



COMPETITION COMMISSION OF INDIA

Case No. 09 of 2016

In re:

**M/s House of Diagnostics LLP,
18 Rajendra Park, Rajendra Nagar,
New Delhi - 110060**

Informant

And

**M/s Esaote S.p.A,
A. Siffredi, 58 16153, Genoa, Italy**

Opposite Party No. 1

**Esaote Asia Pacific Diagnostic Private Limited,
DLF IT Park, A-44 & 45, Ground Floor, Tower C,
Sector-62, Noida, U. P. - 201301**

Opposite Party No. 2

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Dr. M. S. Sahoo
Member**

**Justice G. P. Mittal
Member**



Appearances:

For the Informant: Mr. Puneet Jain and Mr. Abhinav Gupta, Advocates and Dr. S. K. Sogani and Dr. Shubham Sogani, Partner.

For Opposite Party: Manu Seshadri, Advocate and Rahul Venkateshwaran, Representative.

Order under Section 26(1) of the Competition Act, 2002

1. M/s House of Diagnostics LLP (**'Informant'**) has filed the present information under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against M/s Esaote S.p.A (**'OP 1'**) and Esaote Asia Pacific Diagnostic Pvt. Ltd. (**'OP 2'**) [collectively, hereinafter, '**OPs**') alleging, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act.
2. It is stated that the Informant is running three diagnostics centers in the name of 'House of Diagnostics' in Delhi and Faridabad. OP 1 is one of the world's leading producers of medical diagnostic systems and is stated to be a world leader in manufacturing dedicated magnetic resonance imaging (MRI) machine. The Esaote Group is ranked among the top ten groups engaged worldwide in the field of diagnostic imaging and OP 1 is the first and only company to have developed a dedicated standing/ tilting MRI machine. OPs exclusively holds the patent and know-how for the said technology. OP 2, a subsidiary of OP 1 in India, deals exclusively with the machines/ equipments manufactured by OP 1 including their marketing and after sale services.
3. The Informant has stated that the dedicated standing/ tilting MRI machines is substantially different from a typical MRI system and is a dedicated MRI machine for the spine and musculoskeletal system and does not scan head chest and abdomen. It has been further stated that a dedicated MRI is based on a new technique, comprising of an open permanent magnet (instead of an



electromagnet) which also does not require a patient to be placed in a tunnel and that in turn avoids claustrophobic issues. That, the dedicated MRI machine was especially made to study specific joints of the body in both lying down (supine) and standing position (weight bearing) positions unlike the normal MRI machine wherein MRI can be conducted for the whole body but only in a supine position. As per the Informant, a typical MRI system is incapable of performing weight bearing MRI and hence cannot be a substitute for the G-scan machines manufactured by OP 1. The technology of OP 1 is therefore unique in this aspect and cannot be compared with a general MRI machine.

4. The allegations of Informant relate to purchase of three dedicated MRI scanners or G-scan machines or standing/ tilting MRI machines manufactured by OP 1 for the aforesaid diagnostics centers of the Informant. As per the Informant, total consideration of the said machines was agreed as Rs 6,15,00,000/- which includes the charges for installation and commissioning of the machines together with a state of the art light weight perforated 'See Through R. F. Cage' (PTC) at three places, a complete warranty of five years, annual maintenance contract for a period of five years and supply of head coils as well as two MyLab70XV ultrasound machines. It is stated that Rs. 60,00,000/- has already been paid to OPs and for the remaining amount a Letter of Credit (LC) has been executed in favour of OP 2.
5. It is alleged that OP 1 has given exclusive right to OP 2 for servicing the machines and providing after sales support services because of which OP 1 has created a monopoly in the manner of providing services for the upkeep of the machines and as a result consumers are exploited and they are compelled to spend huge amount of money for spares and services. It is stated that the price for the technology is already built into the price of the machine and the same cannot be re-charged in the name of supply of spares *etc.* It is also stated that OPs are exploiting and extorting huge sum of money for annual contracts and demanding payment for services and supply of spares to which consumers



have no option but to accept the same. It is averred that the said arrangement between OPs is anti-competitive as it limits the avenues of providing maintenance/ repair services for the equipments manufactured by OP 1.

6. It is stated that after selling the machines to the Informant, OPs have entered into an arrangement with another diagnostic center in New Delhi *i.e.* M/s Star Imaging and Path Labs (P) Ltd. to supply the same machines with 'free of cost' and 'free of maintenance cost' which is anti-competitive in terms of Section 3(1) of the Act. It is averred that the said machines are presently running/ functioning on a revenue sharing basis between them. Further, after selling the machines to the Informant for full price, OPs have entered into the same market, through M/s Star Imaging and Path Labs (P) Ltd., as a competitor. As per the Informant, once the manufacturer of the said machines becomes the service provider it is difficult for the Informant to compete with OPs as they can provide the same services to the consumers at lower prices.
7. It is also averred that OPs are misusing their dominant position by refusing to perform their obligations under the contract as substantial amount from the contract has already been paid. Further, OPs have unilaterally changed the essential terms of the contract which has affected the Informant adversely. The Informant has stated that since OP 1 is the only manufacturer of standing/ tilting dedicated MRI machine, it has 100% market share. It is stated that by virtue of OP 1's dominance, OPs are able to extract huge amount from the consumers and can unilaterally alter the terms and conditions of contract to the detriment of the Informant/ consumers. Furthermore, since no other person can supply spare parts and provide maintenance services the customers like the Informant have no option but to live with the abusive conduct of OPs.
8. It is also alleged that the machines supplied by OPs were not brand new rather, they had already been manufactured and imported to India before the purchase order was made. It is averred that the machines supplied to the Informant were having manufacturing and other defects and the images of the said machines



are poor, resulting in incomplete MRI results and consequential loss to the Informant. That, as per the terms of purchase order, OPs had agreed to provide light weight PTC for all the three sites, but have failed to provide the same. It is further alleged that the PTC was to be manufactured by the OP 1 itself, however without taking any consent from the Informant it was outsourced to M/s ETS Lindgren, which did not have the know-how to manufacture PTC.

9. Based on the above submissions, the Informant, *inter alia*, has requested the Commission to hold OPs guilty of abusing their position of dominance, declare the exclusive agreement/ arrangement between OP 1 and OP 2 to be void and impose penalty on OPs.
10. The Commission has perused the available information on record and heard both the Informant and OP in its ordinary meeting held on 31.03.2016. The Commission has also perused the expert opinion provided by the Director, All India Institute of Medical Sciences (AIIMS), Delhi on the request of the Commission.
11. It is observed that the Informant appears to be aggrieved by the conduct of OPs for not supplying dedicated tilting MRI machines along with the PTC as per the agreed terms of purchase order. Further, it is the case of the Informant that OPs are not providing after sales services to the Informant as per the agreed terms and charging exorbitantly for the after sales services. The Informant has also alleged that the exclusive arrangement between OP 1 and OP 2 impedes entrance of new players in providing services for the machines manufactured by OP 1. Accordingly, the Informant has alleged contravention of the provisions of Sections 3 and 4 of the Act in the matter.
12. To examine the allegations of abuse of dominance in terms of the provisions of Section 4 of the Act it is necessary to first determine the relevant market and then to examine whether OP 1 is dominant in that relevant market or not.



13. The Commission observes that the allegations in the instant case relate to dedicated MRI scanners or G-scan machines or standing/ tilting MRI machines manufactured by OP 1. The Commission further notes that the dedicated tilting MRI machine is a unique machine designed for limbs, joints and spine examination in a weight bearing/ standing position. Its unique tilting system allows scans to be conducted in positions which show the true extent of disease which may not always be evident when a patient undergoes scan through a normal MRI machine. The Commission has also considered the opinion submitted by the Director, AIIMS in this regard *vide* letter dated 23.06.2016. As per the opinion of the Director, AIIMS, the dedicated tilting MRI is unique as compared to the standard MRI equipment since it can conduct MRI in both ways *viz.* supine and weight bearing position. Further, it has been opined that conventional MRI machines cannot perform MRI in standing position and are not substitutable for dedicated tilting MRI machine. Accordingly, the Commission is of the view that the relevant product market in the instant case may be considered as the '*market for dedicated tilting MRI machines*'. Considering the location where the product is used, the existence of national distribution networks, the need for technical support and maintenance services and the legal framework, the relevant geographic market in this case would be pan-India. It is observed that the territory of India exhibits homogeneous and distinct market conditions with respect to the market of dedicated tilting MRI machine. Therefore, the relevant market in this case to be considered as the '*market for dedicated tilting MRI machines in India.*'

14. The Commission notes that OP 2 is a subsidiary of OP 1 in India and OP 1 holds 100% capital of OP 2 through M/s Esaote International N.V. Thus, it is observed that, both OP 1 and OP 2 belong to the same group ('OP Group') in terms of Explanation (b) of Section 5 of the Act and as such their dominance as a group is required to be seen. The Commission notes that the Informant has stated that OP Group being only supplier of dedicated tilting MRI machines in India holds 100% market share in the relevant market. During the



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preliminary conference the counsel appearing for OPs could not effectively rebut the contention of the Informant that it is not a dominant player. The Commission further observes that OPs in their websites claim that OP Group is the pioneer and world leader in this product. Accordingly, the Commission, *prima facie*, holds that OP Group is in a dominant position in the relevant market as defined above.

15. Coming to the examination of the alleged abusive conduct, the Informant has alleged that OP Group has not supplied dedicated tilting MRI machines along with the PTC as per the agreed terms of purchase order. Further, it is alleged by the Informant that OP Group has not given new dedicated tilting MRI machines as per the terms of the contract and is not providing after sale services as per the contract terms. It is also alleged OP Group is refusing to perform their obligations under the contract and have unilaterally changed the essential terms of the contract. It is observed that being a dominant enterprise in the relevant market OP Group has not acted as per the agreed terms of the contract and changed the terms and conditions of contract unilaterally to the detriment of the Informant/ consumers. Further, it is observed that even after receiving money for after sale services OP Group has not provided after sale services to the Informant. The Commission is of the view that the above said conduct of OP Group, emanating from their dominant position in the relevant market, *prima facie*, amounts to imposition of unfair terms and conditions on the Informant. Therefore, the Commission is of the view that there exists a, *prima facie*, case of contravention of provisions of Section 4 of the Act by OP Group and it is a fit case for investigation by the Director General (DG).

16. With regard to allegations of contravention of Section 3 of the Act, the Commission observes that no cogent material and documentary evidence have been provided by the Informant to substantiate the same. Thus, the Commission is of the, *prima facie*, view that no contravention of the provision of Section 3 of the Act is found in the present case.



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17. In view of the foregoing, the Commission directs the DG to cause investigation into the matter under the provisions of Section 26(1) of the Act. The Commission also directs DG to complete the investigation and submit the investigation report within a period of 60 days from the date of receipt of this order.
18. The Commission makes it clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.
19. The Secretary is directed to send a copy of this order along with the information and other documents filed therewith to the office of the DG forthwith.

**Sd/-
(Devender Kumar Sikri)
Chairperson**

**Sd/-
(S. L. Bunker)
Member**

**Sd/-
(Sudhir Mital)
Member**

**Sd/-
(Dr. M. S. Sahoo)
Member**

**Sd/-
(Justice G. P. Mittal)
Member**

**New Delhi
Date: 23.08.2016**