

**Competition Commission of India  
Case No. 19 of 2011**

**September 30, 2011**

**Arun Kumar Tyagi**

**Informant**

v.

**The Software Engineering Institute  
The High Court of Uttrakhand  
The HCL Technologies Ltd.**

**Opposite Party No.1  
Opposite Party No.2  
Opposite Party No.3**

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

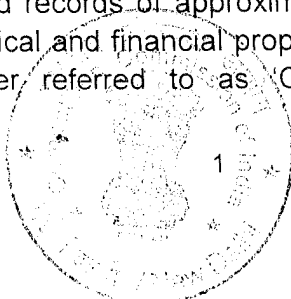
The present information has been filed before the Competition Commission of India (hereinafter referred to as 'the Commission') by Arun Kumar Tyagi (hereinafter referred to as 'the informant') on 21.04.2011 under section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as 'the Act').

2. The information in this matter has been filed against the Software Engineering Institute, USA (hereinafter referred to as 'OP1'), the High Court of Uttrakhand (hereinafter referred to as 'OP2') and the HCL Technologies Ltd. (hereinafter referred to as 'OP3') with the allegation that the opposite parties have acted in concert in the tendering process for procurement of computer software by OP2 for digitizing its old records with a view to kill free and fair competition and to eliminate other competitors from the bidding process.

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

3.1 As per the information, the informant is a citizen of India having its residence at Uttam Nagar, New Delhi. The OP1 is an USA based Software Engineering Institute engaged in certifying the level of Document Management Software developed by different software companies. The OP3 is a company having its visible presence in the software market in India and is engaged in the business of various software and hardware products.

3.2 For digitizing its old records of approximately one crore pages, OP2 invited sealed tender (both technical and financial proposal) from those Original Equipment Manufacturers (hereinafter referred to as 'OME') of the proposed Document



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Management Software who satisfy the prescribed technical and financial requirements.

3.3 It is stated in the information that in order to monopolize the aforesaid bidding process for procurement of computer software, the OP1 and OP3 have formed a cartel and persuaded OP2 to stipulate certain minimum eligibility technical pre-conditions in the tender notice which are exclusively met by OP3. The informant has alleged that the minimum technical eligibility conditions have been stipulated by OP2 with a view to favour OP3 in the bidding process.

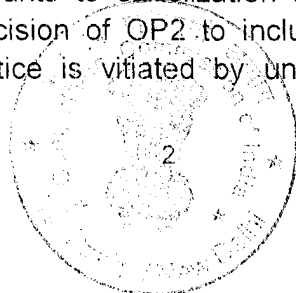
3.4. Besides others, certain minimum eligibility technical conditions as stipulated in the tender notification of OP 2 include:

- (i) The OME of proposed document management software should be at least Capability Maturity Model Integration Level 5 (hereinafter referred to as 'CMMI Level 5')
- (ii) Compliance of Integrated Database Management System (hereinafter referred to as 'IDMS').
- (iii) Preference to IDMS compliance with DoD\_5015.2-STD Version 3 standard (a document standard of USA defence with classified specifications).

3.5 The informant has alleged that specification of an OEM being of 'CMMI Level 5' and preference to IDMS compliance with DoD\_5015.2-STD Version 3 standard as the essential and preferred requirements in the tender notice was aimed to favour the OP3. Stipulation of these technical specifications in the tender appears to be the outcome of cartelization between OP1, OP2 and OP3 which defeats the purpose of free and fair competition in the tendering process.

3.6 It is submitted by the informant that OP1 has issued 'CMMI Level 5' certificate to OP3 in order to participate in the said bidding process. But, it is alleged that OP1 is not an accredited certifying authority in India to certify the capability of OP3 in handling of the job required by OP2. Further, the OP1 has no sanction as well as no expertise in the work related to digitization as required by OP2. As per the Informant, since OP1 is a foreign entity and is not eligible to participate in the Indian tenders in its own name, it accredited OP3 with 'CMMI Level 5' in order to participate in the bidding process through OP3.

3.7 It is also alleged that OP1 is misleading the other bidders by prescribing 'CMMI level 5' as an essential requirement for the proposed document management software to OP2 which amounts to cartelization and restriction on free and fair competition. Further, the decision of OP2 to include the said minimum eligibility conditions in the tender notice is vitiated by unreasonableness. The said pre-



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conditions are violative of the fundamental rights of other bidders of the tender and are in violation of the principle of equity, justice and fair play.

3.8 According to the informant, the above conduct of the opposite parties amounts to cartelization which is anti-competitive as per the provisions of section 3 of the Act.

4. The Commission considered this matter in its meeting held on 10.05.2011 and asked the informant to explain his case by filing written submissions or in person on 31.05.2011. Mr. Vijay Krishna, Advocate appeared on behalf of the informant and explained the allegations *vis-à-vis* the provisions of the Act and filed written submissions before the Commission. The Commission has considered the facts and allegations raised in the information and has examined all the relevant material available on record.

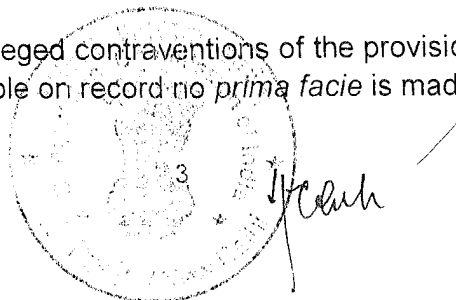
5. It is noted that the activities being performed by OP1 and OP3 are covered in the definition of 'enterprise' under section 2(h) of the Act. Similarly, the activity performed by OP2 i.e. the High Court of Uttarakhand in inviting tenders being purely administrative/ executive in nature and thus while carrying out such activities, OP2 is also covered within the definition of an 'enterprise' under section 2(h) of the Act.

6. The issue for consideration before the Commission in the present matter relates to the examination of alleged conduct of the opposite parties in violation of the provisions of section 3 and section 4 of the Act.

7. As per the information, misguided by the advice of the OP1, the OP2 has specified certain minimum technical eligibility conditions for bidders in the tender notice for procurement of computer software for digitizing its old records with a view to favour OP3 which allegedly amounts to cartelization and is anti-competitive in terms of the provisions of section 3 of the Act.

8. In order to attract the provisions of section 3(3) of the Act, the enterprises must be engaged in similar trade or business. In the present case, OP2 is the floater of the tender, OP3 is a bidder for the tender and OP1 is the agency which accredited 'CMM1 Level 5' to OP3. Thus, from the facts and allegations set out in the information it is amply clear that OP1, OP2 and OP3 are not engaged in similar trade or business. The agreement between OP1 and OP3 in this case does not amount to cartelization in terms of section 3(3) of the Act as OP 1 is not engaged in similar trade or business as OP3, rather it has merely accredited 'CMM1 Level 5' to OP3. Therefore, the Commission is of the opinion that there is no *prima facie* violation of section 3 of the Act in the present matter.

9. With respect to the alleged contraventions of the provisions of section 4 of the Act, from the material available on record no *prima facie* is made out.



10. The Commission is of the opinion that, *prima facie*, there is no violation of provisions of either section 3 or section 4 of the Act in the matter. The informant has also not been able to bring any cogent material on record to substantiate/ establish that the opposite parties are indulging in any anti-competitive activities which are in violation of the said provisions of the Act.

11. Thus, the Commission is of the opinion that there does not exist a *prima facie* case in the matter for making a reference to the Director General for conducting investigation into this matter under section 26(1) of the Act and accordingly, the proceedings related to this matter are closed forthwith under section 26(2) of the Act.

12. The Secretary is directed to convey the Order of the Commission to the informant.

Sd/-  
Member (R)

Sd/-  
Member (AG)

Sd/-  
Member (GG)

Sd/-  
Chairperson

Certified True Copy



*S.P. Gahlaut*  
28/10/2011  
S. P. GAHLAUT  
Assistant Director  
Competition Commission of India  
New Delhi