Competition Commission of India

[Case No. 11/2011]

26th April, 2011

M/s. Kanazia Digital Systems
93-B, Mittal Tower,
Nariman Point, Mumbai

Informant

Vs.

The Airport Authority of India

Opposite Party

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

The information in the present case has been filed by Kanazia Digital Systems Pvt. Ltd. (hereinafter referred to as "the informant") against the Airport Authority of India (hereinafter referred to as "AAI") under Section 19 of the Competition Act, 2002 (hereinafter referred to as "the Act") for its alleged abuse of dominant position in procurement of bollards and tyre killers. The Central Vigilance Commission has been made as proforma party in the case.

2. The facts as stated in the information, in brief, are as under:

2.1. The informant, Kanazia Digital Systems Pvt. Ltd., is a registered company and is engaged in the development of telecommunication networks, security systems such as video surveillance system, display systems and traffic management systems, etc.

both for the public and private sector companies like Air India, Bhabha Atomic Research Centre, Bharti Cellular, GAIL, Procter & Gamble and Reliance Industries Ltd. The Opposite Party, AAI, is a body constituted by an Act of Parliament under the Ministry of Civil Aviation, Govt. of India and is entrusted with the responsibility of creating, upgrading, maintaining and managing civil aviation infrastructure both on the ground and air space in the country. The Central Vigilance Commission is the chief vigilance body of the Govt. of India entrusted inter alia with the task of framing and endorsing guidelines on procurement governance for the government bodies.

2.2. For the development of Airports, the AAI floated a notice for inviting the tender for procurement and installation of Tyre Killers and Bollards on 15.05.2010 and the said notice was cancelled on the same day by the AAI without citing any reasons. Again on 13.09.2010, the AAI refloated the tender notice for procurement and installation of bollards with certain modifications and some additional terms and conditions.

2.3. The informant has stated that bollards are rigid or retractable posts used to close a road or path to vehicles. Bollards can be mounted at entrances to security sensitive infrastructures and are also installed below the road surface. Their retractability takes place either through pneumatic cylinders and pumps or hydraulic cylinders and pumps or more sophisticated electro-mechanical motorized mechanism. Bollards installation is basically civil work which is outsourced by the bidder and actual installation of the bollards and the controllers do not require any special skills. These are the important physical security protection products capable of vehicular access control and preventing explosives laden vehicle attacks. Bollards are not manufactured in India and are imported from around five international suppliers.

2.4. The informant has submitted that there is difference between the terms and conditions in the two notices floated by AAI for invitation of tender for procurement and installation of bollards on 15.05.2010 and on 13.09.2010. As per the terms and conditions of the notice on 15.05.2010, the tender forms will be issued to firms having experience in supply and providing of modern security equipments. The bidders have to produce certificate from clients of having satisfactory completed similar work in other projects during the last seven years ending 30.09.2010, along

with proof of annualized minimum average financial turnover of Rs. 114.07 Lakhs during the last three years ending 31st March, 2010.

2.5. Besides the above terms and conditions, the tender notice of 13.09.2010 included following additional eligibility conditions:

(i) the Indian firms having association with the foreign manufacturers for supply of these equipments should also submit the credentials of foreign firms with all details including completion certificate from end users and work order with item details, value of work executed to meet the above eligibility criteria.
(ii) the Indian firm should have experience of at least one work of execution of ITC i.e. Installation, Testing and Commissioning of similar type of equipments supplied by the same manufacturer in India and a letter of undertaking from original manufacturer should be submitted for technical support and after sales service for the equipment.

2.6. In response to the notice of AAI dated 13.09.2010, the informant along with its partner Sagem Communications (now Aximum, a French Company and European leader in road safety) expressed its interest and submitted application for prequalification scrutiny. The Sagem Communication has an annual turnover of 1.2 Billion Euros in all over Europe, Japan, US, Philippines, Singapore and Middle East and has already installed more than 10000 Bollards all over the World. It also meets the prequalification criteria for the bid as stated in the notice for inviting tender.

2.7. The AAI has rejected the application of prequalification for participating in the bidding process of the informant citing the following reasons:

i) The work experience of supply and installation of ROLM EPABX's executed with M/s Air India, Mumbai and the work experience of SITC of Train & Describe System / Train Management System with the Western Railway is not a work similar to the installation of bollards.

ii) For the work executed outside India, certificate from registered financial auditor translated in English version duly attested by their embassy or notarized as per serial number 2, Para-3 of the notice is not submitted.

2.8. The informant has alleged that the AAI, being one of the large public sector undertakings, is abusing its dominant position by specifying a particular technology i.e. Hydraulic Bollards in its procurement tender invitation notice for bollards and therefore creating technical entry barriers. This act of AAI is in contravention of section 4 (1) of the Act.

2.9. By imposing unfair or discriminatory conditions in the tender invitation notice and by creating regulatory, financial, capital cost, marketing, and technical entry barriers, the AAI has contravened section 4 (2) (a)(i) of the Act.

2.10. Besides, the informant has alleged that the AAI has not specified in the tender notice the number of Airports for which such procurement and installation is to be made. Further, the AAI has increased the size of the project through the aggregation of the requirements of many airports and have created the eligibility criteria based on the aggregate project size.

2.11. The pre-qualification criterion based on the project values implemented by the bidder is not relevant and are specified in the notice with the oblique motive to disqualify some bidders who have the technology and capability to implement this project.

2.12. The AAI has not followed the General Financial Rules 2005 No. 151 (ii) which states that a suitable provision should be kept in the bidding document to enable a bidder to question the bidding conditions, bidding process and/or rejection of its bid.

3. The matter was considered by the Commission in its meeting held on 26.04.2011. The Commission heard the informant through his advocate and carefully scrutinized the entire material submitted by the informant and material available on record.

4. It is noted that the activities being performed both by the Informant and the AAI are covered in the definition of 'enterprise' under section 2 (h) of the Act.

5. The issue for consideration before the Commission in the matter is whether the AAI is engaged in any anti-competitive activities which are in violation of section 3 and/or section 4 of the Act.

6. The crux of the allegations made by the informant in the matter is that, being in the dominant position in the procurement of bollards and tyre killers in India, the AAI is abusing its dominant position by specifying technological requirement of a particular type of bollards i.e. Hydraulic Bollards in the tender notice, imposing unfair or discriminatory conditions in the procurement process of bollards and thereby creating a regulatory, financial, high capital cost, marketing and technical entry barriers in the bollard purchase market. On examination of the matter it is revealed that there is no evidence available on record or in public domain which could show that AAI is a dominant buyer of bollards in India as requirement of bollards is not specific to only one industry *i.e.* AAI. It is used by many organizations like Urban Development Authorities, Road Transport Authorities, Infrastructure Companies and many private companies for security as well as for traffic management. Therefore, in the absence of any material to the contrary, it cannot be held that the AAI is a dominant purchaser of bollards in India.

7. The Commission also observed that the informant has failed in the pre-qualification scrutiny because of technical reasons and for the want of relevant experience in executing similar works as desired by the AAI. As the said tender is an open tender where the parties meeting the prescribed criteria were invited to submit bids. The conditions laid down by AAI in the tender invitation notice are uniformly applicable to all the parties. There seems to be no unfair or discriminatory terms and conditions laid by the AAI for procuring the bollards. Further, just by prescribing the alleged terms and conditions, AAI cannot be said to be creating barriers to entry or driving out the existing competitors from the relevant market. Therefore, *prima facie*, there is no violation of Section 4 of the Act in the matter.

8. With regards to applicability of Section 3 of the Act in the matter, the Commission has noted that AAI does not appear to be involved in any anti-competitive agreement with any other enterprise so as to cause appreciable adverse effect on Competition in India. The informant has also not alleged any violation of Section 3 of the Act in the matter.

9. The Commission, therefore, is of the opinion that, prima facie, no 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 are liable to be closed forthwith.

10. In view of the above discussion the matter relating to this information is hereby closed under Section 26 (2) of the Competition Act.

11. Secretary is directed to inform the informant accordingly.

Certified True Copy

09/05/2011

SURAJ PARKASH GAHLAUT
Office Manager
Competition Commissio
Government of I
New Delhi