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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 02 of 2019

In Re:

Sun Electronics Private Limited

Pratham, Makarand Desai Road
Gotri, Vadodara, Gujarat – 390007.

Informant

And

ElecTek Solutions Private Limited

#25, Bhabha House, #191, Bora Bazaar, Fort
Mumbai, Maharashtra – 400001.

Opposite Party No. 1

Miantic AV Distribution Private Limited

3rd Floor, Maa Nilayam
Beside Best Western Ashoka Hitech City
Jai Hind Society Madhapur, 100ft Road
Hyderabad, Telangana – 500081.

Opposite Party No. 2

RTI India Private Limited

#494, 2nd Floor, 1st Cross, 1st Stage, 4th Block
HBR Layout, Bengaluru, Karnataka – 560043.

Opposite Party No. 3

Remote Technologies Incorporated

#5775, 12th Avenue E Suite 180
Shakopee, Minnesota 55379, USA.

Opposite Party No. 4

CORAM:

Mr. Ashok Kumar Gupta

Chairperson

Mr. U.C. Nahta

Member

Ms. Sangeeta Verma

Member



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

1. The present information has been filed under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter, “the Act”) by Sun Electronics Private Limited, Vadodara (hereinafter, “the **Informant**”) against ElecTek Solutions Private Limited, Mumbai (**OP-1**); Miantic AV Distribution Private Limited, Hyderabad (**OP-2**); RTI India Private Limited, Bengaluru (**OP-3**); and Remote Technologies Incorporated, Minnesota, USA (**OP-4**) (collectively, **OPs**), *inter alia* alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. The Informant is stated to be a private limited company registered under the provisions of the erstwhile Companies Act, 1956 with its registered office at Vadodara, Gujarat. OP-1 is stated to be an integrator and supplier of RTI products in the State of Maharashtra having its registered office at Mumbai. OP-2 is stated to be the sole authorised dealer of OP-3, engaged in the distribution and integration of RTI Home Automation Solutions across India with its registered office at Hyderabad. It is also stated to be the supplier of OP-1. OP-3 is stated to be the Indian Company of OP-4 having its office at Bengaluru and OP-4 is stated to be a global company providing Home Automation Solutions in India through OP-2 and OP-3, with its office at Minnesota, USA.
3. The Informant has submitted in the information that based on the recommendations of its architect for RTI Home Automation Solutions, it conducted an analysis of a few vendors and then finalised OP-1 who is the supplier and integrator of RTI Home Automation Solutions for the State of Maharashtra for its residential project.
4. Subsequently, the Informant issued a work order to OP-1 through Purchase Order (hereinafter, “**PO**”) No. 4500015629 dated 06.05.2017 for a sum of ₹66,31,363/- (Rupees Sixty Six Lac Thirty One Thousand Three Hundred



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and Sixty Three Only) for 41 items (40 material and 1 installation and commissioning) for availing complete RTI Home Automation Solutions. The PO was inclusive of taxes and duties for supply, installation, freight forwarding, transportation, loading, unloading, leads and lifts, programming, testing and commissioning of the materials for complete RTI Home Automation Solutions.

5. It is stated by the Informant that as per the terms of payment mentioned in the above-said PO, the payment was to be made in three phases: 50% advance payment at the time of placing the PO; 35% payment to be done within 7 working days from delivery of materials at site or receiving of bill at Head Office, whichever is later; and 15% payment after 7 working days but before 15 working days from handover of project to the Informant or receiving of final bill received at Head Office, whichever is later. It is further stated that despite making payments of ₹51,08,185/- (Rupees Fifty One Lac Eight Thousand One Hundred and Eighty Five Only) by 28.06.2017 as per the work order, the installation, programming and commissioning of the project was not done by OP-1 within the stipulated time frame.
6. It is alleged that OP-1 rather started demanding that the Informant should purchase additional equipment *i.e.* AV (Audio-Visual) equipment stating that OP-1 would not be able to install or commission the project without this item. The Informant replied to such demand of OP-1 through an e-mail stating that the initial PO was inclusive of programming including installation and commissioning of complete RTI Home Solutions, and the work may be completed as per the same. However, OP-1 did not agree to the same.
7. Finding it difficult to convince OP-1, the Informant approached OP-2 who was the sole distributor and authorised dealer of OP-3 and OP-4's products in India as well as the supplier of OP-1. However, as per the Informant,



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- OP-2 was reluctant to provide any support for the installation and commissioning of the RTI Home Solutions to the Informant unless a 'No Objection Certificate (hereinafter, "NOC")' was obtained from OP-1.
8. It is further alleged that with the intention of exploiting and harassing the Informant since it was not willing to purchase the additional AV equipment from OP-1, OP-1 also sent a revised demand through an e-mail dated 16.08.2018 seeking additional amount of ₹10,00,000/- (Rupees Ten Lac Only) plus taxes for installation and commissioning of RTI Home Solutions at the Informant's project site. OP-1 also demanded the Informant to appoint a Mechanical Electric and Plumbing Consultant (hereinafter, "MEP") thereby adding more financial burden on the Informant. The Informant stated that such programming, installing and commissioning charges including taxes were already included in the initial PO. Hence, the further demand so made was utterly illegal.
 9. Further, the Informant stated that OP-1 also unlawfully withheld the XP8S license key of RTI Home Solutions from the Informant for which the Informant had duly made payment as per the work order. In this regard, the Informant relied on an e-mail dated 15.11.2018 sent by Mr. Manoj Manchala, Director (Technical) of OP-3 to the Informant whereby it was conveyed that the said license for the Informant's project was already billed and delivered to OP-1 by OP-3.
 10. Based on above facts and assertions, the Informant alleged violation of Sections 3 and 4 of the Act, and apart from seeking certain interim reliefs requested the Commission to intervene in the matter; to grant exemplary costs of ₹10 lacs in favour of the Informant; and to impose penalty on the OPs as per the provisions of the Act.
 11. The Commission has perused the information and the material available on record.



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12. It is observed that the Informant approached the OP-1 to supply, install and commission of RTI Home Solutions for its residential flats located at Vienna Apartments, Vile Parle (W), Mumbai as per the work order dated 06.05.2017. Subsequently, the project location was changed with the consent of the parties (Informant and OP-1) to Vini Villa, Mumbai.
13. The grievance of the Informant emanates from non-completion of the aforesaid work at the project site of the Informant by OP-1. In nutshell, the case of the Informant against OP-1 is that OP-1 has not abided by its obligation as per the work order dated 06.05.2017; has sought additional sum of ₹10 Lac from the Informant for completing the assigned work; has insisted that the Informant should buy additional AV equipment, appoint a MEP consultant and has withheld the XP8S license key from the Informant. The Informant's case against OP-2 (dealer and distributor) as well as OP-3 and OP-4 is that though they are the manufacturers of RTI Home Solutions and suppliers of OP-1, they have not taken any action against OP-1 despite repeated complaints by the Informant. On the contrary, OP-2 has asked the Informant to obtain an NOC from OP-1 for assigning the said work relating to RTI Home Solutions to some other vendor. Thus, the Informant has alleged violation of the provisions of Section 3 and Section 4 of the Act by the OPs.
14. In order to gather the true nature of the issues between the parties, it may be useful to refer to some of the correspondences that were exchanged between the Informant and the OPs which have been annexed by the Informant to the Information.
15. The Informant *vide* letter dated 23.08.2018 had sent a communication to OP-1 with the subject "*Deficiency in services and incomplete work as per the order no. 4500015629 dated 06.05.2017.*" The contents of the aforesaid letter mostly relate to deficiency in services by OP-1. At para 7, it was stated by the Informant that "*we are forced to write this, to bring to your*



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notice that you have not been completing the installation, programming, designing, testing and commissioning of the system, which shall be considered as violation of Order terms and be considered as deficiency in your services.” It can be seen from the above communication that the Informant was not satisfied with the services rendered by OP-1 as per the work order dated 06.05.2017 for its residential project.

16. Later on 18.09.2018, the Informant sent a legal notice to OP-1 with the subject *“Legal Notice regarding incompleteness of work as per the work order number 4500015629 dated 06.05.2017, and for deficiency in services and Unfair Trade Practice.”* It is observed from the contents of the said notice that the same focused on not adhering with the contractual obligations by OP-1 as per the work order and that the language of the notice at many places indicates that the issues are apparently relatable to *“deficiency of service”* and *“unfair trade practices”*.
17. In the aforesaid factual backdrop as narrated by the Informant in the Information, the Commission proceeds to examine the various allegations within the framework of the Act.
18. In this regard, the Commission observes that so far as the allegation pertaining to contravention of the provisions of Section 3(3) of the Act are concerned, suffice to note that the Informant has not been able to show any ‘agreement’ amongst the OPs which can be examined within the framework of Section 3(3) read with Section 3(1) of the Act. Similarly, the Commission notes that the Informant has alleged abuse of dominance by all the OPs by averring in the Information that *“...[A]ll the respondents together in collusion are tactically accomplishing such unlawful acts or are able to make such demands due to the dependence of the consumer on the enterprise.”* Such allegations made by the Informant alleging abuse of dominance by all the OPs, do not warrant any examination as the present



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scheme of Section 4 of the Act does not envisage or provide for joint or collective dominance.

19. For the reasons noted below, even the individual conduct of the parties does not appear to contravene the provisions of Section 4 of the Act.
20. In this regard, based on the facts and circumstances of the case, Commission is of the view that the relevant product market appears to be '*the market for supply and installation of smart home solutions*' as this product cannot be substituted with the traditional market of designing the interiors of a residential unit. This product is unique in many aspects viz., it provides online security features, enables maintaining/ controlling the temperature of the residence from a remote location with the help of a mobile application *etc.* This product is totally different and can be distinguished easily based on its unique features, characteristics, comforts and services.
21. With respect to the relevant geographic market, the Commission is of the view that Smart Home Solutions can be bought from anywhere in India as there are many suppliers of the same providing a variety of services on customized basis. As such, it appears that the relevant geographic market would be '*India*'.
22. Accordingly, the Commission is of the view that the relevant market in the instant matter appears to be '*the market for supply and installation of smart home solutions in India.*'
23. In this market, the Commission observes that there are many players providing smart home solutions in India. Some of these players are *Schneider, Electric, Smartify, Z-wave, Pert, Cubical, Odessi, Infineon etc.*, who provide Smart Home Automation Solutions to the consumers by offering a variety of services. As such, in the view of the Commission, the OPs are not found to be dominant in the relevant market delineated *supra*,



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be it OP-1 or OP-2, owing to the presence of several other integrators/ distributors who are vendors of the competitors of OP-3/ OP-4. Further, in the absence of any material to the contrary, it is also observed that OP-3/ OP-4 as supplier/ manufacturer of RTI Home Automation Solutions may also be facing *inter*-brand competition from other suppliers/ manufacturers operating in the relevant market defined *supra*. Upon perusing the material and literature in public domain, it appears that this market is evolving in India with the presence of many players who are offering Smart Home Solution to the consumers. Further, there is nothing on record to suggest that OP-1 is the only integrator to design Smart Home Solution in Mumbai or that OP-2 is the only distributor offering Smart Home Solutions or that the consumers are dependent on OP-1 and/ or OP-2, as the case may be. Based on the above assessment, the Commission is of the view that none of the OPs individually are found to be dominant in the relevant market defined *supra*.

24. In the absence of the dominance of an entity, the question of assessment of abuse does not arise.
25. Coming to the allegations made by the Informant pertaining to contravention of the provisions of Section 3(4) of the Act, it is observed that it *inter alia* proscribes any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.
26. Thus, for a case to be examined under Section 3(4) of the Act, the parties should be operating at different stages or levels of the production chain in different markets. In this regard, it is observed that while OP-1 is stated to be an integrator and supplier of RTI Home Automation Solution in the State of Maharashtra, OP-2 is the dealer and distributor of such products



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across India. Similarly, OP-3 and OP-4 are companies engaged in the business of providing RTI Home Solutions and Automation products in India and abroad respectively.

27. In this factual scenario, it is evident that the Informant (who issued a work order to OP-1 *vide* Purchase Order dated 06.05.2017 for availing complete RTI Home Automation Solutions), is not part of the production chain of RTI Home Automation Solutions. Moreover, from the Information, it appears that the said work order was placed to provide RTI Home Automation Solutions for the residence of one of the Directors of the Informant company.
28. In view of the above discussion, the Commission is of the view that no case of contravention of the provisions of Section 3 or Section 4 of the Act has been made out and the matter is accordingly ordered to be closed forthwith under the provisions of Section 26 (2) of the Act.
29. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(U. C. Nahta)
Member

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 22/04/2019