



**COMPETITION COMMISSION OF INDIA**

**Case No. 80 of 2015**

**In Re:**

**M/s V. E. Commercial Vehicles Limited  
3rd Floor, Select City Walk, A-3,  
District Centre, Saket, New Delhi – 110017**

**Informant**

**And**

**Uttar Pradesh State Road Transport Corporation (UPSRTC)  
Parivahan Bhavan, Mahatma Gandhi Marg, Lucknow**

**Opposite Party**

**CORAM**

**Mr. Ashok Chawla  
Chairperson**

**Mr. S. L. Bunker  
Member**

**Mr. Augustine Peter  
Member**

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

**Mr. M. S. Sahoo  
Member**

**Justice G. P. Mittal  
Member**



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

1. The present information has been filed by M/s V. E. Commercial Vehicles Limited (hereinafter, the '**Informant**') against Uttar Pradesh State Road Transport Corporation (hereinafter the '**Opposite Party**'/ '**UPSRTC**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') alleging, *inter alia*, contravention of the provisions of section 4 of the Act.
2. As per the Information, the Informant is a limited company incorporated under the Companies Act, 1956 and it is a joint venture of M/s Eicher Motors India Ltd. and M/s Volvo Group, Sweden. The Informant claims to be a pioneer in the field of manufacturing motor vehicle products and engines including 'bus chassis', an assembly of all the essential parts of a bus (without the body) to be ready for operation on the road. As per the information, the Informant has been supplying 'bus chassis' to various state transport units including Gujarat, Andhra Pradesh, Uttaranchal, Rajasthan, Bombay and Goa.
3. The Opposite Party is a public sector passenger road transport corporation incorporated under the provisions of the Road Transport Act, 1950 with the objective of development of the road transport sector in the State of Uttar Pradesh. It is stated to be the largest purchaser of passenger buses for public transport in Uttar Pradesh with almost 50% of the total passenger buses belonging to it. The Informant has submitted that owing to its strength, the Opposite Party regulates the market and price of passenger buses used for public transport within the State.
4. Apparently, the Opposite Party procures its requirement of 'bus chassis' for its passenger buses through open tenders and the Informant has challenged the alleged anti-competitive conduct of the Opposite Party in the procurement of such



‘bus chassis’. Bereft of details, the facts that gave rise to the present allegations are summarised in the subsequent paragraphs.

5. The Opposite Party floated a tender bearing No. 1519 MT/12-61V/12-13 (TC) dated 22.08.2012 (hereinafter ‘**Tender No. 1**’) inviting bids from various vehicle manufacturers for supply of 600 diesel passengers chassis BS—III. As per the general terms and conditions of the technical bid of the said tender, all bidders had to submit a sum of Rs. 35 lakhs as earnest money (bank guarantee). Clause 31.1 of the tender document stated that other than M/s Tata Motors Ltd. and M/s Ashok Leyland any chassis manufacturer has to quote his rates along with Annual Maintenance Contract (‘**AMC**’). Further, clause 31.4 of the ‘Tender No. 1’ mentions that the rate per km of AMC for first three years shall be limited to Rs. 2.60/- per km which was stated to be arrived at by the Opposite Party on the basis of its past experience considering its expenditure on repair and maintenance.
6. As a matter of fact, the Informant, being the lowest bidder (L1 bidder) in ‘Tender No. 1’, won the bid. Thereafter, the Informant claims that due to the unreasonable enlarged scope of AMC, which was not clear at the time of submission of bid, it had written to the Opposite Party that it would incur an annual loss of Rs. 9.4 lakhs per vehicle for the said three years period if it has to execute the AMC with the desired enlarged scope of AMC. Subsequently, the Informant claims to have sent several letters to the Opposite Party requesting modification in the scope of the AMC services, but the Opposite Party did not relent. Consequently, the Informant sent a letter dated 03.10.2013 to the Opposite Party requesting it to return the bank guarantee/ earnest money worth Rs. 35 lakhs.
7. The Informant has contended that the Opposite Party should have refunded the said bank guarantee/ earnest money to it in terms of clause 3.2 of the general terms and conditions of the tender document, which states that the earnest money deposited will be forfeited if tender is withdrawn within the period of its validity



of 12 months from the date of opening of the tender, as the offer was not withdrawn by the Informant as per its assertion. The Informant has alleged that by exempting M/s Tata Motors Ltd. and M/s Ashok Leyland from AMC while quoting rates for bus chassis, the Opposite Party has abused its dominant position by imposing unfair conditions and distorting level playing field between equally placed competitors.

8. It has also been alleged that the Opposite Party has given similar exemption in various other tenders such as in Tender No. 1369 MT/13-61V/13-14 dated 20.06.2013 (hereinafter, '**Tender No. 2**'), inviting bids for supply of 500 BS III diesel engine chassis. The Informant has stated that like 'Tender No. 1', 'Tender No. 2' also included a clause (*i.e.*, clause 31.1) mandating all bidders, except M/s Tata Motors and M/s Ashok Leyland, to quote their rates along with the price of AMC. Further, like in 'Tender No. 1', clause 31.4 of 'Tender No. 2' specifies that the rate per km of AMC for first three years shall be limited to Rs. 2.80/- per km. The Informant has alleged that the scope of the AMC services was also not defined in 'Tender No. 2' like in the earlier tender.
9. Similar allegations have been made by the Informant *vis-a-vis* Tender No. 2108 MT/14-61 V/14-15(II) dated 29.09.2014 (hereinafter, '**Tender No. 3**') floated by the Opposite Party for procurement of 400 chassis, BS-III/BS-IV having minimum wheelbase 5334 MM and 50 passenger chassis with minimum wheelbase 5500 to 6200 MM, BS-III/BS-IV. The Informant has alleged that even this tender included the same unfair conditions as in Tender No. 1 and Tender No. 2. Further, on 19.05.2015, the Opposite Party floated another tender having Tender No. 1096 MT/15-61 V/15-16 (hereinafter, '**Tender No. 4**') for 750 chassis BS-III/ BS-IV having minimum wheelbase 5334 MM and 750 fully built ordinary buses having minimum wheelbase 5334 MM, BS-III/ BS-IV specification. It is alleged that clause 38 of the general terms and conditions of 'Tender No. 4' is discriminatory which states that, "*Other than Tata Motors Ltd. and Ashok*



*Leyland any New Tenderer (who has not supplied the chassis of minimum 5334 mm wheel base) can be awarded maximum 20% of the tendered quantity subject to the minimum of 50 chassis depending upon its position in price bid that is L-1. The order for the remaining quantity will be placed on the tenderer quoting the lowest prices".* The Informant has alleged that the Opposite Party has abused its dominant position by imposing discriminatory condition that the new entrants could win the bid only for a particular percentage of the entire tender quantity.

10. Based on the foregoing, the Informant has alleged that the Opposite Party, in the process of procurement of bus chassis, has acted in an anti-competitive manner by imposing discriminatory terms and conditions on the Informant and other prospective bidders *vis-à-vis* the two existing players in the said market *i.e.*, M/s Tata Motors and M/s Ashok Leyland. The Informant has, *inter alia*, prayed before the Commission for issuance of directions to the Opposite Party to refrain from indulging in such discriminatory conduct and for not providing level-playing field to all market players.

11. The Commission has given a thoughtful consideration to the facts stated in the Information and documents submitted therewith. It is observed that the Informant is primarily aggrieved by the alleged discrimination by the Opposite Party in favour of M/s Tata Motors and M/s Ashok Leyland in procurement of 'bus chassis' in the State of Uttar Pradesh. The Informant has highlighted four tenders to depict the alleged anti-competitive practices of the Opposite Party. In 'Tender No. 1', the Informant alongwith M/s Tata Motors and M/s Ashok Leyland participated in which the Informant was the L1 bidder. With regard to Tender Nos. 2, 3 & 4, the information is silent as to who all participated and who the L1 bidder was. In all these four tenders, as per the Informant, the Opposite Party gave preferential treatment to M/s Tata Motors and M/s Ashok Leyland by exempting them from including the AMC cost in their quotations. In 'Tender No. 1', though the Informant won the award of contract for supply of 'bus chassis' being the L1



bidder, the Informant claimed that it was unable to perform its obligation because of the unexpected enlargement of the scope of AMC post opening of the Tender. Thereafter, the Informant kept on writing to the Opposite Party and its officials requesting for waiving off the AMC obligation as is done in case of M/s Tata Motors and M/s Ashok Leyland. When the Opposite Party did not relent to the same, the Informant asked the Opposite Party to refund the earnest money of Rs. 35 lakhs paid at the time of submission of the tender quotation. However, the same was forfeited by the Opposite Party.

12. Looking at the totality of facts, it appears that the Informant is primarily aggrieved by the forfeiture of the earnest money by the Opposite Party. Be as it may, the Commission has examined the facts of the present case to ascertain if a case is made out under section 4 of the Act for imposition of discriminatory terms and conditions by the Opposite Party in the tender documents as alleged by the Informant.
13. Considering the activities of the Opposite Party, the Commission is of the view that it can be termed as an enterprise as defined under section 2(h) of the Act as it is engaged in the activity relating to provision of services in connection with passenger road transport services in the state of Uttar Pradesh and for providing such services it procures 'bus chassis' from the Informant and other manufacturers.
14. The Informant has alleged that the Opposite Party, being a dominant player in the market for procuring 'bus chassis' in the state of UP, has abused its dominant position. To examine the allegations, it is necessary to delineate the relevant market which comprises of the relevant product market and the relevant geographic market. In the present case, the allegations pertain to unfair and discriminatory treatment in tender conditions in the bids floated by the Opposite Party for procurement of 'bus chassis'. The Opposite Party is the procurer of bus



chassis and the Informant is the manufacturer/supplier. Thus, the relevant product market may be defined as the '*market for procurement of bus chassis*'.

15. The 'bus chassis' manufactured by the Informant and other players (like M/s Tata Motors and M/s Ashok Leyland) are used by public (state transport units) as well as private entities. Further, state transport undertakings established/ operating in different States procure 'bus chassis' to provide passenger road transportation services in their respective states. As a matter of fact, the Informant itself has stated that it has supplied such 'bus chassis' to State Transport Corporations in the states of Gujarat, Andhra Pradesh, Rajasthan, Maharashtra *etc.* It is not a case where a particular state transport authority issues a license or permits a manufacturer to manufacture 'bus chassis' which can be used only within a particular/ restricted geographic boundary to qualify for a separate geographic market. The case at hand involves the procurement of 'bus chassis' which, irrespective of the location of the procurer (State Transport Corporation/ Undertaking or private transport operator), would be of similar make/ nature and the manufacturers supplying such 'bus chassis' would usually face similar competitive constraints. Hence, the relevant geographic market can be defined as the territory of India. Accordingly, the relevant market in the present case may be considered as the '*market for procurement of bus chassis in India*'.

16. The Informant has stated that the Opposite Party holds 50% share of the total passenger buses in the State of Uttar Pradesh. Since, the Commission has considered the relevant geographic market as the territory of India, the position of strength of the Opposite Party needs to be assessed accordingly. The Commission has looked into the fleet size of different state transport units to evaluate whether the Opposite Party is dominant in the relevant market or not. As per the data available on the website<sup>1</sup> of Association of State Road Transport Undertakings and the websites of the various State Road Transport Undertakings, it is observed

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<sup>1</sup> <http://www.asrtu.org/stu-members.aspx>, last visited on 17.09.2015.



that the Opposite Party has a fleet size of approximately 9500 buses out of the total number of 124630 buses held by the different public transport authorities across India. Accordingly, the market share of the Opposite Party estimated as 7.62%, which is meagre. Furthermore, as per the review conducted by the Ministry of Road Transport and Highways, it is observed that the Opposite Party had a fleet size (in March 2013) of approximately 8893 buses out of the total number of 133823 buses held by the different public transport authorities across India indicating that the market share of the Opposite Party is merely 6.64%. These market share figures will further reduce if procurement of 'bus chassis' by the private transport entities are taken into consideration.

17. Considering the low market share as estimated above, *prima facie*, it may be considered that the Opposite Party is not dominant in the relevant market as determined above. Though market share figure is not the sole/ conclusive factor for deciding the dominance of an enterprise, a very low market share may be considered as an indicator of low market power of the enterprise. Evidently, the Opposite Party is one of the many state transport undertakings which is procuring 'bus chassis' in varying volumes for its operation. Further, there are many private passenger bus transport operators who are buying 'bus chassis' from the Opposite Party and other manufacturers. In the relevant market determined above, the Opposite Party is therefore not found to be dominant.

18. Since, the Opposite Party is not in a dominant position in the relevant market as delineated *supra*, the question of abuse of dominant position by it, in terms of the provisions of section 4 of the Act, does not arise. Therefore, the Commission finds no case of contravention of the provisions of section 4 of the Act against the Opposite Party in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.





19. The Secretary is directed to inform the Informant and the Opposite Party accordingly.

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**

**Sd/-**  
**(S. L. Bunker)**  
**Member**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**New Delhi**

**Date: 07.01.2016**

**DISSENT NOTE**

**PER**

**Mr. M. S. Sahoo**  
**Member**

**Justice G. P. Mittal**  
**Member**

1. We have had the advantage of going through the majority order of the learned Commission and the information filed by V.E. Commercial Vehicles Limited



(Informant). We are unable to subscribe to the majority view. We pen down the reasons for taking a different view.

2. The Informant has alleged that the OP, Uttar Pradesh State Road Transport Corporation (UPSRTC) has been abusing its dominant position by imposing unfair conditions in its tenders for the procurement of bus chassis and has, therefore, violated Section 4(2)(a)(i) of the Competition Act, 2002 (the 'Act'). The learned Commission by majority has determined that the alleged conduct is not in violation of Section 4 of the Act. We agree with the said determination, though not with the basis and manner of such determination. We do not wish to labour further on this aspect.
3. The Commission has received this information under Section 19(1)(a) of the Act alleging violation of Section 4(2)(a)(i) of the Act. An information is only an information about a conduct, activity or practice which is allegedly not in harmony with the provisions of the Act. The Commission needs to ascertain if there exists a *prima facie* case to proceed further. Being an inquisitorial body, it needs to verify if the material on record *prima facie* supports the alleged conduct and, if so, if the said conduct is *prima facie* in violation of any of the provisions of the Act, not necessarily the provision which is alleged to have been violated.
4. An Informant is not expected to be well versed in the competition law and to point out the exact provision allegedly violated. Even in a criminal matter, the authority is required to consider the substance of the allegations and apply the relevant provision of law. Even if a wrong Section is mentioned in the F.I.R., that does not prevent the Court from framing appropriate charges [Supdt. of Police, CBI and Ors. vs. Tapan Kumar Singh (2003) 6 SCC 175].



5. The Informant has alluded to special treatment granted by UPSRTC to two prospective bidders in the four tenders taken out by UPSRTC. The Informant has stated in Para XXII of the information as under:

*“The reasons why these two entities have been consistently exempted (wrongly typed as ‘expected’) from bidding for the otherwise mandatory annual maintenance contract has not been disclosed by UPSRTC ...”*

6. A perusal of the four tenders issued by UPSRTC, attached to the information, makes the following terms clear:

- a) While TATA Motors and Ashok Leyland are required to bid only the bus chassis price, other bidders are required to bid the chassis price alongwith Annual Maintenance Contract (AMC).
- b) The scope of the AMC is not defined in the tender. TATA Motors and Ashok Leyland would be awarded AMC at the rate not known to the outsiders. Other bidders will have to bid AMC not exceeding Rs. 2.60 per kilometer.
- c) Other than TATA Motors and Ashok Leyland, no other bidder would be awarded work exceeding 20% of the tender size.

7. The competition law does not require any enterprise to adopt a particular manner or mode of procuring any material, nor does it oblige an enterprise to provide a level playing field to all prospective sellers. However, if it decides to procure something by a tender, it must provide an equal opportunity to all prospective sellers, or at least state explicitly the exact extent of preference to a seller. It is difficult to fathom the reason why TATA Motors and Ashok Leyland would bid only for one part (bus chassis) of the composite tender, while the others would bid for both the parts (bus chassis and AMC) and how the bid price of one part would



be compared with the bid price of both the parts in a composite tender to select the winner. It is also difficult to appreciate as to why TATA Motors and Ashok Leyland would not compete inter se on AMC, while all others would compete among themselves. The preferential treatment given to two identified prospective bidders suggests a strong possibility of some understanding between the parties. This gets further credence by the two other terms stated above at Paras 6 (b) and 6 (c).

8. This conduct *prima facie* plays foul of the provisions of Section 3 of the Act. Section 3(1) envisages a variety of agreements which cause or are likely to cause appreciable adverse effect on competition in India. Section 3(3) and Section 3(4) are merely expansion of Section 3(1), but are not exhaustive of the scope of Section 3(1). Section 3(3) only enumerates certain species of agreements having legal presumption of adverse effect on competition and Section 3(4) gives some examples of another species of agreements where there is no such legal presumption. Sections 3(3) and 3(4) do not limit the scope of Section 3(1). An investigation into the allegation would reveal the exact contravention.
9. In *Karnataka Film Chamber of Commerce vs. Kannada GrahakaraKoota* [2015 (1) AKR 769], the Hon'ble Karnataka High Court has elaborated *prima facie* case for the purpose of the Act as under:

*““Prima-facie case” with reference to sub-section (1) of S. 26 of the Act, means no more than that the Commission is satisfied that the case is not frivolous or vexatious and that there is a serious question to be investigated. In American Cyanamid Co. vs. Ethicon Ltd. reported in ILR 1976 (1) KAR 426, with regard to the use of expression “prima facie case”, in the context of exercise of discretionary power to grant an interlocutory injunction, it was held as follows:*



*"The Court, no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried."*

*(emphasis supplied)*

*Prima facie case means that, "a case which has proceeded upon sufficient proof to that stage, where it would support finding, if the evidence to the contrary is disregarded". It means an arguable case and does not mean a foolproof case. In other words, a case which fairly needs an enquiry. A prima facie case can be interfered with in exercise of writ jurisdiction, only on the ground that the finding is perverse or based on no materials."*

10. Since the Commission is empowered to *suo moto* proceed against any person/enterprise for violation of the provisions of the Act and the proceedings are not adversarial, it is duty bound to consider all authentic relevant material available for the purpose of finding out if the allegations are ultimately proved; whether there will be violation of provisions of the Act. Thus, if there is a strong possibility that the person against whom the information has been filed or the material is being examined may ultimately be found to have violated the provisions of Section 3 or Section 4 of the Act, the usual course would be to order an investigation under Section 26(1) of the Act, rather than to close the same.

11. Further, the Commission is not only entitled, but is duty bound, to consider the possibility of similar behaviour by persons similarly placed or other persons in the market and the cumulative effect of their behaviour on competition for the purpose of finding out violation of the provisions of the Act. It cannot be lost sight that UPSRTC is the transport corporation run by the Government of Uttar Pradesh. UPSRTC by itself may not be a dominant player in respect of purchase of bus chassis. Almost every State Government is running its own transport corporation and if all or some of such corporations start putting such conditions, it may impact adversely the supply chain. Thus, we are of the view that the



information cannot be brushed aside without it being investigated by the Director General from competition perspective.

12. We are, therefore, convinced that there is a good *prima facie* case requiring investigation under Section 26(1) of the Act.

**Sd/-**  
**(M. S. Sahoo)**  
**Member**

**Sd/-**  
**(Justice G. P. Mittal)**  
**Member**

**New Delhi**  
**Date: 07.01.2016**