

COMPETITION COMMISSION OF INDIA

Case No.15/2012

Date: 04.07.2012

Filed by

Owners and Occupants Welfare Association

.... Informant

Against

(1) **M/s. DLF Commercial Developers Ltd.**

(2) **Delhi Development Authority**

(3) **M/s. DLF Services Ltd**

.... Opposite Parties

ORDER UNDER SECTION 26 (2) OF THE COMPETITION ACT, 2002

The information has been filed under section 19(1) of the Competition Act, 2002 (the Act) by the Owners and Occupants Welfare Association of DLF Towers Jasola (the informant) through its Secretary against M/s. DLF Commercial Developers Ltd. (opposite Party no.1), Delhi Development Authority through Vice Chairman (opposite party no.2) and M/s. DLF Services Ltd. (opposite party no.3).

2. It is stated in the information that informant was a society registered under the Societies Registration Act, 1860 and the members of the society were various allottees / buyers / owners of commercial flats and shops located in the two buildings known as DLF Towers A and B at Jasola District Centre, Jasola, New Delhi. Informant has alleged abuse of dominance by the opposite parties.

3. The informant is aggrieved by certain terms and conditions of retail /commercial space buyer agreement. According to the informant, the buyer's agreement was heavily loaded in favour of the opposite parties. It was extremely harsh to the allottees and sought to burden the allottees unnecessarily. It is also stated that because of these conditions the opposite part no.1 had unjustly enriched itself of Rs.249 crore. A prayer is made in the information for making an enquiry into this mopping of Rs.249 crore of amount by opposite party no.1 towards sale of additional super area and a request is also made to modify / alter the retail space buyer agreement.



4. The informant in this case has identified the relevant market as high end commercial space in south west Delhi, more particularly in Jasola District Centre, Jasola.

5. For considering dominance, the identification of relevant product market and geographic market was important. Definition of market is essentially a matter of interchangeability that whether the goods or services can be regarded as interchangeable with other goods/services. The interchangeability / substitutability has to be considered from the demand side and supply side and then the Commission has to consider potential competition. Demand side substitutability is to be seen from the angle of customers. The Commission has to determine whether the customer can switch readily to the available substitutes or suppliers located elsewhere in response to a increase in price made by an enterprise in the product and if the substitution was enough to make the price increase unprofitable because of resulting loss of sales.

6. In case of market of buying commercial space, when an area is under development, the booking of commercial space is done by two types of consumers one who are in the need to commercial space for the purpose of establishing a new business venture or for shifting their business place from one place to another place and the others are those who invest in the commercial space for purpose of profits or future rental income. Those who invest for the purpose of profit or future income constitute a different category of customers than those who book commercial space for the purpose of shifting their present existing business to the new commercial space or intend to start new business. Those persons who book commercial space for the purpose of investment, there is a vast substitutability available as they are not area specific customers having existing business, and wanting to shift their existing business to a new centre or intend to expand.

7. The consumers who book commercial space for doing business constitute a separate class in itself and for them the area has importance as such consumers may like to shift to only to the area chosen by them for various commercial considerations. In the present case, Jasola District Centre was a new area being developed by the developers. Jasola being far away from the existing commercial centers, there was no nearby commercial complex within few hundred meters at the time when Jasola started developing. The nearest commercial centre was Nehru Place or Badarpur area. It is not alleged by applicant that Jasola District Centre had some particular significance to the allottees in comparison to other commercial space located in Delhi. The allottees who booked commercial space in Jasola could have booked commercial space anywhere in Delhi. The informant has not stated about the purpose of investment made by the allottees, whether the allottees had booked for the purpose of shifting their existing business in the nearby areas or they had booked for the purpose of investment.

8. In view of the fast development of commercial space taking place in Delhi and around, there was no crunch on supply of commercial space and thus the market of commercial space



was highly substitutable within the area of Delhi. The relevant product market thus has to be considered as the provision of commercial space. The relevant geographic market cannot be confined to mere Jasola District Centre or south west Delhi as Jasola District Centre did not have particular significance or advantage over other commercial areas in Delhi. It was far off from the centre of Delhi and there were other commercial centres available within the periphery of 6-7 kms. from Jasola District Centre. The informants contention of geographic market being south west Delhi and more particularly Jasola District centre is not justified and has no basis.

9. Even as per the informant within Jasola District Centre itself, there were about 11 other developers who had their projects and their list is given in para-34 of the information in a tabular form. No doubt, the share of DLF Limited within Jasola District Centre in the commercial space is shows as 36.77% but the other developers together had approximately 63% share. It is also seen that the prices of other developers were much lower than the price of commercial space being offered by DLF. There was ample supply side substitutability in this case since a number of developers were active in the area of Delhi and were offering commercial space at more competitive price than DLF.

10. It is submitted by the informant that since Jasola was in south west Delhi and near to Nehru Place, Apollo Hospital and well connected with the road, there was consumer preference for this area and therefore this should be considered as separate geographic market. In Delhi, every area is well connected by roads and almost all commercial areas are situated at wide roads and they are approachable from any corner of Delhi. Merely because an area was on main road or near to a hospital or near some upcoming colonies, cannot be a ground for preference for buying commercial space.

11. The informant has insisted that since DLF was having a larger market share and it was having enormous resources at its disposal, therefore, DLF should be considered as dominant. The other argument advanced is that DLF had commercial advantage over other competitors because of its reach and size and therefore it should be considered as a dominant market player. However, this argument is not convincing because the other developers, namely TDI, OMAXE, Realtek who built commercial premises and were active in the area of Jasola also were having tremendous resources at their command. Though their resources may not be equal to DLF but that does not mean that they were lacking resources. Thus opposite party cannot be considered as dominant enterprise within Delhi in the relevant market of providing commercial space.

12. In view of above discussion, it is considered that Jasola District Centre cannot be considered as relevant geographic market for commercial space. Entire Delhi will have to be considered as the relevant geographic market. There is wide demand and supply substitutability of commercial space within Delhi. The dominance of DLF in Delhi in the market of providing commercial space is not there even prima facie.



13. The Commission finds that a prima facie case was not made out for investigation and the matter deserves to be closed. The matter is hereby closed in terms of section 26(2) of the Act.

14. The Secretary is directed to inform all concerned accordingly.

Sd/-
Member (D)

