<i>Namakkal Zone</i>

4	Mr Madan Mohan Maity	Midnapore/ Kolkata Zone
5	Mr Parveen Garg	Chandigarh/ Barwala Zone
6.	Dr Raj Kumar Jaipal	Ajmer Zone
7	Mr Kutumba Rao	Vijaywada Zone
8	Mr Satish Babu M	Mysore zone
9	Mr M Siva Ram Prasad	Hospet Zone
10	Mr Karri Venkata Mukunda Reddy	East Godavari Zone
11	MR gpodithi Gangadhara Rao	West Godavari Zone
12	MR Annapureddy Mohan Reddy	Chennai Zone
13	Mr Desh Deepak Gupta	Lucknow Zone
14	Mr Ravindra Mishra	Jabalpur zone
15	Mr V Ramesh Babu	Chittoor Zone
16	MR B.r. Sainath	Bangalore Zone
17	MR Pramod Nagpal	Vice Chairman, Delhi
18	MR Moreshwar Bhagwant Desai	Mumbai Zone
19	Mr T.U. Bhaskar	Vizag
20	Mr Miten Grishbhai Patel	Ahmedabad Zone

21	Mr Prasad Krishnaji Bhagat	Pune Zone
22	Mr Suresh Shahi	Sangrur Zone
23	Mr E Pradeep Rao	Warangal
24	Mr Inderjit Singh Kang	Ludhiana/Amritsar
25	Mr Ashwinkumar Ramanlal Patel	Surat
26	MR Suvendu Kumar Sahu	Berhampur
27	MR Achin Banerjee	Raipur

117. Statements of important functionaries of these zones have been briefly reproduced hereunder:

118. Dr. Ponnusamy Selvaraj, Chairman of NECC Namakkal Zone, stated before the DG on 10.07.2019, "We have a price advisory committee to arrive the price of eggs and per Kg culling bird rate, which as much as I remember includes the following members:...The price of eggs and culling bird rate is arrived at through SMS and WhatsApp conversation amongst the members thrice in a week i.e. Monday, Thursday and Saturday. The final price is arrived by taking into consideration the majority view point. Subsequently, being Zonal Chairman of NECC I direct my Manager Mr. Ragu

to send a message to NECC Zonal Office (Mr. Balasubramaniam, Senior Office Manager) containing information about the decided rate. Then, Mr. Balasubramaniam send this rate through messages to all members of Namakkal Zone of NECC through a computer assisted mechanism by which the rate is disperse to all the members simultaneously. While arriving at a final price of Namakkal Zone of a particular day we consider various factors such as prices declared in other zones such as Hyderabad and Hospet. Information regarding prices of Hyderabad and Hospet are received regularly by me in my mobile no. 9942899999 through WhatsApp from QMR group. I also use to received WhatsApp message in my mobile no. from PAPPAK the actual selling rates of eggs by the farmers. Although I do not directly interact with Hyderabad and Hospet, our NECC manager at Namakkal interact with Hyderabad and Hospet and gives feedback to me regularly.”

119. Mr. V. S. Balasubramaniam, Senior Manager (Co-ordination) of NECC Namakkal Zone, stated before the DG on 30.07.2019 that “We have a rate fixation advisory committee in Namakkal Zone consisting of 27 members who, in consultation with each other, decide and declare the wholesale selling price of eggs for Namakkal Zone three days a week. This price is communicated to all the members of NECC Namakkal Zone asking them to follow it as well as to

the chairmen of other zones. For the national level co-ordination of prices of eggs between large NECC zones (Namakkal, Hyderabad, Vijaywada, Hospet, Mysore, Bengaluru, Midnapore, Barwala etc.) teleconference between the chairmen of these zones happens once in a week. This teleconference is chaired by Sh. M.B. Desai and sometimes by Sh. K.V.S. Subbaraju, National Vice Chairman.”

120. For the Hyderabad Zone, which controls all NECC activities of southern India, the DG recorded Mr. G. Chandrasekhar Reddy’s statement on 24.04.2019 and 25.04.2019, wherein he stated that, “I along with 4 Executive members discuss daily from 9 a.m. to 10 a.m. about the price of eggs...Daily from 9 a.m. to 10 a.m. we discuss about the prices in various markets in India and hold conference call and then fix price for Hyderabad Zone...Every Wednesday morning from 10.30 a.m. to 11 a.m. we discuss with 25 to 26 Zonal Chairmen through National tele conference about egg sales, supplies and prices. K.V. Subba Rao did participate in the tele conference. This tele conference is given to Bangalore third party for outsourcing.”

121. Mr. M. Siva Ram Prasad of NECC Hospet Zone, on 01.08.2019, stated before the DG that, “I decide and declare the price of eggs for Hospet Zone every day in the evening at around 06:00 PM after getting to know the prices decided by other zone including mainly Hyderabad and Namakkal. For

instance, if the prices in Hyderabad and Namakkal are increasing, we also increase price of eggs in Hospet Zone. The decided price is disseminated amongst the farmers and traders in the Hospet zone through messaging including WhatsApp... Yes, I co-ordinate with other zonal heads viz. Dr. Selvaraj from Namakkal and G. Chandrashekhar Reddy of the Hyderabad zone of NECC through phone calls./ also participate in the teleconference which is held once in a week and where chairmen of 6-7 major zones of NECC participate in order to discuss the prices (even advance price trends for the next week), movement of eggs between zones, stock levels etc.”

122. The DG also deposed Mr. Kutumba Rao, Chairman of NECC Vijaywada Zone on 31.07.2019, wherein he stated that, “In the afternoon at around 03:30 PM I along with the chairmen of East and West Godavari zones of NECC discuss amongst ourselves about the price to be declared for the day. Prior to this meeting information is gathered about the prevailing prices in major zones of NECC including Hyderabad, Kolkata, Barwala and our three zones, movement of eggs across different NECC zones, stock levels etc. Thus, after taking a decision at around 03:30 PM, price of eggs gets disseminated in the three zones i.e. East Godavari, West Godavari, Vijaywada through messaging including WhatsApp messages. This price is also

communicated to other relevant NECC zones and the local committee members for the information of the members”.

123. As per the DG, apart from the above Vijaywada Zone, two adjacent zones, viz., East Godavari and West Godavari Zones, are also major egg production centres, whose Chairmen are big poultry farmers. The DG deposed both of them, Mr. V. Mukunda Reddy on 07.08.2019 and Mr. G. Gagandhar Rao on 08.08.2019, who stated that, “For fixing the rate of eggs we first collect the prevailing rates in other zones. We also collect rates prevailing in Hyderabad, Kolkata, Bellary over phone. We also discuss about the supplies and how other NECC zones perform. Then we convey the rates to the farmers through WhatsApp + Messages. Most of the times we also hold teleconference with the NECC Chairman. M.B Desai Chairman of NECC Mumbai presides the proceedings. They talk in Hindi and English. Since I do not know the languages I do not participate in the tele conference. Sh. Kutumba Rao represents East & West Godavari district and Vijayawada”. Mr. V. Mukunda Reddy stated, “We Chairman of East Godavari Zonal committee, West Godavari District Zonal Committee and Vijayawada Zonal committee fix rate daily as decided by NECC. We also collect about the prevailing rates in Hyderabad, Namakkal and Kolkata. We inform to other centers about the market condition. After the rates are fixed then. We inform all the

Zonal Chairmen and the farmers about the rate through SMS.”

124. The DG then deposed Mr. Parveen Garg on 24.07.2019, Chairman of NECC Chandigarh/Barwala Zone, who stated that, “There are 15-20 active members consisting of some big farmers and traders who are part of a WhatsApp Group. The name of the group is, 'Daily Barwala Opinion' and the group admin is Mr. Pramod Nagpal. Every individual in this group suggests their prices by considering the prices of all other NECC zones. After arriving at mutual consensus, a rate is decided. The decided rate is circulated through messages over phone amongst all the farmers and traders of north India....In nutshell, I can say that the NECC prices declared for selling of eggs in the Chandigarh/ Barwala zone are followed by those in the industry due to the kind of structure that NECC has built wherein farmers and traders both treat the NECC price as their benchmark price for selling/buying...As explained above, the commitment trade (which constitutes around 60-70% of total production in North India) happens only at the declared rates and in case if there is any deviation that leads to termination of the contract between the seller and the buyer. However, there is hardly any deviation from the decided rate that is perceivably affecting the declared rate as such but in exceptional circumstances like in case of poor quality of eggs or delay in

payment by the trader there may be minor deviations upto 5 to 10 paise. I also want to state that while deciding the prices at any NECC Zone, the prevailing prices at other zones are considered. For the national level co-ordination, teleconference calls amongst the zonal chairmen of the major zones are organised on frequent intervals. These conferences are moderated by M.B. Desai and R Satheesh Babu and the participants are like Dr. Selvaraj from Nammakal, Mr. Prasad from Hospet, Mr. Sainath from Bengaluru, Mr. Kutumb Rao from Vijaywada, Mr. Madan Mohan Maity from Kolkata, Mr. Gurram Chandrashekhar Reddy from Hyderabad, Mr. Nitin Patil from Ahemdabad, etc....For the purpose of teleconferences, WhatsApp group named as "Necc TeleConference" is created..." Mr. Parveen Garg, further stated regarding the mechanism of deciding egg prices by NECC that " In nutshell, I can say that the NECC prices declared for selling of eggs in the Chandigarh Barwala zone are followed by those in the industry due to the kind of structure that NECC has built wherein farmers and traders both treat the NECC price as their benchmark price for selling/buying."

125. The DG also found that the price of Mumbai Zone is dependent on egg prices declared in Hyderabad as admitted by Mr. M. B. Desai, Chairman of NECC Mumbai Zone on 04.10.2019, wherein it was stated that, "...A major portion

of the demand of eggs is supplied from Hyderabad Zone. So the price of Mumbai zone is basically decided with NECC prices declared in Hyderabad zone with an addition of Rs. 55 (included cost of transportation, breakage and commission to semi wholesalers etc.). Thus, the price of the Mumbai zone can be said to be dependent upon the NECC zonal price at Hyderabad. In any case, the Mumbai zone price is declared at 04:00 PM every day. After declaration, the NECC price for the Mumbai zone is informed to the Hyderabad and Pune zonal chairmen of NECC. I would also like to state that all zonal chairmen report their respective prices to the Hyderabad office of NECC.”

126. Mr. Suvendu Kumar Sahu, Chairman of NECC Behrampur Zone, when deposed before the DG on 05.03.2020, stated that, “...The NECC price of Berhampur zone depends on the NECC price of these zones. Every day around 6:00 PM. I gather information about the NECC egg price of Vijaywada, East Godavari and West Godavari zones from Mr. Vijay Kumar, an employee of NECC stationed at Hyderabad NECC office, over telephone. His mobile no. is 9440629685. After adding transportation cost of 20-22 paise per egg in the NECC price declared in these zones, I decide the NECC price of Berhampur zone. For example, yesterday the price of these zones was Rs. 2.95 per egg and after adding 20 paise towards transportation charges, the price

declared in Berhampur zone was Rs. 3.15 per egg. Once the price is decided it is circulated to the farmers of the zone through WhatsApp messages. Additionally, the declared price is also sent to a local newspaper (Sambad) for publication on the next day. This practice used to be followed till November 2019. Since November 2019, timing of declaration of NECC rates in Vijaywada, East Godavari and West Godavari zones have been changed from 3:00PM to 6:00 Am in the morning and thereby the price declaration time of my zone has also been changed from 6:00 PM to 6-6.15 AM...I further state that the NECC rate decided in my zone is totally dependent on NECC price declared in Vijaywada, East Godavari and West Godavari zones and demand & supply do not play any significant role in determining egg price in my zone.”

127. Mr. Pramod Nagpal, Vice Chairman of NECC Delhi Zone, stated before the DG on 22.08.2019 that, “ I decide and declare the price of Barwala and Delhi zones of NECC; I am doing that since last 15 years...Daily at around 11:30 am, I start taking the opinion on the egg prices for the day from around 25-30 big farmers and traders from Punjab, Haryana and Delhi. After taking their opinions, I decide the price of eggs for Barwala zone of NECC price of eggs for the day at 12.00 noon. In the evening, at 5:30 PM the same exercise of taking opinions is done and the rate which we call the closing

rate is declared at 6:00 PM for Barwala NECC zone. On the basis of this closing rate of Barwala, the NECC rate for Delhi zone is decided and declared in the evening. Thus, rate for Delhi is declared around 6:15 PM in the evening, the declared price is applicable for the next day. Here, it is important to mention that Delhi being a big consumption centre receives eggs from Barwala zone that is why their rates are linked with each other.”

128. For Ludhiana Zone, the DG deposed Mr. Inderjit Singh Kang, Chairman of Ludhiana NECC Zone, who agreed that, “...As surplus eggs of my zone a/so goes to J&K and Himachal, the Barwala egg price has a major role in price determination of NECC Amritsar/Ludhiana zone. Around 12:15 PM every day, I personally collect information about open market rate of Barwala over telephone from certain farmers and traders of Barwala. I also seek opinion from major farmers and some traders of my zone on the Barwala open market rate. On the basis of Barwala open market rate and majority opinion, at around 12:30 PM every day, I decide the price of egg of Amritsar/Ludhiana zone, to be applicable for the same day, after the price is decided by me, I inform the same to the farmers and traders of my zone through WhatsApp messages and in the evening I inform the decided rate to Sh. Ashok (9216567579, an employee of NECC, Chandigarh for publication in the next morning newspaper.

In the evening Sh. Ashok inform the newspaper office the price which is published in the next day.”

129. For the Chennai Zone, which has a production of around 1 lakh eggs per day but consumption capacity of 65-70 lakhs eggs per day, the DG deposed Mr. A. Mohan Reddy, Chairman of NECC Chennai Zone, who stated, “There is a rate fixation committee in Chennai zone of NECC which facilitates fixation of egg rate in Chennai. The committee consist of 13 members. Being the zonal chairman, I head the rate fixation committee...In Chennai Zone, we fix and declare price of eggs on daily basis except Sunday and the price fixed and declared on Saturday applies to the trading held on Sunday. Every day the price declared in different zone including Namakkal and Hyderabad used to be received by the coordinator of the NECC, Chennai office as well as myself over telephone or messages through SMS/Whatsapp. Being a consumption centre, we generally fix the price of Chennai zone on the basis of the price of the supply zone after adding the transportation cost and traders margin. At the same time, we also consider supply position of the market, movement of stocks and other related factors. While fixing the price, the opinion of the majority members is taken into account. However, my decision is the final and as per my decision the rate is fixed in Chennai zone. Once the rate is fixed, I use to communicate the same to the coordinator for further

transmission of the same to the traders and farmers of the Chennai zone.”

130. For Chittoor Zone, the DG deposed Mr. V. Ramesh Babu on 21.08.2019, who stated that, “...Therefore, the price in my zone is decided on the basis of price of Namakkal zone and Chennai zone. There is an office of NECC at Chittoor and one person Mr. P. Dasradha is posted there as office in-charge. On the basis of my direction, he gathers information about the price, stock position, supply movement details from the chairmen of five local committees of Chittoor zone. I also receive information about the price and stock position of Namakkal and Chennai zone by WhatsApp message from NECC staff of Namakkal as well as Chennai zone. After considering all these factors, I decide the price of eggs at Chittoor zone at around 2:30PM daily...I am further to state that once the price of Chittoor zone is decided at around 2:00 PM, the same is intimated to the Chennai zone for facilitating them to decide their price. On the basis of our decided price as well as of Namakkal decided price, Chennai zone declare its price. On receiving information about our price, Chennai zone send information to us whether the price is right or not. In case the same is convenient to them they declare their price and immediately after that, officially we declare our price at around 2:30 PM every day.” He further stated, “I have to regularly be in touch with the zonal chairman of the

Chennai zone of NECC to discuss and share the daily egg price. On occasions, I also communicate with other zonal chairmen of NECC as and when required. I am aware that chairmen of the major production zones of NECC and others participate in teleconference calls which are held once in a week.”

131. The DG deposed Mr. Madan Mohan Maity, Chairman of Kolkata/Midnapore Zone, which is a consumption centre. He stated, “Rate over phone is discussed amongst the zonal committee members. Thereafter, the zonal committee members discuss amongst themselves and few big farmers and traders to arrive at the final price. The decided price is sent to Local Committee members by the Zonal Committee members including me through SMS or over phone. Thereafter, in turn, Local Committee members send the farmers and traders these prices through messages or over phones. The rates sent by the zonal committee are followed by West Bengal Farmers and Traders...While deciding the rate of egg by the Zonal Committee, apart from decision by the zonal committee, prices prevailing in other Zones such as Andhra Pradesh, Telangana and Punjab are also taken into consideration. There is frequent exchange of information of prices between our zone and Barwala, Hyderabad and Godavari zones. Prices are also sent to NECC headquarter people such as M.B. Desai.”

132. Mr. B. R. Sainath, Chairman of NECC Bangalore Zone, deposed by the DG on 22.08.2019, stated the following regarding the mechanism adopted for the determination of egg prices, "...The shortfall of eggs is fulfilled by supply from the adjoining NECC zones like Namakkal, Hyderabad, Hospet and Mysore zones. In Bangalore the price is fixed and declared for a particular day at 5:30 -6:00 PM in the evening of the previous Case No. 09 and 36 of 2017 Page 49 of 82 day. Generally, I alongwith the NECC manager Sh. Ravindra Reddy collect feedbacks from major farmers (4-5) of Bangalore zone, collect information about stock position and movement of stocks from other stake holders including neighbouring zones like Namakkal, Hyderabad, Hospet and Mysore zones, assimilate that information and discuss the same with the other functionaries of zonal committee. Subsequently, I take the final decision on the price and declare the same at around 5:30 -6:00 PM every evening which becomes applicable for the next day. Once the price is decided the same is disseminated amongst the farmers in the zone through message or over phone. At the same time information of declared price of eggs is also sent to a newspaper agency for publication on the next day...price of Bangalore largely depends upon the price of other neighbouring zones who supply to Bangalore to meet out its short fall. Therefore, before deciding the price for Bangalore

zone we take into account the NECC price declared by these neighbouring zones, movement of stock in and out of Bangalore zone and other ancillary factors such as festivals etc.”

133. For Ajmer Zone, the DG deposed Mr. Raj Kumar Jaipal on 25.07.2019, who stated, “Everyday at around 11:30 am, I receive information through Whatsapp group and phone calls from zonal chairpersons of various zones of NECC like Chandigarh/ Barwala, Hyderabad, Gujarat, Godavari etc. as well the traders of northern India and Ajmer traders regarding the prices and movement of eggs. After this, I collect information from few (8-10) major farmers (having capacity of around 1 lakh eggs per day) of Ajmer Zone to find out the stock position of eggs in their farms. Thereafter, I decide the price of eggs of Ajmer Zone of NECC for that day. The decided price of eggs is circulated through WhatsApp messaging to the farmers and traders of Ajmer zone as well as other zones of NECC...In Ajmer zone, around 90% of the total sales of eggs is through prior commitment with local traders and for this purpose the price declared by NECC is followed by all farmers and traders, there is no deviation in price declared by NECC.”

134. The DG recorded the statement of Mr. Ravindra Mishra, Chairman of Jabalpur NECC Zone on 20.08.2019, who stated, “In the Jabalpur Zone of NECC, we declare the NECC

egg price for the next day at around 8-9 PM in the evening. In order to arrive at this price, as NECC zonal chairman, I look into the previous prices of our zone and prices declared by the adjoining zones of NECC like Hyderabad, Ajmer etc., I also look into the stock situation, supply between different zones and also consult with some farmers of Jabalpur zone. The declared price is disseminated amongst the farmers in the zone through messages and WhatsApp”.

135. Mr. Satish Babu, Chairman of NECC Mysore Zone on 01.08.2019, admitted before the DG to be declaring egg prices for his zone. He stated, “I declare the NECC price of eggs for the Mysore zone at around 12:30 PM thrice in a week. This decision is based upon the opinion of other 4 zonal committee members, information about the NECC prices in zones like Namakkal, Hospet, Bengaluru etc., situation of movement of eggs between different zones and the consumption centres, stock levels etc. The decided price is circulated through WhatsApp and other messages to all the farmers in the Mysore zone.”

136. For Raipur Zone, the DG deposed Mr. Achin Banerjee on 05.03.2020 who, on being asked about determination of egg prices, stated, “...In our zone, NECC egg rate is declared between 7-8 PM which are applicable for the next day. I along with 2-3 office bearers of Chhattisgarh State Poultry Farmers Association (CSPFA) discuss the egg price after

taking into consideration NECC prices of Hyderabad and Godavari zone, and demand & supply position. After discussion, we determine the egg price to be declared. Once the price is decided, the same is circulated to the farmer of Chhattisgarh zone through WhatsApp messages. The decided prices also sent to local newspaper (Deshbandhu) for publication on the next day. Mostly the NECC price in our zone is determined on the basis of NECC prices of Hyderabad and Godavari zones after adding transportation cost of 10-20 paisa.”

137. For Surat Zone, deficit is generally met through supply from Ahmedabad and Mumbai Zone and the same was stated by Mr. Ashwin Kumar Ramanlal Patel, Zonal Chairman of Surat NECC zone, wherein he stated, “...Therefore, the price in Surat zone is based on NECC declared price in Ahmadabad and Mumbai zone. In my zone price is declared every day at 4:00PM to be applicable for the next day. At around 4:00 PM everyday I receive messages from Ahmadabad zonal office of NECC regarding price declared in Ahmadabad and Mumbai zone. There after I discuss the price with few large farmers of my zone and decide the price to be declared which is generally Ahmadabad declared NECC price plus approximately 10-15 paisa towards transportation charges...Once I decide the

price, I inform the same to the farmers of the zone through WhatsApp group...”

138. For Warangal Zone, whose production is consumed within Telangana only, the DG deposed Mr. E. Pradeep Rao, Zonal Chairman of Warangal NECC Zone, who stated, “Being chairman of the Warangal zone of NECC, I have the responsibility to declare prices of egg for Warangal zone. While deciding the price for my zone, I take into consideration price declared in Hyderabad zone along with some other prices declared by small local farmers' associations. However, the main factor in deciding the price remains the price declared in Hyderabad zone of NECC. The daily price of Hyderabad zone is decided at 11.00 AM every day and the price of Warangal zone is decided at 5 PM which is applicable for the next day... Sometimes the price declared by Hyderabad zone is followed as it is in the Warangal zone. However, in case there is a favourable market condition, we decide the price 3-4 paisa higher than Hyderabad declared price...”

139. Mr. Miten G. Patel, Zonal Chairman of Ahmedabad Zone, when deposed before the DG on 03.02.2020, stated that, “Every day I collect information about stock and supply position of eggs in my zone from some important farmers and few traders. I also collect information about price of eggs, supply and movement of stocks of eggs in other NECC zones

from NECC officials and other sources. Considering all these factors, every day at around 4:00 PM, I decide the NECC egg price of Ahmedabad zone, to be applicable for the next day. As soon as I decide the price, I intimate the decided price to the NECC employee...also transmit the decided price to the farmers and other stake holders by sending messages through SMS or WhatsApp.”

140. For Pune, which is a deficit zone, the DG deposed Mr. Prasad Krishnaji Bhagat, Chairman of Pune NECC Zone, who stated that, “... the price of Pune zone is dependent upon the prices declared in these major production zones such as Hyderabad, Hospet and Namakkal.... considering all these factors, between 4-5 PM in the evening, I determine the price of eggs at Pune zone which is generally Hyderabad or Hospet price (whichever is less) plus transportation charges and trader margin. The price so determined by me is applicable for the next day.... In this regard I am to state that the egg price determination by the zonal chairmen of NECC including myself is a coordinated effort amongst various zones of NECC.”

141. For Vizag Zone, the DG deposed Mr. T. U. Bhaskar, Zonal Chairman of Vizag NECC Zone, who stated, “After consulting with few farmers and traders of Vizag Zone, and also consulting with neighbouring Zonal Chairman of Vijaywada Zone, taking into consideration the market

situation of local market as well as markets of neighbouring states i.e. Odisha, Bihar and Bengal, I determine the egg rates and declare the same at 5:00 PM every day for the next day. While deciding the price I also take into account the NECC declared price of other zones such as Vijaywada, East Godavari and West Godavari. Every day I receive rate of other NECC zones through messages and other information such as supply position, stock information over telephone or other means and consider the same while deciding the price of Vizag Zone...”

142. Thus, the DG, based on the statements regarding mechanism of determination of egg prices by NECC in different zones, inferred that NECC declares the price of egg. The various depositions of NECC zonal heads as reproduced below were taken by the DG to show that the determination of egg prices by the zones were not based on market conditions and rather were dependent on other zones egg prices:

Table: Mechanism of fixing egg price in different Zones

S. No	Zone	Zonal Head/Main Dealer	Mechanism of fixing egg price	Zonal price which is taken into consideration
1.	Namakkal Zone	1. Mr. Ponnusamy Selvaraj, Chairman NECC Zonal Committee, Namakkal	Price of eggs and culling birds is determined through SMS and WhatsApp conversation amongst the price advisory committee members thrice a week i.e., Monday, Thursday and Saturday.	Hyderabad and Hospet Zone

		2. Shri V. S. Balasubramaniam, Senior Manager (Co-ordination) of NECC at Namakkal.	Egg prices of other zones like Hyderabad and Hospet received through WhatsApp are considered while fixing final egg price.	
2.	Hyderabad Zone	1. Shri Gurram Chandrashekhar Reddy, Chairman NECC Hyderabad. 2. Sh. B. Samara Reddy, Ordinary Member of NECC	Egg price is discussed by the Zonal Chairman and four other executive members daily from 9.a.m to 10.a.m through teleconference and information is also gathered about movement of eggs from border posts, and accordingly, egg price is decided. Further, every Wednesday, the Zonal Chairmen of NECC participate in Teleconference to discuss sale, supply and price of eggs. It is stated NECC rates are arbitrarily decided and there is no basis or any calculation of costing or other factors to decide egg price.	Prices declared in other zones
3.	Hospet Zone	M. Siva Ram Prasad, Zonal Chairman Hospet Zone	Egg price is decided around 6:00 p.m daily on the basis of the information received about the declared egg price of Namakkal and Hyderabad Zone. Further, if the egg price is increased in Namakkal and Hyderabad Zone, price in Hospet zone is also increased.	Hyderabad and Namakkal Zone
4.	Vijaywada Zone (Andhra Pradesh)	Sh. Kutumba Rao, Zonal Chairman Vijaywada Zone	The egg price is fixed around 03:30 p.m. on the basis of prices prevailing at Hyderabad, Kolkata, Barwala and in consultation with East and West Godavari zones.	East and West Godavari Zones, Hyderabad, Kolkata and Barwala Zone
5.	East and West Godavari Zone	Sh. G. Gagadhar Rao, Chairman of West Godavari Zone. Sh. V. Mukunda Reddy, Chairman of East Godavari Zone.	Egg rates prevailing in Hyderabad, Kolkata, Namakkal and Vijaywada Zone are taken into consideration while fixing the daily egg prices in East and West Godavari zones.	Hyderabad, Kolkata, Bellary, Namakkal and Vijaywada Zone
6.	Barwala/ Chandigarh Zone	Sh. Praveen Garg, Chairman of Chandigarh Zone.	Egg price is decided keeping in consideration the prices of all other NECC Zones and co-ordination at national level takes place through teleconferences.	All other Zones

7.	Bombay(Mumbai) zone	Sh. M. B. Desai, Chairman Mumbai Zone.	Egg price is declared at 04:00 p.m. daily and is based on the price decided in Hyderabad Zone. Eggs are supplied from Hyderabad Zone to Mumbai Zone as the local production is unable to fulfil the daily demand.	Hyderabad Zone
8.	Berhampur Zone(Odisha)	Sh. Suvendu Kumar Sahu, Chairman Berhampur Zone.	Egg rate declaration time of Berhampur Zone is 06:00 p.m. to 6:15 a.m. and is dependent on the NECC declared egg price in Vijaywada, East and West Godavari Zone.	Vijaywada, East and West Godavari Zone
9.	Delhi Zone	Sh. Pramod Nagpal, Vice Chairman Delhi Zone	Egg rate is decided in Delhi and declared around 06:15 p.m. daily, on the basis of the egg price declared in Barwala Zone. Delhi being a consumption centre receives eggs from Barwala, a production center.	Barwala Zone
10.	Ludhiana Zone	Sh. Inderjit Singh, Chairman Ludhiana Zone	Egg price is decided and declared around 12:15 p.m. daily, on the basis of the egg price declared in Barwala Zone.	Barwala Zone
11.	Chennai Zone	Sh. A. Mohan Reddy, Chairman Chennai Zone	Egg price is fixed and declared daily except Sunday and price declared on Saturday applies to trading on Sunday. Chennai is a consumption centre and price is decided on the basis of the price of supply zone. Supply position of market, movement of stocks and other factors are also considered.	Namakkal and Hyderabad Zone
12.	Chittoor Zone	Sh. V. Ramesh Babu, Chairman Chittoor Zone	The egg price is decided at 02:30 pm daily, on the basis of price of Namakkal Zone and Chennai Zone. Further, the supply and stock position in Chittoor Zone as well as of Namakkal Zone and movement of stock between these zones is also taken into account while deciding the price of Chittoor Zone.	Namakkal, Chennai Zone
13.	Kolkata/Midnapore Zone (West Bengal)	Sh. Madan Mohan Maity, Chairman Kolkata/Midnapore Zone	Apart from the decision of Zonal Committee, egg rate is decided by taking into consideration the price of other zones such as Andhra Pradesh, Telangana and Punjab.	Andhra Pradesh, Telangana, Punjab
14.	Bangalore Zone	Sh. B. R. Sainath, Chairman Bangalore Zone	Price is declared around 05:30-6:00 p.m. daily, which is applicable for next day. Price is decided keeping in view the feedback from major farmers, information about stock position and movement of stocks and prices decided by other zones such as Namakkal, Hospet, Hyderabad and Mysore.	Namakkal, Hospet, Hyderabad and Mysore Zone

15.	Ajmer Zone	Dr. Raj Kumar Jaipal, Chairman Ajmer Zone	Price is fixed by the Zonal Chairman after collecting information about the prices decided and declared by other zones such as Chandigarh/Barwala, Hyderabad, Gujarat, Godavari, etc.	Chandigarh/Barwala, Hyderabad, Gujarat, Godavari Zone
16.	Jabalpur Zone	Sh. Ravindra Mishra, Chairman Jabalpur Zone	Price is declared around 08:00-09:00 p.m. in the evening daily, which is applicable for next day. Previous price of Jabalpur Zone as well as prevailing price of Hyderabad and Ajmer Zone is taken into consideration while deciding egg price.	Hyderabad and Ajmer Zone
17.	Mysore Zone	Sh. Satish Babu, Chairman Mysore Zone	Egg price is declared around 12:30 p.m. thrice in a week, based on the opinion of four zonal committee members and information about the NECC prices in zones like Namakkal, Hospet, Bengaluru etc. The decided price is circulated through WhatsApp and other messages to all the farmers in the Mysore Zone.	Namakkal, Hospet, Bengaluru Zone
18.	Raipur Zone	Sh. Achin Banerjee, Chairman Raipur Zone	Egg price is declared around 07:00 to 08:00 p.m. in the evening, which is applicable for the next day. Egg price is decided after taking into consideration NECC prices of Hyderabad and Godavari zone.	Hyderabad and Godavari Zone
19.	Surat Zone	Sh. Ashwin Kumar Ramanlal Patel, Chairman Surat Zone	Egg price is declared around 04:00 p.m. daily, which is applicable for the next day. Egg price is decided after taking into consideration NECC prices of Ahmedabad and Mumbai Zone.	Ahmedabad and Mumbai Zone
20.	Warangal Zone	Sh. E. Pradeep Rao, Chairman Warangal Zone	Egg price is declared around 05:00 pm daily, which is applicable for the next day. Egg price is decided after taking into the consideration price of Hyderabad Zone.	Hyderabad Zone
21.	Ahmedabad Zone	Sh. Miten G Patel, Chairman Ahmedabad Zone	Egg price is declared around 04:00 p.m. daily, which is applicable for the next day. Price is fixed keeping in view the information about stock and supply position of eggs in Ahmedabad Zone and information about price of eggs, supply and movement of stocks of eggs in other NECC zones.	Other Zones
22.	Pune Zone	Sh. Prasad Krishnaji Bhagat, Chairman Pune Zone	Egg price is declared around 04:00 to 05:00 pm daily, which is applicable for next day and is based on the egg price declared in Hyderabad or Hospet Zone.	Hyderabad or Hospet Zone

23.	Vizag Zone	Sh. T. U. Bhaskar, Chairman Vizag Zone	Egg price is declared around 05:00 pm daily, which is applicable for next day and is based on the egg price declared in Vijaywada, East and West Godavari Zone.	Vijaywada, East and West Godavari Zone
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143. The DG found that Ambala in Haryana, Sangroor in Punjab and Lucknow in Uttar Pradesh do not determine egg price but rather, follow the prices determined by other neighbouring zones.

144. The Commission notes that the DG, apart from the above-stated depositions and statements, has also relied upon certain WhatsApp evidences and emails, while finding NECC to be contravening the provisions of the Act. Certain Zonal Chairmen submitted copies of WhatsApp messages along with certificate under Section 65B of the Indian Evidence Act. As per the DG, the same show that teleconferences were held amongst various Zonal Chairmen of NECC on a weekly basis, which played a significant role in egg price determination and declaration process of various zones. The DG has relied upon WhatsApp message sent by Mr. Satish Babu, Zonal Chairman of Mysore Zone to various zonal Chairmen in NECC Tele Conference group on 31.03.2019 at 18.59 pm stating “31/03/2019, 18:59 - SATISH BABU MAYSORE: Mr. Ravi Mishra - Jabalpur ZC, Mr. ShyamBhagat - Pune ZC, Mr. AchinBannerjee - Raipur ZC,

Mr. Shekhar Reddy - Hyd ZC and myself had a discussion just now and we have concluded to increase the egg rates by 2-3 paise in all zones tomorrow in order to send out a positive signal. We request other zones to support the same”.

145. The above statement shows that Mr. Satish Babu, Chairman of Mysore NECC Zone, on 31.03.2019, conveyed to all group members that the Chairmen of five zones (Mysore, Jabalpur, Pune, Hyderabad and Raipur) discussed and decided to increase the egg rates by 2 to 3 paisa in all zones, with a request to other zones to support the price increase.

146. In another message Mr. Achin Banerji, Chairman of Chhattisgarh Zone, stated that all NECC zones, in a united manner, have increased the price of eggs during the last ten days. He also requested all the Zonal Chairmen to follow the trend of increasing the price of eggs. The same is reproduced herein, “My Observation. First time in history, unitedly all zones are increasing egg price from last 10 days on same day, we are experiencing good movement of egg sale in navratri season too. In spite of retaliation from egg trader's sale and rate of egg had improved. My request to all Zonal Chairman to follow this trend (Increasing or decreasing) in future also which would boost the poultry farmer's. Only issue, retail price is not decreasing and sale price is minimum Rs.5/-. During last teleconference, Shri Desai Sir had said

that the retail rate would be advertised through different media. If this is done sale will definitely increase. All zone farmers should do retail price campaign through social media. Regards.”

147. The DG also found Mr. M. B. Desai, facilitating egg price determination of other zones via a WhatsApp message dated 10.04.2019, which states, “...Today we had mini mobile teleconference with Barwalla, Vijayawada, Mumbai, Hospet, Hyderabad and Namakkal. Everywhere no stock and the movements are just normal. Mumbai sales slow due to Vasantha Navarathiri which comes to end on 13th of this month and expect sale will improve by the week end. Vijayawada movements are also slow due to tomorrow elections, hope it will improve by coming days. Hyderabad may continue their increasing trend by increasing 2 or 3 paise today. Namakkal position is normal and may increase 5 paise tomorrow and maintain the local minus by 30 paise for a week at least Easter end. Hospet will follow Hyderabad and Namakkal action...” The DG from the above statement found that Mr. Desai facilitated the egg price determination of other zones, who would decide the price on the basis of the prevailing and forecasted prices of these major production centres without taking into account the demand and supply position of their respective zones.

148. The DG, from the WhatsApp texts of various groups, submitted by Mr. Selevraj, Zonal Chairman of Namakkal Zone, of which he is a member, found that members of the teleconference group were requested to participate in weekly conferences to discuss egg stocks and market position of various zones. The same was sent by Mr. V. S. Balasubramaniam, Senior Manager (Co-ordination) of NECC Namakkal Zone to all members of NECC teleconference on 08.01.2019. It stated, "...advised by respected Mr. M. B. Desai sir I request all members to participate in tomorrow's (09.01.2019) Wednesday teleconference @ 09.45 am sharp repeat 09.45 am sharp (as a special case) to discuss about current egg stock and market position of various zones....

149. Another WhatsApp message was sent by Mr. V. S. Balasubramaniam, Senior Manager (Coordination) of NECC Namakkal Zone, to all members of NECC teleconferences again, on the instructions of Mr. M. B. Desai, wherein egg price was discussed for teleconference to be held on 23.02.2019. Thereafter, another WhatsApp message of Mr. M. B. Desai was circulated by Mr. Balasubramaniam to NECC teleconference group on 06.03.2019, wherein it was decided that all NECC zones would maintain egg prices wherever they were and all Zonal Chairmen had accepted the same. It read, "It is decided in today's (06.03.2019) NECC teleconference that all should maintain the rates

wherever they are there. Considering national layer farmers interest Chairman's accept this decision. All farmers are requested to co-operate to implement this decision not to reduce further..."

150. The DG from the WhatsApp messages observed that teleconferences, which the zonal heads also admitted to be a part of, during DG depositions, were held amongst zonal heads under the supervision of Mr. M. B. Desai discussing various issues including stock, market position, egg prices, etc. The DG, along with depositions and WhatsApp messages, perused the emails of various NECC functionaries. An email dated 28.10.2015 was sent by Mr. K. Somi Reddy, who was one of the executive members of Vijayawada Zone to all zonal heads and important stakeholders, "The Executive Committee Meeting of NECC was held in Hyderabad on 27.10.15 under the Chairmanship of Mr. M. B. Desai. All the Zonal Chairmen of Southern region along with EC members attended to discuss about the present egg market situation and future trends...It was the unanimous view of the house that the consumers are already paying and ready to pay a little more higher price for eggs. It is only that Producers are unable to encash the market. In order to overcome this the following decisions were taken for strict implementation. Every Wednesday, the Zonal Chairman of Namakkal, Hospet, Hyderabad, Coastal

Andhra and Barwala along with Mumbai will be on conference call to discuss about their area market and take necessary collective decisions to improve market conditions...Looking at the placements and market conditions all are hopeful that a better price can be achieved by better coordination among the zones and farmers.”

151. The DG, from the WhatsApp messages and emails, found that weekly teleconferences (Wednesday) were held at major production surplus zones between various zonal heads and other NECC functionaries discussing inter alia, egg prices, stock and its movement and egg supply and sales. According to the DG, the purpose of these teleconferences was stated to sustain egg prices at a certain specified level in a coordinated manner. The same also shows that the Chairmen of various zones were responsible for the determination and declaration of egg prices at their respective zones. It was observed by the DG that mostly all the zonal heads, while deposing before the DG, mentioned a timeline as to when NECC egg price for that particular zone is announced. The same is produced in the following Table:

Table: Timing of Declaration of Egg Price

<i>Timing of price declaration</i>	<i>Name of the Major Production zone</i>	<i>Name of the other NECC zones</i>

11.00 AM	Hyderabag	
12.00 am	Barwala	
12.15 pm		Ajmer
12.15 pm	Namakkal	
12.30 pm		Ludhiana/ Amritsar
12.30 pm		Mysore
2.30 pm		Chittoor
3.30 pm	East Godavari	
3.30 pm	West Godavari	
3.30 pm	Vijaywada	
4.pm		Mumbai
4 pm		Surat (CC)
4 pm		Ahmedabad
5 pm		Warangal
5 pm		Vizag Zone
4-5 pm		Pune Zone
6 pm	Hospet	
5.30-6 pm		Bangalore Zone (CC)
6 pm		Berhampur zone
6 pm	Barwala (closing)	
6.15 pm		Delhi
7-8 pm		Raipur
8-9 pm		Jabalpur zone

152. The above-stated weekly conferences were used as a platform to facilitate understandings/agreements amongst different NECC zones to act on egg prices and facilitated exchange of information about the price of other zones, stock level, movement of stock, etc. Teleconferences also played an important role in national-level coordination amongst the Zonal Chairmen. The evidence on record suggested that Zonal Chairmen decided egg prices for their zone. The DG also investigated the role of Central Executive Committee in the same and found that the Central Executive Committee conducts annual meetings and is headed by Mrs. Anuradha Desai, Chairperson of NECC, and at times by Mr. M. B. Desai, Vice Chairperson of NECC, attended by all Zonal heads. The DG has perused the minutes of meetings dated (i) 04.12.2013 - All “the production zones have to share their consuming markets in a balanced manner and there should not be any internal competition amongst the zones. We should have more information about the dispatches where they are going and therefore collection of such information is more important. It is not clear how the undercutting prevails in some of the zones as almost all eggs are consumed. She requested Namakkal zone to hold the price and reduce the minus. She also reiterated that by holding the price at Namakkal with the reduction of minus would help the entire country”. (ii) 02.12.2015 – “Chairperson also appealed to the

House to educate the farmers for necessary culling at this juncture enabling them to achieve a better price for the remaining flocks. Every farmer should go for culling immediately without any further delay to make the situation in our favour in increasing the egg rate to an optimum level.”

“Chairperson wanted every zone to be strong and united with the required coordination and declare the price followed by everybody. Also we should take advantage of the season increasing the price to the maximum level of Rs. 4.50”, (iii) 30.08.2017 – “Mr. MB Desai while reviewing the overall markets in the country stated that with proper coordination amongst the zonal chairmen and farmers the egg prices can be stabilized at a reasonable level. Accordingly, he wanted the zonal chairmen to extend their cooperation for necessary coordination in this regard and (iv) 08.01.2018 – “lastly she requested all the zonal chairmen to declare a better price for eggs with the coordination, cooperation amongst themselves and also improve their marketing channels”. The Commission, thus, notes, based on the above, that the Central Executive Committee used the meetings as a platform to facilitate exchange of information and coordination amongst zones for better egg prices and its implementation.

153. The evidence on record, thus, suggests that the Central Executive Committee of NECC plays an active role in

controlling the process of determination and declaration of prices of eggs by active intervention through its three-tier structure and reporting by the Zonal Chairmen at annual meetings. The DG, in this regard, had found that the explanation given by NECC that the prices of eggs are declared on the basis of demand and supply conditions is untenable and that fixation and declaration of prices was a result of collusion at zonal level between the Chairmen of Zonal Committees and at the national level by the Central Executive Committee of NECC. Therefore, in view of the above, the DG concluded that the determination of the sale price of eggs by NECC amounts to contravention of Section 3(3)(a) of the Act.

154. The Commission, thus, observes that the DG, from the above evidences, including WhatsApp messages, emails, minutes of meeting, statements on oath etc., gathered during the investigation and their analysis found that NECC has been determining and declaring the prices of eggs on daily basis. The DG noted that the determination and declaration of prices of eggs is done regularly through coordination by Zonal Chairmen of the different zones created by NECC. The DG found that the coordination is facilitated by weekly teleconference calls between different Zonal Chairmen, which are moderated by senior persons of NECC and facilitated by the Central Executive Committee of NECC. 155.

The Commission notes that the DG found from the oral statements made by the Zonal Chairmen and other functionaries of NECC before it, that the egg price determination mechanism is almost similar both in production centres and consumption centres. The responsibility lies with the Zonal Chairmen, who decide and declare the egg price which, in most cases, is after consultation with a few major farmers/traders of the zone. It was also found from the statements of the Zonal Chairmen that there is strong coordination amongst the Zonal Chairmen for the determination and declaration of egg price. In order to examine whether any such decision, which is contrary to the tenets of Section 3 of the Act, was/continues to be taken by NECC, wherein, it declares egg prices on a daily basis which is followed by all scale farmers and poultry stores across India and also, in some instances, was taken as a benchmark price by individual State Governments, the DG analysed WhatsApp chats and teleconferences, whereby information about egg rates of a particular zone was disseminated to all other zones.

156. The Commission observes that the contention of NECC that egg prices are declared as per prevailing market conditions falls flat, as established from the above statements and evidences. It shows that the egg rate of a particular zone is not dependent on the demand and supply

situation of that zone, and rather, it depends on the egg prices declared by other NECC zones through coordination.

157. Moreover, the Commission notes that, as per DG Report, some zones [like Ambala (Haryana), Sangroor (Punjab) and Lucknow (Uttar Pradesh)] do not determine and declare egg prices, but rather, follow prices of other neighbouring zones.

The same is clearly established, as the investigation did not find anything contrary to the fact that Zonal Chairmen indeed decided egg prices in these zones and this finding has not been refuted by NECC with any evidence. Thus, the Commission does not find merit in NECC's submissions that egg prices are dependent on prevailing market conditions.

158. It is apparent/evident that NECC is the only entity in India that declares egg prices on a daily basis on its platform and the same flows from one of its objectives. It is also to be noted that the declared egg price is followed by farmers and poultry owners. The Commission does not find any statutory obligation, duty or power which allows NECC to declare daily egg prices, which are followed as benchmark even by (some) State Government bodies. The Commission further notes from the submissions that this fact has not been denied by the NECC. However, NECC did change the nomenclature from 'declared price' to 'suggestive price' of eggs after an investigation was initiated by the DG.

159. The Commission, therefore, is in agreement with the findings of the DG, which is well supported with the evidences including WhatsApp messages, emails, minutes of meeting, statements on oath etc., gathered during the investigation that NECC declares egg prices on a daily basis through coordination between and by Zonal Chairmen of different zones created by NECC. The Commission notes that such co-ordination is facilitated by weekly teleconference calls among Zonal Chairmen which are moderated by senior NECC personnel. The Commission also finds the active role of NECC's Central Executive Committee, which controls the process of determination and declaration of prices of eggs by active intervention through its three-tier structure and reporting by the Zonal Chairmen at annual meetings.

160. The next question for the Commission would be to determine whether such price declaration and determination is followed/implemented by farmers and poultry stores and if there is any penalty in case of non-compliance. NECC, during investigation and vide its submissions before the Commission, submitted that the egg price declared by it is not mandatory or binding upon the farmers/traders and there lies no compulsion to follow the price declared by NECC. It was noted that NECC did not submit any evidence to substantiate its claim. Thus, the issue was examined based on oral, documentary and digital evidence gathered

from NECC, ACIL and third parties during the investigation.

161. The DG examined a WhatsApp message dated 01.08.2019 sent by Mr. B. Rajender, NECC Core Committee Member which, inter alia, stated, "...6. Grievences Committee was established with 9 members, their duty is to listen to the complaints and solve the deviations. Farmers/traders can inform the deviations to the committee...9. If deviated grievences/core committee will enquire and will lay a penalty of 0.25 ps per egg for the quantity loaded to the farmer and trader each." Mr. B. Rajender, on being asked to explain the same before the DG on 23.09.2019, stated, "to have an effective setup for uniform selling rate of egg and it was also decided to lay a penalty of 0.25 per egg in case of non-compliance with the NECC egg price if any farmer or trader does not follow that. This kind of system is generally followed whenever the egg prices are very low with an intent to enforce NECC prices of egg on farmers as well as traders..." He also stated that the farmers are informed that a penalty would be levied on them in case of non-compliance of NECC declared price.

162. The DG also found WhatsApp messages between Mr. B. Rajender and Mr. Tiku of 07.01.2016, 08.01.2016 and 09.01.2016 concerning levying of penalty on farmers/traders in case of deviation. Mr. B. Rajender admitted to the existence of such messages before the DG in

his deposition dated 23.09.2019 and stated further in this regard, “During that period, it was decided that if anybody deviates from the NECC declared egg prices he has to pay penalty to the zonal committee in tune with the total amount of the lifted quantity. For example, if NECC rate is Rs. 41- per egg and if there is any transaction of one lakh eggs at the rate say Rs. 3.801- per egg, then the entire amount of consideration i.e. Rs. 3.8 lakhs shall be paid by the buyer to the NECC zonal committee and not to the farmer. This is to create pressure on the farmers and traders to follow NECC prices. Such imposition of penalty directly impacts farmers so they don't sell eggs below NECC declared prices and for traders it leads to discontinuation of the contract with the farmers...”

163. The DG also noted further WhatsApp conversations of Mr. B. Rajender dated 06.01.2016, 07.01.2016 and 08.01.2016, wherein, in one of them, he had stated, “it is decided that if anybody deviates from the rate the lifted truck amount will be paid to the Zonal Committee as a penalty”. This shows that NECC, besides declaring the price of egg also sought to enforce the same.

164. The DG also perused a WhatsApp message circulated by Mr. V. S. Balasubramaniam of Hyderabad Zone in different NECC groups stating, “It is decided in today's meeting that from today onwards there is only Single Price

and it is revised for today @ Rs.300/-. And request all to strictly adhere to this system and all deviations will be dealt seriously...” Mr. V. S. Balasubramaniam before the DG on 30.07.2019 stated, “...more or less the declared price is followed...”

165. Mr. M. B. Desai, in his deposition before the DG on 04.10.2019, stated that, “...I am also aware that certain practices like imposition of penalties on farmers and other measures are proposed and sometimes used by the NECC persons at zonal levels.”

166. The DG relied upon another WhatsApp message sent by Mr. B. Rajender dated 25.04.2019, which said, “...2. kindly don't deviate. 3. Committee is serious for all deviations...” An email dated 29.09.2016 sent by NECC Hyderabad to Mrs. Anuradha Desai which discussed that no farmer will sell eggs below Rs. 3.75/ per egg and all Zonal Chairmen will oversee that it is complied with and that the NECC Chairperson may appoint a committee to oversee strict implementation of the same. Mr. M. B. Desai was confronted with this email on 04.10.2019 before the DG to which he stated, “...In as much as the implementation of this price is concerned, efforts are made at the central level of NECC to implement its price through better co-ordination amongst farmers. I am also aware that certain practices like imposition of penalties on farmers and other measures are

proposed and sometimes used by the NECC persons at zonal levels...” The same email was confronted to Mr. K. V. S. Subba Raju, Vice Chairman of Central Executive Committee of NECC, to which he stated, “...NECC chairperson was requested to ensure strict implementation of NECC price and to see that no farmer sells eggs below the price fixed by NECC...”

167. Apart from the above, the DG also perused NECC Central Executive Committee’s minutes of annual meetings. The minutes of the meeting dated 17.10.2011 stated, “...Here in Barwala 75-80% of the farmers are following this price with the commitment to the traders...Most of the traders follow the afternoon SMS. Though it is not a good practice, it is a positive sign of following SMS rate by the farmers to maximum extent.” Minutes of meeting dated 31.01.2012 stated, “...The price declared in Jabalpur is followed by the entire Madhya Pradesh without any plus or minus business in their zone.” Minutes of meeting dated 24.12.2014 stated, “...He cited an example of Hospet rate where the farmers have become united and strictly following the rate declared by NECC. He also informed that even the rules framed by the zone, they are being penalized if any farmer is deviating. As the farmers in their zone are strictly following the NECC rate, even traders are also in the line with farmer's rate. As such the farmers in their area are sure of selling their farm eggs

at NECC declared price with full of confidence. Mr. Prasad informed that this is all possible only because of Chairperson's advice to the farmers of their area reposing confidence amongst them in selling their farm produce at the NECC declared price.” In the same meeting, Chairmen of Ajmer and Vizag zone made similar statements and stated, “... In other seasons some of their production goes to Eastern U.P. and M.P. irrespective of the ups and down in the market they always declare NECC price which is strictly being followed by the traders and farmers without any plus or minus. If any deviation is there by any farmer or trader strict action is initiated on such deviator. As such there is no deviation from NECC rate...Mr. G.R.K. Chowdary, Vizag Chairman stated that they have sheds with a capacity of 42 lakhs, which were full prior to HudHud Cyclone. They are strictly following the NECC price without any plus or minus...”Mr. K. Somi Reddy during the annual meeting of the Central Executive Committee held on 08.01.2018 stated, “The NECC declared price is followed by the farmers and they are getting the price as per NECC price declaration...”

168. The DG also perused an email dated 26.02.2015 sent by Mrs. Anuradha Desai, Chairperson of NECC, wherein, she requested major Zonal Chairmen not to reduce egg prices and stressed that major zones should coordinate and cooperate more closely to hold on to egg price and not reduce it. The DG

perused another email dated 15.11.2017 sent by Mr. Chandrasekhar Reddy, Zonal Chairman of Hyderabad Zone to Mrs. Anuradha Desai, wherein he stated that there is no deviation to the declared price. It reads as, "I am happy to share the good news that Hyderabad NECC egg price has crossed the milestone of Rs.5/- and today it is Rs.5.13/-. It took almost 173 days to move from Rs.3/- to Rs.4/- and 17 days for Rs.5/- from Rs.4/-. In this transition all the stakeholders especially Hyderabad Egg Traders have cooperated very well and the daily price is declared in coordination with farmers & traders, so as to not to have any differences among the farmers & traders and there is not a single deviation in selling price..." Mr. Reddy was asked to explain the same before the DG on 25.04.2019 to which he stated, "... I thus informed that the declaration of daily price with the coordination of farmers and traders resulted in a consensus amongst them and there was not even a single deviation inasmuch as the selling price of eggs is concerned."

169. As per the minutes of meeting dated 31.01.2012, the DG found that egg prices dropped by 25 paise, leading to huge losses to poultry farmers and the same was viewed seriously by Mrs. Anuradha Desai, Chairperson of NECC. As per the DG, who based its finding on the said minutes of meeting, Mrs. Desai took stock of the situation and advised that the egg prices be declared after taking into consideration

neighbouring zones. Mrs. Desai, for the purpose of monitoring the egg prices, also asked for such intimations to be made to her along with reasons.

170. Mr. Raj Kumar Jaipal, Chairman of Ajmer Zonal Committee of NECC, stated before the DG on 24.07.2019, "...the price declared by NECC is followed by all farmers and traders, there is no deviation in price declared by NECC". Similarly, Mr. M. Siva Ram Prasad, Chairman of NECC Hospet zone stated before the DG on 01.08.2019, "In so far as commitment trade (which constitutes around 60% of the total trade in the Hospet Zone) is concerned, NECC prices declared for the Zone are followed exactly by the farmers and traders. Commitment trade means the trade where quantity of eggs that will be lifted by the buyer is fixed and the prices of NECC are applicable in most cases. In commitment trade where there are mostly verbal agreements, if the NECC declared price is not followed the agreement is terminated...In that case the realisation to the seller of the noncommitment trade again reduced by the minus amount and thereby incurs financial loss. Such timely reduction in price of egg by NECC put pressure on the farmers not to deviate from the NECC price in future."

171. Mr. Parveen Garg, Chairman of Chandigarh NECC Zone, stated during his deposition on 24.07.2019 that, "...As explained above, the commitment trade (which constitutes

around 60-70% of total production in North India) happens only at the declared rates and in case if there is any deviation that leads to termination of the contract between the seller and the buyer...”

172. The DG relied upon an email sent by Mr. G. Chandra Shekhar Reddy to Mrs. Anuradha Desai, Chairperson of NECC, dated 15.11.2017, which stated, “...I am happy to share the good news that Hyderabad NECC egg price has crossed the milestone of Rs.5/- and today it is Rs.5.13/-. It took almost 173 days to move from Rs. 3/- to Rs.4/- and 17 days for Rs.5/- from Rs.4/-. In this transition all the stakeholders especially Hyderabad Egg Traders have cooperated very well and the daily price is declared in coordination with farmers & traders, so as to not to have any differences among the farmers & traders and there is not a single deviation in selling price. As we have almost another 3 months season ahead, we thought of taking few traders & committee members and few other important farmers from Hyderabad a foreign trip to keep the trend continued and seek your honours suggestion & guidance in this regard...”

The DG has noted from this email that Mr. Reddy intimated Mrs. Desai that there was no deviation from declared price and also proposed a foreign trip for a few important farmers/functionaries/traders of Hyderabad zone to continue the trend.

173. The DG deposed many other Zonal Chairmen of NECC and senior functionaries, who repeated that NECC declared price is the benchmark price for their zones and is, thus, followed and NECC is engaged in its implementation via levying of penalty in case of noncompliance, enforcing inter-zonal coordination and incentivizing poultry farmers who assist NECC in ensuring proper implementation of its declared price. Thus, as per the DG, declared egg prices by NECC are followed and backed by some action.

174. The Commission gathers that NECC, while declaring egg prices on a daily basis, also ensures its implementation and efforts are made both at the central level and zonal level of NECC for strict implementation of the declared price. The Commission also takes note of the minutes of annually held meetings of NECC, which reveal that NECC is engaged in the implementation of the egg prices declared by it. The same also demonstrates that the Chairperson of NECC and some senior personnel are involved in decision making with regard to the implementation of prices.

175. The Commission, while taking note of the fact that NECC declares egg prices and also ensures its implementation, notes that there is no concrete evidence on the imposition of penalties being levied on farmers for non-implementation of egg prices. While saying so, the Commission observes from the evidence on record that, at a

regional level, there are many big/small scale poultry farmers and, at times, poultry associations, who have a say in the determination of daily egg price. Thus, it would be very subjective to find evidence for acts done by associations for themselves as daily price determination of eggs is a concerted action between NECC personnel and farmers, big or small or associations. It has to be taken into consideration that not all the farmers would have large poultry farms to act independently and separate themselves from the aegis of NECC as their survival would be at risk. Further, the Commission notes that, whilst investigation was commenced, NECC changed the mandatory price of eggs to 'suggestive price', which shows that NECC had the intention to enforce price of eggs. Though there is no direct evidence of imposition and collection of penalties, but the three-tier structure of NECC coupled with the knowledge among members that prices have to be followed strictly to avoid unpleasant action in itself creates an ecosystem where the requirement of strict adherence permeates to each nook and corner. This, coupled with the fact that substantial majority of trades are committed trades and members also knew about the existence of check-points, ensures a systematic adherence to the diktats of NECC. The Commission, having considered the above, agrees with the DG's finding that NECC is declaring egg prices and the same are also being

put to implementation by various means and coordination.

176. The DG investigation gathered evidences regarding limiting and controlling egg supply by NECC via early culling of birds, subsidized cold storage facilities and monitoring of movement of trucks through check-posts. As per the investigation, birds lay eggs for around 12 months starting when they are 21 weeks old and lasting till 72 weeks, post which layer birds are culled and their meat is sold in the market. The investigation found an email dated 26.12.2015, sent by Mrs. Anuradha Desai, Chairperson of NECC, to all Zonal Chairmen of major production zones, directing them to advise farmers to cull birds above 65 weeks of age. The same mail was forwarded to around 100 stakeholders by Mr. Sanjeev Chintawar, NECC executive. It read, "As you are aware, currently the egg market appears to be in utter chaos all over the country, and, every zone is dropping the price daily, by 5 paisa. Such panic reaction to the reduction in demand is not called for. With the onset of summer, some adjustment in demand-supply situation is to be expected, but reducing the price in panic cannot be the solution...I would, therefore, request you not to yield to the pressure from trade, and, not to reduce the price any further. I would also request you to speak to the farmers in your area and advise them to cull all flocks above the age of 65 weeks. This will have an

immediate, positive impact on the demand-supply situation, and consequently on the price...”

177. The DG, thereafter, during investigation, confronted certain NECC Zonal Chairmen with this email, to which, Mr. M. S. R. Prasad, Chairman of Hospet Zone, stated on 01.08.2019, “...I received this email as zonal chairman of the Hospet zone wherein national chairperson of NECC Ms. Anuradha Desai directed the chairmen of major zones including Hospet to speak to the farmers in their respective zones and advise them to cull all flocks above the age of 65 weeks. The purpose of such direction was to stabilise the price of eggs by controlling supply in the market. It was also directed by Ms. Desai that all major production zones like Hyderabad, Namakkal, Hospet, Vijaywada and Barawal should coordinate and co-operate more closely and hold on to the prices of eggs.”

178. Mr. Parveen Garg, Chairman of Chandigarh NECC Zone, stated on 24.07.2019, “...In the said email it was instructed by Ms. Desai to not to further decrease the prices of eggs because of decrease in demand. She also instructed chairmen of all major zones to communicate to the farmers in their respective areas to advise the farmers to cull all flocks above the age of 65 weeks in order to manage supply in the market. It is also mentioned in the email that such move by farmers will lead to no further decrease in prices.”

179. Mr. Kutumba Rao, Chairman of Vijaywada Zone, stated before the DG that, "...The motive and purpose behind such directions was to reduce the production so the prices declared by NECC can be maintained".

180. Mr. V. S. Balasubramaniam, Senior Manager (Co-ordination) NECC, stated before the DG on 30.07.2019, "One major action taken by NECC to control the excess supply of eggs is by asking the farmers for early culling of flocks (layer birds). The standard age to cull a layer bird is 72 weeks which is lowered to as much as 65 weeks to control excess supply in the market. This move by NECC helps to stabilise the egg price by controlling production of eggs for certain time period. I would also like to state that the circulars in this regard are issued by the Zonal chairmen in consultation with the chairperson, Ms. Anuradha Desai."

181. Mr. Sanjeev Chintawar, who forwarded the said email to various stakeholders, on being asked about the concept and purpose of early bird culling, stated before the DG on 01.08.2019, "Whenever there is over production of eggs in the market, generally it is decided by the national chairperson along with zonal chairmen to cull the birds/flocks at a lower age i.e. 65 weeks with an objective to curtail production of eggs. I recall receiving directions through emails and other medium from the chairperson Ms. Desai to zonal chairmen to ask the farmers in their respective

zones to cull the birds at early age. However, my job has been limited to circulate such directions to various members of NECC”.

182. Mr. Ajit Singh, Chief Executive of NECC, on 24.07.2019, accepted that Mrs. Desai had sent the same and stated, “It is clear from the contents of the emails that Ms. Desai has directed the zonal chairmen of major zones to coordinate and co-operate more closely to maintain the existing price. It is also mentioned by Ms. Desai to cull of flocks above the age of 65 weeks so that the supply of eggs can be controlled and prices can be stabilised.”

183. Mr. M. B. Desai, though not recalling the email in question, stated before the DG on 04.10.2019 that, “...I would like to state that generally such suggestions are issued by NECC only when there is a situation where the egg prices are falling and controlling supply becomes necessary to stabilise the prices”.

184. Mr. Satish Babu, Zonal Chairman of Mysore Zone, stated before the DG on 01.08.2019, “... Sometimes, early culling of birds is suggested by our Chairperson Ms. Anuradha Desai for curtailing supply, which would stabilize the price in the market”.

185. The same issue, as the investigation has found was also discussed in the Annual General meetings of NECC in the presence of zonal heads and Central Executive Members,

including the Chairperson. Minutes of meeting dated 16.12.2016 read as, "She requested the entire house to educate the farmers to cull over aged birds resulting in which the remaining yield will have a remunerative price otherwise there will be scarcity in the availability of feed and also rate could not be taken up to the desired level". It can be seen that Mrs. Anuradha Desai requested the farmers to cull birds to have remunerative egg price.

186. The DG, during investigation, also found that NECC zones also declare cull bird rates i.e. the rate at which meat of aged layer birds is sold. With regard to the same, the DG found certain WhatsApp messages sent on 18.03.2019, 21.03.2019 and 23.03.2019 by Mr. V. S. Balasubramaniam, wherein cull bird rate at Namakkal was Rs. 53 per kg, which was increased to Rs. 59 per kg on 21.03.2019 and to Rs. 64 per kg on 23.03.2019.

187. The DG investigation unearthed that usual bird culling age is 72 weeks, but the same is reduced to 65 weeks to maintain NECC egg prices. The DG from the evidence before it found that Mrs. Anuradha Desai, apart from taking other measures to not let egg prices drop in the market, specifically asked Zonal Chairmen to advise poultry farmers to cull birds above 65 weeks of age. The same was acknowledged and adhered to by majority of the Zonal Chairmen, many of which deposed before the DG. While accepting that early bird

culling helps in stabilizing egg prices by controlling supply in the market, this move would cease reduction of egg prices helping maintain NECC declared prices. Thus, as per the DG, NECC indulged in limiting and controlling production and supply of eggs by facilitating and directing early bird culling.

188. The Commission takes note of the OP's submissions on this pertinent issue that the poultry farmers, being small, cannot themselves foresee the market dynamics, including fall in demand for eggs and many were not well informed to take decisions. It is also submitted by NECC that, as an industry body of poultry farmers, it can play an educative or informative role for its members and issue advisories suggesting to farmers what may be impacting egg production and related prices. It is also noted by the Commission that, as regards advisories pertaining to culling of overaged birds, NECC stated that, in order to discourage farmers from engaging in forced moulting (practice controversial and banned by many countries and also prohibited in India), advisories were issued.

189. The DG, during investigation, observed that, for maintenance and implementation of its declared price, NECC provides cold storage subsidies to the farmers when there is lower demand or surplus supply in the market. NECC, as a countermeasure, asks farmers to store their eggs in cold storage, ensuring that eggs are not sold below NECC

declared price. However, as per the DG, this has an impact on egg supply in the market and it is to be noted that cold storage expenses incurred by farmers are compensated by NECC. The DG has found emails regarding the same. One of the emails, dated 27.07.2015, was sent by Chairman of Ahmedabad Zone and addressed to others, including Mr. M. B. Desai, which states, "Here we pleased to inform you that we already sent two emails to respected chairperson regarding approval for subsidy for cold storage operations already under taken in Gujarat during month of April - May. Total eggs we have kept in cold storage that is three day production of 21 farmers is around 36 lacs eggs. Accordingly we are awaiting for chairperson's approval for the same subsidy. So as enables us to submit related documents to Account dept. for release subsidy amount to Gujarat farmers..." Mr. M. B. Desai was asked to explain the same by the DG on 04.10.2019, to which he stated, "...I would like to explain that it was a practice at NECC that subsidy was given to traders for keeping eggs in cold stores so that the NECC price of eggs is maintained in the market. Later on this practice was discontinued and in as much as I remember since past 15-16 years, subsidy is given to the farmers for keeping their eggs in cold storage. This is done at times when there is lower demand or surplus supply in the market in order to maintain the NECC price of eggs. For example, if a

farmer is asked in the month of Sravan to keep his eggs in cold storage for some time and not sell it in the market, he will be compensated through this subsidy to cover his expenses at the cold storages. I would also like to state that entities connected with NECC like Bharat Egg Producers' Association (BEPA) and All India Poultry Development Services Pvt. Ltd. do look after cold storage and probably one of these has cold storage facilities to be rented to poultry farmers only at a subsidised rate.”

190. Mr. V. Ramesh Babu, Chairman of Chittoor Zone of NECC, also informed the DG during his deposition that farmers are provided cold storage subsidy to control supply. He stated, “...Earlier around 7-8 years back, NECC used to provide cold storage subsidy and export subsidy to the farmers to control the supply in a particular area so as to stabilise the NECC declared price. As far as I know sometimes early culling of the laying birds was discussed in various NECC meetings to maintain the supply as well as to reduce the feed cost and 4 to 5 years back some farmers had culled birds early for maintain supply”. 191. Thus, the DG found NECC to be holding egg stocks for a few days and, in return, providing cold storage subsidies to farmers to maintain its declared prices and control supply in a particular area. OP-1 has stated that its practices have not driven any competitor out of the market or foreclosed the

market. In this regard, the Commission observes that, while the provision of cold storage facility and subsidy for the same to farmers to store eggs is ameliorative in nature, especially considering the perishability factor of the eggs, where the said facility is used with a sole intention to limit supply and control prices, such conduct can be examined under the provisions of the Act. The Commission would not like to delve further on this aspect in view of the submissions of the OP-1 that intention of this facility was to benefit the poultry farmers.

192. The DG, thereafter, found evidences of NECC restricting supply through coordination and creation of check posts and found an email dated 08.07.2015 from Mr. Somi Reddy to Mrs. Anuradha Desai, which read, "...On the advice of Sri M. B. Desai Sab, about 15 farmers from West Bengal NECC has come to Rajahmundry on 6th August' 15 to interact with the farmers of this area. We have arranged a meeting with NECC Zonal Chairmen and about 50 important poultry farmers of this area with them. After a lengthy discussion, all of them agreed for a better coordination among the NECC Zones in A.P. and West Bengal on daily basis and also try to regulate the flow of eggs to Sealdah market which is effecting the National market. They also agreed to meet quarterly and also involve Barwala NECC in their discussion on daily declaration of NECC price. In order to strengthen NECC to get

a better price to the farmers of all Zones, it was suggested to have 3 NECC Coordinators to monitor egg market in Bihar; West Bengal, Assam and help or guide NECC Zonal Chairmen to update them on egg market. Mr. Maly of Kolkata even suggested to have a check post at the entry of West Bengal from Odisha side to monitor and regulate flow of eggs to Sealdah market for a better price. The above decisions were unanimously accepted by all and requested for implementation with your kind permission”

193. Amongst other things, the above email suggests having a check post at the entry of West Bengal from Odisha to monitor and regulate flow of eggs to Sealdah market for a better price, a decision which was unanimously accepted and NECC Chairperson’s approval was sought. Mr. Madan Mohan Maity of Midnapore NECC Zone, in the above email, stated before the DG, “...meeting was arranged by NECC on 06.08.2015 at Rajahmundry for the purpose of better co-ordination between Godavari and West Bengal farmers in order to regulate Kolkata egg market. I being Midnapore zonal chairman along with 15-16 farmers of my area attended the meeting with major farmers of the Godavari Zone of NECC. In the said meeting, it was unanimously agreed that all the flow of eggs between West Bengal and Odisha should be monitored and regulated in a way that all farmers can get good prices of eggs.” Thus, as per the DG,

NECC indulged in controlling of egg supply, as Mr. Gurram Chandrasekhar Reddy, Chairman of Hyderabad Zone and Mr. Praveen Garg also admitted to the existence of check posts at Hyderabad Zone. The DG found another email dated 23.01.2018 from the Vizag Zone of NECC to Mrs. Anuradha Desai, Chairperson of NECC, seeking approval for shifting NECC check post. All these evidences of check posts for monitoring and regulating egg supply led the DG to find NECC in contravention of the Act.

194. The Commission, after considering all the above mentioned evidence (depositions, emails, WhatsApp conversations, market dynamics, etc.) relied upon by the DG in the present case and the DG's findings, at the outset, observes that price fixation of a product and dissemination of price information to the constituents dealing in such market qua such product with a view to only remove the information asymmetry that exists, may not be always termed as anticompetitive. This is particularly pertinent, having regard to the nature of the underlying product, its features like perishability and characteristics of the market where such product is bought and sold, i.e organized or unorganized, if such product is affected by seasonal factors and is subject to consumer preferences, having customary and cultural overtones.

195. The Commission, on the nature of the product and market, notes that eggs, *ex facie*, is a product that cannot be equated with other edible products of human consumption and its demand varies based on regional, religious and, at times, on climatic factors. It is noted that, due to the nature of production and gestation period of layer hens, the egg market cannot be timed to follow market behavior as production of eggs is uniform throughout the year. Egg, being a perishable commodity, requires a robust storage infrastructure, which is not available at all times and in all places, and access may not be available to all poultry farmers in equal measure. With a defined shelf life, eggs need to be consumed within a very short time span. Further, in seasons of low demand, to time lower commensurate supplies to counter balance such demand may not be easily achievable and farmers may suffer losses.

196. The Commission observes that not only eggs, but many agricultural crops such as vegetables also face the same phenomenon. Therefore, the government has been emphasizing on creating storage houses and providing market information to farmers on real-time basis to stop the exploitation of farmers by traders and curb distress sales. In this context, the storage of products at the time of excess supply and releasing the product in excess demand periods is akin to a market intervention that may smoothen volatility

and stabilize farm incomes. The Commission negates the argument that any facility of storage made available to farmers will be anti-competitive, unless there is clear evidence that such storage has been used with the objective of distorting prices.

197. The Commission is of the view that price fixations and their dissemination may not be bad at all times especially when there is an underlying object of a common good. However, the Commission necessarily would like to examine in each case whether the price fixation and dissemination of information is the sum result of factors with an economic rationale and at times, even borne out of a necessity to address the concern of market participants, and that it never be an outcome of a coordinated and concerted approach for reaping such unjust rewards as is frowned upon under the provisions of competition law. Besides, what also does not augur well at the altar of free market principles, is the enforcement of prices so fixed by adopting a strict penalty approach. A price that only acts as a benchmark or a mere suggestion and allows the pendulum to move freely either side and does not clog the wheel should not be a malaise from a competition standpoint.

198. Having said that, the Commission notes that NECC is an association of over 37,000 farmers, and price information/dissemination in a large market may have the

effect of removing asymmetry. Moreover, in such a fragmented market, asymmetry of information about demand may lead to a market failure where farmers become the main shock absorber in the supply chain as regards market risks such as price volatility or prolonged periods of low prices. Thus, access to price information based on a mechanism to stabilize volatility reduces information asymmetry. Since demand and supply are not readily observable by a fragmented group of farmers, a benchmark price that stabilizes these fluctuations is crucial for price discovery. However, as already observed in the foregoing paras, the price of any product should be determined based on market forces so as to be compliant from a competition perspective. Save in exceptional cases, where a process is embarked to determine and declare prices (as has been observed in the present case), the same should be done on the basis of a holistic assessment of market conditions and not be subject to the vagaries of whimsical diktats of any organization or any of its members / office bearers wielding decision making powers.

199. Generally, the exchange of market information between competitors or entities on the horizontal level may be viewed with concern as having potential to undermine competition. However, the Commission notes that yet the same cannot be said to be universal statement in as much as certain

exchange of information may have pro-competitive outcomes too for the market. In this regard, the Commission would place reliance on the OECD Report¹ , which points out the literature on competition economics that describes numerous benefits of information exchange amongst competitors that could be taken into account when evaluating an efficiency defence to the information exchange. The same also weighs in the efficiencies that may be obtained from sharing information, helping players in the market understand market trends for better planning and matching supply and demand.

200. The Commission notes that one of the objections taken by OP-1 is that it comprises over 37,000 members and there can be no likelihood of such a large number of members being able to sustain cartel effectively. The Commission is not impressed by this argument of OP1 and notes that any association or cartel comprises both active and passive members and further, the three-tier architecture of OP-1 shows that decisions are taken at the zonal level with the blessings of the central committee. The local level committee members and ordinary farmer members are communicated the decisions taken at the higher levels with an obligation to follow such dictates. The efficacy of the decisions taken are ensured through mandatory enforcement. Thus, the contention raised by OP-1 is not tenable.

201. The Commission further notes that the DG Report has concluded that NECC has been indulging in limiting and controlling production and supply of eggs by directing and facilitating early culling of birds on the basis of advisories issued by the Chairperson of NECC in the year 2015 and 2016. With respect to it, the Commission observes that for a poultry farmer, the expenditure on laying chicks, i.e. feed costs, medication of the livestock, insurance cost, losses of livestock due to diseases, etc. are incurred costs, which remain constant despite the prices at which poultry products, including eggs, are sold. Therefore, during the season when the price realization for a farmer on the poultry products is lower than the average costs of production, the farmer suffers losses depending upon the size and scale of his operations. Thus, it can be said that, during periods of low demand, where the realized prices from the sale of eggs does not cover the cost of maintenance of the livestock, a poultry farmer not only incurs the expenses of maintenance of the livestock but also suffers further losses due to additional eggs produced by laying birds. In which case, a farmer must decide whether he would continue to engage in the production of eggs and thereby, increase its losses, or cull the birds earlier than the laying cycle of the bird and minimize its losses. However, these are independent decisions to be taken by farmers based on their risk

assessment and not upon the diktats or even advisories to be issued by NECC or its Chairperson in this regard. In the present case, it appears as though the advisory was issued with an object to maintain prices.

202. With respect to NECC/ACIL providing cold storage facilities to farmers, the Commission notes that the DG observed that NECC, with the approval of its Chairperson, provides subsidies to farmers for availing cold storage facilities and keeping eggs in cold storage and holding the stock for a few days. The DG also observed that the objective of the subsidy is to control supply in a particular area. The Commission, however, is of the view that eggs are perishable in nature, which makes it necessary that eggs either are consumed within a few days from the date of production or are stored in a cold storage. The Commission is also aware of the fact that, during certain periods each year, such as festivals or summer months, the demand for eggs and other poultry products dips considerably; however, the laying of eggs by livestock, being a natural process, cannot be stopped/stalled during such periods of time. The poultry farmers, due to the downward spiraling demand and considering the perishable nature of eggs, are forced to sell the eggs at significantly lower prices and, at times, below the cost of production of eggs which causes the poultry farmers, especially smaller poultry farmers, to suffer huge losses and

therefore, during such periods, NECC, in the interest of farmers, issues advisories to maintain surplus eggs in the cold storages.

203. Further, during certain periods during a year, such as winter months, the demand for eggs increases considerably, and in certain instances, may be higher than the production capacity of the poultry farmers in the country. In such instances, the deficit between the production and the demand is met through the eggs stored in cold storage during the months and periods of lower demand. Thus, the Commission is of the view that neither can cold storage of a perishable commodity such as eggs be construed as anti-competitive, nor the subsidy for cold storage be viewed as anti-competitive in the facts and circumstances of this case.

204. The Investigation Report has returned a finding of VH Group having some stranglehold over the affairs of NECC. This, according to the DG, is exacerbated by the position of the NECC Chairperson and Vice Chairperson posts being held by Mrs. Anuradha Desai and Mr. M. B. Desai, who hold prominent positions in VH Group. The DG also found that some employees of VH Group closely monitor the activities of NECC and the information collected through aegis of NECC is used to further the economic interests of the VH Group. Additionally, the advisory issued by NECC to farmers about early culling of birds inures to the commercial advantage of

VH Group, which is higher in the value chain and involved in the business of rearing and selling day old chicks. An early bird culling, thus, ensures, more sales of chicks. With regard to the above findings, the Commission observes that the case before the Commission pertains to alleged anti-competitive conduct by NECC. Any other alleged conduct by VH Group is, thus, not a subject of determination by the Commission in the present matter. However, it is entirely for NECC and its members to ponder over and see whether the said society/trust has been established for the benefit of its constituent members, and the egg industry as a whole or is a mere front for any other beneficiaries.

205. The DG has also returned a finding that VHPL collects Rs. 1/- from all farmers who buy BV 300 layer chicks from it and transfers the same to NECC, regardless of the fact whether those farmers are NECC members or not. This collection of Rs.1/- is reflected in the invoice issued by VHPL as a voluntary contribution by the buyer/farmer and is subsequently transferred to NECC which, as per the DG, makes it clear that NECC relies almost entirely on VHPL for its funding. With regard to the above finding, IP-2, in its submissions, has contended that this collection by VHPL of Rs. 1/- while selling its day-old chicks is not voluntary but mandatory. 206. With regard to VHPL receiving Rs. 1/- as a contribution from farmers/buyers of chicks, which is

subsequently transferred to NECC, the Commission finds that, till the time the said contribution is of a voluntary nature and the farmers/buyers are not compelled to pay the said sum in turn to buy the chicks, much of a concern is not observed, though the financing arrangement undoubtedly allows VHPL to exert influence over NECC. Also, if this sum is in the nature of a subscription towards membership, the same is being collected from all farmers regardless of whether such farmers are members or not of NECC, which seems to be incongruous. The collection also becomes linked with the volume of purchases; higher the volume, higher the monies collected from farmers based on their buys, which tends to distort equality amongst members. In this background, the Commission is of the view that NECC should take up the matter appropriately with VHPL to ensure that any payment by farmers remains voluntary and the farmers/ buyers are adequately apprised about it. The Commission also notes that there is no evidence that other industry participants, be it egg producers or chick producers are collecting amounts likewise.

207. With regard to the finding of the DG that certain State Governments are guided in their procurement efforts of eggs by the prices declared by NECC, the Commission notes that it is for such State Governments to consider whether they would like to consider NECC egg prices as setting some

benchmark or would like to evolve a better mechanism of price discovery. The Commission ought not to direct the procurer to the manner in which its procurement process should be guided.

208. The Commission observes that, for the reasons stated in the foregoing paras, while declaration and dissemination of price related information may not be per se anticompetitive in the facts and circumstances of a given case, the Commission, nevertheless, is of the view that such price declaration ought not be an outcome of any coordinated and concerted approach, to benefit a few, but rather, based on sound economic rationale. In the given facts and circumstances of the present matter, the act of NECC, particularly in trying to enforce such prices mandatorily by levying penalties/threatening to levy penalties on farmers, is not in consonance with the provision of Section 3(3)(a) and 3(1) of the Act. This undoubtedly indicates that NECC is wanting to control the price of eggs without giving freedom to farmers to decide their own prices. While farmers may have the benefit of price information but to force them to sell at a NECC's declared price is clearly anticompetitive and result of a concerted approach.

20. It appears that since NECC was basically an organisation established for the benefit of small poultry farmers and the fact that prices were got fixed for the benefit of small poultry farmers,

the Ld CCI taking holistic view instead of imposing any penalty has issued direction mainly to NECC to desist from fixing price as mandatorily with further direction which we have already noticed hereinabove.

21. On going through the impugned order it is difficult for us to interfere with the same. The Learned CCI in its analysis has discussed each and every aspect and giving detailed reasons has passed the impugned order. This Tribunal is satisfied that the Learned CCI has rightly observed that fixation of price by NECC would be suggestive in nature. The order passed by the Ld. CCI assigned detailed reasons and it is difficult for us to find any fault in the same. Accordingly there is no reason for interference with the same. The order of the CCI is hereby approved and the Appeal stands dismissed without cost.

(Justice Rakesh Kumar)
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member (Technical)

Bm