



COMPETITION COMMISSION OF INDIA

Case No. 92 of 2015

In Re:

Trend Electronics

Informant

And

Hewlett Packard India Sales Pvt. Ltd.

Opposite Party

CORAM

**Mr. Ashok Chawla
Chairperson**

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

**Mr. Augustine Peter
Member**

**Mr. U.C. Nahta
(Member)**

**Mr. M.S. Sahoo
Member**

**Justice G.P. Mittal
Member**



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

1. The information in the instant case was filed under section 19(1)(a) of the Competition Act, 2002 ('Act') by Trend Electronics ('Informant') against Hewlett Packard India Sales Pvt. Ltd. ('Opposite Party'/'OP'), alleging, *inter-alia*, contravention of the provisions of Section 4 of the Act.
2. The Informant is stated to be a partnership firm carrying on the business of selling computers, laptops and providing laptops, computers, servers and other IT equipments on hire/rental basis.
3. Opposite Party is stated to be the sales division of Hewlett Packard Company ('HP'), an American multinational corporation. As per the Information, OP is a subsidiary of Compaq Computers, Mauritius which holds 99.99% of the equity shares of OP. OP sells laptops, desktops, tablets, printers, monitors, ink and toners to individuals, small and medium sized businesses and large enterprises. OP also operates/authorises/regulates or otherwise controls the operations of various authorised workshops and service stations, which are in the business of replacement of parts for laptops besides rendering after sale services to laptops, computers, printers, etc.
4. It was submitted that during September 2009 to December 2010, the Informant purchased 525 laptops having model name Compaq 510 ('first laptops'). Between June 2010 and January 2011, the Informant had made further purchase of 550 laptops having model name Compaq 420 ('second laptops') from the authorised sellers of OP. A total consideration of INR 2,91,76,565/- was stated to have been paid by the



Informant towards purchase of these laptops. The Informant submitted that the price of each laptop factored, *inter-alia*, the price of repair, maintenance and after sale services for a period of one year from its purchase subject to terms and conditions.

5. It was further submitted that, within a year of purchase, the Informant noticed defects in the form of cracks in the front panel commonly referred to as 'Bezel' in some of the first laptops and cracks in the touch pad insome of the second laptops. The Informant claimed that only those replacements that were purchased and/or replaced from the Authorised Service Centre of OP ('ASC') would be considered to be genuine. Servicing the said laptops from any independent repairer would have adverse implications on the validity of warranty. Further, considering the volume of laptops that were identified to have defects, the technological information, diagnostic tools and required software to detect the exact cause of the said defects were available only with OP and its ASC.
6. In view of the above, the Informant had sent several emails to the representatives of OP informing the aforesaid defects in the first and second laptops. Pursuant to the requests of the Informant, OP had provided certain replacements in two instances. Subsequently, the representative of OP, *vide* email dated 20th March 2013, confirmed the third set of replacements and also informed that the case of the Informant was closed. In response, the Informant, *vide* email dated 21st March 2013, replied that the case could not be closed as replacement for 190 of the second laptops was yet to be received. Thereafter, the Informant also sent legal notices to the OP to pay damages for which allegedly OP did not take any action at its end.



7. Further, the Informant has alleged that genuine spare parts of laptops manufactured by OP were sold only through its ASC; and the replacement parts were not available in open market. As a result, the independent repairers were denied market access to undertake repair, maintenance and after sale services in respect of laptops manufactured by OP. Thus, the OP used its dominant position in the relevant market of supply of spare parts to protect its position in the other relevant market viz. repair, maintenance and after sale services.
8. It was also submitted that the price of laptops included, *inter alia*, the cost of repair, maintenance and after sale services during warranty period. Therefore, the consumer had no other option but to approach the OP for spare parts and repair & maintenance of its laptops, during the warranty period. However, OP had made the Informant run from pillar to post by requiring the Informant to take up the issue with different representatives but in vein. This as per the Informant also amounts to abuse of dominant position.
9. The Commission has perused and given a considered thought to the information and other materials available on record.
10. In the instant case, the Informant appears to be aggrieved by the purported deficiencies in the after-sale services provided by OP in respect of two categories of laptop purchased by him. It has also been alleged that genuine spare parts of laptops manufactured by OP are sold only through its ASC and the replacement parts are not available in open market. As a result, independent repairers are denied access to spare parts required to carry out any repair and maintenance work and to



provide any after-sale services. The said conducts of OP have been alleged as abuse of dominant position in contravention of the provisions of Section 4 of the Act.

11. For the purposes of examining the allegations of the Informant under the provisions of Section 4 of the Act, it is necessary to determine the relevant market in the first instance. The purpose of market definition as such is to ascertain whether the OP enjoys a strength required to operate independent of the market forces in the same market. Only if the OP enjoys such position, it is imperative to examine whether the impugned conduct amounts to abuse.
12. The Informant has submitted that laptop is the primary product in the instant case and the market for repair, maintenance and after sale services is the secondary market. Further the secondary market for the particular models of laptops purchased by the Informant *viz.* Compaq 510 and Compaq 420 has been identified as the relevant product market. It has been alleged that OP enjoys dominant position in this relevant product market.
13. Although the Informant has submitted that the relevant market in the instant case is the secondary market for repair, maintenance and after-sale services, no justification has been provided for considering the secondary market as a separate and distinct relevant market. From the information available/accessible in public domain, it appears that a consumer purchasing laptop could reasonably ascertain the total cost that he is likely to incur during the life cycle of the laptop. Further, factors such as high rate of obsolescence and low-life span of laptops suggest that any unfair business strategy by the OEMs, in the after-sales services, is



likely to affect the sales of primary product. It is further observed that the laptops purchased by the Informant are in the range of INR 25000 to 35000/-. Considering the price of laptops and options available to resell used laptops, it does not appear to be a case that customers cannot switch to substitutable products without incurring substantial switching costs.

14. In the absence of factors/evidence such as (a) consumer being not able to ascertain the life time cost of the product at the time of its purchase and (b) the manufacturer of the primary product being able to substantially hike up the price of the spare parts in spite of reputational concerns, it would not be appropriate to consider the secondary market for spares and after-sales services for laptops as a separate relevant market. As noted above, the attributes required to view the secondary market as a separate relevant market do not exist in the present case. Rather, the relevant market appears to be a unified system market comprising laptops and its spares and after-sale services. Considering that the price and availability of laptops, spares and after-sale services are similar across India, the relevant geographic market appears to be the entire territory of India.
15. The Commission further observes that although HP seems to be one of the leading players, other credible OEMs such as Lenovo, Dell, Sony, Acer etc. also supply laptops in India. With the presence of other prominent brands, it appears that consumers in India have adequate choice and the OP does not enjoy a position of strength required to operate independent of market forces. Accordingly, OP does not appear to hold a dominant position in the unified relevant market.



16. In light of the above analysis, the Commission is of the view that no case of contravention of the provisions of section 4 of the Act is made out against OP in the present case. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.
17. The Secretary is directed to inform all concerned accordingly.

Sd/-

(Ashok Chawla)
Chairperson

Sd/-

(S.L. Bunker)
Member

Sd/-

(Augustine Peter)
Member

Sd/-

(U.C. Nahta)
Member

Sd/-

(M.S. Sahoo)
Member

Sd/-

(Justice G.P. Mittal)
Member

New Delhi
Date: 19/11/2015