



**COMPETITION COMMISSION OF INDIA**

**Case No. 14 of 2020**

**In Re:**

**SOWIL Limited  
Goodwill Avenue CHS Ltd.  
Wing A, Plot No. 01  
Sector 40, Nag Devi Road  
Nerul (West), Navi Mumbai  
Maharashtra- 400706**

**Informant**

**And**

**Hexagon Geosystems India Pvt. Ltd.  
2<sup>nd</sup> Floor, Tower B, Vatika Atrium  
Golf Course Road  
Sector 53, Gurugram  
Haryana- 122022**

**Opposite Party**

**CORAM**

**Mr. Ashok Kumar Gupta  
Chairperson**

**Ms. Sangeeta Verma  
Member**

**Mr. Bhagwant Singh Bishnoi  
Member**

**Order under Section 26(2) of the Competition Act, 2002**

1. The present Information has been filed by SOWIL Limited ('the Informant') on 19.03.2020 under the provisions of Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Hexagon Geosystems India Pvt. Ltd. ('Hexagon'/ 'Opposite Party'/ 'OP') alleging *inter alia* contravention of the provisions of Sections 3 and 4 of the Act.



2. The Informant is a small scale company empanelled by Ministry of Road Transport & Highways for providing engineering consultancy services and is a multidisciplinary consultancy organisation providing engineering consultancy services for highway development works, railway works, bridges, structures, tunneling, building, water resources and buildings. The range of such services include preliminary planning, feasibility studies, traffic studies, economic & environmental impact assessment, public consultation, detailed design preparation & detailed project reports, supervision of construction, quality control, asset management & rehabilitation and up gradation of a wide range of structures, project management consultancy services, independent engineers, independent consultant, authority engineers, value engineering, proof checking of design, railways engineering services of Light Rail, Mono Rail, Metro Rail and High Speed Rail consultancy services, buildings, malls *etc.*
3. The OP is a private limited company incorporated on 04.10.2016 and is a subsidiary of foreign company *i.e.* Hexagon AB, Sweden. The OP is involved in, amongst other activities, sales & distributaries of equipment of Hexagon AB, Sweden and its other worldwide subsidiaries. The OP is also engaged in distribution of Safe Rail System, a ground-penetrating radar ('GPR') system for rail track ballast health monitoring manufactured by Ingegneria Dei Sistemi ('IDS'), Italy (a subsidiary of Hexagon AB, Sweden).
4. IDS is an independent engineering company, which operates in defense and civilian fields. IDS is a supplier of Radar Instruments for Tracking and Inspecting Railways and Safe Rail System for inspecting railway ballast and sub ballast. IDS's Safe Rail System represents a fast and non-destructive solution for inspecting railway ballast. It allows the user to autonomously inspect railway ballast for renewal and maintenance.



5. The Informant has stated that Ministry of Railways, Research Designs and Standards Organization ('RDSO'), Lucknow *vide* its tender notice no. RDSO/TMM/GPR/2019/01 dated 26.06.2019 invited sealed tenders on two packet systems for the 'Project of Monitoring health of ballast bed with the help of GPR technology for Through Ballast Renewal ('TBR') and formation rehabilitation on Indian Railways.
  
6. As per the terms and conditions of the aforementioned tender, the bidder needs to fulfill certain criteria such as the bidder should have satisfactorily completed in the last three previous financial years and the current financial year upto the date of opening of the tender, track bed survey of 5000 kms for addressing the issues of ballast fouling & formation related issues and the speed of track bed survey must be above 80 kmph. Further, joint venture(s) ('JV') participating in the tender/ bid needs to fulfill conditions like separate identity/ name shall be given to the JV firm. Moreover, the number of members in a JV firm shall not be more than three. The tender condition also required that a member of JV firm shall not be permitted to participate either in individual capacity or as a member of another JV firm in the same tender. Similarly, the tender condition also required that one of the members of the JV firm shall be the lead member of the JV firm who shall have a majority (at least 51%) share of interest in the JV firm. The other members shall have a share of not less than 20% each in case of JV firms with up to three members and not less than 10% each in case of JV firms with more than three members. Lastly, in case of JV firms with foreign member(s), the lead member has to be an Indian firm with a minimum share of 51%.
  
7. As per the Informant, 'Safe Rail system' of IDS marketed in India by OP is the only GPR system in the world that meets the technical eligibility criteria of the aforementioned tender and as required by the RDSO.



8. The Informant has stated that *vide* its e-mail dated 27.08.2019, it asked OP to give the quotation of SRS Safe Rail System with ground penetrating radar (1 set) and SRS Safe Rail System with ground penetrating radar (2 sets) for the purpose of bidding in RDSO tender dated 26.06.2019 for Monitoring health of ballast bed with the help of ground penetration radar technology for through ballast renewal ('TBR') and formation rehabilitation on Indian Railways.
9. As per the Informant, with reference to above e-mail dated 27.08.2019, it received the quotation from the OP on 06.09.2019, which quoted the per unit price as € 5,88,800 with shipping cost extra and carriage and insurance ('CIP') Delhi Airport at the rate of € 4,900. For the sake of convenience, the Informant has converted the total cost (per unit cost + CIP) into Indian Rupees *i.e.* Rs. 4,59,32,195/- (conversion rate of 1 Euro/ € = Rs. 77.37).
10. Further, *vide* e-mail dated 10.09.2019, the Informant sought clarification from OP regarding installation support, maintenance support *etc.* However, the Informant has alleged that it received an internal e-mail of OP dated 10.09.2019, which was sent inadvertently to it. The said e-mail sought approval from internal authority of OP to charge the Informant 80% higher than the price received from IDS for spares prices and charging two times for the training cost. The relevant extracts from the e-mail dated 10.09.2019 are reproduced herein below:

*'...Dear Sir,  
Mail from SOWIL .Can I reply him considering the following:-  
-Spares prices by adding 80% on the prices we received from IDS  
Training cost by doubling  
-Can we provide installation?  
-Warranty period -12 months  
-Insurance - No responsibility  
Also should I ask Simone the prices for same including the system cost to offer to Indian companies? Please advise...'*

**(Emphasis supplied)**



11. The Informant further highlighted that OP *vide* its e-mail dated 18.09.2019 offered to provide spares for two systems, training cost & support during installation at € 35000 *i.e.* Rs. 27,07,810/- Thus, as per the Informant, the total cost for the product amounts to Rs. 4,86,40,005/- (Rs. 4,59,32,195 + Rs. 27,07,810). Further, OP *vide* its e-mail dated 09.10.2019 offered to provide a special discount of 10% for complete SRS system as well as spares, training cost and support during installation. Thus, as per the Informant, OP had reduced the total cost by 10% *i.e.* Rs 48,64,000/- from the final cost of Rs. 4,86,40,005/- (Rs. 4,86,40,005 – Rs. 48,64,000 = Rs. 4,37,76,005/-)
12. Further, on 21.10.2019 the Vice-Chairman of the Informant wrote an e-mail to OP (Mr. Ashok Sharma) requesting to reconsider the rates quoted by OP in its earlier e-mails as the rates are nearly double to what IDS was supplying to other procurers around the world. In pursuance to the same, *vide* e-mail dated 18.11.2019 OP agreed to provide additional discount of 7% *i.e.* the total discount of 17% on original offered offer on equipment, spares, training cost & support during installation. Thus, as per the Informant the total amount for final cost of equipment and spares *etc.* was reduced to Rs. 4,03,71,204/-.
13. Furthermore, on 19.11.2019, the Informant *vide* its email raised alarm that even after 17% discount, the final quote of Rs 4,03,71,204/- is still 200% higher than the price given by Hexagon / IDS elsewhere in the world. Thus, as per the Informant Hexagon/ IDS had put a virtual embargo for its global associates/ partners/ clients to participate in the GPR tender of RDSO dated 26.06.2019 and amounted to creating a non-competitive environment for the said bid/ tender. The Informant also requested OP to look into the matter and provide a pricing of equipment in India and also bring in a competition for the said bid/ tender since Hexagon/ IDS enjoys a near monopoly in the world for supply of rolling stock mounted GPR for ballast inspection at high speeds.



14. Elaborating further, the Informant *vide* its e-mail dated 10.09.2019 also enquired about rate of same equipment from a foreign vendor. In response, the said vendor stated that the price of IDS SRS system is £ 1,53,690/- *i.e.* Rs. 1,41,69,824.55/- at the conversion rate of Rs. 92.20. It, however, cautioned that the prices are being supplied on the understanding that these prices are not to be used as a bartering tool against Hexagon/ IDS and the Informant should respect the confidentiality.
15. In regard to its *supra* stated grievance, the Informant has also stated that it had also written a letter dated 23.12.2019 to RDSO, Lucknow regarding unfair practice, abuse of dominant position and non-competitive environment created in the impugned tender/ bid.
16. As stated earlier, the RDSO tender required that an Indian company have a minimum 51% share in the consortium. Further, as per the Informant, no Indian company had prior experience in undertaking ballast inspection using High Speed GPR equipment. Therefore, the Informant has stated that the bidding Indian company would necessarily have to partner with an international company having requisite experience. In this light, the Informant has alleged that the various international companies using IDS's Safe Rail system have been advised by IDS not to participate in this tender else they would lose IDS support for all their works in future. The said directive has been given by IDS to leverage its dominant position and enable OP (one of the participants in the tender) to be a successful bidder in the RDSO tender dated 26.06.2019 and to keep the service rate abnormally high.
17. Moreover, the Informant has reiterated that as OP enjoys dominant position in the world for rolling stock mounted GPR for ballast inspection at high speed GPR system, it has abused its dominant position by charging profit margin of 200% and placing a silent embargo for international users of the system to partner Indian companies for the work in relation to the impugned tender,



thereby creating a non-competitive environment for the said tender/ bid in violation of the provisions of Section 3 and Section 4 of the Act *i.e.* by engaging in cartel, monopolistic behaviour and unfair practice.

18. Based on the above averments and allegations, the present Information has been filed by the Informant against OP, alleging contravention of provisions of Sections 3 and Section 4 of the Act.
19. To examine the allegations, the Commission considered the Information in its ordinary meeting held on 24.04.2020 and decided to forward a copy of the Information to RDSO, Lucknow with a direction to file its response thereon. Accordingly, RDSO, Lucknow filed its response dated 02.06.2020.
20. In its responses dated 26.05.2020 and 02.06.2020, RDSO pointed out that the tender dated 26.06.2019 was a global open tender with 2 packet system. At present, only the technical bid packets had been opened which have been evaluated and the tender has been discharged. The financial bid was not opened for any bidder as none of the bidders fulfilled the conditions prescribed for opening of their financial bid. It was also pointed out that three tenderers have submitted bids in the impugned tender *i.e.* (i) consortium of ZETICA Ltd. (United Kingdom) as lead member alongwith Vandhana International Pvt. Ltd. as second member; (ii) consortium of Hexagon Geosystems India Private Ltd. as lead member alongwith Intergraph SG&I India Pvt. Ltd. as second member & Ground Control Geophysik & Consulting GMBH (Germany) as third member and (iii) consortium of SOWIL Limited as lead member alongwith SIC Infraconsult GmbH (Germany) as second member.
21. As to other available domestic/ international suppliers of the products and services in question, RDSO stated that a tender for this type of service was being invited for the first time by it or Indian Railway. RDSO also responded that as per the information available with it, no Indian firm is providing such services in its individual capacity. RDSO also informed that other than the



foreign firms who have participated in the tender, another foreign firms that had shown some interest in this work at various stages of tenders was M/s LORAM (USA). RDSO also stated that there may be other firms/ companies who might be providing such services but it does not have any specific information about the same.

22. In its reply RDSO has categorically stated that specifications for the impugned tender are functional and output oriented and do not specify requirements of hardware made by any specific firm and also that the Informant could have used or suggested to use any other system either before submission of his offer or alongwith his offer in present tender. Further, RDSO pointed out that it has neither any role nor any control over the prices being quoted by a third party for a system required by them for the tender.
23. Further, a letter dated 23.12.2019 was written by the Informant to the RDSO, wherein it was requested that RDSO should take necessary action so as to achieve the objective of competitive bidding as the supplier of GPR equipment *i.e.* IDS was charging almost double price for the system to be supplied in India. In regard to the aforementioned letter, RDSO in its reply dated 03.01.2020 stated that no such issue has been raised by other service providers who have shown interest in participation in the said tender and also the decision being taken by Hexagon/ IDS is their internal matter and RDSO has no say in it.
24. The Commission has perused the Information, the reply filed by the RDSO, Lucknow and the related information available in the public domain.
25. At the outset, the Commission notes that the Informant is primarily aggrieved of the fact that the OP has abused its dominant position by charging profit margin of 200% and placing a silent embargo for international users of the system to partner Indian companies for the work in relation to the impugned tender, thereby creating a non-competitive environment for the said tender/ bid in violation of the provisions of Sections 3 and 4 of the Act.





26. Having examined the material available on record, the Commission notes that the Informant has not defined or suggested any relevant market. In the considered opinion of the Commission, it is neither necessary nor feasible to delineate the relevant market in the absence of requisite data on record particularly in light of the market construct emerging out of RDSO's reply dated 02.06.2020 wherefrom it can be deciphered that besides the OP, there are at least 4 other major global players in the market for rolling stock mounted GPR for ballast inspection in India *i.e.* ZETICA Ltd. (United Kingdom); Ground Control Geophysik & Consulting GMBH (Germany); SIC Infraconsult GmbH (Germany); and M/s LORAM (USA). In view of this market structure and the number of global players operating in the market, the OP does not appear to command any market power and it is unnecessary to delve further into the alleged abusive behavior in terms of the provisions of Section 4 of the Act.
27. The Commission also observes that the Informant has not provided any evidence with regard to collusive conduct and as such there is nothing on record that the OP has colluded with any other entity in respect of RDSO tender dated 26.06.2019. In the absence of any material on record which can suggest collusion, no case of contravention of the provisions of Section 3(1) of the Act read with Section 3(3) thereof is made out.
28. Lastly, so far as allegation relating to the restriction imposed by the OP on other global associates/ partners/ clients to participate in the GPR tender of RDSO dated 26.06.2019 is concerned, the Informant has not provided any evidence to support the said assertion.
29. In view of the above discussion, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against OP and the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.



30. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-  
**(Ashok Kumar Gupta)**  
**Chairperson**

Sd/-  
**(Sangeeta Verma)**  
**Member**

Sd/-  
**(Bhagwant Singh Bishnoi)**  
**Member**

**New Delhi**  
**Date: 26/08/2020**