

COMPETITION COMMISSION OF INDIA

22.11.2011

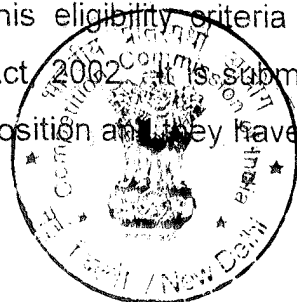
Case No.64/2011

Filed by: M/s Methodex System Ltd.
607-608, eghdoot, 94, Nehru Place,
New Delhi – 110 019 ...Informant

Against: United Bank of India, KOLKATA
Bank of Maharashtra, Pune
Syndicate Bank, Bangalore,
Bank of Baroda, Mumbai ...opp Parties

ORDER UNDER SECTION 26(2) OF THE ACT

The applicant in this case is a Distributor and supplier of "Note Sorting Machines." He claims to have a "Distributorship Agreement" for such Machines with M/s LIAONING JULONG FINANCIAL EQUIPMENT CORPORATION (LJFEC) for India. He submitted that the 'Note Sorting Machine' of which he was Authorized Distributor, had been specially developed and designed for Indian Rupee. His machines have been successfully tested by authorised banks and institutions and he has been given certificate by these institutions about the excellent performance and accuracy of the machines. His grievance is that the Opposite Parties namely United Bank of India, Bank of Maharashtra, Syndicate Bank and Bank of Baroda, in recent past, had taken out tenders for supply of 'Note Sorting Machines' and in the tenders the aforesaid banks provided an eligibility criteria for the tenderers and this eligibility criteria was violative of provision of Section 3 and 4 of the Competition Act, 2002. It is submitted that aforesaid 4 banks were larger banks and have dominant position and they have



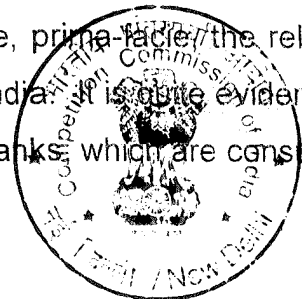
-2-

abused their dominant position by providing such eligibility criteria (as mentioned in the Tenders) due to which the applicant was not in a position to fill the tender.

2. The eligibility criteria given by each bank has been reproduced in the application. All the banks have provided that the tenderers should have past experience of similar work of supply of "Note Sorting Machines" to RBI / Public Sector / Commercial Banks and other financial institutions. Each of the Banks has specified eligibility requirement of 3 years to 5 years experience. Except United Bank of India, other banks have also specified that the Firm should have made profits during last 3 financial years. All the banks have required that the tenderers must have supplied a minimum number of "Note Sorting Machines" during last 3 years. This minimum number varies from Bank to Bank.

3. We have to examine if there is a *prima-facie* violation of Section 3 or Section 4 of the Competition Act, 2002 in the present case. The condition under which Section 3(3) of the Act is attracted have been clearly delineated therein. It is observed that these, inter alia, are applicable when there is an agreement amongst the enterprises which are engaged in production/supply of identical or similar goods or services which results in any of the effects mentioned in Sub Clause (a) to (d) of Section 3(3). Facts in this case do not satisfy these conditions, nor do they satisfy any of the other conditions laid down in Section 3(3). Section 3(4) is attracted only when there is an agreement amongst enterprises which are at different stages or levels of the production chain, which causes or is likely to cause an appreciable adverse effect on competition, while in the present matter there is no such agreement. As such, the facts on record do not disclose any violation of Section 3, or any of the sub-sections thereof, of the Competition Act, 2002.

4. There is a violation of Section 4 of the Act only when an enterprise is dominant in the relevant market in terms of the provisions of Section 4, read with section 19(4) of the Act and it abuses its dominant position. In the present case, *prima-facie* the relevant market appears to be supply of "Note Sorting Machines" in India. It is quite evident that there are large number of institutions, including most of the banks, which are consumers



-3-

of such machines. O.P. Nos. 1 to 4 are only 4 such consumers, and there is nothing to suggest that any one of them is dominant in the relevant market. Further, prescribing of eligibility conditions by the procurer which are uniformly applicable to all the bidders, and which are prescribed by the procurer in the interest of security of the supply, cannot be termed as abusive. Every enterprise has a right to select a reliable and experienced supplier. Therefore, it is clear that no case is made out under Section 4 of the Competition Act.

5. It is, therefore, concluded that there is no prima-facie case under Section 3 or Section 4 of the Competition Act for referring the matter for investigation to the Director General, Competition Commission of India, and it is a fit case for closure.

6. The matter is accordingly closed.

7. Secretary is directed to inform the parties accordingly.

sd/-
(H.C. Gupta)
Member

sd/-
(R. Prasad)
Member

sd/-
(Anurag Goel)
Member

sd/-
(M.L. Tayal)
Member

sd/-
(Ashok Chawla)
Chairperson

Certified True

