

BEFORE THE
COMPETITION COMMISSION OF INDIA

Case No. 15/2009

DATE OF DECISION: 22.03.2011

Information Filed by:

Shri Surinder Bhakoo

Against :

1. The HDFC Bank Ltd.,
(Auto Loan Branch)
28m Industrial Area, Chandigarh

2. The HDFC Bank Ltd.,
Titanic Building , 26-A, Narayan Properties,
Off Saki Vihar Road, Andheri (East),
Mumbai- 400072

FINAL ORDER

[Majority decision by Chairperson, Member (G),(P),(GG),(AG) and (T)]

The instant information has been filed by Shri Surinder Bhakoo (hereinafter referred to as 'Informant') under Section 19 of the Competition Act, 2002 (hereinafter referred to as 'the Act') against the HDFC Bank Ltd, Auto loan Branch, Chandigarh and HDFC Bank Ltd (herein after referred to as 'Opposite Party'), Andheri East, Mumbai, for its alleged anti-competitive acts.



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

2.1 The Informant had taken a loan of Rs. 15,00,000/- from HDFC Bank as Auto loan at interest rate of 10.91 % for a period of 5 years on 6.03.2009 to purchase a BMW Car.

2.2 After paying a few EMIs, the Informant decided to foreclose the account by paying the outstanding amount due to the seemingly high rate of interest being charged by the HDFC Bank. The Informant on 05.11.2009, sent a Cheque to the Opposite Party bearing No. 297309 drawn on Punjab National Bank for Rs. 13, 11,561.22 for the payment of full outstanding payment as per the amount schedule supplied to the Informant at the time of the disbursement of loan.

2.3 The Opposite Party returned the above said Cheque to the Informant without assigning any reasons. The Opposite Party also informed the Informant through email to pay the foreclosure charges of Rs. 91,601.73. As per the Informant the Nationalized Banks do not levy the foreclosure charges on the Auto loan whereas the HDFC Bank is demanding the same. The Informant alleged that the above said conduct of the Opposite Party is against the provisions of the Competition Act.

3. The Commission considered the matter in its meeting dated 02.02.2010 and, having formed an opinion under Section 26(1) of the Act that there exists a *prima facie* case, referred the matter to the Director General (DG) for investigation vide order dated 02.02.2010.

4. The DG, after receiving the direction from the Commission, investigated the matter and submitted his report dated 17.03.2010 to the Commission.



Findings of DG report

5. During the course of investigation, it was submitted by the Opposite Party before the DG that since the case no. 5/2009 facts of which are similar to the instant case is already under investigation by the DG, the instance case may be clubbed with the case No. 5/2009.
6. DG in his report in case no. 5/2009 has concluded that the practice of charging pre payment penalty on early return of loans is found to be anti-competitive in terms of Section 3 (3) of the Act. The DG has requested that the present matter should be considered by the Commission in the light of the findings given by him in case no. 5/2009
7. The Commission, in its ordinary meeting dated 06.04.2010, decided to club the information of the instant case with the information in case No. 5/2009 considering that issues in both the information are substantially similar. It was also decided by the Commission in above meeting that a copy of the DG report be sent to the opposite party for submitting its reply.

Reply of HDFC Bank

8. The Opposite Party filed its reply dated 26.04.2010 and denied all the allegations leveled against it by the Informant. The Opposite Party submitted in its reply that the Informant had never visited its Retail Assets Branch at Chandigarh for the closure of his loan nor ever met with any official of its Bank. As per the averments of the Opposite Party, the Informant, requested, through e-mail dated 05.11.2009, to waive the foreclosure charges completely. The Opposite Party waived certain percentage of the foreclosure charges which was not agreed upon by the Informant. Opposite Party further submitted that after the above said representation the Informant never visited the Bank nor deposited any cheque towards pre-payment of loan account.



9. Opposite Party also submitted that on 10.04.2010 a representative of the Informant visited its branch and shown his willingness to close the account by pre paying the loan subject to the bank partly waiving the foreclosure charges. Thereafter, a Cheque was given to the Opposite Party on 13.04.2010. The above cheque got dishonoured on 16.04.2010. Opposite Party further submitted that the reasons for the above dishonor of Cheque was informed to it by the payee Bank as the signatures of their customer i.e. drawer of the Cheque was not scanned on their system. The Informant was telephonically informed by the Opposite Party and was requested to do the needful. The Opposite Party also submitted that the Informant was properly explained to deposit the prepayment charges as per the loan agreement entered, which was duly accepted by the Informant.

10. It is pertinent to mention here that the Opposite Party in its reply had also submitted that its reply in Case No. 5/2009 may kindly be taken on record as the Commission has already clubbed these two cases.

11. The matter was again considered by the Commission in its meeting dated 18.11.2010 and it was decided to send a copy of the DG's Report to the informant for seeking his comments.

12. The Commission in its order dated 2.12.2002 in case No. 5/2009 decided to de-club the instant case from case No. 5/2009 and decided to pass separate order in the instant case.

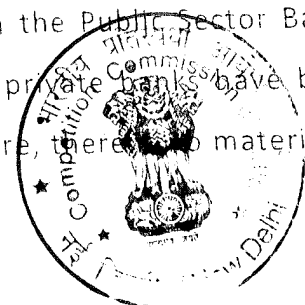
DECISION

13. The Commission has carefully perused the information, documents annexed, the replies of Opposite Party and all the other relevant material and evidence



available on record. It is noted that DG has not made any separate investigation in the present matter and after holding that the issue of levying of pre-payment penalty is similar to that of case no. 5/2009 has requested that the present case be considered by the Commission in the light of the investigation report of DG in case no. 5/2009. It is also observed that DG in his report in case no. 5/2009 has concluded that the practice of charging pre-payment penalty on early return of loans – home loan or other loans is anti-competitive in terms of the provisions of Section 3(3) of the Act. However, it is observed that case no. 5/2009 was related to charging of prepayment penalty by the various banks and financial institutions on foreclosure of home loans on the basis of alleged concerted practice by the banks and financial institutions. The instant information is against only one bank and neither the Informant has made any allegation to the effect that HDFC Bank is imposing pre-payment penalty on auto loan borrowers in pursuance of any agreement with other banks or decision taken by Indian Banks Association ('IBA') nor the DG has examined this issue in the present matter. Therefore in the instant case the Section 3 of the Act has no application and the alleged practice of imposition of pre-payment charges by HDFC Bank can only be examined in context of Section 4.

14. For the applicability of Section 4 of the Act it is necessary to take into consideration whether the enterprise in question is dominant in the relevant market or not. If the enterprise is dominant in the relevant market then only the allegations of abuse can be examined. In the instant case the relevant market can be considered as auto loan market in India. In the instant case, neither the Informant has provided any evidence regarding the dominant position of HDFC Bank in auto loan market nor has the DG examined the position of HDFC Bank in auto loan segment in order to establish its dominant position. As per various reports on the public domain the Public Sector Banks are leading in the above segment of auto loan. The private banks have been overtaken by their public sector counterparts. Therefore, there is no material or

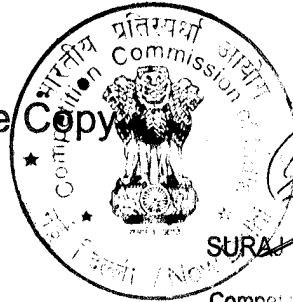


evidence available on record on the basis of which it can be established that Opposite Party is in a dominant position in auto loan segment and resultantly there is no substance in the allegation that HDFC Bank is abusing its dominant position in violation of Section 4 of the Act.

15. In view of the discussion above, this Commission does not find any contravention of Section 3 or Section 4 of the Act. Accordingly, the proceedings are hereby closed and the present case is hereby disposed off accordingly.

16. Secretary is directed to inform the parties accordingly.

Certified True Copy



SP Gahlaut
28/08/11
SURAJ K. GAHLAUT
Joint Manager
Competition Commission of India
New Delhi