

Competition commission of India

Case No.07/2009

27th September 2010

Informant : Quoprrro Global Services Pvt. Ltd.
Cox & king India Ltd.

Opposite party: Consular Passport & visa division,
Ministry of External Affairs, Govt. of
India

ORDER U/S 26(2) OF THE COMPETITION ACT 2002

This information has been filed on 28-08-09 under section 19 of the Competition Act by M/s Quoprrro Global Services Pvt. Ltd., Mumbai and Cox & King India Ltd alleging the abuse of dominance by the Ministry of External Affairs through the Consular Passport Visa Division (CPVD)

2. The facts of the case and allegations leveled by the informants are summarized hereunder.

2.1 M/S Quoprrro Global Services Pvt. Ltd. is a wholly owned subsidiary of Cox & King India Ltd., incorporated on May 16, 2008, for the purpose of carrying on the business of providing outsourced visa facilitation services.

2.2 It has been stated by the informants that the opposite party namely, Ministry of External Affairs through the Consular Passport Visa Division (CPVD) decided some time in 2005-2006 to outsource the logistic and clerical services in order to smoothen the processing of visa applications at its foreign missions. The visa processing services are set out in the request for proposal (RFP) issued by the opposite party through the concerned missions which are granted to the successful bidder for a period of 3 years. The visa processing services include distribution of visa application form, accepting visa applications along with the requisite fees, scrutinizing the application and supporting documents, entering the data of visa applications received, forwarding the completed visa applications to the Indian missions and collecting the processed applications and passports from the Indian mission and returning the same to the applicant.

2.3 It has been alleged that by the very nature of the said services the opposite party is the only purchaser of these services in India and has a complete monopoly over the market and is in position to operate entirely independently of normal market forces. From 2005 onwards, the opposite party issued about 20 RFPs for outsourcing the visa processing services. In October 2008, the opposite party released its RFP for outsourcing the said services for its mission in South Africa. The RFP suddenly included a condition requiring 3 years experience in

operating a Visa Centre of the opposite party and the handling of 100 applications per day on an annual average with the electronic data entry. The first informant protested and the RFP process was scrapped. In March 2009, a new RFP was released with a condition requiring a reduced experience clause of 1 year, but an increased minimum application count handling experience of 300 applications. The 1st informant applied and was disqualified.

2.4 The 1st informant had been successful in getting the contract for handling the said services from Indian High Commission, Singapore and operated successfully from January 2009. This was because there was no restrictive provision mentioned in the RFP for this contract.

2.5 In April 2009, a RFP was released for the said services for Indian Mission in Russia and subsequently amended in May 2009, which included an amended condition of 1 years experience and minimum application count handling of 250. The 1st informant was again excluded from the bid for the same.

2.6 A RFP was released for the said services for Indian Mission in Greece in or about May 2009 where there was no restrictive provision regarding years of experience or application count condition included in the RFP. The 1st informant had been awarded the contract for visa processing services by the Indian High Commission in Greece on June 23, 2009.

2.7 In March 2009, the opposite party appears to have issued a communication to its Missions with a format to RFP which imposes a mandatory 1

year experience condition and a requirement for a minimum application count with some discretion to the Mission concerned.

2.8 In March 2009, the opposite party's Mission in Belgium issued an RFP for outsourcing visa processing services at its Belgium Mission. The RFP included the provision and conditions in the following terms:-

“11.1 (b) The bidder must have experience of operating a Centre for Visa Services on behalf of a Diplomatic Mission or Missions for at least one year, dealing with at least 150 applications per day on an annual-average basis, at least during one of those three years, with electronic data entry.”

2.9 On April 14, 2009, the 1st informant submitted its response to the RFP. Bids were, as usual, submitted in two parts, the technical bid and the financial bid. As per paragraph 11(II) of the RFP, only the financial bids of those parties, whose technical bids had been evaluated and found to meet all requirements would be opened and evaluated. The 1st informant's representative was present in Brussels at the time of opening of the technical and financial bids on April 24, 2009.

2.10 The 1st informant received a letter dated May 13, 2009 from the Mission informing it that it had not satisfied the condition in paragraph 11 (1) (b) of the RFP set out verbatim above.

2.12 Representatives of the 1st informant urgently met with the Joint Secretary of the opposite party, on May 14, 2009 and pointed out the unfairness of the condition inserted, and also pointed out that in any event, the 1st informant is a

wholly owned subsidiary of 2nd applicant and part of the worldwide Cox & Kings Group. It was pointed out that the 1st informant was constituted as a separate corporate entity for the special purpose of providing visa processing services, and that the Cox and Kings Group, had vast experience in handling visa processing services. All this information, data and know-how was available to the 1st informant, and this should also be taken into consideration for considering compliance with the experience condition inserted if the same was now being insisted on

2.13 By a letter dated May 26, 2009, received from the opposite party Mission in Belgium, it was stated that the 1st informant was not considered an eligible bidder. On June 16, 2009, an email was received by the 1st informant, from the said opposite party stating that the tendering process for the Embassy had since been concluded and it would not be possible to reopen the matter.

2.14 The 1st informant addressed a notice dated June 19, 2009 to the opposite party's Mission in Belgium stating that the said condition inserted in the RFP constituted a clear and permanent barrier to entry in the market and was a clearly anti-competitive practice. The notice pointed out that paragraph 11 (1) (b) results in making it virtually impossible for any new entities to enter this market and therefore constituted a clear denial of market access by imposing an unfair, unreasonable and discriminatory condition.

2.16 The opposite party had also issued another RFP for its Mission in Greece in May 2009. This RFP did not contain the condition in paragraph 11(1)(b) of the

RFP for the Indian Mission in Belgium. The 1st informant has been awarded the contract for visa processing services by the Embassy of India in Greece on June 23, 2009. The request for proposal for that tender rightly did not contain the anti-competitive language as contained in the RFP issued by the Embassy, despite both Missions falling under the purview of the opposite party. Paragraph 11 (1) (b) therefore clearly does not meet any criteria of reasonableness or consistent practice.

2.17 By an email communication dated June 30, 2009, the opposite party's Mission merely re-iterated the earlier rejection of the 1st informant's representation.

2.18 The informant has thus alleged that the CPVD, Ministry of External Affairs, has abused its dominance by:

(i) imposing unfair and discriminatory conditions in the purchase of services and thus contravened the provisions of sec.4 (1) and 4(2)(a)(i) of the competition Act.

(ii) imposing an improper limitation and restriction on the purchase of services by contravention of sec.4 (2) (b) (i) of the Act.

(iii) indulging in a practice resulting in the denial of market access to the market for visa processing service in India to the informant in contravention of sec 4 (2)(c) of the Act

3.0 The informants has sought the following relief:-

- a. The condition imposed in the Request for Proposals (RFPs) issued by the said Department of the opposite party either by itself or through any of its diplomatic missions from March 2009 requiring a bidder to have had a minimum experience of at least one year in operating a Centre for Visa Services on behalf of a Diplomatic Mission or Missions; be directed to be discontinued or amended so as to not constitute a barrier to entry into the market by the 1st informant for provision of visa processing services to the Government of India.
- b. The condition imposed in the RFPs issued by the said Department of the opposite party either by itself or through any of its diplomatic missions from March 2009 requiring a bidder to have processed a minimum number of applications per day on an annual-average basis, at least during one of those three years, with electronic data entry be directed to be discontinued or amended so as to not constitute a barrier to entry into the market by the 1st informant for provision of visa processing services to the Government of India.
- c. The discretion afforded by the said Department of the opposite party to its diplomatic missions from March 2009 be directed to be withdrawn, discontinued and /or amended so as to not constitute a barrier to entry into the market by the 1st informant for provision of visa processing services to the Government of India.
- d. Such further and other relief or directions as the Commission may deem fit in the nature and circumstances of the case.

4.0 The matter was considered by the Commission in its meetings held on 20.10.2009, 26.11.2009, 16.02.2010, 06.04.2010, 22.04.2010, 25.05.2010, 22.06.2010 and 22.07.2010. The views of the opposite party i.e.

Ministry of External Affairs were obtained on the information received by the commission. The opposite party forwarded their comments/views vide their letters dated 17.11.2009 and 17.4.2010. It was decided that a copy of the views/comments sent by Ministry of External Affairs on 17.11.2009 & 17.4.2010 be given to the informants and they be asked to file any replies/objections, by 18.5.2010. The informants, if so desire, were also asked to appear before the Commission on 25.5.2010 to make oral submissions.

4.1 In the meeting of the Commission held on 25.5.2010, the request of Advocates to the informants vide their letter dated 30.4.2010 and 5.5.2010 for grant of extension of time to file their response till 10th July 2010 and fixing the hearing sometimes after 10th July 2010, was considered. The case was listed for consideration on 22.6.2010. In the meeting of the Commission held on 22.6.2010, the Commission took on record the submissions/objections to the responses of Ministry of External Affairs, filed by, Advocate for informants vide their Fax dated 14.6.2010.

5.0 In its replies the opposite party has filed a copy of the guidelines along with other details stating therein that the guidelines for visa outsourcing have been framed in keeping with the provisions of General Financial Rules (GFRs) and the instructions of the CVC.

5.1 It has been stated in the reply that it is not the CPV (*Consular Passport Visa*) Division that awards contracts for outsourcing of visa/ passport services abroad. The Division has authorized the Indian Missions /Posts abroad to invite the

bid head and award contract on the basis of guidelines issued to them. Missions/ Posts are free to modify the terms of the RFP and the Agreement as per local conditions without disturbing the basic structure which is governed by GFRs and CVC guidelines. The contention of the informants that CPV Division has 'complete monopoly' in awarding contracts is fallacious and misleading.

5.2 It has also been indicated in the reply that the GFRs lays down inter alia that *'the criteria for eligibility and qualifications to be met by the bidders such as minimum level of experience past performance, technical capability, manufacturing facilities and financial positions etc....'* should be laid down in the bidding document. The guidelines of the CVC on tendering process mentioned that *'...invite tenders from having requisite experience depending upon the size of the project in a fair and transparent manner.....'* and *'...mention the minimum threshold for parameters beyond which the offers shall stand rejected'*.

5.3 The reply further states that the condition of minimum one year of experience with electronic data entry, as well as the experience relating to the number of applications handled by the bidders, laid down in the RFP, is in consonance with the guidelines mentioned above. There is no intent, overt or covert, on the part of Ministry or the Missions/Posts abroad, to promote or create monopoly. It is quite another matter that the visa and passport agencies have functioned in India and abroad since long, the visa outsourcing concept is comparatively new and thus the number of players having requisite experience of electronic transmission of data, is few. It is also essential to note that some sort of

quality control is necessary to ensure efficient and prompt visa services to foreign nationals so as to project a good image of working of our Missions/Posts abroad. Moreover, the personal data provided by foreign nationals in their visa applications, need to be protected and privacy laws being what they are in the advanced countries, outsourcing work cannot be entrusted to just anyone.

5.4 Further, It has been clarified that all service providers, whether Indian or foreign, are free to bid for outsourcing of services, subject to conditions laid down in the RFP.

5.5 It has been mentioned in the reply that the CPV division has no role in receipt in applications and delivery of visa issued by foreign Missions. Again CPV division cannot be said to be indulging in practice resulting in denial of market access for visas processing in India to the informant, as visas are granted by Missions/Posts abroad and not by CPV division New Delhi barring diplomats and staff of foreign Missions/Posts in India.

5.6 The reply brings out the fact that the informant has been awarded visa outsourcing services contracts by the Missions/Posts in Singapore, Hong Kong and Athens, where they fulfilled the laid down conditions in the respective RFPs.

5.7 That the conditions prescribed by the Ministry are in consonance with the GFRs and guidelines of the CVC. As such, there is no violation of the Competition Act. Therefore, the complainants have no ground to protest the selection criteria especially when they themselves have been appointed as Service Provider

6.0 A copy of the reply of opposite party was forwarded to the informants. The counter reply by the informants does not bring out any new facts in support of allegations made by them.

7.0 The Commission has carefully considered the entire material on record and submission made by both the parties with regard to the facts of the case and alleged abuse of dominance.

7.1 The first allegation leveled by the informant is that the opposite party i.e. Ministry of External Affairs through Consular Passport and Visa Division is the only purchaser of outsourced visa processing services and being in dominant position it is abusing the same by imposing unfair and discriminatory condition in purchase of said services. The opposite party in its comments dated 17.11.2009 has stated that as per functions assigned to CPV division outsourcing of visa services by the Indian missions abroad was taken up on selective basis in November 2006 and general guidelines were issued. The outsourcing of visa work was necessitated by steep increase in number of visa applicant over the years thus straining limited manpower and infrastructure available at the Indian missions besides security consideration to minimize the rush of applicants at the counters. Further the guidelines have been framed in conformity with General Financial Rules, 2005 (GFRs) and the instructions of the CVC. A copy of guidelines, since broadened in scope, and circulated on 5th March, 2009 has been enclosed. Moreover, a model Expression of Interest, Request For Proposal and Agreement between the

Mission/Post and the Service Provider were also circulated for the guidance of our Missions/Posts abroad

7.2 In effect the Ministry of External Affairs has suggested that it is not the purchaser of the said services and the purchaser is an individual Indian mission abroad. From the relevant material available on record it is clear that Ministry has only issued guidelines for outsourcing the visa processing services and the impugned condition have not been laid down by the Ministry itself. The Ministry has said that it is not gaining any monetary benefit out of outsourcing of the said services and the informants have not placed any material on record to the contrary. Indian mission abroad have independent corporate entity and within the broad parameters laid down in guidelines they have the ^{discretion} discussions to provide the conditions suitable to their own requirement individually as has been shown in the information and which is admitted position also the different Indian missions abroad in different countries have prescribe^d different conditions regarding number of years of experience as well as count of visa applications handled by the bidding firms. In these circumstances it is untenable to accept the contention of the informant that it is the opposite party which can be said to be the purchaser of the visa services and therefore, the allegations of abuse of dominant position by it also cannot be sustained.

7.3 The second contention raised by the informants that the experience of informant no. 2 namely, Cox & Kings should have also been taken into account when deciding the eligibility of its 100% owned subsidiary also falls flat because not

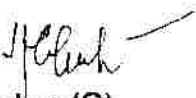
a shred of material has been placed on record to show that this fact was brought to the notice of Indian mission in Belgium while submitting bid for supply of services. Indian mission in Belgium had no occasion to presume these facts in the absence of any such plea taken before it. In the given facts and circumstances the decisions cited by the informants are not applicable to the facts of the instant case.

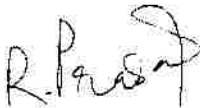
7.4 The last contention advanced on behalf of the informant is that the condition prescribed by the Indian mission Belgium were designed with a view to oust the informant no. 1 from participation in bid has also no force and liable to be rejected because the conditions were not discriminatory and were uniform and transparent by prescribing the impugned conditions regarding experience the Indian mission cannot be accused of creating barriers to entry. Similar issue was involved in the case cited by the opposite party, given in W.T.(C) No. 8971/2009 where the Hon'ble Delhi High Court found that such conditions were not arbitrary or unreasonable. It has also been contended that different Indian missions located in different countries are prescribing different conditions for purchase of same services and on this count they ought to be assailed as discriminatory. As has been discussed above that the opposite party had formulated only broad guidelines and nitty-gritty of details were left to the discretion of individual missions on the basis of their requirements considering the peculiar circumstances obtaining in that country. Therefore, this argument bereft of any merit and deserves to be rejected.

8.0 On the basis of the discussion in the foregoing paras, the Commission is of the view that there exists no, prima facie, case for making a reference to the


Director General for investigation into the matter. Hence, the matter relating to this information is hereby closed under Section 26(2) of Competition Act, 2002.


Secretary is directed to inform the Informant accordingly.


Member (G)


Member (R)


Member (GG)


Member (AG)


Member (T)


Chairperson