



COMPETITION COMMISSION OF INDIA

Case No. 63 of 2015

In Re:

Shri Shrishail Rana

Systweak Software, G1, Tower B1, Evolve,

Mahindra World City, Kalwara, Jaipur

Informant

And

M/s Symantec Corporation

Unit No 1801, 18th Floor,

The Capital, Plot No 70, G- Block,

Bandra Kurla Complex, Bandra, Mumbai

Opposite Party

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. U. C. Natha

Member

Mr. M. S. Sahoo

Member

Justice (Retd.) Mr. G.P. Mittal

Member



Appearances: *For the Informant:*

Shri Abhijeet Sharma and Shri
Gaurav Sharma (Advocates)

For the Opposite Party: Shri Manas Chaudhuri and Shri
Sagardeep Rathi (Advocates).

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

1. The information in the instant case has been filed by Shri Shrishail Rana (hereinafter, the '**Informant**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against M/s Symantec Corporation (hereinafter, the '**Opposite Party**') alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act.
2. The Informant is stated to be the proprietor of a technology firm 'M/s Systweak Software' which designs, develops and distributes computer optimization software for computers operating with Windows and Mac operating systems. The Opposite Party is an American technology company engaged in the activities of development and marketing of software products that are commonly referred to as anti-virus software and are mainly used to identify malicious and harmful software and to protect the user's computer from the same. As per the Informant, the Opposite Party has also developed and distributes computer optimization software which directly compete with its product in system optimisation category.
3. As per the information, in 2013-2014, it came to the notice of the Informant through various user complaints that M/s AVG Technologies (AVG) and M/s Symantec Corporation have been screening, falsely categorizing and displaying the Informant's product as unwanted or malicious or dangerous or misleading application or Potentially Unwanted Application ('PUA') on their website, inside their security software product and/ or on various internet sites. The Informant took up this issue with the respective companies asking them to immediately cease and desist from the same. In response, AVG resolved the same with effect from 03.12.2014. But, despite repeated communications, the



Opposite Party continued to categorize the Informant's products as malicious, misleading application and potentially unwanted application. For the aforesaid conduct, the Informant served a legal notice to the Opposite Party on 03.04.2015.

4. The Informant has alleged that the Opposite Party is a dominant player in the relevant market of 'software distribution and installation and the screening and categorisation of such software in India'. It is submitted that the Opposite Party has significant dominance over the computer security market with respect to anti-virus software and by denying market access to its competitors such as the Informant and categorizing its competitor's product as unwanted, malicious and misleading application; the Opposite Party is abusing its dominant position. As per the Informant, the Opposite Party is in a position to exert control over the relevant market by influencing the mind of its existing customers by alerting its competitor's product as harmful and an unwanted application through its Norton anti-virus software thereby preventing the potential customers from installing and using the product offered by the Informant.
5. The peculiar feature of the computer security market is that if an anti-virus software is installed and made operational on a system it has the advantage of running a check on all the components of the system as well as the products/ service applications including other antivirus/ service applications that the system may install and this advantage is acquired by the Opposite Party while entering into the installation agreement with the existing customer at the time of installation of its software/ application. It is alleged that since Informant's product is being categorised as a PUA by the Opposite Party, this product is now completely out of bounds for the people who have the Opposite Party's anti-virus application installed on their computer/ system thereby, depriving the people an opportunity to install and experience the Informant's product.
6. The Informant has submitted that, having a global market share of 7.1% in Windows anti-virus applications software in January, 2015 (*Source: Case No. 63 of 2015*)



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<http://www.statista.com/statistics/271048/market-share-held-by-antivirus-vendors-for-windows-systems/>), the Opposite Party is at the fifth position in

the computer security market preceded by Avast, Microsoft, AVG and Avira. The Informant has contended that though the Opposite Party is at the fifth position in terms of global market share held by the leading Windows anti-virus application vendors, it is in a dominant position as the products of the Avast and Microsoft are not competing with Informant's product and AVG has already removed the Informant's product from suspicious category.

7. Based on the above, the Informant has alleged that compulsory screening of its products by the Opposite Party as per its own standards and yardsticks and causing false alarm by alerting its customers by categorising its competitor's product as PUA is in breach of the provisions of section 3 of the Act. The Informant has further alleged that the Opposite Party, by the virtue of its position of strength, is able to compel its competitors to undergo the compulsory screening and consequential categorisation, thereby denying market access resulting in violation of the provisions of section 4(2)(c) of the Act. Accordingly, the Informant has, *inter alia*, requested the Commission for initiation of an investigation by the Director General ('DG') and imposition of penalty on the Opposite Party. The Informant has also prayed for interim relief in the matter.
8. The Commission has perused the information available on record and heard the counsels for the Informant on 10.09.2015. Considering the technical nature of the matter, the Commission found it appropriate to hear the Opposite Party also. Accordingly, the Informant and the Opposite Party were again heard 07.10.2015. The counsels of the Opposite Party have submitted that since the Opposite Party does not hold a dominant position, as per the information submitted by the Informant, there is no question of abuse of dominance by it. It is also argued that the warning by the Opposite Party's anti-virus software is not absolutely restrictive in nature *i.e.*, it only alarms the user and provides her/ him an option of installing or not installing a PUA, the same cannot be held as anti-competitive. Whereas, the Informant has submitted that the



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installation of the Opposite Party's anti-virus software automatically deletes its system optimisation software. Thus, the restriction is absolute in nature.

9. Be as it may, before looking into the alleged conduct of the Opposite Party, the prime issue that requires consideration of the Commission is to assess whether the Opposite Party holds a position of dominance in the relevant market, as delineated in the subsequent paragraph.

10. From the documents available on record and the submissions made by the parties, the Commission observes that every base software or add-on software comprise of three sub-segments *i.e.*, security (anti-virus), optimisation and recovery. It is apparent that the Informant is aggrieved as the Opposite Party's anti-virus allegedly misguides the users by showing the Informant's system optimisation software as malicious or PUA. In view of the facts stated above, the relevant product market in the present case may be considered as the 'market for development and sale of computer security (anti-virus) software'. Though the Informant has proposed a wider relevant product market, the Commission is of the view that market for all the three sub-segments are different and non-substitutable by their characteristics and end-use. While the security software protects the computer from malicious and unwarranted applications harming the user's computer, the optimisation software makes the computer system more efficient in its working. Further, the recovery software is meant for locating any recoverable data when some damage is already done to the system. In regards to the relevant geographic market, the Commission is of the view that it would be the territory of India as the conditions of competition for the relevant product are homogeneous throughout India. Accordingly, the Commission defines the relevant market in the instant case as the '*market for development and sale of computer security (anti-virus) software in India*'.

11. Even though the Informant has alleged that that the Opposite Party is a dominant player, the data submitted by it suggests otherwise. As per the data submitted by the Informant, the global market share of the Opposite Party in



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Windows anti-virus application is merely 7.1% in January, 2015 whereas four of its competitors hold higher market share such as Avast has 21.4%, Microsoft has 19.4%, AVG has 8.6% and, Avira has 7.4% market share during the same period. Despite being given an opportunity to explain the Opposite Party's market share in the relevant product market in India, the Informant expressed its inability to do so stating that presently there is no such statistical report ascertaining/evaluating the same. The Commission has, therefore, relied on the global market shares submitted by the Informant.

12. The Informant has contended that since Avast and Microsoft do not develop any software that can potentially compete with the Informant, they should not be considered in assessing dominance of the Opposite Party. Further, it is also contended by the Informant that since AVG has already resolved the grievance of the Informant, it may also not be considered while analysing dominance of the Opposite Party. To the Commission's wisdom, this is a completely absurd reasoning. Though it can be accepted that Avast and Microsoft may not have any motivation as such to declare Informant's software as PUA or AVG agreed to resolve the Informant's grievance, the same does not carve them out from the relevant market. The fact remains that the Opposite Party is constrained by four other players in the relevant market. Moreover, the users have many more options to purchase the security (anti-virus) software and as such the Opposite Party *prima facie* does not appear to be dominant in the relevant market as delineated above. In the absence of dominance of the Opposite Party in the relevant market, it is not required to look into its alleged abusive conduct under the provisions of section 4 of the Act.

13. The Informant has also alleged contravention of the provisions of section 3 of the Act by the Opposite Party. It is alleged that by entering into anti-competitive agreement, the Opposite Party has caused appreciable adverse effect on competition in the market. The Commission examined the licensing agreement for security (anti-virus) between customer/ computer system user and the Opposite Party. The Commission is of the view that such agreement with the end consumer is not envisaged under section 3 of the Act. The



allegation appears to be misconceived devoid of any merit. Based on the above, *prima facie*, violation of the provisions section 3 of the Act is ruled out in this case.

14. In light of the above analysis, the Commission finds that no *prima facie* case of contravention of either the provisions of section 3 or the provisions of section 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.

15. The Secretary is directed to inform all concerned parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S .L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(U.C. Nahta)
Member

Sd/-
(M.S. Sahoo)
Member

Sd/-
(Justice [Retd.] G.P. Mittal)
Member

New Delhi
Date: 17.11.2015