

**BEFORE THE****COMPETITION COMMISSION OF INDIA****Case No. 23/2010****Date of Decision: 10.08.2011****Durga City Cable Network****Informant****Versus**

In2 Cable (India) Ltd.

Opposite Party No.1

Mr. Nagesh Chabbaria

Opposite Party No.2

Mr. Pratap S.Wadhawa

Opposite Party No.3

Mr. Ravi Kumar

Opposite Party No.4

Ms. Gayathri

Opposite Party No.5

Mr. Vinodh

Opposite Party No.6

Surabhi City Cable Network

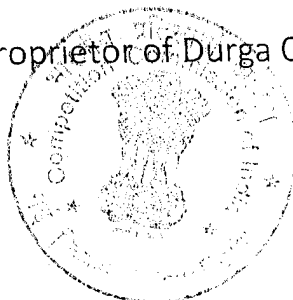
Opposite Party No.7

Mr. Amar Yeroolkar

Opposite Party No.8

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

The instant case before the Commission relates to an information filed on 24.05.2010 under Section 19 of the Competition Act, 2002 (the Act) by Shri Vijay Kumar Gumme, the Proprietor of Durga City Cable Network (hereinafter

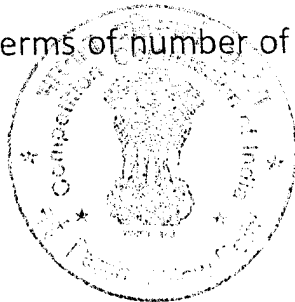


referred to as the Informant) against In2Cable (India) Limited and seven others (hereinafter referred to as Opposite Parties 1 to 7 respectively).

2. Before the facts and allegations are discussed, profile of different parties is brought out in brief in order to appreciate the issues involved in the present matter.

2.1 As per informant, it is operating as a Multi System Operator (MSO) in the District of Bidar, Karnataka since 2005. It is authorized under the relevant provisions to run and operate cable services in the District of Bidar and is providing free to air and also various pay channels to its customers in its area of operations.

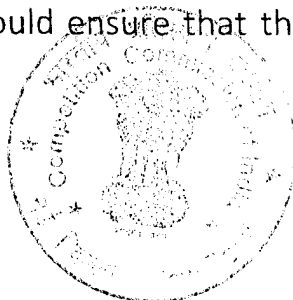
2.2 In2Cable (India) Ltd (the Opposite Party No.1) is a wholly owned subsidiary of Hinduja TMT Limited and is a "Category A" Licence holder. It offers its broadband services under an exclusive arrangement with its group company IndusInd Media and Communications Limited (IMCL) using their existing cable network across India. IMCL commenced its operations in 1995 and as per information it has now built up India's largest cable television (CATV) network, providing multi-channel transmission services to approximately 4 million subscribers under the brand name IN Cablenet and is one of the leading cable TV operators in the world in terms of number of subscribers. In2cable (OP-1)



has amalgamated with IMCL w.e.f 09.02.2007 and is now functioning as its division.

2.3 Shri Nagesh N Chhabaria (OP-2) is the Chief Operating Officer (COO) of IMCL. Earlier he was President (Operations) of the company. OP-3, OP-4 and OP-5 are the Area President, Vice President and CEO respectively of Aerolex Cablenet. The firm, Areolex Cablenet, is involved in managing business of IMCL in Bangalore and Mysore, State of Karnataka. The OP-8, sole proprietor of OP-7 (Surabhi City Cable Network), is also operating in Bidar District like the Informant.

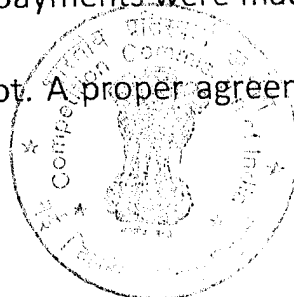
2.4 It has been stated by the Informant that in the cable market in the District of Bidar, the Informant and the OP-7 are operating as the competitors. During the month of May 2009, OP-1 to OP-6 approached the Informant and inspected its premises and control room. Thereafter, OP-5 orally promised the Informant that the services of Incable Digital Network of OP-1 will be supplied through the OP-6 and an agreement to that effect will be signed in due course of time. OP-5 made a promise to digitalise the network of the Informant and in turn, the informant was to use the logo/symbol of OP-1 as supplied by OP-6 to advertise OP-1 as the supplier of the services provided by the informant. OP-5 had also promised that OP-1 would ensure that the Informant might receive



uninterrupted signals from various broadcasters. OP-1 was supposed to execute a proper agreement to make use of the control room of the Informant as its head-end.

2.5 As per the Informant, it was also a pre-condition in the aforesaid arrangement that 51% of the amount collected from the cable business shall go to OP-1 and the remaining 49% shall remain with the Informant. The Informant vide letter dated 04.06.2009, informed the OP-3 that the arrangement is acceptable on the condition that OP-1 telecasts all digital signals to Bidar and any expenditure incurred in the process, will be borne by the informant to an extent of 49% only, remaining to be borne by the OP-1. The informant was also ready to sign an agreement on these conditions. The OP-6 in agreement with the proposals of the informant supplied the symbol/logo of InCable by post.

2.6 The informant has further submitted that after receiving the symbol, it started providing its cable services to the consumers using the symbol of OP-1 along with its own symbol. The agents of OP-1 began to collect 51% of the amount earned out of the business from the Informant, which amounted to Rs. 3 lakh per month. All these payments were made in cash for which the OP-1 refused to provide any receipt. A proper agreement was also not executed

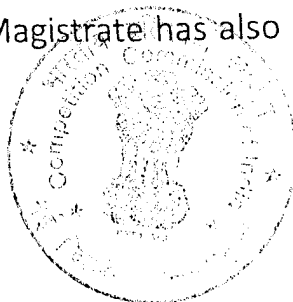


by the OP-1. Further, even though, the informant spent a large amount of money for digitalising the control room, no assistance was provided for the same as orally agreed earlier by the agents of the OP-1.

2.7 According to the Informant, after about 10 months during which advertisement was carried out as per the aforesaid arrangement, OP-1 signed an exclusive agreement with (OP-7), a competitor of the Informant to carry and advertise its logo for similar services as provided by the Informant to the consumers of Bidar District. As per the Informant, the logo which has been provided to it and its competitor, OP-7 are deceptively similar, for providing the similar service of free to air and pay channels to the consumers in the District of Bidar.

2.8 The informant has alleged that OP-1 in collusion with OP-7 is taking all steps to ensure that it is ousted from the market and OP-7 captures the entire market by using the brand name of OP-1.

2.9 The informant has also submitted that upon receiving no response from the Opposite Parties, it filed a Civil Suit before the Civil Court and also a complaint before the Court of First Judicial Magistrate, First Class-II, Bidar. Upon receipt of the complaint, the Judicial Magistrate has also directed investigation in the

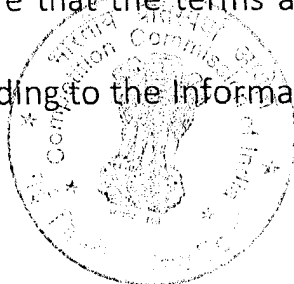


matter under Section 156(3) of Cr. PC and on the basis of preliminary investigation, an FIR has also been registered against OP-2 and OP-5.

2.10 The informant has further submitted that in the District of Bidar, there are approximately 20,000 cable connections. When OP-1 to OP-6 approached the Informant, it had a total of 8000 connections out of which it used to earn an income of Rs. 96 lakh annually from its consumers. After the agreement of OP-1 with OP-7, it is left with only 5000 connections, and its earnings have now reduced to Rs. 60 lakh. Thus, it is incurring monetary loss to the tune of Rs. 36 lakh annually.

2.11 Further, according to the Informant, OP-1 due to his position of strength influences the broadcasters to harass the small operators. Therefore, despite having proper agreement with various broadcasters, the Informant often has to face harassment and de-activation by one broadcaster or the other for some frivolous reasons.

2.12 Based upon the aforesaid facts, it has been alleged by the Informant that OP-1, in abuse of its dominant position, has illegally entered in its area of operations, has used unfair and discriminatory conditions and exerted pressure tactics to ensure that the terms and conditions set out by OP-1 are accepted. Further, according to the Informant, OP-1 has usurped large amount



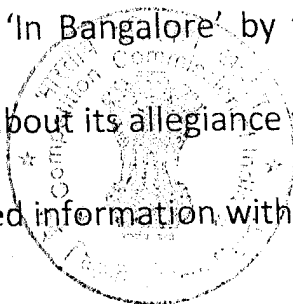
of money from the Informant at a rate of 51% of the collection each month for the last ten months and thereafter has entered into an exclusive agreement with the OP-7, with the sole intention of monopolising the whole district of Bidar.

3. The Commission considered the matter in its ordinary meetings and after having formed an opinion under Section 26(1) of the Act, that there exists a prima facie case, referred the matter to the Director General (DG) for conducting investigation vide order dated 10.08.2010.
4. The DG after receiving the directions from the Commission got the matter investigated by the Addl. Director General who submitted his report dated 23.12.2010 to the Commission. The Commission after considering the findings of DG arrived at a conclusion that further inquiry in the matter is necessary and vide order dated 01.03.2011, directed the office of DG to conduct further investigation in the matter. In terms of the Commission's directions, further investigation was conducted by the DG and a supplementary investigation report dated 18.05.2011 was submitted.



4.1 The DG, in course of investigation asked OP-1, inter-alia, to submit reasons and background of supplying In2Cable logo to the Informant and OP-7, details of money received from the Informant and copies of agreements, if any, entered into with OP-7. The Informant was also asked to submit certain additional information in terms of details of alleged agreement with the OP-1 and copies of correspondences in this regard. Besides, DG also collected information from OP-8 and examined OP-2, 3, 4 and 5 on oath. Information from OP-6 could not be gathered since he could not be traced and his whereabouts could not be made available by the parties.

4.2 Based upon the statements of various persons recorded in course of proceedings and analysis of documents produced and collected in course of investigation, DG has concluded that logo of "In Bangalore" of IMCL appears to have been provided to the Informant and its officials at Bengaluru seem to have initiated the business deal with the Informant and also visited the premises of the latter for this purpose. Although IMCL never provided signal feed, but the use of logo of 'In Bangalore' by the Informant was enough indication for the consumers about its allegiance with IMCL. According to DG, Informant appears to have filed information with the Commission, once OP-2





entered into partnership with OP-7, after which the Informant stopped the use of logo purportedly provided by IMCL to it.

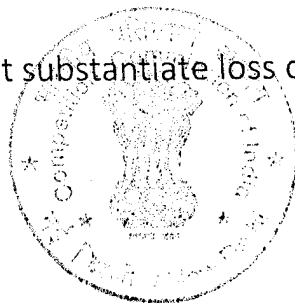
4.3 DG in his report has observed that while the Informant is a cable operator having its business operations in Bidar, OP-1 is one of the largest multi-system operators in the country. Based on industry estimates and various reports of FICCI, KPMG and PWC for the year 2010, the overall market share of IMCL (of which OP is a division now) has been estimated by the DG at around 5% in terms of number of household subscribers. It has also been noted by the DG that from the point of view of the information, the relevant product market in the case is the market of cable distribution which is served normally by Local Cable Operator and in some cases by Large Multi System Operator as well. According to DG, since the Informant operates in the Bidar District of the state of Karnataka, the relevant geographic market should also be the District of Bidar.

4.4 Based upon the information submitted by the Informant and OP-8 and depositions of OP-2, 3, 4, and 5, DG has found that OP-1 is not directly operating in the relevant geographic market of Bidar. According to DG, in absence of a common relevant market for the Informant and OP-1, a case of



abuse of dominance and violation of provisions of Section 4 cannot be made out against the OP-1. The evidences submitted by the Informant indicate that Shri Nagesh N. Chhabaria, COO of IMCL in his personal capacity, perhaps in connivance with Aerolex and its officers entered into an agreement, first with the Informant and thereafter with OP-7 for the cable distribution business in the market of Bidar. DG has also concluded that the allegations of Informant regarding payment of Rs.3 Lakh per month to Shri Chhabaria or authorized representatives from M/s Aerolex, Bangalore can also not be ruled out. However, the same is not verifiable since as per evidences collected in course of proceedings, all the payments have allegedly been made in cash.

4.5 It has also been concluded by DG that there is truth in the allegations of the informant that OP-7 has entered into partnership with OP-2 (COO of OP-1 on 01.04.2010). However, the role of OP-1 in the entire arrangement could not be established. Although both OP-2 and OP-7 have confirmed existence of partnership deed in the form of an agreement for carrying out the business of cable operations in Bidar, no evidence could be found regarding movement of customers from the Informant to this partnership. The Informant also could not substantiate loss of its customers to OP-7.



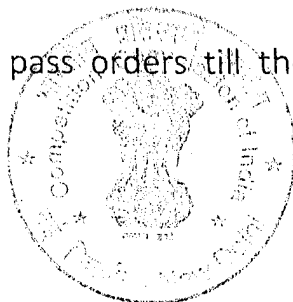
4.6 According to DG, Informant had agreements with various broadcasters, even prior to such alleged agreement of OP-7 with the OP-2. The Informant did not produce evidence of any change in his existing agreements with the broadcasters or any change in the pricing of services to the consumers to conclude that the agreement between OP-2 and OP- 7 directly or indirectly determined the price or services provided by it. No evidence could also be produced to establish that the agreement between OP-2 and OP- 7 limited or controlled the supply of services to cause any appreciable adverse effect on competition.

4.7 Based upon above, DG has concluded that while there is no violation of provisions of Section 4 in the case, no evidence of violation of Section 3 could also be found. On the basis of the investigation, it has finally been concluded by the DG that the allegations made in the information do not violate any of the provisions of the Act.

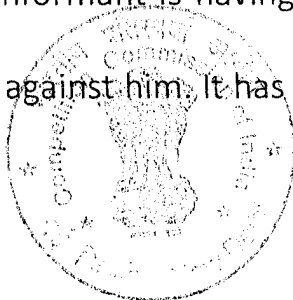
5. The investigation report of DG was considered by the Commission and it was decided that a copy of the report be sent to the Informant and the Opposite Parties to invite their objections and comments.



6. Ms. Vibha Dutta Makhija, counsel on behalf of the Informant and Shri Venkatesh Dhond, Ashok Mansukhani and Ms. Vandana Jaisingh, counsels on behalf of OP-1 and OP-2 appeared before the Commission on different dates and submitted their replies on the main report as well as the supplementary investigation report of DG. Mr. Nagesh Chhabaria, OP-2 also submitted replies on his behalf.
7. Reply on behalf of OP-1 has been filed by IMCL. In its written submissions dated 23.06.2011, it has been submitted that since the DG in his original report as well as in his supplementary report, has come to an unambiguous conclusion that the allegations made in the information do not fall foul of the provisions of the Act, inquiry proceedings be dropped.
8. It has also been brought to the notice that a writ petition has been filed in the Hon'ble High Court of Delhi Writ Petition (c) No. 3171/2011 dated 13.05.2011 to quash the order of Commission dated 01.03.2011 directing further inquiry, directions of DG issued vide letters dated 03.05.2011 and 04.05.2011 and also to quash the entire proceedings before the Commission. It has also been stated that Hon'ble High Court would hear the matter on 19.08.2011 and therefore, the Commission may not pass orders till the petition is disposed off by the Hon'ble Court.



9. OP- 2 filed written submissions dated 19.01.2011, 24.01.2011, 10.02.2011 and 18.06.2011 before the Commission. In his submissions, OP-2 has brought out that he is having his own Cable TV and Internet business in Joint Venture with IMCL in many cities of India for more than 10 years. He was appointed as President of IMCL in the year 2007 and later on was appointed as its COO. He is having a separate office and staff for looking after his business. He has submitted that it is not correct to say that OP-3 to OP-6 are the persons in Bangalore who are responsible for the conduct of business of OP-1 in entire Karnataka since the business of OP-3 to 6 in respect of OP-1 is restricted only to the city of Bangalore and Mysore.
10. OP-2 has submitted that as has also been admitted by the informant there are Twenty Thousand (20000) cable connections in Bidar. In such circumstances, in addition to the Informant who is having only Eight Thousand (8000) subscribers, there are other cable operators who are having rest of Twelve Thousand (12000) connections. OP-7 is also in business in Bidar prior to the Informant. Thus, there are a number of players in the District of Bidar providing competition and there is no party which has monopolised the market.
11. According to OP-2, the Informant is having a criminal background and many criminal cases are pending against him. It has been brought out that many cases

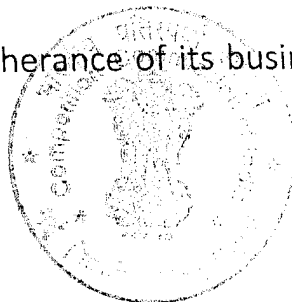


have been filed against him on various offences under various sections of Indian Penal Code. In this regard, OP-2 has also submitted the copies of the FIR, Panchnamas and charge sheet against the informant filed by various parties to substantiate his allegations. According to OP-2, the information has been filed only with the malicious intention and ulterior motive to harass the respondents.

12. OP-2 has further stated that OP-1 has neither supplied logo to the OP-7 nor to the informant. The logo telecasted by the Informant is not that of OP-1. It has also been submitted by the OP-2 that the agreement with OP-7 has been entered into in his personal capacity and no agreement exists between OP-1 and OP-7. It has also been brought out that the logos displayed by OP-7 are of both OP-2 and OP-7 and OP-1 is not concerned with the same. There is no issue of deception of logos, as has been raised by the Informant, since the purported logo of the Informant displays 'Bangalore' while the logo of OP-7 shows 'Bidar'.

13. OP-2 has denied that OP-1 is getting a share of Rs.3 lakh per month from the informant out of business collections. Further, it has also been denied that OP-1 and OP-2 ever have approached the informant for any business dealings.

14. According to OP-2, the Informant perhaps wants that there should be an agreement with OP-1 for furtherance of its business. However, OP-1 cannot be

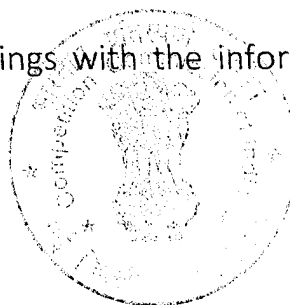


forced to enter into such an agreement with the Informant. OP-2 has also stated that he is unaware of any criminal complaint filed by the informant before the Court of Judicial Magistrate of Bidar against him or OP-1.

15. OP-2 has also argued that several contradictory and incorrect claims have been made by the Informant in the case and heavy costs should be imposed on him for that. He has further stated that he is no way concerned with the Informant. In fact, the Informant was having dealings with OP-3 which gets supported by the Informant's financial statements of 31.03.2010 wherein OP-3 has been shown as sundry debtors. The OP-2 has argued that he has been unnecessarily dragged in the controversy and no offence has been committed by him under the provisions of the Act.

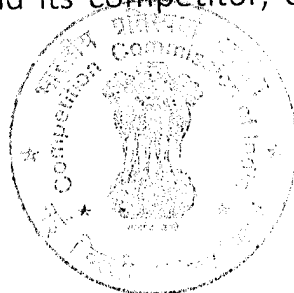
16. The Commission has carefully gone through the information, the investigation reports of DG, replies of the parties and other materials on record available and produced in course of proceedings before it.

16.1 After a careful consideration of the entire records of the proceedings, the Commission finds that this is a case where the informant claims that there was an oral promise made by OP-1 and its executives and associates to enter into an agreement for business dealings with the informant. It has also been alleged



that OP-1 and its executives and other persons associated with its business activities have collected amount at a rate of 51% of the total collection of the business of the Informant. Although no agreement was executed with the main company- IMCL, with whom the business dealings were to be finally made, payments were allegedly made to its COO, the OP-2. However, OP-2 has denied receiving any payments. Later on, as alleged by the Informant, an agreement was executed by OP-1 with its competitor (OP-7) for carrying out the business operations and promise made to it was not fulfilled even when payments were made by it towards the use of logo of OP-1 and advertising OP-1 in the areas of operations of Informant. Due to the agreement that has been reached with OP-7, the Informant has claimed that it is suffering monetary losses.

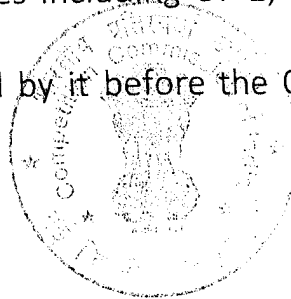
16.2 The Commission also notes that the Informant as an evidence that there was some kind of business dealings with IMCL has submitted a proof of supply of logo of the OP-1 to it. Independent verification in course of investigation by DG has led to the fact that the Informant has used the logo 'In Bangalore' and the competitor of the Informant, OP-7, has used the logo 'In Bidar' in past. However, both Informant and its competitor, OP-7, have stopped using these logos now.





16.3 It has also been noted by the Commission that IMCL (the company of which OP-1 is a part) has denied any business dealings with the Informant and also with OP-7. Before the DG, IMCL has also submitted that the Informant and OP-7 have been served with the letters of 'cease and desist' as regards the use of logo and also to show cause why action under Trade Marks Act may not be initiated against them for the use of its Trade Marks.

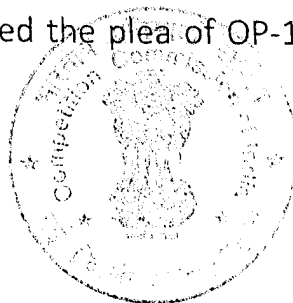
16.4 The Commission has further noted the conclusions drawn by the DG that though IMCL has not provided signal feed to the informant, logo of OP-1 has been used by the Informant. DG has also concluded that perhaps COO of IMCL has entered into dealings with the Informant and also with OP-7 and OP-8 without the knowledge of the Company. However, OP-2 has denied any dealings with the Informant, although it has admitted its partnership with OP-7, independent of OP-1, with effect from April 2010. OP-2 has also rebutted the fact of supply of logo by the OP-1 under any agreement to the Informant. It has also been submitted that there is no issue of deceptive logos being used by OP-7 since the logo used by the OP-7 displays 'In Bidar' while that of the Informant displays 'In Bangalore'. Aggrieved by the alleged conduct of IMCL and its executives/associates including OP-2, the Informant has claimed that complaints have been filed by it before the Courts, though OP-2 has denied



any such complaints and instead has submitted details of the criminal cases filed against the Informant by various parties to bring out that the Informant is involved in criminal activities and has filed this information with malicious intention and ulterior motive.

16.5 The Commission observes that in course of proceedings before it, allegations and counter-allegations have been levelled and a charge of infringement of Trade Marks Act has also been brought out for the alleged wrongful use of logos. The Commission feels that it is not competent to decide the issue of the allegations of infringement of Trade Mark Act and pending complaints before courts against various parties involved in the case. The allegations of infringement of laws under various Acts and the facts adduced by different parties in connection with such allegations are required to be verified by the bodies competent to deal with such issues.

17. Be that as it may, the Commission, amidst all these allegations and counter allegations, has endeavoured to find out whether there has been contravention of any of the provisions of Competition Act in the subject matter brought before it. While proceeding to determine the issues involved in the case, the Commission has also considered the plea of OP-1 that pending the decision by

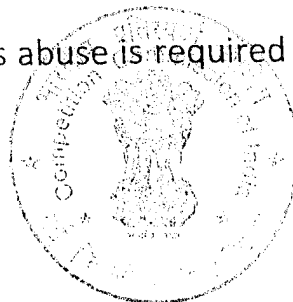


Hon'ble High Court of Delhi against the current proceedings, no order may be passed. In this regard, the Commission observes that since there is no stay from the Hon'ble Court on the pending proceedings, there is no bar in the determination of the issues in the matter.

17.1 After careful consideration of available material on record, the Commission notes that the following points arise for the determination of issues concerning competition in the present matter:

1. Is there any case made out, in accordance with the provisions of Section 4 of the Act, that OP-1 has abused its position of dominance in the present matter?
2. Is there an agreement which has been entered between OP- 1 and OP-7 which may be construed as anti-competitive in terms of provisions of Section 3 of the Act?

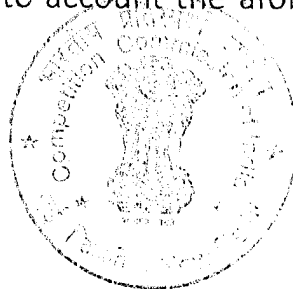
17.2 As regards point (i) above, the Commission observes that in order to inquire into the issues of dominance and abuse thereof under the provisions of the Act, it is necessary to first determine a relevant market in which dominance of a party and its abuse is required to be tested since appreciation



of position of dominance and its abuse is dependent upon assessment of the relevant market.

17.3 The Commission notes that the DG has analysed the relevant product and geographic market in detail and having done so has determined the relevant market as *“the market of cable distribution, which is normally served by Local Cable Operators (LCOs) and in some cases by large MSOs in the Bidar district of Karnataka”*. The Commission, in view of the specific facts of the case, holds that the relevant market determined by the DG is the appropriate relevant market in order to examine the issues of competition, if any, in the case.

17.4 The Commission observes that before examination of the abusive acts and conduct arising out of position of dominance, it is required to be looked into whether the OP-1 is indeed a dominant player in the relevant market as determined above. The Commission notes that the DG, after a detailed investigation, has concluded that IMCL of which OP-1 is a division, has a overall market share of about 5% in terms of number of household subscribers. Further, OP-1 is not providing its services in the relevant geographic market of Bidar. The Commission, taking into account the aforesaid findings of DG, holds



that since OP-1 is not present in the relevant market as found by the DG, a question of its dominance in that market does not arise.

17.5 The Commission further notes that the DG after investigation has found that there is no common relevant market wherein both the Informant and the OP-1 are operating. In such a situation, the Commission feels, a case of abusive conduct impacting the informant cannot be made out against the OP-1. Further, there is no evidence or material produced by the Informant that due to the alleged acts and (mis)conduct of OP-1 any harm has been caused to its competitors or to the end consumers in the relevant market. Considering these facts before it, the Commission holds that no case of contravention of the provisions of Section 4 can be made out against the OP-1.

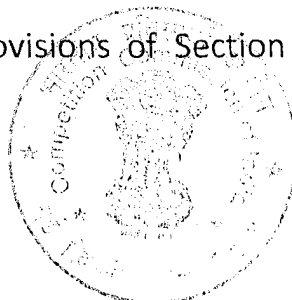
17.6 The Commission further notes that on the issue of alleged anti-competitive agreement entered by OP-1 with OP-7, the DG has found that the investigation could not establish any agreement between the informant and OP-1, although an agreement was executed between OP-2 and OP-7 on 01.04.2010. DG in this regard has also concluded that the agreement between OP-2 and OP-7 did not directly or indirectly determine the price or service or also did not seem to limit



or control the supply of product or services to cause Appreciable Adverse Effect on Competition (AAEC) in the relevant market.

17.7 The Commission, on the basis of the investigation conducted by the DG and submissions of various parties made in course of inquiry proceedings, observes that since no firm evidence of any agreement (oral or written) between OP-1 and OP-7 could be adduced, the question of violation of provisions of Section 3 of the Act by the OP-1, causing any adverse appreciable effect on competition, does not arise.

17.8 The Commission notes that evidences have been produced to the effect that OP-2 and OP-7 entered into a partnership agreement in April 2010 for carrying out the business of cable operations in Bidar. However, as has been contended by OP-2 and also found by DG, the OP-1 is not a party to this agreement, which might have been reached between OP-2 and OP-7 independently. The Commission also observes that even when the partnership agreement between OP-2 and OP-7 is considered, no evidence has been adduced either before the DG or in course of inquiry proceedings before it, to establish that the said partnership agreement has adversely affected competition in the relevant market in contravention of provisions of Section 3 of the Act. There is no



evidence brought before it to support that the partnership agreement of OP-2 with OP-7 is violative of the provisions of Section 3(3) or Section 3(4) the Act.

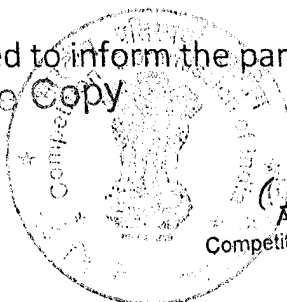
17.9 On examination of all the issues involved in the case, therefore, the Commission is in agreement with the findings of the DG that there is no case of contravention of the provisions of the Competition Act in the whole matter.

18. While holding that there is no contravention of any of the provisions of Section 3 and/or 4 of the Act in the case and the matter deserves to be closed, the Commission also notes that various other issues not concerning competition, have been raised by parties in the course of proceedings. However, the Commission feels that it is not the appropriate forum for determination of all such issues.

19. With the aforesaid findings, the matter relating to this information is disposed of and the proceedings are closed forthwith.

20. The Secretary is directed to inform the parties accordingly.

Certified True Copy



(S.P. Gahlawat)  
12/8/2011  
Assistant Director  
Competition Commission of India  
Govt. of India,  
New Delhi