

COMPETITION COMMISSION OF INDIA

Case No. 48 of 2012

Dated:11/10/2012

IN THE MATTER OF:

PDA Trade Fairs (A division of Pradeep Deviah &
Associates Pvt. Ltd.)

.. Informant

v.

India Trade Promotion Organization

.. Opposite Party

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

The present information has been filed by M/s PDA Trade Fairs (A division of Pradeep Deviah & Associates Pvt. Ltd.) ('the informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against India Trade Promotion Organization ('the opposite party') alleging *inter-alia* contravention of Section 4 of the Act.

2. The informant is a business organization engaged in the business of organizing international trade fairs, thereby bringing buyers and sellers to one common platform in order to facilitate interaction among them for furthering their respective businesses. For carrying out its business, the informant occasionally hires venues for organizing the said trade fairs.

3. As per the information available in public domain, the opposite party is a nodal agency of Government of India engaged in promoting India's external trade. The opposite party is entrusted with the proactive role of catalysing trade, investment and technology transfer processes for which it, *inter-alia*, organizes fairs and exhibitions in India and abroad. For the said purpose, the opposite party

has the control and management of the venue bookings at Pragati Maidan, New Delhi.

4. The present case pertains to an agreement entered into between the informant and the opposite party wherein the informant booked some halls at Pragati Maidan by making an application to the opposite party, in October 2010, for an event named 'Delhi Wood' 2013. The opposite party through its letter dated 28th September, 2011, intimated the terms and conditions of allotment of halls at Pragati Maidan to the informant.

5. The informant alleged Pragati Maidan to be an exclusive and irreplaceable venue for national and international exhibitions in the capital region, in terms of its area and also in terms its locational advantage. Though the information did not specifically define the relevant market, the facts appear to suggest that the informant tried to establish dominance of the opposite party in the market of 'providing venues for trade fairs/exhibitions in New Delhi'. The opposite party is alleged to be in a monopolistic/dominant situation being a Government of India enterprise, operating independently of competitive forces in the said relevant market. Informant contended that owing to its dominant position, the opposite party had put certain conditions in the allotment letter dated 28th September, 2011, which were unfair or discriminatory and created one-sided and onerous obligations on the informant. The said one-sided conditions pertained to provisional rentals stated in the letter subject to further revision; compulsory payment of 10% booking amount at the time of signing of the licensing agreement which could not be postponed beyond one month of the issue of approval of letter of allotment; payment of further 10% before one year of the start of tenancy period and first installment of 25% before eight months (with two months grace period) being compulsory, failing which the allotment was open to cancellation unilaterally by the opposite party; forfeiture of the whole amount in case of cancellation of booking by informant; very high and arbitrary interest payment on non-adherence to the payment schedule etc. However, any cancellation of booking by the opposite party on account of dislocation or

unavailability because of Modernization Programme in Pragati Maidan was allowed as per the allotment letter without any penalty/liability provision on the opposite party.

6. The informant further submitted that when it booked the space for the event, normal annual increase by the opposite party used to be 10%. However, in April 2012, the opposite party revised its rental by increasing it to the tune of 15.7% which was highly unreasonable considering the past year revision trend (around 10%). This affected the internal planning and budgeting of the informant as the rentals provided to the exhibitors could not be changed by the informant. When the opposite party refused to reconsider the rentals, the informant asked for cancellation of the booking and refund of the license fee on 4th April, 2012. The opposite party, however, intimated the informant that the penalty amount of INR 31,20,916 was imposed on the informant for cancellation of the event booking.

7. This, according to the informant, amounted to an abuse of dominant position by the opposite party under section 4 of the Act. The informant, therefore, prayed to the Commission to hold that the opposite party had abused its dominant position in the relevant market of 'providing venues for trade fairs/exhibitions in New Delhi' by creating one-sided agreement and imposing heavy obligations and liabilities on the informant. The informant had also prayed for refund of forfeited money (with interest) and tax deducted at source (TDS).

8. The informant has contended that the relevant market in this case would be providing venue for trade fair/exhibition within the geographic limits of Delhi. The informant's contention is that the geographic market of Delhi is the appropriate market since Delhi is the capital of India and all big exhibitions are held in Delhi. Delhi has offices of almost all national and international companies. It is a centre of excellence, intellectual properties and high concentration of people. For holding trade exhibitions, footfall of the people was one of the major factor and the venue of Pragati Maidan was the most suitable venue for trade fairs and exhibitions because of its proximity to all kinds of

transport and because of the large parking areas available around the exhibition site. There was no other area in Delhi or around Delhi where big trade fairs/exhibitions could be held.

9. Section 2(r) of the Act defines the relevant market and section 19(5) of the Competition Act prescribes as to what constitutes a relevant market for the purpose of the Act. A combined reading of section 29(r) and section 19(5) makes it abundantly clear that the Commission has to take into account not only the relevant product market but also relevant geographic market. While considering the relevant geographic market, the Commission has also to consider the other factors as given in section 19(6). There is no doubt that Pragati Maidan, the venue for trade fairs and exhibitions, holds a unique position in Delhi and is normally considered as the ideal venue for such trade exhibitions because of historical reasons as well as because of its close proximity with all modes of transport, national and international. Its capacity, huge footfall which it attracts during exhibitions & preference of exhibitors, makes it an unsubstitutable and unique place for exhibitions. Thus prima facie, the opposite party was in a dominant position as far as the market of providing venue for trade fairs/exhibitions within the geographic area of Delhi was concerned.

10. However, the mere fact that the opposite party was a dominant enterprise in the relevant market is not a violation of the Competition act. It is to be considered whether there was an abuse of the dominant position by the Opposite Party. The information given by the informant shows that the opposite party has treated the informant at par with all other exhibitors and had not exercised any discrimination. The rate and the terms & conditions of exhibition were same for the informant and others. The rate of booking of the venue was not different for the informant but was same for all. The mere fact that the opposite party while prescribing the rate for the year 2013 made an enhancement on previous rate by 15% instead of usual 10% would not amount to abuse of dominant position. It has not been shown by the informant as to how the rental fixed by the OP was unfair. The informant has not provided any information about the corresponding

increase in rentals by other players in different cities where exhibitions are held. The Commission cannot embark upon an enquiry as to what shall be the fair price or rent, if an informant approaches the Commission on the ground of unfair rent or price. It is the informant who has to substantiate that the increase in rent or price was unfair and amounted to abuse. Merely because the percentage of increase in rent was not same as was during the previous years, one cannot say that the increase was unfair or there was abuse of dominance.

11. The other issues raised by the informant also do not amount to any abuse of dominance. The cancellation of the booked site was got done by the informant. It is the case of the informant itself that normally bookings are done two years in advance. This itself shows that if a booking is cancelled a few months before the exhibition, the authority/enterprise who is providing the site is bound to suffer loss as there is no probability of the site being booked afresh. If the enterprise, in the contract, has provided for forfeiture of the booking amount or such other terms of cancellation, it cannot be said that the OP abused its dominant position.

12. The Commission finds that there was no prima facie case made out by the informant and it was a fit case to close the same under section 26(2) of the Act and the same is hereby closed.

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

S/d-
(H.C. Gupta)
Member.

S/d-
(R.Prasad)
Member.

S/d-
(GeetaGouri)
Member.

S/d-
(AnuragGoel)
Member.

S/d-
(M.L. Tayal)
Member.

S/d-
[Justice S.N. Dhingra(Retd.)]
Member.

S/d-
(Ashok Chawla)
Chairperson.