

(To be circulated after the exercise)

SOLUTION TO THE CASE STUDY

The following five issues have been framed by the Competition Commission:

1. What is the “relevant market” in this case?
2. Is GGG a dominant enterprise?
3. Is CCC an effective competitor to GGG?
4. Are discriminatory conditions in evidence, as alleged?
5. Is there any condition imposed on CCC extraneous to the main subject of the contract?

Besides the five issues, one more issue is important in the context of the given facts in the case study. The sixth issue is:

Is there any barrier created by the State and/or its instrumentalities that affects competition?

1. What is the “relevant market” in this case?

All the 15 operators ply their buses in the capital city. They cater to the citizens in the capital city. Even though some of the operators ply their buses in small towns and rural areas, the market in those places is different from the capital city market. One of the reasons for this is that the locals in small towns and rural areas seldom travel to the capital city. Their interest is confined to travel within those local areas. The Geographical Market which is the relevant market in this case is therefore the capital city bus transport market.

2. Is GGG a dominant enterprise?

Even though market share is not a criterion for determining dominance, the fact that 80 % of the capital city bus transport market is held by GGG, it may be expected to operate independent of its competitors in the market. Furthermore, the city council and city office have favoured GGG in the field of economic competition by promoting it to function as guarantor and organiser of capital city transport. Thus it has been enabled to control the said market which gives it a dominant position. The fact that GGG is a public limited Company with the Municipal Authorities (State instrumentalities) as the biggest share holder, provides it with a big control over the relevant market. GGG is dominant in the relevant market.

3. Is CCC an effective competitor to GGG?

CCC has only 2.5% of the market share. It cannot be dominant in any sense of the term. But, because its operations are efficient, the travelling public perceives CCC as a good operator serving their needs. But for the barriers created by the State instrumentalities and imposition of discriminatory conditions on it by GGG, CCC could be expected to enlarge its operations. Inherently, CCC is an effective competitor.

4. Are discriminatory conditions in evidence, as alleged?

The answer is in the affirmative. Incongruous conditions are included in the contracts for CCC. These conditions relate to performance. Such conditions are not apparently imposed by GGG on the other 13 operators. Thus there is an imposition of discriminatory condition in the contract which provides for the operator (CCC) to render bus transport service. The competition law provision relating to discriminatory condition is infringed.

5. Is there any condition imposed on CCC extraneous to the main subject of the contract?

The case study mentions of GGG insisting on CCC to subscribe to the shares of a new company floated by the former. This condition or imposition is extraneous to the subject of contracts for bus transport services. Under the competition law, this constitutes abuse of dominance by GGG.

6. Is there any barrier created by the State and/or its instrumentalities that affects competition?

The city council and city office have showed favour to GGG in the field of economic condition by promoting it to function as guarantor and organiser of the city bus transport in the capital. In other words, GGG has been assigned the responsibilities to supervise and contract its own competitors. Thus the bus operators like CCC and 13 others that are supposed to become competitors of GGG are in the role of sub-contractors and are subject to control or imposition of incongruous conditions in the contracts they sign and to other kinds of discrimination. In other words, competitors operating in a parallel fashion find themselves in a hierarchical relationship, which is against the rules of protection of economic competition. The Ministry should be advised by the Competition Commission to set right this situation by withdrawing the powers and responsibilities of GGG to function as a guarantor and organiser of city bus transport in the capital.

Conclusion: GGG is dominant and has abused its dominance.