

## **In re: House of Diagnostics LLP v. EsaoteS.p.a (Case No 09 of 2016)**

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**Decision Date:** 27.09.2018

**Keywords:** *Dominant position; abuse of dominant position; monopoly*

**Issue:** Whether there has been a contravention of the provisions of Sections 3 and 4 of the Act?

**Rule:** Sec. 27 of the Competition Act, 2002

The information was filed by M/s House of Diagnostics LLP (Informant) under *Section 19(1)(a)* of the Competition Act, 2002 against Esaote S.p.A. (OP-1) and Esaote Asia Pacific Diagnostic Pvt. Ltd. (OP-2) [collectively, Esaote] alleging contravention of the provisions of *Sections 3 and 4* of the Act.

The allegations of the Informant related to the purchase of three 'Dedicated Standing/ Tilting MRI machine' ('G-Scan machines') manufactured by OP-1 for its diagnostics centres. The total consideration of the said machines was agreed to be Rs. 6,15,00,000/-.

It was alleged that the OPs are abusing their dominant position by charging huge sum of money for supplying spare parts and by refusing to perform their obligations under the contract even though substantial sum of money from the contract had already been paid. It was also stated that since OPs are the only seller and service provider of 'Dedicated Standing/ Tilting MRI machines' in India, it has 100% market share and by virtue of this, they are able to extract huge amounts from the consumers and could unilaterally alter the terms and conditions of comprehensive maintenance contract to the detriment of the Informant and other consumers.

The Informant further stated that after selling 'Dedicated Standing/ Tilting MRI machines' to the Informant, OPs entered into an arrangement with another diagnostic centre in New Delhi i.e. Star Imaging and Path Labs (P) Ltd. to supply the same machines 'free of cost' and 'free of maintenance cost'. It was alleged that the said machines were running on a revenue sharing basis between OPs and Star Imaging and Path Labs (P) Ltd. As per the Informant, once the manufacturer of the said machines enters the market of providing MRI scans in weight bearing positions to the patients, it becomes difficult for the Informant to compete in this market with

the OPs, as the latter, in collusion with third party, can provide the same services to the patients at lower prices.

Based on the above averments and allegations, the Informant filed the instant information against OPs alleging contravention of the provisions of *Section 3 and 4* of the Act.

Based on scientific evidence, claim of the OP Group, statement of doctors, radiologists, diagnostic centres who are the consumers in this case, the relevant market as 'market for standing/ tilting MRI machines in India'.

The Commission concluded that the OP Group commands a virtual monopoly i.e. 100% market share in the market for dedicated standing/ tilting MRI Machines in India.

The Commission opined that the OP Group abused its dominant position in the relevant market by refusing to supply 'See through Perforated RF Cage' despite the same being part of the project. Further, instead of supplying perforated cage, the OP Group supplied lesser priced opaque cage and thereby imposed unfair prices also upon the Informant. Such conduct was held to be clearly an unfair business behavior and one that fell foul of the provisions of Section 4(2)(a)(i) & (ii) of the Act.

Further, the Commission held that the OP Group acted unfairly and thereby abused its dominant position by refusing to provide Head Coils with the machines to the Informant in contravention of the provisions of Section 4(2)(a)(i) of the Act.

Therefore, the Commission concluded that OP Group violated the provisions of Section 4(2)(a)(i), 4(2)(a)(ii), 4(2)(b) and 4(2)(c) of the Act, by abusing its dominant position in the relevant market. Accordingly, OP Group was directed to cease and desist from indulging in conduct found to be in contravention of the provisions of the Act.

The Commission imposed a penalty of Rs. 9.33 lac on the OPs for the impugned conduct which was found to be in contravention of the provisions of *Section 4* of the Act, under *Section 27* of the Competition Act, 2002.