



COMPETITION COMMISSION OF INDIA

Case No. 71 of 2015

In Re:

M/s Applesoft (Through its C.E.O. Sri N. Anbarasan)

39, 1st Main, 1st Cross, Shivnagar,

West of Chord Road, Bengaluru

Informant

And

- 1. The Chief Secretary to the Government of Karnataka
Vidhana Soudha, Bengaluru** **Opposite Party No. 1**
- 2. The Principal Secretary to the Government of Karnataka
E-governance (DPAR-AR), M S Building, Bengaluru** **Opposite Party No. 2**
- 3. The Secretary, Kannada Ganaka Parishat
No. 18, Gokhale Institute of Public Affairs Compound,
Narasimharaja Colony, Bengaluru** **Opposite Party No. 3**

CORAM

Mr. Ashok Chawla

Chairperson

Mr. S. L. Bunker

Member



Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Justice (Retd.) Mr. G. P. Mittal
Member

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

1. This order will dispose of the information filed by M/s Applesoft (hereinafter referred to as the '**Informant**') under section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as the '**Act**') against the Chief Secretary to the Government of Karnataka (hereinafter referred to as '**OP 1**'), the Principal Secretary to the Government of Karnataka, E-governance (DPAR-AR) (hereinafter referred to as '**OP 2**') and the Secretary, Kannada Ganaka Parishat (hereinafter referred to as '**OP 3**') alleging, *inter alia*, contravention of the provisions of sections 3 and 4 of the Act in the matter.
2. OP 1 is the Government of Karnataka. OP 2 has been added in the array of parties through the Principal Secretary to the Government of Karnataka, but no specific



allegations have been mentioned in the Information against it. OP 3 is a non-profit organization registered as a society under the Registrar of Societies in the State of Karnataka. The Informant is a software developer for Indian languages and is aggrieved by the alleged instruction by OP 1 to all its departments and offices to use the language software developed by OP 3 only.

3. Briefly, the Informant has highlighted that OP 1, following the trend implemented in other government departments all over India, has adopted the use of computers to discharge all its administrative functions. As the language of the State of Karnataka is Kannada, efforts are being taken by OP 1 to introduce 'Kannada Language' software to enable use of that language in the entire range of administration within the State.
4. The Informant has submitted that considering the dynamic nature of the language software, both as a resource/ tool in the area of publishing documents/ statements *etc.* and for various applications for use in the processes of computing tools or inter-active tools/ resources in diverse areas of administration and governance, it is necessary to take appropriate steps to avoid future incompatibility. It is stated that the incompatibility may have a severe impact on the easy exchange of files amongst innumerable users, including citizens, officials in various departments, agencies *etc.* who need or use such data for diverse reasons and purposes.
5. As per the factual matrix of the case, OP 1 announced its decision to 'Standardize Standard Codes for Kannada Software' *vide* its order dated 01.11.2000. Accordingly, it sent letters dated 05.01.2001 to all the empanelled vendors of Kannada language software to develop their 'Kannada Software' as per the Standard Code within or before 15.02.2001, in order to get empanelled. The Informant claims to have replied to OP 1 in response to the above said letter and



submitted the Kannada software named 'Surabhi XP' developed by it. However, OP 1 proceeded to place a formal order with OP 3 on 31.01.2001, even before the last date (*i.e.*, 15.02.2001) of submission of 'Kannada Software'. It is claimed that OP 1 sent a formal communication (*i.e.*, an order) to OP 3 to develop a key board tutor and Kannada software named 'Kalitha' for professed free-distribution to various agencies under the State of Karnataka and general public.

6. It is alleged that OP 1 neither followed the guidelines provided under the 'Transparency in Public Procurement Act, 1999' nor the rules made there under which mandates compliance of such law and rules for any public procurement by the State of Karnataka of materials or services over the value of rupees one lakh. Further, OP 1 allegedly disregarded the said law and rules and directed various departments and organizations and other offices under it to start using only 'Kalitha' and thereby created an impermissible monopoly in favour of that product. Later, OP 1 followed the same kind of action with regard to the 'Nudi' Kannada software, newer version of 'Kalitha', which was also professedly developed by OP 3.
7. As per the Informant, these actions of OP 1 are allegedly against the spirit of competition principles as the very process of compelling the end users to a single Kannada language software is detrimental to the growth and development of the software in the said language. It is contended that the actions of OP 1 has led to the reduction in the number of empanelled vendors of Kannada software in the State. Further, it is claimed that the direction of OP 1 has created a monopoly in favour of the said 'Nudi' software and has conversely prevented any scope for any other software to compete with OP 3's software. It has been further contended that OP 1 by its collusive action with OP 3 has resulted in gross violation of the mandate of the Act.



8. On the basis of above mentioned facts, the Informant has prayed before the Commission to issue a direction to OP 1 to start afresh the process of selection of Kannada language software developer to enable fair and transparent opportunity for all eligible developers of Kannada language software in the state. Further, it has been prayed that all the impugned circulars, orders, notifications *etc.* issued by OP 1 insisting the use of only 'Nudi' Kannada software by all institutions, agencies, offices, departments, universities *etc.* in the State of Karnataka be withdrawn with immediate effect.
9. The Commission has given a considered thought to the information and material available on record in its ordinary meeting dated 02.09.2015. The gravamen of the Informant's grievance is two-fold, firstly it is aggrieved that OP 3 ought not to have 'developed' the Kannada language software when its role is limited to only to 'assisting the development of Kannada language software' as per its charter; and, secondly, by favouring OP 3's language software in the State of Karnataka, OP 1 and OP 2 are disturbing the competitive forces and adversely affecting the competing software developers, like the Informant.
10. With regard to the first allegation *i.e.*, development of Kannada language software by OP 3 in complete transgression of its aims and objectives as envisaged in its charter, it may be noted that the same raises no competition concern. The Informant has alleged that as per its own bye-laws, OP 3 cannot be a developer of any Kannada language software on its own, as its professed and proclaimed aims and objectives limit its role to be only an agency to 'assist' in the development of Kannada language software. Given the mandate of the Act to look into practices/ conduct of persons raising competition concern, the issue raised herein do not fall under the ambit of the provisions of section 3 or 4 of the Act. The Informant may approach appropriate forum for seeking relief in this regard.



11. That brings the Commission to examine the second contention *i.e.*, alleged favouring of OP 3's Kannada language software by OP 1 to the exclusion of all other Kannada language software developed by competing developers like Informant. In a nutshell, the Informant has averred that the collusive understanding between OP 1 and OP 3 has created a monopoly in favour of 'Nudi' software developed by OP 3. Apparently, the Informant has alleged contravention of sections 3 and 4 in the same breath. Nevertheless, the Commission has analysed, as elucidated in the following paragraphs, if any *prima facie* case of contravention arise in the present case.
12. The case at hand pertains to transaction between OP 1 and OP 3 where OP 3 is the product/ service provider and OP 1 is the buyer of such product service *i.e.*, the Kannada language software. It is a matter of record that OP 1 placed a formal order with OP 3 in the year 2001 to develop a key board tutor and Kannada software named 'Kalitha' for professed free-distribution to various agencies under the State of Karnataka and general public. 'Nudi' software is also a Kannada language software, apparently the newer version of 'Kalitha' software that serves the same purpose. Sometime thereafter, OP 1 advised all its departments to use the same to the exclusion of any other software. This as per the Informant amounts to collusion between OP 1 and OP 3.
13. The Commission, however, finds it difficult to agree with the assertion of the Informant. Firstly, the facts which are alleged to have fallen foul of section 3 of the Act took place much before the said provision was notified *i.e.*, 20.05.2009. The Act cannot take cognizance of agreements/ understanding/ arrangements that took place before the said cut-off date unless there are actions on the part of the OP 1 and OP 3 that occurred post 20.05.2009 which can be subjected to



Commission's scrutiny. There is nothing on record to suggest any such fact which requires interference by the Commission under section 3 of the Act.

14. With regard to the infraction of the provisions of section 4, the Informant has alleged that by choosing OP 3's Kannada language software, OP 1 has abused its dominant position and created a monopoly in favour of the said product *i.e.*, 'Nudi' software. In this regard, it is observed that since the alleged conduct of OP 1 in choosing OP 3 to develop Kannada language software was taken place during 2001 *i.e.*, much before the relevant provisions of the Act came into effect on 20.05.2009, the Commission cannot take cognizance of the said allegations of the Informant under the provisions of section 4 of the Act. It may be noted that the Commission can take cognizance of an alleged anti-competitive conduct in terms of the provisions of the Act if it occurred post the relevant provisions of the Act came into effect, or the alleged anti-competitive conduct occurred before the notification of the relevant provisions of the Act but the effect of such anti-competitive conduct is continued after the relevant provisions of the Act came into effect on 20.05.2009. In the instant matter neither the alleged anti-competitive conduct of OP 1 occurred post notification of the relevant provisions of the Act nor the effect of such conduct is continued after 20.05.2009. Therefore, the Commission is of the considered view that none of the provisions of section 4 of the Act are violated in the instant matter.

15. Accordingly, the Commission finds that no, *prima facie*, case of contravention of the provisions of either section 3 or section 4 of the Act is made out against OPs in the instant matter.

16. Having regard to the foregoing, the Commission is of the *prima facie* view that the present case does not raise any competition concern which requires



interference by the Commission. The case deserves to be closed under the provisions of section 26(2) of the Act.

17. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(M. S. Sahoo)
Member

Sd/-
(Justice (Retd.) G.P. Mittal)
Member

New Delhi
Date: 21/10/2015