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Fair Competition  
For Greater Good

## COMPETITION COMMISSION OF INDIA

Case No. 08 of 2019

### **In Re:**

**M/s SOWiL Limited**

Goodwill Avenue CHS Limited  
Office No. 2, A-101, Plot No. 1,  
Sector-40, Nerul (West),  
Near Seawood (W) Rly. Station,  
Navi Mumbai – 400 706  
Maharashtra.

**Informant**

### **And**

**Bentley Systems India Private Limited**

203, 2<sup>nd</sup> Floor,  
Okhla Industrial Estate, Phase – III,  
New Delhi – 110 020.

**Opposite Party**

### **CORAM:**

**Mr. Ashok Kumar Gupta**  
**Chairperson**

**Mr. U.C. Nahta**  
**Member**

**Mrs. Sangeeta Verma**  
**Member**

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

1. The present information has been filed by SOWiL Limited (hereinafter, the “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against Bentley Systems India Pvt. Ltd. (hereinafter, the “**Opposite Party/ OP**”) alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.



सत्यमेव जयते



2. The Informant (formerly known as Sir Owen Williams Investment Limited) is a private limited company incorporated under the Indian laws having its Corporate Office at Mumbai and North Region Office at Noida, Gautam Budh Nagar District, Uttar Pradesh. The Informant provides consultancy services in preliminary planning, feasibility studies, traffic studies, railway works, bridges, structures and tunnelling.
3. The OP is a private limited company registered in India under the Companies Act, 1956 and is a subsidiary of Bentley Systems, Incorporated which is registered in the United States of America. The OP is engaged in the business of providing software solutions to engineers, architects, geospatial professionals, constructors for design construction, and allied operation of infrastructure.

#### **Brief facts as per the Information**

4. It is stated that the Informant had purchased certain softwares from the OP. The same are mentioned as below:

S. No.	Old Licenses Description	User Reference No.	Dongle No.	Purchase Year
1	MXRAIL Addin 2.6/v 2.5	40343	5432104577	2000
2	MXRAIL 2.6/v 2.5	40692	5432104485	2001
3	MXBASE 2.6/v 2.5	40421	5432104457	2001
4	MXBASE 2.6/v 2.5	40448	5432104500	2002
5	MXBASE 2.6/v 2.5	-	5432102307	2005
6	MXRAIL Addin 2.6/v 2.5	-	5432104856	2005
7	MXRENEW 2.6	-	-	2005
8	MXROAD Addin 2.6	-	-	2005

5. The Informant had also entered into a SELECT Program Agreement (hereinafter also referred to as SELECT Agreement) – an agreement which enables the subscribers to acquire licensing privileges and services offered from time to time under the SELECT Program – with the OP for renewal of its licenses annually. As per the Informant, the OP had given special exemption for renewal of Annual Maintenance



सत्यमेव जयते



Contract (AMC) on aforementioned licenses during years 2010 to 2016. Further, it is stated that in the year 2017-2018, the Informant had renewed all the 8 licenses with the OP by paying Rs.11,56,462/- including taxes.

6. It has been stated by the Informant that for renewing the licenses *i.e.*, for the year 05.04.2018 to 04.04.2019, the Informant sent a proposal to the OP *vide* e-mail dated 29.10.2017 stating that owing to its poor financial condition and in consonance with its current business requirement, the Informant required the renewal of only 3 licenses out of the total of 8 licenses held by it. The details of the software products for which renewal was sought by the Informant as follows:

	<b>Product Description</b>	<b>Quantities as available as per the version 2017-2018</b>	<b>Partial Renewal Request of the Informant for 2018-19 version</b>	<b>Quantity not to be renewed; to be used in old version 2017-2018</b>
1	Power Rail Track	03	Nil	03
2	Open Road Designer	05	03	02

7. Thereafter, the OP, *vide* e-mail dated 27.11.2017 conveyed to the Informant that the partial renewal of licenses under SELECT Agreement was not allowed as the OP had a “Cover One/Cover All” (hereinafter COCA) policy which mandated the Informant to renew all the licenses. However, the Informant, *vide* its letter dated 15.02.2018, once again requested the renewal of 03 licenses only *viz*;
- i. one license of Open Road Design for SOWiL, Ltd., Noida Office and*
- ii. two licenses of Open Road Design for SOWiL Ltd., Nerul office, Mumbai.* Despite pursuing the above, the OP had forced and pressurized the Informant to renew all the 08 licenses under COCA policy by stating that under SELECT Agreement, partial renewal was not permitted. According to the Informant, the aforementioned



सत्यमेव जयते



condition of the OP to renew all the 08 licenses is unfair and monopolistic.

8. It is further averred by the Informant that the OP replied to the above request of the Informant *vide* letter dated 06.03.2018 conveying that the Informant is a signatory to the SELECT Agreement bearing CLA No.102391615 with the OP, which binds the Informant with all its terms and conditions, including COCA policy as a result of which it is not possible for the OP to run dual contracts (active and inactive contracts) under the same account with the Informant. The OP also referred to its earlier e-mail dated 22.02.2018 sent by its employee Ms. Priyanka Shori which gave various options to the Informant to choose from.
9. Against the said communication of the OP, the Informant sent an e-mail to the OP on 08.03.2018 and once again reiterated its demand for renewal of only 3 licenses. It was also conveyed by the Informant that all the 8 licenses were perpetual in nature and they had the right to use the remaining 5 licenses without switching over to the new version. As per the Informant, it also requested for the remaining 5 licenses to be transferred to the Informant's subsidiary/associate/sister company located at Noida and Navi Mumbai.
10. The OP replied to the Informant through e-mail dated 12.03.2018, stating that tweaking as proposed by the Informant *vide* its e-mail dated 08.03.2018 was not permissible and the same would violate the signed SELECT Agreement between the parties.
11. Thereafter, the Informant sent an e-mail on 19.03.2018 to the OP wherein it was stated that they were willing to renew all the 08 licenses as per the quotation of the OP dated 12.03.2018. It was also stated that the Informant shall be paying the amount of Rs. 10,05,618/-



सत्यमेव जयते



plus 18% GST before the due date i.e., on 05.04.2018. However, the Informant also conveyed that the above practice of the OP was abusive and unfair for which they would be approaching the “*Competence Commissioner, New Delhi*” for an appropriate action against the OP.

12. It has been stated by the Informant that the OP is a leading software company with market share of more than 80% in the field of providing software services to more than 170 countries. OP has covered most of the Indian market through its softwares, such as, Civil 3D/ MXRail/ Open Rail Track, MXRoad and Open Road Design that are used by railways and highways respectively.
13. As per the Informant, purchase of these softwares are mandatory to participate in the Request for Proposal (RFP)/ tender floated by State Government and Central Government agencies including Railways, National Highways Authority of India (NHAI) and Rail Vikas Nigam Limited (RVNL) etc., as this is a preliminary condition to have such software with the consultancy firm/ Informant. As per the Informant, taking advantage of the dominant position, the OP forced the Informant to renew all 8 licenses for the year 2018-19.
14. Based on above facts and assertions, the Informant has alleged violation of Section 3 and Section 4 of the Act. The Informant has requested the Commission to award relief of Rs. 7,16,750/- by directing the OP to return the said amount which was forcibly obtained by the OP on the pretext of renewing the remaining 5 licenses, along with interest.

#### **Reply filed by the OP**

15. The Commission, after considering the matter in its ordinary meetings held on 26.03.2019 and 24.04.2019, directed the OP to submit details



सत्यमेव जयते



regarding the standard market practice with respect to the issues raised in the Information as well as to submit its response on the allegations of the Informant. Pursuant to the aforesaid direction of the Commission, the OP has submitted its reply on 13.05.2019 and has denied the allegations of the Informant regarding anti-competitive practices and abuse of dominance under the Act.

16. The OP has submitted the reply in two versions, confidential and public. It has sought confidentiality on certain portion of the confidential version which relates to renewal quote and invoice issued by the OP in favour of the Informant and one e-mail dated 08.05.2019 sent by the Informant to the OP.

17. The reply of the OP is summarized as follows:

- i. The Informant possesses 8 licenses of Computer Aided Design (CAD) software under the Bentley SELECT Program Agreement. These licenses were originally purchased by the Informant from InfraSoft Corporation. Later on, InfraSoft was acquired by the OP.
- ii. CAD software can be used to produce two-dimensional (2D) or three-dimensional (3D) drawings and models. They have universal application and can be used by users based in any part of the globe. Hence, there is no technological restriction whatsoever.
- iii. The prominent CAD software platforms that are widely used across globe are as follows:
  - a) AutoCAD, developed by AutoDesk
  - b) CATIA and SOLIDWORKS, developed by Dassault Systems
  - c) MicroStation, developed by Bentley Systems



- d) EC-CAD and Sketchup, developed by Trimble
  - e) ZWCAD, developed by ZWSOFT
  - f) ArchiCAD, developed by Nemetschek and
  - g) BricsCAD, developed by Hexagon AB
- iv. All these companies offer their CAD software in India as well as other countries around the world and most of them have their registered subsidiaries in India while others operate through resellers and distributors.
- v. As there are many companies which provide CAD software to their clients, the market is extremely competitive and fragmented. CAD software can be purchased either term based or perpetually by way of a license fee.
- vi. The OP also provides AMC for CAD products which includes periodical updates and technical support apart from other benefits to its users.
- vii. The OP's SELECT program is governed by COCA policy which means that once a subscriber/user decides to enter into the OP's SELECT Agreement, the benefits offered under the said agreement cover all the licenses owned by such subscriber. However, the SELECT Agreement is an optional one and does not preclude the subscriber from using the products licensed by the OP. Further, the license can be utilised without the SELECT program, if the user so wishes.
- viii. The OP employs the COCA policy because SELECT program server authenticates the user upon log-in only and does not track the individual licenses covered under the SELECT program. In other words, the SELECT program is linked to the users account affiliation and not with respect to the individual licenses. Tracking of



सत्यमेव जयते



individual licenses would be unduly burdensome and not in line with the standard industry norms.

- ix. The Informant has failed to provide any evidence to show that the OP is a dominant entity. Rather the Informant has wrongly attributed the market share of Civil 3D, a product developed by AutoDesk which is a competitor of the OP, to allege that the OP is a dominant entity.
- x. The Informant has relied on multiple tenders/RFPs in the Information to show that they mandated the use of the OP products. However, no such conditions were found in the said documents being relied upon by the Informant. Instead they allowed 'similar software' and in some cases the use of AutoDesk's product only.
- xi. On 22.02.2018, the OP, *vide* e-mail communication to the Informant offered three alternative solutions for its 8 licenses in case it did not wish to renew under the OP's SELECT Agreement. These were Portfolio Balancing, License Reduction/ Surrender and SELECT Cancellation. While under the Portfolio Balancing, the user can exchange the existing license with some other license of its choice by payment of difference, in Reduction/ Surrender scheme, the user can return/ surrender the licenses that are no longer needed by it and thereby avoid any associated SELECT program fees on surrendered licenses. Further, under SELECT Cancellation, the user can terminate the OP's SELECT Agreement covering all 8 licenses and pay nothing. The Informant can still retain its licenses in perpetuity (the purchased right to keep the software installed on 8 computers) and use them.
- xii. The Informant has yet again renewed the OP's SELECT Agreement for all the 8 licenses from 05.04.2019 to 04.04.2020. The Informant had also sought an extension



सत्यमेव जयते



of two months to clear the outstanding dues of Rs. 8,89,728/- excluding taxes, towards the aforesaid renewal.

- xiii. The relevant market in the matter is “market for CAD software in India” which is fragmented and highly competitive due to the presence of many players including AutoDesk which is the market leader in the CAD software industry.
- xiv. The AMC program of the OP is an optional program and a user can choose not to opt for it as the license can work independently even without AMC.
- xv. AutoDesk provides its license and AMC together in the form of fixed term based subscription.
- xvi. SELECT Agreement provides host of services to its customers, including but not limited to, regular updates, technical support on a 24/7/365 basis, learning material, software administration and license management amongst other things.
- xvii. The pooling rights enable the Informant to install its licensed software on an unlimited number of computers so long as only 8 are in use at one time. If only 3 out of 8 licenses were under the OP’s SELECT program, such licenses could be installed on innumerable computers and the OP would be obligated to deliver the attendant upgrades without distinguishing the covered and non-covered licenses under the SELECT program. This situation would lead to utter confusion and underpayment by the Informant.
- xviii. The partial renewal as proposed by the Informant, would lead to misuse and unfairly accrue benefits to the Informant under the SELECT program without paying the fees. The request of the Informant is thus unreasonable as



this would require a complete global overhaul of the Bentley SELECT program server portal besides changes in the organisational structure and infrastructure. This will carry serious cost implications for the OP.

- xix. Based on the above arguments, submissions and rebuttals, the OP has submitted that the matter does not call for investigation as the Informant has failed to establish any anti-competitive concerns including abuse of dominance by the OP. Therefore, the OP has requested the Commission to pass an order under 26(2) of the Act and close the case against the OP.

### **Analysis**

18. Before examining the matter on merits, the confidentiality request made by the OP is dealt with. The OP has sought confidentiality on certain correspondences exchanged between the Informant and the OP in its confidential reply dated 13.05.2019. The Commission has perused the above submission of the OP and observes that the annexures placed on record by the OP contain routine business correspondences between the OP and the Informant and same form part of the e-mail dated 08.05.2019 sent to the OP by the Informant. The Commission further observes that no commercially sensitive information/ data, or such information that would result in disclosure of trade secret, has been submitted by the OP in its reply/ Annexures that warrants confidentiality u/s 57 of the Act read with Regulation 35 of the Competition Commission of India (General) Regulations, 2009. Hence, the demand of confidentiality as claimed by the OP, being unmerited, is rejected.



सत्यमेव जयते



19. As regards the merits of the case, the Commission notes that the Informant appears to be aggrieved by the alleged one sided conditions in the SELECT Agreement entered with the OP by virtue of which the Informant, despite its requirements of 03 licenses had to renew all the 08 licenses on payment basis for the year 2018-19. The Informant states that it has executed the above agreement under protest, and has approached the Commission to look into the unfair and monopolistic practices of the OP.
20. In the aforesaid backdrop, the Commission has looked into the conduct of the OP from the lens of Section 3 and 4 of the Act.
21. Section 3(3) of the Act deals with horizontal agreements *i.e.*, the players are operating at the same business level or carrying on similar trade or economic activity. Once this relationship is established then the question regarding the anti-competitive conduct in the form of price fixation, market allocation, bid-rigging etc. is required to be looked into. In the instant case, the Informant is a consultancy firm which is engaged in providing different engineering consultancy services including Highway Development Works, Bridges, Structures, Tunnelling, Mono Rail, Metro Rail etc. On the other hand, the OP is apparently a Software Development Company which develops various softwares, licenses, sells and supports computer software services that are used for the design, construction and operation of infrastructure. As such there exists no horizontal relationship between the parties. Therefore, no case of contravention under Section 3(3) is made out from the facts and circumstances of the case.
22. The Commission notes that the case of the Informant is that the OP has compelled the Informant to renew all the 8 licenses, even though, it is not desirous, owing to certain business exigencies. The



सत्यमेव जयते



Commission is of the considered view that this matter does not also fall under Section 3(4) of the Act as the Informant is a captive consumer of the software purchased from the OP for its own use and no vertical agreement of the nature as mentioned in Section 3(4) of the Act exists in the present matter. Without the existence of a vertical arrangement causing appreciable adverse effect on competition, the present matter cannot be examined under Section 3(4) of the Act.

23. As regards the allegation under Section 4 of the Act, the Commission notes that the Informant has alleged that the OP is abusing the dominant position with respect to renewal of the software licenses held by the Informant. The Commission observes that to establish the dominance of an enterprise, market delineation is required. It can be either relevant product market or relevant geographical market or both. The Commission notes that the Informant has not delineated the relevant market, although, it has stated that the OP is the leading software company having more than 80% market share in the field of providing software services in more than 170 countries. On the other hand, the OP has proposed the relevant market as “*CAD software in India*” based on substitutability of its software and easy access to the consumers.
24. The Commission is not in agreement with the broad relevant market proposed by the OP as stated above. The Commission notes that there are a large number of CAD softwares developed by various companies for a number of applications used in different fields. CAD softwares used for civil engineering works are a subset of such softwares and differ in terms of their utility and usage. The Commission further notes that CAD software refers to a type of software programme used by designers/ engineers to create two-dimensional and three-dimensional models of physical components. It is used for purposes such as to increase the productivity of the



सत्यमेव जयते



designer, improve the quality of design, improve communication through documentation, create a database for manufacturing etc. The Commission also notes that there are a large number of CAD software having different applications used in diverse fields viz., automotive, ship building, aerospace, prosthetics etc., Within the broad category of CAD software, there are various subsets of it used exclusively for a particular purpose which can be used for no other purpose e.g. a CAD software used for engineering work cannot be used for CAD software producing animation effects in movies and cannot be considered to be substitutable.

25. In the instant case, the licenses held by the Informant are related to designing of highway construction, railway design works, metro rail construction, bridges, tunnels etc. The software used by the Informant are essentially the ones that enable the civil engineers, designers, drafters, and surveyors to deliver higher-quality designs and prepare construction documentation at a faster pace and significantly add to productivity. Clearly the above-mentioned features differentiate the software used in the civil construction works from the design softwares used in other fields.
26. Based on the foregoing, the Commission is of the view that the relevant product market in the present case is the market for “*supply of CAD software services in civil engineering works*”. The relevant geographical market is entire “*India*” as there is nothing on record to suggest that the price and condition of competition for supply of software services used for civil engineering purposes, varies from one region to another. Thus, the relevant market for the purposes of this matter is the market for the “*supply of CAD software services in civil engineering works in India*”.



सत्यमेव जयते



27. The Commission observes that there are many software companies such as AutoDesk, Carlson, Site3D, SierraSoft, Trimble etc. providing CAD based software solutions that are developed for the purposes of civil engineering thereby making the relevant market competitive. Such competitive landscape with the presence of many players in the relevant market, does not put the OP in a position to be able to operate independently of the competitive forces prevailing in the relevant market or affect the competitors or consumers in its favour.
28. The Commission further notes that Informant has relied on certain Tenders and RFP documents floated by the government agencies to suggest that only OP's software have to be used for participation in the tender process as a pre-condition. However, the same is not supported by the documents relied on by the Informant. It is important to quote the relevant extracts of the RFP issued by the Northern Railway dated 31.12.2018 annexed by the Informant with the Information which is as below:

“...Pg 126

*(xiii) Design of preliminary alignments with the help of Bentley Rail Track or similar software based on technical parameters, features of geological maps, environmentally sensitive areas obligatory points as per discussion with the client and technical parameters are given in para 4.1 above.*

*6.4. Input/ output Data files of alignment design in soft copy used AutoDesk 3D Civil/ Bentley Rail Track or similar software for the future use of Northern Railway.*



सत्यमेव जयते



*Note: The consultant is required to use 3D Civil/ Bentley Power Rail Track (PRT) or similar software for designing the alignment, development of longitudinal section, cross section, plan & profile drawings and related details. The consultant is required to submit all drawings in DWG/DGN/TIF format (inWGS84 datum and UTM Projection system). The 3D model (inWGS84 datum and UTM Projection system) of the design also to be shared by the consultant along with relevant 3D Civil Power Rail Track files like alignment (.alg), Digital Terrain Model (.dtm), typical cross section/templates and (.itl&.ird) and page 133 of 136...”*

Upon perusal of the above extract of the RFP of Northern Railways, the Commission observes that the name of the OP’s product was mentioned alongwith other products viz., AutoDesk’s Civil 3D or other similar software for designing of railway projects without any exclusivity. Further, the OP in this regard has submitted that the Informant has wrongly clubbed the product of AutoDesk Civil 3D with the product of OP to give the impression that the OP is the market leader. Based on the above, it is observed that the aforesaid products are developed by different entities therefore the contention of the Informant that possessing licenses of OP’s product is essential to participate in RFP’s is misconceived and hence rejected.

29. Therefore, the Commission is of the considered view that the OP does not enjoy dominance in the relevant market. Once dominance could not be established, examination of the abuse of dominance by the OP does not arise.



30. In view of the above discussion, the Commission finds that no case of contravention of the provisions of Section 3 or Section 4 of the Act has been made out and the matter is accordingly ordered to be closed forthwith under the provisions of Section 26(2) of the Act.
31. The Secretary is directed to communicate to the parties, accordingly.

**Sd/-**  
**(Ashok Kumar Gupta)**  
**Chairperson**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**New Delhi**  
**Date: 02.07.2019**

**Sd/-**  
**(Sangeeta Verma)**  
**Member**