



COMPETITION COMMISSION OF INDIA

Case No. 08 of 2017

In re:

M/s Applesoft

No. 39, 1st Main, 1st Cross, Shivanagar,

West of Chord Road, Bengaluru - 560010

Informant

And

1. The Chief Secretary to the Government of Karnataka

Vidhana Soudha,

Bengaluru - 560001

Opposite Party No. 1

2. The Principal Secretary to the Government of Karnataka

E-governance (DPAR-AR),

M S Building, Bengaluru - 560001

Opposite Party No. 2

3. The Secretary, Kannada Ganaka Parishad

64/2, 1st Phase, 3rd Cross,

Chamarajpet, Bengaluru - 560018

Opposite Party No. 3

CORAM

Mr. Devender Kumar Sikri

Chairperson

Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member



Mr. U. C. Nahta
Member

Justice G. P. Mittal
Member

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

1. The information in the present matter was filed by M/s Applesoft (hereinafter, the '**Informant**') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the '**Act**') against the Chief Secretary to the Government of Karnataka (hereinafter, '**OP 1**'), the Principal Secretary to the Government of Karnataka, E-governance (DPAR-AR) (hereinafter, '**OP 2**') and the Secretary, Kannada Ganaka Parishad (hereinafter, '**OP 3**') [hereinafter, OP 1, OP 2 and OP 3 collectively referred to as '**OPs**'] alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. OP 1 is the Chief Secretary to the Government of Karnataka. OP 2 is the Principal Secretary to the Government of Karnataka and has been added in the array of parties but no separate allegations have been made against it in the information. OP 3 is stated to be a private registered society under the Registrar of Societies in the State of Karnataka. The Informant is a software developer in Indian languages having the principal aim to bridge the digital divide in society that arises due to lack of local language support resulting out of computerisation.
3. In the information, the Informant has highlighted several directions/ circulars/ orders/ notifications issued by OP 1/ OP 2 mandating the use of 'Nudi' software in government departments computers (developed by OP 3) to enable communication in Kannada language within the administration of the State of Karnataka. It is alleged that OP 1/ OP 2 by mandating the use of one Kannada language software *i.e.* 'Nudi' software to the exclusion of other Kannada



language softwares are distorting competition and adversely affecting other software developers like the Informant.

4. One such direction pointed out in the information is the direction issued by the Principal Secretary to the Government of Karnataka, Department of Personnel and Administrative Reforms (DPAR) *vide* circular dated 09.12.2010, whereby all the Principal Secretaries of various departments of the Government of Karnataka and the Additional Chief Secretary of the Urban Development Department (encompassing all Corporations, Municipalities and other institutions and local-bodies under local self-government and other agencies in all urban and semi-urban areas of the State of Karnataka) were directed to provide all information relating to preparation of the Governor's Speech at the time of opening of the session of the State Legislature, only by using 'Nudi' software.
5. Another instance pointed out in the information is a circular issued by Bengaluru Electric Supply Company (BESCOM) Limited dated 02.05.2011 to all its concerned wings and units stating that henceforth, all offices and units under it should send all information/ communications (letters/ responses/ other data) in Kannada language by using the 'Nudi 4' software only. Further, the circular stated that as some sub-offices under BESCOM were using some other Kannada language softwares, serious constraints of compatibility were being experienced. Also, it was mentioned that as all departments under Government of Karnataka had fully adopted the 'Nudi 4' Kannada language software, BESCOM was also to use same only.
6. Apart from the above, the Informant has also highlighted other directions of the State Government which promote/ obligate the use of 'Nudi' software. These include obligating the recruitment of Data Entry Operators conversant with this software, prescribing only 'Nudi' software for learning of computer skills in Kannada language in all training and educational institutions under the



Government of Karnataka and also in training under programmes like Sarv Shiksha Abhiyan and so on. Further, it is averred that the Civil Services Rules, which govern all the direct recruitment policy guidelines of the Government of Karnataka, have also been amended so that every fresh entrant is mandated to pass the computer literacy test in Kannada language by using the 'Nudi' software.

7. The Informant has alleged that the cumulative impact of these actions is that no software other than 'Nudi' software would be used within the administration of the Government of Karnataka. This has also placed a compulsion on private users of IT technology tools or resources to use the said software only, as otherwise they would not be able to use any other Kannada language software for communications with any public institution in the State as well as with others for exchange of data or information or for any other correspondence.
8. The Informant has averred that enabling use of software in the regional or local language is not and cannot be a sovereign activity and thus, the action by OP 1/ OP 2 violates the provisions of the Act. Further, OP 1/ OP 2 in conjunction with OP 3 have established and continue to sustain a monopoly in favour of the impugned 'Nudi' Kannada language software (and all its versions as developed by OP 3). They have, thus, created an anti-competitive environment which has imperilled the growth and development of Kannada language softwares and, in turn, impeded the quality and improvements in the Kannada language softwares. Also, it has adversely affected all other Kannada language software developers in the State in terms of loss of financial opportunities to them. Besides, the prevailing scenario has directly conferred an undue status in favour of the 'Nudi' software and OP 3.
9. Based on above mentioned facts, the Informant has prayed that the Commission directs immediate rescinding of all the impugned circulars, orders, notifications *etc.* issued by the Government of Karnataka insisting the use of only 'Nudi'



software by institutions, agencies, offices, departments, universities *etc.* in the State of Karnataka; cancel any arrangement or understanding between the Government of Karnataka and OP 3 on 'Nudi' software and stop the same forthwith; and pay due and fairly assessed compensation (for the unjust and unfair losses suffered flowing out of the impugned illegal directions) to the Informant by the Government of Karnataka.

10. The Commission has perused the material placed on record. It is noted that the Informant in the present matter had earlier also filed an information bearing Case No. 71 of 2015 (*In re: M/s Applesoft and The Chief Secretary to the Government of Karnataka and Ors.*). The facts of the information presently filed by the Informant appear to be continuation of the facts of the earlier information against the same OPs. In the said case, the Commission held that the facts which were alleged to have fallen foul of Sections 3 and 4 of the Act had taken place much before the said provisions were notified *i.e.* on 20.05.2009 and cognizance of the same cannot be taken unless there are actions on the part of these OPs that occurred post that date. Therefore, the earlier case was closed under the provisions of Section 26 (2) of the Act.
11. However, in the present case, the Informant has highlighted various instances where the Government of Karnataka has obligated/ prescribed the use of 'Nudi' software for communications in Kannada language post 2009. The issue for determination now is whether the continued conduct of the Government of Karnataka of prescribing use of 'Nudi' software only even post 2009, as pointed out by the Informant through various instances, amount to abuse of dominance.
12. Before examining whether the conduct of OP 1/ OP 2 violates the provisions of Section 4 of the Act, the issue that needs to be dealt with is whether the Government of Karnataka would fall within the scope of definition of 'enterprise' in terms of Section 2(h) of the Act. To determine the issue, it would



be pertinent to highlight the provisions of Section 2(h) of the Act, as stated below:

“ ‘enterprise’ means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.”

13. It is clear from the above that for the purposes of ascertaining whether an entity is an enterprise or not within the meaning of Section 2(h) of the Act, it is essential to examine the nature of the activity undertaken by the entity. Further, the assessment of whether an entity is an ‘enterprise’ or not is to be done based on the facts of every case and the conclusion may vary from case to case depending upon the activity under consideration. In the present case, the activity under consideration is prescribing the use of ‘Nudi’ Kannada language software in all government departments’ computers to carry out the administrative functions of the Government of Karnataka. In this regard, it is observed that OP 1/ OP 2 appear to be merely carrying out the policy functions of the Government. They are not suppliers of service in competition with other players in the market for development of Kannada language software but have merely engaged OP 3 for development of software for the government’s use and improvement of the government’s administrative processes, apparently to



further the objective of digitalisation/ computerisation in the administrative processes and procedures.

14. The various circulars/ orders/ notifications prescribing/ obligating the use of 'Nudi' Kannada language software pointed out by the Informant seem to be underlined with the objective to smoothen the functioning of various administrative bodies, agencies and other related institutions of the Government in the State of Karnataka and to ensure that there are no software compatibility issues in communications with any other public institutions in the State for exchange of data or information in Kannada language. The private users who allegedly are compelled to use 'Nudi' software appear to be doing to ensure seamless communications with the State Government. Thus, having pondered upon the nature of activity alleged to be anti-competitive and the facts of the present case, the Commission is of the view that OP1/ OP2 are not engaged in any economic activity covered within the definition of an enterprise and hence, do not fall within the ambit of Section 2(h) of the Act. Since OP 1/ OP 2 are not an enterprise, no case of contravention of the provisions of Section 4 of the Act is made out against them.

15. With regard to allegations of contravention of Section 3 of the Act, it is noted that the same appear to arise from the continuing actions of OP 1/ OP 2 promoting 'Nudi' Kannada language software developed by OP 3. It is alleged that OP 1/ OP 2 in collusion with OP 3 are procuring 'Nudi' software developed by OP 3 only and OP 1/ OP 2 are advising all its departments to use 'Nudi' software only to the exclusion of all other softwares. The Commission, however, does not agree with the assertion of the Informant. A decision taken by a consumer to purchase goods/ services from a particular supplier/ seller cannot be termed as collusion. Therefore, the Commission is of the view that provisions of Section 3 would not be applicable to the facts of the present case as well.



16. In view of the above, the Commission concludes that no *prima facie* case of contravention of any of the provisions of either Section 3 or 4 of the Act has been established against any of the OPs in the present case. Accordingly, the matter is closed under the provisions of Section 26(2) of the Act.
17. The Secretary is directed to inform the parties accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

Sd/-
(Justice G. P. Mittal)
Member

New Delhi
Date: 05/05/2017