



COMPETITION COMMISSION OF INDIA

Case No. 23 of 2019

In Re:

Satyen Narendra Bajaj,
No. 18/3, Chitrakoot, 1st Cross,
Kumaracot Layout, High Grounds,
Bengaluru – 560 001

Informant

And

PayU Payments Private Limited
32, Viraj Building, SV Road above HDFC Bank,
Khar, West Mumbai,
Maharashtra – 400 052

Opposite Party No. 1

Enstage Software Private Limited
No. 25, Shankaranarayana Building 1,
First Floor, East Wing,
M G Road, Bengaluru,
Karnataka – 560 001

Opposite Party No. 2

CORAM

Mr Ashok Kumar Gupta
Chairperson

Ms Sangeeta Verma
Member

Mr Bhagwant Singh Bishnoi
Member

Present for the Informant :

Mr. Santosh Muttalli, Adv
Mr. Aditya Bhardwaj, Adv
Mr. Manjunath A.S., Adv

Order under Section 26(2) of the Competition Act, 2002

1. The present information has been filed by Mr. Satyen Narendra Bajaj (hereinafter, '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, '**Act**')



alleging contravention of provisions of Section 4 of the Act by PayU Payments Private Limited (hereinafter, ‘OP-1/PayU’) and by Enstage Software Private Limited (hereinafter, ‘OP-2/Wibmo’). OP-1 and OP-2 are hereinafter collectively referred to as ‘Opposite Parties/ OPs’.

Facts and Allegations as stated in the Information

2. The Informant is an individual user/consumer of the services provided by PayU and other e-payment gateways.
3. PayU is a fintech company that provides payment technology solutions to online merchants. It was founded in the year 2002 and has its head-quarter at Hoofddorp, Netherlands. It allows online businesses to accept and process payments through payment methods that can be integrated with web and mobile applications. Further, PayU is the e-payment division of Naspers, a global internet and entertainment group and one of the leading technology investors in the world. Naspers is a leading financial services provider in the global growth markets and is engaged in the business of providing payment gateway services and other digital payment enablement services to both consumers and businesses. It also holds a Non- Banking Financial Company (‘NBFC’) license in India to offer credit services.
4. Wibmo is a leading technology and service provider for the financial services industry, best known for its hosted risk-based authentication, 3D secure, and payment security services. It provides solutions ranging from mobile payments, fraud and risk management, prepaid solutions and a host of merchant services. It works with most of the large Indian banks to implement security protocols such as one-time password authentication and other risk management solutions. As stated by the Informant, on the basis of information available on its website, Wibmo is certified by Mastercard, Visa, RuPay as well as the Payment Card Industry Data Security Standard (‘PCI DSS’) which means that it can process/authenticate all forms of digital payments from cards to mobile based transactions.



5. During the financial year 2017-2018, PayU has availed many services from Wibmo such as use of 3D secure page powered by Wibmo, Risk based authentication, QR code-based solution, integration with Tally *etc.* to generate invoice, prepaid card authentication and loyalty program. As stated, it can be inferred from the above that PayU and Wibmo share very close commercial links with each other.
6. PayU is stated to be a '*dominant*' player in the market of e-payment processing gateways in India with a high market share in some sectors, for example, 55% in e-commerce and 22% in travel agency. The Informant has delineated the relevant market as "*e-payments gateway in India*", in which it claims that PayU is dominant.
7. It is stated that PayU acquired Wibmo. The OPs as a combined entity ('**Combination**') is directly or indirectly likely to result in unfair or discriminatory conditions in availing e-payment processing gateway services in India.
8. The said Combination is stated to have strengthened the position of PayU in the market of e-payment processing gateway services in India for completion of the e-payments due to the dominant position held by Wibmo in the downstream market "*risk-based authentication and payment security services in the e-payments gateway in India*", as defined by the Informant as a secondary market. As per the Informant, this is likely to result in unfair and discriminatory conditions in availing payment gateway services in India for the consumers as well as the other competitors of PayU and Wibmo. This allegedly raises valid concerns, as a consumer is not only limited in his options to avail services of PayU in the relevant market, but also he is '*at the sole expense of PayU and Wibmo*', which opens up the scope for PayU and Wibmo as a group to exploit the consumers by abusing their dominance in the upstream as well as the downstream market. In this regard, the Informant alleged that PayU has indulged into the following practices of abuse:
 - 8.1. PayU has intentionally foreclosed the market for other competitors by denying them proper access to Wibmo in the downstream market;



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- 8.2. PayU has substantially created entry barriers for new market players by capturing the downstream market through Wibmo, so that no other competitor can use a safe pathway to lead customers towards a safe e-payment transaction. In the last five years, no major player has entered the e-payment gateway in India and this has led to limitation of choices and preferences on behalf of the customers.
9. As per the Informant, the present case also relates to some of the emerging problems in the digital markets where the relevant and the secondary markets exhibit key features like (i) increasing returns (as PayU's business expands in scale, costs keep falling, making it that much easier for the business to go much further); and (ii) network effects – that lead to the creation of a 'winner-takes-all' or at least a 'winner-takes-most' phenomenon.
10. Based on the aforesaid facts and allegations, the Informant has prayed to the Commission to hold PayU liable for both exclusionary as well as exploitative abuses of dominance in contravention to Section 4 of the Act, which has allegedly caused Appreciable Adverse Effect on Competition in India ('AAEC') in the relevant and the secondary market.
11. The Informant also filed an application for interim relief under Section 33 of the Act praying for quashing of the combination arrangement between the Opposite Parties as null and void.
12. The Commission considered the matter in its ordinary meeting held on 02.07.2019 and directed to relist the matter. On 08.08.2019, the Commission again considered the matter and decided to pass an appropriate order in due course. In the meantime, the Informant *vide* his letter dated 06.09.2019, requested to assist the Commission in the matter. Based on such request, the Commission called the Informant for a preliminary conference on 14.11.2019. During the preliminary conference on 14.11.2019, the Informant sought liberty to file additional information. The Informant filed certain additional information on 12.12.2019.



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13. In the additional information, the Informant attempted to demonstrate the effect of integration as a result of the acquisition of Wibmo by PayU and tried to differentiate the transaction processes done on two online marketplaces, namely www.amazon.in and www.flipkart.com. According to the Informant, PayU has integrated its risk-based authentication, 3D secure and payment security services which were rendered by Wibmo with its customer Amazon. It is alleged that due to integration of services of Wibmo with PayU on www.Amazon.in, it takes less than 5 seconds to generate the One-Time Password (OTP). However, on www.flipkart.com there is no such integration and it takes more than 20 seconds for generating OTP. This way, according to the Informant, integration of Wibmo with www.amazon.in provides its customers the best '*user interface and user experience*' which has led to reduced time in completing the transaction but at the same time ensuring customers a more secure system. This has allegedly given an advantage to PayU which cannot be matched by any of its competitors.
14. Based on the above, the Informant, *inter alia*, alleged that the acquisition of Wibmo '*will provide PayU complete details of the accounts of buyer and seller along with commission rates charged by other payment gateways*'. This would give PayU access to ready customer database with the help of which it can on-board any merchant by providing lower commission rates in comparison to its competitors. In short, this would facilitate PayU in having a clear advantage over its competitors as it has enabled it to build a digital ecosystem which is capable of harmonising transaction processing on both the acquiring and issuing sides amounting to an abuse of dominant position.
15. The Commission considered the contents of the additional information on 26.12.2019 and decided to pass an appropriate order in due course.
16. At the outset, the Commission notes that the premise upon which the information is filed is that pursuant to the impugned Combination, the Opposite Parties have become dominant in the market. The Informant has alleged that resultant to the combination, the parties are attempting to monopolise the e-payment gateway market in India. As per the Informant, this attempt to monopolisation is likely to have exploitative as well as



exclusionary effects in the relevant market as defined by the Informant. Moreover, it is alleged that on the strength of the combination, the OPs or PayU is trying to monopolise the e-payment gateway market in India and adversely affecting the competitors as well as the consumers by limiting their options.

17. The Commission is of the view that while the Act prohibits an abuse of dominant position by an enterprise, mere existence of dominant position, without any *prima facie* evidence of its abuse, is not recognised as an anti-competitive conduct in the scheme of the Act. In order to establish a *prima facie* case for intervention, an abuse of a dominant position cannot be based on a mere existence or potential to achieve dominance in the market.
18. The Commission notes that the impugned combination was consummated sometime in the month of April 2019 as per the information available in public domain. The Informant has raised certain apprehensions that the impugned combination may give rise to the possibility of abuse of a dominant position. However, investigation under the Act cannot be ordered solely based on conjecture and apprehension. The mandate of the Act is clear. The trigger to order investigation under Section 26(1) is the *prima facie* case for intervention either under Section 3 or Section 4 of the Act. Further, Section 4 of the Act requires existence of an alleged abusive conduct which can be investigated. Dominance in itself is not bad, its abuse is. The erstwhile market legislation, namely the Monopolies and Restrictive Trade Practices Act, 1969 (repealed *w.e.f.* 01.09.2009) provided for control of monopolies. However, the Act made a paradigm shift from 'monopoly being *per se* bad' to 'abuse of dominant position' being bad in law. Therefore, even if contention of the Informant is accepted that the OPs have secured a dominant position, which the Commission is not deliberating at this stage, the existence of dominance bereft of any abusive conduct under the provisions of Section 4 of the Act, cannot be held to be the basis to order investigation. The *prima facie* existence of abusive conduct under the provisions of Section 4(2) of the Act is a *sine qua non* to order investigation under the Act. There is no evidence furnished which could suggest that the OPs have indulged in any such abusive conduct. Moreover, the Commission notes that the contents of the additional information filed by the Informant do not further



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the Informant's case under the Act. The Informant has merely stated that there is reduction in transaction time and a more secured payment ecosystem, owing to such integration as mentioned before. Thus, in the absence of any alleged abusive conduct, it will be legally untenable to direct an investigation under the Act. With respect to the Informant's allegation on access to data by PayU that allegedly allows it an unfair competitive advantage, the Commission finds it premature to deal with this issue at present, especially in the absence of any evidence of exclusionary or exploitative abuse/conduct.

19. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case for investigation and the information filed is closed forthwith under Section 26(2) of the Act. Consequently, no case arises for consideration of the application of interim relief under Section 33 of the Act.

20. The Secretary is directed to communicate the order to the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 29/01/2020