



COMPETITION COMMISSION OF INDIA

Case No. 29 of 2015

In Re:

M/s Surana and Surana

No. 61-63, Radhakrishnan Salai, Mylapore, Chennai

Informant

And

M/s Dell India Private Limited

Divyasree Greens, Ghallaghatta Village,

Varthur Hobli, Bangalore, Karnataka

Opposite Party

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member

Mr. Augustine Peter

Member

Mr. Sudhir Mital

Member

Mr. U. C. Nahta

Member

Mr. M. S. Sahoo

Member



Appearances: Advocates Shri Kalyan Jhabakh and Ms Asha Treesa Joseph on behalf of the Informant.

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

1. The information in the present case has been filed by M/s Surana and Surana (hereinafter referred to as the '**Informant**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against M/s Dell India Private Limited (hereinafter referred to as the '**Opposite Party**'/ '**OP**') alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act in the matter.
2. As per the information, the Informant is a Chennai based law firm established in 1971. The Opposite Party is an Indian subsidiary of an American multinational private corporation engaged in the activities of designing, manufacturing and marketing of a wide range of computers and computer hardwares in the brand name of 'DELL'.
3. The Informant has alleged that OP entered the Indian market of computers and computer hardwares *via* predatory pricing and it offered its products at ridiculously low prices compared to what was offered by its competitors in India.
4. It is averred in the information that, in 2005, the Informant had purchased servers, a computer program that provides services to other computer programs (and their users) in the same or other computers, manufactured by OP at price Rs. 15900/- each. At that time, as per the Informant, the market price of a server of similar specification of other brands was much higher (around Rs. 40000/-) compared to the price offered by OP *i.e.*, Rs. 15900/-. Being satisfied with the prices of the OP's products as well as service support, in November 2014, the Informant



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decided to purchase a new high end 'x86 server' manufactured by OP. The Informant has submitted that since its entire core IT infrastructure was made up of the equipments manufactured by OP, for technical inter-operability and operational efficiency of dealing with a single vendor, it preferred to go for 'x86 server' manufactured by OP.

5. Upon approaching OP for getting price quotation from its different distributors/ partners for a 'x86 server', the Informant was informed that as per OP's new policy customers can get price quotation only from one of the distributors/ partners of OP. The Informant had asked for quotation from five distributors/ partners of OP. Futurenet, one of the distributors/ partners of OP, was the first one to 'lodge the enquiry' whereas other distributors/ partners of OP were prohibited from giving competitive prices.
6. It is stated in the information that as per the press release by International Data Corporation ('IDC'), a premier global provider of market intelligence and advisory services for information technology, OP is the second largest vendor of 'x86 server' in Indian market. Thus, it is in a dominant position in 'x86 server' market in India. It is alleged that by providing seven-year warranty, OP is restricting the after sale market and it has imposed unfair and discriminatory terms and conditions under the new policy by prohibiting its distributors/ partners from giving competitive quotes to the Informant which is in contravention of the provisions of section 4 of the Act.
7. Further, it is alleged that the practices adopted by OP indicate existence of an anti-competitive agreement, as per the provisions of section 3(4) of the Act, between OP and its distributors/ partners. The OP bars its distributors from sharing approved prices of one end customer with another. It has been alleged that OP has violated the provisions of section 3(4)(d) which deals with "refusal to deal" by not allowing its distributors to furnish a quote to the Informant for 'x86



server' after one of its distributor has quoted a price for the same and this deprives the Informant from getting economical/ competitive prices.

8. It is also alleged that OP's anti-competitive conduct has resulted in denial of market access to the Informant and the distributors/ partners of OP. The OP is trying to achieve advantage in the market by creating entry barriers, thereby denying market access and imposing upon the Informant a monopoly situation whereby, the Informant is forced to deal with a single distributor which is in violation of section 4(2)(c) of the Act.
9. On the basis of above submissions the Informant, *inter alia*, requested the Commission to conduct an inquiry into the anti-competitive and abusive practices carried on by the Opposite Party and declare the acts of the Opposite Party as anti-competitive; direct the Opposite Party not to enter into anti-competitive agreements with its dealers and distributors; award an amount of Rs. 5,00,000 (Rupees Five Lakh Only) to the Informant towards notional loss suffered on account of the Opposite Party's anti-competitive practices; and award an amount of Rs. 1,00,000 (Rupees One Lakh Only) for expenses incurred towards filing this application.
10. The Commission perused the material available on record including the information and heard the counsel appearing on behalf of the Informant on 26.05.2015.
11. From the facts of the matter it is revealed that the Informant is primarily aggrieved by the conduct of OP in prohibiting its distributors/ partners to furnish price quotation for the product 'x86 server' to the Informant after one of its distributors has quoted the price for the same. The Informant has alleged contravention of the provisions of sections 3 & 4 of the Act by the Opposite Party.



12. To examine the alleged infraction of the provisions of section 4, the relevant market in terms of section 2(r) of the Act needs to be delineated first where OP is operating, before determining the position of dominance of OP in the relevant market and its alleged abusive conduct. In the present matter, the dispute between the Informant and OP pertains to the sale and purchase of a specific category of server *i.e.*, 'x86 server'. It is observed that, in terms of their end use, 'x86 server' is different from other servers available in the market and hence it is not substitutable with other servers with different specifications. Further, there are no other products available which can be considered as a substitute for 'x86 server'. The 'x86 server' was developed by Intel and is based on Intel 8086 CPU (Central Processing Unit) and its variant Intel 8088. It is an extension of servers to 16-bit and above. At present the 'x86 server' are available in the format from 16-bit to 512-bit. They work with DOS, Windows, Linux, BSD, Solaris and MAC OS X. In comparison to 'x86 server', the servers below 16-bit are not compatible to the modern technology. Further, the 'x86 server' are used for more efficient work with low power consumption whereas other servers such as 'iAPx432' work 5 to 10 times slower than 'x86 server'. Thus, 'x86 server' are different from other servers in terms of efficiency and end-use. Accordingly, the relevant product market to be considered in the present case is "the market of x86 server". Since the conditions of competition of 'x86 server' are homogenous throughout India and it can be traded throughout India without any geographic barriers, the relevant geographic market to be considered in this case would be India. Thus, the Commission is of the view that the relevant market to be considered in the present case is the "*market of x86 server in India*".

13. The underlying principle in defining dominant position of an enterprise in a relevant market is linked with the concept of market power which allows an enterprise to act independently of competitive forces. Such independence allows an enterprise to affect the relevant market in its favour. From the report of International Data Centre, it is observed that, in 2014 the market share of OP in



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‘x86 server’ market was 23% whereas, the market share of HP, the nearest competitor of OP, in the same year was 37% in India. Rest 40% of the market was shared by other brands such as IBM, Cisco, Lenovo *etc.* Further, in the year 2013, the market share of OP was 16% whereas the market share of HP was 33%. Besides, other big players such as IBM, Lenovo, *etc.* are also operating in the relevant market indicating presence of competitive constraints for OP in the relevant market. Based on the above, the Commission is of the, *prima facie*, view that OP is not in a dominant position in the relevant market as defined *supra*. Since, OP does not appear to be in a dominant position in the relevant market, the question of abusing its dominant position, in terms of section 4 of the Act, does not arise.

14. So far as allegation pertaining to contravention of the provisions of section 3(4) of the Act is concerned, the Commission observes that even though OP and its distributors are vertically placed, the alleged conduct does not give rise to appreciable adverse effect on competition (AAEC) in the relevant market, considering the fact that ‘x86 server’ of other companies are available in the market. The end consumers have option to get quote from the distributors of other companies who are manufacturing ‘x86 server’. Further, none of the factors of section 19(3) of the Act seems to be satisfied which causes AAEC in the relevant market. Therefore, Commission is of the, *prima facie*, view that no case of contravention of any of the provisions of section 3(4) of the Act is made out against the Opposite Party.
15. In the light of the above analysis, the Commission finds that no, *prima facie*, case of contravention of the provisions of sections 3 and 4 of the Act is made out against the Opposite Party in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.



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

Sd/-

(Ashok Chawla)
Chairperson

Sd/-

(S. L. Bunker)
Member

Sd/-

(Augustine Peter)
Member

Sd/-

(Sudhir Mital)
Member

Sd/-

(U. C. Nahta)
Member

Sd/-

(M. S. Sahoo)
Member

New Delhi

Dated: 10.06.2015