

**COMPETITION COMMISSION OF INDIA**

**Case No. 27/ 2011**

**Date: 08.11.2011**

INFORMANTS:-                      Mr. Jagmohan Chhabra  
    Mrs. Shalini Chhabra  
OPPOSITE PARTY :                M/s Unitech Ltd., Gurgaon

**ORDER UNDER SECTION 26(1) OF THE COMPETITION ACT, 2002**

**As per R. Prasad (dissenting)**

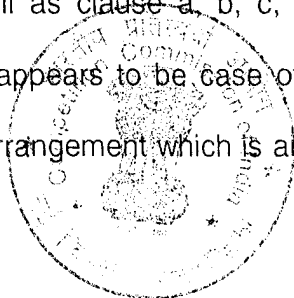
I have a different view on the subject. There is no need to discuss the facts again in this case. In my view the case is made out for making a reference to DG for investigation under Section 26(1) of the Competition Act.

2.     The reasons holding for this view are given as under:-

- (i)     On the basis of these facts, it has to be decided whether they appears to be prima facie case for investigation under section 26(1) of the Competition Act. The fact is that the information providers entered into an agreement with the Unitech. The question is whether Unitech came to a position of dominance. The next issue to be decided as to whether what would be relevant market in this particular case. In section 2(r) of the Competition Act relevant market means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. Another aspect to be considered is switching costs to buyers. In this particular case if the buyers wanted to switch from Unitech to any other developer/ builder the switching costs would

very high as the earnest money paid by the purchasers would be forfeited. Therefore after entering into the agreements with the developers, the information providers became captured customers which allowed the builders to affect its consumers (i.e. the IPs) in its favour. As far as the relevant market is concerned the relevant market would be the project itself i.e. in this case "FRESCO". Fresco is conglomerate of various flats and there are a large number of buyers of flats. Therefore the relevant market in this case would be the project known as Fresco. The relevant product market would be the supply of apartments and the relevant geographic market would be an area occupied by the project in sector 50, Gurgaon. As switching cannot be resorted by the information except at a cost and again to the builder the IPs are at the mercy of the builder. This is clear from the fact that instead of giving premises in 36 months of the agreement, the builder has taken more than 5 years and still more time is required. Further if the purchasers delayed payment, they had to be charged interest @18% PA compounded every quarter whereas if the developer delayed the project, it had to pay only Rs. 5 per sq. Ft/ per month. This is certainly unfair. It is also seen that in the terms of the agreement there is a mention of maintaining charges to be made in the advance for 3 years and that the maintenance would be carried out by the developer or its nominee. This appears to be case of tie-in arrangement.

- (ii) On the perusal of this facts a view of the provisions of section 19(4)(g) of the Competition Act as well as clause a, b, c, d, f and Section 19(4) of the Competition Act there appears to be case of abuse of dominance. Further there is case of tie-in arrangement which is anticompetitive under section 3(4)



of the Act and can be considered as one of the factors under Section 19(4)(m) of the Act.

- (iii) As there appears to be prima facie violation under Section 4 of the Act as Unitech in this case is in a dominant position in the relevant market, the Director General is directed to investigate this case with reference to Section 26(1) of the Act.

Sd/-  
Member (P)

