

COMPETITION COMMISSION OF INDIA

Case No. 35 of 2022

In Re:

Perfect Infraengineers Limited
(Rep. by Promoter Guarantor: Smt. Manisha
Nimesh Mehta)
Plot No. R-637, T.T.C. Industrial Area,
Thane Belapur Road, MIDC Rabale,
Navi Mumbai – 400 701

Informant

And

L. G. Electronics India Pvt. Ltd.
A-24/6, Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi – 110 044

Opposite Party

CORAM

Ravneet Kaur
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed by Perfect Infraengineers Limited (the ‘**Informant**’) under Section 19(1)(a) of the Competition Act, 2002 (the ‘**Act**’) against LG Electronics India Pvt. Ltd. (‘**Opposite Party**’/OP) alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. As per the Information, the Informant, a company incorporated in 1996, is engaged in providing air conditioner repairing, sales, and service. The Informant, in collaboration with Suntrac, USA, introduced ‘Hybrid Thermal Solar’ (HTS) panels in India which, as

claimed by Informant, when integrated with the air conditioner (AC), results in saving 30-40% electricity consumption without causing any harm.

3. It is stated that Envirocare Labs Pvt. Ltd., Thane (**'Envirocare'**) had placed orders with the Informant for supplying HTS panels for LG VRF ACs. In respect of the same, Envirocare had communicated to the OP to use the Informant's HTS panels on OP's Variable Refrigerant Flow/Variable Refrigerant Volume (VRF/VRV) ACs on 19.05.2022. However, no response/feedback was received from the OP. Thereafter, the Informant had approached one of the officials of OP *vide* email dated 21.07.2022, who also apparently denied permission for the same.
4. The Informant has mentioned another occasion when a similar proposal was made to the Delhi Metro Rail Corporation (DMRC) to supply its HTS panels for integration with OP's VRF ACs installed at DMRC premises. However, the OP intimated DMRC, through emails, about its refusal to allow such integration of the Informant's HTS panel with its VRF/VRV ACs installed at DMRC premises. Regarding such integration, the Informant provided assurance to DMRC that the HTS Panel will cause no harm to OP's VRF/VRV ACs and also undertook the responsibility for the entire VRF/VRV ACs for free, in the unlikely case that something goes wrong. In addition, the Informant had proposed to fully indemnify the OP if any of the spare parts were to get worn out or deteriorate or needed repairs. However, the OP did not agree and refused to install the Informant's HTS panels on its VRF/VRV ACs.
5. It is stated that Intertek, an international certifying body for testing energy consumption and saving, had given a certification to the Informant that its HTS panel results in energy savings and the same was also communicated to OP, but to no avail.
6. It is alleged that the aforementioned refusal of OP not only caused immense prejudice and hardship to Envirocare and DMRC, but also to the Informant.

7. It is alleged that, by refusing to allow the Informant to install its HTS panel, the OP has contravened the provisions of Section 3(1), Section 4(1), Section 4(2)(a)(i), Section 4(2)(b), Section 4(2)(c), and Section 4(2)(d) of the Act.
8. Lastly, the Informant has prayed the Commission to grant a mandatory injunction in favour of the Informant by directing the OP to permit installation of the Informant's HTS panels for DMRC and Envirocare-owned ACs and to honour the contract of maintenance to provide spares of AC machines as and when required by both of them respectively.
9. The Commission, after considering the Information *vide* order its dated 11.10.2022, directed the OP to file its reply to the Information filed on 23.12.2022. The submissions of the OP, *inter alia*, are mentioned below:
 - a. The relevant market in the instant matter is “*market for the sale of heating ventilation and cooling variables refrigerant flow air conditioner*”.
 - b. Daikin, with an average market share of 44%, has been the market leader during the last 3 years, i.e., 2020, 2021, and 2022. However, OP only had an average market share of 16% during this period.
 - c. Refusal by OP was for bonafide technical reasons to save itself from possible claims and liabilities from customers and are objectively justified.
 - d. Test reports relied upon by the Informant were biased and not verified by any third party. Further, the Informant was a defaulter, having pending litigations with OP, and is filing petitions at different forums to settle its personal grudges against OP and to involve it in unnecessary litigations.
 - e. VRV/VRF AC of OP has not been tested with the solar panels anywhere in India, and installing solar panels or hybrid solar panels with VRF/VRV AC is not an industry practice.

10. Thereafter, the Informant filed a rejoinder dated 18.01.2023 to the reply of OP. Informant has largely reiterated the facts mentioned in the Information, such as 30-40% lesser electricity consumption due to HTS solar panels, not even a single instance of these panels causing harm to AC, willingness to indemnify the OP and consumer during the period of warranty, and that its HTS panels have been approved by various other AC manufacturers.
11. The Commission has perused the Information, reply/rejoinder of parties, information available in the public domain, and interim application filed by the Informant. The Commission noticed that the Informant is primarily aggrieved by the conduct of OP for refusing and preventing the installation and integration of HTS panels of the Informant with the OP's VRV/VRF ACs.
12. To begin with, the Commission proceeds to examine the allegations pertaining to Section 4 of the Act.
13. With regard to the VRF/VRV ACs, the Commission observed that VRF Heating, Ventilation, and Air Conditioning (HVAC) systems cleanse the air and delivers cool or warm air based on the user's needs. VRF/VRV AC systems are valued for their inverter technology-based principles of energy saving. VRF/VRV AC systems help maintain varying temperatures simultaneously in different areas as per the user's requirements by way of segregating indoor units, equipped with temperature controls. Further, the OP has submitted the characteristics and advantages of VRF/VRV AC systems, which makes it better than traditional air conditioning systems.
14. In light of the above, it appears that, due to the distinct characteristics and advantages of VRF/VRV AC systems, the relevant product market may be delineated as the "*market for manufacture and sale of VRF HVAC Air conditioners*". Regarding this, OP has also stated that the market for the sale of heating ventilation and cooling variables refrigerant flow air conditioner is the relevant product market. In relation to the relevant geographic market, it appears that the conditions of competition are homogeneous across India.

Further, there is nothing on record which suggests heterogeneity in the conditions of competition in the delineated relevant product market. Accordingly, the whole of India may be considered as the relevant geographic market. Resultantly, the relevant market in the instant case may be *prima facie* defined as the “*market for manufacture and sale of VRF HVAC Air conditioners in India*”.

15. Having delineated the relevant market *supra*, the Commission now proceeds to assess OP’s dominance in the relevant market. It is noted that, apart from OP, there are many VRF/VRV HVAC air conditioner manufacturers and suppliers in India. Some of them are Voltas, Daikin Airconditioning, Blue Star, Panasonic, Samsung, Haier Appliances, and Carrier.
16. With regard to market share, the Commission notes that, on the basis of information available in the public domain, Daikin is the largest player in the VRF/VRV AC systems. In its submissions OP has also stated that Daikin has been the market leader during the last 3 years, i.e., 2020, 2021, and 2022, with an average market share of 44%, and OP had only an average market share of 16% during the said period. The Informant has not provided any information about the dominance of OP. In view of the aforesaid, the Commission notes that the OP does not appear to be dominant in the relevant market. The presence of large number of players makes the market contestable and provides several options for the consumers and therefore, acts as a competitive constraint for OP. In the absence of dominance, no case of contravention of the provisions of Section 4 of the Act is made out.
17. The Commission notes that, though the Informant has alleged violation of Section 3 of the Act, the Informant has not provided any information as to how the said conduct of the OP falls under the purview of Section 3 of the Act. Be that as it may, looking at the market construct and the nature of allegations, the question of contravention of provisions of Section 3 (1) of the Act is also ruled out.

18. Resultantly, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out, and the Information filed is directed to be closed forthwith in terms of the provisions of Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises, and the same also stands dismissed.
19. The Secretary is directed to communicate to the parties accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 20.06.2023
New Delhi