

COMPETITION COMMISSION OF INDIA

Dated: 09.02.2012

Case No. 67 of 2011

(1) Geogi Kuruvilla, Chennai
(2) Shri Mohandurai Chithambaram

Informant

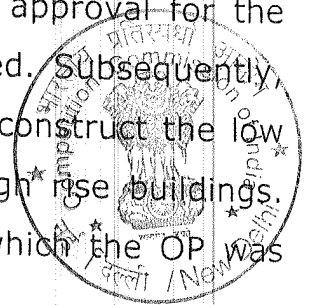
Vs.

M/s Hirco Developments Pvt. Ltd., Mumbai & Others

Opposite Parties

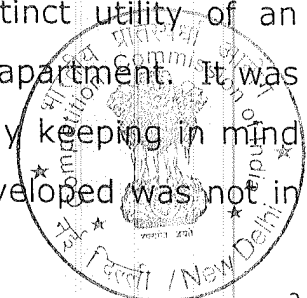
R. Prasad (dissenting)

Information was received against M/s Hirco Developments Pvt. Ltd., Mumbai in respect of abuse of dominance. The information was filed by ones Shri Geogi Kuruvilla and Shri Mohandurai Chithambaram. Shri Kuruvilla had booked a residential unit in Hirco's Hiranandani Palace Gardens project in sub-urban Chennai that is the district of Kanchipuram. The booking was done by making a payment of Rs.1,00,000/- on 11.08.2008 and at the time of booking flat no. 1303 was allotted to Shri Kuruvilla. Subsequently Shri Kuruvilla paid a further sum of Rs.5,01,520/-. The opposite party i.e. M/s Hirco dealer gave a letter in respect of the schedule of the payments to be made by Shri Kuruvilla along with other terms and conditions. According to the scheme the plinth of the building was to be completed by June 2009 and the building by middle of 2011. The informant Shri Kuruvilla found that the construction had not started and therefore Shri Kuruvilla was of the view that the approval for the construction from the authorities had not been received. Subsequently the OP informed Shri Kuruvilla that at first they would construct the low rise building and later on they would construct the high rise buildings. Incidentally the project was a town planning project which the OP was



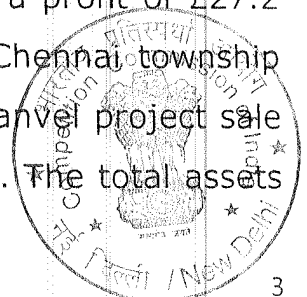
going to implement. Eventually 10,000 flats were to be constructed in the township. The township was to have residential blocks, offices, schools, colleges, hospitals etc. But no construction was started because approval was not received from the authorities. The informant Shri Kuruvilla requested for the cancellation of the allotment and refund of money given by him to OP. The OP informed the informant that he would get sum of Rs. 75,190 after deduction of 17.5% of the entire apartment cost i.e. Rs.5,26,340/-. The informant Shri Kuruvilla found that the cancellation charges were never part of either the offer or allotment letter and were never communicated to the informant. Shri Kuruvilla also found that the OP was re-allotting the Flat No.1303 to another party.

2. As far as the Competition Act is concerned the informant stated that the market i.e. the relevant market was the market for services of development in respect of mid-segment residential accommodation in mixed use township in sub-urban Chennai. He brought to the notice of the Commission the provisions of Section 2(r), Section 19(5), 19(6) and Sections 19 (7). It was argued that this case is identical with the case decided by the Commission in the case of DLF case no. 19 of 2010. It was stated that in the development of township the OP was a pioneer in India. It was stated that the property which was being developed in sub-urban Chennai in district Kanchipuram had a total area of 369 acres. Shri Kuruvilla stated that when he booked the flat he was actually acquiring a packaged deal offering residence, employment, medical and recreational facilities at one go. It was therefore his view that the residential service offered was distinct from any other residential apartment offered by any other developer. It was also argued that an apartment booked for self-use or resale purposes both in such a project, the developer and the consumers recognise the distinct utility of an integrated township when compared with a standalone apartment. It was also stated that the apartments were priced accordingly keeping in mind the various amenities on offer. The property being developed was not in



Chennai but was in the proximity to Chennai. According to the informant Shri Kuruvilla the total cost of the apartment was Rs.34,10,880. According to the informant, the price of the apartment in question puts it squarely in the mid segment category. It was argued that sub-urban Chennai was a distinct geographical market. It was also argued that the project itself can be treated as the relevant market.

3. The informant then discussed the explanation to Section 4 of the Competition Act and the factors mentioned in Section 19(4) of the Act. According to the explanation to Section 4 dominant position is a position of strength which enables an enterprise to operate independently of competitive forces prevailing in the relevant market and which is able to affect its competitors or consumers or the relevant market in its favour. It was stated that as far as dominance is concerned the facts mentioned in Section 19(4) of the act have to be looked into. The informant has stated that the OP had 66.4 million square feet in development in sub-urban Chennai as well as another equivalent area in suburban Mumbai. It was therefore argued that this itself was a clear indication of the dominant position of the OP. It was also stated that the OP was listed on the London Stock Exchange as Hirco PLC. It was argued that Hirco claimed to be India's largest residential builder and leading developer of mixed-use townships for the country's increasingly affluent middle class. It was argued that CRICIL had given AAA rating to the Hiranandani group. CRISIL has mentioned that the group has already developed around 20 million square feet of real estate space over the past three decades across real estate segments. CRISIL has also stated that the Hiranandani group has a strong revenue profile as is evident from cash flow of Rs.3.6 billion per annum from its large portfolio. The informant then went through the balance sheet of Hiranandani group PLC which reported a profit of £27.2 million. It was stated that the sales contracts for the Chennai township totalled as on 30.11.2010 was £110.2 million. For the Panvel project sale considerations received till 30.11.2010 was £169 million. The total assets



of the company were ₹542,120,000/=. Chennai Project had also been awarded the Best Integrated Suburban Developer award. The OP had also been received awards especially for the Chennai project. It was argued that the preconstruction booking was due to the dominant position enjoyed by the OP. The only competition faced by the OP was from the Mahindra World the project located on National Highway which was also an integrated township developed by Mahindra. It was stated that a consumer had no countervailing buying power against and this was clear from the fact that the apartments were sold prior to Hirco getting approvals from the authorities. Further there were high switching costs as the buyer was stuck up with the apartments regardless of delays. It was clear from the unilateral increase in the number of apartments and the incorporation of forfeiture clauses in the agreements given to the buyers by Hirco.

4. It was then stated that Hirco resorted to abusive behaviour in a similar way as the DLF. The other reasons for the abuse of dominant position were stated to be (i) commencement of project without sanction / approval of the project (ii) increase in the number of floors (iii) Delay in completion and forfeiture of amounts (iv) clauses of the agreements loaded in favour of Hirco.

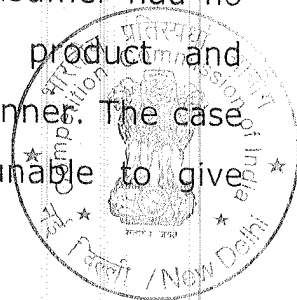
5. Thus the informant has tried to establish the dominance of Hirco and its abusive behaviour. Similar allegations were made by Shri Mohandurai Chitambaram who along with his wife had booked Flat No. 304 in a building known as Whitehall in the same project. Similar analysis was carried out by the second informant.

6. The issue to be decided is whether an investigation under Section 26(1) of the Act can be directed. On similar facts in the case of DLF an investigation by the D.G. was directed. There is no reason for the Commission to take a different stand. The majority view in this case is that it is not a fit case for investigation.



7. Before analysing the case, I have to consider the majority view. In the majority order there is a discussion of explanation to Section 4 of the Competition Act. There is also discussion of relevant market, relevant product market and the relevant geographic market. It has been assumed that in order to be in a dominant position in the relevant product market other players have to exist and dominant player should control the market. The concept of switching to other houses and bungalows in the relevant geographic market was also considered. In the majority view one single township cannot be considered as a geographic market and that the applicant had to identify the other surrounding areas where houses and bungalows were available and then the party has to establish that the particular enterprise which was constructed the township was a dominant player. In view of the majority if the Commission is not able to examine demand substitutability, supply substitutability and the potential demand, the Commission cannot determine the market power of the enterprise. In the opinion of majority if the township had to be considered in the relevant market in terms of having similar features in the nearby areas have to be considered. A view has been taken that a single township cannot be the relevant market. It has been assumed that other townships are coming up in the vicinity of the township under consideration.

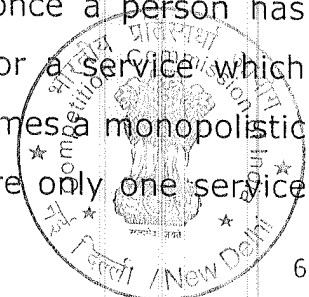
8. The majority then considered the arguments of the informant and considered that a comparison had to be made with different townships anywhere in the country. It was also the view of the majority that if a project itself is considered as the relevant market then the provision of Section 4 would apply to each and every building however small or big it may be. It has been held that Section 4 of the Act was to curb anti-competitive practices by a dominant player when the consumer had no alternative. It was therefore held that the relevant product and geographic market cannot be defined in such a narrow manner. The case has been closed on the ground that informant was unable to give



information regarding surrounding townships and other projects as well as the market share of the other players in the market.

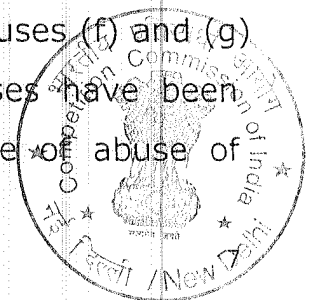
9. While analyzing this case, it has to be held that this is a case of service in accordance with Section 2(u) of the Act. When a consumer proposes to purchase a property he enters into a competitive market where he has a choice of going to any builder. But once he makes a choice and goes to a developer by paying the earnest money for the purchase of a property he becomes a captured consumer because if he switches to any other developer, he loses the earnest money. Even the agreement is signed after the consumer pays substantial amounts of money. Thus, there are two markets – the first market is when the consumer wants to purchase the property and the second market is the aftermarket i.e. when he has made the choice.

10. The next issue to be decided is the concept of dominance and relevant market. Market is a wider term where large number of goods and services are transacted whereas relevant market is the market which has to be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. Relevant product market means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the product or services, their prices and intended use. In this case, the issue is of service and not of product. Such service is available at various locations in India but if the consumer has made his choice by selecting a builder in one location then the choice is made. In that case either there is no choice available to the consumer or in his opinion there is nothing which is substitutable. There is no doubt that a market means that many players are available in the market for service but once a person has made his choice, he has only one service provider for a service which would be available for a period of time. In fact it becomes a monopolistic market of services just like an electricity market where only one service



provider is available in one location. Further, as far as the consumer is concerned because of the high switching costs to the consumer, there is no other substitutable or interchangeable provision of services. As far as relevant geographic market is concerned, it means a market comprising the area in which the conditions of competition for provision of services or the services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas. This provision of the Act as defined in Section 2(s) of the Act talks of competition for services or services which are homogenous from the neighbouring area. There is nothing in the Act which prohibits that the project itself cannot be taken as the relevant geographic market. In fact the service is being rendered in the said geographic area by one service provider and this provision of service is not available in the neighbouring areas. Further, even if service is available in the neighbouring areas, it is matter of investigation and also that the homogeneity in the area under consideration may be different from the area in the neighbourhood. Thus, the relevant market in this case should be the provision of services for the construction of rows and bungalows on the land of 369 acres in Kanchipuram, Suburban Chennai.

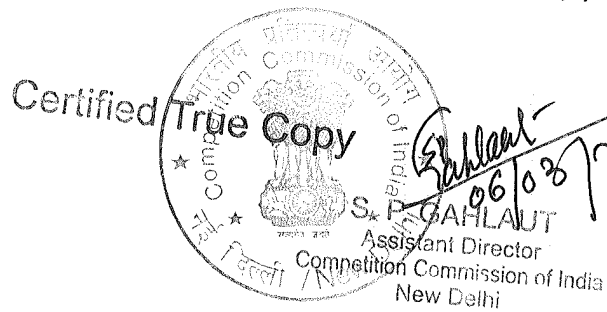
11. The next issue is of dominance and the dominance arises out of position of strength in the geographical area as discussed above and in this area Hirco is able to affect its consumer in its favour. This is in accordance with reference to the clause (ii) of the explanation to Section 4 of the Act. The dominance also has to be seen with reference to the factors mentioned in Section 19(4) of the Act. Hirco has acquired its monopolistic position for the provision of services to the consumer after the consumer booked the flats/bungalows in the 369 acres of land in Kanchipuram Suburban Chennai. Further, the consumers are totally dependent on the service provider i.e. Hirco. Therefore clauses (f) and (g) of Section 19(4) are applicable in this case. The abuses have been mentioned in the information. It appears to be a case of abuse of



dominance. Investigation is required for both market and after market abuse.

12. The Director General is therefore directed to investigate this case and submit a report within sixty days of receipt of this direction.

13. The Secretary is directed to forward a copy to the Director General.



Sd/-
Member (R)