



COMPETITION COMMISSION OF INDIA

Case No. 24 of 2018

In Re:

Swarna Properties

H. No.: 8-2-268/1/D/B,
P. No. 558, Swarna Heights,
Road No. 3, Arora Colony,
Banjara Hills,
Hyderabad- 500034,
Andhra Pradesh

Informant

And

Vestas Wind Technology India Private Limited

298, Old Mahabalipuram Road,
Sozhinganallur,
Chennai-600119,
Tamil Nadu

Opposite Party

CORAM

Mr. Sudhir Mital

Chairperson

Mr. U. C. Nahta

Member

Justice G. P. Mittal

Member



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 Swarna Properties (the “**Informant**”) against Vestas Wind Technology India Private Limited (**OP**) alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. As per the information, the Informant is a partnership firm having its office at Hyderabad. As per the Service & Availability Agreement executed and entered into between the Informant and OP on 01.01.2014 (**Service Agreement**), the Informant is stated to own a Wind Energy Generator system which includes , ‘One number Vestas V82 x of 1650 KW’ of Wind Turbine Generator, Towers and substation located at the Timmappangudda Wind Farm, Karnataka (**Site**).
3. The Opposite Party is stated to be a wholly owned subsidiary of Vestas Wind Systems A/S and has its office in Chennai. It is stated in the official website of OP’s principal company i.e. Vestas Wind Systems A/S that its core business is development, manufacturing, sale and maintenance of wind power plants¹. Further, as per the website² of OP, it is stated that it is a company that is engaged in the business of manufacture, sales, marketing and maintenance of wind power systems in India.
4. The Informant has stated that an Agreement dated 01.01.2014 was executed between the Informant and OP for supply of wind turbines (equipment). It is averred that the sale of wind turbines was conditional upon acceptance of maintenance services and appointment of OP as Annual Maintenance Contractor (AMC). Accordingly, a Service Agreement was entered into between them. It is stated that the Informant had no other option but to accept the same. The Informant alleges that such agreement containing exclusive service conditions requiring the Informant to avail the services of OP only is in contravention of Section 3 of the Act. That such condition in the

¹ <https://www.vestas.com/en/about/profile>

² <http://www.vestas.in/about#!india-footprint>



Agreement limits and restricts the Informant from availing the maintenance services from any other service provider.

5. It is also alleged that the conduct of OP to impose such unfair and discriminatory conditions in the sale and purchase of wind turbines has resulted in denial of market access to the Informant. It is further alleged that OP has used its dominant position in one relevant market to enter into or protect other relevant market which is in contravention of the provisions of Section 4 of the Act.
6. The Commission has perused the information submitted by the Informant and material available in the public domain. It is observed that the Informant is aggrieved with OP's alleged insistence that they would supply the equipments on a condition that the servicing of the same will be done by OP. The Informant avers that such conduct restricts its freedom from approaching other company for servicing since it has been bound by the Agreement.
7. The Commission notes that since allegations have also been made regarding violation of the provisions of Section 4 of the Act, it would be appropriate to first delineate the relevant market and then to assess the dominance of OP in the same.
8. Before delineation of the relevant product market, it is first useful to understand the characteristics of product involved in this matter. The basic principle behind technology of wind energy is that wind electric generators convert kinetic energy available in wind to electrical energy by using rotor, gearbox and generator. The wind turns the blades of a windmill-like machine. The rotating blades turn the shaft to which they are attached. The turning shaft typically can either power a pump or turn a generator, which produces electricity. The amount of energy produced by a wind machine depends upon the wind speed, wind density and the size of the blades in the machine³. Thus, generation of wind power may be variable depending on variation in weather conditions. These facts also signify that the functioning of wind turbine

³ http://niwe.res.in/information_gi.php (National Institute of Wind Energy, GoI)



through which electricity is generated cannot be substituted with any other form of power generating equipment. In view of foregoing, the Commission delineates the *market for supply of wind turbines* as the relevant product market in this case.

9. With regard to the relevant geographic market, the Commission observes that the Informant had purchased the equipments from a Chennai based company for its site, which is located at Karnataka. This shows that there is no regulatory or economic barrier regarding supply of wind turbines from one place to other in India. Thus, the Commission delineates the relevant geographic market as *India*.

10. Accordingly, the relevant market in the instant case is the *market for supply of wind turbines in India*.

11. With regard to the assessment of dominance of OP in the relevant market, the Commission observes that apart from OP, there are several other domestic and global manufacturers operating in the relevant market. The list includes, Suzlon Energy Limited, Wind World (India) Ltd., Siemens Gamesa Renewable Power Pvt. Ltd., ReGen Powertech Pvt. Ltd., GE India Industrial Pvt. Ltd., Senvion Wind Technology Pvt. Ltd., RRB Energy Ltd., *etc*⁴. Further, as per the Global Wind Report's annual market update for the year, 2016, the top-five Original Equipment Manufacturers (OEMs) in India are Suzlon (35.4%), WindWorld (18%), Gamesa (10.1%), Vestas (7.6%) and Regen (7.3%)⁵. Therefore, considering the presence of a number of players and their market shares in the relevant market, it is apparent that consumers have multiple choice in case of purchase/supply of wind turbines and they are not dependent on OP for the same. Also, these OEMs who command larger or comparable market shares pose competitive constraints on OP in the relevant market. Thus, OP does not appear to enjoy a position of strength which could enable it to operate independently of its competitors in the relevant market. Accordingly, the Commission holds that the question of abuse does not arise in the instant matter and no case is made out under Section 4 of the Act against OP.

⁴ <http://www.indianwindpower.com/about.php#tab4>

⁵ http://www.indianwindpower.com/pdf/GWEC_Global_Wind_2016.pdf



12. The Informant has also alleged that exclusive service agreement imposed on the Informant by the OP is in violation of the Section 3 of the Act. The Commission observes that no case of violation of Section 3(3) is made out as the matter does not pertain to a horizontal agreement between two or more players in the market. Further, even if viewed from the angle of vertical agreements under Section 3(4)(a) of the Act which provides for tie-in arrangement and under Section 3(4)(b) of the Act which provides for exclusive supply agreement, the Commission is of the opinion that there exist no *prima facie* case. The Informant has not provided any evidence to substantiate the allegations and has not even provided the copy of the Agreement. Also, even if assuming that OP has insisted on sale of wind turbines/ equipment only on purchase of after-sale services from them, the Informant had the option to look for other vendors which did not impose the impugned terms and conditions. Further, it is observed that clause 6 of the Service Agreement dated 01.01.2014 provides for exclusivity wherein the Informant has been restrained from procuring any service or spare parts from anyone else other than OP during the five year term of the Service Agreement. However, in the said Agreement both the parties did have the option to terminate the contract under clause 13 of the Agreement in case of default/non-performance of duties and obligations specified therein by either party by giving due notice. Also, presence of many players with higher or comparable market shares shows that OP does not have any significant market power which could indicate that the Informant had no option to switch to other vendor in the relevant market.

13. Lastly, it is pertinent to note here that vertical agreements such as tie-in arrangement and exclusive supply agreement are not *per se* violative of the provisions of the Act and there is nothing in the information to suggest that conduct of OP had an appreciable adverse effect on competition in the market. Therefore, no *prima facie* case of violation of provisions of Section 3(4) of the Act is made out.

14. In view of the above, the Commission holds that no *prima facie* case of contravention of the provisions, either Section 3 or Section 4 of the Act is made out against the OP



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 the parties accordingly.

Sd/-
(Justice G. P. Mittal)
Member

Sd/-
(U.C.Nahta)
Member

Sd/-
(Sudhir Mital)
Chairperson

Date: 07.08.2018

Place: New Delhi