COMPETITION COMMISSION OF INDIA

Case No. 30 of 2019

***In Re*:**

Air Works India (Engineering) Private Limited 1st Floor, Kalyani House, Plot No.40, Sector-18, Gurugram, Haryana- 122001, India	**Informant**

And

GMR Hyderabad International Airport Limited (GMR) DLF Building No.5, Tower B, DLF Cyber City, DLF Phase-2, Sector-25, Gurugram, Haryana-122002, India	**Opposite Party No.1**
GMR Aero Technic Limited (GAT) 5th Floor, Good Earth City Centre, Sector-50, Gurugram, Haryana-122002, India	**Opposite Party No.2**

CORAM:
Ravneet Kaur
Chairperson

Anil Agrawal
Member

Sweta Kakkad
Member

Deepak Anurag
Member

Present:

For Air Works India (Engineering) Private Limited	None
For GMR Hyderabad International Airport Ltd. (GMR/OP-1) & GMR Aero Technic Limited (GAT/OP-2)	Rajshekhar Rao, Sr. Advocate Abdullah Hussain, Advocate Kanika Ch. Nayar, Advocate Shambhavy Singh, Advocate

Ishan Handa, Advocate
Sayan Kumar Panda, Advocate
Harshil Wason, Advocate
Bhaskar Chandran, Executive Director-Legal & Group General Counsel
Sheetal Sharma, Jr. Manager, Legal
BSS Kakaraparty, CLO
Partha Sarthi, CLO, Legal Head
Sridhar Babu, Vice President GMR

O R D E R

Brief Facts as per Information

1. The Information in the instant matter has been filed under Section 19(1)(a) of the Competition Act, 2002 ('**Act**') by Air Works India (Engineering) Private Limited ('**Air Works**'/'**Informant**') against GMR Hyderabad International Airport Limited ('**GHIAL**'/'**GMR**'/'**OP-1**') and GMR Aero Technic Limited ('**GATL**'/'**GAT**'/'**OP-2**') alleging contravention of the provisions of Section 4 of the Act. OP-1 and OP-2 are collectively referred to as the '**Opposite Parties**'/'**OPs**'.

2. The Informant is stated to be a company incorporated under the Companies Act, 1956 having its registered office in Mumbai and is, *inter alia*, engaged in the business of providing Maintenance, Repair and Overhaul ('**MRO**') services which includes Line Maintenance Services ('**LMS**') and Base Maintenance Services ('**BMS**') of aircraft to airlines and general aviation. OP-1 is a company which owns and operates Rajiv Gandhi International Airport ('**RGIA**') in Hyderabad, India. OP-2 is a wholly owned subsidiary of GMR Aerospace Engineering Limited., which in turn is a wholly owned subsidiary of OP-1. OP-2 is also engaged in the business of providing third party MRO services at RGIA. Both Informant and OP-2 provide MRO services.

3. As stated, OP-1 had entered into a Joint Sector Agreement **('JSA')** with the Ministry of Civil Aviation ('**MoCA**'), Government of India, for Development, Construction, Operation and Maintenance of RGIA *vide* Concessionaire Agreement dated 20.12.2004 for a period of 30 years (extendable to another 30 years at the option of GMR). Pursuant to the JSA, OP-1 became the sole concessionaire of RGIA and had the exclusive right

to maintain, manage and operate the airport including to use its discretion in respect of provision of services by third parties at the airport.

4. Following the execution of the Concessionaire Agreement for RGIA, OP-1 entered into agreements to give space(s) to business entities desirous of operating from the airport premises. The Informant has stated that it is one of the third-party service providers of MRO services at RGIA, covering both LMS and BMS, and the nature of services offered requires it to be located within the airport premises.

5. It has been submitted that LMS may include activities like trouble shooting, defect rectification, component replacement, schedule maintenance and/or checks, minor repairs, modifications and visual inspections. These services are required to be provided during the time between the landing and take-off of any aircraft to declare it airworthy and make it fit for departure. On the other hand, BMS includes heavy periodic maintenance of the aircraft of airline operators. The Informant is stated to be authorized to undertake aircraft maintenance and repair services at RGIA by the aviation departments of Kingdom of Saudi Arabia, Republic of Sri Lanka, Republic of Singapore, United Arab Emirates, Republic of Turkey and State of Kuwait. The Informant undertakes aircraft maintenance and repair works for many foreign airlines such as Air Arabia, Etihad Airways *etc.* At the time of filing of the Information, the Informant was providing LMS at 19 airports in India and was servicing 220 international flights per month at the RGIA.

6. Since the LMS provided by the Informant necessarily required it to be present within the airport premises, the Informant executed a License Agreement dated 20.12.2011 with OP-1 for a period of 3 years through which it was given an area of 96.04 sqm for setting up, operating and maintaining the Airline Engineering Maintenance Office and Warehouse. OP-1, in turn was charging license fee, common area maintenance fee and utility charges for the same from the Informant.

7. On expiry of the term of the License Agreement dated 20.12.2011, an agreement dated 28.11.2014 was executed between the Informant and OP-1 entitling it to continue providing LMS to aircraft until 22.03.2019. The Informant averred that since OP-1 manages and operates the RGIA, the Informant was dependent upon OP-1 for grant of

the necessary license to operate from the airport for provision of LMS to various airlines.

8. The Informant had paid OP-1 an interest free security deposit of Rs. 5,88,342/- (Rupees Five Lakhs Eighty-Eight Thousand Three Hundred and Forty-Two Only) and a Royalty Deposit of Rs. 6,24,828/- (Rupees Six Lakhs Twenty-Four Thousand Eight Hundred and Twenty-Eight Only), on account of the license to operate from RGIA.

9. The Informant was also paying a monthly permission/license fee for the said premises, which as of March, 2019, was Rs. 1,26,184/- (Rupees One Lakh Twenty-Six Thousand One Hundred and Eighty-Four Only) plus GST at the rate of 18%. In addition to the monthly permission/license fee, the Informant had also been sharing its revenue with OP-1 since March, 2014. Since 01.01.2019 uptill 30.06.2019, the Informant had paid an amount of Rs. 32,10,269/- (Rupees Thirty-Two Lakhs Ten Thousand Two Hundred and Sixty-Nine Only) towards revenue sharing which was 13% of Gross Revenue of the Informant.

10. The Informant stated that for providing continuous operations at the airport, a license was required to be obtained and hence, it was the understanding amongst all licensees who were operating at the airport for technical support services that as long as they were carrying on their operations, the license would continue to be granted.

11. Since the License Agreement dated 28.11.2014 was valid till 22.03.2019, the Informant requested OP-1 *vide* email dated 25.02.2019 to renew the agreement for 5 years. In response, OP-1 informed that a letter addressing the said issue had already been sent by it to the Informant.

12. Subsequently, the Informant received a letter dated 22.02.2019 from OP-1 wherein it was informed that the License Agreement between OP-1 and the Informant could not be renewed, stating the following: "*As we will be needing the said space for our on-going expansion works at RGIA, we regret to inform you that we will not be extending the Agreement any further beyond 22nd March 2019*".

13. In response to OP-1's letter dated 22.02.2019, the Informant again *vide* email dated 11.03.2019 requested OP-1 to renew the License Agreement dated 28.11.2014. As no reply was received from OP-1, the Informant wrote a letter dated 22.03.2019 to the Secretary, MoCA requesting to intervene in the matter. The Informant again requested OP-1 to renew the License Agreement as there was no option but to close down its business at RGIA.

14. OP-1, *vide* its letter dated 27.06.2019, asked the Informant to vacate the premises by 30.06.2019. The Informant, *vide* its letter of even date, once again requested MoCA to intervene in the matter. It further requested OP-1, *vide* letter dated 28.06.2019, to withdraw its letters dated 22.02.2019 and 27.06.2019 and renew the License Agreement dated 28.11.2014.

15. The Informant also filed a writ petition bearing WP(C) No.13298/2019 before the Hon'ble High Court of Judicature for the State of Telangana at Hyderabad ('**High Court of Telangana**') *inter alia,* seeking a writ or order or direction in the nature of *mandamus* declaring the notice issued by OP-1 to vacate/eviction letter as arbitrary, unconstitutional and against the principles of natural justice. However, *vide* order dated 02.07.2019, the Hon'ble High Court rejected the request of interim relief, *inter alia,* on the ground of existence of licensor and licensee relationship and the arbitration clause in the License Agreement. The Informant challenged the said order in appeal which also eventually got dismissed.

16. The Informant alleged that OP-1 is dominant in the *'market for Line Maintenance Services at RGIA'* and has abused its dominant position. It further stated that OP-1 resorted to sending emails to the Informant's customers to avail the LMS of an alternate vendor. The Informant's customers however, expressed their willingness to continue with the services provided by the Informant. Further, OP-1 *vide* email dated 30.07.2019, asked the Informant to surrender the vehicle licenses to its airside office. The Informant further alleged that OP-1 and OP-2 started poaching the Informant's technically skilled employees.

17. As per the Information, OP-2 is a provider of MRO services from 2017. The Informant, on the basis of recently audited balance sheets, alleged that OP-2 was under tremendous

financial hardship and required support from the parent company. The Informant alleged that the motive behind termination of its license by OP-1 was to protect/promote its own group entity, *i.e.*, OP-2.

18. The Informant levelled the following allegations of abuse of dominance by OP-1:

a) Creation of a monopolistic environment which would enable OP-2 to operate on its own terms and conditions without being affected by any competition and charging of exorbitant rates from the customers (Airlines) thereby increasing the cost to end customers which may potentially lead to contravention of Section 4(2)(a)(i) of the Act;

b) Ousting of the Informant from providing LMS at RGIA, thereby, limiting and restricting provision of services by the Informant and adversely affecting competition in the market for such services in contravention of Section 4(2)(b)(i) of the Act;

c) Denial of market access to the Informant by refusing to renew the license so as to prevent the Informant from providing LMS to the airlines at RGIA and by withholding access to the premises in the said airport thereby, causing impediments to the Informant in continuing LMS, in contravention of Section 4(2)(c) of the Act;

d) Leveraging of its dominant position in the upstream market and indulging in exclusionary practices/restricting provision of services in the downstream market, thereby eliminating competition in contravention of Section 4(2)(e) of the Act.

19. Based on the aforesaid facts and allegations, the Informant *inter alia* prayed to the Commission to order an investigation to be made in the matter, besides seeking a direction for OP-1 to renew the License Agreement dated 28.11.2014 with the Informant, which has allegedly been discontinued without any objective justification.

20. The Informant also filed an application dated 21.08.2019, under Section 33 of the Act, seeking interim relief for restraining OP-1 and OP-2 from taking any coercive action against the Informant and for allowing the Informant to continue providing LMS at

RGIA. Subsequent to the filing of the Information, the Informant filed 2 more applications, dated 29.08.2019 and 20.09.2019, seeking early listing of the matter alleging that OP-1 had disabled the electricity connection and also locked the premises of the Informant.

<u>Prima facie consideration by the Commission</u>

21. The Commission considered the Information in its ordinary meeting held on 01.10.2019 and decided to pass an appropriate order in due course. The Commission while passing the *prima facie* order noted that since the allegations in the present case pertained to denial of market access as well as of leveraging of dominant position, 2 markets needed to be identified: first relevant market (upstream market), in which the erring entity is alleged to be dominant and the second (downstream) market, in which the said entity is protecting its position, directly or indirectly, by exercising abuse in the upstream market.

22. The Commission was of the view that '*provisioning of Line Maintenance Services*' is the downstream market where the alleged abuse has been occasioned. However, for analyzing OP-1's position, the upstream market *i.e.* '*market for provision of access to airport facilities/premises*' attained relevance.

23. With respect to the relevant geographic market, the Commission noted that the same appeared to be the RGIA, as for providing any other third party services at the airport, the service provider needs to have access to the facilities/premises at RGIA. In such a scenario, the airport itself becomes the relevant geographic market, being the place where the competition dynamics are homogenous and distinct from those prevailing outside such airport.

24. Accordingly, for carrying out analysis under the provisions of the Act, the upstream market was delineated to be '*market for provision of access to airport facilities/premises at the RGIA*', while the downstream market was delineated to be '*market for provision of Line Maintenance Services at the RGIA*'.

25. With regard to the assessment of dominance, the Commission noted that by virtue of the Concessionaire Agreement, the Government of India granted OP-1 the exclusive

right and privilege to carry out the Development, Design, Financing, Construction, Commissioning, Maintenance, Operation and Management of the airport for a period of 30 years. The Commission was of the view that this agreement implied dominance in terms of providing access to the facilities/premises at RGIA to various third party service providers who wish to provide their services at the airport. Thus, OP-1 was considered to be dominant in the relevant/upstream market.

26. The Commission noted the facts of the present case and observed that all the allegations were stemming from a single conduct *i.e.*, not extending the License Agreement of the Informant by OP-1 (and disallowing its presence at the RGIA). The said conduct suggested violation of Section 4 of the Act in terms of: (i) limiting and restricting the provision of services of the Informant, thereby adversely affecting competition in the market of such services [Section 4(2)(b)], (ii) denial of market access (*i.e.*, denying access to the space at the airport premises) [Section 4(2)(c)] and (iii) leveraging of dominant position in the upstream market by OP-1 to protect the downstream market [Section 4(2)(e)].

27. The Commission noted that OP-1, leveraging its dominant position in the upstream market with exclusionary motive to favour its own group entity (*i.e.,* GAT/OP-2) and denying market access to the Informant, warranted investigation. Furthermore, it was observed that the alleged conduct by OP-1 had the potential to limit and restrict the provision of LMS and the technical development relating to provisioning of such services to the prejudice of consumers. RGIA as a dominant entity controls access to the airport and denies access to the competitors; there is no alternative means available to the LMS providers of entering the airport at a reasonable cost without having access to the facility. Further, the Commission also looked into market shares of third party LMS providers and found that OP-2's market share was 27% and the Informant's market share was 53%. The Commission, *prima facie,* held that denial of access to the Informant would benefit OP-2 which is a subsidiary of OP-1 and a competitor of the Informant in the relevant market.

28. In view of the foregoing the Commission was of the considered view that *prima facie*, a contravention with regard to Sections 4(2)(b), 4(2)(c) and 4(2)(e) of the Act was made out against OP-1. The Director General ('**DG**') was directed to carry out detailed

investigation into the matter, in terms of Section 26(1) of the Act, and submit an Investigation Report within 60 days. The Commission decided to deal with the application for interim relief separately.

Subsequent Developments

29. After passing the *prima facie* order dated 03.10.2019 under Section 26(1) of the Act, the Commission *vide* order dated 04.10.2019, decided to hear the parties on interim relief on 17.10.2019. OPs had challenged the aforesaid orders before the Hon'ble High Court of Telangana in WP (C) No. 22467/2019. On 17.10.2019, the Informant as well as OPs appeared before the Commission through their respective legal counsels. OPs brought to the notice of the Commission the stay order dated 16.10.2019 of the Hon'ble High Court of Telangana passed in the aforementioned writ petition whereby, the Hon'ble High Court stayed all further proceedings in the matter. Accordingly, the Commission decided to defer the hearing, till further orders.

30. On 30.05.2020, OP-1 sent a letter to the Commission intimating about the selection of a third party service provider for LMS through competitive and transparent bidding process and sought closure of the case. The Commission, *vide* its order dated 10.06.2020 observed that, in view of the directions contained in order dated 16.10.2019 passed by the Hon'ble High Court of Telangana in WP(C) No. 22467/2019, the Commission is precluded from considering the request. The stay granted by the Hon'ble High Court was vacated pursuant to the dismissal of WP (C)No. 22467/2019, on 12.10.2022.

31. The Informant filed an application dated 30.10.2023 for withdrawal of the Information, stating that "*it has now approached the OPs to consider their request for continuing their operations at RGIA since it has already been carrying on its business at the RGIA and it is no longer interested in pursuing complaint filed before the CCI. Therefore, there is no cause of action to continue further in this matter*". The Commission, *vide* its order dated 06.12.2023, considered the aforementioned application of the Informant and observed that the proceedings before the Commission are not in nature of a '*lis*' between the parties but are proceedings '*in rem*', having implications on the market and its various constituents/stakeholders. The Commission also noted that the Hon'ble Supreme Court in case of *Samir Agrawal vs. CCI* (2021) 3 SCC 136 held that the

proceedings before the Commission are inquisitorial in nature. Further, the Commission observed that no provisions allowing withdrawal of the filed Information exists in the Act. Accordingly, the aforementioned application was rejected.

32. After seeking due extension of time from the Commission, the DG submitted its Investigation Report dated 21.11.2023 to the Commission. The Commission considered the Investigation Report of the DG in its ordinary meeting held on 16.02.2024 and directed to forward an electronic copy of the same to the parties for filing their respective objections/suggestions, if any, latest by 22.03.2024, along with a brief synopsis thereof with an advance copy to each other, under intimation to the Commission. The OPs were further directed to furnish their audited financial statements including Balance Sheets and Profit & Loss accounts for the Financial Years ('**FYs**') 2020-21, 2021-22 and 2022-23, latest by 05.04.2024.

33. The Commission also considered the interim relief application of the Informant dated 21.08.2019 filed under Section 33 of the Act, and observed that in view of the Informant's application dated 30.10.2023 for withdrawal of the filed Information, the case of grant of relief does not survive as it had become infructuous. Accordingly, the said application for interim relief under Section 33 was disposed of *vide* order dated 16.02.2024

Filing of Writ Petition before the Hon'ble High Court of Telangana

34. On 18.03.2024, the OPs preferred a WP(C) No. 7227/2024 before the Hon'ble High Court of Telangana. *Vide* order dated 19.03.2024, the Hon'ble High Court stayed all further proceedings arising out of the present matter for 2 weeks. The Hon'ble High Court dismissed the aforementioned writ petition as withdrawn while granting liberty to avail the remedies as available under the law.

35. In compliance of the order of the Commission dated 10.07.2024, the Informant filed its objections/suggestions on 24.07.2024. OPs filed their joint objections/suggestions on 09.08.2024. OP-1 also filed its relevant financial details pertaining to LMS as directed by the Commission. Further, as directed, OP-1 and OP-2 filed their separate financial

statements including Balance Sheets and Profit & Loss accounts for the FYs 2020-21, 2021-22 and 2022-23 on 11.12.2024.

36. The Commission *vide* its order dated 12.03.2025 decided to hear the OPs and the Informant on the Investigation Report of the DG on 09.04.2025 and directed the parties to appear through their authorized representative(s) in terms of Section 35 of the Act.

37. The Informant, *vide* its letter dated 07.04.2025 stated that it had entered into an out of court settlement with OP-1 and therefore, did not wish to pursue the matter further. On 09.04.2025, the Commission heard the OPs in terms of Section 35 of the Act. None appeared on behalf of the Informant. The Commission directed the OPs to file their written synopsis. Accordingly, OPs filed their written synopsis on 16.04.2025. The Commission *vide* order dated 14.05.2025, considered the aforementioned submissions of the OPs, took the same on record and decided to pass an appropriate order in due course of time.

Findings of DG

38. With regard to delineation of upstream relevant market, the DG placed reliance on the submissions of Directorate General of Civil Aviation (‘**DGCA**’), the Concessionaire Agreement dated 20.12.2004 between the MoCA and OP-1 and the statement of CEO of OP-1 dated 20.09.2023. The DG noted that an approval is required to be obtained from DGCA for carrying out LMS at a particular airport, in accordance with the provisions of Civil Aviation Requirements-145 (‘**CAR-145**’). However, by virtue of being the concessionaire of RGIA, OP-1 has, in terms of the Concessionaire Agreement, the exclusive right to undertake *inter alia*, the operation and management of the airport including granting space and access for carrying out various services such as LMS, by third parties. This was further supplemented by the statement of CEO of OP-1 that OP-1 provides and issues Airport Airside Vehicle Permit **(‘AAVP’)** and Airport Airside Driving Permit **(‘AADP’)** to the LMS providers after the Airport Entry Permit is issued to them by the Bureau of Civil Aviation Security (‘**BCAS**’). Regarding the provision of space to LMS providers at RGIA, it has been stated that OP-1 allots space to them subject to availability, operational convenience and safety. Thus, the DG concluded that the

upstream relevant market be delineated as "*provision of access to airport facilities/premises*".

39. With regard to the downstream market, the DG pointed out that at a particular airport, there are multiple providers of LMS competing with each other and the dynamics of competition in this segment are different from other maintenance services. No LMS provider can work at a particular airport without license from the DGCA, entry permit issued by BCAS and other type of permits such as AAVP and AADP issued by the concerned airport operator. These all features make the services related to LMS unique, thereby, the downstream relevant market can be delineated to be *'market for provision of Line Maintenance Services.'*

40. With regard to the relevant geographic market, the DG was of the view that the same would be as narrow as the target airport *i.e.,* RGIA, as a service provider needs to have access to the facilities/premises at the concerned target airport, in order to provide their services. Also, the competition dynamics at the target airport were considered to be homogenous and distinct from those prevailing outside of it as stated above.

41. With regard to dominance of OP-1 in the upstream relevant market, the DG noted that OP-1 was conferred monopoly at RGIA by virtue of Concessionaire Agreement which granted exclusive right to the OP-1 in terms of exclusive right and privilege to carry out the Development, Design, Financing, Construction, Commissioning, Maintenance, Operation and Management of the RGIA for a period of 30 years. Considering the factor given in Section 19(4)(g) of the Act ('*Monopoly or dominant position whether acquired as a result of any statute or by virtue of being a government company or a PSU or otherwise*'), OP-1 appears to be a dominant entity in the upstream relevant market. Dominance of OP-1 can also be assessed in terms of other factors mentioned in Section 19(4) of the Act. In this regard, it may be noted that over the years, OP-1 has grown and earned huge revenue from business operations because of the passenger growth.

42. With regard to the allegation under Section 4(2)(b) of the Act, the DG noted that the conduct of OP-1, in denying the renewal of space license of the Informant, may result in higher prices to be charged from the airlines by the remaining LMS providers as there

will be less competitive constraints. The DG also noted that although the airlines were allowed to undertake the LMS themselves, the data showed that most of the airlines preferred third party LMS providers. As per the reply filed by OP-1, 8 airlines (Indigo, Emirates, Spice Jet, Cathay, Vistara, British Airways and Star India) are undertaking self-line maintenance as compared to 24 airlines which are availing third party maintenance service, which shows that the airlines are also dependent on the LMS providers and any exit of existing player from the market may limit or restrict either the prices or the services. The DG also noted that it would not be economically feasible for those airlines which have a smaller number of transits, to do line maintenance on their own.

43. The DG further noted that it will be difficult for even Bird Execujet (entity selected to be third party LMS provider through a tender issued by OP-1 on 23.12.2019) to replace the Informant, if it is allowed to carry out operations after resolution of legal issues between the Informant and OP-1, as OP-1's conduct of writing emails shows that it wants the airlines to choose from amongst the existing LMS service providers and not Bird Execujet. Further, even Bird Execujet will require considerable time to get business from those airlines which have already given their business to other existing LMS players. In view of the above, the DG concluded that the conduct of OP-1 has potential to limit/restrict the provision of LMS of third party service providers, to the prejudice of consumers in contravention of Section 4(2)(b) of the Act.

44. With respect to the allegation of denial of market access under Section 4(2)(c) of the Act, the DG noted that OP-1 has primarily taken 3 pleas for the non-renewal of license of the Informant: (a) Ground Handling Services Regulations w.e.f. 01.07.2019 whereby the number of Ground Handling Service providers were restricted to 3 entities *viz.* Air India or its subsidiary, subsidiary of the airport operator (OP-2), and third party ground handler, which was to be selected through a bidding process, (b) owing to the large scale expansion works being undertaken at RGIA, there was dire need of enclosed and ready to occupy space particularly on the airside to support the expansion works, and (c) space on airside was stated to be non-essential for providing LMS.

45. With regard to the *first plea*, the DG considered clause 3(4) and (5) of the Ground Handling Regulations, 2018 notified by the Airports Authority of India ('**AAI**') *vide* Notification dated 26.10.2018 and also took into account AAI's reply dated 19.09.2023, which stated that the above regulations are not applicable to RGIA and also did not include LMS. The DG further noted that OP-1, *vide* it's reply dated 27.09.2023, stated that it followed the Ground Handling Services Regulations issued by MoCA in 2017 and not the regulations by AAI. The DG, however, noted that in the MoCA's notification dated 15.12.2017, clause 3(d) and (e) have similar provisions as that of AAI's 2018 Regulations.

46. The DG also noted that CEO of OP-1 replied in the negative when he was asked whether OP-1 discussed the tender process for appointment of third party LMS providers in terms of the Ground Handling Regulations, with any authority such as AAI, DGCA/MoCA *etc*. Also, when asked as to how the company came to the conclusion that a tender was required to be issued in terms of Ground Handling Regulations without discussing the same with any of the abovementioned authorities, an evasive answer was given, stating that since LMS is considered akin to Ground Handling Services, OP-1 thought it prudent to limit the number of LMS provider for healthy business environment and non-compromise of quality of service. The DG noted that the statement of CEO of OP-1 itself shows that LMS is not part of Ground Handling Services otherwise it would not have been considered 'akin' to Ground Handling Services.

47. The DG further noted that OP-1, *vide* its reply dated 31.10.2023, stated that it had agreed to consider the Informant's request for space allocation at RGIA, which further strengthens the fact that Ground Handling Regulations are not applicable to OP-1 otherwise it would not have considered the request of the Informant for grant of space as it would increase the number of players. Also, no bidding is done in this regard, which is one of the requirements of said Regulations.

48. In view of the foregoing, the DG noted that Ground Handling Services Regulations issued by either MoCA in 2017 or by AAI in 2018 are not applicable to the LMS at RGIA. Therefore, the contention of the OP-1, that it did not renew the license of the

Informant as it was required to select a third party LMS provider through bidding, does not sustain.

49. With regard to the *second plea*, the DG noted that the CEO of OP-1 was asked certain questions to ascertain whether the space which was licensed to the Informant, was actually required for the expansion project and if so, could some other space within the airside be used for the said purposes. The DG also sought details of land/space allotted to various entities by OP-1 for various purposes at the airside of RGIA after it had refused the request of the Informant to renew their license.

50. Based on the statements and submissions of OP-1 and its officials, the DG noted that after expiry of the license of the Informant, space was allotted in Airlines Engineering Maintenance Building ('**AEMB**') to 4 airlines at the first floor and to 1 airline *i.e.*, British Airways on the ground floor. The DG further noted that such activities could have been carried out either from the space allotted to other airlines as mentioned above or from the space designated for allotment to Bird Execujet (third party LMS provider selected through bidding process) or some other vacant space could have been used for the said purpose. It was also noted that, in his statement, CEO of OP-1 could not justify as to why only the said space, which was previously allotted to the Informant, was required by OP-1 for expansion project and not any other space lying vacant on the airside. As per the DG, the only plausible explanation for not doing the same is that OP-1 wanted to drive the Informant out of the market as it is one of the competitors of its own subsidiary *i.e.* OP-2. In view of the above, the DG was of the opinion that non-renewal of license of the Informant on the ground that the space was required for ongoing expansion project work at RGIA does not seem to be reasonable as OP-1 could have used the other vacant space for the said purpose.

51. As regards the *third plea* on non-requirement of space on the airside for LMS providers, OP-1 has claimed that the Informant is continuing its LMS activities even without the space. In this context, the DG noted that OP-1 challenged the proceedings of this case before the Hon'ble High Court of Telangana by way of WP (C) No. 22467/2019 wherein, on 17.12.2019, it gave an undertaking that that it would cooperate with respect to the running of business of the Informant including issuance of necessary permit so as to

ensure smooth functioning of its business. Even though the aforesaid writ petition challenging the position got dismissed on 12.10.2022, it is admitted position of the parties that the Informant was allowed to continue LMS at RGIA by OP-1, even though no space has been allotted to it. Consequently, the Informant had hired separate office space outside RGIA and provides LMS to its customers by carrying the required equipment in a vehicle and driving into the airport premises at the scheduled time of arrival of airlines. The DG stated that despite the above, the Informant is carrying out its operations under onerous and critical circumstances to provide timely support services. The DG found that allotment of space is critical to the operations of any LMS provider, as had it not been so critical the space could not have been provided to other operators. Thus, the DG concluded that the conduct of OP-1 resulted in denial of market access to the Informant in contravention of Section 4(2)(c) of the Act.

52. With regard to the allegation raised under Section 4(2)(e) of the Act, the DG found that OP-1 issued certain emails to the airlines such as Jazeera Airways and Saudi Airways, whereby they were asked to choose an alternate vendor for LMS given the non-extension of the Informant's license. This resulted in some favourable business going to OP-2, as number of airlines being serviced by OP-2 has increased since refusal by OP-1 to renew the License Agreement of the Informant. Sri Lankan Airlines moved its LMS from the Informant to OP-2, which was claimed to be through a tender process. As per the Informant, Etihad and Jazeera Airlines shifted their LMS during the period of filing Information till 01.11.2022. The DG further noted that though OP-1 had stated that these emails were sent as a good industry practice, so that the airlines do not face any operational issues, shifting of airlines from the Informant to OP-2 for LMS and joining of 15 employees after refusal to renew the license of the Informant points towards the conduct of OP-1 to protect its own entity (OP-2) and causing loss to the Informant which creates uncertainty in the minds of the employees of the Informant and could have benefited OP-1/OP-2. In view of the above factual scenario, the DG found that only inference that can be drawn is that said emails were sent by OP-1 for the benefit for its own subsidiary OP-2, so that it can get more business by ousting the Informant. Thereby, OP-1 has leveraged its position in the upstream market to benefit its own subsidiary (OP-2) in the downstream market. This conduct of OP-1 along with the conduct of non-

renewal of license of the Informant without reasonable justification, was stated to be in violation of Section 4(2)(e) of the Act.

Reply/Objections/Suggestions of the Parties

53. The Informant, while reiterating the findings of the DG in the present matter, stated that since the Investigation Report submitted by the DG, has come to the conclusion that the conduct of OP-1 is violative of Section 4 of the Act, the Informant has nothing further to submit and supports the Investigation Report submitted by the DG. The Informant also stated that OP-1 agreed to provide space at airside to it for performing the LMS and a fresh License Agreement was entered into between the Informant and OP-1 on 20.12.2023.

54. OPs submitted their detailed objections/suggestions on the findings of DG and allegations of the Informant.

55. On the delineation of the relevant market, OPs have submitted that the market definition should be broad and that the geographical market cannot only be restricted to RGIA since there are several other airports functioning in the country.

56. On the question of dominance, OP-1 has submitted that the same may be left open with respect to the present case since the DG has delineated the geographical market incorrectly and as such OP-1's dominant position is also incorrect.

57. With regard to the allegation under Section 4(2)(b) of the Act, OPs have stated that the assumption of the DG that "*most of the airlines prefer third party LMS providers*", and that the non-renewal of space "*may result in higher prices to be charged from the airlines*" appear to be highly speculative. It was pointed out that self-handling accounted for 76% of all transits in FY 2018-2019 and 78.1% in FY 2022-2023, which indicated that self-handling is preferred by airlines.

58. With regard to the allegation under Section 4(2)(c) of the Act, OPs submitted their comments on the 3 pleas, submitted by them before the DG. With respect to the *first plea*, OPs stated that Ground Handling Regulations were adopted for *inter alia*

conducting a bidding process and restricting the total number of third-party LMS service providers. It was also stated that the allocation of space resources through a competitive bidding process (in which the Informant participated) cannot be objected to as being abusive as it is pro-competitive in nature. OPs further stated that Government of India through the Concessionaire Agreement has granted OP-1 the exclusive right and privilege to carry out Development, Construction, Maintenance *etc.* at RGIA and this agreement has given it the right to grant, Service Provider Rights (‘**SPR**’) to any person for the purpose of carrying out the activities and business on such terms and conditions as it deems appropriate.

59. On the *second plea*, OPs submitted that the airport expansion projects team needed an enclosed and ready to occupy space on the airside for the airside expansion works and thus the space allotted to the Informant had been chosen since its license was expiring. It was pointed out that the space on the ground floor in the AEMB is provided to various airlines operating from RGIA as first preference is primarily given to their airline engineering and maintenance activities. Space on the first floor is provided to the airlines for catering to their office/administrative purposes, which is also not suitable for storing tools and equipment. It was also submitted that the DG ignored 2 other crucial factors *viz.* (a) airlines must be given preference if vacant space is available, and (b) OP-1 also took back some space from Spice Jet and OP-2 in the period since June, 2019 when the expansion works were ongoing, which is contrary to the conclusion drawn by the DG that alternate space was readily available and could have been utilized by OP-1.

60. On the *third plea*, of non-requirement of space on the airside for providing LMS, OPs reiterated that the Informant has been providing LMS at RGIA since 2011 and continued to do so even in 2019 despite non-renewal of licence for space, with a mobile vehicle and necessary passes for entry and exit at the airport. It is stated that space is not needed for LMS because there are several airlines and third party providers which provide LMS without any space at the airport *e.g.* KLM Dutch Airlines. Thus, it is argued that the DG has mixed up the airline operators’ requirements with the requirements of standalone LMS service providers.

61. With regard to the allegation under section 4(2)(e) of the Act, OPs submitted that OP-1, being the operator of the airport, cannot be faulted for sending emails to airlines informing them of developments at the airport. It is also pointed out that OP-1, neither mentioned OP-2 in any email nor requested any airline to engage OP-2. Further, as per OP-1, OP-2 has received the business of Etihad and Sri Lankan Airlines through competitive bidding and Jazeera itself approached OP-2 for LMS. With respect to the DG's observations on the shift of employees from the Informant to OP-2, OPs submitted that the DG failed to appreciate that the choice of individual candidates/employees to join or leave an employer is not in anyone's control. The DG is also stated to have ignored that prior to 2019 as well, 20 employees of the Informant had moved to OP-2. OPs further submitted that if it was OP-1's intention to oust the Informant from providing LMS, it could have also stopped the Informant from functioning at Delhi Airport, where the Informant provides LMS. This substantiates that OP-1 has not committed any abuse as alleged.

62. OPs further submitted that during the course of investigation, the Informant approached OP-1 and requested for allocation of space at RGIA, which was agreed to by OP-1 since the expansion works were nearing completion and certain space got released from expansion works. Thus, the dispute between the parties was resolved amicably.

Analysis of the Commission

63. The Commission has perused the Information, material available on record, the Investigation Report, the replies/suggestions/objections to the Investigation Report and the written submissions of the parties, post hearing.

64. The Commission notes that the present matter concerns non-renewal of the Informant's license by OP-1 for space at the airside of RGIA which is stated to be required, *inter alia* for the provision of LMS. This was stated to have been done for limiting the services provided by the Informant, denying market access to the Informant by withholding access to the premises in the said airport and leveraging its dominant position at the airport to eliminate competition in the market of provision of LMS wherein OP-2, which is a subsidiary of OP-1, is also functioning. The aforementioned conduct is alleged to be in violation of Sections 4(2)(b), 4(2)(c) and 4(2)(e) of the Act.

65. The issue which arises for consideration before the Commission is whether the OPs are in contravention of the aforementioned provisions of Section 4 of the Act as a result of the non-renewal of the Informant's license for space at the airside of RGIA.

66. At the outset, the Commission deems it appropriate to deal with certain preliminary objections of OPs. OPs have stated that the Commission should reconsider its rejection of the Informant's withdrawal application dated 30.10.2023.

67. The Commission notes that OPs challenged the order dated 06.12.2023 of the Commission (rejection of withdrawal application) before the Hon'ble High Court of Telangana *vide* WP(C) No. 7227/2024. The Hon'ble High Court dismissed the aforesaid writ petition as withdrawn while granting liberty to avail the remedies available, under the law. Further, as per the information available, the outcome of the writ petition has not been challenged in further legal/judicial proceedings. Be that as it may, the Commission proceeds to analyse the allegations against the OPs.

68. The allegations of the Informant need to be analysed for abuse of dominant position by OP-1, if any, as per the provisions of Section 4 of the Act. For analysing the said allegations, the Act requires delineation of the relevant market, followed by assessment of OP-1's position in the said relevant market and then, if OP-1 is found to be dominant, analysing its conduct with regard to the alleged abuse.

69. The first issue before the Commission is the delineation of the relevant market as per provisions of the Act. As per reply of DGCA dated 01.12.2022, the Commission notes that besides giving approval for LMS, DGCA being an aviation safety regulator, had no role in the commercial decisions of OP-1 regarding the refusal/allotment of space to the Informant. This makes it clear that the role of DGCA is limited to the issuance of license for carrying out LMS at a particular airport. For the requirement of space to carry out LMS, the concerned concessionaire holder/operator of the airport has the power to allocate space in the airport. The Commission also noted DG's reliance on the order of the Commission dated 01.10.2019 in Combination Registration No. C-2019/07/676, in which the relevant market was defined as '*market for provision for access to airport facilities/premises*' as the upstream relevant market. Thus, the Commission is of the

view that the DG has rightly delineated the upstream relevant market as '*market for provision of access to airport facilities/premises at RGIA*'.

70. With regard to the delineation of downstream market, the Commission notes that the nature of the services of line maintenance *i.e.,* LMS is technical and has unique characteristics which distinguishes it from other types of maintenance or repair services such as BMS. Airlines specifically require LMS between landing and take-off of any aircraft, which is either carried out by third party LMS providers or self-handling. It was also observed that demand of LMS providers by the airlines itself shows that it can be considered as a separate relevant market. In view of the above, the Commission agrees with the delineation of the downstream relevant market as '*market for provision of Line Maintenance Services*.'

71. With regard to the delineation of geographical market, the Commission is of the view that every airport is unique in terms of its geographical location, catchment area, handling of airlines, ownership, facilities, distance from various cities, kind and category of travellers, number of connecting flights and destinations whether local or international *etc.* The Commission is in agreement with DG that the same would be as narrow as the target airport *i.e.*, RGIA as a service provider needed to have access to the facilities/premises at the concerned target airport, in order to provide their services. As stated, the competition dynamics at the target airport are considered to be homogenous and distinct from those prevailing outside of it. Thus, the Commission is of the view that delineation of the relevant geographical market as '*RGIA*' by the DG is appropriate in the present matter.

72. The Commission now proceeds to examine the issue whether OP-1 is dominant in the relevant market and if yes, whether it has abused its dominant position in the relevant market. In this regard, the Commission noted that OP-1 was conferred monopoly at RGIA by virtue of Concessionaire Agreement which granted exclusive right to the OP-1 in terms of management and operation of the RGIA for a period of 30 years. Considering the factor given in Section 19(4)(g) of the Act, the Commission is of the

view that OP-1 is dominant in the delineated upstream market for *'provision of access to airport facilities/premises at RGIA'*.

73. After analysis of dominance, the Commission would like to examine the allegations of abuse of dominance in the matter in terms of Sections 4(2)(b), 4(2)(c) and 4(2)(e) of the Act.

74. Regarding allegation raised under Section 4(2)(b) of the Act, whereby OP-1 is alleged to have limited/restricted the services provided by the Informant, the Commission observes that as per the reply filed by OP-1, 8 airlines are undertaking self-line maintenance and 24 airlines are availing third party maintenance services. It is also noted by the reply of OP-1 dated 26.07.2023, that at RGIA, British Airways is also working as a third party LMS provider, which implies that the 8 airlines undertaking self-maintenance can also be employed as third party service providers by the 24 airlines which are availing third party maintenance. In view of the above, the Commission disagrees with the conclusion of the DG that any exit of one existing player from the market will adversely impact either the prices or the services, since self-handling entities can also provide LMS to the airlines availing third party services. Moreover, the Informant was never out of the relevant market as it was offering services as per scheduled timings of airlines using vehicles, tools and engineers based on necessary passes issued by OP-1 to make entry and exit from the airport. The Commission further notes that OP-1 has given a list of LMS providers which operate without space but the same was not taken into consideration by the DG. This indicates that space at the airport is not an essential ingredient for providing LMS. The Commission, further notes that the DG has not collected sufficient evidence to show that the OP-1 has limited/restricted provision of LMS or technical/scientific development. In this regard, OP-1 has started third party selection of LMS provider by tender and this conduct of OP-1 cannot be said to be anti-competitive more so when the Informant participated in the said tender. Thus, OP-1 has not denied services of the Informant but only conveyed its intention not to renew the license. In view of the above, the Commission observes that non-renewal of the Informant's license for space on the airside of RGIA by OP-1 does not have the potential to limit and restrict the provision of LMS and technical development relating

to such services, so as to cause prejudice the consumers and hence, is not in contravention of Section 4(2)(b) of the Act.

75. With regard to the allegation of denial of market access under Section 4(2)(c) of the Act, the Commission has perused the observations of the DG and reply of the OPs and observes that OP-1 itself admitted that the reason for non-renewal of the Informant's license was not the adoption of the Ground Handling Regulations only, but the space constraints on the airside. As per the Concessionaire Agreement, OP-1 has the right to grant SPRs to any person for the purpose of carrying out the activities and business on such terms and conditions as it deems appropriate as per law. The Commission further notes that it is not necessary to analyse the adoption of such regulations by OP-1. Further, the Concessionaire Agreement has conferred exclusive right to OP-1 for management and operation of RGIA and it can take executive decisions in pursuance of the same as per law. Unless and until, there is any contravention of the provisions of the Act, there is no occasion to interfere with the autonomous functioning of OP-1. Simply because OP-1 conducted a tender in line with Ground Handling Regulations and selected an entity, it cannot be said that it has violated the provisions of the Act. Adopting a benchmark or a method for selection of a service provider *per se* cannot be termed as anti-competitive. At this juncture, it is noted that OP-1 had given sufficient time to vacate the premises by way of a legal notice to the Informant conveying its intention not to renew the license in due course.

76. The Commission further notes that the CEO of OP-1 had stated in his statement that an enclosed and ready to occupy space on the airside was needed for the airside expansion works and hence, the space previously provided to the Informant was needed. Going by the justification offered by OP-1, it appears that the reason for not renewing the Informant's license was the OP-1's need for readily available enclosed space on the airside of the airport. Hence, the space which was about to become available on expiry of the Informant's license was chosen. In contrast, the space which was reserved for Bird Execujet, was an open space and establishment of an enclosure/office may have taken time.

77. The Commission also observes that OP-1, had provided information to the DG about the allocation of 178 sqm space on the ground floor in the AEMB after June 2019, which was also taken back from Spice Jet for OP-1's operational use. Further, OP-1 provided information to the DG that space had been taken from OP-2 and allotted to British Airways since an airline operator is given primacy over other third party service providers but this fact has been ignored by the DG.

78. In view of the aforementioned information submitted by OP-1, the Commission does not agree with the conclusion of the DG that the only plausible explanation for not taking any other space apart from the space assigned to the Informant, was to drive it out of the market to benefit its own subsidiary *i.e.,* OP-2. From the submissions made by OP-1, it appears that they have provided adequate explanation for taking up the space earlier assigned to the Informant. It is also noted that, as submitted by the OP-1, space from OP-2 was taken to provide it to British Airways, which indicates that OP-1 was not showing preferential treatment to its own subsidiary and was following the general rule of giving primacy to airlines over other service providers. Further, OP-1 did not prematurely terminate the license rather it sent a notice to the Informant when the term of the License Agreement was expiring. Thus, refusal of OP-1 to renew the Informant's space license cannot be perceived as a denial of market access to the Informant from the downstream market of provision of LMS at RGIA. Further, the Commission notes that Informant continued with the services of LMS even without the space, which shows that space is not a *sine qua non* for provision of LMS because there are several airlines and third party providers which provide LMS without any space at the airport. Had space been so crucial, the Informant and other LMS providers could not have continued the service. All these facts establish that there was no denial of market access to the Informant. Accordingly, no case of violation of Section 4(2)(c) of the Act has been made out in the matter.

79. On the allegation of leveraging of dominant position by OP-1 in the upstream market to benefit its own subsidiary (OP-2) in the downstream market, the Commission observes that in the emails sent by OP-1 to certain airlines informing them about the non-renewal of the Informant's license, whereby the airlines were asked to choose an alternate vendor, OP-1 did not urge them to choose OP-2 or any other specific vendor. Further, in

2 cases OP-2 got the LMS work through a bidding process and in 1 case it was approached by the airline itself. It is also observed that the shift of employees from the Informant to OP-2, both before and after the expiry of the Informant's license, does not necessarily point towards any uncertainty arising in the minds of the employees due to non-renewal of licence as observed by the DG. Thus, the non-renewal of the Informant's license by OP-1 cannot be considered to be an attempt to leverage its dominant position in the delineated upstream market to benefit its subsidiary (OP-2) in the downstream market, in violation of Section 4(2)(e) of the Act.

80. Considering the facts and circumstances of the case, material on record, Investigation Report of the DG, submissions made by the parties and analysis carried out in the preceding paragraphs, the Commission is of the view that the Informant was not denied access to the airport as it was able to offer LMS even without the space allotted at RGIA and OPs have neither denied LMS of the Informant at the RGIA nor leveraged its dominant position in upstream relevant market to benefit its own subsidiary (OP-2). Thereby, OPs have not abused their dominant position. Hence, no case of contravention of provisions of Sections 4(2)(b), 4(2)(c) and 4(2)(e) of the Act is made out against the OPs. Accordingly, the matter is directed to be closed.

81. Before parting with the order, the Commission deems it appropriate to deal with the request of the parties seeking confidentiality over certain documents/information filed by them under Regulation 36 of the Competition Commission of India (General) Regulations, 2024. The Commission notes that during the course of the proceedings, parties had filed their respective submissions in confidential as well as non-confidential version. Certain excerpts from such submissions, over which confidentiality has been sought, have been relied upon by the Commission. Such excerpts, which have been reproduced or used in this order, have not been granted confidentiality. The rest of the documents/information on which confidentiality has been sought by the parties is allowed for a period of 5 years, subject to Section 57 of the Act. It is, however, made clear that nothing used in this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same has been used for the purposes of the Act, in terms of provisions contained in Section 57 thereof.

82. The Secretary is directed to communicate to the parties, accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

New Delhi:

Date: 15/09/2025