

**Competition Commission of India**

**Case No. 39/2011**

Date : 21.11.2011

**Mr.Mohammed Tariq Sultan**

***Informant***

1. Hongkong& Shanghai Banking Corporation Ltd.
2. Standard Chartered Bank Ltd.
3. Citibank N.A
4. H.D.F.C Bank Ltd.
5. ICICI Bank Ltd.
6. Royal Bank of Scotland N.V
7. Kotak Mahindra Bank Ltd.
8. Barclays Bank Plc.
9. Deutsche Bank A.G.
- 10.HDFC Ltd.
- 11.India Bulls Financial Services Ltd.
- 12.Fullerton India Credit Company Ltd.
- 13.Into Pacific Housing Finance Ltd.
- 14.The Indian Banks Association

***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) on 25.07.2011 by Mr. Mohammed Tariq Sultan (hereinafter referred to as the "Informant") against Hongkong & Shanghai Banking Corporation Ltd. (hereinafter referred to as the HSBC), Standard Chartered Bank Ltd. (hereinafter referred to as the SCBL), Citibank N.A, H.D.F.C Bank Ltd., ICICI Bank Ltd., Royal Bank of Scotland N.V, Kotak Mahindra Bank Ltd., Barclays Bank Plc., Deutsche Bank A.G., HDFC Ltd., India Bulls Financial Services Ltd., Fullerton India Credit Company Ltd., Indo Pacific Housing Finance Ltd., Indian Banks Association(hereinafter referred to "IBA") for their alleged anti-competitive practices in the provision of banking and financial services in India.



2. The facts and allegations as mentioned in the information, in brief, are as under:

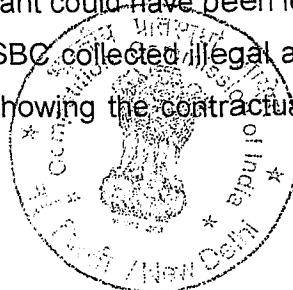
2.1. All the Opposite Parties (other than IBA) are Banking Companies and Non-Banking Finance Companies licensed by the Reserve Bank of India to conduct banking business in India. The Indian Banking Association (IBA) is an association of all the banks in operation in the country.

2.2. As per the information, the informant had availed housing Loan of Rs.53,00,000/- from HSBC vide A/c No. INHSBC 081-418980-220 dated 31.03.2005 on a floating interest rate and the loan amount was liable to be repaid in a period of twenty years. In the month of June 2010, the informant repaid entire loan amount with accrued interest and foreclosure charges. For a period of five years and three months, the informant paid an amount of Rs. 80, 91,842/- to the HSBC towards the principal, rate of interest and foreclosure charges.

2.3. As per the informant, the interest rate paid by him to HSBC was at the rate of 20.5% per annum which was higher than the agreed/contracted interest rate. Against this, the informant issued a legal notice to HSBC on 14.06.2011 calling upon to provide the details of his housing loan account. In spite of receipt of the said legal notice, HSBC did not reply to the informant.

2.4. The informant has alleged that HSBC along with other Opposite Parties are charging rate of interest which is higher than the prevailing market rate of interest. As revealed from the empirical study conducted by the informant himself, all other banks and financial Institutions are also following same practices as that of HSBC.

2.5. It has also been alleged that HSBC along with the Opposite Parties are following flat method of accounting of the interest rather than diminishing balance method. If the aforesaid loan amount was calculated as per the diminishing balance method then the loan burden on the informant could have been less. According to informant, by following the flat method, HSBC collected illegal additional amount from him. Further, HSBC is superficially showing the contractual rate of interest

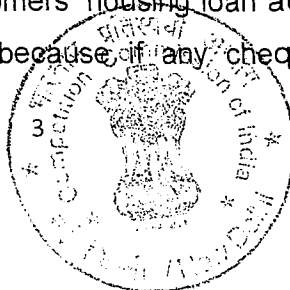


ranging from 8.75% to 13% per annum on paper while it is actually charging a much higher rate @ 17.05% P.A.

2.6. The informant has further alleged that the loan application and the agreement papers of HSBC and other banks are loaded heavily in favour of the Opposite Parties and against the customers. Since the customer interested for housing loan is in a situation of "take it or leave it"; he has virtually no say in respect of the terms and conditions contained therein. Knowing the unfavourable terms and condition in the loan agreement and application form, a customer signs on the dotted lines of the agreement and application form as he has no meaningful choice or alternatives from where he can avail housing loans without honouring these terms and conditions. Imposition of one sided terms and condition amounts to 'unfair trade practice' as per the ratio pronounced by the Hon'ble Supreme Court of India in its landmark judgments reported in A.I.R 1986 S.C at page no. 1571 and A.I.R 1995 S.C at page no. 1811. These acts of HSBC and other Opposite Parties are also hit by the provisions contained in Section 23 and section 27 of the Indian Contract Act, 1872.

2.7. According to informant, all the Opposite Parties have illegally adopted 'front end method of accounting' instead of "diminishing balance method of accounting" by way of a uniform practice in order to enhance their profits. This is to deliberately attack Loanees who opt for foreclosure. It is appropriate to them since the E.M.Is (Equated Monthly Instalments) are first adjusted towards the interest component of the loan amount which is payable for the entire tenure of the loan and the principle component of the loan amount is adjusted against the subsequent E.M.Is and if any Loanees wants to foreclose the loan amount in the middle of the tenure, all the respondents demand the principle component due as on the date of the proposed foreclosure.

2.8. It has also been alleged by the informant that the Opposite Parties have formed a cartel as regards imposition of some bounce charges despite the fact that the levy of bounce charges to the customers' housing loan account by the Opposite Parties is per-se illegal. It is so because if any cheque is dishonoured for



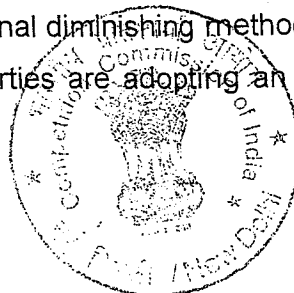
insufficient funds, the charges would be on the customer's account and no charge would be levied on the party who presented the cheque for encashment.

2.9. According to the informant, HSBC and other Opposite Parties are also holding the property of the customers by way of equitable mortgage and are retaining the title deeds of the properties. The customers like the informant are placed in a helpless position and are virtually trapped into a debt trap by paying exorbitant amounts. If the protesting customers refuse to pay the exorbitant amounts as demanded, the Opposite Parties declare the protesting customers' loan amounts as non-performing asset and thereafter seize and auction the property/assets of the customers by invoking the provisions contained in SERFA & ESI Act, 2002 and by posting his name in the defaulter's list in the common data base which is shared by all the banks. The said modus operandi of the Opposite Parties constitutes an abuse of dominant position as defined under Section 4(2) of the Competition Act, 2002.

2.10. It has also been stated that the Opposite Parties are gaining over other nationalized banks by offering customers a lower interest rates on paper though actually it is higher. These banks are also attracting the customers by disbursing the loans faster compared to conventional cautious approach of the banks. However, this approach has also resorted to unfair trade practices as aforesaid for capturing a major market share.

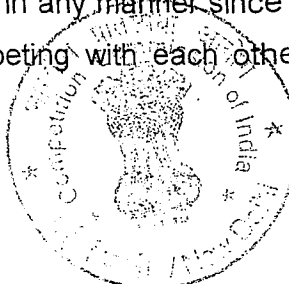
2.11. According to the informant, the floating interest rate should actually fluctuate in line with the rates of interest revised by the Reserve Bank of India from time to time. Although the Opposite Parties are effecting the upward revision of interest rate instantly, they are not giving effect to the downward revision of interest rate as announced by Reserve Bank of India.

2.12. The informant has further alleged that all the Opposite Parties are following the same modus operandi of charging excess interest rates which are more or less at uniform. The existence of formation of cartel by all the Opposite Parties is proved by the fact that unlike the conventional diminishing method as followed by other nationalized banks, the Opposite Parties are adopting an illegal front end



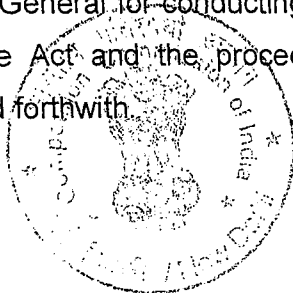
method of computing the interest rates. Further, the Opposite Parties are uniformly denying the benefit of the downward revision of interest rates by the R.B.I to their customers.

3. The Commission considered the case in its meeting held on 10.08.2011 and decided that the informant might be asked to explain the case either personally or through his authorised representative. Accordingly on 24.08.2011, Shri Rakesh Singh, counsel of the Informant appeared alongwith his associates on behalf of the informant and explained the case.
4. On a careful consideration of the entire information, relevant documents annexed therewith and all other submissions of the informant, the Commission notes that the grievance and allegations of the informant is basically centred on the issue that the Opposite Party no. 1 had charged exorbitant rate of interest in actual in comparison to the contracted fluctuating rate of interest. Further, all banks named in the information are doing the same by forming a cartel.
5. The Commission observes that since the informant has alleged cartelisation, it is required to be seen whether the Opposite Parties have entered into an agreement to engage in any anti-competitive act or conduct in violation of Section 3(3) of the Act.
6. After considering the relevant material available on record and also the information available in public domain, the Commission notes that the rate of interest charged by the Opposite Parties is determined by an array of internal or external factors such as Repo Rate/Reverse Repo rate/PLR and is not an outcome of any agreement among the Opposite Parties. Charging different rate of interest from the customers over a period of time is dependent upon a number of market factors and cannot be said to be anti-competitive, unless some evidence is produced to the contrary. It cannot be said that charging different rate of interest as per prevalent market conditions at different point of time by the Opposite Parties has resulted into limit or control of market of home loan since home loan market has witnessed considerable growth over the last few years and several new banks / HFCs have entered the market in the past decade. There is also no evidence of sharing the market in any manner since the opposite parties appear to operate all over India competing with each other and are charging



interest rates not based upon an agreement but independently as per their own individual internal calculations and decisions.

7. The Commission observes that there is no evidence or material adduced by the informant or is available on record on the basis of which it can be said that there exists any agreement among the Opposite Parties with regard to fixation of high interest rates and other allegations made by the informant. Therefore, none of the clauses of section 3(3) of the Act relating to anti-competitive agreements among the market players engaged in providing identical services is applicable to the facts of the instant case. Further, there is no case of any vertical agreement either which may be said to be violative of provisions of Section 3(4) of the Act in the whole matter.
8. With regards to the applicability of Section 4 of the Act in the matter, the Commission notes that as per reports in public domain the market share of the opposite parties does not make them individually a dominant player either in the market of provision of banking and financial services in India or in relevant market of home loan market within the meaning of explanation (a) to Section 4 of the Act. The provisions of Section 4(1) prescribe that no enterprise or group shall abuse its dominant position. 'Group' for the purposes of Section 4 as per explanation (c) to the said Section 4 has been assigned the same meaning as given in Clause (b) of Explanation to Section 5. The Commission notes that the Opposite Parties in this case do not qualify to be called as enterprise falling in same group within the meaning of clause (b) of Explanation to Section 5. Since there is no case of dominance either individually or in group by these banks, any question of abuse within the meaning of provisions of Section 4 also does not arise in this case.
9. In view of the foregoing, the Commission is of the opinion that there is no evidence/material to establish contravention of any of the provisions of Section 3 or 4 of the Act in the matter.
10. Accordingly, the Commission holds 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. The Secretary is directed to inform the informant accordingly.

Sd/-  
Member (T)

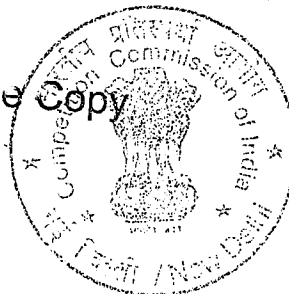
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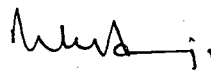
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Member (T)

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**HARISH AHUJA** 22/11/11  
Dy. Director (FA)  
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Govt. of India  
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