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Fair Competition  
For Greater Good

**COMPETITION COMMISSION OF INDIA**

**Reference Case No. 01 of 2017**

**In re:**

**Public Works Department,**

**The Government of National Capital Territory, Delhi**

**Informant**

**And**

**Harman International (India) Pvt. Ltd.**

**301-3B Campus, RMZ Ecospace,**

**Sarjapur Outer Ring Road,**

**Bengaluru, Karnataka.**

**Opposite Party**

**CORAM**

**Mr. Devender Kumar Sikri**

**Chairperson**

**Mr. S. L. Bunker**

**Member**

**Mr. Sudhir Mital**

**Member**

**Mr. Augustine Peter**

**Member**

**Mr. U. C. Nahta**

**Member**

**Justice G. P. Mittal**

**Member**



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

1. Based on a complaint received from Shri Rohit S. Bhatnagar, Director, M/s Pragati Engineers, Delhi, the Public Works Department, Government of National Capital Territory, Delhi (**'Informant'**) has filed the present reference/information under Section 19(1)(b) of the Competition Act, 2002 (the **'Act'**) against M/s. Harman International (India) Pvt. Ltd. (**'OP'**) alleging contravention of the provisions of Section 3 of the Act.
2. As per the information, during the Commonwealth Games, 2010, a highly sophisticated sound system manufactured by the OP was installed at Thyagraj Sports Complex, New Delhi by Hi-Tech Audio Systems Pvt. Ltd. at the cost of around Rs.1.90 crores. For the operation and maintenance of the said sound system, the Executive Engineer (E) M-452, Public Works Department, Government of National Capital Territory, Delhi (**'Executive Engineer'**), invited bids from the manufacturers/ authorised distributors of the OP as per the provisions of Clause 16.9 (4) of the Central Public Works Department (CPWD) Works Manual, 2012 which provides that the sound reinforcement system should be maintained comprehensively and operated upon by the manufacturer/ authorised agent only.
3. It is stated that in response to the aforesaid tender, four firms namely M/s Pragati Engineers, Pan Intellectom Ltd., Hi-tech Audio Systems Pvt. Ltd. and M/s Ambica Electricals had submitted their bids. Since all the four bidders were not the Original Equipment Manufacturers (OEMs) or authorised distributors of the OP, they were not qualified for the tender and accordingly, the tender was cancelled.
4. For wider participation and better competition, in the subsequent tender, the Executive Engineer modified the tender conditions allowing the authorised dealers/ agents of the OP along with OEMs and authorised distributors of the OP to participate in the tender. In the second tender, only two firms *i.e.* M/s Pragati Engineers and Hi-Tech Audio Systems Pvt. Ltd. submitted their bids. Upon evaluation of the bid documents, it was found that only Hi-tech Audio Systems



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Pvt. Ltd. was eligible for the bid as per the tender conditions and accordingly, the price bid of Hi-tech Audio Systems Pvt. Ltd. was opened. However, the said tender was cancelled by the Superintending Engineer (E), EMC M-45, Public Works Department, Government of National Capital Territory, Delhi (**'Superintending Engineer'**) citing the reason that the rate quoted by Hi-Tech Audio Systems Pvt. Ltd. was too high.

5. Thereafter, the Executive Engineer again floated a tender for the third time wherein the aforesaid two firms *i.e.* M/s Pragati Engineers and Hi-tech Audio Systems Pvt. Ltd. submitted their bids along with the authorisation letter issued by the OP in their favour. The said tender was opened on 29.07.2013 and M/s Pragati Engineers was found to be the lowest bidder with price quotation of Rs. 24,72,000/-.
6. In the meantime, the Superintending Engineer received a letter dated 28.07.2013 from the OP duly signed by Shri Prashant Govindan, Director, India Operations of the OP, wherein it was stated that Hi-tech Audio Systems Pvt. Ltd. was its only authorised agent to participate in the above mentioned tender and the OP has not authorised any other firm or company to submit bid in response to the said tender. The Superintending Engineer forwarded the said letter to the Executive Engineer for necessary action pursuant to which the Executive Engineer wrote a letter to the OP bearing No. 54(8)/EE(E)/M-452/PWD/GNCTD/2013-14/367 dated 03.08.2013 asking for clarification on its contradictory stand in issuing authorisation letters to the firms who participated in the tenders floated by the Informant.
7. In its reply dated 21.08.2013, the OP stated that it had issued authorisation letters to both Hi-Tech Audio Systems Pvt. Ltd. and M/s. Pragati Engineers to participate in the second and third tender floated by the Informant. However, the said authorisation letters were issued in good faith provided that they adhere to certain conditions such as involvement in installation/ commissioning of projects in Stadiums, Airports and large Public Facilities in India and having necessary trained and certified personnel. It was stated that since only Hi-Tech Audio



Systems Pvt. Ltd. fulfilled the aforesaid conditions, its authorisation prevailed and the authorisation issued to M/s. Pragati Engineers dated 11.06.2013 was requested to be treated as null and void.

8. In the aforesaid backdrop, the Executive Engineer cancelled the tender floated for the third time and invited bids for the fourth time. In response to the said tender, only Hi-tech Audio Systems Pvt. Ltd. submitted the bid and the same was opened on 11.09.2013. The fourth tender was cancelled by the Superintending Engineer citing the reason that the rate quoted by Hi-tech Audio Systems Pvt. Ltd. was more than the rate quoted by M/s Pragati Engineers in response to the third tender *i.e.* Rs.24,72,000/- and the tender had to be decided to be floated again for the fifth time.
9. In the meantime, the Executive Engineer wrote a letter dated 28.11.2013 to the OP asking it to explain under what circumstances the authorisation letters issued to the other firms were withdrawn and why a case of blacklisting should not be initiated against it. The OP, *vide* its letter dated 23.12.2013, stated that despite repeated calls and reminders, except Hi-tech Audio Systems Pvt. Ltd., they all failed to get their personnel/ engineers certified from the OP.
10. Based on the above submissions, the Informant has alleged that, by withdrawing the authorisation letters issued to other firms to participate in the tenders floated by the Informant and giving undue advantage to Hi-tech Audio Systems Pvt. Ltd., the OP has contravened the provisions of Section 3 of the Act. Accordingly, the Informant has requested the Commission to take appropriate action against the OP in terms of the provisions of the Act.
11. The Commission has perused the information and the material available on record. It is observed that the Informant is primarily aggrieved by the alleged conduct of the OP in killing competition by giving undue advantage to Hi-Tech Audio Systems Pvt. Ltd. in granting authorisation letter only in its favour to participate in the tender floated by the Informant for procurement of services for operation and maintenance of the sound system at Thyagraj Stadium, New Delhi.



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12. The Commission notes that the OP is a manufacturer of high quality sound and high-fidelity audio products and infotainment system for automotive, home and professional markets and installing the same in stadiums, arenas, transportation centres and performance venues across the world. It has a wide range of brands such a Harman Kardon, JBL, Mark Levinon, Lexicon, Infinity Harman and Mark Levinson. It was reported in the Economic Times dated 14.09.2016 that the OP has experienced significant revenue growth during the last five years and it continues to invest heavily in the Indian market. Further, relying on its good quality products and better service network, the OP expects further significant growth in the Indian market in the next three years.
  
13. It is noted that a highly sophisticated and state of the art sound reinforcement system manufactured by the OP was installed at the Thyagraj Stadium, New Delhi for the Commonwealth Games, 2010. For operation and maintenance of the said sound system, a tender was floated by the Informant calling bids from the OEMs or authorised distributor agents of the OP. The said tender had to be cancelled four times, either on the ground of not meeting the tender conditions or because of quotation of higher rates by the bidders.
  
14. The Commission observes that in the third tender, two firms *i.e.* Hi-Tech Audio Systems Pvt. Ltd. and M/s Pragati Engineers had participated as authorised agents of the OP wherein M/s Pragati Engineers was selected. However, the OP informed the Informant that only Hi-Tech Audio Systems Pvt. Ltd. was its authorised agent and the authorisation letter of M/s Pragati Engineers stands nullified. Thereafter, in the fourth tender, only Hi-Tech Audio Systems Pvt. Ltd. participated. However, the tender had to be yet again cancelled on account of high rate quoted by Hi-Tech Audio Systems Pvt. Ltd. *vis-à-vis* the rate quoted by M/s Pragati Engineers in the third tender. The Informant has raised doubts on the intention of the OP and alleged that it is favouring only one firm and forcing the Informant to get its system maintained by only the said agency, thus, affecting competition in the market.



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15. In this regard, the Commission has perused the clarification given by the OP *vide* letter dated 23.12.2013 to the Informant regarding withdrawal of authorisation of other agents from bidding in the said tender. From the clarification given by the OP, it is observed that the products of the OP are operated and serviced by trained and certified contractors to ensure public safety and the OP restricted the number of its authorised agents to participate in the subsequent tenders of the Informant so as to meet the local fire and electricity safety norms as well as mechanical and structural norms. Further, it is observed that training and certification exercises are conducted by the OP free of cost in all major cities in India and the aforesaid firms were initially authorised by the OP to participate in the tender floated by the Informant on the assurance that they would send their personnel for training and certification within the stipulated time frame. Also, it was mutually agreed that the firms would not undertake contracts that involved public safety unless they get their personnel certified from the OP.
16. The Commission from the letter of the OP notes that only one firm *i.e.* Hi-Tech Audio Systems Pvt. Ltd. sent its engineers and professionals for training and the other firms, despite repeated calls and reminders, failed to get their personnel certified. Thus, taking into consideration the importance of public safety and operating procedures and also taking note of the fact that non-trained professionals would be unable to execute complex and sophisticated maintenance procedures required for digital audio systems, the OP withdrew the authorisation letter given to other bidders.
17. With regard to the allegation of the Informant that the OP, by entering into an agreement with its service provider Hi-Tech Audio Systems Pvt. Ltd. and by making it its sole authorised agent for the purpose of maintenance of the sound system at Thyagraj Stadium has violated the provisions of Section 3 of the Act, the Commission observes that the Informant has neither placed any document on record from which such an agreement can be inferred either explicitly or by implication nor can such conduct of the OP be conclusively said to be anti-competitive as withdrawal of the authorisations by the OP seems to have been done only in the interest of maintaining its goodwill and to ensure public safety



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by asking its products to be serviced by trained and certified staff. Further, nothing has been placed on record to suggest that such other firms were competent to execute the contract of servicing the highly sophisticated sound reinforcement system without endangering the products installed as well as public safety. Thus, the Commission is of the view that the alleged conduct of the OP cannot be construed to be in violation of any of the provisions of Section 3 of the Act.

18. Also, with regard to the allegation that the OP is giving undue advantage to one firm *i.e.* Hi-Tech Audio Systems Pvt. Ltd. by giving authorisation letter only to it to participate in the fourth tender floated by the Informant, the Commission observes that to participate in the first tender of the Informant, the OP had issued authorisation letters to all four firms *i.e.* M/s Ambica Electricals, Pan Intellectom Ltd., M/s Pragati Engineers and Hi-Tech Audio Systems Pvt. Ltd. The first tender was however, cancelled by the Informant as all the four firms were neither OEMs nor authorised distributors of the OP as per the prescribed tender conditions. To encourage wider participation and to bring competition in the bidding process, the Informant changed the tender conditions in the subsequent tenders and allowed authorised dealers/ agents as well to participate in the tender along with OEMs and authorised distributors. To participate in the second and third tender, the OP authorised only two firms *i.e.* M/s Pragati Engineers and Hi-Tech Audio Systems Pvt. Ltd. Subsequently, in the fourth tender, the OP, *vide* its letter dated 21.08.2013, asked the Informant to consider the bid of only one firm *i.e.* Hi-Tech Audio Systems Pvt. Ltd. *inter alia* stating that all the other firms are not getting their manpower/ engineers trained or certified from the OP which is essential for the aforesaid service. The Commission is of the view that the aforesaid reason of the OP for not giving authorisation letters to other bidders cannot be said unreasonable considering the fact that only trained professionals can execute the operation and maintenance of the complex and sophisticated digital audio systems manufactured by the OP. It is pertinent to note that it is only the OP who knows as to how its products are to be maintained and operated upon appropriately. Further, it is important that brand name, quality and goodwill in



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the market be maintained by providing efficient services by trained personnel. Thus, the Commission is of the view that the aforesaid conduct of the OP cannot be said to be anti-competitive in terms of any of the provisions of the Act.

19. In light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of Section 3 of the Act is made out against the OP in the instant matter. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.

20. The Secretary is directed to inform all concerned accordingly.

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**  
**(S. L. Bunker)**  
**Member**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**Sd/-**  
**(Justice G. P. Mittal)**  
**Member**

**New Delhi**  
**Date: 06.09.2017**