

Matrix Info Systems Private ... vs Intel Corporation & Other on 9 August, 2019

COMPETITION COMMISSION OF INDIA

Case No. 05 of 2019

In re:

Matrix Info Systems Private Limited

Informant

207 Bajaj House, # 97 Nehru Place, New Delhi - 110019.

And

Intel Corporation

2200 Mission College Blvd., Santa Clara, Opposite Party 1

California 95054 - 1549, U.S.A.

Intel Technology India Private Limited

23 - 56P, Deverabeesanahalli Varthur Hobli, Opposite Party 2

Outer Ring Road, Bengaluru, Karnataka - 560 103.

CORAM

Ashok Kumar Gupta

Chairperson

U. C. Nahta

Member

Sangeeta Verma

Member

Present:

For Matrix Info Systems Pvt. Ltd.: Ms. Khyati Dhupar, Mr. Ishan Arora and Mr. Abhishek Rana, Advocates and Mr. Sunil Jain, Director of Matrix Info Systems Pvt. Ltd.

For Intel Corporation: Mr. Raj Shekhar Rao, Mr. Anandh Venkataramani, Ms. Rajshree Jaiswal, Mr. Karan Singh Chandhiok, Ms. Kalyani Singh, Ms. Lagna Panda and Ms. Shruthi Narayan Rao, Advocates and Ms. Evangelina Almirantearena, Vice President, Legal Department, Intel Corporation

For Intel Technology India Pvt. Ltd.: Mr. Karan Singh Chandhiok, Ms. Kalyani Singh, Ms. Lagna Panda and Ms. Shruthi Narayan Rao, Advocates and Ms. Poja Malhotra, Senior Counsel, Legal Department, Intel Technology India Pvt. Ltd.

ORDER UNDER SECTION 26 (1) OF COMPETITION ACT, 2002

1. The present information has been filed by Matrix Info Systems Pvt. Ltd. (the 'Informant') under Section 19 (1) (a) of the Competition Act, 2002 (the 'Act'), against Intel Corporation ('Opposite Party No. 1/ OP-1') and Intel Technology India Pvt. Ltd. ('Opposite Party No. 2/ OP-2'), alleging contravention of the provisions of Sections 3 and 4 of the Act (hereinafter, OP-1 and OP-2 collectively referred to as 'Intel').

2. The Informant is a Delhi based Information Technology ('IT') trading company which is engaged in the business of importing, wholesaling, distributing and supplying a wide range of IT products. OP-1 is a leading multinational corporation and technology company incorporated in USA which is engaged in the activities of designing and manufacturing of a wide range of IT components, peripherals, computer systems, etc. as well as manufacturing and distribution of electronic devices relating to communications and computing including micro-processors etc. OP-2 is an Indian subsidiary of OP-1.

3. As per the information, in the ordinary course, IT products are sold in India by sellers and/ or re-sellers, by purchasing the same either directly from the manufacturing company or through distributors, either in India or abroad. Most of the IT products come with manufacturer's warranty, which is generally worldwide. However, as per the Informant, over past few years, big IT companies like OP-1 have entered into exclusive agreements with certain sellers/ distributors and appointed them as their authorised sellers, who directly sell the IT products of such companies to the consumers in India with a country-specific manufacturer's warranty instead of worldwide warranty.

4. The Informant has stated itself to be a parallel importer of Intel Micro-processors in India, which is allowed under the Indian law. As per the Informant, parallel imports are beneficial for the consumers as import of goods from a country with lower prices force sellers in the country of destination to reduce prices. The Informant has stated that it imports Intel Micro-processors from OP-1's authorised distributors in other countries and sells the same to consumers in India at highly competitive prices.

5. As per the Informant, prior to 2016, Intel used to provide manufacturer's warranty within India on its Boxed Micro-Processors that may have been purchased from any country in the world. However, w.e.f.

25.04.2016, Intel amended its warranty policy for India. As per this new policy, Intel would entertain warranty requests for Intel Boxed Micro-processors in India only when the same are purchased from an authorised Indian distributor of Intel that too within the country. As a result of this country-specific warranty for India, Intel does not acknowledge warranty requests on its Boxed Micro-Processors that are purchased from anywhere else in the world (even if these purchases are made from the authorised distributors of Intel in other nations). In support, the Informant has placed on record various communications that took place between the Informant and OP-2. As per the Informant, in some communications, OP-2 has even falsely alleged that such Micro-Processors are products of Original Equipment Manufacturers ('OEMs') i.e. Tray Micro-processors, which are different from Boxed Micro-processors, to avoid acknowledging the warranty.

6. The Informant has stated that such change has been made by Intel without any legitimate justification and Intel has been behaving in a differential manner with the Indian market. As per the Informant, such separate warranty terms of Intel for India vis-à-vis the rest of the world, is arbitrary and unfair towards the Indian market and consumers. Quoting the statement of Mr. Rajiv Bhalla, Director, Direct and Channel Sales, Intel South Asia, published in Digit.in on 25.04.2016, the Informant has averred that by adopting this new Indian specific warranty policy, Intel only intends to protect the market share of its own authorised distributors in India.

7. As per the Informant, because of this change in the warranty policy, Indian customers would be forced to purchase Intel's Boxed Micro-Processors only from the authorised distributors of Intel in India in order to avail the after-sales warranty within the country. This limits the choice of customers as to whom they can buy from and also affects the business of independent resellers and parallel importers like the Informant. Further, such policy change would give OP-2's Indian authorised distributors a position of power to sell Intel's Boxed Micro-Processors at higher prices. The Informant has claimed that though it may be possible to claim warranty on Intel's Boxed Micro-Processors purchased from outside the country by sending these abroad, it may not be feasible to do so on account of cross-border restrictions and cost and time implications. Hence, as per the Informant, such change in its warranty policy by Intel is abusive in nature and anti-competitive under the provisions of the Act.

8. The Informant has delineated the relevant product market as 'market for sale of boxed Micro-processors for Desktop and Laptop Personal Computers ('PCs')' and relevant geographic market as 'India'. As per the Informant, in terms of the factors contained in Section 19 (3) of the Act, Intel holds a dominant position in the relevant market for 'sale of Boxed Micro-processors for Desktop and Laptop PCs in India'.

9. The Informant has alleged violation of Section 4 (2) (a) (i) of the Act by Intel as it imposes unfair and discriminatory conditions that warranty shall be provided only when a Boxed Micro-processor is purchased in India from its authorised Indian distributor and does not cover any other resale or imported products. Further, the Informant has alleged violation of Section 4 (2) (c) of the Act by Intel as Intel limits and restricts the business of other resellers and parallel importers and denies market access to them by not providing them warranty on Intel's Boxed Micro-Processors in India when not purchased from the authorised distributors of Intel. Relying on the observation of the Hon'ble Supreme Court in

Competition Commission of India v. Fast Way Transmission Pvt. Ltd. and Others, (2018) 4 SCC 316, the Informant has submitted that even though the independent resellers and/ or parallel importers are not the competitors of Intel, yet denial of market access to them due to unreasonable condition of warranty put by Intel, is sufficient enough for applicability of Section 4 (2) (c) of the Act.

10. The Informant has also levelled allegations of contravention of Section 3 of the Act against Intel. As per the Informant, the exclusive agreement between OP-2 and its authorised Indian distributors which gives them exclusive selling rights in India is violative of Section 3 (4) (c) of the Act. This imposition of condition to purchase from only certain sellers/ distributors for claiming warranty in India and imposition of blanket ban on after-sales warranties if purchased from other sources is resulting in total deprivation of consumer choice which is also violative of the provisions of Section 3 (4)(d) of the Act. Further, Intel's restriction on independent resellers and/ or parallel importers, by not acknowledging the warranty on Intel's Boxed Micro-Processors purchased from sellers other than Intel authorised distributors in India and falsely claiming such products to be OEM products (i.e. Tray Micro-processor), is violative of Section 3 (4) (e) of the Act.

11. As per the Informant, Intel is indirectly imposing unfair disadvantage on the independent resellers for selling Intel Boxed Micro-Processors at lower prices in comparison to Intel's authorised distributors. Such conduct of Intel and its agreement with its Indian authorised sellers/ distributors is causing an appreciable adverse effect on competition ('AAEC') in terms of Section 19 (3) of the Act.

12. Based on the aforesaid averments and allegations, the Informant has filed the present information against Intel, alleging contravention of the provisions of Sections 3 and 4 of the Act.

13. After considering the information filed by the Informant in its ordinary meeting dated 19.03.2019, the Commission decided to call the parties for a preliminary conference. One day before the date of preliminary conference, Intel filed its preliminary response dated 01.07.2019, to the information filed by the Informant.

14. In its response, Intel has stated that no contravention of the provisions of Section 4 of the Act is made out against it. As per Intel, 'warranty' and 'warranty service' are two distinct concepts. Contrary to the Informant's allegations, Intel offers a 3 year limited warranty on all genuine Boxed Micro-processors. Under its new India specific warranty policy, it is only the 'warranty service' which cannot be availed in India if the Boxed Micro-processors are not purchased from Intel's authorised distributors in India. However, for such Boxed Micro-processors purchased from outside India, warranty service can be claimed from the place of purchase. As per Intel, such India specific warranty policy for Boxed Micro-processors of Intel is compatible with the Indian legal position. Reliance in this regard was placed on the decision of the Commission in Mr. Ashish Ahuja v. Snapdeal.com and Another, Case No. 17 of 2014 decided on 19.05.2014. Intel has claimed that its new warranty policy is more permissive as under the same, Intel not only offers warranty on all genuine Boxed Micro-processors, whether purchased from authorised or unauthorised distributors, but also offers warranty service on all genuine Boxed Micro-processors at the place of purchase. Further, as per Intel, the legal position in India is that a manufacturer is entitled to refuse warranty service on products purchased from unauthorised

distributors. In this regard, reliance has been placed on a judgment of Ld. Division Bench of the Hon'ble Delhi High Court in *Kapil Wadhwa and Others v. Samsung Electronics Co. Ltd. and Another*, 194 (2012) DLT 23.

15. As per Intel, no violation of Section 4 (2) (a) of the Act is made out as Intel's India specific warranty policy for Boxed Micro-processors applies to all purchasers in India and there is no discriminatory treatment by Intel in this regard. Further, as per Intel, there is no violation of Section 4 (2) (c) of the Act by Intel as the Informant itself, after change of warranty policy by Intel, has imported multiple Intel Boxed Micro-processors in India which evidently shows that there is no denial of market access by Intel.

16. Intel has also stated that the information filed by the Informant lacks evidence and no contravention of Section 3 (4) (c), 3 (4) (d) or 3 (4) (e) is made out against Intel. As per Intel, its authorised distributors are not exclusive in as much as they may sell Micro- processors of any other brand as well. Further, the prices at which they sell their Micro- Processors in India are also not set or controlled by Intel.

17. Intel has further stated that the information does not demonstrate any AAEC in India or meets the requirements of Section 32 of the Act. Intel has averred that the entire claim of the Informant is based on Intel allegedly refusing to entertain its warranty service claims on two Boxed Micro-processors in India. As per Intel, the Informant had placed requests to replace 34 Micro-processors in toto. Out of the same, 29 were replaced by Intel, 3 were denied on the ground of being Tray Micro-processors and only on 2 Micro- processors, the Informant sought warranty service in India which was refused by Intel to be given in India. Intel has submitted when these 2 refusals are seen in the light of the total import of Micro-processors made in India (around 2.93 million units in 2018-19), the number is insignificant, thereby, demonstrating the lack of AAEC in India.

18. Further, explaining the reason for its India specific warranty, Intel has stated that India has a large unorganised sector engaged in computer manufacturing and assembly, which is serviced both by authorised distributors of IT products and peripherals as well as grey/ parallel market importers. It is not uncommon in India for importers to import goods by underinvoicing; or to import old and salvaged parts disguised as new products. Even the Informant has imported such underinvoiced and old products including Intel Micro-processors, in violation of India's export-import ('EXIM') Policy and has been penalised for the same by the Commissioner of Customs (Import). Even otherwise, the Informant has been the subject of a variety of investigations. It is to protect its customers from such undervalued and old products, that Intel has its exclusive India- specific warranty policy. Through such policy, Intel seeks to ensure that its customers purchase Intel's Boxed Micro-processors only through Intel's authorised distributors in India. Intel makes investment and incurs cost to ensure that its authorised distributors in India provide quality service to the customers. By procuring their requirements from authorised distributors, customers are aware that Intel Boxed Micro-processors purchased by them are authentic, new and not used products. Thus, as per Intel, its India specific warranty policy has legitimate business justifications and the same does not impair genuine undistorted competition in any market.

19. Further, as per Intel, by not disclosing such material facts to the Commission, the Informant has approached the Commission with unclean hands. Intel has also taken a technical objection with regard to the Affidavit filed by the Informant in support of its information and failure on the part of the Informant to file a certificate under Section 65B of the Indian Evidence Act, 1872 ('IEA') in support of certain documents relied upon by it as Annexures to its information.

20. On 02.07.2019, the Commission held a preliminary conference with the Informant and the Opposite Parties. The learned counsel for the Informant also showed to the Commission a comparison of rates of Intel Boxed Micro-processors in different countries including in India in support of its contentions. Thereafter on 05.07.2019, the Informant filed a certificate under Section 65B of the IEA in support of Annexure O of its information.

21. The Commission has considered aforesaid submissions of the parties made in writing as well as orally during the preliminary conference and has analysed the documents and caselaws placed on record by both the parties.

22. The Commission notes that the Informant has filed the present information alleging contravention of the provisions of both Sections 3 and 4 of the Act. The Commission first proceeds to analyse the allegations of the Informant in terms of Section 4 of the Act. The Informant seems to be primarily aggrieved with the India specific warranty policy of Intel on its Boxed Micro-processors according to which, Intel does not provide warranty service within India for products that are not purchased in the country from its authorised Indian distributors.

23. With regard to the Relevant Product Market, the Commission notes that Micro-processor is a distinct product in itself not substitutable with any other product. Further, the Commission notes that it is also well recognised that there is no substitutability or interchangeability of Micro-processors across end products as has been held by the Commission in its two prior cases involving Intel i.e. the ESYS Information Technologies case (supra) and in the order dated 09.11.2018 passed in Case No. 16 of 2018 titled Velankani Electronics Private Limited v. Intel Corporation. Further, the Commission notes that Micro-processors also can be classified into two categories - Boxed Micro-Processors and Tray Micro-processors. Tray Micro-processors are the ones which Intel makes as per the requirement of the OEMs for their assembly line/ manufacturing activities and Boxed Micro-processors are the ones which are sold by Intel in the open market. Intel does not provide direct warranty support on Tray Processors but rather the OEM or the reseller has to be contacted for seeking warranty support. However, warranty on Boxed Processors is provided by Intel only. Thus, the Commission is of the prima facie opinion that since in the present case, the end products being dealt with by the Informant are Desktops and Laptops, the relevant product markets in the present case may be taken as market for 'Boxed Micro-processors for Desktop PCs' and market for 'Boxed Micro-processors for Laptop PCs'.

24. With regard to the relevant geographic market, the Commission notes that the Informant has alleged that Intel has changed its warranty policy specifically for India, thereby limiting purchases from Indian authorised distributors only for claiming Intel warranty service in India. Given the fact that in the present case, the Indian market and Indian consumers seem to have been affected and the competition

conditions within the territory of India are homogenous, the Commission is of the prima facie opinion that the relevant geographic market in the present case would be the 'territory of India'.

25. Therefore, the Commission prima facie opines that the relevant markets in the present case would be "the market for Boxed Micro-processors for Desktop PCs in the territory of India" and "the market for Boxed Micro-processors for Laptop PCs in the territory of India".

26. On the issue of dominance, the Commission notes that in the case of ESYS Information Technologies (supra), the Commission had found Intel to be in a dominant position in the relevant markets of Micro-processors for desktops PCs in India as well as the relevant market of Micro-processors of mobile/portable PCs such as laptops, notebooks, net-books, etc. in India. In the present case also, the Informant has placed on record and furnished sufficient evidence in the form of Gartner's Supply Chain List of 2018, Research Bulletin by IC Insights, Passmark Report dated 16.12.2018, statement of Dell's CTO John Roese and Annual Reports of the OPs and of its competitor AMD, which prima facie establishes that Intel is in a dominant position in the markets of Micro-processors for Desktop and Laptop PCs in the territory of India.

27. Further, the Commission notes that segmented data with regard to the market share of Intel in the Boxed and Tray Micro-processors segment is not available on record. However, the Informant's documents on record show that the market share of Intel is at least three times the market share of its only competitor in the Micro-processors market i.e. AMD. Further, the information available does not show that AMD specialises in either the Tray or the Boxed Micro-processor market. Therefore, it can safely be assumed that even in the segregated market of Boxed Micro-processors for Desktop and Laptop PCs respectively in the territory of India, Intel would be having a high market share. Furthermore, in terms of other factors stated in Section 19 (4) of the Act such as significant economic power of Intel; dependence of consumers on Intel; high entry barriers in the market; no countervailing buying power etc., the Commission notes that the dominant position of Intel in the markets of Micro-processors for Desktops and Laptop PCs in India is prima facie, established.

28. Now that the dominant position of Intel in the delineated relevant markets is prima facie established, the Commission proceeds to analyse the allegations of abuse of dominance made by the Informant against Intel.

29. The Commission notes from the Intel website that the worldwide warranty policy of Intel for Boxed Micro-processors (which was also the erstwhile warranty policy in India) is as follows:

"HOW TO OBTAIN WARRANTY SERVICE You may contact your place of purchase or you may contact Intel by calling an Intel Customer Support (ICS) center during business hours. You will be asked for (1) your contact details; (2) proof of purchase; (3) model name and Product identification number; (4) an explanation of the problem and (5) more information if necessary. If ICS confirms that the Product is eligible for warranty service, you will receive a Return Material Authorization (RMA) number and instructions for returning the Product. ..."

On the other hand, the warranty policy of Intel for Boxed Micro-processors in India is as follows:

"HOW TO OBTAIN WARRANTY SERVICE You may contact your place of purchase or you may contact Intel by calling an Intel Customer Support (ICS) center during business hours. Only Intel Products sold by Intel Authorised Distributors in India and purchased in India are eligible for warranty service within India. The list of Intel Authorized Distributors in India is located at <https://www-ssl.intel.com/content/www/xa/en/resellers/where-to-buy/overview.html>. For Intel products purchased from other sources, please contact your place of purchase for warranty service. You will be asked for (1) your contact details; (2) proof of purchase; (3) model name and Product identification number; (4) an explanation of the problem and (5) more information if necessary. If ICS confirms that the Product is eligible for warranty service, you will receive a Return Material Authorization (RMA) number and instructions for returning the Product. ... "

30. From the above, the Commission notes that in the new warranty policy of Intel for India which came into effect from 25.04.2016, admittedly, the change that has been brought about is that only Intel Boxed Micro-Processors sold by Intel Authorised Distributors in India and purchased in India are eligible for warranty service in India. Though Intel would continue to provide warranty services on Boxed Micro-processors purchased through sources other than its authorised Indian distributors, unlike in other countries, such warranty service cannot be claimed by the purchasers directly in India by contacting Intel. Instead, the purchaser would have to seek warranty from the seller who, in turn, can contact Intel. This would be so even when the Boxed Micro- Processors of Intel are purchased/ imported in India from an authorised distributor of Intel located outside India.

31. The Commission further notes that Mr. Rajiv Bhalla, Director, Direct and Channel Sales, Intel South Asia, in his statement published in Digit.in on 25.04.2016 has offered the following explanation for such change in warranty policy that "Intel Authorised Distributors play a key role in our overall market strategy, which includes ensuring that authorized Intel Products are sold in India. The revised warranty policy ensures that our customers will not only enjoy the authentic Intel Products purchased through our authorized distributors here, but also ensures an amazing service and after sales experience that will keep them coming back to our authorised distributors for future purchases."

32. Further, the Commission also notes that Intel, during the preliminary conference, has tried to give a commercial justification for introduction of such differentiated warranty policy for India. Intel has stated that in India, there is a large unorganised market and parallel importers (like the Informant) often underinvoice goods or import old and salvaged parts disguised as new products. Thereafter, when the product stops working, Intel receives requests for replacement of such old and used products. This, according to Intel, not only creates a burden upon it as it only has limited number of service centres in India, but also affects the consumers' interest adversely.

33. The Commission notes that under its new India specific warranty policy with regard to Boxed Micro-Processors, Intel does not offer warranty service to consumers in India, on products purchased by them from the parallel importers, even when such parallel imports have been made from authorised distributors of Intel abroad. For claiming service on such warranty, the purchasers have to contact Intel at the place of purchase only. The Informant has stated that though it may be possible to claim warranty on foreign purchased Intel Boxed Micro-Processors from outside the country, it may not be practical to

do so on account of cross-border restrictions, cost and time implications etc. Further, the Commission notes that it has been contended by Intel that the business of parallel importers in India has not been affected by the new warranty policy of Intel in India, as can be seen from the imports made by the Informant recently. The Commission, however, is of the prima facie view that imports made by one single entity cannot be the sole criteria to assess the AAEC caused by the change in Intel's warranty policy in India.

34. Thus, the Commission is of the prima facie opinion that the India specific warranty policy of Intel has the potential to lead to denial of market access to the parallel importers and resellers of Intel Boxed Micro-Processors in India, who are competitors of Intel's Indian authorised distributors. The Commission also notes that the Informant has also made allegations that on some occasions, Intel has even falsely alleged that the Micro-Processors sought to be replaced by the Informant are products of OEMs i.e. Tray Micro-processors to avoid acknowledging the warranty.

35. The Commission is also of the prima facie opinion that such differentiated warranty policy of Intel in India also limits the choice for the Indian consumers. They may not be able to buy Intel Boxed Micro-processors from multiple sources because Intel would not provide direct warranty service in India if the Boxed Micro-processors are purchased from a seller other than an authorised Indian distributor of Intel in India. Rather, the consumer would have to contact the seller for claiming warranty. Such would be the situation even if the consumers purchase the product from an authorised Intel distributor but from outside India. In such circumstances, the consumers in India would only have the benefit of claiming seller's warranty and not manufacturer's warranty, unless they purchase their product from an authorised Intel distributor in India.

36. In the absence of competition from parallel importers, may lead to the risk of prevalence of higher prices for Intel Boxed Micro-Processors in India. The Commission notes that during the preliminary conference, the Informant has provided a comparison of rates as on 29.06.2019 of one type of Intel's Boxed Micro-processor (Intel i3-8300 Micro- processor) offered by Intel's authorised distributors in India and outside India, which are as follows:

Country Price (INR) India 29,610 Japan 18,344 USA 11,307 Germany 11,757 From the above, it can be seen that the rates offered in India for the same product by Intel's authorised distributors in India is almost 2 times the rates offered by Intel's authorised distributors outside India. In fact, the Informant has argued during the preliminary conference that the rates at which it imports Intel's Boxed Micro-processors from Intel's authorised distributors outside India even when increased by the Informant's own profit margin, still offer price competition to the Boxed Micro-processors sold by the Indian authorised distributors of Intel. Though Intel has argued during the preliminary conference that the prices at which Intel's authorised distributors in India sell their Micro-Processors are not set or controlled by Intel, the Commission observes that the new warranty policy of Intel in India seems to be aimed at disincentivising the purchase of Intel Micro-Processors from distributors other than Intel's authorised distributors in India even though purchased from Intel's authorised distributors abroad at cheaper rates. This has the effect of raising prices offered by Intel authorised distributors in India.

37. Therefore, in the prima facie opinion of the Commission, the distinction made by Intel by means of its new India specific warranty policy between the products purchased in India from Intel domestic authorised distributors and those purchased from Intel's foreign authorised distributors, is prima facie unfair and discriminatory, especially when seen in the light of the fact that such differential treatment is not meted out by Intel in other jurisdictions.

38. Further, the Commission notes that Intel has argued that its warranty policy is compatible with the Indian legal position by placing reliance on the Commission's decision in *Ashish Ahuja* (supra). The Commission however, observes that the facts of the said case are entirely different from the present case. In that case, it was not the situation that SanDisk would not provide warranty services on products purchased from authorised distributors of SanDisk merely because the purchases are made from outside India. Further, in that case, SanDisk did not limit its warranty policy in any particular country/ies. Furthermore, the Commission notes that Intel has also placed reliance on a judgment of the Hon'ble Delhi High Court in *Kapil Wadhwa* (supra) to contend that a manufacturer is entitled to refuse warranty service on products purchased from unauthorised distributors. However, the Commission, on perusal of the said judgment finds that in that case, refusal of warranty in India by Samsung was held by the Hon'ble Court to be justified in the circumstances that no warranty on those products was provided by the manufacturer Samsung, even in the country from which they were imported by the Appellant.

39. The Commission also notes that even the above-extracted statement of Mr. Rajiv Bhalla, Director, Direct and Channel Sales, Intel South Asia, hints that the change in warranty policy by Intel in India has been brought about only to protect the market share of Intel's authorised distributors in India. Further, the Commission observes that the justification offered by Intel for introducing this differentiated warranty policy for India by stating that old and salvaged Micro-Processors are being sold as new by unauthorised sellers in India, also does not seem to be prima facie acceptable. Such problems of counterfeit goods/ sale of old products disguised as new may be subsisting in various parts of the world and not in India alone. Further, merely because Intel may have received a few requests in India for replacement of some old Boxed Micro-processors which may have been sold as new, Intel cannot, in a market as large as India, subject every consumer and/ or parallel importer/ reseller to suffer the inconvenience of claiming its warranty service outside India, even if the product is eventually purchased from an Intel authorised distributor, but outside India. Further, in the digital world today, technology may enable quick verification by Intel of such counterfeit, old or used products.

40. Thus, the Commission is of the view that such conduct and unfair warranty policy of Intel in India, with respect to its Boxed Micro-processors, prima facie amounts to abuse of dominant position by Intel in contravention of the provisions of Section 4 of the Act. The contention of Intel in this regard that it has not denied to provide warranty in India but only 'warranty service' in India is of no avail.

41. With regard to the alleged contravention under Section 3 of the Act, the Commission notes that the Informant has alleged that the vertical agreement entered into between Intel and its authorised distributors in India is anti-competitive under the provisions of Section 3 (4) of the Act, being in the nature of exclusive distribution agreement, amounting to refusal to deal as well as amounting to resale price maintenance. The Commission in this regard notes that during the preliminary conference, Intel

has already stated that the agreement between Intel and its authorised distributors is not in the nature of exclusive distribution agreement and its authorised distributors may sell Micro-processors of any brand. Further, the Commission observes that the Informant's grievances are mainly in regard to change in the warranty policy of Intel in India upon its Boxed Micro-Processors. Therefore, in the opinion of the Commission, a prima facie case of contravention of even Section 3 (4) of the Act also is not made out in the present matter.

42. Lastly, regarding Intel's contentions that the Informant has approached the Commission with unclean hands, the Commission observes that the said allegation has no bearing upon the merits of the present case as the proceedings before the Commission are in rem and not in personam. Antecedents of the Informant cannot be a ground for the Commission to not take cognizance of an abusive conduct of any entity. Further, regarding Intel's contention that the Informant has failed to file a certificate under Section 65B of the IEA, the Commission observes that the Informant has already filed a certificate under Section 65B of the IEA on 05.07.2019.

43. Based on the above analysis of the facts and materials presented by the Informant and Intel, the Commission is of the prima facie opinion that the new differentiated India specific warranty policy of Intel in regard to its Boxed Micro-Processors is in contravention of Section 4 (2) (a) (i) of the Act. The same also prima facie results in limiting or restricting the market for Boxed Micro-processors for Desktop and Laptop PCs in the territory of India in contravention of Section 4 (2) (b) (i) of the Act as well as results in denial of market access to parallel importers in contravention of Section 4 (2)(c) of the Act. Consequently, under the provisions of Section 26 (1) of the Act, the Commission directs the Director General ('DG') to cause an investigation into the matter and submit an investigation report within a period of 150 days of receipt of this order.

44. Nothing stated in this order shall tantamount to expression of final opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.

45. Secretary is directed to send a copy of this order along with copy of the information and documents received in relation to this matter to the Office of the DG.

Sd/-

Ashok Kumar Gupta Chairperson Sd/-

U. C. Nahta Member Sd/-

New Delhi

Sangeeta Verma

Date: 09.08.2019

Member

