

COMPETITION COMMISSION OF INDIA
CASE NO. 70/2010

Dated 08.03.2011

IFP Petro Products Pvt. Ltd.
B-229, Okhla Industrial Area,
Phase-I, New Delhi - 110 020

Informant

MSTC Limited
225-C, Acharya Jagdish Chandra Bose Road,
Kolkata - 700 020

Opposite Party

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

The present information has been filed under Section 19 of the Competition Act, 2002 (hereinafter referred to as "the Act") by IFP Petro Products Pvt. Ltd. (hereinafter referred to as "informant") against MSTC Limited (hereinafter referred to as "Opposite Party") for alleged abuse of its dominant position.

2. The facts as stated in the information, in brief, are as under:-

2.1 The informant, a company duly incorporated under the Companies Act, 1956, is engaged in the business of refining of used oil. The Opposite Party, a Government of India Enterprise registered under the Companies Act, 1956, is engaged in providing agency services for auctioning scraps, used oil, etc of various private and government undertakings in india.

2.2 It has been submitted by the informant that the Opposite Party, being a government agency and market leader in providing agency services for conducting auction of scraps, most of the government and private companies (hereinafter referred to as "Principals") sell their scraps, used oil, etc through it. Further, it has been submitted that none of the prospective buyer can directly deal with the Principals if they are registered with the Opposite Party's e-auction portal for sale of their scraps. Any buyer who wants to participate in the e-auction, is also required to register with the Opposite Party's e-auction portal after paying registration fee of Rs.10,000/-.



2.3 As per averments the purchases of scraps through Opposite Party's e-auction portal are governed by the Buyer's Specific Terms and Conditions Agreement (hereinafter referred to as "agreement"). It has been alleged that the terms and conditions in the agreement are one sided and heavily loaded in favour of the Opposite Party and Principals. Being in the dominant position in the market of auction of scraps, used oil, etc, the Opposite Party is abusing its dominant position in the relevant market by imposing the following one sided, unreasonable and unjustified terms and conditions on the informant which are anti-competitive and contrary to the provisions of the Act:

- (i) Bidders are not allowed to take the samples of the lots and the Opposite Party does not provide any test or quality reports of the products which are being sold by it. After acceptance of the bid, the same can neither be withdrawn nor cancelled. The materials sold through e-auction are on the sole risk of the buyers. Usually, there may be 7 to 15 days gap between the date of the acceptance of the bid and the physical lifting of the material. During this period the materials remain in the Principal's premises under his custody and the buyer has no control or dominion over the materials. There have been instances where due to pilferage, the quantity of materials has been found to be less than the declared quantity for which the bid has been made. In certain instances even the quality of the material has been found to be extremely low.
- (ii) In the event of material being sold in lots and not in numbers or units, often it is found that the sold materials are deficient in quality, quantity, size, and weight as stated in the bid documents. As per the terms of agreement, the Opposite Party or the Principal is not bound to refund the amount to the extent of shortfalls. On the contrary, after issuance of delivery order, the Principal is allowed to withdraw the sold material or any part thereof and is not liable to pay for any loss or damage to the buyers including the rate of interest on the money deposited by the buyer to purchase the scraps, used oil, etc which is unfair.
- (iii) In the event of any partial withdrawal of scraps, used oil, etc, by the Principal, it is not economically feasible for the buyer to lift the remaining quantity of the goods because of high transportation cost of small quantity of material compared to the agreed whole quantity.



3. The Commission considered the matter in its meeting held on 04.01.2011 and decided to call the informant to explain the case. The Managing Director of the informant and its counsel appeared before the Commission on 01.02.2011 and made oral submissions. The Commission has carefully perused the information, documents annexed with the information, affidavit filed by the informant on 28.02.2011 and the material available on record and has also taken into account the oral submissions made on behalf of the informant.
4. It is noted that the activities being performed by both the Opposite Party and the informant are covered in the definition of 'enterprise' under section 2 (h) of the Act.
5. On close examination of the matter it is revealed that although the informant has alleged that the Opposite Party is abusing its dominant position in the relevant market by imposing unilateral unfair terms and conditions on buyers of scraps, used oil etc, in violation of Section 4 of the Act but it has not been able to bring any cogent evidence on record to show that the Opposite Party is in dominant position in the relevant market and that the terms and conditions of the agreement constitute abuse in terms of the provisions of Section 4 the Act.
6. Before any enterprise can be said to be violating the provisions of section 4 of the Act, it is necessary that its dominance in the relevant market is established. In the present matter, it is seen from the perusal of Annual Reports of MSTC, available in public domain, that the business volume of the Opposite Party in the agency business segment has been declining over the years. As per Annual Reports the market space for the Opposite Party is also shrinking because of mushrooming of small service providers in the segment. Further, many of the Principals and other sellers are directly auctioning their scraps, used oil, etc through their own e-portal which indicates that there are numbers of players in the relevant market from which the Opposite Party is facing competition. Considering all these factors, coupled with the fact that informant has not adduced any data or material to show the dominance of the Opposite Party, it is amply clear that the assertion that the Opposite Party is in a dominant position in the relevant market has not been established.
7. Thus, when tested on the touchstone of requirement of law for establishing abuse of dominance by an enterprise, the material placed by the informant before the Commission and the other available material undoubtedly fail to satisfy the essential ingredients of the provisions of section 4 of the Act.
8. The Commission, therefore, is of the opinion that no *Prima facie* case of violation of section 4 of the Act by the Opposite Party is made out for making a reference to the Director General for conducting investigation into the matter under Section 26 (1) of the Act and, therefore, the proceedings are liable to be closed forthwith.



9. In view of the above discussion, the proceedings relating to the information are hereby closed under Section 26 (2) of the Act.

10. Secretary is directed to inform the informant accordingly.

Certified True Copy



S. Parkash
11/5/2011
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