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COMPETITION COMMISSION OF INDIA

12th May, 2010

MRTP Case-received from CAT

Global Enterprise InfoTech Solutions, B7-B9, Basement Floor, Gem Plaza, 66, Infantry Road, Bangalore-560001. (Through its Proprietor)

....Informant

1 I.SAP AG (German Parent Corporation) Through its CEO & President Dietmar-Hopp-Allee 16.69190 Walldorf, Germany.

2. SAP India Private Limited,(Wholly Owned Indian Subsidiary), Through its Managing Director, Vaswani Victoria, No.30, Victoria Road, Bangalore -560001.

3. M/s. Siemens Information Systems Limited (Marketing Agent of SAP India),Through its M D 6th Floor,4 M.G. Road, nungambakkam Chennai-600034.

4. M/s. EIPR India Limited,(Outsourcing Company), Through its Managing Director,11, Tulsiani Chamber, Nariman Point,Mumbai-400021.

5. The Police Officer in Charge of PS-MIDC, Through: The Commissioner of Police, Office of the Commissioner of Police, Opp. Crawford Market, D.N. Road, Mumbai-400001. (Ref.: FIR No.596 of 2008 PS-MIDC, Mumbai).

...Opposite Parties

The case has been transferred to this Commission by Competition Appellate Tribunal vide their order dated 27th January, 2010. The case was originally filed before the MRTP Commission and Director General (I&R) was directed to investigate the matter, however, no report was filed by DG (I&R) till the transfer of the matter to this Commission.

2. The complainant alleged that the opposite parties were indulging into the prohibited monopolistic, restrictive and unfair trade practices. The complainant also alleged that the opposite party no. 1 is abusing its dominant position by imposing unfair conditions in the license of granting its software. The Commission considered the matter in its ordinary meeting held on 15.04.2010 and decided to call the Complainant to explain the case on 12.05.2010, However, despite being served the complainant did not appear before the Commission on 12.05.2010.

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3. The relevant facts culled out from the complaint and the material filed in support thereof are being summarized as under:

3.1 The Complainant is running a Business of providing consultancy to various Small Business Groups in the field of Information Technology. For this purpose it recruits fresh software graduates to train them for proper use, knowledge and application of I.T. Resources. After training, these recruits were being deputed at the business site of complainant's clients. The complainant has purchased the license from opposite party no.1 to use its software for 11 users to run their business.

3.2 The opposite party no.1 is a German based parental company engaged in developing software and System Applications & Products in Data processing generally known as SAP products and selling licenses for use of the software. The opposite party no. 2 is the wholly owned Indian subsidiary company of the opposite party no. 1 in India. The opposite party no. 3 is the marketing agent of the opposite party 1&2 in India. The opposite party no. 4 claims itself to be an outsourcing agency for opposite party 1 & 2 in India to locate and prevent piracy of the software of the opposite party..

3.3 The opposite party no. 1 illegally forces the licensees to make payment of 50% or 100% amount in advance before signing any agreement and they do not supply copy of the agreement so signed between the parties till 100% payment is made. The complainant alleged that in this case the agreement signed was deceptive and misleading and the language of agreement was also confusing, unfair and guilty of shifting unreasonable legal burden on the consumer. The opposite parties practice such unfair trade practices as they are in dominant position and are, thus restricting the competition.

3.4 The complainant entered into an agreement with opposite party no. 1 to use an enterprise business planning software for his clients and also to train the staff so that the trained staff can be deputed with the clients of complainant. The complainant entered into the end user license agreement (ENDULA) with the opposite party no. 1 on 27th September 2002. Complainant was carrying its business without any hurdle till 2008.

3.5 The Complainant also alleges that on 22nd September, 2008 a person stated to be investigating officer of opposite party no 1 lodged an FIR with Police Station, MIDC, Mumbai for offence under sections 420 of the IPC and Section 51 and 52A and 63A and B of the Copy Right Act against the complainant for using the software of opposite party company for training the employees of complainant without license. Complainant stated that they purchased the license from the opposite party and also entered into end user license agreement (ENDULA) with opposite party no. 1. However, the contention of opposite party is that the opposite party no.1 issued the license for permanent staff whereas the complainant was using the license to train the temporary staff also.

4. The opposite party no. 1 has furnished the following comments to the DG (I&R) on the allegation made by the complainant in the complaint.

4.1 Opposite party no. 1 has denied all the allegations made against it by the complainant. The opposite party has stated that the FIR against the complainant was lodged before the police station MIDC Mumbai under section 420IPC and section 51, 52A, 63A and 63B of Copy Right Act, 1956 as the complainant was violating the opposite parties intellectual property right by training it's the temporary staff using the software programme of opposite party. As per the opposite party the ENDULA does not authorize the complainant to train the temporary employees and only the education partners of opposite party no. 1 are eligible to do so. The complainant can train only the permanent staff. It is evident from the material captured from the premises of the complainant that the Intellectual Property Rights of opposite party no. 1 were being violated. The materials seized from the complainant by the police bears the title as "SAP student admission form-10" and "SAP certificates" which are the trademarks and logos of SAP. The opposite party stated that the claim of complainant that they were carrying out the internal training of employees only does not hold good, on the contrary is a clear case of infringement of Copyright which is a punishable offence.

4.2 Opposite party no. 3 submitted to DG(I&R) that they are only a resale agent of the opposite party no. 1 in India and has no role to play in the agreement (ENDULA) dated 27.09.2002 which was signed between the complainant and opposite party no.1. They further prayed to delete its name from the array of the parties in the matter.

5. The complainant has prayed for the following reliefs:

- 5.1 To issue Notice of Enquiry against all the opposite parties
- 5.2 To direct to the opposite parties not to indulge in the alleged monopolistic, restrictive and unfair trade practice
- 5.3 To pass cease and desist order against the opposite parties
- 5.4 To award costs of this complaint

6. The Commission considered all the relevant material placed on record in the ordinary meeting held on 12.05.2010.

7. In view of the above, and after considering the entire material filed by the complainant and the replies of opposite party no. 1 & 3 on record as well as the relevant provisions of the Competition Act, 2002 the Commission is of the opinion that the allegations as made in the information does not come under the prohibitive ambit of Competition Act, 2002. The complainant has not been able to place before the Commission any credible or cogent material to show or establish the infringement of section 4 of the Act in this case and hence the allegations made by the complainant have remained unsubstantiated and

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uncorroborated. The Commission, therefore, comes to the conclusion that as 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, the proceedings relating to this information are required to be closed forthwith.

8. In view of the above, the matter relating to this information is hereby closed.

Secretary is directed to inform the complainant accordingly.

Member (A) Member (R) Member (G)

Member (AG) Member (T)

Chairperson