

**COMPETITION COMMISSION OF INDIA**

**CASE NO 57/2010**

**Date: 02.12.2010**

**Informant:** M/s. Best Xerox Centre, Proprietor Smt. Sunder Jain, Represented through authorized representative Sh.R.C.Jain.

**Opposite Party:** Xerox Modi India Limited.

**ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002**

1 The present information has been filed under section 19 of the Competition Act, 2002 by M/s. Best Xerox Centre through its sole proprietor Smt. Sunder Jain (hereinafter referred as informant) against Xerox Modi India Limited (hereinafter referred as OP) for alleged abuse of its dominant position by unilaterally changing the terms of arbitration agreement between them.

2. The Brief facts of the case are as follows:

2.1 The informant purchased a Xerox machine priced Rs. 8,05,800 from the erstwhile Modi Xerox Co. Ltd., in 1997. The grievance of the informant is that the condition regarding the appointment of arbitrator and the venue of arbitration was changed by the OP in its Full Service Maintenance Agreement (FSMA) on 11.12.1997 as compared to the conditions mentioned in proforma invoice/ sale invoice dated 30.09.1997 and 21.11.1997.

2.2 The terms regarding the arbitration clause as per the proforma/sale invoice dated 30.09.1997 and 21.11.1997 are as under:

*"In the event of any dispute or difference arising between the parties pertaining or arising under this contract, the same shall be referred to the arbitration of a board of arbitrators comprising one nominee each of MX and the customer and an umpire to be appointed by the arbitrators before entering upon the reference. The venue of such arbitration shall be head office of MX, presently at Hemkunt Tower, 98, Nehru Place, New Delhi-110019."*

While amended clauses of FSMA are as under:

*"In the event of any dispute or difference arising between the parties pertaining or relating to this Agreement, the same shall be referred to the arbitration of a sole arbitrator appointed by the Chairman of the board of directors of MX or by a person designated / authorized by him. All proceedings of such arbitration shall be governed by the Arbitration & Conciliation Act, 1996 or any amendments thereof. The venue of such arbitration shall be the head office of MX, presently at Hemkunt Tower, 98 Nehru Place, New Delhi-110019".*

*"Only the Courts at Delhi shall have exclusive jurisdiction to adjudicate any disputes between the parties arising from this agreement."*

2.3 It is alleged that the opposite party has thus misused its dominant position which is apparent from comparing the conditions of arbitration given in the proforma / sale invoice and the FSMA. The informant alleges that at the time of selling the machine, the opposite party deliberately incorporated very liberal terms to lure the consumer into purchasing the machine but at the time of signing of service agreement the opposite party incorporated very restrictive terms so as to discourage the consumer from raising dispute relating to after sales service.

2.4 It is alleged that the opposite party held a monopoly in the market of Xerox machines. The informant alleged that opposite party's technical service engineer and spare parts were not available in the open market and the consumer had no option but to accept whatever conditions the opposite party put in the FSMA. The said Full Service Maintenance Agreement was for the maintenance, repair and /

or replacement of worn out parts as and when required and for providing consumables free of cost. In lieu thereof opposite party takes per copy charge. These charges were based on the readings recorded in the meter installed in the machine. The opposite party allegedly enhanced the said service charges from time to time as per market price index.

2.5 As per the informant, the controversy had arisen in year 2000 when the opposite party did not provide satisfactory service as per its own terms and conditions while the informant had paid full annual service charges. As a result, the informant had to suffer irreparable loss. As per the informant, various litigations are pending between the informant and the opposite party with regard to the above dispute for the last ten years.

2.6 The informant has prayed for following relief;

- (i). The OP may be penalized for unfair trade practices and abuse of dominant position of enterprise/OP for discontinuing service and spare parts of Xerox machine.
- (ii). The OP may be penalized for unfair trade practices of adding exclusive jurisdiction of Delhi courts in service agreement contrary to proforma invoice and may be penalized for unfair trade practices as envisaged under section 36A of the MRTP Act.

3. Written submissions were filed on behalf of the informant on 24.11.2010 reiterating and elaborating upon the submissions already filed in the main information.

4. The Commission has given due consideration to the written submissions filed on behalf of the informant and the material available on record.

5. The information under discussion pertains to purchase of photocopier by the informant. It is gathered from information available in public domain that the photocopier market in India is valued at Rs. 850 crores. The market is dominated by a few

strong players like Xerox, Canon, (Ricoh) Gestetner and HCL Toshiba. Xerox has built up a considerable edge over other players in the market. The main strength of any photocopier manufacturer is its distribution and service capabilities. The demand for the photocopier in the present period is on the decline with the rise of electronic forms of data duplication / storage and efficient data transfer through internet. The market of photocopier is can be classified into 2 basic categories, i.e. Analog and Digital. Analog photocopiers are black & white machines while digital comes in both black & white and color.

6. The grievance of the Informant is that the OP company incorporated liberal terms of arbitration in proforma / sale invoice to lure consumers at the time of purchase of the machine, but at the time of signing of service agreement they incorporated very restrictive terms. It is noted that the informant has brought nothing on record to suggest that the maintenance agreement with the OP Company is mandatory for the purchaser. There are other enterprises that can service or maintain photocopiers. A user of photocopier therefore has ample choice of selecting a vendor for servicing.

7. On thorough perusal of the information, it has been observed that the Informant has alleged that the opposite party has monopoly in the Xerox machines. In this context it is noted that there are several other manufacturers of photocopiers and Xerox cannot be said to be a monopoly by any stretch of imagination. Moreover, the dispute has arisen in respect of post-purchase service agreement. As already noted above, the market of service / maintenance of photocopiers is very competitive as there are several small vendors who maintain the machines by charging an annual amount. A customer has the choice of either entering into a FSMA with the manufacturing company or with any other servicing vendor. In terms of this market for maintenance services, the OP cannot even be said to be dominant, leave alone in a monopolist's position of strength. The informant has not been able to bring on record any evidence to *prima facie* establish that the opposite party has dominant position in the market of photocopier servicing in the context of explanation to section 4 of the Competition Act, 2002. Further, there is no *prima facie* evidence or material to establish that the OP has a dominant position in

terms of any factors given in section 19(4) of the Act. For a market for servicing of any equipment, the most relevant and important factor would be dependence of a consumer on the OP. In this case, a consumer has several choices of vendors with whom to enter into a full service maintenance agreement and it is not compulsory to have FSMA with OP only. The perusal of information available on public domain reveals that, the spare part and consumable parts of the Modi Xerox photocopiers are available in the open market. Thus, *prima facie*, none of the factors of section 19(4) of the Act are present in this case.

8. This Commission has also examined the possibility of the impugned FSMA agreement between the informant and OP being in contravention of section 3 of the Act. Very clearly, the facts of the case do not indicate any possibility of *per se* contravention of the nature mentioned under sub section 3 of section 3 of the Act. For any other kind of agreement to be in contravention of the provisions, it is imperative that there be a *prima facie* indicator of appreciable adverse effect on competition in India due to the agreement under question as per the provisions of section 19 (3) of the Act. The perusal of information available on record and perusal of material on records, there is nothing to suggest any agreement which is creating barriers to new entrants in the market of photocopier servicing or is foreclosing competition or curtailing accrual of benefits to customers. Since there are several vendors offering maintenance services for photocopiers, if the said act of OP were to affect the buyers' interest adversely, they would shift to other available options in this competitive market.

9. Coming now to the other grievance of the Informant regarding the choice and place of the forum for arbitration, it is noted that The Arbitration and Conciliation Act, 1996 has a comprehensive procedure for objecting to or challenging the terms of the arbitration clause in the FSMA and place of arbitration. This Commission is not the forum for challenging the terms of any arbitration clause, unless there is any anti competitive element involved. As already discussed above, there are no *prima facie* factors that indicate any contravention of section 3 or section 4 of the Act in this case.

10. In view of the above, and after considering the entire material and submissions of authorized representative of the informant, the Commission is of the opinion that the allegations, as made in the information and the reliefs as prayed by the informant, do not fall within the ambit of Competition Act, 2002. The informant has also not been able to place any credible or cogent evidence/material to show or establish the infringement of section 3 or 4 of the Act in this case and hence the allegations made by the informant have remained unsubstantiated and uncorroborated. The Commission, therefore, is of the view that no *prima facie* case is made out for making a reference to the Director General for conducting investigation into this matter under section 26 (1) of the Act and the proceedings relating to this information are required to be closed forthwith.

11. In view of the above, the matter relating to this information is hereby closed under section 26(2) of the Competition Act.

12. Secretary is directed to inform the informant accordingly.

Sd/-  
Member (L)

Sd/-  
Member (R)

Sd/-  
Member (P)

Sd/-  
Member (G.S)

Sd/-  
Member (T)