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**CCI imposes penalty upon Esaote S.p.A and Esaote Asia Pacific Diagnostic Pvt. Ltd. for abusing dominant position**

The Competition Commission of India (CCI) has imposed a penalty of Rs. 9.33 lac upon Esaote S.p.A and Esaote Asia Pacific Diagnostic Pvt. Ltd. ('Esaote') for abusing dominant position in supplying dedicated standing/ tilting MRI machines.

The final order was passed by CCI on 27.09.2018 on an information filed by House of Diagnostics LLP (HoD).

The Informant - House of Diagnostics LLP - which is engaged in the business of medical diagnostic imaging services, filed information before CCI against Esaote alleging *inter alia* supply of old machines with various manufacturing and other defects. The Informant also alleged that Esaote charged huge sum of money for supplying spare parts and by refusing to perform its obligations under the contract. Essential terms of the contract were also alleged to have been changed unilaterally by Esaote.

Holding Esaote to be the only manufacturer who was found to supply standing/ tilting MRI machines in India, CCI held Esaote to be dominant in this market.

The CCI further found Esaote to have misled HoD by supplying old machines instead of new machines as ordered by the Informant. The CCI also held that Esaote acted unfairly and thereby abused its dominant position by refusing to provide Head Coils with the machines to the Informant.

The CCI also found Esaote to have demanded arbitrary charges in derogation of its contractual obligations for comprehensive maintenance contract in respect of G-Scan MRI machines. The CCI also noted that Esaote S.p.A has given exclusive distribution rights to its Indian subsidiary



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in respect of G-Scan MRI machines. Such exclusivity was found to limit provision of services in after sale market besides denying market access to third party service providers.

Accordingly, a penalty was imposed upon Esaote. Besides, a cease and desist order was also issued against them. While imposing the penalty, the Commission applied the principle of relevant turnover and based the penalty on the revenue generated by Esaote from sale of G-Scan MRI Machines in India only. The penalty was imposed by the Commission @ 10% of the average relevant turnover of the preceding three financial years of Esaote.

The final order was passed by a majority of 2-1 with the Chairperson issuing a Dissenting Note. In his Dissenting Note, the Chairperson held that the relevant market cannot be narrowed to standing/ tilting MRI machines alone as any market delineation would have to necessarily include all MRI machines irrespective of some additional features or functionalities. In the absence of market power, the question of abuse of dominance did not arise, added the Chairperson in his Dissent Note.

The order of the Commission (Majority Order and Dissent Note) was passed in Case No. 09 of 2016 and a copy thereof has been uploaded on the website of CCI at [www.cci.gov.in](http://www.cci.gov.in).

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