

COMPETITION COMMISSION OF INDIA**CASE NO 60/2010**

Date: 22.12.10

Information Against : (i) IELTS Australia Pty Ltd.,
(ii) IDP Education Pty Ltd.,
(iii) IDP Education India Pvt. Ltd.,
(iv) Planet EDU Pvt. Ltd.

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

The present information has been filed alleging that the practices followed by and agreements/arrangements between IDP Education Pty. Ltd. (Party No.2) and IDP Education India Pvt. Ltd. (Party No.3) in providing education services to the candidates seeking foreign education in Australia are anti competitive and Party No.3 is abusing its dominant position.

2. The facts of the case, in brief, given by Information Provider (IP) are as under:

2.1 The IP is a non-profit oriented association of counsellors in India promoting Australian Education by way of counseling and enrolling students for education courses in Australia. Its objective is to assure credibility of agents who are involved in counseling services for students on behalf of Australian Education and training institutions keeping in view interest of students going abroad.

2.2 The IP has submitted that M/s. IELTS Australia Pty. Ltd. (Party No.1), is a company incorporated under the laws of Australia and is one of the partners of International English Language Testing System (IELTS). Other partners of IELTS are the University of Cambridge ESOL Examinations and the British Council. Party No.1 is a subsidiary company of Party No.2.

2.3 The IP further submits that in the year 2002, Party No.1 also started to conduct the said test in India through Planet EDU Pvt. Ltd (Party No.4), under 'Test Centre Agreement'



and the said arrangement continued till 30th September 2010. Hence, both Party No. 4 i.e. Planet EDU Pvt. Ltd and British Council were separately conducting these tests in India.

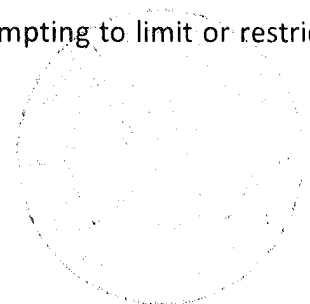
2.4 As per the IP, till September 2010 the prime business activities of IDP Australia or IDP India, in India was to offer counseling services and other related services to students similar to the services of members of the IP Association. But with the expiry of the 'Test Agreement' with Party No.4, they have ventured into conducting the tests by themselves along with providing the counseling services. For this Party No.3 was franchised to conduct these tests by Party No.2.

2.5 The IP alleges that in September 2010 the said Parties have entered into an agreement/arrangement with each other whereby Party No. 3 was franchised and made an authorized IELTS Test Centre for India apart from being a center for educational counseling business. The IP alleges that the said agreement/ arrangement would create a monopoly by restricting the market access of counsellors in the market. .

2.6 The IP further alleges that the Party No.3 is abusing its dominant position by representing to students as being the 'World's largest student placement and English Language Testing Service provider'. As per the IP, this assertion is not correct and is being made to restrict the competition in the business of educational counseling being carried by members of the Informant Association. The IP has alleged that the said parties are providing the same services as that of the members of the IP association free of cost to encourage the people to approach the test centre and take their advice.

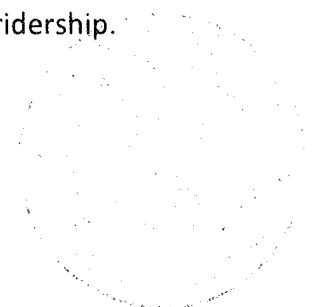
3. The Commission considered the information in its different meetings held on 15.11.2010, 01.12.2010 and 22.12.2010. The Commission also perused all the material placed on record including the written submissions, affidavits etc. as well as heard the learned counsels of the IP.

4. On perusal of the documents placed on record, it is seen that the main grievance of the IP is that the Party No.3, which is an IELTS Test Center, is attempting to limit or restrict

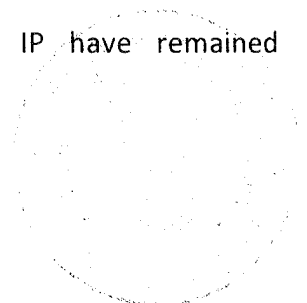


the educational counseling services to itself and thereby adversely affecting the competitive business interests of the IP association whose members are providing the services of educational counseling to the students intending to go to Australia.

5. It is noted that Party No.1, IELTS Australia, is in the business of conducting tests alone whereas Party No.3 IDP India is engaged in the business of conducting tests as well as providing counseling services to the prospective candidates. The candidates can choose any one of the test centres from British Council and the IELTS: IDP. There seems no agreement between the agents controlling the services for any anti-competitive behavior. Any arrangement between Party No.3 IDP India and Party No.1 IELTS Australia cannot be a subject of examination under Section 3(3) of the Act as they are active in different markets. The relevant market in the present case is "Counseling Services" alone. Moreover, even after the said arrangement there remains competition among the agents in the market and all are acting independently in advising the students.
6. Such an arrangement between Party No.1 IELTS Australia and Party No.3 IDP India can be examined for violation of 3(4) of the Act. However, for making a case of violation of Section 3(4) of the Act, the agreement/arrangement [including arrangements mentioned from (a) to (e) in Section 3(4)] should cause an Appreciable Adverse Effect on Competition in India. The alleged violation of competition law in the information, is of "tie-in arrangement".
7. In a "tie-in" arrangement, as a condition of purchase, a purchaser is also made to buy some other good. The basic philosophy behind a "tie-in arrangement" being treated as violative of competition law is that it harms the consumer as he is forced to buy a good (the tied one) which he may not necessarily want at the time of purchase of a good that he actually wants (tying good). So, the consumer may be better off if the products are sold separately. Another effect of "tie-in" is that low quality product may achieve a higher market share than otherwise it would have on account of ridership.



8. In the present case both the services are, invariably, needed by consumers. No case of low quality product being offered is either claimed or made out. Moreover, there is no harm to the consumer; rather he is being substantially benefitted (by an amount upto Rs. 10,000/- which is no longer required to be paid) if he avails both the services from the IDP India.
9. When tested on the factors of the 19(3), the only possibility which could be claimed to be anti-competitive is that of "driving out the existing competitors of the market". Even this possibility has neither been supported by a strong material in the information nor the results of the said practice can be inferred to cause any anti-competitive harm.
10. As Party No.3 IDP India and Party No.1 IELTS Australia are the subsidiary companies of the Party No.2 IDP Australia and this company has converted its constitution from non-profit organization to a company in 2006, for pure commercial reasons there can be an arrangement in sharing the resources in terms of space and staff. This arrangement may help IDP India to offer free counseling services, which might not be possible with any other agents.
11. Managing the two operations under the same roof could be a business decision to reduce the establishment cost and other operating expenses. This type of arrangement may bring efficiency and ultimately be beneficial to the student's fraternity in terms of low charges.
12. In view of the above and after considering the entire material and submissions of authorized representative of the IP, the Commission is of the opinion that the allegations as made in the information and the reliefs as prayed by the IP do not find ground in the ambit of the Act. The IP has also not been able to place any credible or cogent evidence/material to show or establish the infringement of section 3 or 4 of the Act in this case and hence the allegations made by the IP have remained

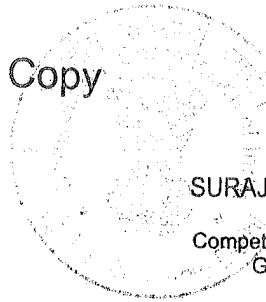


unsubstantiated and uncorroborated. The Commission, therefore, is of the view that no prima facie case is made out for making a reference to the Director General for conducting investigation into this matter under section 26 (1) of the Act and the proceedings relating to this information are required to be closed forthwith.

13. In view of the above, the matter relating to this information is hereby closed under section 26(2) of the Competition Act.

14. Secretary is directed to inform the IP accordingly

Certified True Copy



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04/02/2011
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