



COMPETITION COMMISSION OF INDIA

Case No. 67 of 2016

In re:

**Shri Veer Pratap Naik
Managing Director & CEO,
G2G Engineering Services Private Limited,
74, 11th Main Road, MC Layout,
Vijayanagar, Bangalore – 560 040.**

Informant

And

**AVEVA Information Technology India Pvt. Ltd.
Unit No. 202, A Wing, 2nd Floor,
Supreme Business Park, Supreme City,
Mumbai – 400 076.**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**



Appearances:

For Informant:

Shri Veer Pratap Naik, MD & CEO
Ms. Sunita Mason, Director

For OP:

Shri Ramji Srinivasan, Senior Advocate
Shri Harman Singh Sadhu, Advocate
Shri Vivek Aggarwal, Advocate
Ms. Supritha Produtari, Advocate
Shri Vivek Paul Oriel, Advocate
Shri Navtej Garewal, Senior Vice President
Shri Nikhil Gawai, Legal Manager

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

1. The present information was filed by Shri Veer Pratap Naik ('**Informant**') under Section 19(1) (a) of the Competition Act, 2002 (the '**Act**') against AVEVA Information Technology India Pvt. Ltd. ('**OP**'/ '**AVEVA**') alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.
2. As per the information, the Informant is a private limited company incorporated under Companies Act, 1956 and is engaged in the business of providing engineering support in the form of 3D modeling and preparation of structural steel fabrication drawings to engineering, procurement and construction (EPC) companies in India as well as globally. The OP is a wholly owned subsidiary of AVEVA Solutions Limited, which is stated to be one of the leading engineering, design and information management software providers in the world. It is stated that Aveva Solutions Limited had acquired BOCAD Services International S.A. Belgium (BOCAD) in the month of May, 2012.
3. It is stated that the Informant entered into an agreement with BOCAD Services International S.A. Belgium on 26th August, 2010 to purchase 30 'BOCAD



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licenses' over a period of the next 3 years for a total consideration of 10,000 Euros each. It is averred that 20 of these licenses were purchased before BOCAD got acquired by AVEVA *i.e.* before May, 2012.

4. It is averred that, after the merger, AVEVA's representatives had contacted the Informant and insisted that the Informant buy the balance 10 licenses of BOCAD as per their earlier agreement. Thereafter, OP also offered 6 licenses of the 'Plant Design Management System (PDMS) Software' along with the balance 10 BOCAD licenses. In this regard, the Informant entered into an agreement with the OP *vide* Licenses Agreement CA-AP1102 dated 1st January, 2014. It is stated that the OP had concealed the information that the licenses of its products were also available on a monthly rental basis, and it had collected the first year Annual Maintenance Contract (AMC) fee of Rs 10,710,000/- on a yearly basis from the Informant.
5. It is alleged that there were fundamental differences between the terms of agreement entered with BOCAD and *viz-a-viz* the agreement entered with the OP. In case of BOCAD, the licenses for the software were dongle based and operated uninterruptly (perpetual), even if no AMC fee was paid for the following year. The Informant had the right to use and had complete possession and effective control over the softwares. But, as per the agreement with the OP, the new set of licenses were server based and locked into individual server. Further, the licenses were issued on monthly rental basis and could not be transferred to a laptop/ another office of Informant without the approval of the OP.
6. It is alleged that in the month of January, 2016, the OP blocked the Informant from using all the licenses due to non-payment of AMC. The Informant has alleged that blocking of the 'fully paid version of License' results into eroding the capital invested by the Informant. It is further stated that the said act of the OP diminishes the Informant's position in the market and compelled it to lay-off its employees.



7. It is further alleged that the OP is indulging in predatory pricing and unfair business practices by selling BOCAD licenses at very low prices and extremely low license fee to other companies viz. Techflow Engineers (I) Pvt. Ltd and InSteel Engineers Pvt. Ltd. It is submitted that the license cost and AMC to Techflow Engineers is about 1/10th and 4% respectively of the cost of license and AMC charged from the Informant. Further, the licenses supplied to these companies have a very long validity period, making them virtually perpetual.
8. It is alleged that the OP had divided the licenses granted to the Informant into 75 licenses comprising of 25 BOCAD offshore, 25 BOCAD onshore, and 25 BOCAD Steel Licenses and had charged an AMC of Rs 45,15,000/- which was three times more than the AMC charged of Rs 15,00,000/-. It is alleged that though the OP had collected AMC cost for 75 licenses, it provided only 25 licenses at a particular point and the balance 50 licenses were not accessible to the Informant. Further, it is alleged that the OP has abused its dominant position by cleverly using different terminology in the agreement such as 'First year fee' and 'Annual fee' in place of 'Cost of software' and 'Annual Maintenance Fee' respectively. It is also alleged that the OP is using a term 'rights to use goods' in the agreement without actually transferring any possession or effective control of goods to the Informant.
9. Based on the above submissions, the Informant has alleged that the conduct of the OP is in violation of the provisions of Section 4(2)(a)(i), 4(2)(a)(ii), 4(2)(b)(i), 4(2)(c), 3(3)(a) and 3(3)(b) of the Act and *inter alia* has prayed the Commission to intervene appropriately in the matter.
10. The Commission has perused the available information on record and observed that the Informant is primarily aggrieved by the alleged conduct of OP which is abusing its dominant position by *inter alia* imposing restrictive terms and conditions in the license agreement.



11. The dispute between the Informant and the OP in the present case emanates from an agreement entered into between BOCAD and the Informant for supply of 30 BOCAD 3D licenses. It is observed that after BOCAD was acquired by AVEVA, the Informant had entered into a new agreement with the OP for supply of 3D software. From the information available in the public domain, it is observed that 3D modelling engineering software is used in industries like 3D architecture, interior design, printing, animation *etc.* These software tools allow for building and customising structural models from scratch. Based on the above, the Commission notes that the relevant product market in this case may be defined as the market for ‘3D modelling software’. With regard to the relevant geographic market, it is noted that since the market for 3D modelling software exhibits distinctly homogenous market conditions in the territory of India, the relevant geographic market in this case may be considered as the ‘territory of India’. As such, the relevant market in this case may be defined as the market for ‘3D modelling software in India’.
12. With regard to dominance of OP in the relevant market defined *supra*, from the information available in the public domain, it is observed that there are other 3D software companies which are making and selling 3D software products which are substitutable with the software being manufactured by OP. For instance, ‘Tekla Structures’ a software manufactured by Trimble Solutions is a software for structural steel detailers and fabricators which can be used to create a detailed, constructible 3D model of any steel structure from industrial and commercial buildings to stadiums and high rise buildings. From the websites of the Informant as well as the certain other companies which are engaged in similar services *viz.* Techflow Engineers India Pvt. Ltd. and InSteel Engineers Pvt. Ltd. it can be seen that all these companies also use the Tekla Structures for steel detailing projects. The Informant is also using ‘Pro Steel’ software manufactured by Bentley for accurate 3D models for structural steel, metal work, and steel assemblies. Further, Autodesk Inc. produces two softwares *viz.* ‘AutoCAD’ and ‘Revit Structures’ which are 3D CAD softwares used by engineering detailing companies such as the Informant and Techflow



Engineers India Pvt. Ltd. for the purpose of steel detailing. 'CADWorx Steel Professional' is another 3D software for steel detailing manufactured by Integraph which is also available in India. Further, PTC, a technology solutions company manufactures a 3D CAD software which is also available in India.

13. During the course of the hearing, OP has submitted that even in the markets for Engineering Design Tools (EDT), EDT Plant Design or EDT AEC, it does not have any market power. OP has further submitted a report of ARC Advisory Group (report) on "Engineering Design Tools for Plant and Infrastructure" which reveals that in 2014, it had a market share of 9.5% in the market for EDT, 16.7%, in the market for EDT Plant Design and 1% in the market for EDT AEC, on a worldwide basis. Further, according to the said report, AVEVA faces stiff competition from players such as Autodesk (having a market share of 36% in EDT and 53.4% in EDT – AEC), Intergraph (having a market share of 30.4% in EDT – Plant Design and 16.5% in EDT) and Bentley (having a market share of 18.7% in EDT and 24.3% in EDT AEC).
14. Moreover, during the course of hearing, the Informant itself has submitted that Tekla (which is now owned by Trimble) is the dominant player in this market with approximately 3000 licences. In this regard, it is submitted by the OP that they had sold just 500 licenses approximately in India which are similar to the ones used by the Informant. In addition to competition from Tekla, OP faces stiff competition from other players such as AutoDesk, Bentley *etc.* in this market. Further, in response to a query of the Commission, the Informant has admitted that the OP is a recent entrant in this market.
15. Based on the above, the Commission observes that the OP does not enjoy a position of strength which would enable it to operate independent of market forces in the relevant market. Therefore, OP cannot be considered as a dominant player in the relevant market. The Commission notes that in the absence of dominance of OP in the relevant market, the question of abuse of dominant position by the OP does not arise. Thus, no case of contravention of



any of the provisions of Section 4 of the Act is made out against OP in the instant case.

16. With regard to the contravention of Section 3 of the Act in the matter, the Commission notes that the allegation of the Informant does not hold any ground as the information does not disclose any kind of agreement which can be termed as anti-competitive in terms of any of the provisions of Section 3 of the Act.
17. In the light of the above analysis, the Commission finds that no case of contravention of any of the provisions of either Section 3 or 4 of the Act is made out against the OP in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.
18. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi
Dated: 05.12.2016