



COMPETITION COMMISSION OF INDIA

Case No. 30 of 2019

In Re:

**Air Works India (Engineering)
Private Limited**

1st Floor, Kalyani House, Plot No.40, Sector-18,
Gurugram, Haryana- 122001, India

Informant

And

**GMR Hyderabad International Airport Limited
(GMR)**

DLF Building No.5, Tower B,
DLF Cyber City, DLF Phase-2,
Sector-25, Gurugram,
Haryana-122002, India

Opposite Party No. 1

GMR Aero Technic Limited (GAT)

5th Floor, Good Earth City Centre,
Sector-50, Gurugram,
Haryana-122002, India

Opposite Party No. 2

CORAM:

**Mr Ashok Kumar Gupta
Chairperson**

**Ms Sangeeta Verma
Member**

**Mr Bhagwant Singh Bishnoi
Member**

Directions for investigation under Section 26(1) of the Competition Act, 2002

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 (hereinafter the 'Act') by Air Works India (Engineering) Private Limited (hereinafter, the 'Informant') against GMR Hyderabad International Airport Limited (hereinafter, 'GMR/GHIAL'), and GMR Aero Technic Limited



(hereinafter, ‘GAT’) alleging contravention of the provisions of Sections 4 of the Act. GMR and GAT are collectively referred to as the ‘Opposite Parties’.

Facts, as stated in the information

2. The Informant is a company incorporated under the Companies Act, 1956 having its registered office in Mumbai and is, *inter alia*, engaged in the business of providing maintenance, repair and overhaul (‘MRO’) services of aircraft to airlines and general aviation. The Informant was first incorporated as a partnership firm in 1951 and started its operations from the Mumbai airport hangar. It was, thereafter, incorporated as a private limited company in the year 1986. Presently, the Informant is providing MRO services at 19 airports in India.
3. GMR/GHIAL had entered into a joint sector agreement with Government of India through the Secretary, Ministry of Civil Aviation, New Delhi for Development, Construction, Operation and Maintenance of Rajiv Gandhi International Airport, Hyderabad (‘RGIA’) *vide* Concessionaire Agreement dated 20.12.2004 for a period of 30 years and the said Concessionaire Agreement is extendable to another 30 years at the option of GMR. GMR, thus, is the sole concessionaire operating RGIA.
4. GAT is a wholly owned subsidiary of GMR Aerospace Engineering Ltd., which in turn is a wholly owned subsidiary of GMR, and therefore they together constitute a group. GAT is in the business of providing third party Airframe MRO facility at RGIA. GAT is located inside RGIA and provides MRO services to the airlines which are similar to that of the Informant, *i.e.* both Line Maintenance Services and Base Maintenance services.
5. GMR entered the airports space in early 2000s and is today counted amongst the top 5 private airport developer and operators globally. GMR presently operates, maintains and develops Delhi International Airport and Hyderabad International



Airport (*i.e.* RGIA). Apart from being the largest private airport company in India, GMR is also the only Indian airport developer to have developed and operated airports outside India.

6. Pursuant to the Concession Agreement at Hyderabad, GMR has the exclusive rights to maintain, manage and operate the RGIA including to use its discretion in respect of provision of services by third-parties at RGIA. GMR entered into agreements to give space to business entities desirous of operating from the airport premises.
7. The Informant is one of the third-party service provider providing MRO services at RGIA. It has been submitted that the nature of services provided by the Informant requires it to be located within the airport premises. MRO services provided by the Informant include Line Maintenance Services as well as Base Maintenance Services.
8. The Line Maintenance Services may include activities like trouble shooting, defect rectification, component replacement, schedule maintenance and/or checks, minor repairs and modifications and visual inspections. The Line Maintenance Service is required to be provided during the time between the landing and take-off of any aircraft to declare it airworthy and make it fit for departure. The Informant is stated to be authorised to undertake aircraft maintenance and repair services at RGIA by the aviation departments of Kingdom of Saudi Arabia, Republic of Sri Lanka, Republic of Singapore, United Arab Emirates, Republic of Turkey and State of Kuwait. The Informant undertakes aircraft maintenance and repair works for many foreign airlines such as Air Arabia, Etihad Airways *etc.* At the time of filing of the information, the Informant was providing Line Maintenance Services at 19 airports in India and was servicing 220 international flights per month at the RGIA.
9. On the other hand, Base Maintenance Services include heavy periodic maintenance on the aircrafts for airline operators. The Informant is stated to have the capability



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to carry out heavy maintenance on ATR 42/72, A320 family, Q400 and B737 fleet of aircraft for periodic airframe checks and full-fledged redelivery / repossession checks at the time of a lease return which includes End of Lease Services, Aircraft painting, NDT Services, Service Bulletins (SBs) and Airworthiness Directives (ADs) updates. The Informant currently maintains 43 aircraft types in India under the approval granted to it by Directorate General of Civil Aviation ('DGCA') and provides Base maintenance services at Hosur (Near Bengaluru).

10. Since the Line Maintenance Services provided by the Informant necessarily require it to be present within the Airport premises, the Informant executed a License Agreement dated 20.12.2011 with GMR for a period of three years and in terms of the license agreement, the Informant was given an area of 96.04 square meters for setting up, operating and maintaining the Airline Engineering Maintenance Office and Warehouse. GMR, in return was charging license fee, common area maintenance fee and utility charges for the same.
11. On expiry of the term of the License Agreement dated 20.12.2011, an agreement dated 28.11.2014 was executed between the Informant and GMR entitling it to continue to provide the Line Maintenance services to the aircrafts until 22.03.2019. The Informant averred that since GMR manages and operates the RGIA, the Informant was dependent upon GMR to grant it the necessary license to operate from the Airport for provision of its services to various airlines, as aforementioned.
12. The Informant has, towards such license to operate from RGIA, paid GMR an interest free security deposit of Rs.5,88,342/- (Rupees Five Lakhs Eighty-Eight Thousand Three Hundred and Forty-Two Only) and a Royalty Deposit of Rs.6,24,828/- (Rupees Six Lakhs Twenty-Four Thousand Eight Hundred and Twenty-Eight Only). Both deposits put together amount to Rs.12,13,170/- (Rupees Twelve Lakhs Thirteen Thousand One Hundred and Seventy only).



13. In view of the 4% annual escalation clause in the License Agreement, as of March 2019, the Informant has paid a monthly permission/license fee of Rs.1,26,184/- (Rupees One Lakh Twenty-Six Thousand One Hundred and Eighty Four only) plus GST @ 18% for the said premises. In addition to the aforementioned monthly Permission/License fee, the Informant had also been sharing its revenue with GMR since March, 2014 and the monies paid in the form of Revenue sharing since 01.01.2019 to 30.06.2019 to GMR amounted to Rs. 32,10,269/- (Rupees Thirty-Two Lakhs Ten Thousand Two Hundred and Sixty-nine only) which was 13% of Gross Revenue of the Informant.
14. Since the License Agreement dated 28.11.2014 was valid till 22.03.2019, the Informant requested GMR *vide* its email dated 25.02.2019 to renew the agreement for five years. In response to the email, GMR informed that a letter addressing this issue had already been issued by it to the Informant.
15. Subsequently, the Informant received a letter from GMR dated 22.02.2019 wherein it was informed that the License Agreement between GMR and the Informant could not be renewed citing the reason that '*..As we will be needing the said space for our on-going expansion works at RGIA, we regret to inform you that we will not be extending the Agreement any further beyond 22nd March 2019*'.
16. The Informant has stated that for providing continuous operations at the airport a license is required to be obtained and hence, it is the understanding amongst all licensees who are operating at the Airport for the technical support services that as long as they are carrying on their operations, the license would continue to be granted.
17. Pursuant to the receipt of the letter dated 22.02.2019, the Informant *vide* email dated 11.03.2019 requested GMR to renew the License Agreement dated 28.11.2014. As no reply was received from GMR, the Informant wrote a letter dated 22.03.2019 to the Secretary, Ministry of Civil Aviation requesting them to



intervene in the matter. The Informant again requested GMR to renew the agreement as there was no option for it but to close down its business at RGIA.

18. GMR, *vide* its letter dated 27.06.2019, asked the Informant to vacate the premises by 30.06.2019. The Informant, *vide* letter dated 27.06.2019, requested the Ministry of Civil Aviation to intervene in the matter. It further requested GMR, *vide* its letter dated 28.06.2019, to withdraw its letter dated 22.02.2019 and 27.06.2019 and renew the License Agreement dated 28.11.2014.
19. The Informant also filed a writ petition being WP (C) No.13298/ 2019 before the High Court of Judicature for the State of Telangana at Hyderabad *inter alia* seeking a writ or order or direction in the nature of *mandamus* declaring the notice issued by GMR to vacate/ eviction letter as arbitrary, unconstitutional and against the principles of natural justice. However, *vide* order dated 02.07.2019, the Hon'ble High Court rejected the grant of interim relief, *inter alia*, on the ground of existence of licensor and licensee relationship and the arbitration clause in the license agreement. The Informant challenged the said order in appeal and was reserved for orders on 16.08.2019.
20. The Informant has alleged that GMR is dominant in the 'market for line maintenance Services at RGIA' and being the dominant player, it has abused its dominant position. It is further stated that GMR resorted to sending of emails to the Informant's customers to avail the Line Maintenance Services of an alternate vendor. The Informant's customers expressed their willingness to continue with the services provided by the Informant, one such instance being an internal e-mail dated 09.07.2019 wherein support of Fly Dubai for the Informant was discussed. Further, GMR by email dated 30.07.2019 asked the Informant to surrender the vehicle licences to its Airside office. The Informant has further alleged that GMR and GAT have started poaching the Informant's technically skilled employees.



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21. As per the Information, GAT is a provider of MRO services from 2017. The Informant, on the basis of recently audited balance sheet, alleged that GAT is under tremendous financial hardship and requires support from the parent company. The Informant has alleged that the motive behind termination of its license by GMR is to protect/ promote its own group entity, *i.e.* GAT.
22. The Informant has levelled the following allegations pertaining to abuse of dominance by GMR:
 - a. Denial of market access to the Informant by refusing to renew the license so as to enable the Informant to continue to provide Line Maintenance Services to the Airlines at RGIA and by withholding access to the premises in the said airport thereby causing impediments for the Informant to continue providing Line Maintenance Services, in contravention of Section 4(2)(c) of the Act;
 - b. Leveraging its dominant position in the upstream market and indulging in exclusionary practices and restricting provision of services in the downstream market thereby eliminating competition in contravention of Section 4(2)(e) of the Act;
 - c. By ousting the Informant from providing Line Maintenance Services at RGIA, thereby, limiting and restricting provision of services by Informant and adversely affecting competition in the market for such services in contravention of Section 4(2)(b)(i) of the Act;
 - d. Creating a monopolistic environment which would enable GAT to operate on its own terms and conditions without being affected by any competition and charge exorbitant charges from the customers (Airlines) thereby increasing the cost to end customers which may potentially lead to contravention of Section 4(2)(a)(i) of the Act.
23. Based on the aforesaid facts and allegations, the Informant has *inter-alia* prayed to the Commission to order an investigation to be made in the matter, besides seeking a direction to GMR to renew the License Agreement dated 28.11.2014 with the



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Informant, which has allegedly been discontinued without any objective justification.

24. The Informant has also filed an application dated 21.08.2019, filed on 22.08.2019, under Section 33 of the Act seeking interim relief for restraining GMR and GAT from taking any coercive action against the Informant and for allowing the Informant to continue providing Line Maintenance Services at the RGIA. Subsequent to the filing of the information, the Informant filed two more applications, dated 29.08.2019 and 20.09.2019, seeking early listing of the matter alleging that GMR has disabled the electricity connection and also locked the premises of the Informant. The Informant has also enclosed a picture of the locked premises along with the application dated 20.09.2019.

Analysis of the Commission

25. The Commission considered the information and subsequent documents filed by the Informant in its ordinary meeting held on 01.10.2019 and decided to pass appropriate order in due course.
26. On a perusal of the facts and allegations stated in the information, the Commission notes that the Informant is a provider of third-party services to airlines and general aviation, namely the Line Maintenance Services and the Base Maintenance Services, collectively referred to as the Maintenance, Repair and Overhaul ('MRO') services. Provisioning of MRO services in the aeronautical industry entails a complex process that has strict and precise requirements defined by airworthiness authorities to ensure safety of passengers and aircrew. For providing Line Maintenance Services, the service provider needs to be located at the airport. The Line Maintenance Services are rendered during the intermittent interval between arrival of an aircraft and its next take-off, requiring the service provider to be physically present at the airport to attend to such aircraft on an immediate basis. Further, the service providers of Line Maintenance Services primarily



compete on the prices as well as on reducing the turnaround time (TAT) which is their most critical key performance indicator.

27. As per the facts, the Informant currently maintains 43 aircraft types in India under the approval granted to it by DGCA and provides Base maintenance services at Hosur (Near Bangalore) and Line Maintenance Services at 19 airports in India namely Ahmedabad, Amritsar, Bangalore, Calicut, Chennai, Coimbatore, Delhi, Gaya, Goa, Hyderabad, Jaipur, Kolkata, Lucknow, Madurai, Mumbai, Nagpur, Trichy, Trivandrum and Varanasi. At the Hyderabad Airport, *i.e.* RGIA, the Informant has been uninterruptedly providing these services to various airlines since 2011, for facilitation of which a License Agreement was executed between the Informant and GMR on 20.12.2011 (hereinafter, 'Initial License Agreement'). In terms of the said License Agreement, the Informant was given access to an area of 96.04 sqm inside the RGIA for setting up, operating and maintaining the Airline Engineering Maintenance Office and Warehouse. Since the Initial License Agreement was to end on 19.12.2014, the Informant requested for an extension from GMR, pursuant to which an agreement dated 28.11.2014 was executed between the Informant and GMR whereby the agreement was extended for a further period till 22.03.2019 hereinafter referred to as, 'Renewed License Agreement'. Before the expiry of the Renewed License Agreement, the Informant approached GMR for further extension which was apparently denied by GMR stating that it needs the space allocated to the Informant for their on-going expansion work at RGIA.
28. The Informant has alleged that GMR, owing to its sole control over the airport premises (*i.e.* RGIA), has denied access to the Informant for providing the Line Maintenance Services, with an intent to give advantage to its group company, *i.e.* GAT, (established in 2017) which competes directly with the Informant at RGIA for providing Line Maintenance Services.



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29. The allegations of the Informant need to be analysed for abuse of dominant position by GMR, if any, as per the provisions of Section 4 of the Act. For analysing the said allegations, the Act requires delineation of relevant market, followed by assessment of GMR's position in the said relevant market and then, if GMR is found to be dominant, analysing each conduct with regard to alleged abuse.

Delineation of Relevant Market

30. 'Relevant market' consists of 'relevant product market' and/or 'relevant geographic market'. The relevant product market as defined under Section 2 (t) of the Act means "*a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.*" The relevant geographic market, on the other hand, defines the contours with regard to geography within which the conditions of competition for supply of goods or provision of services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.
31. The determining factor for defining relevant product market is demand side interchangeability/ substitutability of the product, from the point of view of factors such as basic characteristics, their prices and intended end-use. In the present case, the Informant is aggrieved by alleged abusive conduct of GMR whereby it has been denied access of the airport premises to provide Line Maintenance Services to the airlines.
32. The Informant has proposed the relevant market as '*provisioning of Line Maintenance Services*', though at some places denial has been alleged in MRO services, of which Line Maintenance Services is a sub-set. The Commission is of the view that '*provisioning of Line Maintenance Services*' is the downstream market where the alleged abuse has been occasioned. However, for analysing



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GMR's position, the upstream market *i.e.* 'market for provision of access to airport facilities/premises' attains relevance.

33. The geographic market, in the present case, appears to be as narrow as the RGIA, as for providing any other third-party services, including the Line Maintenance Services, at this airport, the service provider needs to have access to the facilities/premises at RGIA. In such a scenario, the airport itself becomes the relevant geographic market, being the place where the competition dynamics are homogenous and distinct from those prevailing outside such airport. Provision of services at one airport cannot be substituted with other airport. Hence, the relevant geographic market would comprise 'Rajiv Gandhi International Airport (*i.e.* RGIA)'
34. Thus, the relevant market would be '*market for provision of access to airport facilities/premises at the RGIA*'.
35. Further, the Commission notes that the allegations of abuse in the present case do not pertain to the upstream market, but to a downstream market where the Informant operates as a service provider for MRO services (Line Maintenance Services as well as Base Maintenance Services). Since the case is of denial of market access as well that of leveraging, two markets need to be identified, first relevant market, in which the erring entity is alleged to be dominant and the second (downstream) market in which the said entity is protecting its position, directly or indirectly, by exercising abuse in the upstream market.
36. Upstream market has already been delineated *supra*. As regards the downstream market, the Commission is of the view that the market needs to be delineated keeping in view the allegations of abuse.
37. As per the Concessionaire Agreement (annexed with the information), GMR has the exclusive right to develop, design, finance, construct, commission, maintain,



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operate and manage RGIA. While doing so, it necessarily interacts/deals with airlines, customers, consumers and various third-party service providers who are willing to provide services or avail services at/of the airport. Any of these can potentially become the service provider or consumer in a downstream market. In the present case, the Informant is the provider of MRO services to the airlines. However, the abuse has specifically been alleged to have happened in the Line Maintenance Services market. Given the parameters under Section 2(t) of the Act, it is observed that the Line Maintenance Services are different from the Base Maintenance Services in terms of characteristics, price and end-use. The duration required to provide these services varies. While Base Maintenance Services, takes place after a long duration of time and are time consuming, the Line Maintenance Services may take place several times in a day in comparatively much lesser time. Additionally, it seems that provisioning of Base Maintenance Services does not require physical presence of the service provider at the airport while in case of Line Maintenance Services, it appears to be necessary. Thus, in terms of labour/infrastructure requirement, characteristics and the frequency for providing these services, Base Maintenance and Line Maintenance Services are different from each other and are hence not substitutable. Hence, the downstream market for the purposes of carrying out the analysis would be '*market for the provision of Line Maintenance Services at the RGIA*'.

38. Accordingly, for carrying out analysis under the provisions of the Act, the relevant markets are delineated as under:
- i) Upstream Market: '*market for provision of access to airport facilities/premises at the RGIA*'
 - ii) Downstream Market: '*market for provision of Line Maintenance Services at the RGIA*'



Assessment of Dominance

39. Construction, operationalisation and maintenance of airports involve heavy investments. Traditionally, airports were owned, managed and operated by governments but there has been an emerging trend worldwide towards private sector involvement with varying degrees of private ownership and responsibilities, including the use of public-private partnership (PPP) models. As per the information gathered from public domain¹, RGIA is operated by the GMR Hyderabad International Airport Limited (GHIAL) which signed a Concession Agreement with the Government of India on 20.12.2004 for a period of 30 years (hereinafter, the ‘Concession Agreement’), further extendable by 30 more years at the option of GHIAL. The inauguration of the airport was done in March 2008. GHIAL is a joint venture formed as a consortium between GMR Group (63%), Government of India (13%), Government of Telangana (13%) and Malaysia Airports Holding Bhd (11%). The model of PPP for RGIA is based on a Build-Own-Operate-Transfer (BOOT) basis. During the period of concession, the consortium was incorporated to design, finance, build and maintain the green field RGIA, which has the flexibility to increase capacity to handle over 40 million international and domestic travellers per annum. Since GMR is the major shareholder of GHIAL, it has been used synonymously with GHIAL for the purposes of analysing this case.
40. The Commission notes that in a consortium bid project, competition is at the time of bidding and is known as ‘*competition for the market*’. Once the project is awarded, the awardee inevitably becomes a dominant player, rather a monopolist, with regard to developing, controlling, operating and maintaining the airport as it can operate independent of the market forces. Such monopoly or dominant position is attributable to the concession agreement whereby the Government of India has

¹ <http://www.hyderabad.aero/our-company.aspx>



granted GMR/GHIAL the exclusive right and privilege to carry out the development, design, financing, construction, commissioning, maintenance, operation and management of the Airport for a period of 30 years. This necessarily implies dominance in terms of providing access to the facilities/premises at RGIA to various third-party service providers who wish to provide their services at the airport. Thus, there does not seem to be any doubt that GMR/GHIAL is dominant in the ‘*market for provision of access to airport facilities/premises at the RGIA*’.

Abuse of Dominant Position

41. Allegations of the Informant primarily merit analysis of GMR’s conduct under 3 broad heads:
 - a) ***Section 4(2)(c)***: Denial of market access (*i.e.* denying access to the space at the airport premises)
 - b) ***Section 4(2)(e)***: Leveraging of dominant position in the upstream market to protect the downstream market; and
 - c) ***Section 4(2)(b)***: Limiting and restricting provision of services by Informant and adversely affecting competition in the market for such services.

42. Since all these allegations are stemming from a single conduct *i.e.* not extending the Licensing Agreement with the Informant by GMR (and disallowing its presence at the RGIA), the Commission has simultaneously dealt with all these allegations.

43. At the outset, the Commission observes that though there existed a License Agreement (*i.e.* the Renewed License Agreement) between the Informant and GMR that specifically sets out the term of the arrangement between the parties. However, the issues highlighted in the present information do not appear to be mere contractual disputes as the Renewed License Agreement explicitly allowed termination of the Agreement by efflux of time *i.e.* by 22.03.2019. Thus, the issue may not be that of breach of the said Agreement, but that of alleged abuse of



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dominant position by an enterprise enjoying such dominance in the upstream market.

44. As per the information provided by the Informant, GAT, a wholly owned subsidiary of GMR Aerospace Engineering Ltd. which is a wholly owned subsidiary of GMR, is in direct competition to the Informant as it provides both Base Maintenance as well as Line Maintenance Services. While the Informant has been providing such services at various airports, GAT actively provides Line Maintenance Services only at Hyderabad and Delhi, apart from being present at the airports at Goa and Kathmandu. As regards Base Maintenance Services, GAT is stated to *inter-alia* have the capability to perform base maintenance on certain specified aircrafts.
45. As a general principle, every entity, dominant or otherwise, has freedom to choose its trading partners. It is a basic and fundamental right to decide with whom an enterprise wishes to deal and as such refusal to deal is not *per se* sufficient to conclude contravention of the provisions of the Act. However, there is no dearth of literature and decided case laws to provide guidance on when a refusal to deal by a dominant enterprise/undertaking constitutes an abuse.
46. Para 76 of the *Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty (now Article 102 TFEU) to abusive exclusionary conduct by dominant undertakings [2009] OJ C 045/7* provides the following:

*'Typically, competition problems arise when the dominant undertaking competes on the 'downstream' market with the **buyer** whom it refuses to supply. The term 'downstream market' is used to refer to the market for which the refused **input** is needed in order to manufacture a product or provide a service.'*

(emphasis supplied)



47. In the present case, the Informant is essentially a ‘buyer’ (a customer) of GMR for availing access to the location/space at RGIA which seems to be a necessary ‘input’ for providing Line Maintenance Services.
48. As discussed earlier, every refusal may not amount to a contravention of the provisions of the Act. The three guiding criteria/conditions, as per the existing literature, where refusal to deal amounts to abuse are: *firstly*, the refused input is indispensable for an entity in order to compete on the downstream market; *secondly*, refusal shall most likely eliminate competition on the downstream market; and, *thirdly*, refusal shall most likely damage consumers.
49. The Commission examined the facts of the present case on all these conditions to ascertain whether *prima facie* abuse has been occasioned to the Informant.
50. As for the first criterion *i.e.* indispensability of the input, the Commission observes that this requirement is perceived in terms of substitutability, to evaluate if there is any other input that could be used in order to neutralize the effects arising from the refusal to deal. Thus, indispensability or substitutability is established only when the input refused cannot be obtained through an alternative source.
51. Undoubtedly, in the present case, the access to the airport facilities/premises is an essential facility to provide third-party services, especially the Line Maintenance Services which necessarily requires physical presence of the service provider and its infrastructural facility at the airport premises.
52. The doctrine of essential facility originated in the US antitrust law, though it soon gained recognition with various antitrust authorities. As per the existing jurisprudence, an asset is considered to be essential facility if it fulfils the following main economic conditions:
- a. The dominant entity controls access to an essential facility;
 - b. The facility cannot reasonably be duplicated by the competitor;



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- c. The dominant entity denies access to the competitor;
 - d. There should be no alternative means of entering the relevant market at a reasonable cost without having access to the essential facility;
 - e. There must be spare capacity on the facility in question;
53. Ostensibly, all the aforesaid conditions seem to have been met in the present case with respect to access to the facilities/premises at the airport for providing Line Maintenance Services at the RGIA. GMR/GHIAL, *vide* the Concession Agreement, has the exclusive right and privilege to carry out the development, design, financing, construction, commissioning, maintenance, operation and management of the RGIA, for a period of 30 years, which is further extendable for another 30 years at the option of GMR. The airport premises is the '*essential facility*' here, which is under the control of GMR. It is also seen that the Line Maintenance Services pertain to such requirements and procedures which can be undertaken only at the airport itself. An entity providing such services therefore cannot do so without being present in the premises.
54. It is not possible for the Line Maintenance Service provider to station itself outside the airport premises as the service is required between the landing and take-off of the aircraft. Further, it is apparent from the facts stated in the information that the level of competition in the downstream market is low, since apart from the Informant, other dedicated service provider of Line Maintenance Services is GMR's own group company GAT. Thus, RGIA may be construed as an essential facility for providing the services in the downstream market delineated *supra*.
55. As regards the second condition mentioned in para 48 *supra i.e.* that the refusal is likely to eliminate competition in the downstream market, the Commission notes that the Informant is a significant player in the said market. While the Informant has been providing Line Maintenance Services at RGIA since 2011, GAT entered the downstream market in the year 2017. Further, other than the Informant and GAT, other players providing the Line Maintenance Services are Air India, Spice



Jet and British Airways. Market shares of these players in providing Line Maintenance Services at RGIA, as per the information, are as follows:

S.No.	Third party Technical Handler	No. of Third Party Airlines Handling	Monthly Transits	Third Party Customer Share	Third Party Transit Share
1.	Air Works (Informant)	8	227	53%	47%
2.	GMR (GAT)	4	149	27%	31%
3.	Air India	1	47	7%	10%
4.	Spice Jet	1	30	7%	6%
5.	British Airways	1	30	7%	6%
	Total	15	483	100%	100%

56. Quite clearly, the Informant and GAT are the most significant players in the downstream market posing competitive constraints on each other. Given that physical presence at the airport premises is indispensable to provide Line Maintenance Services, non-renewal of the license arrangement by GMR with the Informant *prima facie* seems to amount to the Informant's exclusion from the downstream market, which may skew the market in favour of GMR's group entity, *i.e.* GAT.
57. The Informant, as an illustration, has enclosed emails dated 06.07.2019 and 16.08.2019 sent by GMR to the Jazeera Airways whereby the latter has been asked to choose an alternate vendor for Line Maintenance Services given the non-extension of the Informant's license. The Informant has also alleged that GMR has made attempts to poach Informant's technically skilled employees and has disabled the electricity supply to the Informant's location at RGIA, apart from finally locking the said premises. All these are serious allegations given the strong



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possibility of exclusionary motive because of GMR's existence in the downstream market, through GAT.

58. The Line Maintenance Services, if not being provided by the Informant, would likely benefit GAT, being the second largest and seemingly the only player in the downstream market apart from the Informant. The remaining players seem to be either providing such services for captive consumption or being comparatively small so as not to provide any effective competitive constraint in the downstream market.
59. Thus, the facts of the present case *prima facie* suggest denial of market access to the Informant coupled with exclusionary motive by GMR to favour its own group entity (*i.e.* GAT). Owing to its dominance in the upstream market and its presence in the downstream market, GMR seems to have distorted the level playing field. Though the excluded player/buyer could be only a customer [as was held by the Hon'ble Supreme Court in *CCI v M/s Fast Way Transmission Private Limited & Ors.*, Civil Appeal 7215 of 2014 (Judgement dated 24.01.2018)], this case seems to pose a greater competition concern given the presence of competitive relationship between GMR (through GAT) and the Informant in the downstream market.
60. Such alleged denial of market access thus *prima facie* warrants an investigation under Section 4(2)(c) as well as Section 4(2)(e) of the Act, as the denial seems to be aimed at leveraging of the dominant position by GMR in the upstream relevant market to adversely affect the competition in the downstream market.
61. The Commission further notes that the alleged conduct by GMR has the potential to limit and restrict the provision of Line Maintenance Services and the technical development relating to provisioning of such services to the prejudice of consumers within the meaning of Section 4(2)(b) of the Act, thus, fulfilling the third condition mentioned in para 48 *supra i.e.* refusal likely to damage consumers. As per the



information, the Line Maintenance Services are necessarily required as per DGCA guidelines to ensure airworthiness of the airplanes. At the time of filing of the information, the Informant and GAT were directly competing with each other in the downstream market, having respective market shares of 53% and 27%. Counterfactual would be a single dedicated service provider in the downstream market. Thus, if the Informant is excluded from this market, its existing as well as potential customers (*i.e.* the airlines) would be required to either have their in-house arrangement for their line maintenance, which may increase their cost and impact revenue; or avail services from an alternative service provider operating in the downstream market, which as alleged by the Informant will be GAT. In such a situation, the entity providing Line Maintenance Services in downstream market would virtually be the same as the one dominant in the upstream market, being part of the group. Thus, there would neither be any effective competitive constraint nor any regulatory constraint to put a check on such entity in respect of either price or quality of services in the downstream market. This can potentially result in over-charging from the airlines (which is the intermediate consumer) and may also have an adverse impact on the end consumer in the long run. Thus, *prima facie* a contravention of the provisions of Section 4(2)(b) of the Act has also been made out.

62. Based on the foregoing analysis, the Commission is of the considered view that *prima facie* a contravention with regard to Section 4(2)(b), Section 4(2)(c) and Section 4(2)(e) of the Act is made out against GMR. The DG is, thus, directed to carry out detailed investigation into the matter, in terms of Section 26(1) of the Act, and submit a report within 60 days.
63. During the course of investigation, if involvement of any other party/entity is found, the DG shall investigate the conduct of such other party/entity(s) who may have indulged in the said contravention.



64. It is, however, made clear that nothing stated herein shall tantamount to an expression of final opinion on the merits of the case and the DG shall conduct the investigation without being influenced by any observations made herein.
65. As regards application under Section 33 of the Act, as filed by the Informant, it will be dealt separately.
66. The Secretary is directed to send a copy of this order, along with the information and the documents filed therewith, to the DG.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 03/10/2019