



COMPETITION COMMISSION OF INDIA

Case No. 67 of 2014

In Re:

**Shri Uday Sakharam Yadav,
503, Sukant Co-operative Housing Society,
Plot No.237, Charkop, Kandivli, Mumbai**

Informant

And

**Excise, Entertainment & Luxury Tax Department
Govt. Of NCT of Delhi
L-Block, Vikas Bhawan, I.P. Estate
New Delhi**

Opposite Party No.1

Tata Consultancy Services

Opposite Party No.2

CORAM

**Mr. Ashok Chawla
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**



Mr. U C Nahta
Member

Present: Informant in person

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

1. The present information has been filed under section 19 (1)(a) of the Competition Act, 2002 (“**the Act**”) by Shri Uday Sakharam Yadav (“**Informant**”) against Excise, Entrainment & Luxury Tax Department, Govt. of NCT of Delhi (“**OP 1**”) and Tata Consultancy Services (“**OP 2**”) alleging *inter alia*, contravention of the provisions of section 4 of the Act.
2. Facts of the case, as stated in the information, may be briefly noted:
3. The Informant claims to be an inventor of a product ‘Split Unique Number on Product Protection Cover’ for which he has applied for patent.
4. It is submitted by the Informant that in order to stop the illicit and duplicate liquor from entering Delhi NCT from adjoining States, the OP 1 entered into an agreement with OP 2 for a period of seven years for providing a web based supply chain information management portal by the name of Excise Supply Chain Information Management System (ESCIMS). It is stated that this system enables to track every unit of stock accurately using 2-D barcode technologies which permanently tags bottles and cartons at the distillery or brewery stage and also tracks them through the supply chain until the Point of Sale. For this system to work, vendors were required to scan the barcodes of the bottle before sale to update the history of bottles. The Informant alleges that the vendors were not following the process leading to the failure of the very purpose of the Scheme.



5. The Informant submits that his invention can successfully stop the business of illicit liquor completely. It is alleged that despite several efforts on his part to request OP 2 to communicate the utility of his invention to OP 1, the OP 2 deliberately avoided paying any heed to the same which is alleged to be in contravention of the provisions of section 4 of the Act.
6. Accordingly, the Informant has alleged that the conduct of the Opposite Parties is in contravention of the provisions of section 4 of the Act.
7. The Informant, in his additional information, has pointed out the reasons as to why the brand owners are not ready to accept his invention and has requested the Commission to investigate the working of GS1 India (Global Standards), which administers and allocates GS1 product identifiers used in barcoding for unique and universal identification of supply chain objects.
8. Based on the above averments and allegations, the Informant has prayed, *inter alia*, for the issuance of direction to OP 2 to incorporate his invention with ESCIMS to enable Excise Department to stop entry of illicit liquor completely.
9. The Commission perused the material available on record including the information, additional information and facts placed on record by the Informant. Facts of the case reveal that the grievance of the Informant primarily pertains to the alleged abusive conduct of the OP 2 for not incorporating his invention with ESCIMS to enable Excise Department to stop entry of illicit liquor completely, which is alleged to be in contravention of the provisions of section 4 of the Act.
10. At this stage, it would be pertinent to have a look at the definition of enterprise as given in section 2(h) of the Act. The same is quoted below:

Section 2(h): "enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity,



relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Explanation.—For the purposes of this clause,-

- (a) "activity" includes profession or occupation;*
- (b) "article" includes a new article and "service" includes a new service;*
- (c) "unit" or "division", in relation to an enterprise, includes-*
 - (i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;*
 - (ii) any branch or office established for the provision of any service;*

11. As may be noted, in order that any entity falls within the meaning of enterprise as per section 2(h) of the Act, it is necessary that it is or has been ‘engaged in any activity’ of the nature defined therein. The activities mentioned in the said section have to be economic and commercial in nature. Furthermore, the words ‘engaged in’ preceding the words ‘any activity’ reflect both regularity and continuity of the activities mentioned in the section.

12. As per the information available in public domain, it transpires that the prime job of OP 1 is to regulate the import and supply of liquor, intoxicants and narcotics (for medical purposes), the statutory powers which are



discharged under the Delhi Excise Act, 2009 and Medicinal and Toilet Preparation Act 1955. The information also reveals that OP 1, apart from fulfilling its primary responsibility of revenue collection, controls and regulates the liquor intoxicants and narcotics trade and discharges the responsibility of making available the same in safe quality to the consumers.

13. The above information makes it clear that the Opposite Party No. 1 is primarily engaged in revenue collection, apart from other regulatory functions which does not involve any economic activity as described in the Act. Therefore Opposite Party No. 1 does not fall under the definition of 'enterprise' as defined in section 2(h) of the Act and the provisions of section 4 of the Act are not attracted against it.
14. OP 2 is an Indian multinational information technology (IT) service, consulting and business solutions company. OP 2 alongwith its 59 subsidiaries provide a range of information technology-related products and services including application development, business process outsourcing, capacity planning, consulting, enterprise software, hardware sizing, payment processing, software management and technology education services. Thus, OP 2 is engaged in activities as described in section 2(h) of the Act. Therefore, OP 2 falls under the definition of 'enterprise' as defined in section 2(h) of the Act.
15. The Informant had not proposed any relevant market in the information. Excise Departments across states are taking the help of information technology to achieve their objectives, for which they are working in collaboration with IT companies to create such solutions. The capabilities and features required in such solutions are specific to the requirement of the operations of the Excise Department. In case of a significant price hike, such Departments who are consumers of such solutions, cannot substitute this product/ service in favour of any other general supply chain solutions. Thus,



the relevant product market in the present case appears to be the “*market for development of online information management applications for Excise Departments*”.

16. OP 1 can avail such services from a solution provider located anywhere in India. In case of a significant price hike, OP 1 is unlikely to switch over to another solution provider outside India due to security and other factors. Thus, the relevant geographical market is the territory of India.
17. Thus, the relevant market in the present case is the “*market for development of online information management applications for Excise Departments in India.*”
18. As per the information available on public domain, Excise Departments across the country are utilizing various information technology companies / solution providers at various stages for developing information management systems for their operations. For example, the Department of Rajasthan has engaged Trimax IT Infrastructure & Services Limited, Departments of Mumbai, Goa & West Bengal have engaged National Informatics Centre for the same. It is evident that there are various other solution providers for these Excise Departments apart from OP 2. Several information technology companies / solution providers are competing with each other in the relevant market. Presence of such players with comparable services in the relevant market indicates that the consumer has the option to switch to other solution providers in the relevant geographic market.
19. Since there is no information available on record and on the public domain to show the position of strength of the OP 2 which enables it to operate independently of the competitive forces prevailing in the relevant market, *prima facie*, OP 2 does not appear to be in a dominant position in the relevant market. In the absence of dominance of the OP 2 in the relevant market, its conduct cannot be examined under the provisions of section 4 of the Act.



20. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against the Opposite Parties in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

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

Sd/-

(Ashok Chawla)

Chairperson

Sd/-

(S. L. Bunker)

Member

Sd/-

(Sudhir Mital)

Member

Sd/-

(Augustine Peter)

Member

Sd/-

(U C Nahta)

Member

New Delhi

Date:-05/12/2014