



COMPETITION COMMISSION OF INDIA
Case No. 95 of 2014

In Re:

Brickwork Ratings India Private Limited

Informant

And

**1. CRISIL Limited, A Standard & Poor's
Company**

Opposite Party No. 1

2. S&P India LLC, USA

Opposite Party No. 2

CORAM

**Mr. Ashok Chawla
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**



Appearances: Shri Avinash Kumar, Advocate for the Informant alongwith Shri Vivek Kulkarni, Managing Director and Shri D. Ravishankar, Director of M/s Brickwork Ratings India Private Limited.

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

1. The present information has been filed by Brickwork Ratings India Private Limited ('the Informant'/ Brickwork) under section 19(1) (a) of the Competition Act, 2002 ('the Act') against CRISIL Limited, A Standard & Poor's company ('the Opposite Party No. 1'/ OP-1/ CRISIL) and S&P India LLC, USA ('the Opposite Party No. 2'/ OP-2), alleging *inter alia* contravention of the provisions of section 4 of the Act.
2. The Informant *i.e.*, Brickwork is a credit rating agency ('CRA') registered under the Companies Act, 1956 and accredited with SEBI with its corporate office in Bengaluru. It is also accredited by National Small Industries Corporation (NSIC) and RBI for carrying out SME and bank loan ratings respectively. It is stated to be a full-service rating agency providing Non-convertible Debentures (NCD), Bank Loan and MSME ratings with a country-wide presence. It is stated to be the smallest and a new entrant in the CRA market.
3. OP-1 *i.e.* CRISIL Limited is stated to be the oldest and largest CRA amongst all credit rating agencies in India. OP-2 is S&P India LLC, a Delaware, US based firm which holds the largest shareholding in OP-1 *i.e.* CRISIL. It is averred that Standard & Poor is the premier rating agency established in 1860 and got present corporation status in 1941. The agency now belongs to McGraw Hill, whose numerous firms own rating agencies



all over the world. It is pointed out that Standard & Poor has shareholding in over 50 CRAs all over the world.

4. It is averred in the information that OP-1 has given ratings to the maximum number of companies for their bank loans in India. OP-1 has been described in the information as the pioneer in credit ratings in India since 1987. It is averred that till S&P took over OP-1, it had a fair name. OP-1 was earlier promoted by premier financial institutions like SBI, ICICI, UTI and ADB *etc.* However, it is stated that presently the majority shareholding in OP-1 belongs to S&P, an international credit rating agency which enjoys number one position/ largest credit rating agency globally. It has been stated that S&P is a dominant credit rating agency not only in US but also internationally with more than 12 lakh ratings of debt of \$52 trillion or nearly Rs 50 lakh crores which is 28 times the Indian GDP.
5. It is stated that the relevant product market in the instant case may be defined as the market for “providing the services of credit ratings and other allied services”. Further, the relevant geographic market may be taken as all of India since all CRAs provide their services of credit ratings and other allied services all over India. Hence, the Informant avers that the relevant market for the purpose of our analysis in this case may be taken as the market for “providing the services of credit ratings and other allied services in India”.
6. On dominance, it is stated that OP-1 is the largest credit rating agency in India having more than 60% market share of the entire ratings market in India. OP-1 is also stated to have given ratings to the maximum number of companies for their bank loans in India. It is also averred that the agency has the largest revenue, which is more than double its nearest rival ICRA that was set up 23 years ago. Comparatively, it was pointed out that Brickwork was set up only six years ago. OP-1 and OP-2 have been stated



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to enjoy double dominance due to various reasons. OP-1 has dominance in the Indian market whereas OP-2 (S&P as an economic entity) has dominance in the world market and is present in at least 50 countries in the world. OP-1 is able to attract Indian firms by giving international rating *via* OP-2. Accordingly, it was stated that OP-1 enjoys a dominant position in the relevant market.

7. It was alleged that OP-1 is abusing its dominant position in the relevant market through a wide array of practices, which have been detailed *in extenso* in the information *viz.* predatory pricing, exclusivity obligations, long-term contracts, tying/ bundling of services, unfair contract terms, loyalty discounts, *etc.* which fall foul of the provisions of section 4 of the Act.
8. The Commission heard the counsel appearing for the Informant on 21.01.2015 when the Informant was directed to file additional information by 29.01.2015 in support of its allegation relating to the alleged predatory pricing resorted to by CRISIL. The Commission has also perused the material available on record.
9. The Informant- a new entrant in CRA market- appears to be aggrieved of the impugned anti-competitive/ unfair and abusive conduct/ practices indulged in by the Opposite Parties. The Informant alleges that the said acts have resulted into *inter alia* both exploitative as well as exclusionary behaviour to drive the small competitors like the Informant herein out of the market.
10. To examine the alleged abusive conduct, it is necessary to delineate the relevant market.



11. It may be noted that CRAs provide information on the creditworthiness of debt issuers. In its widest application, the relevant market could cover all those instruments that disclose information enabling investors to assess credit risk such as financial journals, analyst reports, internal risk-assessment procedures, capital/ solvency ratios, any appropriate combination of accounting indicators, etc. However, ratings issued by CRAs exhibit several features that distinguish them from other information channels. First, financiers/investors favour CRA ratings because they enshrine information on the creditworthiness of the debt issuer in the present and in the future, by contrast to static accounting indicators of other information channels. Second, portfolio governance and prudential regulation obligations require investors to hold financial products rated by CRAs. As a result, debt issuers have little choice but to request ratings from CRAs in exchange for a fee. Alternative risk-assessment instruments are, thus, no substitutes for CRA ratings, and should thus be excluded from the relevant market. As such, the relevant product market may be taken as provision of credit rating services. Further, it appears that the conditions for provision of such services in the entire country are uniform and homogeneous as there are no barriers within the territory of India in terms of geographic location for the consumers. Thus, the relevant geographic market may be taken as the whole of India.
12. In the result, provision of credit rating services in India appears to be the relevant market.
13. So far as the issue of dominance of the Opposite Parties in the relevant market is concerned, it may be noticed from the information that OP-1 is the largest and the oldest credit rating agency in India having more than 60% market share of the entire ratings market in India as it has given ratings to the maximum number of companies for their bank loans in India. Besides, it has the highest revenue, which is stated to be more than double



of its nearest rival *i.e.* ICRA. The remaining market share is stated to be shared by the other four CRAs including the Informant.

14. Furthermore, the Informant has averred that OP-1 and OP-2 enjoy double dominance due to various reasons. OP-1 has dominance in the Indian market whereas OP-2 has dominance in the world market and is present in at least 50 countries in the world. OP-1 is able to attract Indian firms by giving international rating *via* OP-2. Accordingly, it was stated that the OP-1 enjoys a dominant position in the relevant market.
15. In this connection, it may also be pointed out that in *M/s SRMB Srijan Limited v. CRISIL Limited*, Case No. 64 of 2013, the Commission found OP-1 to be in a dominant position in the market of credit rating services for availing the banking facilities/ loans in India.
16. In view of the above, the Commission is of opinion that OP-1 appears to be in a dominant position in the relevant market of provision of credit rating services in India.
17. On the issue of alleged abusive conduct of OP-1, it may be observed that the Informant has made diverse allegations ranging from unfair/ excessive/ predatory pricing, exclusivity behaviour, exploitative conduct to oust the Informant from various public procurement of credit rating services.
18. In this connection, it may be noted that the Informant has alleged that OP-1 is pricing too low to woo customers contrary to RBI mandated stipulations and to oust the competitors from the market. The Informant has admitted that no “specific evidence” could be given in this regard as the companies are scared of OP-1 suspending them and further OP-1 informing about them to RBI. Yet, the Informant has given the following



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instances in regard to predatory pricing particularly in the Government tenders:

- (i) In Karnataka State Financial Corporation (KSFC)'s tender dated 6th June 2014, OP-1 quote was L-1 at Rs. One Lakh and the Informant/ Brickwork quote was Rs. 2.5 Lakh. In the previous tender dated 16th August 2011, OP-1 has quoted almost Rs. 16 lakhs for similar tenders before the entry of Brickwork. If one considers the total cost quoted by OP-1 the initial rating fee was Rs 16 lakhs and annual surveillance fee of Rs 8 Lakhs per year for ten years. Thus, the total cost works out to be Rs 96 lakhs for ten years for Rs 200 Cr KSFC bonds. In the year 2013, OP-1 has quoted just Rs 4.65 lakhs instead of Rs 96 lakhs. The issue size of 2013 is Rs 250 cr compared to the issue size of 2011 which was Rs 200 cr. One would expect higher than Rs 96 lakhs for the 2013 quote. Thus, the company which used to quote as high as Rs 96 lakhs in 2011 before entry of Brickwork, has now drastically reduced the price to just Rs 4.65 lakhs just to keep Brickwork out.
- (ii) In the case of West Bengal State Electricity Distribution Co. Ltd.'s tender, the OP-1 once again quoted far lower to keep the present Informant out. It is to be noted that the OP-1 being a large firm where the annual compensation of the CEO might exceed the revenues of the Informant. In spite of having large cost structure, the OP-1 charges so low, primarily to exclude the new agency like the present Informant. To put it simply, the OP-1's strategy is to keep prices low (even below the average variable costs/ AVC) wherever the Informant participates and eventually drive it out of market. At that point one can expect the OP-1 return to its monopoly pricing habits after driving the small competitors (like the Informant) out of the market.



19. On exclusivity behaviour, the Informant has alleged that OP-1 adopted a strategy to drive the Informant out from the market by persuading PSUs to adopt newer eligibility norms. It is the case of the Informant that OP-1 itself has systematically violated such norms in order to drive the present Informant out of the market. While doing the consultancy work, it is alleged that OP-1 made EPFO, ONGC and PFC to change the eligibility standards suddenly and kept the Informant out of tenders. Thus, it could get these tenders by retaining exclusivity, alleges the Informant.
20. Grievance was also made of the fact that OP-1 through its unit *i.e.* CRISIL Research does provide advisory and consultancy services (and not through independent subsidiaries) and thereby benefiting itself in getting credit rating tenders. It was alleged that CRISIL used this research division to offer advisory services to EPFO. As an advisory to EPFO, it was found by the Informant that there is exclusionary behaviour/ practices adopted by CRISIL which blocked/ prevented the Informant from getting any work from EPFO over 18 months. The Informant has highlighted in detail the *modus operandi* adopted by OP-1. It was pointed out that wherever OP-1 does not have influence, the Informant has been able to get through Government tenders and an example of Coal Mines Employee Provident Fund (CMEPF) in this regard was cited where the contract was awarded to the Informant.
21. The grievance of the Informant also relates to elimination of the Informant from the Government tenders by the alleged anti-competitive/ exclusionary behaviour of OP-1. In this connection, it was pointed out that usually PSUs call for tenders and everyone registered with SEBI/RBI can participate and the lowest bidder can get the work. However, OP-1, because of its dominance, has been able to influence PSUs to change/maintain norms, which eliminates the Informant from participation



in the bids. In this regard, it was pointed out that the most important change effected by OP-1 was to introduce ten-year experience rule for eligibility. It was pointed out that the ten-year rule was never there in any of government tenders before the entry of the Informant in 2008. OP-1 due to dominance over market has influenced players to introduce this rule to block the Informant. If this dominance continues, even after the Informant acquires 10-year experience, EPFO can come up with 20 year experience as the eligibility criteria and bar Brickwork. It was alleged that since OP-1 is a very large company with presence in around 200 cities in India and plenty of economic strength in terms of billion dollar market capitalisation and manpower, it has been able to influence a number of PSUs. The shareholding of OP-2 as a foreign company is also a big advantage for CRISIL which can influence the PSU and large firms.

22. Lastly, the Informant has alleged that OP-1 is indulging in exploitative conduct by dissuading its customer from switching by threatening suspensions.
23. On a careful consideration of the allegations levelled by the Informant relating to unfair/ predatory pricing, exclusionary conduct in public procurement, exploitative behaviour in stopping switching by the customers, the Commission is of the opinion that the same appear to be of general and generic nature without having been supported by any data or costs involved to establish predatory pricing *etc.*, and as such do not seem to raise competition issues and contravention of the provisions of section 4 of the Act.
24. Even in the additional information filed by the Informant, no specific or concrete data have been given. In fact, the Informant has only surmised in the additional information that due to the threats held out by OP-1 no small company is willing to share the information. Furthermore, the grievance



pertaining to contravention by OP-1 of RBI notification/ circular relating to pricing, requires the issue to be agitated before the appropriate forum. From the data furnished by the Informant itself, it may be seen that in respect of KSFC's tender for the years 2011, 2012 and 2014, OP-1 was not even the lowest bidder in any of those tenders. On the contrary, the Informant appears to be the lowest bidder for the tender dated 16.08.2011. Similarly, with respect to the tender floated by West Bengal Electricity Distribution Co. Ltd., it may be noticed that though the amount quoted by OP-1 appears to be low yet it may be seen that the Informant had also been quoting less than half the amount than the rest of the bidders in respect of KSFC's tender dated 16.08.2011. This indicates that there are instances where bidders quote very less amount to win the bids and price competition appears to be the norm for tenders. There is nothing available on record which is suggestive of any predation resorted to by OP-1. The Informant itself has based its case on "too low" pricing by OP-1 instead of establishing predation.

25. On the issue of denial of market access, the Informant has also not disclosed any evidence to substantiate the same. It is admitted by the Informant itself that it is unable to provide specific evidence.
26. With regard to the allegation of exclusionary behaviour of OP-1, it is alleged that OP-1 is providing advisory services apart from credit rating services and thereby influencing the PSUs to change eligibility norms to oust the Informant from the market. On a closer scrutiny, it appears that the Informant is more concerned about '*moral value*' than on any alleged anti-competitive issue. As regard the allegation of elimination of the Informant from government tenders by OP-1, no evidence has been submitted to elaborate the same.



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27. In view of the above, the Commission is of the view that no material has been placed before the Commission wherefrom even a *prima facie* contravention can be established against the Opposite Parties. Resultantly, no case, whatsoever, is made out against the Opposite Parties for contravention of the provisions of section 4 of the Act and the information is ordered to be closed forthwith in terms of the provisions contained in section 26 (2) of the Act.
28. The Secretary is directed to inform the parties accordingly.

Sd/-

**(Ashok Chawla)
Chairperson**

Sd/-

**(S. L. Bunker)
Member**

Sd/-

**(Sudhir Mital)
Member**

Sd/-

**(Augustine Peter)
Member**

Sd/-

**(U. C. Nahta)
Member**

New Delhi

Date: 18/03/2015