

Indian Exhibition Industry Association v. Ministry of Commerce & Industry and Ors

Case No. 74 of 2012

Nature of Infringement: Abuse of Dominant Position

Legal Provisions: Section 2(h), Section 4, Section 27, of the Competition Act, 2002.

Order: Order Passed under Section 27 of the Competition Act, 2002.

Key Words: Abuse of Dominant Power, Exhibitions/Fairs market.

FACTS

Indian Exhibition Industry Association (IEIA) an association of exhibition organisers/venue owner's service providers has filed a complaint against Ministry of Commerce and Industry (MCI) and Indian Trade Promotion Organisation (ITPO), a Section 25 Company, wholly owned by Government of India. Objectives of ITPO are to promote, organise and participate in industrial trade fairs and exhibitions in India or abroad.

ITPO issues a guideline for Licensing of Exhibition Space & Facilities in Pragati Maidan (the guidelines) imposing a "time gap restriction" between two exhibitions/ fairs. This time gap restriction was amended from time to time and finally as it stood in 2011 is that a time gap of 90 days before and after the fair in case of ITPO fairs and third Party fairs having similar product profiles and for other events having similar product profile/ coverage 15 days. It was alleged that ITPO adversely affected the established exhibitions of other players in market by scheduling its own unrecognised exhibitions and refusing the permission to other players on the pretext of arbitrary time gap restrictions, which were further cancelled causing loss to industry as whole. Further exhibitors were forced by the ITPO to avail certain services which were not required by them but were imposed by ITPO by way of unreasonable and arbitrary conditions in the agreement. It was alleged that, due to its position, ITPO plays a dual role as a regulator as well as the organiser of exhibitions which cause abuse of dominant power and led to the contravention of section 4 of the Competition Act.

COMMISSION DECISION

Relevant Market

In the present case the allegation relates to the policies and procedures stipulated by the MCI and ITPO with respect to licensing of venues to exhibitors for conducting fairs and exhibitions. In order to attract exhibitors and visitors, the venue of the exhibition plays a key role. The venue regularly used for organising national and international exhibitions and trade fairs can be distinguished for venues for other kind of events in terms of parameters such as physical characteristics, consumer preference. On the basis of this the relevant product

market will be “market for provision of venue for organising national and international exhibitions and trade fairs”

Further relevant geographic market in the present case was taken a region of Delhi, as Delhi has been holding exhibitions at Pragati Maidan since 1977 and has its rich historical background for holding international and national exhibitions and fairs. Further in terms of available infrastructure of other exhibitions centres in comparison to Pragati Maidan, the condition of supply and demand for venues for national and international exhibitions in Delhi are different from those prevailing outside. Further, the factors such as consumer preference, adequate facilities, transport cost etc. makes Delhi a distinct destination for holding International and national exhibitions and trade fairs.

Thus relevant market in the present case is “*provision of venue for organising international and national trade fairs/exhibitions in Delhi*”

Dominant Position of ITPO

There were no competitors of ITPO in the relevant market which could match it in terms of size and importance. Furthermore, multiple roles were performed by ITPO at different levels involved in the holding of events i.e. as a regulator it issues necessary permissions and no objection certificate, as an organizer of international events in India and abroad, it formulates policies and guidelines for holding such events, grants approvals for third party exhibitions held at Pragati Maidan and other international events at other venues. Additionally, it also organizes trade fairs and exhibitions at Pragati Maidan.

These plural functions and powers conferred on ITPO only strengthen its position of dominance in the relevant market. Due to the unique features and characteristics of Pragati Maidan, it becomes the first preference and almost irreplaceable for holding important national and international events. Further, since Government has envisaged ITPO to play a significant role in various facets of organizing national and international events, the consumers are heavily dependent upon ITPO for holding events at Pragati Maidan. There are entry barriers in terms of availability of adequate space, appropriate location, state of art infrastructure, visibility on global map, approvals for being in the relevant market of providing venue for holding international and national events in Delhi. In the absence of alternate venues, most of the third party organizers are dependent on ITPO for venue for conducting international and national events in Delhi. There is also absence of any countervailing buying power which could be exerted upon ITPO.

Abuse of Dominant Position

On the time gap restriction, it is evident that by stipulating favourable time gap restrictions for its own events as compared to third party organized events, ITPO imposed unfair and discriminatory conditions on the third party event organizers at Pragati Maidan. The findings show that the time gap restriction between two “third party events” was 15 days before and after the event whereas in case of ITPO organised events/exhibitions, the time gap restriction was 90 days before and after the event. This was accepted by ITPO in its own written submissions. Such a conduct is clearly in contravention of the provisions of section 4(2)(a)(i)

of the Act. Besides, it also limited/ restricted the provision of services and market thereof in contravention of the provisions of section 4(2)(b)(i) of the Act. Further, increase in the time gap restrictions for holding third party events, before and after ITPO own events of similar profile, amounted to denial of market access to the third parties who compete with ITPO for organizing events at Pragati Maidan in contravention of the provisions of section 4(2)(c) of the Act. Further, ITPO has used its dominant position in the relevant market of venue provider in Delhi for organizing events to protect and enhance its position in the market of event organization and thereby contravened the provisions of section 4(2)(e) of the Act.

Ministry of Commerce & Industry was also impleaded as opposite party in the present case. Though no specific allegations are levelled against the Ministry, yet the same was presumably arrayed as a party due to its role in policy formulation with regard to development of trade, commerce and industry in the country as well as implementation projects. The Commission is of the considered opinion that the aforesaid functions of the Ministry do not qualify it to render an “enterprise” within the meaning of section 2(h) of the Act.

ITPO is imposed with penalty @ 2% of the average of Income/Receipt/Turnover for the last three preceding financial years which is equivalent to Rs. 6,75,03,540.00