

BEFORE THE
COMPETITION COMMISSION OF INDIA

CASE REF: Case No. Case No. 15/28, 6/28, 13/28, 12/28, 2/28 (6 MRTP Cases)

DATE OF DECISION : 7.6.2011

1. Shri Norbert Lobo Vs. Citibank N A (6/28)
2. Shri Gulshan Kumar Gupta Vs. BHW Home Finance Ltd (15/28)
3. Shri Madan Lal Ghai Vs. ICICI Bank Ltd (13/28)
4. Shri C. M. Gupta Vs. ICICI Bank Ltd (11/28)
5. Shri Prakash Bajpai Vs. ICICI Bank Ltd (12/28)
6. Shri Govind Agarwal Vs. ICICI Bank Ltd (2/28).

Informants

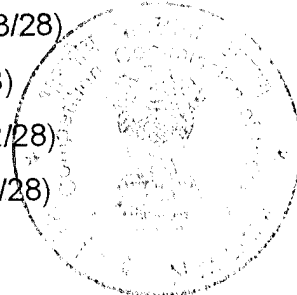
1. Citibank NA 6/28
2. BHW Home Finance Ltd 15/28
3. ICICI Bank. 2/28, 11/28, 12/28, 13/28

Opposite Parties

Final Order

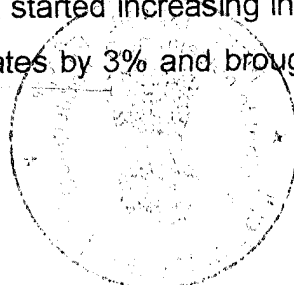
Consequent upon the repeal of Monopolies and Restrictive Trade Practices Act, the following 6 cases have been received by the Competition Commission of India (the Commission) from the erstwhile Monopolies and Restrictive Trade Practices Commission (the MRTPC) on transfer under section 66 (6) of the Competition Act, 2002 (the Act):

1. Shri Gulshan Kumar Gupta Vs. BHW Home Finance Ltd (15/28)
2. Shri Norbert Lobo Vs. Citibank N A (6/28)
3. Shri Madan Lal Ghai Vs. ICICI Bank Ltd (13/28)
4. Shri C. M. Gupta Vs. ICICI Bank Ltd (11/28)
5. Shri Prakash Bajpai Vs. ICICI Bank Ltd (12/28)
6. Shri Govind Agarwal Vs. ICICI Bank Ltd (2/28)



2. Facts/allegations, in Brief

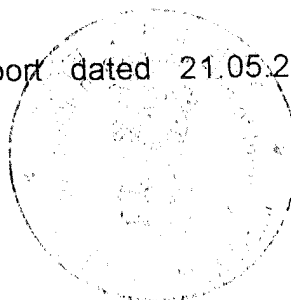
- 2.1 All the above cases relate to charging of differential rate of interest from different set of borrowers and pre-payment penalty being charged by banks/finance companies. As the subject matter of information is substantially the same in all these cases, the DG has decided to club the same for common investigation
- 2.2 The main issue for investigation was of differential rate of interest charged by the bank/financial institutions from new customers and the existing customers and levying of prepayment penalty or foreclosure charges on the customers/borrowers for switching over to another bank/financial institution.
- 2.3 As per the information, Shri Gulshan Kumar Gupta availed Housing Loan from BHW Home Finance Ltd. (BHW) for amount of Rs. 8,,97,000/- under floating rate of interest @ 11.75% per annum for a period of twenty years. He came to know that the company has reduced the rate of interest to 10.25% per annum. To clarify the fact, the informant contacted the company and they confirmed the same. It is stated that for new customers, the interest rate offered was as low as 9.99%, but for the existing borrowers the rate of interest had not been reduced by the bank. Furthermore, it is stated that the applicant has to pay 2% prepayment penalty on entire amount to switch to another bank which may be offering lower interest rate. He has alleged that the benefit of the declining interest rates in home loans is not given to him by BHW. Also the prepayment charges restrict him from shifting to some other bank.
- 2.4 As per information filed by Shri Nobert Lobo, he and Molly Lobo have taken housing loan at a floating rate of interest from Citibank. They availed the 5% cash back scheme of Citibank. The loan was given at a lower rate of interest of 8.75%, as compared to the rates given to existing customers who were paying 9.75% to 10.25%. However, soon thereafter, the bank started increasing interest rates and within a year it had increased the interest rates by 3% and brought it at par with existing rates for older customers.



- 2.5 According to the information, Shri Madan Lal Ghai had taken a home loan of Rs. 20,00,000/- from ICICI Home Finance Co. Noida on a floating rate of interest of 7.25%. The bank increased the rate of interest 7 times during the period 16.06.05 to 31.03.07. The EMI was increased from Rs. 17,545/- as on 07.05.2005 to Rs 21,749/- per month with effect from July 2007, at an enhanced interest rate of 11.75%. The informant stated that the bank gave home loan to its new customer at a floating interest rate of 10.5% in year 2007. He has alleged that ICICI Bank is charging higher interest than the other banks and also levying prepayment penalties.
- 2.6 Shri C. M. Gupta informed that he had availed a home loan of Rs. 15 lakhs on floating rate of interest of 9.5% per annum in September 2006 from ICICI Bank Ltd. The said loan was to be prepaid in 180 equal installments of Rs. 15,664/-. He states that in a news column it had been stated that ICICI bank had increased the home loan interest rates for the new customers but the interest rates for old borrowers had remained unchanged. Despite this, Shri Gupta received a communication from the bank that interest rate on loan had been increased from 9.5% to 12% per annum and repayment period had been increased from 180 EMIs to 292 EMIs. He tried to repay the balance amount of loan in one go for which ICICI Bank did not agree and asked for prepayment charges of 2.5%. He has alleged that ICICI Bank has increased the interest rates and is also levying prepayment penalties if he wished to foreclose the loan.
- 2.7 As per information filed, Shri Prakash Bajpai took housing loan of Rs. 13,25,000 from ICICI Bank at floating rate of interest of 7.75% on October, 9, 2004. Soon after that the bank increased the rates and started charging interest rates higher than most other banks citing rising costs of funds. It is also stated that in respect of the Foreclosure Charges the bank is charging a fee of 2% on full & final prepayment.
- 2.8 Shri Govind Agarwal in his information sated that he had taken a home loan of Rs.7 Lakhs from ICICI Bank in March, 03 on floating rate of interest. Later ICICI Bank intimated that with effect from 1st Oct. 08, floating rate of interest would

stand increased to 14%. It is stated that new customers were being offered loan at a lower rate of interest at 12% in Oct 08. It is further submitted that bank does not adjust floating rates in a fair and transparent manner. It is also alleged that ICICI is cheating existing customers by asking for processing fee again to extend the lower floating rate of interest applicable for new customers to old customers.

3. After receiving the complaint the MRTPC sought comments/replies from the said opposite parties. In the meantime the MRTP Act was repealed and the case was transferred to the Commission in terms of Section 66 (6) of the Act.
4. The Commission in its ordinary meeting held on 08.03.2010 observed that all the above cases relate to charging of differential rate of interest from different set of borrowers and pre-payment penalty being charged by banks/finance companies. The common issue observed in all these 6 cases is that the above mentioned banks and financial companies are charging differential rates of interest from new customers qua existing customers. Further it was observed that in case existing borrowers wish to switch over to some other finance company, charging of pre-payment penalty acts as a barrier. Upon forming an opinion that there exists a *prima facie* case, the Commission referred the matter to the Director General (DG), CCI for investigation vide its order dated 08.03.2010. As the subject matter in all the above said cases was substantially the same, it had been decided by the Commission to club the cases for common investigation in terms of Section 26(1) of the Act read with regulation 27 of CCI General Regulations, 2009.
5. The DG submitted the investigation report dated 21.05.2010 to the Commission.



6. Summary of Findings of DG

The findings of the DG in his investigation report are summarized below:

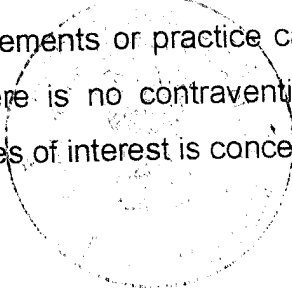
- 6.1 The report observes that the floating interest rate which is variable over the loan period is dependent on two factors (i) benchmark/reference rate (ii) Spread, which is more or less constant for the loan period. The benchmark/reference rate remains same for the existing and new customers. It is the spread margin which differs from customer to customer. However, according to the report, it can be inferred that exact charge or the range of possible charges to be levied was not clearly specified in the loan agreement.
- 6.2 The report observes that banks and financial institutions started offering loans with adjustable rates to manage volatility and asset-liability mismatch. The spread is calculated based on profile of the customer, credit history, repaying capability, tenure of the loan, nature of property etc., The spread seeks to cover the cost of funds, profit mark up, credit risk etc.
- 6.3 The report observes that this spread/margin is variable and also negotiable and it depends on negotiations between the lender and the borrower. According to the report, since the spread varies from individual to individual, the interest rate offered to two individuals at a given point of time cannot be same although the benchmark remains constant and the floating rate offered to the customer remains unchanged.
- 6.4 All the customers have different loan requirements and characteristics and it is not feasible for the banks to have a uniform common spread for all the customers.
- 6.5 The DG report observes that banks/financial institutions are passing on the effects of increase/decrease in Benchmark/Reference Rate to customers but

are not adjusting the spread, which once calculated/fixed remains constant for the loan period. The report further observed that the spread/margin can be negotiated or altered on payment of conversion or switch over charges by the borrowers at the time of switching from fixed to floating rate of interest.

6.6 According to the report, the impression that banks are not passing the benefit to customers when interest rates are falling is on account of non transparency about interest setting mechanism and lack of awareness on part of consumers about the prevailing PLR/FRR and the applicable spread. This shortcoming of the system has been duly addressed by RBI by converting from PLR system to Base rate system. Base rate is the minimum rate at which banks can lend after meeting all the expenses and is more objective and transparent than PLR.

6.7 The report remarks that RBI guidelines on base rate are intended to ensure transparency in the pricing of lending rates to the borrowers. According to the guidelines, the banks are now required to display the information on their base rate at all branches, websites and to general public from time to time through appropriate channels.

6.8 The DG's report states that in most of the cases the informants have taken the loan during the period from 2003 to 2007. It is noted that the average interest rate during the period has moved in the range from 10.63% to 13%. The average interest rate was range bound between 10.63% in April 2004 to 10.50% in March 2006 and downward movement of interest rate was quite limited. According to the report, it can be inferred from the movement of interest rates that the banks/financial institutions have not arbitrarily increased the interest rate but this happened on account of the prevalent market conditions. Rising interest rates are not on account of any agreements or practice carried on by banks/ financial institutions. Therefore, there is no contravention of Section 3 of the Act as far as charging differential rates of interest is concerned.



6.9 With respect to pre-payment penalty, to avoid duplication, DG has referred to report in Case no 5/2009 wherein prepayment penalty levied by banks was dealt with independent of the differential rate of interest charged by the banks. It is noted that the prepayment /foreclosure charges are mentioned in terms and conditions of the loan agreement of all the banks which are duly signed by the borrower. Based on findings given in Case no. 5/2009, levying of pre-payment penalty by banks is held in violation of Section 3(3) of the Act. However, it is observed that the clause and the applicable charges were clearly disclosed by the bank/financial institution in their terms and conditions which includes loan agreement, sanction letter etc. the borrowers have signed the relevant prepayment clause in the said loan agreements thus the question of not informing about the prepayment clause does not arise.

7. The Commission considered the report of the DG dated 21.05.2010 in its meeting held on 17.06.2010 and being of the opinion that further investigation is called for, directed the DG to make further investigation and submit a supplementary report within 30 days. After receipt of the direction of the Commission for further investigation, the DG got the matter investigated further and submitted the supplementary report vide letter dated 20.09.2010.

8. **Conclusion in the supplementary DG report**

The supplementary report observes that with regard to differential interest rate it cannot be concluded that there is infringement of any Section of the Competition Act, 2002. However, with regard to pre-payment charges it is concluded by the DG that these charges are levied by banks/financial institutions so as to make the exit expensive and to prevent switching over of customers on account of fluctuation in the interest rates. The report finds the said practice to be in violation of Section 3(1) read with Section 3 (3) (b) of the Competition Act, 2002.

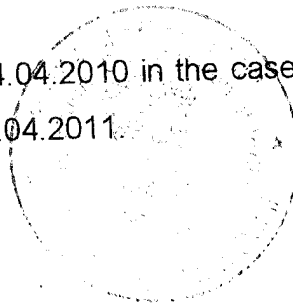
9. The said supplementary report of DG was considered by the Commission in its meeting held on 30.12.2010. The Commission decided that the copy of DG report be

sent to informant and the opposite parties to invite their comments/objections, if any, within 15 days of communication of the order of the Commission. It was also decided that the parties be given permission to make inspection of the records and also the opportunity of oral hearing, personally or through their authorized representative, on 27.01.2011, if they so desire.

10. In Commission's meeting dated 27.01.2011 the comments filed by one of the informants Shri Norbert Lobo was taken on record. Two of the informants namely, Shri Madan Lal Ghai and Shri C M Gupta appeared and made submissions and also filed written submissions in the matter. The counsel of ICICI Bank also appeared and made oral submissions. He sought further time of 15 days to file comments/ reply and same was granted by the Commission. The Commission further decided to accord the informants and the opposite parties who had not responded to the notice of the Commission dated 30.12.2010, another opportunity to file their comments/reply within 15 days and to appear for oral hearing on 15.02.2011, if they so desire. The Commission also directed that notice to BHW be sent at its alternate address.

11. In the Commission's meeting held on 15.02.2011, accordingly, the counsel of BHW, ICICI Bank and Citibank appeared before the Commission alongwith one of the informants, Shri C.M. Gupta. The counsel of ICICI Bank filed reply dated 15.02.2011 in the case of Shri Madan Lal Ghai and Shri C.M. Gupta and sought further time of 2 weeks to file reply in the other two cases which was allowed by the Commission. The counsel of Citibank also sought further time of two weeks to file their reply which was allowed by the Commission. The reply filed by BHW received on 14.02.2011 was taken on record by the Commission.

12. The reply filed on behalf of Citibank dated 04.04.2010 in the case of Shri Nobert Lobo was taken on record in its meeting held on 06.04.2011.



13. Reply to the DG report by Citibank

The Citibank filed its reply dated 04.04.2010 to the DG report through M/s. Dua Associates, Advocates and submitted the following:

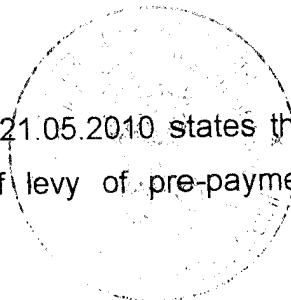
13.1 At the outset it is submitted that Citibank is not engaged in any anti-competitive activity. In this context, it is plead that the contents of the replies submitted by Citibank to the DG dated 13.09.2010, 13.05.2010, 04.05.2010 and 29.09.2008 be read as part and parcel of the present reply to the investigation reports submitted by DG.

13.2 It was submitted that the Commission has already adjudicated upon the issue of imposition of pre-payment charges, which is also subject matter of the present investigation reports submitted by the DG, and the Commission has settled/ determined the said issue. It is pointed out that in this respect, this Commission has concluded in no uncertain terms that there is no agreement among the banks for levy of pre-payment charges that can be termed as action in concert and therefore does not fall within the purview of anti-competitive action under the Act.

13.3 It is asserted that this Commission has already decided on the issues identical to the allegations examined by the DG in the present investigations in the Commission's order dated December 2, 2010 in case no. 5/2009. In view of the decision, nothing further survives of the conclusions in the reports of the DG dated May 21, 2010 and September 16, 2010 and as such the same should be dismissed by this Commission.

14. Reply to the DG report by Deutsche Postbank Home Finance Limited (Earlier BHW)

14.1 It was submitted that the DG report dated 21.05.2010 states that in order to factually verify and examine the issue of levy of pre-payment/foreclosure



charges by banks and financial institutions in this case, the information collected in case no. 5/2009 and examined in detail by the DG has been relied upon.

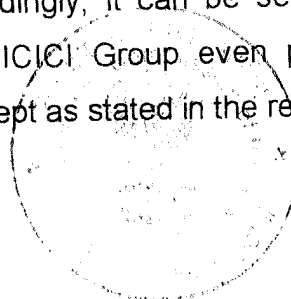
14.2 It is further emphasized that since the issue in the instant complaint is similar to that in case no. 5/2009, the report in this case has been clubbed and read in reference to investigation report of the Case No. 5/2009. It is pointed out that as per the majority decision dated 02.12.2010, the proceedings in Case No. 5/2009 have been closed, after comprehensively examining the aforementioned reports of the DG.

14.3 It is submitted that in the said Case No. 5/2009, in respect of pre-payment levy, the Commission has clearly held that "Neither the violation of Section 3 or Section 4 of the Act has been established, nor is there any evidence whatsoever of any appreciable adverse effect on competition in the home loan market in India in this context".

14.4 It is argued that the conclusion of the supplementary report dated 16.09.2010 that the pre-payment charges are in violation of Section 3(1) read with Section 3 (3) (b) of the Competition Act, 2002 is contrary to the final decision of Case No. 5/2009 dated 02.12.2010 on the same subject matter. It is contended that in the light of decision dated 02.12.2010 and the conclusions therein, the investigation in the above referred complaint has to be closed.

15. Reply to the DG report by ICICI Bank

15.1 It is submitted that the observation of the DG with regard to levying of pre-payment charge being a collective decision of the banks is not true. Since incorporation of ICICI Bank, ICICI Bank has levied pre-payment charges which are much before the IBA meeting. Accordingly, it can be seen that the pre-payment charges were being levied by ICICI Group even prior to the IBA meetings, which was the origin of this concept as stated in the report.



15.2 It is averred that ICICI Bank has not entered into an agreement, taken a decision or begun any new practice post the meeting and therefore its action cannot be deemed an agreement as mentioned in the report.

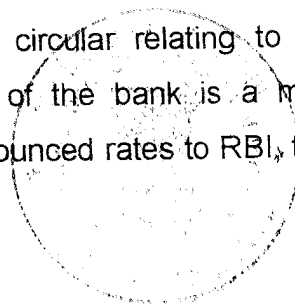
15.3 It is further argued that for the violation of Section 3(3) (b), it must be established that there exists an agreement, practice carried on or, decision taken by an any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provisions of services, which result in effects mentioned in clauses (a) to (d) of sub-section (3) of Section 3 of the Act. These include acts that limit or control production, supply, markets, technical development, investment or provision of services. It is submitted that on the basis of the IBA Circular it cannot be concluded that the practice of charging pre-payment penalty is a concerted decision of all the banks /HFCs as all of them have not started charging pre-payment penalty at one point of time.

15.4 It is contended that there is no agreement among the banks and HFCs investigated by the DG, for levy of pre-payment charges that can be termed as action in concert. It is further submitted that there is no evidence to establish that the practice of charging pre-payment charges is a result of some action in concert or emerges from a collusive decision.

16. Reply filed by Shri C.M. Gupta, one of the informants

16.1 It is submitted that the informant has signed the loan agreement when floating rate of interest was 9.5% but the ICICI bank never intimated him regarding charging of higher interest rate. Therefore, the requirement of transparency in the setting of interest rates for the loan has not been complied with as claimed in the reply of the bank.

16.2 The informant contends that the RBI circular relating to transparency in interest rates mentioned in the reply of the bank is a matter of record. However, by simply forwarding the announced rates to RBI, the bank has not



complied with the intent of the RBI circular. It is contended that the bankers are not entitled to charge the interest as per their own sweet will.

16.3 It is argued that the paras in the loan agreement referred to by the banks in respect of pre-payment charge are meant for transferring the loan to another bank whereas the informant wants to repay the loan from his own sources, therefore, the bank is not entitled to charge any pre-payment penalty.

16.4 It is alleged that when the informant obtained the home loan the bank concealed the vital fact that pre-payment penalty will be charged even if the loan is prepaid from own sources.

17. Reply filed by Shri M.L. Ghai, one of the informants

17.1 Further to the oral submissions before the Commission, the informant has filed a letter on 27.01.2011 with which he has annexed the following documents:

- a. Statement of excess interest and foreclosure charges charged by the ICICI Bank in his home loan account
- b. Bank's letter of disbursement dated 01.06.2005
- c. Account statement from 01.06.2005 to 07.01.2008 showing how the EMI increased from Rs. 18,258/- to Rs. 21,749/- per month.

18. Reply filed by Shri Norbert Lobo, one of the informants

18.1 The informant supports the investigation report that pre-payment charges is in violation of Section 3(3)(b) of the Act and needs to be scrapped immediately. However, in the informant's case an additional 5% pre-payment penalty was charged without their knowledge. As a proof it is pointed out that the agreement does not have the informant's signatures on all pages, not even on relevant pages. Therefore, it is argued that any clause the bank is pointing out is false and invalid. The contractual obligation itself does not exist when the document is invalid. DG in his report, conclusion, page 25 of 25, para 2, says,

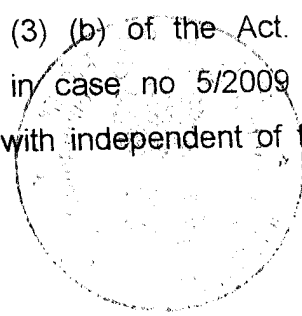
that the borrowers have signed the relevant pre-payment clauses in the loan agreement, thus the question of not informing about the pre-payment clause does not arise. However, the observation does not apply in the informant's case as stated above, since they have not signed on all or relevant pages of the agreement.

18.2 As far as differential interest rates are concerned the informant feels the investigation is missing a very important point. It is contended that different customers can be charged different interest rates while taking loan. But increasing it differently and bringing it at par for all customers without any scheme or pre announcement amounts to cheating, anti-competition and restrictive trade practices.

19. Decision

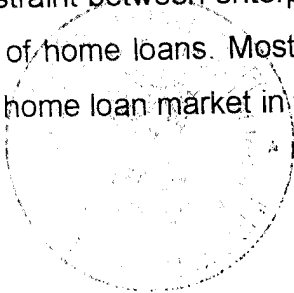
19.1 The Commission has carefully considered the material submitted by the informants in respective cases, the report of the DG, the supplementary report, replies filed by the respective banks as well as the informants and all other materials and evidence available on record. It is observed that there are 6 different cases which were referred by MRTPC and are based on the same issue of differential interest rate and prepayment penalty.

19.2 It is noted that the DG report with regard to differential interest rate has concluded that there is no infringement of any provision of the Act. With regard to pre-payment charges it has concluded that these charges are levied by banks/financial institutions so as to make the exit expensive and to prevent switching over of customers on account of fluctuation in the interest rates and accordingly the DG report held that the said practice is found to be in violation of Section 3(1) read with Section 3 (3) (b) of the Act. The DG report has recommended reference to report in case no 5/2009 wherein prepayment penalty levied by banks was dealt with independent of the differential rate of interest charged by the banks.



19.3 It is observed that DG in his report in case 5/2009 had concluded that the practice of charging pre-payment penalty on loans, home loans or other loans is anti-competitive in terms of the provisions of Section 3(3) of the Act. This Commission feels that the facts and allegations in the said case are different from the instant cases. It is observed that case no. 5/2009 was related to charging of pre-payment penalty by the various banks and financial institutions on foreclosure of home loans and the allegation was of concerted practice by the banks and financial institutions. Even the DG report had given its findings specifically on violation of Section 3(3) of the Act. But it is noted that the present information are against individual banks and there is no case of any other bank or financial institutions being in any agreement of the nature mentioned in Section 3(3) of the Act.

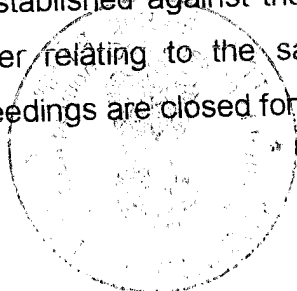
19.4 For applicability of Section 3(1) of the Act the agreement should be between existing or potential competitors or between enterprises upstream downstream in any production chain. There could be a case of Appreciable Adverse Effect on Competition (AAEC) only if enterprises conspire either horizontally or vertically in form of some agreement/concerted action/understanding/joint decision etc., to gather undue market power. In the present cases, the individual agreements between each informant and his bank are not the relevant or actionable "agreement" conceived under Section 3. To assess any impact on competition what must be examined is whether banks are entering into some mala fide understanding amongst themselves to the detriment of the consumers or competing banks. Alternatively, whether any bank is imposing vertical restraints up or down the production chain of home loan that distorts upstream downstream competition due to which consumer will eventually suffer. But in this case the banks are in a competitive market and all are offering their products at competitive rates. There is no evidence of any agreement between the impugned banks/ financial institutions to control the interest rates in the market or any vertical restraint between enterprises or persons at different stages of the production chain of home loans. Most importantly there is no evidence there is any AAEC in the home loan market in terms of Section 19(3) of the Act.



19.5 This Commission is of the view that Section 3(1) of the Act should not be evoked independently. The philosophy of "competition" is concerned primarily with ensuring free competition between existing or potential competitors because competition results in allocative and productive efficiencies that result in consumer welfare. Section 3 deals with agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause AAEC within India. Imposition of switching costs or any other condition on the consumer cannot be per se anti-competitive in absence of valid evidence of any agreement between enterprises producing identical or similar goods or services or those at different stages or levels of a production chain in different markets. This Commission would also like to emphasize that a business practice in any trade cannot be dragged into the ambit of Section 3(3) without any evidence that such practice has emerged from some sort of consensus or agreement. Therefore, in the instant cases, the Commission finds no contravention of Section 3. Further, it is necessary that such agreements are proved to have AAEC in terms of Section 19(3). This is not the case in the instant matter.

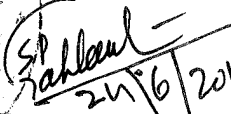
19.6 It is also noted that the DG in his main report has not given any finding on applicability of Section 4 of the Act in the matter. However, based on the market position of the respective banks, the DG in his supplementary report has concluded that none of the banks in question i.e. Deutsche Post Bank, ICICI Bank and Citibank enjoy dominant position in home loan market. The Commission finds that in absence of any evidence to the contrary there are no reasons to disagree with the conclusion drawn by the DG in this regard.

19.7 Therefore, after analyzing the entire material available on record the Commission comes to the conclusion that no violation of either Section 3 or Section 4 of the Act is established against the opposite parties. In view of the above findings the matter relating to the said information are disposed of accordingly and the proceedings are closed forthwith.



20 The Secretary is directed to inform the parties accordingly.

Certified True Copy


24/6/2011
SURAJ PARKASH GAHLAUT
Office Manager
Competition Commission of India
Government of India
New Delhi