



COMPETITION COMMISSION OF INDIA

Case No. 74 of 2012

In Re:

Indian Exhibition Industry Association

Informant

And

Ministry of Commerce & Industry

Opposite Party No. 1

Indian Trade Promotion Organization

Opposite Party No. 2

CORAM

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. S. L. Bunker
Member

Present: Shri Malay Shrivastava (ED, ITPO), Shri R.K. Singh (GM, ITPO), Shri
D.K. Jain (Dy. GM, ITPO), Shri Hitesh Sethi (Manager, ITPO), Shri



B.N. Gupta (Manager, ITPO), Shri V.P. Malik (Manager, ITPO), Ms. Jasdeep Seth (Dy. Manager, ITPO) for OP 2 (ITPO).

Shri Muneesh Malhotra (Advocate), Shri Achin Mittal (Advocate), Shri Vikram V. Minhas (Advocate) and Brig. (Retd.) Raj K. Manchanda (ED, IEIA) for the Informant.

Order under Section 27 of the Competition Act, 2002

1. The present information under section 19(1)(a) of the Competition Act, 2002 ('the Act') was filed by Indian Exhibition Industry Association ('the informant') against Ministry of Commerce & Industry ('OP 1') and Indian Trade Promotion Organization ('OP 2'/ ITPO) alleging *inter alia* contravention of the provisions of section 4 of the Act. The Commission after considering the entire material available on record *vide* its order dated 06.05.2013 passed under section 26(1) of the Act, directing the DG to cause an investigation to be made into the matter and to submit a report.

Brief facts of the Case

2. The informant is an association of exhibition organisers/ venue owners/ service providers, registered under the Societies Registration Act, 1860 with the objectives of *inter alia* promoting development of Trade Fairs & Exhibition Industry and to support its orderly growth.

3. OP 1 is responsible for development of trade, commerce and industries in the country. OP 2 is a company registered under section 25 of the Companies Act, 1956 and is stated to be wholly owned by the Government of India which has administrative control over it. It is further stated that the main object for



creating ITPO was to promote, organize and participate in industrial trade fairs and exhibitions in India or abroad and to take all the measures incidental thereto and to organize, undertake and publicize tradeshows and fair exhibitions depots in India as well as abroad and to undertake promotion of export to explore new market for traditional items of export etc.

4. Briefly, the informant is aggrieved by the alleged time gap restriction imposed by OP 2 between two exhibitions/ fairs. As per the informant, OP 1 issued a letter dated 27.02.2003 to OP 2 stating therein that the time gap restrictions prescribed in the guidelines issued by OP 2 for Licensing of Exhibition Space & Facilities in Pragati Maidan ('the Guidelines') should be lifted to make the system transparent and afford greater freedom to the organizers to hold exhibitions/ fairs in a manner which promotes the business interests. Accordingly, OP 2 intimated OP 1 vide its letter dated 28.03.2003 that the Guidelines have been amended to drop the 'time gap restriction' between two exhibitions/ fairs irrespective of where the exhibitions/ fairs are held.

5. However, in 2006, OP 2 re-formulated the said Guidelines and added clause 6.2 therein which imposed a 'time gap restriction' of 15 days between two events having similar product profiles/ coverage and in case of ITPO fairs, *90 days before start or 45 days after the close of an ITPO show*. The Guidelines were re-considered in October, 2007 wherein a gap of 15 days between two events having similar product profiles/ coverage was maintained whereas in case of ITPO and third party fairs having similar product profiles, a gap of 90 days before ITPO's show and 45 days after ITPO's show was imposed.



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6. In 2011, OP 2 further amended the said 'time gap restriction' and revised the same to *90 days before and after the fair in case of ITPO fairs* and third party fairs having similar product profiles.

7. Highlighting the above amendments as arbitrary and discriminatory, the informant alleged that OP 2 adversely affected the established exhibitions of other players in the market by scheduling its own unrecognized exhibitions and refusing the permission to other players on the pretext of arbitrary time gap restrictions. It was further alleged that OP 2 would announce its exhibitions and later cancel them causing loss to OP 2 as well as the industry as a whole. Lastly, it was alleged that in addition to these abuses, exhibitors were also forced by the ITPO to avail certain services which were not required by them but were imposed by OP2 by way of unreasonable and arbitrary conditions in the agreement.

8. Based on the above averments and allegations, the informant alleged abuse of dominant position by OP 2 by virtue of playing a dual role as a regulator as well as the organiser of exhibitions which, as per the informant, led to the contravention of section 4 of the Act.

9. The Director General ('the DG'), after receiving the directions from the Commission, investigated the matter and submitted the investigation report on 14.02.2014. On investigation, the DG found OP 2 to be a dominant entity in the relevant market of 'provision of venue for international and national trade fairs and exhibitions in Delhi'. It was observed that various competition concerns emerge due to the conflict of interest on account of OP 2 being an event organizer at Pragati Maidan as well as the entity which decides the applications and makes rules for leasing space at Pragati Maidan to third parties, who compete with OP 2 as event organizers. The DG found that from time to time,



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OP 2 had amended the time gap restrictions between two similar profile events at Pragati Maidan which were much more stringent for third party events as compared to OP 2's own events.

10. Noting that there may be an economic rationale for time gap restrictions like confusion between events, free riding concerns *etc.*, the DG opined that the same was not *per se* unfair. However, since the restrictions were discriminatory and more stringent for third party events as compared to OP 2's own events, the DG concluded contravention of the provisions of section 4(1) read with section (4)(2)(a)(i) of the Act. Further, it was noted that in the year 2011, OP 2 shifted its own event (IISE) into the period traditionally reserved for other competing events (Smart Expo, IIFEC). As such, the DG was satisfied that OP 2 discriminated against third party organizers by altering the time gap restriction guidelines, rescheduling its own events and delaying the confirmation of allotment dates to third parties which resulted in denial of market access to third parties to use the venue Pragati Maidan for their events at their usual slots. Such acts of the OP 2 were found to have the effect of limiting the provision of services of holding trade fairs and exhibitions at Pragati Maidan and also denial of market access to such third party exhibitors and was accordingly found by the DG to be in contravention of section 4(1) read with section 4(2)(b)(i) and section 4(2)(c) of the Act. The DG further noted that OP 2 leveraged its dominant position in the relevant market of 'provision of venue for holding international and national exhibitions in Delhi' to protect its activities in the other market of 'organization of events at Pragati Maidan' thereby contravening section 4(2)(e) of the Act.

11. The DG, however, did not come across any evidence of role/responsibility of OP 1 in the aforesaid conduct. Rather, it was found that through directions issued on 27.02.2003, OP 1 had specifically directed OP 2 for removal of time



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gap restrictions between similar profile events to make the system more transparent.

12. Further, the allegations regarding allotment of venue subject to acceptance of supplementary obligations such as conditions of compulsorily taking of foyer area, engaging of empanelled housekeeping agency, non-invoicing of such charges by OP 2 for its own events were found to be causing no contravention of the provisions of the Act.

13. The Commission considered the DG report, the submissions of the parties and the information available in public domain. The main issues before the Commission in this case are as follows:

Issue 1: What is the relevant market in the present case?

Issue 2: Whether OP 2 is dominant in the relevant market?

Issue 3: If yes, whether OP 2 has abused its dominant position within the meaning of section 4 of the Act?

Issue 1:

Relevant Market

14. 'Relevant product market' has been defined in section 2(t) of the Act meaning as a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. Furthermore, to determine the 'relevant product market', the Commission is required to have due regard to all or any of the following factors viz. physical



characteristics or end-use of goods, price of goods or service, consumer preferences, exclusion of in-house production, existence of specialized producers and classification of industrial products.

15. The DG noted the relevant product market as ‘provision of venue for organizing national and international exhibitions and trade fairs’. It may be noted that the allegations in the present case relate to the policies and procedures stipulated by OP 1 and OP 2 with respect to licensing of venues to exhibitors for conducting fairs and exhibitions. In order to attract exhibitors and visitors, the venue for exhibition plays a key role. The venues which regularly hold exhibitions and trade fairs ideally have large space to accommodate multiple exhibitions, are centrally located and are well known on the world map and are, therefore, most preferred by the exhibitors particularly for organizing international and national exhibitions and trade fairs.

16. Hence, the venues regularly used for organizing national and international exhibitions and trade fairs can be distinguished from venues for other kind of events in terms of parameters such as physical characteristics, consumer preferences.

17. In view of the above, the Commission is of the opinion that the relevant product market delineated by the DG i.e. market for ‘provision of venue for organizing national and international exhibitions and trade fairs’ is correct.

18. Further, ‘relevant geographic market’ has been defined in section 2(s) of the Act meaning as a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions



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prevailing in the neighbouring areas. To determine the ‘relevant geographic market’, the Commission is required to have due regard to all or any of the following factors viz., regulatory trade barriers, local specification requirements, national procurement policies, adequate distribution facilities, transport costs, language, consumer preferences and need for secure or regular supplies or rapid after-sales services.

19. The DG delineated the relevant geographic market in the present case as Delhi. As highlighted in the DG report, Delhi has been hosting exhibitions at Pragati Maidan since 1977 and it has a rich historical background as a venue for holding international and national exhibitions and trade fairs. Factors like better public transport system, connectivity to airports, railway stations and inter-state bus terminals, centralized location nearby hotels, substantially large exhibition and open display space at its venue Pragati Maidan, location of Central and State Ministries etc. also distinguish and create preference for exhibitors as well as visitors for Delhi over other places in the country. Further, as brought out in the DG report, such fairs usually require liaisoning and approvals from governmental authorities which makes Delhi as an advantageous location as a venue. Lastly, it may also be highlighted that Delhi being the capital of the country also adds to its attractiveness as a preferred location.

20. The Commission is satisfied with DG’s observations on this aspect. Further, in terms of the available infrastructure of other exhibitions centres in comparison to Pragati Maidan, the conditions of competition 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. make Delhi a distinct destination for holding international and national exhibitions and trade fairs. Considering all the above stated factors, the Commission is of the view that



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‘Delhi’ as a venue for holding international trade fairs and exhibitions cannot be substituted with other venues in NCR or other cities in the country. Therefore, the relevant market in the present case is ‘provision of venue for organizing international and national trade fairs/exhibitions in Delhi’.

Issue 2:

Dominance of OP 2 in the Relevant Market

21. On the issue of dominance, the DG on the basis of the available facts and assessment in terms of parameters contained in section 19(4) of the Act, found OP 2 to be dominant in the relevant market of ‘provision of venue for organizing international and national exhibitions, trade fairs (events) in Delhi’ within the meaning of section 4 of the Act.

22. DG noted that there were no competitors of OP 2 in the relevant market which could match it in terms of size and importance. It was also observed that even outside Delhi, OP 2 as a venue provider stood way above other venue providers in terms of various parameters such as area of operation, space, location, resources, infrastructure etc. Furthermore, multiple roles were performed by OP 2 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 OP 2 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



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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. The DG also observed the absence of any countervailing buying power which could be exerted upon ITPO.

23. The Commission is in agreement with the DG's finding on the issue of dominance of OP 2 in the relevant market. It may be additionally pertinent to note that OP 2 has acceded to DG's findings by accepting that it is a dominant player in the exhibition industry by virtue of owning one of the largest exhibition venues at a prime location in the capital of the country. OP 2 submitted that the venue is spread over an area of 123 acres of land hosting large number of events/exhibitions and generating substantial revenue.

24. In view of the facts before the Commission and OP 2's own submissions, the Commission has no hesitation in holding that OP 2 is dominant in the relevant market for 'provision of venue for organizing international and national exhibitions, trade fairs (events) in Delhi'. Pragati Maidan is the only established venue for holding international and national trade fairs/exhibitions (events) in Delhi and OP 2 as venue provider for holding events in Delhi has absolute control and dominance.



Issue 3:

Abuse of dominant position by OP 2

25. The DG conducted a detailed investigation into the various issues and allegations arising out of the information. The main allegation of the informant pertained to arbitrary and discriminatory time gap restrictions imposed by OP 2 between two events. Though the DG did not find time gap restrictions *per se* as abusive, the conduct of OP 2 in stipulating, amending and applying the same was found to be abusive in terms of the provisions contained in sections 4(2)(a)(i), 4(2)(b)(i), 4(2)(c) and 4(2)(e) of the Act.

26. On perusal of the DG's observations and findings 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, OP 2 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 OP 2's own organised events/exhibitions, the time gap restriction was 90 days before and 45 days after the event in case of OP 2 events (which was amended to 90 days before and after the event in 2011). This has been accepted by OP 2 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 OP 2's own events of similar profile, amounted to denial of market access to the third parties who compete with OP 2 for organizing events at Pragati Maidan in contravention of the provisions of



section 4(2)(c) of the Act. The Commission also believes that OP 2 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.

27. The informant also alleged that OP 2's guidelines for reserving slots for regular events and allocation on first-come-first basis was often disregarded for benefitting its own events. It was alleged that OP 2 would take unreasonable time to confirm the booking which allowed it to manipulate the bookings. The informant cited various instances in support of this allegations. From chronology of events in processing applications for events received from third party organizers viz. "UBM and Electronics Today", it is evident that OP 2 imposed unfair and discriminatory conditions upon the third party organizers by taking long time in confirming the allotment dates; by not deciding applications on first-come-first-basis; coupled with altering of time gap restriction guidelines to its advantage; giving preferential treatment to its own fairs over competing fairs in contravention of the provisions of section 4(2)(a)(i) of the Act. Further, such conduct amounted to denial of market access to the third parties who competed with OP 2 for organizing events at Pragati Maidan in contravention of the provisions of section 4(2)(c) of the Act.

28. The other allegations of the informant with regard to compulsion for taking the 'foyer area' along with the allocated area, compulsory usage of OP 2's designated housekeeping agency etc. do not appear to raise any competition concern. OP 2 submitted that the charges imposed on the third party organizers for common foyer area were to: (i) to prevent unauthorized/unregulated use of this area by any of the organizers (ii) to avoid conflict between multiple



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organizers regarding use of this area and to ensure controlled allocation of this area and (iii) to ensure smooth conduct of the event, movement of visitors. The Commission is satisfied with the explanation furnished by OP 2 and, therefore, no contravention is found on this ground.

29. Similarly, the issue of designating housekeeping agency on their panel and not giving any option to the exhibitors to engage any other housekeeping agency does not raise any competition concern to warrant Commission's intervention. From the submissions made by OP 2 before DG, it appears that third party organizers were free to engage housekeeping agencies of their choice though that would be in addition to the conservancy charges to be paid by them. The DG opined that OP 2 being the owner of the Pragati Maidan was vested with the responsibility of ensuring cleanliness, maintenance, proper sanitary conditions as per international standards. This necessitated OP 2 to provide housekeeping services for the entire venue. We agree with the finding of the DG and hence, the appointment of housekeeping agencies for the aforesaid purpose and levying of conservancy charges on the third party organizers appear to be justified subject to the quantum being levied in a fair, transparent and non-discriminatory manner. No contravention is found on this ground.

30. On the issue of non-charging of rental, foyer charges by OP 2 for its own events, the Commission is satisfied with the explanation provided by OP 2. The informant alleged that since every organizer has to include in their costing the hall rental, foyer charges, housekeeping charges etc. charged by OP 2, the cost charged by the other organizers was very high in comparison to the cost charged by OP 2. This was alleged to be an abusive conduct of the dominant undertaking. OP 2 submitted that it is entrusted with the responsibility of promoting external and domestic trade of India in a cost effective manner by organizing and



participating in international trade fairs in India and abroad. The main focus of OP 2 is to support and assist small and medium enterprises to access markets both in India and abroad. OP 2's events cover a wide variety of sectors such as handlooms, handicrafts, textiles, manufacturing, processed food, publishing and printing industry, agriculture, leather goods. Thus, OP 2 organizes events in Pragati Maidan with an objective of trade promotion and as such the cost of participation in ITPO's events in Pragati Maidan is required to be kept at a reasonable level as compared to the events organised by third party organisers. Commission cannot completely ignore the fact that while a third party event in Pragati Maidan is primarily organized by companies/organizations with profit-motive keeping the cost of participation high, OP 2 generally targets small and medium enterprises to provide them a platform to exhibit their products at a reasonable cost. Therefore, the Commission is satisfied with the explanation furnished by OP 2 in this regard and no contravention is found on this ground as well.

31. The last allegation made by informant was with regard to onerous terms and conditions imposed in the Agreement entered into between OP 2 and third party organizers in case of cancellation or re-scheduling of events. The Commission has perused the clauses in the Agreement pertaining to cancellation and rescheduling and apparently the different regime for liability of OP 2 and third party organizer is *ex facie* discriminatory which can be noticed from a bare perusal of the impugned clauses noted below:

7.21 Rescheduling

The exhibition organizers may be permitted to reschedule their events subject to the following conditions:

(a) Re-scheduling will be permitted only once and the rescheduled dates should be within 6 months of the



original booking. Any rescheduling beyond 6 months will be treated as cancellation of original booking and applicable penalty has to be paid by the organizers.

(b) Minimum of 5 months notice from the date of the original tenancy of the booking.

(c) Atleast 50% of the committed License Fees should have been paid.

(d) The proposed re-scheduling should be for the same quantum of area booked in terms of per sqm./day. In the event of shortfall, the applicable penalty will have to be paid before such re-scheduling.

5.20 Liability of ITPO limited to refund of deposit in the event of halls being unavailable

ITPO is in the process of undertaking a modernization program or facilities in Pragati Maidan. ITPO will inform the organizers in advance of any dislocation in the halls blocked by the organizers in the event of implementation of modernization program. In such an eventuality, ITPO's liability is limited to refunding the advance license fee received from the organizer.

32. In view of the above, Commission is of considered opinion that the above stipulations amount to imposition of unfair conditions on third party organizers by OP 2 in exercise of its dominant position in contravention of the provisions of section 4(2)(a)(i) of the Act. Resultantly, Commission is of view that OP 2 has contravened the provisions of section 4(2)(a)(i), 4(2)(b)(i), 4(2)(c) and 4(2)(e) read with section 4(1) of the Act, as detailed above.

33. Before parting with this order, it may be pointed out that the informant has also impleaded OP 1 (Ministry of Commerce & Industry) 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.

34. In view of the above, the Commission passes the following order.

ORDER

35. The Commission directs OP 2 to cease and desist from indulging in such anti-competitive practices which have been found to be abusive in terms of the provisions of section 4 of the Act in the preceding paras of this order.

36. Before levying the penalty on OP 2 for contravention of the provisions of section 4 of the Act, it may be pointed out that subsequent to filing of information, the discriminatory features that earlier existed due to non-parity in time gap restrictions applicable to two 'third party events' and that between an ITPO and third party events have been largely removed through the amendment dated 20.05.013, barring a small element of comparative advantage that OP 2 fairs continue to enjoy due to the 3 days of time gap restriction which is not available between two third party events. The time gap, as it stands presently, is very small and was sought to be justified by OP 2 on logistical grounds and the same does not appear to have any adverse effect in the market.

37. With this mitigating factor in mind along with OP 2's self submission and admissions, the Commission considers it appropriate to impose penalty @ 2% of the average of the Income/Receipt/Turnover for the last three preceding financial years as calculated below.



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Year	Income/Receipt/Turnover (in rupees)
2010-11	3,05,11,88,066.00
2011-12	3,73,79,52,630.00
2012-13	3,33,63,90,378.00
Total	10,12,55,31,074.00
Average	3,37,51,77,025.00
Penalty @ 2%	6,75,03,540.00

38. The directions contained in para 35 above, should be complied with immediate effect and OP 2 is also directed to file an undertaking to this effect within a period of 30 days from the date of receipt of this order.

39. The Commission directs the OP 2 to deposit the penalty amount within 60 days of receipt of this order.

40. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M. L. Tayal)
Member

Sd/-
(S. L. Bunker)
Member

New Delhi

Date: 03/04/2014