

**IN RE: AIR WORKS INDIA (ENGINEERING) PRIVATE LIMITED (INFORMANT) AND GMR
HYDERABAD INTERNATIONAL AIRPORT LIMITED (GMR) (OPPOSITE PARTY I), GMR AERO
TECHNIC LIMITED (GAT) (OPPOSITE PARTY II)**

Decision date: 03/10/2019

Keywords: abuse of dominant position, essential facility, damage to consumer

Rule: Sec. 4 of the Competition Act, 2002.

The Informant was a company engaged in the business of providing maintenance, repair and overhaul ('MRO') services of aircraft to airlines and general aviation. GMR/GHIAL had entered into a joint sector agreement with Government of India through the Secretary, Ministry of Civil Aviation, New Delhi for Development, Construction, Operation and Maintenance of Rajiv Gandhi International Airport, Hyderabad. GAT was a wholly owned subsidiary of GMR Aerospace Engineering Ltd., which in turn was a wholly owned subsidiary of GMR, and therefore they together constitute a group.

GMR had the exclusive rights to maintain, manage and operate the RGIA including to use its discretion in respect of provision of services by third-parties at RGIA. The Informant was one of the third-party service provider providing MRO services at RGIA. It was submitted that the nature of services provided by the Informant requires it to be located within the airport premises.

The Informant executed a License Agreement dated 20.12.2011 with GMR for a period of three years and in terms of the license agreement, the Informant was given an area of 96.04 square meters for setting up, operating and maintaining the Airline Engineering Maintenance Office and Warehouse. On expiry of the term of the License Agreement dated 20.12.2011, an agreement dated 28.11.2014 was executed between the Informant and GMR entitling it to continue to provide the Line Maintenance services to the aircrafts until 22.03.2019. The Informant averred that since GMR manages and operates the RGIA, the Informant was dependent upon GMR to grant it the necessary license to operate from the Airport for provision of its services to various airlines, as aforementioned.

Since the License Agreement dated 28.11.2014 was valid till 22.03.2019, the Informant requested GMR to renew the agreement for five years. The Informant was informed that the License Agreement could not be renewed citing the reason that 'As we will be needing the said space for our on-going expansion works at RGIA, we regret to inform you that we will not be extending the Agreement any further beyond 22nd March 2019'.

The Informant had stated that for providing continuous operations at the airport a license was required to be obtained. The Informant had alleged that GMR was dominant in the 'market for line maintenance Services at RGIA' and being the dominant player, it had abused its dominant position. The Informant, on the basis of recently audited balance sheet, alleged that GAT was under tremendous financial hardship and requires support from the parent

company. The Informant had alleged that the motive behind termination of its license by GMR was to protect/ promote its own group entity, i.e. GAT.

The Informant had levelled the following allegations pertaining to abuse of dominance by GMR:

- a. Denial of market access to the Informant by refusing to renew the license so as to enable the Informant to continue to provide Line Maintenance Services to the Airlines at RGIA and by withholding access to the premises in the said airport thereby causing impediments for the Informant to continue providing Line Maintenance Services, in contravention of Section 4(2)(c) of the Act;
- b. Leveraging its dominant position in the upstream market and indulging in exclusionary practices and restricting provision of services in the downstream market thereby eliminating competition in contravention of Section 4(2)(e) of the Act;
- c. By ousting the Informant from providing Line Maintenance Services at RGIA, thereby, limiting and restricting provision of services by Informant and adversely affecting competition in the market for such services in contravention of Section 4(2)(b)(i) of the Act;
- d. Creating a monopolistic environment which would enable GAT to operate on its own terms and conditions without being affected by any competition and charge exorbitant charges from the customers (Airlines) thereby increasing the cost to end customers which may potentially lead to contravention of Section 4(2)(a)(i) of the Act.

Based on the aforesaid facts and allegations, the Informant had inter-alia prayed to the Commission to order an investigation to be made in the matter, besides seeking a direction to GMR to renew the License Agreement dated 28.11.2014 with the Informant, which had allegedly been discontinued without any objective justification. The Informant had also filed an application dated 21.08.2019, filed on 22.08.2019, under Section 33 of the Act seeking interim relief for restraining GMR and GAT from taking any coercive action against the Informant and for allowing the Informant to continue providing Line Maintenance Services at the RGIA.

Analysis of the Commission

RELEVANT MARKET

‘Relevant market’ consists of ‘relevant product market’ and/or ‘relevant geographic market’. In this case, the Informant was aggrieved by alleged abusive conduct of GMR whereby it was denied access of the airport premises to provide Line Maintenance Services to the airlines. The Commission was of the view that ‘provisioning of Line Maintenance Services’ was the downstream market where the alleged abuse was occasioned. However, for analyzing GMR’s position, the upstream market *i.e.* ‘*market for provision of access to airport facilities/premises*’ attains relevance.

For providing any other third-party services, including the Line Maintenance Services, at this airport, the service provider needs to have access to the facilities/premises at RGIA. Hence, the

relevant geographic market would comprise ‘Rajiv Gandhi International Airport (*i.e.* RGIA)’. Thus, the relevant market would be ‘*market for provision of access to airport facilities/premises at the RGIA*’.

Since the case was of denial of market access as well that of leveraging, two markets need to be identified, first relevant market, in which the erring entity was alleged to be dominant and the second (downstream) market in which the said entity was protecting its position, directly or indirectly, by exercising abuse in the upstream market. The downstream market for the purposes of carrying out the analysis was identified to be ‘*market for the provision of Line Maintenance Services at the RGIA*’.

ASSESSMENT OF DOMINANCE

The Commission notes that in a consortium bid project, competition was at the time of bidding and was known as ‘*competition for the market*’. Once the project was awarded, the awardee inevitably becomes a dominant player, rather a monopolist, with regard to developing, controlling, operating and maintaining the airport as it can operate independent of the market forces. This necessarily implies GMR/GHIAL had dominance in terms of providing access to the facilities/premises at RGIA to various third-party service providers who wish to provide their services at the airport. Thus, there did not seem to be any doubt that GMR/GHIAL was dominant in the ‘*market for provision of access to airport facilities/premises at the RGIA*’.

ABUSE OF DOMINANT POSITION

Competition problems arise when the dominant undertaking competes on the ‘downstream’ market with the buyer whom it refuses to supply. The term ‘downstream market’ was used to refer to the market for which the refused input was needed in order to manufacture a product or provide a service. In this case, the Informant was essentially a ‘buyer’ (a customer) of GMR for availing access to the location/space at RGIA which seems to be a necessary ‘input’ for providing Line Maintenance Services. The three guiding criteria/conditions where refusal to deal amounts to abuse are: *firstly*, the refused input was indispensable for an entity in order to compete on the downstream market; *secondly*, refusal shall most likely eliminate competition on the downstream market; and, *thirdly*, refusal shall most likely damage consumers.

Undoubtedly, the access to the airport facilities/premises was an essential facility to provide third-party services, especially the Line Maintenance Services which necessarily requires physical presence of the service provider and its infrastructural facility at the airport premises. It was not possible for the Line Maintenance Service provider to station itself outside the airport

premises as the service was required between the landing and take-off of the aircraft. Thus, RGIA may be construed as an essential facility for providing the services in the downstream market. [fulfilling the first condition]

The Informant and GAT were the most significant players in the downstream market posing competitive constraints on each other. Given that physical presence at the airport premises was indispensable to provide Line Maintenance Services, non-renewal of the license arrangement by GMR with the Informant *prima facie* seems to amount to the Informant's exclusion from the downstream market, which may skew the market in favour of GMR's group entity, *i.e.* GAT. Thus, the facts of this case *prima facie* suggest denial of market access to the Informant coupled with exclusionary motive by GMR to favour its own group entity (*i.e.* GAT). Such alleged denial of market access thus *prima facie* warrants an investigation under Section 4(2)(c) as well as Section 4(2)(e) of the Act, as the denial seems to be aimed at leveraging of the dominant position by GMR in the upstream market to adversely affect the competition in the downstream market. [fulfilling the second condition]

The Commission further notes that the alleged conduct by GMR had the potential to limit and restrict the provision of Line Maintenance Services and the technical development relating to provisioning of such services to the prejudice of consumers within the meaning of Section 4(2)(b) of the Act, thus, fulfilling the third condition *i.e.* refusal likely to damage consumers.

Thus, if the Informant was excluded from this market, its existing as well as potential customers (*i.e.* the airlines) would be required to either have their in-house arrangement for their line maintenance, which may increase their cost and impact revenue; or avail services from an alternative service provider operating in the downstream market, which as alleged by the Informant will be GAT. In such a situation, the entity providing Line Maintenance Services in downstream market would virtually be the same as the one dominant in the upstream market, being part of the group. Thus, there would neither be any effective competitive constraint nor any regulatory constraint to put a check on such entity in respect of either price or quality of services in the downstream market. This can potentially result in over-charging from the airlines (which was the intermediate consumer) and may also have an adverse impact on the end consumer in the long run. Thus, *prima facie* a contravention of the provisions of Section 4(2)(b) of the Act had also been made out.

CONCLUSION

Based on the foregoing analysis, the Commission was of the considered view that *prima facie* a contravention with regard to Section 4(2)(b), Section 4(2)(c) and Section 4(2)(e) of the Act was made out against GMR. The DG was, thus, directed to carry out detailed investigation into the matter, in terms of Section 26(1) of the Act,