



COMPETITION COMMISSION OF INDIA
Case No. 29 of 2019

In Re:

**Ms. Vijayachitra Kamalesh,
House No.225, 4th C-Cross,
HRBR 3rd Block,
Bangalore – 560043.**

Informant

And

**RCI India Private Limited,
Embassy Golf Links Business Park,
Pine Valley, First Level,
Koramangala,
Bangalore – 560071, Karnataka**

RCI

CORAM:

**Mr Ashok Kumar Gupta
Chairperson**

**Ms Sangeeta Verma
Member**

**Mr Bhagwant Singh Bishnoi
Member**

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

1. The present Information has been filed by Ms. Vijayachitra Kamalesh (“**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against RCI India Private Limited (“**RCI**”) alleging contravention of the provisions of Section 3 and Section 4 of the Act.



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2. As stated in the Information, the Informant joined RCI on 12.06.1993 as a Director and worked there for 26 years. The Informant was responsible for looking after the business affairs of the company and also various aspects including treasury wherein she was one of the authorized signatories for all the bank accounts of RCI.
3. It has been submitted that RCI is an Indian subsidiary of RCI Inc., and looks after the business of time share exchange in India. The Informant has alleged that RCI by virtue of various agreements has been making illegal transactions with its clients including Mahindra Holidays & Resorts India Ltd (“**Mahindra (India)**”).
4. It has been stated that an agreement, dated 04.08.2014, was executed between Covington S.A.R.L., a company incorporated in Luxembourg (“**Covington**”), RCI Europe (a company incorporated and registered in England and Wales) and Mahindra (India) (a company incorporated in India). It is further stated that Covington is a subsidiary of Mahindra Holiday Resorts Holdings (Mauritius) Limited (“**Mahindra (Mauritius)**”), which is a subsidiary of Mahindra (India). Hence, Covington becomes a direct subsidiary of Mahindra (India). As per the said agreement, RCI Europe acted as beneficial protector and guardian of the business interests of RCI. Further, by means of the said agreement, it was agreed that RCI Europe would provide interest free loan of 10 million Euros to Mahindra (India) for the purposes of buying Holiday Club Resorts OY (“**Holiday Club**”). The said shares were to be bought in two tranches, the first tranche consisted of a loan for 6.5 million Euros, which was to be utilised for purchase of 19% shares of Holiday Club by Covington. The second tranche consisted of a sum of 3.5 million Euros, which was for the purpose of completing the purchase of the remaining 81% of the entire issued share capital of Holiday Club.
5. It has been averred that RCI and Mahindra (India) had earlier entered into another agreement on 13.12.2013, by means of which they agreed on certain terms of engagement. It has been alleged that agreement dated 04.08.2014, mentions that in consideration of the continuing relationship under the agreement dated 13.12.2013, between RCI and



सत्यमेव जयते



Mahindra (India), RCI Europe had agreed to provide the interest free loan to Covington. Further, it has been alleged that the effect of the said loan transaction is that it creates barriers to competition for its rival in the timeshare exchange market, *i.e.* Interval International.

6. The Informant has prayed that a detailed investigation may be initiated into the anti-competitive practices committed by RCI and Mahindra (India) and stringent penalty be imposed upon both the companies for their illegal and criminal acts which are aimed at contravening the provisions of the law by creating a corporate smokescreen.
7. The Informant has also sought interim relief under Section 33 of the Act and has prayed before the Commission to restrain RCI from continuing various anticompetitive practices.
8. After perusing the Information on record and material available in public domain, the Commission observed that the matter pertains to 'Timeshare' sector. Briefly, a timeshare is a model in which customers own a right to use certain property/ properties, owned by timeshare companies, for a fixed duration every year for a certain number of years, subject to availability. The timeshare model can apply to many different types of properties, such as condominiums, homes, campgrounds, vacation resorts *etc.*
9. At the outset, the Commission notes that as per the Informant, she was working with RCI as the Director (Financial Planning and Analysis) for the last 26 years and was responsible for looking after the business affairs of the company on various aspects including treasury. She was also stated to be one of the authorized signatories for all the bank accounts of RCI with various banks. The present Information is stated to have been filed only on the basis of the mental recollection of the events which the Informant was exposed to during the course of her employment with RCI and no evidence has been appended with the Information to substantiate the allegations made therein.
10. The Informant has alleged contravention of the provisions of Section 3 and Section 4 of the Act due to an agreement dated 04.08.2014, entered into between Covington, RCI



सत्यमेव जयते



Europe and Mahindra (India). It is pertinent to note that as per the Informant, RCI is not even a formal party to the said agreement. The Commission observes that the primary grievance of the Informant is that RCI Europe, Mahindra (India) and Covington joined hands and purchased the shares of Holiday Club which disrupted competition in the timesharing market. The impugned transaction, *ipso facto*, appears to be an acquisition by Covington and does not seem to raise any competition concern.

11. The Commission notes that the provisions of the Act are only attracted when the impact of the alleged/ impugned conduct has some nexus to the competition in markets in India and is likely to cause an appreciable adverse effect on competition in such market. Though the presence of such entities in India is not a *sine qua non*, however, the impact of their conduct must have an appreciable adverse effect on competition in India to trigger the machinery under the Act. This provision is encompassed by the Act under Section 32 which states as follows:

“Acts taking place outside India but having an effect on competition in India

32. The Commission shall, notwithstanding that,

(a) an agreement referred to in section 3 has been entered into outside India; or

(b) any party to such agreement is outside India; or

(c) any enterprise abusing the dominant position is outside India; or

(d) a combination has taken place outside India; or

(e) any party to combination is outside India; or

(f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India,

have power to inquire in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 of the Act into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India and pass



सत्यमेव जयते



such orders as it may deem fit in accordance with the provisions of this Act.”

(Emphasis Supplied)

12. The Commission observes that the abovementioned provision of the Act is based on what is commonly known as the “*effects doctrine*”, which empowers competition regulators to extend jurisdiction beyond the “*principle of territoriality*”. The pith of this doctrine is that the domestic competition law captures anti-competitive acts by enterprise(s) even if the violating enterprise is not located within the territory of the country or the alleged conduct has taken place outside the territorial jurisdictions, provided that the anti-competitive act has an effect in the country. In the present matter it is pertinent to note that Holiday Club is a Finnish company and serves only in Finland, Sweden and Spain. (Source: <https://www.holidayclubresorts.com/en/about-us/company-info/>, Retrieved on 15.10.2019 at 13:12PM). Thus, the Commission notes that the acquisition, alleged to be anti-competitive, has taken place outside India and is in the context of a product meant for consumption outside India *i.e.* sale of resorts/part of resorts on time share basis. Though Mahindra (India) seems to be the ultimate acquirer of the Holiday Club, the present case does not seem to have any impact on the competition in the Indian markets. Given that Holiday Club has resorts only in Finland, Sweden and Spain, the impugned acquisition of Holiday Club does not appear to bring any material change in the position of Mahindra (India) as a competitor in the Indian markets. Thus, the present case does not appear to raise any competition concern in India, to warrant scrutiny under the Act.
13. The Commission observes that agreements dated 13.12.2013 and 04.08.2014, which have been relied upon by the Informant as being anti-competitive agreements, have not been submitted by the Informant along with the information. Thus, nothing comes out in the information which points towards any appreciable adverse effect on competition in India. It is further observed that in order to establish a *prima facie* case for contravention of the provisions of Section 3 and Section 4 of the Act, it is important that besides allegations,



सत्यमेव जयते



the Information contains some evidence which shows an anti-competitive conduct, warranting investigation.

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

15. 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: 29/10/2019