

# Redressal Foundation vs . Mumbai International Airport Pvt. ... on 20 March, 2025

COMPETITION COMMISSION OF INDIA

Case No. 12 of 2024

In Re:

Fight Against Corruption (NGO)  
(Through its Trustee - Deepak Vashist)  
Basement, Plot 128, Pocket 10, Sector 23B  
Dwarka, New Delhi- 110077

Informant No.1

Contractor Council of India  
(Through its President - Ajit Singh Gaur)  
R/o 990 A, Shahbad Mohammad Pur,  
Swami Chowk, Bijawasan,  
Southwest Delhi-110061

Informant No.2

And

Airports Authority of India  
(Through Secretary)  
Rajiv Gandhi Bhawan,  
Safdarjung Airport,  
New Delhi - 110003

Opposite Party No.1

Ministry of Civil Aviation  
(Through Secretary)  
Rajiv Gandhi Bhawan, Block B,  
Jorbagh Safdarjung Airport Area,  
New Delhi - 110003

Opposite Party No.2

Delhi International Airport Limited  
(Through its Chairman)  
New Udaan Bhawan, Aerocity,  
Delhi - 110037 (Opposite Terminal)

Opposite Party No.3

GMR Airports Limited  
(Through its Chairman)  
New Udaan Bhawan, Opposite Terminal 3  
Indira Gandhi International Airport  
New Delhi - 110037

Opposite Party No.4

Case No. 12 of 2024

Fraport AG Frankfurt Airport Services Worldwide  
(Through Director in DIAL)  
New Udaan Bhawan, Opposite Terminal-3

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Opposite Party No

Indira Gandhi International Airport,  
New Delhi- 110037

CORAM

Ms. Ravneet Kaur  
Chairperson

Mr. Anil Agrawal  
Member

Ms. Sweta Kakkad  
Member

Mr. Deepak Anurag  
Member

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

1. The present Information has been filed under Section 19(1)(a) of the Competition Act, 2002 ('Act') by Fight Against Corruption ('Informant No.1') and Contractor Council of India ('Informant No.2') (collectively referred herein as 'Informants') against Airports Authority of India ('OP-1'/'AAI'), Ministry of Civil Aviation ('OP-2'/'MoCA'), Delhi International Airport Limited ('OP-3'/'DIAL'), GMR Airports Limited ('OP-4'/'formerly known as GMR Airports Infrastructure Limited or 'GIL') and Fraport AG Frankfurt Airport Services Worldwide ('OP-5'/'Fraport AG') (collectively referred herein as 'Opposite Parties') alleging contravention of the provisions of Section 4 of the Act.

2. As per the Information, Informant No.1 is an NGO working in the field of curbing corruption under the name 'Fight against Corruption' represented by its trustee Shri Deepak Vashisht. Informant No.2 is stated to be a group of contractors' with the name 'Contractor Council of India' represented by its President Shri Ajit Singh Gaur. It claims to be a third-party service provider engaged in providing construction services at Delhi and Indore airports.

3. As stated in the Information, OP-3/DIAL is a joint venture, formed as a consortium between GMR Airports Limited, Airports Authority of India and Fraport AG Frankfurt Airport Services Worldwide. OP-4/GIL is a leading global airport platform company with over two decades of experience in designing, constructing, and operating world- class sustainable airports. OP-5/Fraport AG Frankfurt Airport Services Worldwide, is a German transport company which operates Frankfurt Airport in Frankfurt am Main and holds interests in the operation of several other airports around the world.

4. As per the Informants, OP-4 entered into a joint sector agreement ('JSA') with the Government of India through the Secretary, MoCA for development, construction, operation and maintenance of Indira Gandhi International Airport, New Delhi ('IGI') vide Concessionaire Agreement dated 04.04.2006 for 30 years and the said Concessionaire Agreement is extendable by another 30 years at the option of OP-4, making it the sole concessionaire for operating IGI. It is also stated that a

group consortium known as DIAL was formed with OP-4 and OP-1 and had the following shareholding as given in the shareholding document obtained from the Ministry of Corporate Affairs website:

List of Shareholders of OP-3 as on 31.03.2022 S.no Name of Shareholders No. of Shares Percentage Holding

1. GMR Infrastructure Limited 100 -

2. GMR Energy Limited 100 -

3. GMR Airports Limited 1,567,999,798 64% (formerly known as GMR Airports Infrastructure Limited)

4. Fraport AG Frankfurt Airport 245,000,000 10% Services Worldwide

5. Airports Authority of India 637,000,000 26%

6. GMR Airports Limited jointly 1 -

with Mr. Srinivas Bommidala

7. GMR Airports Limited jointly 1 -

with Mr. Gandhi Kiran Kumar TOTAL 2,450,000,000 100%

5. As per the Information, OP-4 through OP-3 has the right to maintain, manage and operate IGI as per the Operation, Management and Development Agreement ('OMDA') between OP-4 and OP-1 & OP-2, which includes the use of its discretion in respect of provision of services by third parties at IGI with prior consent of its shareholder including OP-1. It is stated that OP-4 entered into agreements to give space to business entities, hotels and business houses which were desirous of operating from the airport premises.

6. It has been alleged that OP-4, in its capacity as a major shareholder in OP-3, is exploiting its dominant position and failing to comply with the stipulated competitive bidding process, as mandated by Clause 8.5.7 of the Concessionaire Agreement. It has also been alleged that OP-4 charges a fee of 13% or any other fee on all tenders for operating and doing work at Delhi Airport, specifically those related to Annual Maintenance Contracts ('AMC') subject to obtaining the No Objection Certificate ('NOC') from GMR itself. The Informants assert that such fees, particularly on AMC tenders, have a direct adverse impact on the profit margin of other industry players.

7. OP-4 is also alleged to be aligning with particular players and facilitating the victory of the aligned entity in tenders floated by OP-3. It is stated that OP-4, in collaboration with Tenaga Parking Services (India) Pvt. Ltd. ('TPSPL'), has established a new company named Delhi Airport Parking

Services Private Limited ('DAPSL') for the purpose of leveraging the name and experience of Tenaga Parking Services and also meeting the criteria set by OP-4 itself for parking tenders. Formation of DAPSL is stated to have occurred without following any competitive bidding process to favor OP-4 as one of the major stakeholders of DAPSL. In this regard, it is further stated that the shareholding structure of DAPSL, indicates that TPSPL holds only a 10% stake, while the majority shareholding 49.90% and 40% is retained by OP-3 and OP-4, respectively. This shareholding structure is alleged to be a mechanism that inhibits other players from entering the market. It has also been alleged that the Concessionaire Agreement has been violated by depriving due profits from OP-4 to Government of India and creating losses to public money where OP-4 holds 40% extra share on top of its stake in OP-3.

8. The Informant No.1 also annexed a letter dated 16.12.2023 addressed to the Prime Minister Office ('PMO'), stating that Encalm, an entity responsible for providing lounges at the airport, is purportedly owned and operated by individuals who concurrently hold positions on the board of directors in GMR. This interconnection is stated to have raised concerns about potential conflicts of interest that may affect fair competition and the participation of regular vendors in offering lounge services.

9. In view of the above, the Informant have levelled the following allegations against OP- 4, in the present matter:

(i) Creating a monopolistic environment, enabling it to operate without competitive restraints, which may result in imposition of exorbitant charges on customers (Airline), thereby increasing costs for end customers and potentially violating Section 4(2)(a)(i) of the Act.

(ii) Limiting the provision of services in the airport market of Delhi, by ousting the other prospective contractors through the establishment of its own companies, in contravention of Section 4(2)(b)(i) of the Act.

(iii) Utilizing its dominant position to selectively award contracts to its own formed companies by manipulating tender conditions and in some instances, not following the competitive bidding process, leading to denial of market access, in contravention of Section 4(2)(c) of the Act.

(iv) Leveraging its dominant position in the upstream market to engage in exclusionary practices, restricting the provision of services in the downstream market, in contravention of Section 4(2)(e) of the Act.

10. Based on the aforesaid facts, the Informants have inter-alia prayed to the Commission to order an investigation to be made in the matter, along with an interim relief under Section 33 of the Act, by way of restraining OP-4 through OP-3 from taking any coercive action against the Informants, and seeking early listing of the matter.

11. In its ordinary meeting held on 04.09.2024, the Commission considered the Information and decided to seek comments/reply from OP-3 and OP-4, on the Information. Additionally, the Commission also decided to seek comments/responses of OP-3 and OP-4, on the following specific questions:

a. When was DAPSL awarded with the contract to operate and maintain the car parking facility at the IGI Airport in Delhi by OP-3/OP-4? b. When was the lounge business provided to Encalm at the IGI Airport in Delhi by OP-3/OP-4?

c. On what basis DAPSL and Encalm were awarded with the contract to operate and maintain parking services and for providing lounge services respectively by OP-3/OP-4? Was there any requirement of competitive bidding to be followed by OP-3/OP-4 for provisioning of these services by DAPSL and Encalm under any law/agreement specifically under clause 8.5.7(i)(c) of the Concessionaire Agreement dated 04.04.2006?

d. If the above-mentioned contracts/works were awarded to DAPSL and Encalm through competitive bidding, then provide the details of the concerned tender(s) along with list of participants/bidders and their respective quotes. e. Does the value of the contracts/agreements which awarded the provision of parking services and the lounge facilities/services at IGI Airport exceeded Rs. 50,00,00,000/- (Rupees Fifty Crores Only)?

f. Any other relevant information for the instant matter.

12. OP-3 and OP-4 filed Interim Application ('I.A.') Nos. 287 and 286 of 2024 dated 08.10.2024 respectively wherein request was made for an extension of time to file comments/responses sought vide order dated 04.09.2024. The Commission considered the respective I.A.s and for the reasons mentioned therein, granted time till 22.11.2024 to file responses/comments in the matter.

13. OP-3 and OP-4 filed their respective responses dated 22.11.2024, in confidential and non-confidential versions. OP-3, in its response, stated that GMR group was selected by AAI/OP-1, pursuant to a global competitive bidding process. As an outcome of the bid process, AAI allowed GMR group led consortium members to acquire 74% shareholding in DIAL, and also executed OMDA in favour of DIAL, which gives DIAL the exclusive right and authority to maintain IGI airport. It was also submitted that while the Information arrays 'GMR' as OP-4, there is no entity by that name. It was further submitted that no parent company of OP-3 has any involvement in the process of grant of contracts and OP-3 undertakes its business activities independently.

14. OP-3 submitted that it complied with the prescribed process of Article 8.5.7 and Schedule 12 of OMDA and called for competitive proposals/bids from eligible parties where the estimated contract value was above INR 50 crores for parking and lounge facility.

15. The rest of the arguments submitted by OP-3 are summarized as under:

i. The Informants (both NGO and the alleged association/company/trust) are serial and proxy litigants, which are being used by private interested parties (such as Swami Contractors and Mr. Ajit Swami alias Ajit Singh Gaur) under the garb of public interest and are abusing the process of law seeking identical / similar relief for their personal interest, through multiple litigations. Moreover, under Regulation 10(2)(da) of the Competition Commission of India (General) Regulations, 2009 [as well as under Regulation 10(2)(g) of Competition Commission of India (General) Regulations 2024], it is mandatory requirement for the information to provide "details of litigation or dispute pending, if any, between the Informant and parties before any court, tribunal, statutory authority or arbitrator in respect of the subject matter of information". However, despite this mandatory legal requirement, the Informants have not disclosed any of the above litigations in the Information. On this ground alone, the Information is liable to be dismissed under Section 26(2) of the Act.

ii. The present Information is not maintainable as the award of contract was well beyond the three years limitation period under the proviso to Section 19(1) of the Act. Further, the Informants have also failed to justify or provide an explanation to satisfy the Commission with a sufficient cause to entertain a time barred information and thus a closure under Section 26(2) of the Act should be passed by the Commission on this ground alone.

iii. The interim relief prayed by the Informant in form of an order under Section 33 of the Act, cannot be granted as the Informants have not made any submissions to establish any mandatory requirements laid down by the Hon'ble Supreme Court in Competition Commission of India v. Steel Authority of India Limited & Anr., Civil Appeal No. 7779 of 2010 to invoke the powers of the Commission under Section 33 of the Act. Moreover, such relief can also not be granted as the Informants have not filed a separate application seeking an interim relief under Section 33 of the Act enlisting reasons/impact on market before the Commission.

iv. The Information does not have a supporting affidavit under erstwhile Section 65B of the Indian Evidence Act, 1872 or current Section 63 of the Bharatiya Sakshya Adhiniyam 2023, with respect to the e-acknowledgement for submission of the letter dated 16.12.2023, addressed to the Hon'ble Prime Minister and copy to AAI, Secretary, MoCA and Central Vigilance Commission, New Delhi, in absence of which, the reference letter does not meet the evidentiary standards required for digital documents and should not be admitted.

v. All allegations made in the Information are denied as they lack factual and legal basis and hence merit a dismissal at the prima facie stage itself. Allegations raised by the Informants apart from being unsubstantiated, do not make out a prima facie case of any wrongdoing on part of OP-3 given that all the requisite requirements for award of contracts were duly followed by OP-3 in compliance with the OMDA. The

Informants have also not met the legal and procedural requirements of the Act to make out a case against OP-3, and accordingly the Information deserves to be closed. The Informants have neither defined the relevant market nor addressed the issue of OP-3's dominance. Instead, the Informants have merely cited provisions, without substantiating the facts, to claim abuse of dominance.

vi. The scope of grant under Article 2 of the OMDA recognizes the exclusive right of OP-3 to contract and/or subcontract with third parties to undertake functions on behalf of OP-3. Article 8.5.1 of the OMDA provides that "the JVC shall at all times provide at the Airport, Aeronautical Services, Non-Aeronautical Services and Essential Services at the Airport for the Term". OMDA defines 'non-aeronautical services' to mean services listed in Part I and II of Schedule 6 of the OMDA, like airline lounges, vehicle parking etc. OP-3 has the right under OMDA to contract and/or sub-contract with third parties to undertake such functions on its behalf in accordance with Article 8.5.7. Such third party can also be subsidiaries/joint ventures of OP-3 as permitted in Article 2.3 of the OMDA. Further, in terms of Article 8.5.7 (i)(c)(aa), OP-3 is required to comply with the procedure of competitive bidding for (i) award of contracts in the field of public works concessions, and (ii) for every contract whose value exceeds INR 50 crores; and OP-3 complies with this requirement.

vii. Article 8.5.7 (i)(d) of OMDA states that every contract entered into by OP-3 shall be on an arms-length basis, and shall contain an express provision allowing the transfer of the rights and obligations of OP-3 under such contract to AAI, in the event of termination or expiry of OMDA. The Article 8.5.7 (i)(d) read with Article 8.5.7(i)(f) contemplates the entering of contracts with Group Entity of OP-3 (related party transactions). For entering into such contracts AAI checks that (i) OP-3 has adopted the procedure set out in Schedule 12 of the OMDA;

(ii) the terms of the contract are on arms-length, equitable and are not inconsistent with or contrary to the letter and spirit of OMDA. Thus, OP-1 checks and once it confirms the compliance by OP-3 of such aspects, the matter is placed before the Board of Directors for its consideration and approval. Hence, the necessary checks and balances are provided in and adhered to by DIAL in these related party transactions. Furthermore, OP-3 on periodic basis, submits the details of the executed contracts and shareholding pattern of the counter parties of such contracts to OP-1. It is submitted that OP-1 was duly informed of all the action undertaken by OP-3 in relation to awarding the concessions for parking facility at the IGI Airport.

viii. Article 12.2 of the OMDA provides for 'Charges for Non-Aeronautical Services', in terms of which OP-3 is free to fix the charges for such services, subject to the applicable law and provisions of the existing contracts and other arrangements. Being an exclusive concessionaire entity selected on the basis of competitive bidding - (i) the statutory framework empowers the airport operator to regulate and impose commercial and other terms on entities for carrying on any trade or business within the IGI Airport, and (ii) the contractual framework under the OMDA determines fixing of charges by OP-3 for the non-aeronautical services. OMDA is a comprehensive concession document

governing the affairs of OP-3.

ix. Each of the processes involving award of contract for parking facility and lounge facility, multiple third-parties participated in the bid process and none of the bidders were related parties to OP-3 or GIL. Additionally, the allegation in relation to GIL being the majority shareholder in the concessionaire entities is stated to be misplaced given that in the case of lounge facilitates contract, neither OP-3 nor GIL have any shareholding or common directors with Encalm or in the case of parking contract, was part of consortium of the selected bidder. Also, under the OMDA, OP-3 is required to pay a certain revenue share to OP- 1 and there has been no deprivation of revenue to OP-1 on account of the award of contracts in relation to parking or lounge facility as baselessly alleged by the Informants.

x. The issue in relation to the 'parking charges' and 'contractual freedom' was previously the subject matter before the Commission in Citizen Grievances Redressal Foundation vs. Mumbai International Airport Pvt. Ltd. and Delhi International Airport Private Ltd., wherein OP-3 was also an opposite party which was closed by the Commission. The order pertained to the "provisions of services for vehicle parking at each of the two airports" where the Commission noted that there does not appear to be any competition issues involved in the case as (a) in relation to an airport project owned by a consortium, the earning from 'non-aeronautical services' forms a substantial part of income of the consortium, and (b) consortium is given liberty to charge for such services so as to recover the investments over a period of time and to meet overall maintenance and management of the airport.

xi. Even before the execution of OMDA, the fee / charges payable on the gross turn over in relation to third party services had been fixed at 13% by OP-1 which was accordingly continued by OP-3 on a uniform and unchanged basis, i.e., the rate of the fee/charges has remained unchanged, and the same is uniformly payable by all service providers. The rate is accordingly known to all market participants operating at IGI Airport. Given that a similar charge is levied at other major airports as well regardless of whether such airports are operated by OP-1 or private concessionaires, raising this issue is totally meaningless.

16. OP-4, in its submissions, stated that OP-3 handles all the operational contracts for IGI Airport and OP-4 is not involved in the selection and/or execution of operational contracts in relation to IGI Airport. The process in relation to awarding the contract to

(i) DAPSL, and (ii) Encalm (in compliance with the OMDA), has been undertaken solely by OP-3, with no involvement of OP-4.

17. OP-4 submitted that a composite scheme of amalgamation and arrangement under Section 230 to 232 of the Companies Act, 2013 amongst GMR Airports Limited, GMR Infra Developers Limited and GMR Airports Infrastructure Limited (formerly GMR Infrastructure Limited) and their respective shareholders and creditors ('Scheme') was filed before the Hon'ble National Company Law Tribunal, Chandigarh Bench ('NCLT'). The Hon'ble NCLT by way of an order dated 11th June 2024 approved and sanctioned the Scheme ('NCLT Order') and a certified copy of which was filed



with the Registrar of Companies ('ROC') on 25th July 2024 ('Effective Date'). It is submitted that from the Effective Date, GMR Airports Limited stood amalgamated into GMR Airports Infrastructure Limited ('GIL') whereby and / or in terms whereof, amongst others: (a) GMR Airports Limited stood dissolved without requiring undergoing the process of winding up from the Effective Date; and (b) all legal proceedings filed by or against GMR Airports Limited pending and / or arising on or before the Effective Date stood transferred to and vest in GIL. Thereafter, the corporate name of GIL was changed from "GMR Airports Infrastructure Limited" to "GMR Airports Limited", which was certified by the ROC by way of issuance of a new certificate of incorporation dated 11.09.2024 for GIL. Accordingly, by virtue of the Scheme, the aforesaid matter in which erstwhile GMR Airports Limited has been arrayed as OP-4, stands transferred to GIL with effect from the Effective Date.

18. The remaining arguments of OP-4 are summarized as under:

i. OP-3 performs its functions in terms of the OMDA, and under the OMDA, OP-

1 maintains supervisory control over the operations of OP-3 including grant of contracts to third parties, which is especially relevant for any contracts awarded to group companies for which OP-1 has additional monitoring provisions to ensure contracts awarded are on an arm's length basis.

ii. Allegation of 'GMR' collaborating with Tenaga in establishing DAPSL and abusing its dominant position through OP-3, is unsubstantiated as: (a) the Informants have not only made incorrect submission but have also not provided any evidence to support their allegation, (b) OP-4 never collaborated with Tenaga in establishing DAPSL, which was jointly incorporated by the selected bidder for the parking concession, and (c) OP-3 is an independent corporate entity which is professionally run by its management (the Board of Directors of OP-3 comprising of shareholder representatives which includes OP-1 and OP-

5).

iii. The shareholding pattern of DAPSL (as of 31 March 2022) provided by the Informants in the Information is correct. GIL as a part of its growth strategy made an investment through acquisition of 40.10% equity stake from the shareholder of DAPSL who wanted an exit. The acquisition of the shareholding of DAPSL was undertaken in compliance with the: (a) Shareholders' Agreement dated 12.02.2010 of DAPSL; and (b) Request for proposal ('RFP') dated 15.10.2009. It was also stated that the shareholding of DAPSL has subsequently been changed.

iv. OP-4 should be excluded from the proceedings as it does not fulfil the criteria for a proper party and/or necessary party in the matter. The allegation in the Information primarily is in relation to operational contract for operating the parking facility at IGI Airport (by DAPSL) that had been entered with OP-3. OP-4 had no role to play in awarding the said contract to DAPSL and the decision was independently taken by OP-3. Similarly, GIL was not involved in awarding the contracts for lounge facilities to Encalm at the IGI Airport. Furthermore, the allegations raised in

the Information such as - "...GMR holds 40% extra share on top of its stake in DIAL..." and "...GMR' in its capacity within the airport services sector, charges a fee of 13%..." are not even competition issues, which can be adjudicated under the Act. In fact, all allegations raised against 'GMR' are misplaced, and can only be addressed by OP-3.

19. The Commission considered the matter in its ordinary meeting held on 15.01.2025 and decided to pass an appropriate order.

20. As per information available in the public domain, OP-1/AAI is a statutory body under the ownership of the MoCA, Government of India which is responsible for creating, upgrading, maintaining, and managing civil aviation infrastructure in India. OP- 2/MoCA in India is the nodal ministry responsible for the formulation of national policies and programs for the development and regulation of civil aviation.

21. The Commission has perused the copy of Information along with the attached documents. The primary grievance of the Informants appears to be related with irregular awarding of parking services to DAPSL, which is alleged to be a collaboration between OP-4 with TPSPL, for the purpose of meeting the criteria set by the OP-4 itself and leveraging the name and experience of TPSPL. In its letter dated 16.12.2023 to the PMO, Informant No.1 made a similar complaint about Encalm, the entity responsible for providing lounges at the Delhi Airport, being purportedly owned and operated by individuals who concurrently hold positions on the board of directors in OP-4.

22. It has been alleged that OP-4, by favoring companies in which it holds a majority shares, is denying access to other market players by manipulating tender conditions, leveraging its dominant position in the upstream market to engage in exclusionary practices and limiting the provision of services in the airport market of Delhi, by ousting the other prospective contractors. It has been further alleged that OP-4 is not following competitive bidding processes for tenders and is creating a monopolistic environment, enabling it to operate without competitive restraints, which may result in imposition of exorbitant charges on customers. Beside these allegations, the Informants have also alleged that OP-4 is charging a fee of 13% or any other fee on all tenders specifically tenders related to AMC. In view of the above, the Informants have alleged violation of Section 4(2)(a)(i), 4(2)(b)(i), 4(2)(c) and 4(2)(e) of the Act by Opposite Parties.

23. OP-4, in its submission, stated that OP-3 handles all the operational contracts for IGI Airport and OP-4 is not involved in the selection and/or execution of operational contracts in relation to IGI Airport. The same was also corroborated by OP-3 in its submissions. In view of the submissions of both OP-3 and OP-4, the Commission deems it fit to analyze the conduct of OP-3 alone for the purpose of examination of allegations in the present matter.

24. With regard to allegation under Section 4(2)(a)(i) of the Act, it is noted that the Informants have not given any evidence with regards to the imposition of unfair conditions or exorbitant charges. OP-3, in its submission, has stated that charges in relation to the aeronautical services is fixed by the statutory regulator i.e., Airports Economic Regulatory Authority, and the charges in relation to non-aeronautical services were fixed by OP-3 based on competitive metrics. It was also stated that

provisions under Section 4 of the Act do not contemplate violations based on speculative or potential future abuse.

25. With regard to the allegation of imposition of 13% fee on tenders, OP-3 stated that even before the execution of OMDA, the fee / charges payable on the gross turn over in relation to third party services had been fixed at 13% by AAI. This practice has accordingly continued by DIAL on a uniform and unchanged basis, i.e., the rate of the fee/charges has remained unchanged, and the same is uniformly payable by all service providers. The rate is accordingly known to all market participants operating at IGI Airport. Given that a similar charge is levied at other major airports as well regardless of whether such airports are operated by AAI or private concessionaires, it is stated that raising this issue is baseless.

26. Thus, the Commission, in relation to the allegation under Section 4(2)(a)(i), is of the view that the imposition of 13% fee on tenders is a continuation of the charges previously levied by AAI, a statutory body, and notes that the same is being levied uniformly on all the service providers, with no further increase. In view of generic and wide nature of allegations related to creation of monopolistic environment which could lead to imposition of exorbitant charges on customers in future, the Commission is of the view that in absence of any evidence, it may not be prudent to deal with the allegation/apprehension at this juncture.

27. The allegations under 4(2)(b), 4(2)(c) and 4(2)(e) of the Act, appear to be emanating from the alleged conduct of OP-3 of selectively awarding contracts/tenders to companies, in which it is one of the majority stakeholders.

28. In light of the above-mentioned allegations, the Commission deems it fit to take note of the relevant provisions of the OMDA Agreement. Article 2.1.1 of the OMDA recognizes the exclusive right of OP-3 to perform aeronautical and non-aeronautical services at the Airport. 'Non-Aeronautical services' constitute services listed in Part I and II of Schedule 6 of the OMDA which also include airline lounges and vehicle parking. Article 2.1.2 of the OMDA recognizes the exclusive right of OP-3 to contract and/or subcontract with third parties to undertake functions on behalf of OP-3. The relevant clauses are reproduced as under:

"2.1 Grant of Function 2.1.1 AAI hereby grants to the JVC, the exclusive right and authority during the Term to undertake some of the functions of the AAI being the functions of operation, maintenance, development, design, construction, upgradation, modernization, finance and management of the Airport and to perform services and activities constituting Aeronautical Services, and Non-Aeronautical Services (but excluding Reserved Activities) at the Airport and the JVC hereby agrees to undertake the functions of operation, maintenance, development, design, construction, upgradation, modernization, finance and management of the Airport and at all times keep in good repair and operating condition the Airport and to perform services and activities constituting Aeronautical Services and Non-Aeronautical Services (but excluding Reserved Activities) at the Airport, in accordance with the terms and conditions of this Agreement (the "Grant").

2.1.2 Without prejudice to the aforesaid, AAI recognizes the exclusive right of the JVC during the Term, in accordance with the terms and conditions of this Agreement, to:

(i) Develop, finance, design, construct, modernize, operate, maintain, use and regulate the use by third parties of the Airport;

(ii) Enjoy complete and uninterrupted possession and control of the Airport Site and the Existing Assets for the purpose of providing Aeronautical Services and Non-

Aeronautical Services;

(iii) Determine, demand, collect, retain and appropriate charges from the users of the Airport in accordance with Article 12 hereto; and

(iv) Contract and/or sub contract with third parties to undertake functions on behalf of the JVC, and sub-lease and/or license the Demised Premises in accordance with Article 8.5.7."

29. With regard to the allegation of selectively awarding contracts/tender by OPs to its own entities leading to limiting the provision of services in the airport market of Delhi and denial of market access, it is noted that Article 2.3 of the OMDA allows OP-3 to hold shares in entities specifically created/incorporated to perform aeronautical, non- aeronautical or essential services as envisaged in the Agreement. The relevant clause is reproduced as under:

"2.3 Other Material Investments Without prejudice to the generality of Article 2.2, the JVC shall not during the Term, without the written consent of the AAI hold any shares, ownership participation or any other ownership interest in any undertaking other than the Airport.

Provided that the JVC or its subsidiaries/ joint ventures may undertake treasury operations in the ordinary course of business and may hold shares, ownership participation or any other ownership interest in any undertaking specifically incorporated/created for performing any Aeronautical Services, Non-Aeronautical Services or Essential Services as contemplated under this Agreement or engaging in designing, constructing, financing, operating, managing, developing or maintaining a second airport pursuant to exercise of the Right of First Refusal under the State Support Agreement."

30. In view of the provisions quoted above, the Commission is of the view that, as per the OMDA Agreement, OP-3 has the right to sub-contract third party entities for providing services such as parking and lounge services and also have the right to acquire ownership of such entities. It is also noted that OP-3, in its submissions, gave details of the bidding process adopted for both parking and lounge services through which DAPSL and Encalm were awarded their respective contracts. OP-3 has stated that in each of the processes involving award of contract for parking facility and lounge facility, multiple third-parties participated in the bid process and none of the bidders were related

parties to OP-3 or OP-4.

31. With regard to the allegation pertaining to parking services, the Commission noted the submission of OP-3, wherein it is mentioned that DIAL issued the RFP dated 15.10.2009 and carried out a competitive bidding process, in which ten domestic and international entities participated. Based on a technical and financial evaluation of the bids submitted, a consortium of Greenwich and Tenaga was identified as the highest bidder for the purpose of awarding the concession for parking services. Subsequently, in accordance with the requirement of the bid documents, the selected bidder incorporated special purpose vehicle ('SPV') i.e., DAPSL on 11.02.2010 and in line with the bid requirements, DIAL opted to acquire 49.9% shareholding in DAPSL vide the Shareholders' Agreement, which was executed on 12.02.2010. Therefore, the Commission observes that the entity for parking services was selected through a competitive bidding process, in compliance with the OMDA agreement. Thus, the allegation raised in the Information, under Section 4(2)(b), 4(2)(c) and 4(2)(e) of the Act, in relation to the award of parking services to entities allegedly under significant control of OP-3 is unsubstantiated.

32. Similarly, with regard to the allegation pertaining to lounge services, OP-3 has stated that Encalm is an independent third party and has no relation with DIAL or GIL except being the licensee to provide certain services at IGI Airport. It is also stated that none of the Encalm's shareholders hold any directorship in DIAL/GIL or vice versa. The contract for operating and managing lounge facility at IGI Airport was awarded to Encalm on 17.11.2021, by way of competitive bidding process. Thus, similar allegations, under the above-mentioned provisions of the Act, raised in relation to Encalm's selection process are unsubstantiated.

33. In view of the above, the allegations pertaining to parking and lounge services, under Section 4(2)(b), 4(2)(c) and 4(2)(e) of the Act, are based on misplaced facts. Therefore, the Commission is of the view, that there is no requirement of delineating the relevant market, in the facts of the case.

34. The Commission finds that no prima facie case of contravention of the provisions of Section 4 of the Act is made out against the Opposite Party. Accordingly, the information is ordered to be closed forthwith in terms of the provisions contained in 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 is also rejected.

35. Before parting with the order, the Commission deems it appropriate to deal with the request of OP-3 and OP-4 seeking confidentiality over certain documents/information filed by them under Regulation 36 of the Competition Commission of India (General) Regulations, 2024 ('General Regulations') (as amended from time to time). Considering the grounds put forth by the parties for the grant of confidential treatment, the Commission grants confidentiality to such documents/information in terms of Regulation 36 of the General Regulations for a period of three years from the passing of this order. 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 have been used for the purposes of the Act in terms of the provisions contained in section 57 thereof.

36. The Secretary is directed to communicate to the Informant, accordingly.

Sd/-

(Ravneet Kaur) Chairperson Sd/-

(Anil Agrawal) Member Sd/-

(Sweta Kakkad) Member Sd/-

(Deepak Anurag) Member Place: New Delhi Date: 20.03.2025