

COMPETITION COMMISSION OF INDIA

[Case No. 10/2012]

August 07, 2012

Filed by

Iqbal Singh Gumber & Mrs. Hardeep Kaur

Informant

Against

(1) Purearth Infrastructure Ltd. & Others

Opposite Parties

As per R. Prasad (Dissenting)

I do not agree with the majority order for the reasons given below. The facts of the case are not required to be discussed again as they have already been discussed in the majority order.

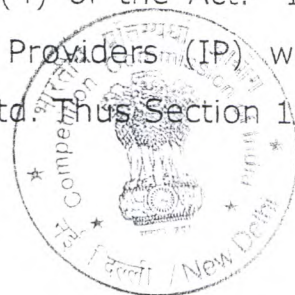
2. The main reason for closing the case is that M/s Purearth Infrastructure Ltd. was not held to be a dominant player as its market share was very low and further M/s Purearth was not dominant player in the real estate in Delhi & NCR. The majority has held that the informants were not able to produce any record to show the dominant position of the opposite parity. For this reason the case has been closed by the majority by an order under Section 26(2) of the Competition Act.

3. I have a different view on this subject. In the Competition Act dominant position means a position of strength, enjoyed by an enterprise, in the relevant market in India which enables it to (i) operate independently of competitive forces prevailing in the relevant market (ii) affect its competitors or consumers or the relevant market in its favour. Now in this case the issue is regarding construction of a mall/commercial complex at Central Square, Bara Hindu Rao, Delhi. Thus, the OP in this case was rendering a service to the informants as defined under Section 2(u) of the Competition Act. Service itself includes a time concept and the delivery of the premises was to be given to the



informants within a certain period. But till today the construction has not started. In fact the informants had booked the premises on April 2006 and the entire payment was completed by 20th July, 2008. But instead of delivery of the shops, even the construction has not been started. The question is whether it is a case of abuse of dominance.

4. Under the Competition Act the relevant market defines a market with reference to the relevant product market or the relevant geographic market or with reference to both the markets. In this particular case the construction was to be made over a land area of nearly 66 acres. The relevant geographic market would therefore be the land area where the construction was to take place, as the provision of services on this land was distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas. The relevant product market means a market comprising all those services which are considered interchangeable or substitutable by the consumer. In this particular case after the informants had booked their space and made the payment then there could not be any substitution with any other provision of services because the switching costs were very high. Therefore the informants became captive consumers of the opposite parties. In this relevant geographic market the OP i.e. M/s Purearth Infrastructure Ltd. was the dominant party because it could affect its consumers and even the market in its favour. It could also operate independently the forces prevailing in the relevant market because in the relevant geographic market and service market there was not competition. Therefore the relevant market in this case would be "service for development of commercial space for a shopping mall in Central Square, Bada Hindu Rao, Delhi". It is not necessary that while discussing dominant position, only the market share of the O.P. has to be looked into. Market share is one of the 12 items mentioned under Section 19(4) of the Act. In this particular case the consumers i.e. Information Providers (IP) were totally dependent on M/s Purearth Infrastructure Ltd. Thus Section 19(4)(f) is clearly attracted.



Further the monopoly and dominant position was acquired a result of the agreement between the OP and the IP. Therefore Section 19(4)(g) is also attracted. Thus, merely on the basis of market share it cannot be held that the OP was not dominant. Further the informant can give the basic information but it is for the Commission to decide whether there is a case of abuse of dominance. Moreover under the Section 4(2) of the Competition Act there would be an abuse of dominant position if any of the conditions in clauses (a)(b)(c)(d) and (e) are attracted. In this particular case the information provider could not switch to any other market without losing money. It appears that it is a case of denial of market access.

5. Therefore in my view it is a fit case for investigation by the Director General under Section 26(1) of the Competition Act.

sd/-

(R. Prasad)
Member

Certified True Copy

Gahlaut
07/08/2012
S. P. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi