

IN RE: SOWIL LIMITED & BENTLEY SYSTEMS INDIA PVT LTD.

Decision date: 02/07/2019

Keywords: anti-competitive practice, horizontal and vertical agreement, abuse of dominant position

Issue: Whether the OP's insistence to renew all 8 licenses amounted to an unfair and monopolistic practice, and an abuse of its dominant position?

Rule: Sec. 3(3), Sec. 3(4) and Sec. 4 of the Competition Act, 2002.

The Informant had purchased certain softwares from the OP, which is engaged in the business of providing software solutions. The Informant had also entered into a SELECT Program Agreement – an agreement which enables the subscribers to acquire licensing privileges and services offered from time to time under the SELECT Program – with the OP for renewal of its licenses annually.

The case of the Informant is that the OP compelled the Informant to renew all the 8 licenses, even though it was not desirous, owing to certain business exigencies. It was argued that the condition of the OP to renew all the 8 licenses is unfair and monopolistic. Taking advantage of the dominant position, the OP forced the Informant to renew all 8 licenses.

The OP argued that the Informant had failed to provide any evidence to show that the OP is a dominant entity. It submitted that the relevant market in the matter is “market for CAD software in India” which is fragmented and highly competitive due to the presence of many players.

The Commission held that there was no *prima facie* case made out. It noted that neither Sec. 3(3) nor Sec. 3(4) are attracted since this is not a horizontal or vertical agreement of the nature as mentioned in these sections.

For the purpose of Sec. 4, the Commission noted that the relevant market for the purposes of this matter is the market for the “*supply of CAD software services in civil engineering works in India*”. It observed that there are many software companies such as AutoDesk, Carlson, Site3D, SierraSoft, Trimble etc. providing CAD based software solutions that are developed for the purposes of civil engineering thereby making the relevant market competitive. Thus, it concluded that OP does not enjoy dominance in the relevant market.