

COMPETITION COMMISSION OF INDIA

CASE No. MRTP Case No. C-125/2009/DGIR (22/28)

Dated 20.1.2011

Information Filed by:

Shri Achintya Mukherjee

Against:

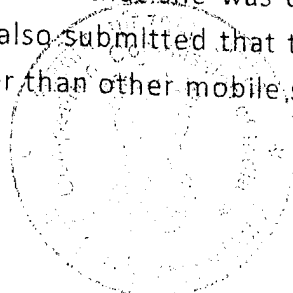
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|--------------------------------|------------------------|
| 1. Loop Telecom Pvt. Limited | (Opposite Party No. 1) |
| 2. Vodafone Group of Companies | (Opposite Party No. 2) |
| 3. Bharti Airtel | (Opposite Party No. 3) |

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

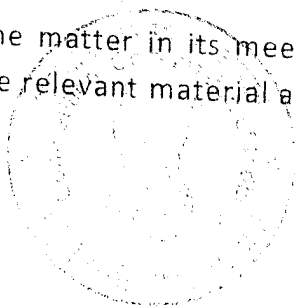
The instant information has been received on 10.12.2009 by the Competition Commission of India from erstwhile Monopolies and Restrictive Trade Practice Commission (MRTPC) by transfer under Section 66 (6) of the Competition Act, 2002 (the Act).

2. The information and allegations, in brief, as given in the complaint dated 02.6.2009 to the MRTPC, are as under:

- 2.1 Shri Achintya Mukherjee, (hereinafter referred to as 'Informant') is the Honorary Joint Secretary of Bombay Telephone Users Association. The Association received a complaint from one of its members alleging that she had been using the mobile services of Opposite Party No.1 and she was not able to select mobile service provider if her choice during roaming in the State of Rajasthan. She further complained to the Association that during roaming mobile services of her mobile number were restricted to the mobile service of Opposite Party No.2 and that she was denied access to any other mobile service provider. She also submitted that the roaming charges of the Opposite Party No.2 was higher than other mobile service providers.

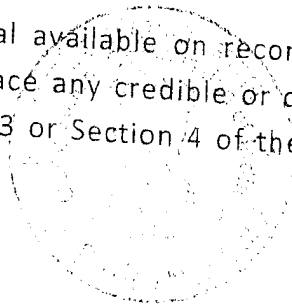


- 2.2 The Association also made a representation to the Telecom Regulatory Authority of India (TRAI) to take punitive steps against the Parties. It was alleged by the Association before the TRAI that due to electronic manipulation of software by the mobile service providers the manual selection option of the subscriber is disabled and the choice of the consumer is restricted to only one particular operator during roaming.
- 2.3 The MRTPC took the cognizance of the above said complaint and the Director General (Investigation & Regulation (DG (IR))), MRTPC started investigation in the matter. DG (IR) vide its letter dated 26.08.2009 sought the comments of Opposite Party no. 2. In its reply dated 03.09.2009 the Opposite Party No. 2 informed the DG (IR) that as the mobile number under question did not belong to the company, the notice to the relevant operator should be issued.
- 2.4 During the pendency of the investigation before the DG (IR), the matter was transferred to the Competition Commission of India on 10.12.2009.
- 2.5 The matter was considered by the Commission in its meeting dated 01.06.2010 and comments of the Telecom Regulatory Authority of India (TRAI) were sought on the aforesaid issue. TRAI submitted its comments on 22.07.2010. The Informant also filed written submissions on 03.01.2011 in support of his case.
- 2.6 The Informant, in his written submissions dated 03.01.2011, reiterated the allegations mentioned in the complaint before the MRTPC. It has been further informed that the choice of selecting roaming service provider was again restricted during the subsequent visit of same member of the Association to Rajasthan. This time she was forced to select the services of Opposite Party No. 3 only.
- 2.7 The Informant alleged that the act of restricting the use of a phone to an exclusively contracted partner in roaming is anti competitive and violative of Section 3(3) and Section 3(4) of the Act.
3. The Commission considered the matter in its meeting held on 20.01.2011 and has carefully perused the entire relevant material available on record.



4. It is noted that the sole grievance of the Informant is centered around the fact that during roaming the choice of consumers is restricted to only one particular service provider owing to exclusive agreement between the original service provider and the service provider in the roaming area. Because of such agreement, the consumers are made to pay more for the use of mobile services of a pre-selected roaming partner. The consumers do not have a choice to manually select the roaming service provider.
5. In the context of the allegations made by the informant the following extracts from the reply of TRAI appear to be relevant for examining the issue:

“As per Cl. No. 2.2 (a) (i) of UAS license agreement, the licensee shall be free to enter into an agreement with other provider(s) in India or abroad for providing roaming facility to its subscriber under full mobility service unless advised/directed by Licensor otherwise.”
6. On perusal of the above UAS (Unified Access Service) license agreement, it is borne out that the agreement between the original mobile service provider and the service provider in the roaming area is governed by the Rules and Regulations of the TRAI. As per the above UAS license agreement, the operator is free to opt for any service provider(s) operating in the roaming area. There is no minimum or maximum limit of the operators to be opted for the roaming service by a particular mobile service provider. Therefore, in view of the terms of the license, if any mobile service provider has entered into an agreement with only one provider for the purpose of providing roaming facility, it cannot be said to be in violation of the terms of license.
7. The TRAI is the appropriate authority to deal with issues inter alia relating to mobile telephony services. The information rues the fact that in many territories, the consumer does not have the option to avail the roaming services from the mobile service operator of his choice. With a view to provide explicit choice to the consumers the TRAI may consider modifying the UAS license agreement in such a manner that the word ‘provider(s)’ in the above UAS License Agreement is extended to mean two or more roaming partners.
8. After examining the entire material available on record it is evident that the Informant has not been able to place any credible or cogent material to show the infringement of either Section 3 or Section 4 of the Act. 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 the matter under Section 26(1) of the Act. The proceedings relating to this information are required to be closed forthwith.

9. In view of the above, the matter relating to this information is hereby closed under Section 26(2) of the Competition Act 2002.
 10. Secretary is directed to inform the Informant accordingly:
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