



COMPETITION COMMISSION OF INDIA

Case No. 70 of 2014

In re:

**Shri Rajat Verma
A-30, Sector 49
Noida, U. P.**

Informant

And

**Public Works (B&R) Department
Government of Haryana Sector 33A
Chandigarh.**

Opposite Party No. 1

**Secretary
Public Works (B&R) Department
Government of Haryana Sector 33A
Chandigarh.**

Opposite Party No. 2

**Superintending Engineer
Public Works (B&R) Department
Branch Karnal
Haryana**

Opposite Party No. 3



CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. Sudhir Mital
Member

Justice G. P. Mittal
Member

Appearances

Informant	None
OP-1, OP-2 & OP-3	Shri Ranjan Sardana, Advocate Shri Yogesh Mohan Mehra, Executive Engineer Shri S. K. Vij, Senior Divisional Accounts Officer

ORDER UNDER SECTION 26 (6) OF THE COMPETITION ACT, 2002

Introduction

1. The information in the present case has been filed by Shri Rajat Verma (**Informant**) under Section 19(1)(a) of the Competition Act, 2002 (**Act**) against Public Works (Building and Road) Department, Government of Haryana (**OP-1/ Haryana PWD (B&R)**), Secretary, Haryana PWD (B&R) (**OP-2**) and Superintending Engineer, Haryana PWD (B&R), Karnal Circle, Haryana (**OP-3**) alleging contravention of the provisions of Section 4 of the Act.



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2. The Informant is a director of the company 'Dwarika Projects Ltd.' and OP-1 is a Department of the Government of Haryana, responsible for construction of roads, buildings, bridges and other civil construction works in the State of Haryana. OP-2 and OP-3 are officials of the said Department. Although the allegations were primarily against Haryana PWD (B&R), its officials were made *pro forma* party in the present case.

3. As per information, the Government of Haryana through OP-1 had invited online bids for "*Construction of Approaches to 2 Lane Rail Over Bridge (ROB) at Level X-ing No. 78-AB in Km 139 on Delhi Ambala Railway line crossing Nilokheri-Karsa-Dhand road in Karnal District*" on 29.08.2012, for which the Informant had also bid. The Informant alleged that certain clauses of the bid document of the said tender are unfair and discriminatory. The clauses alleged to be unfair included:
 - a) Clause 30(a) of 'Instruction to Bidders' being adopted and applied by OP-1 in making payment to the contractors against work done by them
 - b) Clause 24 and Clause 25 of 'Conditions of Contract' regarding settlement of disputes between parties including through alternate dispute resolution
 - c) Clause 30 of General Conditions mentioned in 'Technical Specifications of the Contract' regarding 'Study of Drawings and Local Conditions'
 - d) Item No. 1.4 of Bill of Quantity relating to reinforcement work
 - e) Clause 9 of the 'Conditions of Contract' regarding employment of requisite number of technical and engineering staff by the contractor
 - f) Clause 59 and Clause 60 of 'Conditions of Contract' regarding termination and payment upon termination, respectively
 - g) Clause 61 of 'Conditions of Contract' regarding all materials on site, plant, equipment, etc. becoming deemed property of the employer in case of default by contractor



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- h) Clause 23.1 of the 'Conditions of the Contract' - a general clause providing that the contractor shall carry out all instructions of engineers.
- i) Deletion of Clause 44 of the 'Conditions of the Contract', which defined compensation event for contractors.

The Informant has alleged that OP-1 is in a dominant position in so far as execution of roads, buildings, bridges and other civil construction works in the state of Haryana is concerned and it has abused this dominant position by incorporating such clauses in the bid document.

4. After considering the information, the Commission passed an order dated 12.01.2015 under Section 26 (2) of the Act wherein it observed that OP-1 was not covered in the definition of 'enterprise' as it was not directly engaged in any economic and commercial activities. However, in Appeal no. 45/2015 (*Shri Rajat Verma v. Haryana Public Works (B&R) Department, through its Engineer-in-Chief & Ors.*), the Hon'ble Competition Appellate Tribunal (**COMPAT**) held that the Public Works Department, Government of Haryana fell within the definition of the term 'enterprise' under Section 2(h) of the Act. Consequently, the matter was remitted to the Commission.
5. Thereafter, the Commission heard the parties afresh and passed an order dated 27.02.2017 under Section 26(1) of the Act directing the Director General (**DG**) to conduct an investigation into the matter. The findings of the DG are stated in the ensuing paragraphs.

DG's Investigation

6. The DG, keeping in view the allegations made in the information and the *prima facie* opinion expressed by the Commission in its order under Section 26(1) of the Act, identified three main issues for investigation *i.e.* (i) what is the relevant market in the instant case, (ii) whether OP-1 is dominant in the said relevant



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market and (iii) whether OP-1 has abused its dominant position in the relevant market by incorporating/ executing unfair and/ or discriminatory terms and conditions in its bid documents.

7. In order to ascertain the relevant market for purposes of assessing the dominance of OP-1, the DG first examined the relation between OP-1 and the Informant. The DG noted that OP-1 is responsible for the construction and maintenance of roads, buildings, bridges and other civil construction works in the State of Haryana for which it floats open bids/ tenders from time to time wherein all eligible contractors and bidders can participate. Thus, OP-1 being a procurer of construction services from contractors/ builders for roads and bridges *etc.* in the State of Haryana, is on the demand side, whereas the Informant and other builders/ contractors are on the supply side. In the instant case, since the Informant has alleged abuse of dominant position by OP-1 as a procurer of construction services, the DG found this to be a case involving alleged abuse of buyer's power.
8. In this context, the DG referred to two cases decided by the Commission relating to abuse of buyer's power *i.e.* *Case no. 16 of 2013 (Adcept Technologies Pvt. Ltd. v Bharat Coking Coal Limited)* and *Case no. 80 of 2015 (V.E. Commercial Vehicles Limited v UPSRTC)*. It was noted that in these cases, the Commission had delineated the relevant product market by applying the concept of 'demand side substitutability' inversely *i.e.* by assessing the availability of substitutes for suppliers and their ability to switch to alternative sales opportunities both in terms of products as well as geographies. Accordingly, the DG applied the same concept in this case also.
9. While delineating the relevant product market on the above basis, the DG noted a marked distinction between the services for roads and bridges and services for construction of buildings, *etc.* in terms of technical specifications, material and machinery required for construction, expertise of civil engineers, *etc.* Moreover,



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the allegations on incorporation of unfair conditions by OP-1 in the bid documents for tenders floated and executed by it related to procurement of construction services for roads and bridges. Thus, in view of the foregoing reasons, the supply of construction services for buildings and other works was not considered to be relevant for the purposes of determination of the relevant product market in this case.

10. Thereafter, the DG investigated whether construction services supplied for all types of roads and bridges should be included in the relevant product market. With respect to construction of roads, the DG observed that from the perspective of suppliers of construction services, roads can be classified into different types such as Expressways, National Highways, State Highways, District roads, Village roads *etc.* based on functional aspects. However, the requisites of engineering and construction do not do not vary much amongst various types, except the size of the project. Thus, the relevant product market would include all types of roads.
11. With respect to construction of bridges, the DG observed that bridges can be classified in a number of different ways based upon traffic carried, main structural system, position of carriageway, *etc.* However, for purposes of the present case, the DG considered the classification based on type of traffic carried and noted that there are basically three types of bridges *i.e.* Foot bridges solely for pedestrians or very light traffic; Road bridges for automobile traffic and Railway bridges for railway traffic. Further, the DG analysed whether the road bridges and railway bridges for railway traffic are similar or distinct and found that on account of several reasons such as span, material used, foundation, *etc.*, the construction of railway bridges for railway traffic is quite different from road bridges and as such cannot be considered at par with the road bridges. Railway bridges for railway traffic, therefore, need to be excluded from the relevant product market.



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12. In addition to above, the DG also examined whether supply of construction services for 'repair and maintenance' of roads and bridges (except railways bridges for railway traffic) should be included in the definition of relevant product market and noted that though in the Haryana PWD code published by OP-1, the works have been classified into 'Original Works' and 'Repairs or Maintenance Works'/'Operation and Maintenance Works', the classification is nebulous as a variety of new works are also to be treated as 'Repairs' as per the Code. Moreover, the suppliers of construction services participate in both types of tenders floated by procurers of construction services and there is no difference in the services supplied for construction of new roads and bridges and maintenance/ repair of roads and/ or bridges. Therefore, both these types of works can be considered together in the definition of relevant product market.
13. Thus, based on the aforesaid analysis, the DG defined the relevant product market as '*the market for procurement of construction services for construction/ repair/ maintenance of roads and bridges (other than 'railway bridges for railway traffic')*'.
14. While determining the relevant geographic market also, the DG applied the concept of 'demand side substitutability' from the perspective of suppliers and defined the relevant geographic market by analysing the ability of suppliers to supply goods and services in different geographical areas.
15. On analysis of factors mentioned in Section 19(6) of the Act, the DG observed that there are no regulatory trade barriers in so far as participation by contractors in the bids floated by OP-1 (for construction of roads and bridges) are concerned. Although the cost of transportation of raw material such as grit, sand, bitumen and cement is quite high, the contractors either procure these locally or the manufacturers deliver them on-site. Similarly, in case of heavy machinery used for construction of roads and bridges, the contractors prefer to procure/ hire heavy



machines locally in case the project site is far from the base of the contractor. Thus, transportation costs within the length and breadth of the country or a specified region or a state do not play a considerable role. Also, the procurement policies of the State PWDs and other Government agencies are in line with what is being followed at the national level. In view of foregoing, the DG concluded that the contractors have the ability to supply their services for construction of roads and bridges to various parts of the country; hence, the relevant geographic market cannot be limited to the 'State of Haryana'.

16. To conclusively arrive at the relevant geographic market for purposes of this case, the DG analysed the particulars of L1 bidders (who executed the work) in all the tenders floated by OP-1 during the financial year 2012-13 costing Rs. 5 crores and above. It was observed that OP-1 had floated 82 tenders for construction/maintenance of roads and bridges in the State of Haryana during 2012-13, of which the DG could gather details of L-1 bidders relating to 73 tenders. On examination, it was found that 73 tenders were awarded to 34 different contractors. The DG collected, collated and analysed the data pertaining to 23 out of these 34 contractors (through probe letters, OP-1 and websites of contractors) and observed that 13 contractors including the Informant (who had undertaken the work in Haryana), had competed and completed the projects in other States and Union Territories (UTs) in India as well viz. Rajasthan, Punjab, Delhi, Himachal Pradesh, Uttar Pradesh, Bihar, Jammu & Kashmir, Madhya Pradesh, Uttrakhand, West Bengal, Jharkhand and Assam. In four of these states i.e. Jammu and Kashmir, Assam, Jharkhand and West Bengal only one contractor in each state had undertaken the construction works of roads and bridges. The DG after excluding these four states, delineated the relevant geographic market as '*the territories of the States of Haryana, Himachal, Rajasthan, Punjab, Bihar, Madhya Pradesh, Uttar Pradesh, Uttrakhand and Delhi*'.



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17. In view of the above, the DG defined the relevant market for the purposes of assessing dominance of OP-1 as *'the market for procurement of construction services for construction/ repair/ maintenance of roads and bridges (other than 'railway bridges for railway traffic in the territories of the States of Haryana, Himachal, Rajasthan, Punjab, Bihar, Madhya Pradesh, Uttar Pradesh, Uttrakhand and Delhi'.*
18. After delineating the relevant market as above, the DG then analysed the position of strength enjoyed by OP-1 in the said relevant market by taking into account various factors outlined in Section 19(4) such as market share of OP-1, its size and resources, size and importance of its competitors, dependency of contractors on OP-1 for supplying their services for construction of roads and bridges and entry barriers. Based on analysis of these factors, the DG concluded that the OP-1 was not in dominant position in the relevant market. The contractors were not dependent upon OP-1 for supplying their services for construction of roads and bridges. Moreover, there were no restrictions or entry barriers on contractors for participation in bids in tender floated by OP-1 or by any other bodies in other States and UTs in India.
19. Although OP-1 was not found to be in a dominant position, the nine clauses of the bid document alleged to be abusive were examined by the DG and it was observed that out of nine clauses, three clauses were clearly unfair and discriminatory *i.e.* Clause 30(a) relating to– Payment of running and final bills; Clause 30 relating to drawings and other conditions and deletion of Clause 44 relating to Compensation Events

Consideration of the Investigation Report by the Commission

20. The investigation report of the DG was forwarded to the Informant and OP-1 on 20.02.2018 directing them to file their respective objections/ suggestions thereto



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and appear for oral hearing on 25.04.2018. While OP-1 filed its submissions, no submissions were filed by the Informant in response to the investigation report of the DG. Further, none appeared for the Informant during the hearing as well.

Submissions of OP-1

21. At the outset, OP-1 has stated that it is not an enterprise. However, for the sake of argument if it is assumed to be so, the instant response is being filed with the Commission for purposes of compliance.

22. With respect to the relevant market delineated by the DG, OP-1 has stated that the although the DG has made an attempt to distinguish between construction services for roads and bridges *vis-a-vis* construction services for buildings, the investigation has failed to bring a clear distinction in this regard. It is averred that there are no palpable distinctions in terms of technical specifications, material and machinery. The investigation report has wrongly inferred that there is difference in the material used for roads, bridges and buildings. Although few materials may be different, most of the materials like cement, stone, dust, steel, *etc.* which comprise majority of construction cost and quantity are common. Also, the observation in the investigation report that quantity of material handled during construction of the roads is manifold than used in the construction of buildings in factually incorrect and the structural engineering analysis made in the investigation report serves no real argument to show that roads and bridges and buildings require some different type of impact assessment. There is no special technology used in construction of bridges; the techniques and method used in construction of roads, bridges and buildings are common. Similarly, there cannot be distinction in the types of bridges as such an analysis would delineate every bridge as a different product and, hence, a different market. Further, there are no specialised courses to teach only laying down of roads or constructing buildings. The engineers in this field graduate in civil engineering. Even in the list of



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personnel provided by the Informant the qualification column shows that the personnel hold degrees such as Bachelor of Engineering (Civil), Bachelor of Engineering (Mechanical), Diploma Civil, *etc.* Nowhere it is mentioned that a personnel has specialisation in constructing roads, bridges, buildings, *etc.* either by way of qualification or by way of experience.

23. Further, it is stated that the characteristics of a product/ service should be analysed from the perspective of both buyers and sellers. In the instant case buyer *i.e.* OP-1, as well as sellers *i.e.* contractors, consider the market to be that of 'civil works'. Thus, the analysis made in the investigation report with regard to relevant product market is liable to be rejected and the same should be defined as '*procurement of services for construction, repair and maintenance of civil structures*'
24. Regarding the relevant geographic market delineated by the DG, OP-1 has submitted that though it does not negate the analysis in the investigation report in entirety, however it would like to state that the relevant geographic market should not be restricted to few states, but extended to the entire 'territory of India'. The facts of the case show that the Informant's company is carrying out work of similar nature in multiple states across India. Further, the Informant's company is not only working for numerous States/ UTs Government and their departments but also for various private players. Moreover, the eligibility criteria for participation in the bidding process of OP-1 is so relaxed that any eligible and willing contractor can participate irrespective of its location within India. Thus, the relevant geographic market in the instant case should be the '*Territory of India*'.
25. In view of above, OP-1 has defined the relevant market as '*procurement of services for construction, repair and maintenance of civil structures in the territory of India*'.



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26. Regarding dominance, OP-1 has stated that although it is not in a dominant position even in the relevant market delineated by the DG, its position is further diluted in the relevant market as defined above. Thus, it cannot be said to be in a position of strength so as to have any influence upon the relevant market, competitors and/or the consumers.
27. With respect to alleged abuse of dominance, OP-1 has stated that it is a settled principle of law that where an entity is not in a dominant position in the relevant market, the question of abuse of dominance within the meaning of the provisions of Section 4 of the Act does not arise.
28. However, commenting upon the observations of the DG regarding the conditions imposed by OP-1 in the bid document, OP-1 has *inter alia* stated that it has adopted the conditions, evolving out of its experience. These conditions not only protect its own interest but also protect public money and interest. These conditions also ensure that there is efficient utilization of the resources and any contractor does not delay or stall the project in between. Thus, the conditions cannot be labelled as unfair in any manner.

Analysis

29. The Commission has heard the matter and also examined the material available on record, including the information filed, the investigation report and the submissions filed by OP-1 with the Commission.
30. In the present case, the Informant has alleged that OP-1 is in a dominant position in the execution of works of roads, buildings, bridges and other civil construction works in the State of Haryana and abusing its dominant position by incorporating unfair clauses in the bid document of the tender dated 29.08.2012.



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31. The Informant has not furnished any reply to the investigation report of the DG. However, OP-1 has filed detailed submissions raising primarily two contentions. At the outset, OP-1 has contended that it is not an enterprise and, therefore, not covered under the provisions of the Act. The other contention raised by OP-1 is with respect to the relevant market definition arrived at by the DG in its investigation report. Both these contentions are dealt in succeeding paragraphs.
32. With respect to first contention raised by OP-1, the Commission finds it apposite to refer to the observations of the Hon'ble COMPAT in Appeal no. 45/2015 (*supra*) wherein it was observed as follows:

“17.if a department of the Government is engaged in any activity relating to construction or repair, then it will fall within the definition of the term ‘enterprise’. ... there is nothing in Section 2(h) and (u) from which it can be inferred that the definitions of ‘enterprise’ and ‘service’ are confined to any particular economic or commercial activity. The only exception to the definition of the term ‘enterprise’ relates to those activities which are relatable to sovereign functions of the Government and activities carried by the four departments of the Central Government, i.e., atomic energy, defence, currency and space.”

Further: *“19. the Public Works Department is a provider of service to the public and from that perspective it clearly falls within the ambit of term ‘enterprise’ 20. Whether the activity of procuring construction services is with a view to make profit is not the concern of the Act. ... Therefore, there is no escape from the conclusion that it is an enterprise within the meaning of Section 2(h) of the Act....”*

33. Accordingly, the Hon'ble COMPAT has held that the Public Works Department, Government of Haryana squarely fell within the definition of the term ‘enterprise’



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under Section 2(h) of the Act and that the same would be the position *qua* Public Works Departments of the other States as also the Central Public Works Department.

34. Considering that Hon'ble COMPAT has already decided the issue and held OP-1 to be an enterprise, there remains nothing more to be decided thereupon.
35. Regarding the second contention raised by OP-1 with respect to the definition of relevant market arrived at by the DG, it is observed that in the *prima facie* order dated 27.02.2017 passed under Section 26(1) of the Act, the Commission had defined the relevant market as "*the market for procurement of services for construction and repair of roads and bridges through tendering in the State of Haryana*". Further, considering that PWD was the only procurer of such services in the State of Haryana, it was *prima facie* considered dominant in this relevant market. The Hon'ble COMPAT had also observed similarly in Appeal no. 45/2015 (*supra*).
36. However, during investigation, the DG investigated the issue of relevant market afresh. On examining the allegation, the DG observed that the present case was one of alleged abuse of buyers' power and not that of seller's power. Thus, it was surmised that in the present case the concept of 'demand-side substitutability' would be applicable in reverse *i.e.* from the perspective of suppliers and availability of substitutes to them. Accordingly, after thorough investigation, the DG concluded that the relevant market ought to be defined as '*the market for procurement of construction services for construction/ repair/ maintenance of roads and bridges (other than 'railway bridges for railway traffic) in the territories of the States of Haryana, Himachal, Rajasthan, Punjab, Bihar, Madhya Pradesh, Uttar Pradesh, Uttrakhand and Delhi*'.



37. The Commission notes that the DG has taken a different approach to define the relevant market by defining the same on the basis of area in which the sellers (including the Informant) operate and their ability to switch between procurers. Such approach postulates that if the sellers have the option to switch from one procurer in a particular region to another procurer in a different region, the dominance of a procurer such as OP-1 would have no meaning from the perspective of a seller such as the Informant, as in situation of abuse by a procurer such as OP-1, the sellers can easily switch to other procurers. This approach emanates from two earlier decisions of the Commission involving market related to procurement *i.e.* Adcept Technologies Pvt. Ltd. v Bharat Coking Coal Limited (*supra*) and V.E. Commercial Vehicles Limited v UPSRTC (*supra*).
38. In Adcept Technologies Pvt. Ltd. v Bharat Coking Coal Limited (*supra*), the Commission while outlining the approach for dealing with buyer's power cases had observed that:

“...Generally, as per the scheme laid down by the Act, the dominant player (or enterprise) is the seller of goods/services who/which adversely affects the buying side i.e. the consumer. In this case, the buyer has been contended to be dominant and affecting the competition on selling side of the market (by excluding some of the players, informant in this case). Such cases of „buyer power” or buyer being dominant and abusing its dominant position to suppress competition in the downstream market have been assessed by competition regulators in other jurisdictions like UK (Office of Fair Trading) and EU (European Commission). In the case of buyer power it is the procurement markets, not the supply markets, which have to be defined. The demand-side oriented market concept is applied inversely in this context. From the suppliers point of view the market definition is thus based on their ability to switch to alternative sales opportunities. The definition focuses on the products the supplier is



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offering or would be able to offer without any significant problems. Therefore, what needs to be seen in this case is that whether the OP, if at all it is found to be dominant in the relevant market defined by the Commission, had been able to adversely affect the competition in the supply side of the market.”

39. The DG, in light of the above observations of the Commission and also the practice followed by various mature competition jurisdictions, defined the relevant market by considering the availability of substitutes to the sellers. The Commission after considering the analysis and investigation conducted by the DG finds itself in agreement with the approach adopted by the DG. The Commission feels that such approach is founded on sound principles of competition law.
40. It is noted that though OP-1 has broadly agreed with the approach adopted by the DG in defining the relevant market, it has nonetheless suggested its own definition of relevant market. OP-1 has contended that there is no sound basis for DG to exclude certain types of construction services as all these are covered under the head ‘civil works’. Moreover, any contractor from throughout the territory of India could participate in the tender subject to eligibility conditions. Accordingly, there is no justification to restrict the relevant market to certain states alone.
41. Before dealing with this contention of OP-1, the Commission deems it appropriate to advert to the findings of the DG on dominance. It is observed that the DG analysed the dominance of OP-1 on five parameters laid down in Section 19(4) of the Act as follows:
- i. Market Share: Based on the data in ‘Basic Road Statistics of Transport and Highways, Government of India’ for the years 2011-12, 2012-13 and 2013-14, the DG noted that total length of roads in the State of Haryana as on 31.03.2012, 31.03.2013 and 31.03.2014 was 42,638 Km, 42,476 Km and 42,685 Km respectively. This constituted 3.38%, 3.09% and 3.00% of the



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total length of road in the relevant market during the respective years. The majority share of around 75-80% of the total length of road in the relevant states in these years was found to be held by the States of Uttar Pradesh, Rajasthan, Madhya Pradesh and Bihar.

- ii. Size and Resources: To assess the size and resources of OP-1, the DG considered the value of works executed by OP-1 and found that as per the annual reports, OP-1 had executed works amounting to Rs. 1,838.09 crores, Rs. 2,259.05 crores and Rs. 3,040.37 crores in the financial years 2011-12, 2012-13 and 2013-14 respectively.
- iii. Size and importance of competitors: The DG analysed the size and importance of competitors of OP-1 in terms of outlay expenditure on roads and bridges. Based on a report published by Transport Research Wing of the Ministry of Road Transport and Highways (**MORTH**), the DG has found that the average outlay in Haryana for the financial years 2011-12, 2012-13 and 2013-14 was 493.83 crores which is far lower than the outlay in the states like Uttar Pradesh Rajasthan, MP, Bihar and Delhi where the average outlay for these three financial years was 2655.68 crores, 1839.57 crores, 3084.78 crores. 5297.42 crores and 1342.95 crores respectively.
- iv. Dependency of contractors on OP-1 for supplying their services for construction of roads and bridges: For this purpose, the DG considered the details of the tenders floated by OP-1 during the year 2012-13 costing Rs. 5 crores and above along with the details of L-1 bidders. As already noted by the DG various contractors including the Informant (who undertook the work in Haryana), were providing similar construction services of roads and bridges to various other organizations in different States and UTs in India. Therefore, it was concluded by the DG that the contractors were not



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dependent upon OP-1 for supplying their services for construction of roads and services.

- v. Entry Barriers: Based on participation of contractors in tenders floated by OP-1 or other PWDs or agencies of different states/UTs, the DG examined and compared the Standard Bidding Document (**SBD**) of OP-1 *i.e.* Clause 3.1 of the Nilokheri Document (bid document pertaining to the agreement between OP-1 and Informant) and SBD published by MORTH. It was observed that there were no restrictions or entry barriers on contractors for participation in bids in tender floated by OP-1. Further, the fact that various contractors including the Informant have participated in the tenders floated by PWDs and other agencies of different States and UTs, clearly showed that there were no entry barriers in the relevant market.

42. Based on the foregoing, the DG concluded that OP-1 was not in a dominant position in the relevant market outlined in the investigation report. The Commission notes that OP-1 has agreed with the DG regarding the finding on dominance. On comprehensive perusal of the findings of the DG, the Commission also finds itself in agreement with the analysis of the DG on dominance.
43. Considering that OP-1 is not found to be in a dominant position in the narrowed relevant market as defined by the DG, it is unlikely that this position would change if the relevant market is broadened to the one suggested by OP-1. In both cases, the situation would remain the same. Thus, the contention of OP-1 on the aspect of relevant market definition is found to be immaterial to the outcome of the case.
44. With respect to the findings of the DG on abuse of dominance, the Commission opines that since OP-1 has not been found to be dominant, there remains no requirement to examine the allegations of abuse of dominance, as in absence of



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dominance there can be no case of abuse of dominance in terms of Section 4 of the Act.

45. Based on the foregoing, the Commission is of the view that the contravention of the provisions of Section 4 of the Act is not established in the instant matter. Hence, the case is closed under Section 26(6) of the Act.
46. The Secretary is, hereby, directed to inform the parties accordingly.

Sd/-

**(Devender Kumar Sikri)
Chairperson**

Sd/-

**(Sudhir Mital)
Member**

Sd/-

**(Justice G. P. Mittal)
Member**

**New Delhi
Dated: 09.07.2018**