

COMPETITION COMMISSION OF INDIA

[Case No. 46/2011]

Dated: 28.09.2011

PRIMORDIAL Systems Pvt. Ltd., New Delhi - Informant

1. Indian Newspaper Society (INS), New Delhi

2. Sh. Raman K. Chugh, Gurgaon

3. Hype & Hike Advertising Inc., Gurgaon - Opposite Parties

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

1. The Commission has considered the present matter on the basis of an information received from PRIMORDIAL Systems Pvt. Ltd. (hereinafter referred to as 'the Informant') on 19.08.2011 under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter referred to as 'the Act'). The matter relates to alleged abuse of dominant position by Indian Newspaper Society-INS (hereinafter referred to as 'Opposite Party No. 1'), Sh. Raman K. Chugh (hereinafter referred to as 'Opposite Party No. 2') and Hype & Hike Advertising Inc. (hereinafter referred to as 'Opposite Party No. 3') in the provision of advertisement services in print media in India.

2. The brief facts and allegations as per information in the case are as under:

2.1. As per the information, the informant is a company incorporated under the provisions of Companies Act, 1956 and is engaged in the provision of skill based education services to the young people in India through its own educational

institution India Institute of Learning & Advanced Development (hereinafter referred to as 'INLEAD') and by entering into strategic alliance with other organisations in India like India Tourism Development Corporation Ltd., Sri Ram College of Commerce, Delhi University etc.

- 2.2.** The Opposite Party No. 1 is a registered society of print media/newspaper publishers in India and is primarily engaged in giving accreditation to different advertising agencies for publication of advertisement of their clients in various print media who are its members. Besides, it is also responsible for maintenance of financial discipline and safety of the business interest of its members.
- 2.3.** The Opposite Party No. 3 is an accredited advertisement agency of Opposite Party No. 1 having its office at Gurgaon, Haryana and is engaged in the provision of advertisement services including the responsibility of booking space in various print media to its clients as per their requirements. The Opposite Party No. 2 is proprietor of Opposite Party No. 3 and is working as an advertising agent.
- 2.4.** It has been submitted by the informant that as it is in the business of provision of skill enhancement education programmes, publicity plays an important role in its business operation and development for which it has to depend on different print and other media for advertisements of its programmes.
- 2.5.** As per the information, in October, 2010, the Opposite Party No. 2 approached the informant to work as its agent for media publications/advertisement and assured that his advertisement agency shall provide end-to-end advertising & marketing collateral design and layout services to the informant and advertise the contents in different print media at the best negotiated rates. Further, the Opposite Party No. 2 assured the informant to provide a 10 week payment credit cycle from the date of publication of an advertisement to the payment due date. The Informant agreed with the said assurance and terms and conditions and appointed the Opposite Party No. 2 along with agency as the 'Agency on Record' for its media publication with effect from 05.10.2010.

- 2.6.** On the basis of the agreed terms and conditions, the Opposite Party No. 2 carried out the assignments of the informant smoothly for about nine months. Thereafter, citing the reason of internal financial problems, the Opposite Party No. 2 declined to adhere to the promise made by him with regard to the price for advertisement design & layout services and 10 week credit cycle for payment.
- 2.7.** On several occasions, informally, the informant tried to resolve this issue with the Opposite Parties but it could not succeed as the Opposite Party No. 2 on every occasion asked for more time to establish his agency's delivery capabilities.
- 2.8.** The informant has alleged that while on the one hand the Opposite Party No. 2 continued to neglect the provision of advertisement agency services, on the other hand he demanded more money over and above his initial commitments from the informant.
- 2.9.** The informant appointed another agency for the advertisement services on 14.06.2011 because of the undue demand of money and negligence in the provision of advertisement agency services by the Opposite Party No. 2. However, the informant assured the Opposite Party No. 2 to release its balance advertisements.
- 2.10.** The informant has further submitted that as of 14.06.2011, there has been no payment of the Opposite Party No. 2 due on it for the completed credit cycles. For the payments due in the subsequent credit cycles, the Opposite Party No. 2 has to submit all account details along with documented advertisement release clippings and details of unpublished release orders to the informant.
- 2.11.** In response, the Opposite Party No. 2 through an e-mail on 16.06.2011 threatened the informant to withdraw from its on-going ad-campaign and claimed pending payments of Rs 24, 22, 524 (Rupees Twenty Four Lac Twenty Two Thousand Five Hundred & Twenty Four) for its advertisement agency services without providing the proofs of advertisements and invoices from the

newspapers/media and also demanded an additional amount of Rs. 16, 00, 612 (Rupees Sixteen Lac Six Hundred & Twelve) for the services that has never been rendered to the informant.

2.12. The informant has alleged that the Opposite Party No. 2 without any just cause and without any payment being legally due on it has declined to release its pending advertisements which have already been booked under subsidized package deals with the media publications. The Opposite Party No. 2 continues to claim payments for the very same advertisements.

2.13. The informant has alleged that the aforesaid behaviour of the Opposite Parties amounts to the denial of services without any just cause which is anti-competitive as per section 4 (2) (c) of the Act.

2.14. The informant has also alleged that because of Opposite Party No. 2, its media campaign in the peak admission season for July 2011 batch admission was completely affected and its business suffered a lot which is irreparable. It has also been submitted that because of the said acts, there was a revenue loss of an amount of Rs.48, 03,326 to the informant.

2.15. The informant has further submitted that the Opposite Party No. 2 had assured the informant to advertise/publish its advertisement content in special education supplements in the newspapers, but in effect he was getting them published in irrelevant sections of the newspapers/media.

2.16. It has been alleged that the Opposite Party No. 2 has visited the office of the informant on several occasions to meet its senior officials and tried to offer them bribes in terms of cuts and commissions with the intention to make the informant agree to its unjust and unfair payment demands and to make the informant continue to overlook the shortfalls in its service delivery. The Opposite Party No. 2 has unfairly tried to retain the business of the informant as it was one of the

largest client of the Opposite Party No.2 and provided a turnover of nearly 40 - 50% of its entire business.

2.17.It has also been alleged that Opposite Party No. 2 is threatening to malign the reputation of the informant in the market and blacklist it as an advertiser in the print media. The Opposite Party No. 2 has sent an e-mail to all the multiple media publications accusing the informant for non-payment of its dues and requested them not to publish the advertisement of the informant. It has also filed a complaint with Opposite Party No. 1 requesting it to issue an advisory to all the media publications not to carry out the advertisements of the informant.

2.18. According to the informant, instead of resolving the dispute between the informant and the Opposite Party No.2, the Opposite Party No. 1 wrote a letter to the informant asking it to pay the pending dues of Rs. 37 Lac (Rupees Thirty Seven Lakh) to Opposite Party No. 2. The informant approached the Opposite Party No. 1 and explained that the claims of the Opposite Party No. 2 are false and the matter is sub-judice before the High Court of Delhi. But, instead of listening to the submissions of the informant, the Opposite Party No. 1 has threatened the informant to issue an advisory to its members advising them to not to publish its advertisements in future. Further, Opposite Party No. 1 has been constantly pressurizing the informant to surrender to the illegal and undue demands of the Opposite Party No. 2.

2.19.The informant has alleged that because of its dominant position in the market of advertisement services, Opposite Party No. 1 is compelling it to pay the illegal and undue demands of the Opposite Party No. 2, which amounts to abuse of dominant position as per the provisions of Section 4 (1) and 4 (2) (b) (i) of the Act.

3. The Commission considered the matter in its meetings held on 01.09.2011, 08.09.2011, 13.09.2011 and 28.09.2011. Mr. Sumit Sharma, Advocate appeared on behalf of the informant on 28.09.2011 and made a request to withdraw the information filed before the Commission.

4. The Commission has examined the allegations of the informant in light of the provisions of the Act and evidences available on record. The Commission observes that any issues relating to competition ought to be looked into with reference to the relevant market, which happens to be the provision of advertisement services in print media in India in the instant case.
5. On careful examination of the whole matter, the Commission further observes that the basic allegations in the matter is that being in a dominant position in the market of provision of advertisement services in print media, the Opposite Party No.1 has abused its dominant position by compelling the informant to pay the illegal and undue demands of the Opposite Party No. 2, which according to the informant is anti-competitive as per Section 4 (2) (b) (i) of the Act. Further, by declining to release the pending advertisements and by demanding undue amounts from the informant, the Opposite Party No. 2 has abused its dominant position in violation of Section 4 (2) (c) of the Act.
6. The Commission notes that the informant is a client of Opposite Party No. 2. There is allegation in the information to the effect that the informant has been threatened of denial to publish its advertisements because of some alleged pending dues. However, the Commission feels that this in itself, in any manner, cannot be said to be denial of market access or limiting the provision of advertisement services in India.
7. The Commission also notes that the allegations in the information pertain to dispute between the two parties and has no bearing on the issues concerning competition in the relevant market in India. Thus, *prima facie*, there appears to be no case of violation of any of the provisions of Section 4 of the Act in the matter.
8. The Commission further observes that *prima-facie* the case also does not involve any anti-competitive agreement which may be considered to be violative of the

provisions of Section 3(3) and Section 3(4) of the Act. The informant has also not alleged any violation of Section 3 of the Act by the Opposite Parties in the matter.

9. The Commission, in view of the above discussion, holds that there is no *prima facie* case made out for making a reference to the Director General (DG) for conducting investigation into this matter under Section 26 (1) of the Act. The Commission notes that the advocate of the informant has also sought to withdraw the information filed before the Commission.

10. In light of foregoing, the Commission deems it fit to close the matter relating to this information under Section 26(2) of the Act.

11. The Secretary is directed to communicate the decision of the Commission to the informant accordingly.

Sd/-
Member (R)


Sd/-
Member (C)

Sd/-
Member (A)

Sd/-
Member (D)

Sd/-
Chairperson

True Copy



S. P. GAHLAUT
Assistant Director
Competition Commission of India
New Delhi
07/X/2011