

COMPETITION COMMISSION OF INDIA

Case No. 21 of 2012

Dated : 18/9/2012

IN THE MATTER OF:

Advertising Agencies Guild

... Informant

Vs.

Directorate of Advertising and Visual Publicity & Anr. ... Opposite Parties

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

The information was filed by Advertising Agencies Guild ('the informant') under section 19(1)(a) of the Competition Act, 2002 ('the Act') against the Directorate of Advertising and Visual Publicity (OP.1) and the Union of India, through Ministry of Information and Broadcasting (OP.2) alleging *inter alia* contravention of section 3 (1), section 4(2)(a)(ii) and section 4(2) of the Act.

2. The informant is an association of small and medium sized advertising agencies in the private sector, registered under the Societies Registration Act, 1860. According to the informant, the OP.1 is the nodal agency under OP.2, created to undertake advertising and publicity for various Ministries and Departments of the Government of India, making it the largest buyer of advertisement space in the market across several formats. Because of the enormous budget to be spent on advertisements by OP.1 and OP.2, the print media provides special rates for advertising space to the OP.1.

3. According to information, the OP.1 was the dominant and sole supplier of advertising services to the Government of India and was directly in competition with the informant association members. Further, the OP.2 issued a circular whereby all Government Ministries/Departments/Attached & Subordinate Offices/Field Offices were asked to route their advertisements through the OP.1. Further, the circular is open ended and does not provide for any exit clause which may be used to exit the circular. This circular, according to the informant, was an anti-competitive act and likely to cause



appreciable adverse effect on competition. Further, the circular not only limits the supply of advertising services to its customers but also forecloses competition between OP.1 and other private advertising agencies in violation of provisions of the Act.

4. The informant alleged that the OP.1 was providing services at prices much below the prices offered by any other competing advertising agency which amounted to predatory pricing and thus, contravened section 4 explanation (b) of the Act. The OP.1 was offering its customers a discount, which is actually the commission the other advertising agencies receive from the newspapers and magazines on booking advertisements with them. This commission is normally the sole revenue of advertising agencies unless they are entrusted the job of designing and conceptualizing the advertisement. Further, all advertising agencies are accredited with Indian Newspaper Society (INS) which does not allow the agencies from passing the commission they receive from publications to its clients. The OP.1 is not registered with INS and therefore, not bound by the restriction. This conduct of OP.1, according to the informant, amounted to imposing unfair and discriminatory price in sale of service and therefore, violative of section 4(2)(a)(ii) of the Act.

5. The informant submits that the OP.1 has a turnover of more than Rs. 700 crores making it a dominant player. The circular not only established the dominance of the OP.1 but also created entry barriers for new entrants and foreclosed the market for existing competitors in violation of section 4 of the Act.

6. While examining the contravention of section 4 of the Act, the dominance of the party has to be examined. The total advertising market is worth Rs. 8,000 crores and with a turnover of Rs. 700 crores, the share of OP.1 in advertisement market is not even 10%. Further, it is seen that the OP.1 is one of the many entities engaged in the act of providing advertising services and there exist more than 500 agencies in the country.

7. It may be noted that the informant's grievance is about Government's advertisements being routed through OP.1 and not about entire market. The advertising agencies about 500 in number are providing services to a large number of private companies and others. The Government advertising and the private advertising are



substitutable, interchangeable and cannot be placed in separate compartments in exclusion of each other. The relevant market in the present matter is purchase of advertising space and time in print and electronic media. OP.1 acts as a purchase department of OP.2 for purchase of advertising space and time. As a bulk purchaser, OP.2 has a right to have its own purchase department to save costs. Saving costs on commission or striking a bargain is right of every bulk purchaser. No issue of predatory pricing or abuse of dominance arises, if the purchase department of Government or an enterprise passes on the entire commission it gets on purchase of material, to the parent organisation.

8. In light of the above discussion, it is concluded that the OP.1 *prima facie* does not enjoy a position of strength, in the relevant market in India, enabling it to operate independent of the competitive forces prevailing in the relevant market; nor it affects its competitors or consumers or the relevant market in its favour. Hence, the dominance or abuse thereof by OP.1 *prima facie* is not established.

9. It is a fit case for closure under section 26(2) of the Act and is hereby closed.

The Secretary is directed to inform all concerned, accordingly.

Sd/-
Member (C)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Member (D)

Sd/-
Chairperson

Certified True Copy



RAMESH CHAND
Asstt. Director
Competition Commission of India
Government of India
New Delhi

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25/11/12