



COMPETITION COMMISSION OF INDIA

Case No. 06 of 2022

In Re:

M/s House of Diagnostics LLP
#18 Rajendra Park, Rajendra Nagar
New Delhi – 110 060.

Informant

And

Neurologica Corporation
#14 Electronics Ave., Danvers, MA 01923
United States of America

Opposite Party No. 1

Samsung Electronics Co. Ltd.
#129, Samsung-ro, Yeongtong-gu
Suwon, Gyeonggi-do, South Korea

Opposite Party No. 2

Samsung India Electronics Private Ltd.
20th -24th Floor, DLF Two Horizon Center
Golf Course Road, Sector – 43
Gurugram – 122 002, Haryana

Opposite Party No. 3

Schiller Healthcare India Pvt. Ltd.
Advance House, 2nd Floor
Makwana Road Off Andheri Kurla Road,
Marol Naka, Andheri (E)
Mumbai – 400 059, Maharashtra

Opposite Party No. 4

CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member



ORDER UNDER SECTION 26 (2) OF THE COMPETITION ACT, 2002

1. The present Information was filed by M/s House of Diagnostics LLP ('Informant'), under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') against Neurologica Corporation ('OP-1'), Samsung Electronics Co. Ltd. ('OP-2'), Samsung India Electronics Private Ltd. ('OP-3'), and Schiller Healthcare India Pvt. Ltd. ('OP-4') (hereinafter 'OPs'), alleging, *inter alia*, contravention of the provisions of Sections 3(4) and 4 of the Act (together OP-1, OP-2, OP-3 and OP-4 are referred to as the OPs).
2. The Informant is stated to be in the business of chain of diagnostic centres in and around Delhi NCR, including at Medanta Hospital, Gurugram, Haryana.
3. OP-2, headquartered in Seoul, South Korea, is stated to be one of the world's largest semi-conductor manufacturers and South Korea's top electronics company. It is stated to make a wide variety of consumer devices, including TVs, LCD panels, and printers; semi-conductors such as DRAMs, static RAMs, flash memory, and display drivers; communications devices ranging from smartphones to networking gear; and microwave ovens, refrigerators, air conditioners, and washing machines. OP-3 is stated to be the Indian subsidiary of OP-2.
4. OP-1, operating in healthcare segment, is stated to be the healthcare subsidiary of OP-2, based out of Danvers, Massachusetts, USA. It is stated to develop, manufacture and market imaging technologies and accurate diagnostic solutions to healthcare providers. It is stated to be the only supplier of portable CT scanner machines in India, the product in question in the present matter.
5. OP-4, also operating in healthcare segment, is stated to be a manufacturer and supplier of devices for cardiopulmonary diagnostics, defibrillation and patient monitoring as well as software solutions for the medical industry. Its product range is stated to cover critical care, cardiology, radiology, telemedicine, cardiopulmonary, anaesthesia and surgery. It is also stated to be the exclusive agent through which OP-1 provides aftersales services with respect to the portable CT scanner machine sold by OP-1, in India.



6. The Informant is stated to have purchased “Portable and Mobile CT–CereTom”/“CereTom–eight slice CT scanner” from OP-1 *vide* Purchase Order (‘PO’) dated 31.12.2012, for an amount of \$3,10,000 plus 11.76% Customs Duty. The said machine is stated to be currently installed at Medanta Hospital, Gurugram. The terms and conditions attached to the PO of the aforesaid portable CT scan machine, *inter alia*, included the following:

- a) A second machine shall be purchased within one year subject to successful operation of the first machine.
- b) Comprehensive All Parts Warranty with free replacement of all parts including Tube with no additional cost, for 12 months from the date of satisfactory installation, shall be provided.
- c) After the first year Comprehensive Maintenance Contract (‘CMC’), 2nd year onwards Annual Maintenance Contract (‘AMC’) shall cost ₹1,00,000/- per annum for initial two machines, and for 3rd to 5th machine when ordered, AMC shall be at no additional charge, and the said amount for AMC is escalation free for subsequent years.
- d) All parts insurance cover including the Tube shall be facilitated by OP-4 and shall cost additional 1.1 % of the machine’s invoice value, per annum, post the 1st year CMC. Premium for the insurance is to be borne by the customer. In case OP-4 is not able to provide/facilitate the same, this cost shall be added to the cost of AMC as mentioned above and then it shall be converted to all parts covered CMC with replacement including Tubes, plastic and other vacuum parts, boards *etc.*
- e) OP-4 shall provide an uptime guarantee of 98% per year. It further guarantees that at no time the machine shall be down for more than 1 day at a stretch. In case the machine is down beyond 48 hours, it shall entail downtime penalty @ ₹10,000/- per day.
- f) Any upgrade of whatsoever nature of the machine shall be provided free of cost for the next 5 years. The machine shall be upgraded to match any latest machine/technology for Ceretom as sold by OP-1 for the next 5 years, in both hardware and software.



7. It has been averred that based on the above terms and conditions, the Informant computed the lifetime cost of owning and operating the machine at the time of making the purchase. However, it alleged that after the expiry of the period under the PO and at the time of renewing the terms and conditions for provision of aftersales services with respect to the machine purchased, the OPs, *inter alia*, revised the cost of AMC provided to the Informant in an arbitrary manner or in the alternative, offered to the Informant Maintenance Contract whereunder only engineer visits would be covered, and prices to be charged for spare parts replacement, service provision *etc.* would not be disclosed in advance.
8. In specific, the Informant alleged as under:
- (i) In September, 2016, OP-4 unilaterally increased the price of AMC to ₹15,00,000/- plus additional one-time amount of ₹10,00,000/- for replacement of spare part Monoblock (CT Tube), which the Informant was forced to accept. Though the amount of ₹10,00,000/- paid was to be adjusted in the CMC price of ₹15,00,000/-, OP-4 did not do such adjustment.
 - (ii) OP-4 also added a 2% annual escalation clause.
 - (iii) OP-4 restricted the duration of contract to 5 years from 2016 to 2021.
 - (iv) Though CMC was expiring on 25.09.2021, no one month advance notice for renewal of CMC was given by OP-4 to the Informant.
 - (v) *Vide* quotation dated 22.09.2021, OP-4 again wanted to increase CMC cost from ₹15,00,000/- to ₹65,00,000/- plus 18% GST (including cost of spare part X-Ray Tube) or ₹35,00,000/- plus 18% GST (excluding cost of spare part X-Ray Tube). Thereafter, on such amount, *vide* revised quotations dated 25.09.2021, 10% percent discount was offered making it ₹58,50,000/-, ₹31,50,000/-, which is however, still on a very higher side. Also, such amounts quoted are for a period of one year contract only.
 - (vi) OP-4 forced the Informant twice over a period of 5 years (2015 to 2020) to take computer and software upgradation at a cost of ₹19,00,000/-.



- (vii) Nonetheless, though the last upgradation was done in 2018, within a span of 3 years, *vide* e-mail dated 07.11.2021, OP-4 issued End of Life ('EoL') letter for the Informant's machine.
 - (viii) Though the Informant requested the OPs for buyback of the machine as the OPs were not maintaining it properly; the OPs have till date not agreed to it.
 - (ix) The Informant is unable to get the machine serviced from outside on its own or through any other third party as the machine is a sophisticated machine encrypted/protected by passwords, which are known only to the manufacturer or authorised service provider. Though the Informant requested the OPs to provide passwords, encryption codes, accessibility to spare parts, diagnostic tools, technical know-how and/or other information, data *etc.* so as to enable the Informant to get the machine serviced from outside, OP-4 stated that it has already provided password related to operations and manual to the Informant. However, it refused to provide to the Informant, know-how and service password.
 - (x) Since September 2021, the CMC of the machine has not been renewed. Thus, OPs are charging ₹59,000 per service visit. However, even after servicing, the machine again shows error within 3-4 days.
 - (xi) The Informant has been forced to purchase spare parts like CT Tube and centipedes at very high prices.
 - (xii) The OPs are forcing the Informant to take 'Service only AMC' on which the Informant asked them to share spare parts prices with the Informant to enable it to take a viable decision. However, the OPs refuse to share such price list also.
 - (xiii) As on date, the machine has been down since more than 90 days. Hence, as per uptime clause in the PO, the OPs are bound to pay to the Informant, penalty @₹10,000 per day *i.e.* ₹9,00,000 and still counting.
9. Based on the above averments and allegations, the Informant filed the instant information against the OPs alleging contravention of the provisions of Sections 3(4) and 4 of the Act.
10. With respect to the allegations of contravention of the provisions of Section 4 of the Act, the Informant stated that:



- (a) A ‘portable’ CT Scan machine is a separate relevant product when compared with other CT Scan machines.
- (b) In terms of the decision of the Commission in *House of Diagnostics LLP v. Esoate S.p.A. and Another*, Case No. 09 of 2016 decided on 27.09.2018, the relevant geographic market ought to be “Delhi NCR”.
- (c) In terms of the decision of the Commission in *Shamsher Kataria v. Honda Sael Cars India Ltd. and Others*, Case No. 03 of 2011 decided on 27.07.2015, two separate relevant markets ought to be delineated in the present matter as firstly, the cost of switching the machine for the Informant would be extremely high and hence, it is locked-in with the OPs once the machine is purchased, and secondly, constant arbitrary increase of CMC/AMC for the machine by the OPs have made calculation and estimate of lifetime cost of the machine by the Informant, completely wrong and redundant. Such two separate relevant markets ought to be:
- (i) market for manufacture and supply of Portable CT Scan Machines in Delhi NCR (RM I); and
 - (ii) market for spare parts and repair service of Portable CT Scan Machines in Delhi NCR (RM II).
- (d) In India, the only supplier of Portable CT Scan machines is OP-1, thereby making it dominant in RM I. Further, as OP-1 provides exclusive aftersales services through OP-4, it is also dominant in RM II.
- (e) The conduct of the OPs is in violation of:
- (i) Section 4(2)(a) – Imposing unfair and discriminatory prices and conditions on the Informant for renewal of CMC/AMC;
 - (ii) Section 4(2)(b)(i) – Limiting and restricting RM II and provision of services therein by not providing encryption/passwords *etc.* for availing after-market services from outside;
 - (iii) Section 4(2)(b)(ii) – Forcing the Informant to either abandon the equipment and issuing of EoL letter, thereby restricting technical/scientific development;



- (iv) Section 4(2)(c) – Not sharing encryption/passwords, technical knowhow *etc.* thereby not letting any other person to enter RM II which is clear denial of market access;
 - (v) Section 4(2)(d) – Forcing the Informant to accept supplementary obligations like upgradation of machine at exorbitant price, accept CMC at manifold rates, *etc.*; and
 - (vi) Section 4(2)(e) – Using dominance in first delineated relevant market to enter into and protect its interest through OP-4 in second delineated relevant market.
11. With respect to the allegations of contravention of the provisions of Section 3(4) of the Act, the Informant stated that:
- (a) The agreement between the Informant and the OPs amounts to a tie-in arrangement as defined under Explanation (a) to Section 3(4) because the Informant has been forced to accept servicing of the machine from the OPs only which shows that service of the machine had been tied up with purchase of the machine;
 - (b) The agreement between OP-1 and OP-4 amounts to exclusive supply agreement and exclusive distribution agreement as defined under Explanations (b) and (c) respectively, to Section 3(4), as OP-1 provides aftersales services for its machine exclusively through OP-4;
 - (c) The agreement between OP-1 and OP-4 amounts to refusal to deal as defined under Explanation (d) to Section 3(4) because the OPs are not sharing encryption/passwords with the Informant to enable it to get the machine serviced from any third party outside;
 - (d) The conduct of the OPs is causing an appreciable adverse effect on competition ('AAEC') in India where competition does not even exist in both the Relevant Markets as delineated.
12. As per the Informant, due to the aforesaid conduct of the OPs, the Informant is incurring huge losses not only in financial terms but also in terms of loss of goodwill. Shifting critically ill/ICU patients who are kept alive on life support system and



dependent on the machine to CT Scan room because of non-working of portable CT scan machine at the hospital, poses extremely high risks. Even the doctors at Medanta Hospital, Gurugram have written letters in this regard to the Informant, however, it was unable to get the machine operative by the OPs.

13. Based on the facts and allegations stated above, the Informant prayed that the Commission (i) directs an inquiry and/or investigation be held into the matter by the Director General; (ii) directs the OPs to cease and desist from indulging in anti-competitive activities; (iii) impose penalty on the OPs; (iv) directs the OPs to provide passwords/encryption, technical knowhow and spare parts necessary and essential for service of the Informant's machine; (v) directs the OPs to provide a copy of the agreement between Samsung Group and OP-4 to bring out the price paid by OP-4 to Samsung Group; (vi) directs the OPs to honour their commitment and service the machine of the Informant as per the terms of the PO; (vii) directs the OPs to honour their commitment and service the machine of the Informant as per mutually agreed terms; (viii) directs the OPs to provide penalty in respect of failure to keep uptime of the machine of the Informant; (ix) directs the OPs to pay back the capital cost incurred by the Informant and increased cost forcefully charged by the OPs from the Informant over the years; (x) directs the OPs to take back/ revoke the EoL issued; (xi) give a finding on contravention of the provisions of the Act by the OPs on the basis of which compensation can be claimed by the Informant from Appellate Tribunal; and/or (xii) pass any such other order as the Commission deems appropriate in the present facts and circumstances of the matter.
14. Further, the Informant also filed a separate application under Section 33 of the Act seeking interim relief stating that the machine is lying idle at Medanta Hospital, Gurugram and this is causing a lot of inconvenience to the doctors and patients. As such, it prayed the Commission (i) to direct the OPs to immediately restore the machine in proper and full working condition if not at terms of the PO but then at least at rates charged previously *i.e.* ₹15,00,000/- + 2% escalation per year starting from 26.09.2016 amounting to ₹16,56,121/-; and/or (ii) pass any other order which the Commission may deem fit under the present circumstances, equity and justice.
15. The Commission considered the Information and the application for interim relief filed by the Informant in its ordinary meeting held on 15.02.2022, and *vide* order of even



date, forwarded an electronic copy of the Information to OP-1 and OP-4, seeking their comments/response thereto (including replies on certain specific queries), and also to file its rejoinder to such response(s), if any.

16. In its response dated 18.04.2022 to the Information, OP-4 submitted as follows:

- (a) The Informant has stated certain facts wrongly before the Commission. The actual facts are that *vide* e-mail dated 03.11.2012, a quotation was shared with the Informant for supply and installation of one Ceretom–eight slice CT scanner (portable) along with all available accessories. *Vide* letter dated 05.11.2012, terms and conditions were finalised between the Informant and OP-4 for initial two machines and then subsequent three more machines, including CMC and AMC. Accordingly, such discounted prices were for more than one machine; however, the Informant ended up purchasing only one machine with accessories from OP-1. Thus, one such machine was delivered, installed and made operational on 13.02.2013.
- (b) For the first year, the aforesaid machine was covered under warranty; thereafter, a Labour AMC ('LAMC') which included only maintenance, servicing and upkeep of machines, but not the cost of spare parts, was entered into between the Informant and OP-4 on 12.02.2014 for a period of one year ending on 11.02.2015 and the same was subsequently revised and renewed on yearly basis for two years *i.e.* up to 11.02.2017. While LAMC for 2016-17 was still operational, the Informant entered into Comprehensive AMC ('CAMC') on 26.09.2016 (which included cost of spare parts) with OP-4 for its machine, renewed till 25.09.2021. As per the terms of the CAMC, the new revised quote was ₹15,00,000/- p.a. excluding taxes. Along with the said price, a 2% annual escalation was also agreed upon between the parties. The Informant renewed the CAMC for a consecutive period of 5 years *i.e.* till 2021.
- (c) The Informant agreed to such increase in rates of its own volition because not only was it fully satisfied with the services offered by OP-4, but it was also well aware that it had negotiated the original rates by indulging in misrepresentation and deceit. Terms of PO dated 05.11.2012 were based on reliance that the Informant intends to place orders for multiple machines and not just one machine. It was not



at all feasible for OP-4 to provide CAMC service at requested price for only one machine to the Informant. Further, as per e-mails exchanged between the Informant and OP-4 in 2016, CAMC of ₹15,00,000/- was much lower than direct CAMC with the manufacturer. In fact, the Informant was also aware that the CAMC charged was less than several other customers of OP-4.

- (d) On 23.09.2021, before expiry of CAMC dated 26.09.2016, new CAMC quotes of ₹65,00,000/- (including X-ray Tubes and excluding taxes) and ₹35,00,000/- (excluding X-ray Tubes and taxes) for continued maintenance services were issued by OP-4. Upon request of the Informant and after negotiations and discussions, considering long association with the Informant, OP-4 even offered 10% discount whereafter which, prices came down to ₹58,50,000/- and ₹31,50,000/- respectively.
- (e) Such prices offered were the best feasible price and were settled considering the condition and EoL period of the machine. The Informant is well aware of this. The Informant's machine sold on 05.11.2012 had only a year and a half left of its commercially serviceable life. Hence, continuing earlier CAMC charges as quoted in CAMC dated 26.09.2016 with 2% escalation would have been commercially unfeasible for OP-4. OP-4 stated that one-year CAMC charges are higher than five-year CAMC as risk of spare parts failure is distributed over five years and therefore, becomes lesser than concentrated risk of one year (that too in latter life of machine which has commercial life of 10 years) where chances of spare parts failure is much higher. CAMC offered by OP-4 to all its customers is driven by same calculations and considerations, and it ensures that said terms stay uniform across the board, without any undue favours to a customer.

17. Regarding specific allegations made by the Informant, OP-4's submissions are as follows:

- (a) In relation to issuance of EoL to the Informant, OP-4 submitted that issuing of EoL certificates for diagnostic machines is a common practice. As per International Standard IEC 60601-1 which is generally followed for medical equipment in India, expected serviceable life of medical machines/units shall be as decided by manufacturer and ISO 14971 which is mandatory for manufacturers requiring them to provide information on maximum expected product service life. This concept of



EoL marks the end of manufacturer's obligation to make spare parts of machine available to purchaser or provide maintenance of the same. The said practice is undertaken to ensure the accuracy and innovation in machines, and also to allow manufacturers to move away from supply and maintenance of old equipments. EoL does not mean that the machine itself is rendered useless, the same only extinguishes the liability of the manufacturer to provide spare parts and manage upkeep of the machine. The Informant is also well aware that even most government tenders consider 10 years to be the expected life of such machine. In fact, some of spare parts like X-ray tube costs more than ₹20,00,000/-, and if required to be changed, the said costs will be borne by OP-4. Further, the Informant is attempting to profiteer by making illegal claims against the OPs after having used (to full satisfaction) the machine for virtually its entire serviceable life.

- (b) With respect to delineation of relevant market, OP-4 submitted that market for 'portable CT Scan Machines' may not be defined as a relevant market separate from 'CT Scan Machines' as the end-use of both is same.
- (c) Regarding the dominance of OPs, it has been submitted that there are other companies in the market also which are manufacturing and supplying portable CT scan machines and the OPs are not the only entity in business of such machines. Such other products are: See Factor CT3 of Epica, Airo of Mobius, Loop X of Brainlab, O Arm of Medtronic, Studio imaging Ring of Elekta, and On-Site of Siemens. These other products may not be similar in design or quality to the machines and equipment provided by the OPs; however, they would serve as functional substitute to the same. Therefore, the OPs are not in a dominant position or abusing the same in any manner, whatsoever. Further, the OPs have sold only 23 Ceretom CT Scan machines on pan India basis since 2013. Hence, they cannot be a dominant player by any stretch of imagination.
- (d) In relation to servicing of the machine, it has been submitted that all passwords for operation of the machine/unit as also the user manual *etc.* were shared with the Informant. The Informant is well-aware from the outset that only properly trained and skilled technicians can access and repair the machine; any untrained person trying to calibrate the machine may cause radiation accidents and therefore, the same is not advisable. The Informant has no right to demand technical know-how



etc. from OP-4 as the same will be against the terms of Exclusive Distributorship Agreement entered into between OP-1 and OP-4. The know-how and details sought by the Informant are proprietary to the manufacturer and therefore, OP-4 is not in a position to disclose the same to the Informant. It is OP-1 who holds rights in the patents, pending patents, trade secrets, trademarks, copyright, *etc.* vested in the machine purchased by the Informant. Considering vested IP Rights of OP-1 in the machine, refusal to share the same with the Informant cannot be seen as an abuse of dominant position. Further, the present case is nothing but a ruse by the Informant to extract proprietary information from the OPs and misuse the same along with its technology partners.

- (e) Regarding downtime penalty, it was submitted that during non-subsistence of maintenance contract, there can be no downtime penalty.
- (f) OP-4, regarding software upgrade, OP-4 submitted that it never forced the Informant to take/upgrade any software or otherwise. Software are essential for operational efficiency and accuracy of the machine and therefore, it is advisable to install and keep it upgraded. It was the decision of the Informant all along to take the same or have the upgrade.
- (g) Regarding procurement of spare parts, it has been submitted that the Informant is free to procure spare parts and services from the open market. Many of the spare parts are freely available in the market. OP-4 does not have any dominance in spare part and services market as well. It never forced the Informant to purchase spare parts from it; in fact, there have been instances when the Informant procured certain parts (batteries) from third party providers, and OP-4 assisted the Informant in installing the same without taking any objection to it. Further, although OP-4 is the exclusive authorised service provider for the machine in question, it has no objection if the Informant decides to get the machine serviced from anywhere else. However, in such situation, OP-4 cannot be held liable for any errors or malfunctions in the machine thereafter.

18. As sought by the Commission, OP-4 also provided copies of the agreements entered into between itself and certain other customers as well as submitted the charges (In ₹)



collected from the Informant for providing aftersales services by OP-4, which are as follows:

(In ₹)

Year	Contract Type	Period	Base Amount	Tax	Total Amount
2015	LAMC	12.02.2015 – 11.02.2016	1,00,000	12,360	1,12,360
2016	LAMC	12.02.2016 – 11.02.2017	1,00,000	15,000	1,15,000
2017	CAMC	26.09.2016 – 25.09.2017	15,00,000	99,000	15,99,000
2018	CAMC	26.09.2017 – 25.09.2018	15,30,000	2,75,400	18,05,400
2019	CAMC	26.09.2018 – 25.09.2019	15,60,600	2,80,908	18,41,508
2020	CAMC	26.09.2019 – 25.09.2020	15,91,812	2,86,526	18,78,338
2021	CAMC	26.09.2020 – 25.09.2021	16,23,648	2,92,257	19,15,905
		Total	80,06,060		

19. As far as OP-1 is concerned, *vide* e-mail dated 18.04.2022, it stated that it has received the Commission's order dated 15.02.2022; OP-4 is its exclusive distributor for India and it has submitted a comprehensive reply to the allegations made in the letter to present a fair and complete picture to the Commission to assist with its investigations and findings. OP-1 stated that it continues to compile and collate the information related to the case working with OP-4 and will be happy to respond to any pertinent questions by the Commission.
20. On 02.05.2022, the Informant also filed its rejoinder to the response filed by OP-4 along with additional information, and thereafter on 05.05.2022, it filed an application under Sections 43 and 48 of the Act against OP-1 and its individuals, stating that OP-1 has failed to comply with the directions of the Commission regarding filing of a response to the Information and accordingly, proceedings against it (and Samsung Group) be initiated under Section 43 of the Act and under Section 48 be initiated against their individuals, for non-compliance of the directions issued by the Commission.
21. In its rejoinder, the Informant majorly reiterated the submissions made by it in the Information filed. It, however, further stated that it has been falsely submitted by OP-4 that assurance to buy three more subsequent machines was given by the Informant to OP-1. As per the Informant, its intention to buy subsequent machines was purely based on operations and performance of the first machine. Further, it stated that it is clear from the e-mail communications exchanged in 2015 itself that the Informant had raised



concerns regarding inability of OP-4 to properly upkeep and maintain the first machine purchased by it.

22. The Informant also stated that it is clear from the e-mail trails available on record of 2016-17 that in the year 2016 also, OP-4 forced the Informant to accept the new CAMC arrangement, which the Informant was refusing to accept. The Informant submitted that it never opted for LAMC and it was always covered under CAMC. The rearrangement of CAMC was forced upon it by OP-4. As per the Informant, the strategy employed by the OPs was to make the Informant a locked-in customer after it had purchased the machine from the OPs and gets dependent on the OPs for the upkeep of the machine. The OPs also forced the Informant to forego all its claims and losses while renewing the CAMC including that of outstanding downtime penalty.
23. The Informant further submitted that when compared with other customers of the OPs, it can be seen that the OPs did not change the original conditions mentioned in the respective POs of other customers post purchase, as was the case with the Informant. Further, it submitted that the warranty offered to other customers like JP Narayan Apex Trauma Centre, AIIMS Delhi, PGI Chandigarh *etc.*, was for 5 years; to Max Hospital Delhi was for 2 years; however, for the Informant, was for only 1 year. CMC charges to the above stated hospitals were also pre-defined for the next 5 years after warranty without any escalation totalling to comprehensive cover for ten years with pre-defined escalation free of cost. However, so was not the case with the Informant. Also, other customers made payments of CMC after completion of CMC period on receipt of bank guarantee of 2.5% of the cost of the equipment valid till 2 months extra after expiry of entire CMC period. All software upgrades were also covered free of cost during CMC for other customers. However, the same have been charged heavily to the Informant by the OPs. Manpower has also been provided free of cost during the warranty period to others to ensure smooth functioning and operation of the equipment; but no such facility was provided to the Informant even on being charged heavily. Terms and conditions of other customers also included conditions like releasing 80% of payment of the equipment within 30 days from the satisfactory installation of the equipment and balance 20% to be released after 4 months of the installation subject to satisfactory report about running of the equipment. As such, the cost paid by the Informant for 9 years for upkeep of the machine under consideration is more than what has been paid



- by others to upkeep their respective machines for 10 years. This clearly shows the discriminatory approach adopted by the OPs towards the Informant.
24. Regarding EoL, the Informant reiterated that the EoL issued to it was not properly signed as well as undated. The same seems to be drafted specifically for the Informant as OP-4 was not willing to provide services to the machine under consideration any further and wanted to force the Informant to take CAMC at inflated prices or buy an upgraded new machine.
 25. The Informant also submitted that merely writing a line “*I would strongly recommend that you consider buyback options etc.*” does not mean giving an option of buyback, especially in the absence of any quote, price, terms, conditions in this regard.
 26. Regarding dominance of the OPs, the Informant submitted that the OPs have sold 29 and not 23 Ceretom Machines in India, post 2013 and the total number of portable CT scan machines sold in India by the OPs is 36. Further, it submitted that in the absence of data regarding the number of machines sold by competitors of the OPs in India, the number of machines sold by the OPs in India cannot be called too less. The Informant also submitted that out of the 6 other alleged manufacturers of portable CT scan machines mentioned by OP-4 in its reply, the Informant could only confirm that one sells its machines in India and it has till date, sold only 2 machines in India.
 27. In reply to the submission of OP-4 that the Informant had in fact procured certain part (batteries) from third party providers and OP-4 assisted the Informant in installing the same without taking any objection, the Informant categorically denied any such procurement. It rather reiterated that in the absence of OP-4 providing know-how, diagnostic tools, passwords *etc.* necessary, the Informant cannot get its machine serviced from outside.
 28. Making such submissions, the Informant reiterated the prayers made by it, in the Information filed.
 29. The Commission in its ordinary meeting held on 18.05.2022, considered the Information and the response and rejoinder thereto filed by OP-4 and the Informant respectively, and decided to pass an appropriate order in due course.



30. The Commission, at the outset, notes that in the present matter, allegations have been made with regard to (i) abuse of dominant position by OP-1; and (ii) existence of an anti-competitive agreement between OP-1 and OP-4. No allegations have been made with respect to OP-2 and OP-3. As such, the Commission proceeds to analyse these two sets of allegations made by the Informant w.r.t. contravention of the provisions of Sections 4 and 3 of the Act, respectively.

Section 4

31. Before examining the conduct of OP-1 in terms of the provisions of Section 4 of the Act, the Commission first proceeds to determine whether OP-1 is an ‘enterprise’ within the meaning of Section 2(h) of the Act.
32. As per the information available on the website of OP-1¹ itself, it is a subsidiary of Samsung Electronics and develops, manufactures and markets innovative medical imaging equipment for healthcare facilities and private practices worldwide. OP-1 is present in the radiology field and is delivering fast, easy and accurate imaging solutions including CT scan machines to healthcare providers.
33. From the above, it is clear that the nature of activities performed by OP-1 i.e. manufacture and sale of healthcare products including portable CT Scan Machine, is an ‘economic’ activity. As such, OP-1 is an ‘enterprise’ within the meaning of Section 2(h) of the Act.
34. Once OP-1 is established to be an ‘enterprise’, the Commission, for the purposes of examining the allegations of abuse of dominance against OP-1 under Section 4 of the Act, (a) defines the ‘relevant market’; (b) assesses whether the party proceeded against is in a position of dominance in the delineated relevant market; and finally (c) determines if the conduct of the dominant party is abusive in nature (exclusionary or exploitative).
35. Delineation of a relevant market is the most crucial element for assessing dominance and abuse of dominance by an enterprise. As per Section 2(r) of the Act, “*relevant market means the market which may be determined by the Commission with reference*

¹ <https://www.neurologica.com/about-us>, last accessed on 10.02.2022



to the relevant product market or the relevant geographic market or with reference to both the markets.”

36. As per the Informant, the relevant product in the present matter is ‘Portable CT Scan Machine’ which is the product purchased by the Informant from OP-1. The Informant has stated that a ‘portable’ CT Scan machine is a distinguished product from other conventional CT Scan machines because the end consumers using this machine are critically ill/ICU patients who are kept alive on life support systems. Shifting such patients to a CT Scan machine affixed in a room is at the cost of extremely high risks associated with mobilisation from ICU and critical care units to CT Scan Room. On the contrary, to save their life, a portable CT Scan Machine can be brought to them to conduct lifesaving diagnosis, even in the middle of a procedure. Hence, the very feature of portability of this machine makes it a distinct product from other CT scan machines.
37. However, in its reply to the Information, OP-4 has submitted that the relevant product market ought to be the market for ‘CT Scan Machines’ as the end use of both portable and non-portable CT Scan machines is the same.
38. In the opinion of the Commission, a portable CT scan machine may not be interchangeable and substitutable with other conventional CT scan machines. The very feature of portability of the machine makes this machine a differentiated product in terms of the factors enumerated under Section 19(7) of the Act including physical characteristics and end-use of the product, price of the product, consumer preference, etc. Therefore, in light of the definition of the relevant product market given in Section 2(t) of the Act, the relevant product market in the present case may be delineated as the market for ‘Portable CT Scan Machines’.
39. As far as the relevant geographic market is concerned, the Informant has stated that the relevant geographic market in the present case ought to be ‘Delhi NCR’ as was taken by the Commission in another case involving similar facts *i.e. HoD v. Esoate (supra)*. However, the Commission notes in this regard that the contention of the Informant is misconceived as in the case of *HoD v. Esoate (supra)*, the Commission had defined the relevant geographic market as the ‘territory of India’. The Commission had noted that the “potential consumers of G-Scan machines are scattered in different parts of the country. Also, the seller of these machines has the distribution network and



infrastructure not only to sell and supply the Dedicated Standing/Tilting MRI in entire India but also to provide after sales service, spare parts and other support. This makes the relevant geographic market in the instant case as the whole of India.”

40. In the present matter also, the portable CT scan machine has been purchased by the Informant from OP-1 from outside India. In terms of the factors provided under Section 19(6) of the Act, there seem to be no regulatory trade barriers, local specification requirements, national procurement policies, language barriers *etc.* with respect to the purchase of the machine or availing aftersales services in respect thereof across the territory of India. As such, given the definition of the relevant geographic market in Section 2(s) of the Act, the relevant geographic market in the present case appears to be the ‘territory of India’.
41. Hence, in the present matter, the Commission is of the opinion that the relevant market in the instant case is “*market for portable CT scan machines in India*”.
42. It is noted that the Informant has also stated that in the present matter two separate primary and secondary relevant markets ought to be defined: – one concerning manufacture and sale of the machine, and the second concerning provision of aftersales services and spare parts of the machine. As per the Informant, the cost of switching the machine for the Informant would be extremely high and hence, it is locked-in with the OPs once the machine is purchased, and secondly, constant arbitrary increase of CMC/AMC for the machine by the OPs has made calculation and estimate of lifetime cost of the machine by the Informant, completely wrong and redundant. Hence, relying on the decision of the Commission in the case of *Shamsher Kataria (supra)*, the Informant has stated that two distinct primary and secondary markets ought to be delineated in the present matter.
43. The Commission notes that the allegations made by the Informant in the present matter relate to the aftermarket *i.e.* repair services and provision of spare parts with regard to portable CT Scan machines. Hence, it becomes pertinent to assess whether a single unified relevant market as delineated above would be sufficient or whether further sub-segmentation of market into primary market and secondary aftermarket needs to be made for the purposes of assessment of dominance of OP-1.



44. In this regard, the Commission notes that competition issues in aftermarkets arise when a producer of durable goods, in an attempt to monopolize the aftermarket, behaves in a fashion that restricts alternative producers from offering a complementary good or service. This monopoly behaviour and the concomitant abuse of market power allow the producer in the primary market to charge supra-competitive prices and impose other anti-competitive restraints in the aftermarket. The primary basis for determination of the existence of a systems market or aftermarket involves a determination of whether the customers engage in whole life costing, or the reputation effects deter producers of the primary product from setting supra competitive price for the secondary product.
45. In the Indian context, the Commission in *Shamsher Kataria (supra)*, defined separate relevant product market and aftermarket observing that:

“As per the Commission, one of the key factors in choosing one product rather than another (and, therefore, the associated level of utility) depends, among other things, on the 'product price'. Therefore, where it may be easier for a consumer to shift to a different razor (where an average Gillette razor may be priced at Rs.500) than for the same consumer to shift to a separate car (average price of a car would be Rs. 3 lakh or more), consumer will shift to another primary product than to pay incrementally exploitative prices for the secondary product(s).”

46. In the present matter, the Commission notes that the Informant, being a well-known diagnostic centre chain, would be purchasing highly specialised technical machinery like CT scan machines, from time to time. Hence, it would very well be in a position to assess the life time/expectancy as well as lifetime cost of such a machine at the time of making the initial purchase. Further, regarding life time/expectancy, the Commission notes that as per information available in public domain², *“the radiological equipment has a definite life cycle span”* and the article (mentioned in footnote) also lists out the life expectancy of the various types of imaging equipment including CT Scan machines. Though the Informant has alleged that the constant increase of CMC/AMC for the machine by the OPs has made calculation and estimate of lifetime cost of the machine by the Informant completely wrong and redundant, the fact of the matter is that the Informant, being a well-known diagnostic centre chain, at the time of purchase,

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4195838/>, last accessed on 11.02.2022.



seems to have been in a position to make whole life cost analysis of the machine in question.

47. Further, the Commission notes that in two earlier similar cases, *HoD v. Esoate (supra)* and *Star Imaging and Path Lab Pvt. Ltd. and Another v. Siemens Ltd. and Others, Case No. 06 of 2020 decided on 13.08.2021*, the Commission took a single unified market and did not define a separate market for aftersales services. In *Star Imaging and Path Lab (supra)*, the Commission stated that “*the inability to conduct the whole life costing of a product is an essential factor for having separate markets, but that inability is not present in the current scenario. On the contrary, just like the Commission’s order in Case No. 100 of 2014 (Shri Amitabh v. M/s Kent RO Systems), the IPs in the present case had the ability to undertake the whole life cost analysis before buying both the CT scan machines as well as the MRI machines*”.
48. Therefore, the Commission is of the view that in the present matter, delineation of a single unified market i.e. “*market for portable CT scan machines in India*”, would be appropriate.
49. In such delineated market, the Commission now proceeds to ascertain the position of dominance, if any, held by OP-1.
50. The Informant had stated in the Information filed that OP-1 is the only supplier of portable CT scan machines in India. Hence, it is by default the dominant player in the delineated relevant market.
51. However, OP-4, in its response, has stated that other companies are also there in the market which are manufacturing and supplying portable CT scan machines and the OPs are not the only entity in business of such machines. Such other products are: See Factor CT3 of Epica, Airo of Mobius, Loop X of Brainlab, O Arm of Medtronic, Studio imaging Ring of Elekta, and On-Site of Siemens.
52. In reply to the above submission of OP-4, the Informant, in its rejoinder, has submitted that out of the six other alleged manufacturers of portable CT scan machines mentioned by OP-4, the Informant could get confirmation from only one that it sells such machines in India. Of the remaining five, four did not reply to the Informant, and one (i.e. Siemens) stated that its machines would be available from 2023 in India.



53. Further, the Commission notes that OP-4 has submitted that the OPs have till date since 2013, sold only 23 Ceretom CT Scan machines pan India. In its rejoinder, the Informant has submitted that the OPs have in fact sold 29 Ceretom Machines in India post 2013, and the total number of portable CT scan machines sold in India by the OPs is 36.
54. From the above material provided by the parties, the Commission observes that the OPs are not in a monopoly position in the delineated market as was initially alleged by the Informant in its Information. Admittedly, there is at least one other player *i.e.* Brainlab present in the Indian market. Further, from the information available in the public domain³, it is noted that another player *namely* Medtronic, also supplies its machine O-Arm (Complete Multi-Dimensional Surgical Imaging System) in the Indian Market. As submitted by OP-4, there may be even four more players present in the Indian market. As such, there seem to be multiple other players present in the market in India. Further, as per the information available on record, the entire market for portable CT scan machines appears to be import based and with the availability of other manufacturers, the purchasers of these machines are free to import similar/identical machines from other manufacturers. Moreover, even if the figures given by the Informant are taken to be correct, the OPs have till date not sold more than 36 portable CT scan machines in India since 2013. In this market construct, OP-1 does not appear to command any market power which can enable it to operate independent of market forces or affect the market or consumers in its favour. As such, the issue of abuse of dominance by OP-1 does not arise. Accordingly, the Commission is of the opinion that no case of contravention of the provisions of Section 4 of the Act, can be made out against OP-1.

Section 3

55. As far as the allegations of there being an anti-competitive agreement in violation of competition law amongst OP-1 and OP-4 are concerned, the Commission notes that as OP-1 is stated to be the manufacturer and supplier of the product in question, while OP-4 is stated to be its authorised aftersales service provider, any agreement between these two entities, who are at different stages or levels of the production chain in different markets, may be analysed in terms of Section 3(4) of the Act.

³ <https://www.aiims.edu/en/tenders/archivetender/proprietary-tender.html?view=expire&id=6908-ref-no51-stores-do-ortho-pac-2016-17-fsc&catid=131> last accessed on 14.06.2022.



56. It has been alleged by the Informant that OP-4 is the exclusive aftersales service provider of OP-1 in India with respect to the machine in question. On the other hand, OP-4 has replied that though it is the authorised service provider of aftersales services with respect to the machines of OP-1 in India, there is no bar upon the Informant to procure spare parts or avail aftersales services, from third parties.
57. In this regard, the Commission notes that the Informant has simply stated that as the machine is sophisticated and encrypted/protected by passwords which are known only to the manufacturer or authorised service provider which are not being provided to it, it is unable to get the machine serviced from outside. In reply to this, OP-4 has submitted that all passwords related to operation of the machine/unit as also the user manual *etc.* have been shared with the Informant. The Informant is well-aware that only properly trained and skilled technicians can access and repair the machine; any untrained person trying to calibrate the machine may cause radiation accidents and therefore, the same is not advisable. As far as technical know-how *etc.* of the machine is concerned, the same forms part of the Exclusive Distributorship Agreement entered into between OP-1 and OP-4. The same are proprietary to the manufacturer and therefore, OP-4 cannot disclose the same to the Informant. It is OP-1 who holds rights in the patents, pending patents, trade secrets, trademarks, copyright, *etc.* vested in the machine purchased by the Informant.
58. In view of the above submissions of parties, the Commission is of the opinion that the facts of the case do not highlight any anti-competitive agreement in terms of Section 3 of the Act and accordingly, the allegation of the Informant with regard to contravention of Section 3 of the Act is misplaced and devoid of any merit.
59. Be that as it may, from the submissions made by the parties, the disputes and issues existing between them seem to be more in the nature of contractual disputes without any competition issue involved therein.
60. The Commission further observes that though the Informant claims that it was charged heftily by the OPs at the time of renewal of its maintenance contract in 2016, for such grievance, the Informant has approached the Commission in 2022 only. The Informant has not only approached the Commission belatedly but has also approached at a time when the machine of the Informant is approaching EoL, as pointed out by OP-4.



61. In view of the foregoing, the Commission is of the considered opinion that no case of contravention of any of the provisions of the Act is made out against either OP-1 and/or OP-4 in the present matter. As such, the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act. All pending applications also stand dismissed.
62. Before parting, it is noted that on 08.06.2022, OP-4 has filed a sur-rejoinder to the rejoinder filed by the Informant submitting that the Informant, *vide* its rejoinder, has brought new information and grounds before the Commission to build upon a prejudicial case against OP-4 and hence, it necessitated the filing of the instant sur-Rejoinder to reply to the new information, submissions and grounds pleaded by the Informant which were originally not pleaded in the Information. In response to the same, the Informant has filed an application dated 08.06.2022 to register its strong objection to the sur-rejoinder made by the OP-4 and requested the Commission to reject the sur-rejoinder and not take the same on record for any purposes.
63. In this regard, for the reasons already given while closing the case, the Commission observes that no further and/or other order(s) and/ or direction(s) are required to be passed on these aspects.
64. The Secretary is directed to forward a certified copy of the present order to the parties/their legal counsel(s), accordingly.

New Delhi
Date: 16.06.2022

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member