



**COMPETITION COMMISSION OF INDIA**

**Case No. 47 of 2018**

**In Re:**

**Advocate Jitesh Maheshwari  
B-96, MIG, RIICO Colony,  
Abu Road, Dist. Sirohi-307026  
Rajasthan**

**Informant**

**And**

**National Stock Exchange of  
India Ltd., Exchange Plaza, C-  
1, Block G, Bandra Kurla  
Complex, Bandra (E),  
Mumbai-400051.**

**Opposite Party**

**CORAM:**

**Mr. Ashok Kumar Gupta  
Chairperson**

**Mr. Augustine Peter  
Member**

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

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

1. The present Information has been filed under Section 19(1)(a) of the Competition Act, 2002 ('Act') by Mr. Jitesh Maheshwari, Advocate ('**Informant**') against the



National Stock Exchange of India Ltd. ('NSE'/ '**Opposite Party**'/ '**OP**') alleging contravention of the provisions of Section 4 of the Competition Act, 2002 ('Act').

2. At the outset, the Informant has highlighted that the 'NSE Co-location case', which is currently being investigated by Securities Exchange Board of India ('SEBI'), Income Tax Department ('ITD') and Central Bureau of Investigation ('CBI') and upon perusing various media reports on the same, the Informant is of the opinion that the case must also be investigated by the Competition Commission of India ('Commission') to assess if there is a possible contravention of the provisions of Section 4 of the Act.
3. The Informant has submitted that the OP, *vide* its circular bearing number NSE/MEM/12985 dated 31.08.2009, had announced the launch of 'co-location' services along with the guidelines/ procedures to be followed by the members interested in availing such facility.
4. The Informant has averred that the OP is a service provider, which provides the services of co-location to the trading members, who availed this facility as consumers, on payment of the prescribed fees. The services were offered in the form of full racks as well as half racks to trading members, which could be availed by the members as per the size of trading carried out by them and their paying capacity. The trading members which were availing the co-location service of the OP had access to information about traded prices of shares ahead of other traders, which made a huge difference to the proprietary and high-frequency traders. The fees levied by the OP for providing the co-location services was same for all the trading members availing such services, and accordingly the trading members availing the co-location services were supposed to be kept on equal footing and were supposed to have equal access to the price feeds *vis-à-vis* each other.
5. The Informant has alleged that from year 2010 to 2014, the OP, instead of providing equal and fair access to all the trading members availing its co-location facility,



provided preferential and unfair access to some trading members. The Informant has stated that this benefitted the trading members to whom the preferential access was provided in getting the price feeds and other data before the other trading members to whom such preferential access was not provided. The Informant has also alleged that this distorted the competition between the trading members availing the co- location facilities from the OP, leading to undue gains to the trading members to whom such preferential access was provided.

6. The Informant also alleged that the OP has abused its dominant position by providing preferential access to certain trading members of its co-location services, resulting in contravention of the provisions of Section 4 of the Act. For substantiating these allegations, the Informant has stated that the OP is providing services to its trading members which are neither inter-changeable nor substitutable for a consumer by reason of characteristics of the service, its prices and intended use. Therefore, the Informant has defined the relevant product market as '*providing services of trading in securities to the trading members by the OP*'. The Informant has averred that the OP is providing such services throughout India and thus, the relevant geographic market would be the '*territory of India*'.

7. The Informant while seeking to establish the dominance of the OP for the purpose of Section 4 of the Act has placed reliance on the order of the Commission in *MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd.*, (Case No. 13/2009 dated 23.06.2011) and *UPSE Securities Limited v. National Stock Exchange of India Ltd.*, (Case No. 67 of 2012 dated 19.02.2013). The Informant has further stated that the OP is providing the services of trading in securities, especially in cash (equity) and derivative (Futures and Options). The Informant has compared the data of NSE with that of the Bombay Stock Exchange Ltd., ('**BSE**') (a rival providing same service) in cash (equity) segment and derivative segment and on the basis of the same, the Informant has stated that the market share of OP is much more than that of BSE. Further, the Informant has submitted that the OP enjoys advantage over its competitors due to the dependence of consumers on the OP. Furthermore,



the regulatory barrier of entry of a new stock exchange also strengthens the position of the OP in the relevant market. Therefore, based on the aforesaid decisions and material provided on volume of trades *etc.*, the Informant claimed that the OP holds a dominant position in the relevant market.

8. The Informant has submitted that para 3 at page no. 21 of the Draft Red Herring Prospectus ('**DRHP**') of the OP mentions about the co-location case. This is currently pending with the SEBI. It has been stated that upon receiving the complaints against the OP regarding providing of unfair access of the co-location facility to select trading members, SEBI constituted a team headed by professors of the Indian Institute of Technology, Bombay to look into the said complaints. The interim report of the team observed that the OP has violated norms of fair access and compromised market fairness and integrity, as certain select trading members who availed the co-location facilities of OP were able to gain materially from the exploitation of OP's market feed dissemination architecture to receive market data ahead of other trading members of the OP.
9. The Informant has stated that SEBI *vide* its letter dated 28.11.2016 directed the OP to initiate an independent examination (including forensic examination by an external agency). The Informant has further stated that the observations of the Report of the Independent Agency provided that:

*“Different stock brokers were treated differently and there was no uniform approach applied across stock brokers with respect to allocation of new IPs across ports on existing servers and movement from one server to another. Ticks were disseminated faster to members connected to less crowded servers, thereby giving an advantage to such stock brokers.”*

10. As regards the pending co-location case, the Informant has averred that SEBI received an anonymous complaint from a whistle-blower against the OP in January



2015, alleging rigging of high-frequency trading systems at the OP's exchange because of which certain brokers with co-location servers at the OP were getting preferential access to market data.

11. The Informant has stated that the whistle-blower had written two more letters to SEBI in August, 2015, and October, 2015. The Informant has further stated that the media report of *Mydigitalfc.com* titled '*Letter from a whistle-blower to SEBI on NSE rot*', has provided excerpts of both the letters. It had been stated in the media report that the whistle-blower *vide* these letters has stated that due to favorable access, certain brokers and their clients were benefited against whole market every day for at least more than five years which comprised of trading volume of roughly Rs. 2-3 lakh crores per day.
12. The Informant has averred that the whistle-blower wrote another letter dated 14.12.2017 to Ministry of Finance, which was published by Moneylife titled as '*NSE whistleblower's 4th letter alleges rigging of currency market; manipulation at NSE*' and has levied allegation against the OP of rigging in the rupee-dollar trading that gives an unfair advantage to some companies based overseas and cautioned the problem could spread to the commodities markets. Further, the whistleblower alleged that the OP has a 'comfort zone' with select firms who support their policy initiatives and new products.
13. The Informant has submitted that as per various media reports, SEBI had ordered the forensic audit of cash and currency derivative segments of the OP and for this purpose Deloitte and Ernst & Young were engaged. The Informant has further stated that a report was also submitted by the Technical Advisory Committee ('TAC') of SEBI in the matter after thorough investigation. Apart from the investigation by TAC, a probe was also conducted by SEBI's internal team and the investigation report was tabled before the Board of SEBI.
14. The Informant has stated that the media report of *The week*, titled *IT dept seizes Rs 11cr. from entities in NSE co-location case*, dated 18.11.2017, on forensic audit of



the OP's equity derivatives platform by Deloitte, highlighted that co-location facility of the OP was prone to manipulation and allowed potential preferential access to some brokers and Deloitte had also found emails which had instructions against movement of servers based on requests by members without proper justification and approval. The Informant has further stated that media report on the investigation by TAC emphasized that TAC had recommended action against the OP upon finding evidence that some traders on the exchange had unfair access to market data and trading systems. The Informant has also stated that media report on SEBI's probe into the OP's algorithmic trading platform had highlighted that some traders had unfair access to market data and trading systems. The Informant has submitted that upon completion of the SEBI's investigation and on the basis of the above stated reports, SEBI initiated enforcement proceedings against the OP.

15. Based on the aforesaid facts and allegations, the Informant has *inter-alia* prayed for an investigation under Section 26(1) of the Act. Further, the Informant has also prayed for an interim order to restrain the OP from carrying out anticompetitive activities under Section 4(2)(b)(ii) as well as Section 4(2)(c) of the Act.
16. The Commission has carefully analysed the information filed by the Informant, the documents annexed therewith, and the information available in the public domain in this regard.
17. The basic grievance of the Informant is that by giving unfair preferential access to some trading members of its co-location services, the OP has limited and restricted the provision of services to other trading members availing the co-location service which resulted in 'denial of market access' to others to whom such unfair access was not given. Thus, the Informant has alleged contravention of Section 4(2)(b)(ii) and Section 4(2)(c) of the Act.
18. At the outset, the Commission observes that as per the policy of the OP as enshrined in its circular dated 31.08.2009, the co-location services are to be provided by the OP for a cost on a non-discriminatory basis. Apparently, the fee levied by the OP



for providing the co-location services was uniform to all the trading members availing the services and the OP was required to provide equal benefits of the co-location services to the said trading members. However, as per the Informant, because of the alleged practices followed at OP, some trading members of the OP allegedly received preferential and unfair access to trading information, over others thereby enabling them to reap benefits viz. getting the price feeds and other data before other trading members to whom such preferential access was not provided, despite having availed co-location services.

19. As stated by the Informant in his information, the case is currently under adjudication by SEBI. The Commission observes that the genesis of the NSE co-location case dates back to 2015, when a whistle-blower wrote a letter to SEBI alleging that NSE gave preferential access to a few high-frequency traders and brokers to the exchange's trading platform. The following excerpts from the OP's DRHP, enclosed with the information, may be relevant in this regard:

*“SEBI while reiterating the observations of the CFT/IIT Interim Report through its letter dated September 2016, or the Observation Letter, among other things, observed; (i) that the architecture of our Company with respect to dissemination of TBT data through transmission control protocol was prone to manipulation and market abuse; (ii) preferential access was given to certain stock brokers; (iii) we violated our own policies by permitting entities that are not internet service providers to lay fiber at our co- location facility for various stock brokers and (iv) the possibility of collusion between our officials and stock brokers.”*

20. The Commission notes that it is apparent that SEBI is looking at similar issues as alleged in the information by the Informant. However, the exact role of the OP, either direct or indirect, with respect to the alleged contravention in provision of preferential/discriminatory co-location services is still at the stage of investigation.



21. The Commission observes that discriminatory and abusive conduct which falls foul of the provisions of the Act falls within the jurisdiction of the Commission and can be independently examined by the Commission based on cogent facts and evidence. However, the allegations against the OP are yet to be established in an appropriate proceeding and also there is not sufficient information and data before the Commission about the role attributable to the OP, in the provision of discriminatory co-location services *qua* certain trading members, as alleged in the Information to arrive at a *prima facie* view. Thus, it may not be apposite for the Commission to delve into the allegations contained in the Information at present.

22. Accordingly, the matter is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.

23. The Secretary is directed to communicate the order to the Informant, accordingly. A copy of the order is also directed to be sent to SEBI for information.

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

**Sd/-**  
**(Augustine Peter)**  
**Member**

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

**New Delhi**  
**Date: 07/01/2019**