

COMPETITION COMMISSION OF INDIA
[Case No.17/2010]

Dated: 23rd May, 2011

Shri Pravahan Mohanty

Informant

Vs.

1. HDFC Bank Limited, Chennai

2. Card Services Division of the HDFC Bank, CEEBROS.

Opposite Parties

Order under section 26(6) of the Competition Act, 2002

The information in the present case has been filed by Shri Pravahan Mohanty (hereinafter referred to as 'informant') against the HDFC Bank Limited (herein after referred to as "Opposite Party No. 1") and the Card Services Division of the HDFC Bank Limited, CEEBROS (herein after referred to as "Opposite Party No. 2") under section 19 of the Competition Act, 2002 (hereinafter referred to as 'the Act') for its alleged abuse of dominant position in the market of provision of credit card services in India.

2. Brief Facts and Allegations in the Matter

The facts and allegations as stated in the information, in brief, are as under:

2.1 The informant has submitted that the Opposite Party No. 1 is a banking company registered under the Companies Act, 1956 and is engaged in the provision of various banking services including provision of credit card services in India. The Opposite Party

No. 2 is a division of Opposite Party No. 1 created for administering its credit card business in India.

- 2.2** The Opposite Party No.1, being the second largest private bank and having over 13 million card holders with 70,000 point of sale terminals, is in a dominant position in the banking business in India in terms of Explanation to Section 4(2) the Act,. Further, the Opposite Party No.1 has 1725 branches and 3898 Automated Teller Machines (ATMs) all over India.
- 2.3** The informant is one of the credit card holders of the Opposite Party No.1 since 24.11.2006. The informant has alleged that before the issue of credit card, the Opposite Party No.1 has not informed him regarding the complex terms and conditions to be imposed on him on receipt and use of the credit card.
- 2.4** The aforesaid credit card was received by the informant from the Opposite Party No.2 along with an unsigned "Card User's Guide" and a 27 pages "Card-member Agreement" which is printed in a very small font size. The said "Card-member Agreement" was not given to the informant before or at the time the application for the issue of card was made or even after the card was issued. The clauses contained in the agreement are unfair, onerous, unconscionable and legally unsustainable.
- 2.5** It is stated in the information that issue of credit card by the Opposite Party No.1 to the credit card holders amounts to the grant of loans (i.e. credit facilities) in disguised form. For grant of loans it is essential that an agreement has to be entered into between the loan sanctioning agency and the person who is taking loan. But in this case at the time of issue of credit card, which is equivalent to grant of loans, the Opposite Party No.1 has not executed any agreement, formal or otherwise, with the informant in regards to terms and conditions, rate of interest, terms of re-payment of credit card bill, etc.
- 2.6** It is also alleged that Opposite Party No. 1 is indulging in advancing personal loans through credit card wherein the card holder does not require being an account holder of the bank. This act of the Opposite Party No. 1 results in massive scale of addition of money supply in the economy which escapes from the regulation of the Reserve Bank of India (RBI) and is thus, contributing to price rise in the country.
- 2.7** The informant has alleged that the following clauses of the said "Card-member Agreement" are unilateral and biased in favor of the Opposite Party No. 1 and therefore, are anti-competitive:

- a) Charging of non refundable entrance fee, annual membership fee which are unilaterally determined and charged on customers.
- b) Charging of unstipulated financial charges on daily basis which has not been explained in the agreement.
- c) Charging of interest even after termination of contract.
- d) Charging of rate of interest over 30% per annum unilaterally in case of a single default contrary to the provisions of 'Usurious Loan Act, 1913' and RBI circulars.
- e) There is no definition of term 'current daily percentage rate of interest' which is charged on total outstanding amount.
- f) The clause on lien and right of set-off of money in the bank account against outstanding dues of the card holders is unilateral and is exercised without giving notice to customers.
- g) The appointment of third party representatives to collect the amount payable causes harassment to the card holders. This is also against the Contract Act and Law of Torts.
- h) Right to unilaterally change any of the terms and conditions of the "Card-member Agreement" is against the doctrine of mutuality in the Law of Contract.

2.8 It has been alleged by the informant that the freedom of choice of the informant is curtailed by the Opposite Parties by sending the card holder agreement along with the card for immediate use and providing in the agreement itself that use of the card will amount to acceptance of the terms of the agreements which is hidden somewhere in the user manual. The Opposite Party No. 1 has not only limited the choice of cardholders but also compelled them to accept the onerous terms and conditions which are contrary to the provisions of the Act.

2.9 It is alleged by the informant that, being in a dominant position in the banking business in India, the Opposite Party is abusing its dominant position by imposing unfair and one-sided terms and conditions while issuing credit card i.e. sale of service which is in violation of Section 4(2)(a) of the Act.

3. The Commission considered the matter in its meetings dated 11.05.2010 and decided to call the informant to explain the case on 03.06.2010. The informant and his counsel appeared on 03.06.2010 and made oral submissions. After examining the material available on record and hearing the counsel for the informant, the Commission formed an opinion under Section 26(1) of the Act that there exists a prima facie case in the

matter and accordingly directed the Director General (herein after referred to as "DG") to conduct investigation vide its order dated 10.06.2010.

4. In pursuance of the direction of the Commission the DG got the matter investigated and submitted his report to the Commission on 26.11.2010.

5. **Findings of the DG Report**

The gist of the findings of DG report is as below:

- 5.1 Following issues were framed by the DG for the purpose of investigation:
 - i) Whether the Opposite Party No.1 enjoys a dominant position in the market of provision of credit card services in India?
 - ii) If so, whether the Opposite Party No.1 is abusing its dominant position in the said market?
- 5.2 For investigation in the matter, the DG has examined, in detail, the framework within which the operation of business of the credit card is taking place in India. The replies of the Opposite Party No.1, Axis Bank Ltd., Barclays Bank, SBI Cards and Payment Services Ltd. and the Reserve Bank of India in this regard were also taken into consideration during the course of investigation.
- 5.3 To determine the issue whether the Opposite Party No.1 enjoys a dominant position the DG has defined the relevant market as 'the market of credit card services in India'.
- 5.4 In order to examine the dominance of the Opposite Party No.1 in the relevant market the DG has given due regard to the parameters such as market share, number of card holders of various competitors, size of capital & revenue, size of surplus or deposits, etc. of the Opposite Party No.1.
- 5.5 As per DG report the market share of the Opposite Party No.1 in 2009-10 was 17% in terms of revenue. DG has noted that by the end of June 2010, in terms of number of credit card holders of major banks in India, the ICICI Bank Ltd was on the top having 64,08,707 card holders, the Opposite Party No.1 was the second largest number of credit card holders having 45,16,377 and the State Bank of India (SBI) was the third largest

number of credit card holders having 25,36,437 card holders. Three other banks also have more than 11, 01,866 card holders.

- 5.6 Having examined and compared the balance sheets of the Opposite Party No.1 with its main competitors (ICICI Bank and SBI) in the market of credit card service, the DG has noted that in terms of capital, reserves & surpluses and deposits, the Opposite Party No.1 is lagging far behind its competitors.
- 5.7 DG has also noted that there are no competition barriers in the relevant market as, according to the RBI guidelines, the banks with net worth of Rs.100 core and above is eligible to undertake credit card business. The approval of RBI is not necessary for banks desirous of indulging in credit card business. The banks who intend to enter into the credit card business market can do so with the approval of their respective boards. The existence of thirty players both from the private and public sector in the business of credit card is sufficient indication of the fact that there are no barriers to entry in the market.
- 5.8 The Opposite Party does not appear to possess any market power so as to act independent of competitive forces in the market. With regards to fee and other charges by the Opposite Party No. 1 and terms and conditions contain in the "Card-member Agreement", the DG has observed that these are more or less similar in all the banks that are in the credit card business.
- 5.9 Considering the nature and operation of credit card market in India, it is observed by the DG that card holders are free to choose the card issuers/banks and are equally free to dump the card in case they are not satisfied with the service of the said card issuer bank. It is noted that the informant has availed the services of four card issuers implying that there are ample choices available for the consumers in the relevant market.
- 5.10 The DG has concluded that the present case is primarily pertaining to unfair trade practices by the Opposite Party No.1. Even though allegations of abuse of dominant position have been made by the informant, no evidence has either been furnished by the informant or could be found during the course of investigation. There is enough competition in the market of credit card services in India.
- 5.11 Thus, DG has come to the conclusion that since Opposite Party No.1 does not enjoy dominant position in the relevant market no violation of section 4 of the Act is made out against it.

6. The Commission considered the DG report in its meeting held on 07.12.2010 and decided to send a copy of the report to the informant as well as to the Opposite Parties for filing their objections /replies, if any, to the DG report. The parties were also allowed to appear before the Commission for oral hearing, if they so desire. The informant and opposite party filed their objections/comments and also made oral submissions through their counsel on 15.02.2011.

7. Objections of the informant to the DG Report

- 7.1 The informant has submitted that the DG has not given any findings on the allegations leveled by him against the Opposite Parties and has completely ignored all the pertinent allegations pointing to dominant position of the Opposite Parties. It has been also been submitted on behalf of the informant the conclusion drawn by the DG that Opposite Parties are not dominant in the relevant market is erroneous and in terms of Explanation (a) to section 4 (2) if an enterprise enjoys a position of strength which enables it to affect consumers in its favour then it can be said to be in a dominant position. It has been submitted that in this case not only the Opposite Parties are in a dominant position but by imposing unfair conditions and price in sale of service they have abused their dominance in violation of section 4(2)(a)(i) and 4(2)(a)(ii) of the Act.
- 7.2 The informant has also submitted that, the Opposite Parties are using its dominant position to deny the card members their rights to access the open market of credit cards in violation of section 4(2)(c) of the Act and at the same time they are using their dominant positions in the relevant market of banking services to enter into relevant market of the credit card services in violation of section 4(2)(e) of the Act.
- 7.3 The informant has requested for further investigation/inquiry in this matter in terms of Section 26(7) of the Act.

8. Comments of HDFC Bank

The HDFC Bank filed its comments to the DG report on 05.01.2011 and stated that it is in agreement with the findings and conclusions of the DG Report. However, it has objected to the observations made by the DG that there could be a case of unfair trade practice by the HDFC Bank.

9. Decision

- 9.1 The Commission has carefully gone through the entire material submitted by the informant, the Report of the DG, the objections/comments filed by the informant and Opposite Party No.1 to the DG report as well as oral submissions made on their behalf and all other relevant material and evidence available on record.
- 9.2 It is noted that the activities being performed by the Opposite Party No.1 is covered in the definition of 'enterprise' under section 2 (h) of the Act.
- 9.3 Considering the facts and circumstances of the case, the issue which emerges for examination before the Commission is whether Opposite Party No.1 is in a dominant position in the *market of provision of credit card services in India*. If so, whether it has violated the provisions of Section 4 of the Act by abusing its dominant position.
- 9.4 It is evident from the analysis of the evidence collected by the DG that the Opposite Party i.e HDFC Bank does not enjoy dominant position in the relevant market of credit card services in India. There are 30 players in the relevant market and the market share of the HDFC Bank in revenue terms is 17% in 2009-10. In terms of number of credit card holders also the HDFC Bank is second in rank, closely followed by SBI and other banks. It has also been observed by DG that in terms of capital, reserves & surpluses and deposits HDFC Bank lag far behind from its competitors. The informant has also not been able to place any cogent material in rebuttal of the evidence submitted by the DG.
- 9.5 Further, there appears to be ample of choice available to the consumer in the market in selection of credit card service provider. The consumers are not bound to avail the said service from the Opposite Party No.1. It is also seen that the terms and conditions as well as charges levied by all the players are more or less similar. Levying impugned charges and imposing alleged terms and conditions may be termed as 'unfair trade practices' but elements of abuse of dominant position definitely stand on a higher platform and in absence of establishment of dominant position such conduct of Opposite Party will not be covered under the provisions of section 4 of the Act.
- 9.6 On the basis of foregoing analysis and evaluation of evidence available on record, the Commission is of the view that no contravention of section 4 of the Act by the Opposite Party is established and the allegations made in the information have no substance. Therefore, the Commission is in agreement with the findings of DG report and hence, the matter is liable to be closed forthwith.

9.7 Accordingly, the present case is hereby closed under Section 26(6) of the Competition Act, 2002.

10. Secretary is directed to inform the parties, accordingly.

Sd/-	Sd/-	Sd/-	Sd/-	Sd/-
Member (G)	Member (P)	Member (GG)	Member (AG)	Member (T)
		Sd/-		
		Chairman		