



PUBLIC VERSION

COMPETITION COMMISSION OF INDIA

Case No. 16 of 2018

In Re:

**Velankani Electronics Private Limited,
No. 43, Velankani Tech Park, Electronics City Phase – 1,
Hosur Road, Bengaluru – 560100, Karnataka**

Informant

And

**Intel Corporation,
2200, Mission College Boulevard,
Santa Clara, California 95054 – 1549, U.S.A.**

Opposite Party

CORAM

**Mr. Sudhir Mital
Chairperson**

**Mr. Augustine Peter
Member**

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

Present: For Velankani Electronics Private Limited: Ms. Smita Singh, Advocate alongwith Ms. Anju Prakash, Company Secretary, Mr. Zayed Sayed and Mr. Vinymol, Senior Design Engineers, and Mr. H. Nagraj, Financial Controller.

For Intel Corporation: Mr. Rajshekhar Rao, Ms. Kalyani Singh and Mr. Sarthak Pande, Advocates alongwith Ms. Evangelina Alhiratearena, Vice-President (Law and Policy), Ms. Puja Malhotra, Senior Counsel (Law and Policy) and Mr. Baskar Dhandapani, Director (Sales).

ORDER UNDER SECTION 26 (1) OF COMPETITION ACT, 2002

1. The present information was filed by Velankani Electronics Private Limited (**the Informant**), under Section 19 (1) (a) of the Competition Act, 2002 (**the Act**), against Intel Corporation (**the Opposite Party/ OP**), alleging contravention of the provisions of Section 4, particularly Section 4 (2) (b), 4 (2) (c) and 4 (2) (e) read with Section 4 (1) of the Act. The Informant is a Bangalore based company registered under the provisions of the Companies



Act, 2013, engaged in the business of design and manufacture of electronic products in India pursuant to Government of India's (GoI) 'Make in India' initiative. The OP is a leading multi-national corporation and technology company engaged in the designing, manufacturing and distribution of a wide range of information technology components, peripherals, computer systems, *etc.* as well as electronic devices relating to communications and computing such as Processors, Chipsets, Mother-Board/ Server-Board, Integrated Circuits, Network Interface Controllers, Flash Memory, *etc.*

2. As per the information, the Informant started its business under the GoI's Make in India initiative in 2015 and one of the electronic products that it manufactures is the 'Server'. From the information available in public domain, the Commission notes that a Server is a type of computer which is designed to process requests and deliver data to another computer over the internet or a local network. The Informant has stated that a Server is in itself a specific product, and is different from other types of computers such as a Desktop, Laptop, Tablet, Note-book, *etc.*

3. Further, the Informant has stated that a Server has various sub-assemblies (components) which includes Processor, Server-Board, Chassis, Memory Disc, *etc.* At present, to manufacture Servers, the Informant does not design or manufacture the various sub-assemblies but rather assembles the same after purchasing them from the market. For the said purpose, it has tied up with the OP for Manufacturing Enablement and Licensing Agreement. However, as per the Informant, if it has to purchase the Server-Board (one of the sub-assemblies of Server) from its competitors in the Server market (Supermicro Inc., Gooxi, Gigabyte, Tyan, *etc.*), the same will not be available to it at a competitive price. Purchasing the Server-Board from competitors would unduly inflate the cost of the Informant's final product Server and deprive its product of any market access. Hence, in such a scenario, for the Informant to access the Server market, it is imperative that the Informant designs and manufactures its own Server-Boards.

4. The other important sub-assembly of the Server is stated by the Informant to be the 'Processor'. 'Processor for Server' is stated to be a distinct product in itself which cannot be inter-changed or substituted by any other product. The Informant has stated that it cannot manufacture the Processor itself because it is not easily reproducible at a reasonable cost in



सत्यमेव जयते



the short-term. As a result, it has to purchase the Processor for its Server from the market only.

5. As per the Informant, the OP is a dominant player in the relevant market of “Processors for Servers” in India as well as globally. For manufacturing a Server, the Processors of the OP are essential standard. Relying upon reports like Intel’s Annual Report 2017, information available on Intel’s website and reports compiled by the International Data Corporation (IDC), the Informant has alleged that the OP is in a dominant position in this market globally. With regard to the Indian market, the Informant has stated that the OP has a market share of more than 80%. It has stated that the consumers of Servers treat and accept Intel’s Processors as the Industry Standard. Most of the Central and State Government Departments/ Agencies and other major entities, as a policy, procure Servers and other products having Intel Processors only. Hence, as per the Informant, the OP holds a dominant position in the relevant market of “Processors for Servers in India” and the Informant is completely dependent on the OP for procuring Processors for its Servers. In support of its contention, the Informant has relied upon a previous decision of the Commission passed under Section 26 (6) of the Act, titled *ESYS Information Technologies Private Limited v. Intel Corporation and Others, Case No. 48 of 2011* decided on 16.01.2014.

6. The Informant has stated that the other two sub-assemblies of the Server namely the Server-Board and the Chassis have to be designed in such a manner that they interface with the Processor. There cannot be an effective/ marketable Server unless the Server-Board and the Chassis interface with the Processor. Hence, to manufacture Server-Boards on its own, the Informant needs access to the reference designs from the Processor manufacturer i.e. the OP, so as to incorporate the same in the design of its Server-Board. In the absence of such reference designs from the OP, the Informant cannot develop its Server-Board which would interface or be compatible with the OP’s Processor. The OP’s design files are hence, stated to be very essential for the Informant.

7. The Informant has further stated that consequently, to seek such access, it approached the OP in July 2017 for procuring the reference designs in order to enable it to design its Server-Boards which would interface with the OP’s Processor. As per the Informant, initially, the OP did not refuse to provide the reference design files and rather gave access to some of them to the Informant. However, on 05.03.2018, the OP communicated to the Informant that it will be



सत्यमेव जयते



able to share the design files only after execution of a Service Level Agreement (SLA). But, after almost 10 months, the OP suddenly issued a communication dated 04.05.2018 to the Informant, whereby the OP refused to provide the relevant reference design files to the Informant. The reason given for such refusal was that the Informant did not have '*sufficient technical and sales scope and expertise*'. However, no reason for arriving at such a conclusion was given by the OP. The OP rather stated that the choice with whom to do business is a legitimate business decision and the OP has the discretion to decide upon the same. As per the Informant, during the intervening 10 months, at no point of time the OP demanded the Informant to meet any threshold as to resources, *etc.* or fulfil any relevant criteria as to technical expertise, *etc.* The OP never disclosed the terms on which it proposed to provide the reference designs to the Informant. The Informant has also stated that the OP has been sharing/ furnishing the complete reference design files with the Informant's competitors in the Server market such as Dell, HPE, *etc.* (**Original Design Manufacturers/ Original Equipment Manufacturers or ODMs/ OEMs**) thus, enabling them to manufacture their own Server-Boards, but not with the Informant. This, as per the Informant, has placed it in a disadvantageous position in the Server market.

8. It is further stated that on 09.05.2018, at the initiative of the Informant, the representatives of the Informant and the OP met in the presence of an official of Ministry of Electronics and Information Technology (**MEITY**) wherein the Informant re-iterated its requirement for access to the reference design files. No concrete response was received from the OP's representative and to avoid any further delay, it was discussed that the Informant would continue its efforts to design its own Server-Boards without seeking any further files or support from the OP and the OP would have No-Objection to the same. Accordingly, on 09.05.2018, the Informant sent an e-mail to the OP seeking confirmation regards the same. However, till 16.05.2018, the OP only deferred the issuance of any response; thus, keeping the Informant in lurch. The OP also did not provide the demanded No-Objection to the Informant.

9. The Informant has averred that each Server model has a limited lifespan of 2 to 3 years and with change in each Server model, the design of the Server-Board is likely to become obsolete as a new Processor would be released by the OP by then and the market demand would be shifted to the latest model. In such a scenario, the Informant will have to start the



सत्यमेव जयते



process all over again. Therefore, the Informant has stated that all such delays being made by the OP are costing it dearly.

10. The Informant has submitted that such conduct of the OP has several adverse consequences. The consumers are deprived of competitively priced Servers. The cost of procurement of Servers remains high in India. The Informant may not qualify under the Preferential Market Access (**PMA**) Policy under the Make in India initiative and consequently, India will continue to import electronic products and components which results in considerable drain of foreign exchange reserves of India.

11. Based on the above averments and allegations, the Informant has filed the present information alleging contravention of the provisions of Section 4 of the Act by the OP for abuse of dominant position. As per the Informant, the OP, being in a dominant position, cannot arbitrarily and unreasonably decline business dealings with others or stipulate unreasonable business terms, which effectively deny market access to them. By refusing to provide complete reference design files to the Informant, the OP has successfully prevented and precluded the Informant from designing/ manufacturing its own Server-Boards. Such conduct of the OP amounts to violation of Section 4 (2) (c) of the Act. The OP is also guilty of limiting and restricting the production of Servers and the market therefor and also limiting the technical/ scientific development relating to Servers in violation of Section 4 (2) (b) of the Act. It is also alleged that the OP is abusing its dominant position in the market for Processor for Servers to protect its market of Servers in violation of Section 4 (2) (e) of the Act.

12. In reply to the above information, the OP filed its preliminary response on 11.07.2018. Thereafter, a preliminary conference was held with the parties on 12.07.2018 wherein detailed arguments from both sides were made. The Informant also filed a brief synopsis of its case. The OP, through a prototype of the Server-Board and the Micro-Processor displayed before the Commission as a demo, explained in detail the concept of designing of a Server-Board. Subsequently, the Informant also filed written submissions alongwith certain additional documents and a compilation of citations on 25.07.2018. Both the Informant and the OP also filed undertakings, as directed by the Commission, dated 04.08.2018 and 07.08.2018, respectively. In reply to the written submissions of the Informant, the OP also filed a response dated 20.09.2018.



सत्यमेव जयते



13. The Commission has considered in detail the aforesaid submissions of the parties and has carefully analysed the material placed on record by them. The grievance of the Informant is the alleged denial of access by the OP to all files/ documents/ information necessary for enabling the Informant to design/ develop and manufacture its own Server-Boards which are compatible with the Micro-Processors manufactured by the OP, in a discriminatory manner. This, as per the Informant, amounts to abuse of dominant position by the OP in contravention of Section 4 of the Act.

14. To assess the conduct of the OP under the provisions of Section 4 of the Act, a relevant market needs to be delineated first. If the OP is found to be in a dominant position in such relevant market, the Commission is required to analyse the alleged abusive conduct.

15. As per the Informant, the relevant market in the instant case would be the market for “Processors for Servers”. The Informant argued that the conduct complained of is the denial to provide access to the reference design files, which inhibits the Informant’s capability to design Server-Boards which are compatible with the OP’s Micro-Processors. It has been contented that conduct pertains to withholding of integration/ interfacing information in the market for “Processors for Servers”. Hence, the relevant market would be market for “Processors for Servers”. The Informant placed reliance in this regard on the decision of *Commission of European Communities* dated 24.03.2004 in *COMP/ C-3/37.792 (Microsoft)*.

16. Next, the Informant argued, that in the relevant market thus defined, the OP holds more than 90% share globally as more than 90% users in the market opt for products with Intel X66 Processors only. In India also, the OP possesses a market share of at least 80% and market share of the OP has constantly been very high. Hence, as per the Informant, the OP is clearly in a dominant position in this market. Lastly, as per the Informant, since the OP is a dominant player in such relevant market, denial to reference design files to the Informant by the OP in a discriminatory manner, amounts to abuse of dominant position by the OP. Being a dominant player, the OP was duty bound to provide such files to the Informant in a non-discriminatory manner. The Informant also stresses upon the fact that the option to get reference design files from other Micro-Processor manufacturers like IBM or ARM to design Server-Boards is not available to it as even if the Informant designs its Server-Boards compatible with such other Micro-Processors, not many people will buy the final product (Server) of the Informant as most consumers prefer Servers with Intel Processors only.



सत्यमेव जयते



17. *Per contra*, the OP has argued that the market for “Processors for Server” cannot be the relevant market in the instant case as the allegations contained in the information are not *vis-a-vis* Micro-Processors but in the context of Server-Boards. The two are completely distinct products and the Informant has alleged that it has been denied access by the OP to the reference designs for Server-Boards. The OP contended that the market for “Micro-Processors for Servers” is wholly irrelevant in the instant case and that the relevant product market should be the market for ‘Server-Boards’ or in the alternative, the market for ‘Servers’.

18. Further, the OP has stated that as the participants in the market for Servers and Server-Boards are global suppliers whose production activities are distributed throughout the world and since the conditions for demand and supply for Servers is homogeneous across the globe, the relevant geographic market should be ‘worldwide’.

19. The OP further argued that in the relevant markets of ‘Server-Boards worldwide’ or ‘Servers worldwide’, it is not a dominant player. Even in the Indian markets for Server-Boards or Servers, the OP is not dominant. As per the OP, the top players in the Servers market, both worldwide and in India, are HPE and Dell and the OP sells very minimal quantities of Servers and Server Systems as well as some of the components used in Servers in India such as White-Box Servers. Its major domain is Micro-Processors and not the downstream products like Servers and Server-Boards. The OP relies upon the IDC Reports placed on record by the Informant to stress upon the same. Hence, in absence of a dominant position of the OP in such markets, the OP argued that no case of abuse of dominance is made out against it.

20. In rebuttal, the Informant has stated that the OP’s delineation of the relevant market is incorrect because the conduct complained of pertains to reference design files of Server-Boards for compatibility with Micro-Processors only. Further, relying upon the judgment of the Hon’ble Supreme Court in *Competition Commission of India v. Fast Way Transmission Private Limited and Others*, (2018) 4 SCC 316, the Informant has stated that the fact that it is operating in the downstream/ distinct market and is not a competitor of the OP in the market for “Processor for Servers” is also irrelevant.



सत्यमेव जयते



21. After considering the above rival submissions of the parties, the Commission is of the *prima facie* opinion that in the instant case, the relevant market would be the market for “Processors for Servers in India”. Even though the denial of files by the OP to the Informant restricts/ impedes the entry of the Informant in the ‘Server’ or ‘Server-Board’ market, the conduct complained of is with regard to the design files which enable the Informant to design a product compatible with the OP’s Processor. It is the denial of access to such files which has been alleged to be abusive by the Informant. Relevant market in this case is the market in which the conduct actually took place and not the market in which the eventual effect may be caused. Thus, the relevant product market in the instant case would be market for ‘Processors for Servers’. Further, as per the *Explanation* to Section 4 of the Act, ‘dominant position’ means a position of strength, enjoyed by an enterprise, in the relevant market, “in India”. Therefore, as per the scheme of the Act, the dominant position of an enterprise and abuse thereof, is required to be assessed ‘in India’ and not globally. Therefore, the relevant geographic market in the instant case would be ‘India’.

22. In the relevant market of “Processors for Servers in India”, admittedly, the OP is in a dominant position. The Commission also takes note of the fact that in the previous decision of the Commission in *ESYS Information Technologies Private Limited (supra)* relied upon by the Informant, the Commission has concluded that the OP was dominant in the market of Micro-Processors for Servers in India.

23. Once the OP is *prima facie* found to be dominant in the relevant market of “Processors for Servers in India” delineated by the Commission, the Commission now proceeds to analyse the allegations of abuse of dominance made by the Informant.

24. The Informant’s case is that it wants to make a cost effective Server for the Indian market. As per the Informant, at present, there is no Indian player that designs its own Server-Boards. 100% Servers in India are either directly imported and traded or are assembled from imported sub-assemblies and traded in the market. The cost of assembling a Server is higher than the cost of importing a Server. Hence, the Informant seeks to manufacture Servers under its own name for the Indian market. However, for manufacturing its own Server, if the Informant has to procure Server-Boards from its competitors in the Server market, it would lose its competitive edge. Therefore, it seeks to design its own Server-Boards for its Server. Random designing of such Server-Boards cannot be done and the Board has to be designed in such a



सत्यमेव जयते



manner so that the same is compatible with the Micro-Processor being used in the Server. Since the demand in the market is for Servers fitted with the OP's Processors mostly, the Informant has to design its Server-Board in a manner so that the same is compatible with the Micro-Processor of the OP. For such interfacing, the Informant requires reference design files from the OP, which are being provided to the other Server manufacturers. However, the OP is not providing all such files to the Informant which is affecting its ability to design and manufacture its own Server-Board.

25. The Commission notes that the Informant has submitted a list of files alongwith its information (Annexure 9 to the information) which it states are the files required for designing a Server-Board. The heading of the list is "*Latest files Requested/ Required for Servers: Buchanan Pass, Wolf Pass, Silver Pass, Sawtooth Pass*". From the detailed submissions of the parties, the Commission notes that the files to which the Informant is seeking access are twofold: reference design files for Server-Boards, and simulation files thereof. Though the Informant refers to the files as reference design files for Intel Processors, evidently the reference design files being sought are the reference design files for Server-Boards as what the Informant seeks to do is to design a Server-Board compatible with the OP's Micro-Processor. With regard to the reference design files, the Informant has alleged that though the OP has uploaded certain reference design files of 'Buchanan Pass', and 'Wolf Pass' on its Purley Platform, the OP has not furnished any reference design files pertaining to 'Silver Pass' and 'Sawtooth Pass' to the Informant.

26. On the other hand, the OP has stated that upon demand of the Informant, the OP, in order to provide the Informant access to its reference designs and other collateral, has provided the Informant access to its 'Intel Business Link (IBL)' online portal. Annexure 9 of the information which lists the files to which the Informant is seeking access are for products named 'Buchanan Pass', 'Wolf Pass', 'Silver Pass' and 'Sawtooth Pass'. These products operate on a 'Purley Platform' which is a Server Platform. [REDACTED]

[REDACTED] Through IBL, the Informant has available to it a wide variety of collateral, including reference designs for Server-Boards. Collateral for Purley Platform are hence, accessible to the Informant which is the same access provided to all other customers of the OP (including ODMs/ OEMs) for Purley Platform. Such access has



been provided to the Informant from as far back as 31.08.2017 and the Informant has downloaded the reference design files from IBL. The e-mails annexed with the information also clearly demonstrate that the Informant has access to the reference designs and that the OP has made multiple and sincere efforts to assist the Informant in accessing such reference designs. Thus, there is no question of any denial to the Informant of any reference designs.

27. The OP has further stated that it does not develop an exhaustive set of collateral *i.e.* it does not necessarily develop reference designs for all Server-Boards which are compatible with Intel Micro-Processors. [REDACTED]

28. The OP has stated that [REDACTED]

29. The Commission is of the view that though the Informant avers that access to the whole set of reference design files for ‘Buchanan Pass’, ‘Wolf Pass’, ‘Silver Pass’ and ‘Sawtooth Pass’ has not been provided to it by the OP as is given to the other ODMs/ OEMs, the OP has consistently maintained that access to all the reference design files for these products has



सत्यमेव जयते



been given to the Informant like it is given to all the other ODMs/ OEMs of Servers. From the categorical submission of the OP on oath in its undertaking that the reference designs for 'Buchanan Pass' and 'Wolf Pass' have already been provided to the Informant as are provided to the other customers of the OP and that no reference designs for 'Silver Pass' and 'Sawtooth Pass' exist, the Commission is of the view that there is no denial of reference design files as being sought by the Informant on part of the OP.

30. With respect to simulation files, the Informant has argued that even in respect of the files made available of 'Buchanan Pass' and 'Wolf Pass', the same do not include the latest version of the design files – IBIS files (which the OP makes available to others and which contain more specific information based on advanced standards) but only SPICE models have been made available, that too not the complete versions. In the absence of complete reference design files/ information pertaining to 'Skylake', the Informant cannot, by any means, design Server-Boards compatible with the OP's Micro-Processors. As per the Informant, 'Skylake' is the latest Processor of the OP and the OP offers several designs of 'Skylake' Processors under the Purley Platform. 'Buchanan Pass', 'Wolf Pass', 'Silver Pass' and 'Sawtooth Pass' are the four designs of 'Skylake'.

31. The Informant has further stated that though the OP has provided to it access to the IBL portal, the portal does not contain all the requisite information/ files for enabling compatible between the Server-Boards being designed by the Informant and the OPs Processors. Annexure 9 of the information lists the design files/ information, the latest/ updated versions of which the Informant requires to integrate its product with the OP's Processors. Files at sl. nos. 1 to 6 are standard information required while files at sl. no. 2.8 include simulation models for the complete product (IBIS, SPICE). Having requested for these files since July 2017, the OP on 18.10.2017 furnished a link to the Informant for accessing the required documents. On accessing this link, the Informant could access/ download a document titled 'Purley Platform Message of the Week'. Page 36 of this document contained description as 'Full Collateral List'. On clicking at the collateral list, the Informant could access an Excel Sheet listing approx. 700 document references. However, the same does not contain the IBIS files requested by the Informant. Though the same contained some SPICE files, they do not perform the required function (simulation) fully and accurately. Also, out of these 700 documents, the Informant cannot access about 82 documents which are significant to



सत्यमेव जयते



establish the required interface. Further, the Informant has also stated that the e-mails annexed with the information also demonstrate that the OP, having initially furnished some of the reference design files, in spite of repeated requests of the Informant, withheld critical files like IBIS for 'Skylake, Lewisberg, PHY, and Silver Pass, Sawtooth Pass reference design files, *etc.* The Informant even placed on record opinions from industry experts like Würth Electronics and Mentor Graphics stating that IBIS files are critical and SPICE files made available are not capable of performing the desired simulation function. Though the Informant has requested the OP multiple times to provide the IBIS files, the OP has not provided the same. Rather in its e-mail dated 22.02.2018, the OP has communicated to the Informant that IBIS files are made available to tier one customers only. As per the Informant, such refusal on the part of the OP hence amounts to abuse of dominant position by it.

32. Further, as per the Informant, though the OP has argued during the preliminary conference that SPICE files are the later/ advanced versions which include the function of IBIS files, however, the same is not true. IBIS files/ models were introduced much later in 1993 and are much more advanced than SPICE which was introduced in 1973. IBIS files contain more specific information and are based on advanced standards. Further, the same are admittedly provided by the OP to its tier one customers. It is not the case of the OP that providing access to IBIS files to the Informant is not feasible for it. Thus, the OP, being a dominant player, cannot discriminate against the Informant by withholding access to the IBIS files.

33. In contrast, the OP has argued that first of all, in the initial information filed before the Commission, the Informant was only alleging denial of reference design files by the OP. IBIS – AMI for Skylake Server is not a reference design at all but rather a format model for simulation. IBIS is not a reference design for Server-Boards; but it is rather a tool to enable simulation. In Annexure 9 of the information, there is no mention that the Informant is even seeking access to the Skylake Servers. It is only in certain e-mails relied upon by the Informant annexed with the information, that the Informant is seeking IBIS simulation files from the OP. Thus, the Informant itself is not clear as to what files it wants, but it expects the OP to provide the same to it. The OP hence, took an objection that in the written submissions filed by the Informant post the preliminary conference, new averments have been made, which neither form part of the initial information filed by the Informant nor were argued



upon in the preliminary conference. As per the OP, though the Informant had ample time to collect, collate and file such submissions and documents at an earlier stage also before the preliminary conference was held, however, it only sought bring such new submissions on record at a belated stage as a dilatory tactic. Hence, such submissions of the Informant with regard to simulation files may not be taken on record by the Commission.

34. [REDACTED]

[REDACTED], which also has been provided to the Informant. Though it is correct that interfaces modelled using IBIS were introduced a few months after the SPICE model files, the Informant has been unable to prove that SPICE files do not perform the simulation function fully and accurately. The date of launch does not matter. Rather, the e-mails dated 16.07.2018 and 18.01.2018 placed on record by the Informant between the Informant and third parties clearly show the lack of resources and expertise on part of the services provider. Repeated requests for IBIS files have only been made by the Informant because it is unable to use the SPICE files provided by the OP. The e-mails themselves show that IBIS files are only an alternate to the SPICE files provided by the OP. Hence, it is the Informant who lacks the necessary ability and expertise to be able to use the resources made available by the OP through IBL.

35. Regarding the contention of the Informant that certain files though are visible on IBL, cannot be accessed by the Informant, the OP has stated that such files may be those which are customised or bespoke Server-Board reference files developed by the OP on the special request of any customer to be used only with that customer's own design. Such customised files cannot be provided to the Informant nor can the Informant be provided with such additional support by the OP. Further, certain files ([REDACTED], [REDACTED] and [REDACTED]) which the Informant states it cannot access on IBL have already been downloaded by it. In fact, as per



सत्यमेव जयते



the records of the OP, the Informant has already downloaded [REDACTED] of the 82 files on the Purley Platform which the Informant has stated to be non-accessible to it. Moreover, it is the Informant's own submission that out of 700 files listed on Purley Platform, it can access 618 files. Also, the Informant has given the file reference number [REDACTED] for 'IBIS – AMI for Skylake Server' stating that the same cannot be accessed. However, as per Intel's record, file with the reference number [REDACTED] has already been downloaded by the Informant.

36. With regard to the e-mail dated 22.02.2018, the OP has stated that the said e-mail does not state that IBIS files are made available to tier one customers only, rather what is written in the e-mail is that the required document/ file was released to a single tier one customer. The document referred in the e-mail is one of the customised files developed by the OP on special request of the customer to be used only with the customer's own design.

37. From the above opposing submissions of the parties, the Commission notes that the Informant's case is that IBIS simulation files, though are provided by the OP to its other customers *i.e.* ODMs/ OEMs, have not been provided to the Informant. Also, access to the complete set of SPICE files as well, has not been provided by the OP to the Informant. On the other hand, the case of the OP is that the Informant does not need IBIS files for designing a Server-Board at all as the Informant has already been provided with all the SPICE files which are nothing but an alternative to the IBIS files.

38. First of all, the Commission deals with preliminary objection taken by the OP with regard to simulation files that the entire case of the Informant of not being provided with the simulation files has been introduced by the Informant only in its written submissions filed post the preliminary conference and the same does not form part of the initial information filed by the Informant or was argued in the preliminary conference. Hence, such submission of the Informant may not be taken on record by the Commission. The Commission finds no merit in such contention of the OP as the Commission while forming a *prima facie* opinion is not restricted to the facts stated in the information. The proceedings before the Commission are not *in personam* in the nature of a private *lis* between two parties but are rather proceedings *in rem* affecting an entire market. Hence, the Commission may even take notice of further facts not stated in the first information while forming a *prima facie* opinion.



सत्यमेव जयते



39. Next, the Commission notes that the OP has not disputed the claim of the Informant of not being provided with the IBIS files as such but rather only repeatedly stated that the Informant does not need IBIS files for simulation as it has been provided with SPICE files, which can be used as an alternative. However, clearly, access to IBIS simulation files has been given by the OP to at least one ODM/ OEM which is evident from the e-mail dated 22.02.2018 written by the OP to the Informant. Further, it is seen from the record that IBIS files/ models have been introduced much later in 1993 and are much more advanced than SPICE which were introduced in 1973. As per the Informant, IBIS files contain more specific information and are based on advanced standards. Even the OP concedes to the fact that interfaces modelled using IBIS were introduced a few months after the SPICE model files. It does not dispute that IBIS is more advanced than SPICE or that access to IBIS files has been given to other ODMs/ OEMs. It is also not the case of the OP that providing access to IBIS files to the Informant is not feasible for it. The OP has rather stated that the Informant has been unable to prove that SPICE does not perform the simulation function fully and accurately. According to the Commission, such submissions of the OP do not explain as to why IBIS files have not been provided to the Informant though the same are being provided to the other ODMs/ OEMs by the OP. To the Commission, the OP has been unable to provide a reasonable explanation for indulging into such discriminatory treatment.

40. Though the OP has stated in its latest written submissions that [REDACTED], which has been provided to the Informant, however, the Commission notes that the said submission does not form part of the OP's undertaking. The OP was directed *vide* orders dated 12.07.2018 and 19.07.2018 to submit an undertaking categorically stating that it has given access to the Informant to all the files required to design and operate a Server-Board compatible with the OP's Micro-Processors and no extra files are being provided by it to the other ODMs/ OEMs, which have not been provided to the Informant. Though the OP can claim exemption for the customised files which it provides to the other ODMs/ OEMs, there is no reason for the OP not to provide the complete set of IBIS files to the Informant if they are more advanced and convenient to use than SPICE, specifically in view of the fact that the same are being provided by the OP to its other customers, by only stating that alternative SPICE files have been provided to the Informant.



सत्यमेव जयते



41. Moreover, the Commission also notes that out of the 700 document references mentioned on the Purley Platform, the Informant is unable to access multiple files. The Informant states 82 out of such 700 documents, it is unable to access. The OP in reply shows that ■ out of such 82 documents have been downloaded by the Informant. However, with regard to the remaining ■ files, the OP gives no explanation. It rather states that clear access to 614 documents has been given to the Informant. The Commission is of the view that provision of 614 files does not counteract the non-provision of at least ■ files. It has never been the case of the Informant that there has been complete denial of files by the OP to it; rather what the Informant complains is that access to all the files (the complete set) has not been given to it. Thus, the OP has clearly not given access to the Informant to at least ■ important files. Hence, *prima facie*, it cannot be said that access to all necessary files/ documents/ information has been provided by the OP to the Informant, without any discrimination and at par with the other ODMs/ OEMs, which would enable the Informant to design/ develop and manufacture its own Server-Boards which are compatible with the Micro-Processors designed and manufactured by the OP, at this stage. In the absence of any cogent explanation from the OP as to why IBIS files cannot be provided to the Informant or any clarity on whether all SPICE files have been provided by the OP to the Informant, the Commission is of the view that such facts can only be determined by the Commission after a comprehensive investigation into the matter by the Director General (DG) of the Commission.

42. The OP has made a submission that it is not the only source of reference designs available to the Informant. There are alternate options available to the Informant for getting access to the reference designs as well like procuring the designs from ODMs/ OEMs or hiring specialised companies like Wipro, L&T, Infosys, *etc.* for creating a design. Merely because one option is commercially preferable to the Informant over the other, it cannot be said that there is any direct or indirect compulsion on the Informant to procure the reference design files from the OP only. However, the Commission is of the view that such contention of the OP cannot be accepted because it would make no sense for the Informant to procure the design files for compatibility with OP's Processor from any alternate source like procuring the designs from ODMs/ OEMs or hiring specialised companies like Wipro, L&T, Infosys, *etc.* at an enhanced cost when it can easily and conveniently get the same from the OP itself like the other ODMs/ OEMs are getting.



सत्यमेव जयते



43. The OP has also explained that it categorises the manufacturers of Intel based Servers and Server-Boards into two categories – (i) ODMs/ OEMs who are well established IT companies who manufacture and design their own customised Servers and Server-Boards; and (ii) Licensed Manufacturers who enter into Licensing Agreements with the OP and are provided detailed documentation including standard reference designs to make Server-Boards based on such designs. The OP has stated that the Informant belongs to the second category. The OP entered into a Manufacturing Enablement Agreement with it to enable it to manufacture Intel Server-Boards based on Intel’s designs. In accordance with the agreement, it provided the Informant all requisite documentation and materials as well as dedicated technical support. In consideration, the Informant paid to it a license fee. Such Server-Boards made by the Informant being based on Intel’s proprietary designs and materials are sold as Intel Server-Boards. Under the Manufacturing Enablement Agreement, the OP is under no obligation to treat the Informant at par with the ODMs/ OEMs or share its reference designs for Server-Boards.

44. Commission hold that such submissions of the OP do not explain as to why the OP could not have asked the Informant at the first instance when approached for provision of reference design files by the Informant, to enter into the other kind of agreement as the ODMs/ OEMs have with it for getting access to all the requisite files. However, the only reason given by the OP for not treating the Informant at par with the ODMs/ OEMs is the alleged lack of financial and human resources and technical expertise with the Informant. From the e-mail communications annexed with the information by the Informant, the Commission notes that only in one e-mail dated 05.03.2018, the OP has communicated to the Informant that it will be able to share the design files only after execution of an SLA. However, no further details on what kind of SLA needs to be executed or how can the same be executed have been provided to the Informant.

45. Further, after almost 10 months of *to and fro* e-mails, only *vide* one letter dated 04.05.2018, the OP refused to provide the relevant reference designs to the Informant stating lack of ‘*sufficient technical and sales scope and expertise*’. The Informant has stated that at no point of time prior to such letter, any such capacity/ capability requirement was told to the Informant for designing a Server-Board. The Informant has employed more than 30 people who are well qualified designers and the Informant has no dearth of talent or capability for



सत्यमेव जयते



such designing. However, it has not been provided with all the requisite design files for designing a Server-Board compatible with the OP's Micro-Processor. Through the IBL, only piece-meal design files have been provided. The Informant has also stated that there are no thresholds of economic/ human resources prescribed either by the OP or by the industry to be eligible to design Server-Boards/ Servers. As per the Informant, it has deployed sufficient resources for designing the Server-Boards which is subject to expansion based on the need. At no point of time has the OP ever specified to the Informant any deficiency/ incapacity as regards the size of its team/ resources employed.

46. On the other hand, as per the OP, the Informant, having no prior experience in the manufacturing of Server-Boards or Servers except for the work undertaken under the Enablement Agreement cannot jump straight to designing its own Server-Boards like the ODMs/ OEMs even with access to the reference designs, without serious support from the OP. Also, it lacks technical and R&D capability. The ODMs/ OEMs employ hundreds of engineers in their R&D division while in contrast, the Informant has only 59 out of which only 13 are design engineers. Further, in terms of total revenue also, the ODMs/ OEMs dedicate millions and millions of USD towards R&D division while the Informant in 2016-17 had total revenue from operations as \$7.2 million only. In view of such assessment by the OP, it had sent the letter dated 04.05.2018 to the Informant stating that same level of support cannot be provided to it at this stage as is provided to the ODMs/ OEMs because at this point, the Informant does not possess sufficient expertise and resources. As per the OP, the Informant only wants to avail subsidies of the government; it is only for financial incentive that the Informant suddenly seeks to design a Server-Board. However, such designing does not happen overnight. Years of R&D, billions of rupees, *etc.* are required and the Informant relying only on tax subsidies, seek to enter such market and expects the OP's support in such extreme leap of faith.

47. In reply, the Informant has argued that the comparison of the resources of the Informant with well established players in the IT industry to deny entry to the Informant in the Server-Board market, amounts to abuse of dominant position on part of the OP. Even till date, the OP has not informed to it the threshold or the conditions required to be met in terms of financial resources, human resources or expertise, for getting access to all requisite files necessary for designing a Server-Board.



सत्यमेव जयते



48. The Commission notes from the case record that the OP did not specify any threshold set by it or the industry which the Informant was required to meet either in monetary terms or the number of personnel, *etc.* The OP only generally stated that there is a huge difference between the capacities of the Informant and the ODMs/ OEMs who design their own Server-Boards. Such designing is a time taking process and in its opinion, the Informant wanting to enter into the same is a fishing expedition on part of the Informant. The Commission is of the opinion that unless the OP has to undertake some special efforts or incur any costs or risks to provide the requisite files for designing to the Informant, it cannot decline to provide the same only because it does not think that the Informant is capable enough to do such designing work.

49. The only thing in which the OP may have to incur costs is provision of ‘handholding’ or ‘support’ to the Informant by sending its engineers to help the Informant. As per the OP, when the Informant sent the letter dated 20.03.2018 asking the OP to provide to it the reference designs access to design its own Server-Boards like is given to the other ODMs/ OEMs, the OP understood that what the Informant is actually seeking is support and assistance of the same level as is provided to the ODMs/ OEMs in addition to the reference designs to which it already had access to. To other Server-Board manufacturers also, the same design files are provided which have been given to the Informant; however, to such other manufacturers, support of a very high level by the OP is also given once they understand the design files. It is such support that the Informant is seeking. Similar level of support at this stage cannot be provided to the Informant as what the Informant is trying to do is ‘to learn to run before it can walk’. The OP has made available to the Informant the entire database of reference design files, but the Informant lacks the ability to understand and synthesise the same. The OP, at this stage, cannot provide to the Informant the same level of support as is given to the other ODMs/ OEMs. The OP provides technical assistance to those who want to manufacture Server-Boards and Servers based on its Micro-Processors on an [REDACTED]. Technical assistance comprises of – (i) Collateral *i.e.* documentation and materials which are the OP’s intellectual property provided to the customers after executing necessary confidentiality agreements and which are provided to the Informant as well for the Purley Platform; and (ii) Support services *i.e.* customised services provided by highly trained Intel employees. These support services differ for the two



सत्यमेव जयते



categories of Intel customers as mentioned above. The ODMs/ OEMs are provided a higher level of support services while the other customers need a lower level of support only.

50. As per the OP, it is under no obligation to provide any such assistance to the Informant for understanding the files; when the Informant cannot even understand the files, how will it design a complicated product using such files. Though the OP was not required under the Manufacturing Enablement Agreement that the Informant be given access to the Purley Platform (Server Platform for 'Buchanan Pass', 'Wolf Pass', 'Silver Pass' and 'Sawtooth Pass') also, anyhow, all necessary reference designs have been provided by the OP to the Informant through Purley Platform. It is the Informant who is unable to understand the same. The OP has discharged its existing legal relationship under the existing contract with the Informant to the fullest and even more than that, but if the Informant wants such support from the OP, it should have entered into a design agreement with the OP. The OP has not denied to the Informant anything that was required to be given by the OP under law.

51. On the other hand, as per the Informant, there is nothing wrong for a young company to want to enter into designing. Nowhere has the Informant asked the OP to provide to it any 'support' in the form of Intel engineers; the only 'support' the Informant seeks is access to requisite files like is provided to the other ODMs/ OEMs and necessary clarifications upon the same. The OP's belief that the Informant is not only seeking access to the reference design files but also seeking Intel's support services involving considerable costs is grossly incorrect. In none of the communications made by the Informant to the OP, it has sought the OP's assistance by way of deploying/ deputing any engineer to assist the Informant.

52. In view of the categorical submission of the Informant that it is not asking for any 'support' in the form of engineers from the OP at this stage which would lead to incurring of costs and risks by the OP, there seems to be no reason as to why the OP will not co-operate with the Informant so that the Informant is able to design and develop a cost effective Server-Board for the Indian market.

53. Additionally, the OP has asserted that the Informant has itself admitted in its in its e-mail dated 09.05.2018 annexed with the information written pursuant to the MEITY meeting that it is capable of designing its Server-Boards with the material it has without any further assistance from the OP. However, the Informant has submitted in regards to this e-mail that



सत्यमेव जयते



even if the Informant could create the requisite data to ensure integration/ interfacing between the OP's Processors and the Informant's Server-Boards by having recourse to reverse engineering decoding, apart from the cost and time involved in adopting a trial and error approach, there is no certainty that the desired result can be achieved at all. The Informant would run a risk of significant financial and other liabilities. The Commission notes from the said e-mail that all that the Informant stated in the same was that till the time the issue is resolved, the Informant be given a No-Objection to "*continue our efforts to design our server boards without seeking any further files or support from Intel*". The same does not imply that no reference design files were required by the Informant anymore to help it design Server-Boards compatible with the OP's Micro-Processors. Further, as stated above, when the files are being provided to the other ODMs/ OEMs, there is no reason for the OP not to provide the same to the Informant as well.

54. Also, with regard to the Informant's contention that the OP has even failed to provide to it the No-Objection sought though it had agreed to give the same in the MEITY meeting, the OP has argued that the e-mails written by it to the Informant post the MEITY meeting were in the context that as the OP has also provided access to the Informant to information under the Manufacturing Enablement Agreement, it had to ensure that there was no confusion between these two separate issues. However, in reply thereto, rather than providing such clarifications, the Informant reiterated its earlier demands made in the letter dated 20.03.2018, which was a complete reversal from what it had stated in the MEITY meeting. Even the Ministry has not found any fault with the OP's conduct. From the consequent e-mail trail post the MEITY meeting, the Commission notes that such contention of the OP is not acceptable as though the Informant requested at least twice for the No-Objection, the OP failed to provide the same but rather only deferred the matter.

55. Another contention raised by the OP is that under the Manufacturing Enablement Agreement, the Informant is already making Servers and selling in the market which is evident from the Informant's website which lists out five Intel based Servers under its brand name 'Prysm', and hence, it is already present in the market for Servers. In such circumstances, there can be no question of any denial to it to the Server market on part of the OP. The Commission is of the opinion that assembling Servers under the brand name of Intel is not the same as designing and manufacturing own Servers under own name.



सत्यमेव जयते



56. The OP has also argued that it has no incentive to deny access to anyone to the Server or Server-Board market segment. The OP's interests are aligned to ensure multiple manufacturers of Server-Boards and Servers. Since the OP's primary focus in the Server business is the sale of Micro-Processors, it is in the OP's commercial interest to ensure that the market is replete with multiple manufacturers and suppliers of Server-Boards and Servers that use its Micro-Processors. In this regard, the Informant has submitted that abuse of dominance provisions under the Act do not insist on motive or intent on part of the dominant entity. The Informant can only establish the conduct of the OP. The intention/ motive behind the OP's such conduct can only be explained by the OP and anyhow, this fact would not be relevant in the instant matter. The Commission in this regard is of the view that at this stage the Commission is not required to go into the intent or motive of the OP in indulging into the alleged conduct that has been, *prima facie*, found to be abusive. Otherwise also the language of Section 4 does not impose any such obligation on the Commission.

57. Based on the above analysis of the facts and materials presented by the Informant and the OP, the Commission is of the opinion that there exists a *prima facie* case of contravention of the provisions of Section 4 of the Act by the OP in the matter. The Commission holds that the OP being in a dominant position in the market for "Processors for Servers in India" has, by refusing to provide access in a non-discriminatory manner to the complete set of files/ information necessary for the Informant to design its own Server-Boards which are compatible with the Micro-Processor manufactured by the OP, *prima facie*, denied market access to the Informant in contravention of Section 4 (2) (c) of the Act. Further, the OP through its conduct has also *prima facie*, limited and restricted the production of Servers and the market therefor and has also limited the technical/ scientific development relating to Servers in the market in violation of Section 4 (2) (b) of the Act. Consequently, the DG is directed to cause an investigation into the matter to ascertain whether the OP has abused its dominant position in contravention of the provisions of Section 4 of the Act by denying to the Informant access to its reference design files for Server-Boards and/ or simulation files for the same, in a discriminatory manner, not at par with the ODMs/ OEMs, without any reasonable justification for the same.



सत्यमेव जयते



58. It is made clear that, if during the course of the investigation, the DG comes across any other anti-competitive conduct of the OP in addition to that mentioned in the present order, the DG shall be at liberty to investigate the same as well.

59. The DG is further directed to look into the role of the persons/ officers who were in-charge of and responsible for the conduct of the business of the OP at the time of the alleged contravention in terms of the provisions of Section 48 of the Act.

60. Nothing stated in this order shall tantamount to expression of final 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.

61. The Secretary is directed to send a copy of this order along with the information and the documents received in relation to this matter to the Office of the DG.

Sd/-
(Sudhir Mital)
Chairperson

Sd/-
(Augustine Peter)
Member

New Delhi
Date: 09.11.2018

Sd/-
(U. C. Nahta)
Member