

# Competition Commission of India

File No. C- 35/2008/DGIR (19/28)

21.9.2010

Suresh Goel

Complainant

v.

Seagate Singapore International Headquarter Pvt. Ltd Respondent

## ORDER

This complaint was filed by Shri Suresh Goel ('the complainant') before the Office of DGIR, MRTP Commission on 13.2.2008 under the MRTP Act, 1969 ('the MRTP Act'). Upon receiving the complaint, the DGIR decided to conduct a preliminary investigation under section 11(2) of the MRTP Act. Consequent upon the repeal of the MRTP Act, this complaint has been transferred to the Competition Commission of India ('the Commission') under the provisions of section 66(6) of the Competition Act, 2002 ('the Act').

2. As per the averments made in the complaint, the respondent which is a multinational company having its registered office in Cayman Island is operating as a full-fledged company/ establishment in India in the guise of a liaison office. It has been further alleged that historically the respondent had a dominant market share in the Hard Disk Drive (HDD) industry in India. As per the allegations made in the complaint, the respondent has abused its market dominance in multiple ways in India and thus has violated the provisions of the MRTP Act. It is further alleged that the respondent had been indulging in anti-competitive trade practices whereby its officials have openly threatened 'termination' in case its distributor is found selling HDDs of any other brand other than that of the respondent. It is further alleged that by not allowing its distributors to work and grow with other vendors, the respondent makes the distributors dependent upon it. It has also been alleged that the respondent has indulged in cartel like activity with other HDD manufacturers. Apart from these allegations, the complainant has also alleged violation of other laws like labour laws, FEMA Regulations, RBI guidelines, custom laws etc., in the complaint.

3. A copy of this complaint was sent by DGIR to the respondent who vide letter dated 4.4.2008 denied all the allegations and made detailed submissions. The respondent has filed copies of the memorandum and articles of association of the company and also copies of agreements entered into between the respondent and its distributors. It has been contended by the respondent that the allegations made in the complaint are beyond the scope of enquiry by the DGIR. Para wise comments on the allegations made by the complainant have also been submitted by the respondent.

4. The DGIR sent the reply of the respondent dated 4.4.2008 to the complainant for comments. The complainant in his reply dated 18.11.2008 reiterated the allegations made in the complaint and provided further details against the respondent with regard to (i) sales activities being carried out under the guise of a liaison office; (ii) evasion of corporate tax, service tax and other taxes; (iii) monopolistic behaviour, price fixing and anti-competitive business practices; (iv) establishment of service centres and import of refurbished HDDs; (v) violation of the provisions of FEMA; and (vi) violations of labour laws.

5. With regard to alleged monopolistic behaviour, price fixing and anti-competitive business practices of the respondent, the complainant stated that the respondent's share was 72.4% in 2004 and 73.7% in 2006. It is further alleged that the distributors are not being allowed to work and grow with other vendors and that the respondent has colluded with other HDD manufacturers to increase prices of HDD.

6. Comments of the respondent were again sought by DGIR vide letter dated 10.7.2009, who submitted its detailed reply dated 28.8.2009. In the reply, the respondent denied all the allegations and reiterated its earlier submissions. It is averred that the complainant is not a customer of the respondent nor it is affected by the alleged violations in any way. The respondent also made point-wise submissions on merits and questioned the data submitted by the complainant regarding its market share and termed the same as outdated and unreliable. It also annexed the distribution agreement with one of its distributors under which the distributor was permitted to market products competitive to the respondent.

7. The matter was considered by the Commission on 6.4.2010 and the Commission decided that in order to ascertain the facts, complainant should be asked to explain his case. Accordingly, a letter dated 9.4.2010 was sent to the complainant. The matter was posted for further hearing by the Commission on 4.5.2010. As there was no response from the complainant on the said date, the Commission again considered the case and vide its order

dated 4.5.2010 decided to grant another opportunity to the complainant to file written submissions and also allowed the complainant to make oral submissions on 8.6.2010. Thereafter, the complainant was sent a letter dated 7.5.2010 and another letter was sent on 28.5.2010. The said letter was served upon the complainant on 31.5.2010 but there was no response from him. In the absence of any response, the Commission proceeded to consider the matter on merits on the basis of the material available on record.

8. On examining the entire relevant material closely, it is seen that although the complainant has made wide ranging allegations, he has not been able to substantiate them in any way. Moreover, despite several opportunities having been afforded to him, he has not responded or made any written submissions to explain his case before the Commission. It is also noted that the correspondence available on the record pertains mainly to the years 2001 and 2004 whereas the complaint was filed in the year 2008.

9. In addition to the above mentioned facts, it may also be pointed out that the complainant has attached 45 annexures with the complaint which have been considered by the Commission. On careful scrutiny of some of these annexures which refer to the alleged anti-competitive practices of the respondent, it is seen that they do not bring out any element of anti-competitive practice. In this regard, reference may be made to some of these annexures. Annexure Nos. 27 and 28 relate to year 2004 and 2006. Annexure 31 which speaks about market sharing is dated October 2, 2004. Annexure 37 relates only to a warning and annexure 38 is an email detailing minutes of pricing call, which does not disclose any information regarding either the alleged predatory pricing or collusive pricing of HDDs in India. Annexure 39 is an email between eSys and the respondent which also does not make out a case of infringement of the provisions of MRTP Act.

10. The respondent in its reply dated April 4, 2008, has supplied a copy of agreement which was entered into with its distributors (Annexure 'D' of reply). On a careful perusal of this document also, it appears that there is no coercive clause as alleged by the complainant which restricts distributors from supplying products of other vendors. Furthermore, the respondent vide its letter dated August 28, 2009 has submitted 10 annexures of which annexures 'C' and 'H' are copies of distribution agreements entered into by the respondent with its distributors. These two agreements do not seem to place a limitation or punish distributors for procuring products of other vendors. Thus the allegations against the

respondent that it is not allowing distributors to grow or remain competitive is not established.

11. It may also be observed again that despite several opportunities given to the complainant he has not made any effort to substantiate the allegations made in his complaint before the Commission.

12. On considering the entire material on record and in view of the above discussion, the Commission is of the considered opinion that no case as alleged in the complaint is made out against the respondent and the matter is accordingly closed.

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