



सत्यमेव जयते



Fair Competition for Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 52 of 2013

In Re:

M/s Financial Software and System Private Limited Informant

And

- 1. M/s ACI Worldwide Solutions Private Limited,
India Opposite Party No. 1**
- 2. M/s ACI Worldwide Incorporated,
USA Opposite Party No. 2**
- 3. M/s ACI Worldwide (Asia) Pte. Limited,
Singapore Opposite Party No. 3**

CORAM

**Mr. Ashok Chawla
Chairperson**

**Dr. Geeta Gouri
Member**

**Mr. Anurag Goel
Member**

**Mr. M. L. Tayal
Member**

**Mr. S. L. Bunker
Member**



Order under Section 26(1) of the Competition Act, 2002

1. The present information has been filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by M/s Financial Software and System Private Limited ('the informant'/ FSS) against M/s ACI Worldwide Solutions Private Limited, India ('the opposite party No. 1'/ ACI India), M/s ACI Worldwide Incorporated, USA ('the opposite party No. 2'/ ACI Worldwide) and M/s ACI Worldwide (Asia) Pte. Limited, Singapore ('the opposite party No. 3'/ ACI Asia) alleging *inter alia* contravention of the provisions of sections 3 and 4 of the Act. The informant has described the opposite parties as affiliate/ group entities and collectively referred to them as ACI hereinafter for felicity of ready reference.

2. The informant is a private limited company incorporated in India under the Companies Act, 1956. It is stated to act as a system integrator to banks and other financial institutions. It caters to the specific needs of the banks through its two business divisions, FSSTechnologies and FSSNeT.

3. ACI is stated to be engaged in the business of developing software (BASE24) for electronic payment solutions which enables card-based payment transactions for banks. BASE24 is a 'Transaction Processing Switch' software (EFT Switch), which enables an ATM or a Point of Sale (POS) terminal to communicate with the relevant bank's core banking network. As such, all banks and financial institutions, which desire to provide ATM, POS, mobile banking and internet banking services, require EFT Switch software. It is averred that at present about 77% of ATMs in India and about 80% of POS operate on BASE24.

4. The informant has stated that the relationship between ACI and the ACI Banks (the banks using BASE24 software) is governed by a licence



agreement which provides right to use including the right to customize the modules of BASE24 software.

5. It is the case of the informant that BASE24 software (and other comparable software) requires modifications to enable banks to offer additional value added services through ATMs and POS devices; and to operate the 'distributed branch banking model' where customers are identified at a branch level and authorizations are sent to that branch host. FSS provides modification and customization services for software like BASE24 to ACI Banks. FSS and ACI are stated to have had a long standing relationship, starting from FSS acting as a re-seller for ACI for BASE24 in India in 1991, then FSS becoming a distributor and service provider for BASE24 in India in 1998 through various distribution agreements. During the currency of the distribution agreement, certain disputes arose between FSS and ACI sometime in 2007-2008. Subsequently, FSS and ACI entered into a Settlement and Release Agreement whereby,

- FSS and ACI agreed to settle all disputes,
- The distribution agreements between FSS and ACI stood terminated,
- On and from April 01, 2010, ACI and FSS both have the right to provide professional services, including implementation and customer modification services to all ACI Banks; and
- Till March 31, 2011, FSS shall serve as ACI's "preferred services partner" for ACI products (BASE24)

6. Subsequently, avers the informant, pursuant to the terms of the Settlement and Release Agreement, FSS and ACI made a joint presentation to all ACI Banks, whereby:

- FSS transitioned from a distributor to a system integrator;



- ACI would continue to provide support on the core product (BASE24 software), through its helpdesk services and on-site documentation;
- FSS shall continue to provide support on such customization;
- The BASE24 software and the services around the software are two different products/ services;
- If a module license is purchased from ACI which requires customization, then the customer shall have the 'option of either asking ACI to do it, or FSS to do it'.

7. Narrating the sequence of events in chronological order, the informant has alleged that during 2010-11 ACI took the position that it would not allow FSS to continue to provide system integration/ other services in respect of the BASE24 software. Subsequently, at a meeting of all ACI Banks on June 08, 2011 ACI Banks stressed that it was their prerogative to choose 'the production support (on-site support) and service partner'. A core committee of 7 banks was formed to take up these issues with the relevant parties. On June 21, 2011, the Core Group and ACI met, when ACI informed that "they will allow banks to take 'Professional Services (including implementation and customization)' only through ACI or their authorized third party provider excluding FSS....". ACI Banks demonstrated to ACI that they did not believe in capability of ACI in taking over support services from FSS. The ACI Banks further stated that as 95% of ATMs in India were connected to the BASE24 switch, ACI Banks could not afford any risk to their operations. On July 14, 2011, a meeting between ACI Banks, ACI and FSS was held. During the course of the meeting, ACI agreed to give its consent to ACI Banks to use FSS or third party for customers' specific modification to BASE24 software for a period of 6 months. The ACI Banks, however insisted that ACI gives its unconditional consent for allowing FSS to carry out customers specific



modification to the BASE24 software for an indefinite period. Most importantly, ACI 'agreed that choosing hardware upgrade partner will be [the] individual bank's decisions'. On or around the first week of August, 2011, ACI wrote to each ACI Bank stating that it would provide consent to the ACI Banks to use FSS for doing customizations on BASE24 software for a period of 24 months ending July 13, 2013.

8. It is further averred that in the month of February, 2013 ACI made a presentation to each ACI Bank and communicated that 'post 13th July 2013, ACI will not provide consent to any third party to access, modify or customize your existing BASE24 application'. ACI further stated that it had launched the ACI enhanced support programme (ACI ESP) under which ACI would provide services to ACI Banks similar to those being provided hitherto by FSS. Further, sometime in April, 2013, ICICI Bank led discussions with ACI calling for a joint meeting of all ACI Banks with ACI. However, ACI did not consent to meeting all ACI Banks and communicated their position through ICICI Bank. In May, 2013, ACI sent letters to each ACI Bank individually and stated that 'ACI will not provide consent to Bank to use FSS or any other third party to provide BASE24 services to the Bank beyond July 2013'. Since then several rounds of discussions have taken place between the ACI Banks and ACI where it has been pointed out that the ACI Banks should have the right to appoint their choice of system integrator without interference by ACI. The informant alleges that ACI has been completely un-relentless to these requests solely with a view to exclude FSS from the downstream market in favour of its own ACI ESP offering.

9. Based on the above averments and allegations, the informant has alleged that ACI has contravened provisions of section 4(1) of the Act by abusing its dominant position by:

- not allowing ACI Banks to choose a service provider of their choice;



- imposing unfair condition in the purchase or sale of goods or services through exclusive supply arrangements with ACI Banks;
- by directing the ACI Banks, not to avail the integration services of FSS, ACI is restricting the provision of services of customization and modification in respect of software for electronic payment systems, i.e. the downstream market;
- using its dominance in the upstream market of software for electronic payment systems to gain entry in the downstream market of provision for services of customization and modification in respect of software for electronic payment systems; and
- limiting and restricting the technical or scientific development in the market.

10. The informant has also alleged contravention of the provisions of section 3(4) of the Act by alleging that ACI by restricting the ACI Banks from dealing with any third party in respect of providing services in respect of customization and modification of ACI products has indulged in refusal to deal. It is alleged that the arrangement imposed by ACI causes or is likely to cause an appreciable adverse effect on competition in the downstream market in India as it would lead to foreclosure of competition in the downstream market and also lead to creation to entry barriers and driving existing competition out of the downstream market.

11. Lastly, it has been alleged that ACI seeks to impose tie-in arrangements with ACI Banks by tying the upstream market of software with the downstream market of services. It is averred that this arrangement by ACI would result in definite foreclosure of the downstream market, ousting existing players in the downstream market and creation of entry barriers in the



downstream market, hence, causes or is likely to cause appreciable adverse effect on competition in the market.

12. The Commission has perused the information and other material available on record.

13. The informant, essentially, appears to be aggrieved by the decision of ACI that post-July 13, 2013 ACI will not provide consent to any third party to access, modify or customize the existing BASE24 application and ACI through its new programme ACI ESP would provide services to ACI Banks in respect of customization and modification of BASE24 application which was hitherto provided by FSS i.e. the informant herein.

14. It may be observed that ACI is a developer of BASE24 software which is used by banks. This software acts as a transaction processing switch which enables an ATM or POS terminal to communicate with the relevant bank's core banking network. It may be further observed that such transaction processing switches (*i.e.* software) require a suite of services in respect of their implementation and customization to enable the software to communicate with host bank or branch, as the case may be, or to provide value added services through ATM or POS devices. Such services may be provided by the software developer or specialised system integrators/ service provider or both. These services appear to be distinct and separate from the software as there appears to be a market of such services due to the presence of buyers, suppliers and the underlying product/ service.

15. In view of the above, the transaction processing switch software constitutes the upstream product market whereas the suite of services surrounding the software constitutes the downstream product market.

16. Resultantly, it appears *prima facie* that the relevant upstream market is that of 'software for electronic payment systems' and the consequent relevant downstream market is that of 'provision of services in respect of



customization and modification of software of electronic payment systems’.

The relevant geographic market for both the upstream and the downstream markets is the territory of India.

17. In the afore-delineated relevant market, the dominance of ACI may now be examined. As per the averments made in the information approximately 77% of total ATMs and approximately 80% of total POS devices operate on BASE24 software in India. It may, however, be added that there are other enterprises also (e.g. M/s Fidelity Information Systems, M/s Opus Software Solutions Private Limited, etc.) which are in the business of selling transaction processing switch software which is under consideration in the present case. It may also be observed that migration to other processing switches of other software developers may present commercial risk and may further have the potential to impact the continuity of services being provided by the banks.

18. In view of the market structure, as noticed above, it appears that ACI commands a high degree of market share in comparison to its competitors. Furthermore, looking at the dependence of consumer on ACI due to risks associated in switching/ migrating to other software developers and considering the first mover advantage of ACI, it *prima facie* appears that ACI is a dominant player in the relevant market of software for electronic payment systems in India.

19. On the issue of abuse, the informant appears to be aggrieved by the decision of ACI that post-July 13, 2013 ACI will not provide consent to any third party to access, modify or customize the existing BASE24 application with ACI Banks and ACI through its new programme ACI ESP would provide services to ACI Banks in respect of customization and modification of BASE24 application which was hitherto provided by FSS *i.e.* the informant herein.



20. The impugned conduct of ACI in not allowing ACI Banks to choose a service provider of their choice; directing the ACI Banks not to avail the integration services of FSS, using its dominance in the upstream market of software for electronic payment systems to gain entry in the downstream market of provision for services of customization and modification in respect of software for electronic payment systems *prima facie* seem to contravene the provisions of sections 4(2) (a) (i), 4(2) (b) (i) & (ii), 4 (2) (c), 4(2) (d) and 4 (2) (e) of the Act.

21. Furthermore, the above conduct also *prima facie* amounts to ‘tie-in arrangement’ and ‘refusal to deal’ within the meaning of the expression as defined in explanations (a) and (d) to section 3(4) of the Act respectively. Such agreements *prima facie* are also likely to have appreciable adverse effect on competition looking at the market share and market size of the enterprise in question.

22. In view of the above, the Commission is of opinion that *prima facie*, a case of contravention of the provisions of sections 3 and 4 of the Act, as noted above, is made out against the opposite parties.

23. In the result, the Commission is of the opinion that there exists a *prima facie* case to direct the Director General (DG) to cause an investigation to be made into the matter in terms of the provisions contained in section 26(1) of the Act.

24. The DG is directed to complete the investigation within a period of 60 days from receipt of this order. The DG is also directed to investigate the role (if any) of the persons who were in charge of, and were responsible to the companies for the conduct of the businesses of such companies, after giving due opportunity of hearing to such persons.

25. It is, however, made clear that nothing stated herein shall tantamount to an expression of final opinion on the merits of the case and the DG shall



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conduct the investigation without being influenced by any observations made herein.

26. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of the DG forthwith.

**Sd/-
(Ashok Chawla)
Chairperson**

**Sd/-
(Geeta Gouri)
Member**

**Sd/-
(Anurag Goel)
Member**

**Sd/-
(M. L. Tayal)
Member**

**Sd/-
(S. L. Bunker)
Member**

New Delhi

Date: 04/09/2013