



COMPETITION COMMISSION OF INDIA

Case No. 29 of 2014

In Re:

**Telecommunication Users Group of India
103 A, Friends Colony, New Delhi - 65**

Informant

And

**M/s United Telecoms Ltd.
18A/19, Doddanekundi Industrial Area,
II Phase, Mahadevapura Post, Bangalore - 48**

Opposite Party No. 1

**M/s Bharat Broadband Network Ltd.
C-DOT Campus, Mandigaon Road,
Chhattarpur, New Delhi – 30**

Opposite Party No. 2

CORAM

**Mr. Ashok Chawla
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

Appearances: Advocate Shri Abhinav Mukerji on behalf of the Informant.



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

1. Filed by Telecommunication Users Group of India ('the Informant') under section 19(1) (a) of the Competition Act, 2002 ('the Act'); the present information relates to predatory bidding by M/s United Telecoms Ltd. ('UTL') pursuant to a tender floated by M/s Bharat Broadband Network Ltd. ('BBNL') for procurement of, *inter alia*, broadband equipments based on Gigabit Passive Optical Network (GPON) technology alongwith accessories and after sale services.
2. Facts, as gathered from the information, may be briefly noted:
 - 2.1 The Informant is a not-for-profit society registered under the Societies Registration Act, 1860. The primary objective of the Informant is to advocate, enhance, expand and usher in the true value of broadband potential for value addition so that people of India can avail the services with ease and affordability.
 - 2.2 UTL, the Opposite Party No. 1, is a company, *inter alia*, engaged in the provision of information and communication solutions with wide experience in telecom equipments, telecom networks, e-governance networks and real estate development. BBNL, the Opposite Party No. 2, is a Special Purpose Vehicle set up by Government of India for establishment, management and operation of National Optical Fiber Network (NOFN). It is a public sector undertaking responsible for overseeing the country wide implementation of NOFN by providing network connectivity to Gram Panchayats, giving a non-discriminatory access to various Telecom Service Providers (TSPs), Internet Service Providers (ISPs), Cable TV Operators and Content Service Providers promoting Information and Communication Technologies (ICT) applications such as e-Commerce, e-Banking, e-Governance, e-Education and Tele-medicine to rural population.



- 2.3 As per the Informant, BBNL issued a tender bearing the no. BBNL/MM/2013/002 on 05.08.2013 for building a nation-wide optical fiber network. The tender was for turnkey delivery of entire network consisting of supply of telecom equipments based on GPON technology, associated accessories like Solar Power System, batteries *etc.* as well as services for installation, commissioning, support and maintenance for the next five years.
- 2.4 In response to the said tender, based on three different GPON technologies, seven parties submitted their bids. It was stipulated in the tender that the Purchase Order would be divided amongst L-1 to L-4 bidders at L-1 price. On opening of the bids on 18.02.2014, it was observed that UTL was the L-1 bidder.
- 2.5 It is the case of the Informant that in response to the said tender, UTL had quoted unviable and economically unsound prices which are even below the cost price of the goods and services to be supplied. The Informant alleges that UTL resorted to predatory pricing (less than 87% compared to L-2) in order to obtain award of the tender and to create a monopoly in the e-governance and e-services market. It is averred that in the said tender compared to other Centre for Development of Telematics (C-DOT) licensees (*i.e.*, L&T Ltd., Tejas Networks Ltd. and Bharat Electronics Limited) for GPON products, UTL had bid at 47% - 72% lower, even though all the four bidders are using C-DOT technology and C-DOT approved design, transfer-of-technology and Bill-of-Material.
- 2.6 The Informant has alleged that as per the technology transfer agreement (which made these bidders eligible) each licensee of C-DOT is allowed to manufacture the product without making any changes in the C-DOT approved design and Bill-of-Material. The manufacturing cost of the product is typically 5% - 10% of the Bill-of-Material. In such a scenario, it is impossible for UTL to quote less than half of the prices quoted by the other



C-DOT licensees, given that procurement volumes of all the bidders are the same.

2.7 Furthermore, it is alleged that compared to other GPON technology suppliers for identical technical specification, UTL had bid 56% - 263% lower. This clearly indicates that even against global competition, UTL had bid GPON equipments at the low prices.

2.8 As per the Informant, for accessories, which are to be supplied against precise technical specifications provided by BBNL, UTL had bid 43% - 333% lower compared to other bidders. Also, for the services; the scope of which includes installation, commissioning, training and Annual Maintenance Contract (AMC) support for next 5 years for 2, 50,000 villages in the country; UTL had bid 150% - 3000 % lower than the other bidders, which is below the cost.

2.9 The price quoted by UTL for the services such as implementation, testing and commissioning of Optical Network Terminal (ONT) along with SPV and other accessories was Rs. 245/- only. It is alleged that as per the defined scope of the services which include site survey, solar panel & battery installation, racks installation and wiring along with earthing as per defined specification, this price is clearly not genuine and not feasible for any bidder to execute. As per the Informant, the objective of the said tender was to nominate multiple vendors who would not only supply the equipments but also maintain the network for at least seven years. This network is planned to be a carrier's carrier network, which will provide network service to many other service and application providers with a committed uptime. With non-feasible facility management and AMC charges, UTL would not be able to provide quality services and may demand higher prices for the services in future from BBNL on any context or just by derailing the project.



- 2.10 The Informant has further submitted that other bidders may not be able to execute this project at the prices quoted by UTL, in case they are required to match the predatory pricing of the L-1 bidder i.e., UTL. As per the Informant, this is a planned strategy with vested interest to scuttle the project by bidding at unviable and below-the-cost prices.
3. Based on the above averments and allegations, the Informant has filed the present information alleging infraction of the provisions of section 3 and section 4 of the Act.
4. The Commission has perused the material available on record besides hearing the counsel appearing for the Informant on 24.06.2014.
5. The essence of the grievance of the Informant is directed against UTL in bidding in a predatory manner by quoting rates below the cost pursuant to the tender floated by BBNL for procurement of *inter alia* broadband equipments based on GPON technology alongwith accessories and after sale services.
6. To examine the allegations as laid in the information, the relevant market in the instant case may be taken as market for broadband equipments based on GPON technology in India as primary market. Also, the market of accessories (Optical Line Terminal - OLT, ONT, Element Management System - EMS, splitters, solar panel, batteries, etc.) and the market for after sale services appear to be the secondary markets.
7. It is observed that in the domestic market for GPON equipments there are about eleven domestic vendors viz. M/s Himachal Futuristic Communications, M/s ITI Ltd., M/s Bharat Electronics Ltd., M/s VMC Systems Ltd., M/s Sai InfoSystems (India) Ltd., M/s SM Creative Electronics Ltd., M/s United Telecoms Ltd., M/s Tejas Network Ltd., M/s Prithvi Infosystems, M/s Alphion India Private Limited and M/s GPON India. Out of these eleven, seven vendors such as M/s ITI Ltd, M/s Bharat Electronics Ltd,



M/s VMC Systems Ltd., M/s Sai InfoSystems (India) Ltd, M/s SM Creative Electronics Ltd, M/s United Telecoms Ltd and M/s Tejas Network Ltd. have licenced the GPON technology from C-DOT in 2011 which has indigenously designed and developed the technology.

8. In light of the above market construct and in the absence of any data in the information or in the public domain to suggest dominance of UTL, the Commission is of prima facie opinion that dominance of UTL in the relevant market does not appear to have been established. The presence of foreign players such as ZTE, Huawei, Ericsson, Alcatel-Lucent *etc.* in the sale of GPON equipments further negates any entity possessing dominance in the relevant market.
9. Further, no specific allegation is leveled against BBNL in the information, however; some passing averments of abuse of dominant position by BBNL have been made which are of general in nature. In this regard, it is pertinent to note that BBNL is the procurer of the GPON equipments and had designed the bid document with terms and conditions based on the policy guidelines envisaged by the Department of Telecom. With the presence of other procurers of GPON equipments in the market such as BSNL, MTNL, Railtel *etc.*, there is nothing in the information as well as in the public domain to indicate that BBNL is a dominant procurer of GPON equipments.
10. In view of the above discussion, the issue of abuse of dominance by the Opposite Parties does not arise and, *prima facie*, no case of contravention of the provisions of section 4 of the Act is made out against the Opposite Parties.
11. Also, the information does not reveal any kind of agreement among the bidders which can be termed as anti-competitive in terms of the provisions of section 3 of the Act.



12. Accordingly, the information is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.

13. The Secretary is directed to inform the parties accordingly.

Sd/-

(Ashok Chawla)

Chairperson

Sd/-

(S. L. Bunker)

Member

Sd/-

(Sudhir Mital)

Member

Sd/-

(Augustine Peter)

Member

New Delhi

Date: 03.09.2014