

BEFORE THE

COMPETITION COMMISSION OF INDIA

CASE REF: Case No. 7/28, 25/28, 8/28, 9/28, 10/28

Informant:

1. Shri V. Ramachandran Reddy against HDFC Ltd. (Case No.7/28),
2. Ms. Swapna Muthukrishnan against HDFC Ltd. (Case No.25/28),
3. Shri A.K.Baviskar against ICICI Bank Ltd. (Case No.8/28),
4. Shri Charanjit Singh against ICICI Bank Ltd. (Case No.9/28),
5. Shri Shiv Kumar Gupta against ICICI Bank Ltd. (Case No.10/28)

Opposite Parties:

1. HDFC Ltd. (in case no. 7/28 and 25/28)
2. ICICI Bank. (in case no. 8/28, 9/28 and 10/28)

Dated: 31.05.2011

ORDER

Consequent upon the repeal of Monopolies and Restrictive Trade Practices Act, the following 5 cases have been received by the Competition Commission of India (the Commission) from the erstwhile Monopolies and Restrictive Trade Practices Commission (the MRTPC) on transfer under section 66 (6) of the Competition Act, 2002 (the Act):

1. Shri V. Ramachandran Reddy against HDFC Ltd. (Case No.7/28)
2. Ms. Swapna Muthukrishnan against HDFC Ltd. (Case No.25/28)
3. Shri A.K.Baviskar against ICICI Bank Ltd. (Case No.8/28)
4. Shri Charanjit Singh against ICICI Bank Ltd. (Case No.9/28)
5. Shri Shiv Kumar Gupta against ICICI Bank Ltd. (Case No.10/28)

Facts/allegations, in brief

- 2.1 Shri V. Ramachandra Reddy vide letter dated 21.11.2007 to MRTPC stated that he has availed a home loan in 2003 from HDFC Ltd. (HDFC) on floating rate of interest. He has alleged that the benefit of the declining interest rates in home loans is not given to him by HDFC, though he has opted for floating rate of interest.
- 2.2 Smt. Swapna Muthukrishnan vide letter dated 7th March, 2009 has availed a home loan from HDFC on floating interest rate. She has alleged that the benefit of the declining interest rates in home loans is not given to existing customers like her by HDFC, though she has opted for floating rate of interest.
- 2.3 Shri A.K. Baviskar vide letter dated 27th November, 2007 to MRTPC submitted that he has taken the Home loan from ICICI Bank Ltd (ICICI Bank). He paid the switching fee and shifted his loan type from fixed rate to floating interest rate in March, 2005. He has alleged that ICICI Bank charged higher interest when the interest rates have increased by 4.5% i.e. from 8.00% to 12.50% as the same are based on benchmark floating rate. Later when the interest rates have declined the benefit of declining interest rate was not passed on to him by ICICI Bank. Moreover he has paid for switching fee for shifting from fixed to floating rate of interest.
- 2.4 Shri Charanjit Singh vide letter dated 4.4.2008 to MRTPC stated that he has availed the home loan of Rupees 26 lakhs in 2007 @ floating rate of 11%. He stated that ICICI Bank has increased the floating rate of interest on his loan and accordingly increased the overall loan period from 17 years to 23 years. He has alleged that the benefit of the declining interest rates in home loans is not given to him by ICICI Bank.
- 2.5 Shri Shiv Kumar Gupta vide letter dated 27.2.2008 to MRTPC stated that he has taken the home loan from ICICI Bank. He stated that the bank has hiked the interest rate by 2% i.e. from 10.5% to 12.5% in 2007 by increasing the total

loan tenure and the amount of EMIs. He has alleged that the benefit of the declining interest rates in home loans is not given to him by ICICI Bank.

3. The Commission in its ordinary meeting held on 11.05.2010 observed that all the above cases relate to charging of differential rate of interest from different set of borrowers. The common issue observed in all these 5 cases is that the above mentioned banks are charging differential rate of interest from new customers qua existing customers or they are not passing on the benefit of reduced rates of interest to existing customers who have taken home loan on floating rate of interest. Upon forming an opinion that there exists a *prima facie* case, referred the matter to the Director General (DG), CCI for investigation vide its order dated 11.05.2010. As the subject matter in all the above said cases was substantially the same, it had been decided by the Commission to club the cases for common investigation in terms of Section 26(1) of the Act read with regulation 27 of CCI General Regulations, 2009.

4. The DG, after receiving the direction from the Commission, got the matter investigated through the Deputy Director General and submitted the investigation report dated 22.10.2010 to the Commission.

5. **Summary of Findings of DG**

The findings of the DG in his investigation report are summarized below in this section :

6.1 The floating interest rate which is variable over the loan period is dependent on two factors (i) benchmark/reference rate and (ii) Spread, which is more or less constant for the loan period. The benchmark/reference rate remains same for the existing and new customers. It is the spread margin which differs from customer to customer.

- 6.2 The calculation of spread is based on the profile of the customer, credit history, repaying capability, tenure of the loan, nature of property etc. The spread seeks to cover the cost of funds, profit make up, credit risk etc.
- 6.3 This spread/margin is variable and also negotiable and it depends on the terms and conditions negotiated between the lender and the borrower. Since the spread varies from individual to individual, the interest rate offered to two individuals at a given point of time cannot be same although the benchmark/reference rate is same.
- 6.4 All the customers have different loan requirements and characteristics and it is not feasible for the banks to have a uniform/common spread for all the customers.
- 6.5 Banks/financial institutions are passing on the effects of increase/decrease in Benchmark/Reference Rate to customers but are not adjusting the spread, which once calculated/fixed remains constant for the loan period. However, the spread/margin can be negotiated or altered on payment of conversion or switch over charges by the borrowers at the time of switching from fixed to floating rate of interest.
- 6.6 According to the report, the impression that banks are not passing the benefit to customers when interest rates are falling is on account of non transparency about interest setting mechanism and lack of information on part of consumers about the prevailing PLR/FRR and the applicable spread. This shortening of the system has been duly addressed by RBI by converting from PLR system to Base rate system. Base rate is the minimum rate at which banks can lend after meeting all the expenses.
- 6.7 From 2003-2008 the average interest rate has moved in the range from 10.63% to 13%. The upward movement has affected customers in the amount and tenure of the loan. It is observed that the banks have not arbitrarily increased

the rate but the increase is on account of prevalent market conditions. Rising interests are not on account of any agreements between banks or practice carried on by banks. Therefore, there is no contravention of Section 3(3) of the Act.

- 6.8 Section 3(4) of the Act applies on agreements or restraints between enterprises at different stages of levels of production chain. There is no such restraints noted in the impugned cases. The borrowers have the liberty to choose fixed or floating rate based on their requirements. Banks/financial institutions are also free to offer their services or products to numerous borrowers without any exclusivity. Hence Section 3(4) would not be applicable in this case.
- 6.9 With regard to Section 4 of the Act which deals with abuse of dominant position it is submitted that HDFC Ltd. & ICICI Ltd does not enjoy the dominant position. It is noted that the home loan/mortgage market is not limited or restricted or solely dependent on ICICI Bank and HDFC Ltd. owing to the presence of numerous other players as there are no major entry barriers in the sector. These entities are not in a position to unilaterally influence the Indian housing sector in their favour. Hence, in the absence of their dominant position violation of Section 4 cannot be established.
7. The DG report was considered by the Commission in its meeting held on 25.11.2010 and it was decided that a copy of the report be sent to the informants and the opposite parties to invite their comments/objections within 15 days of communication of the order of the Commission. The Commission also decided that the parties be given permission to make inspection of the record and also the opportunity of hearing as per the relevant Regulations.
8. The opposite parties, ICICI Bank and HDFC submitted their written submissions which were considered in the meeting of the Commission dated 23.12.2010. It was decided that the informants and the opposite parties be allowed another opportunity to present their case. The counsel for HDFC appeared before the

Commission on 18.01.2011 and made oral submissions and requested for allowing them to submit additional written submissions in the matter which was acceded to by the Commission. The Commission further decided that another opportunity be provided to other parties to appear before the Commission for oral hearing, if they so desire on 15.02.2011. The counsel for ICICI Bank and HDFC appeared before the Commission on 15.02.2011 and made oral submissions. The counsel of ICICI Bank requested for further time of two weeks to submit written submissions which were acceded to by the Commission. The reply dated 14.02.2011 filed by one of the informants namely, Shri Shiv Kumar Gupta was taken on record.

9. Reply to the DG report by HDFC

The HDFC in its reply dated 22.12.2010 filed through Saikrishna & Associates, Advocates submitted that since the DG report has categorically found that there is no violation of any of the provisions of the Act, the present matter should be closed.

10. Reply to the DG report by ICICI Bank

The ICICI Bank in its reply dated 20.12.2010 submitted that findings contained in the DG report conclude that there is no contravention of the provisions of the Act and therefore, the matter should be closed, by passing necessary orders.

11. Reply to the DG report by Shri Shiv Kumar Gupta (one of the informants)

11.1 The letter of Shri Shiv Kumar Gupta contended that the report submitted by the DDG on 22.10.2010 is biased one, against natural justice and is totally favouring cartel member bankers i.e. ICICI bank and HDFC. Finally it is based on data, case study and sample figures which are totally faulty, wrong and have biased approach only to favour the cartel members. It was further argued that the methodology used is against the public at large and has the effect of encouraging cartel/dominating bankers to

officially run the biggest fraud in the country under umbrella of liberalization policy of RBI.

11.2 The letter objected that the data compiled from RBI's official figures was not considered by the DDG while preparing his report. The detailed response of the informant alongwith the data compiled from RBI's official figures provided by the informant on 26.02.2010 clearly shows dominating and cartelisation aspects. DDG has knowingly narrowed down the area/scope of his investigation for home loan ignoring overall market position of the bankers in personal finance. Even RBI data is significant in showing cartelisation/ dominated structure of these banks.

11.3 It was prayed that CCI should use its statutory power in the larger interests of personal finance consumers of the banks and should conduct broader investigation in more transparent manner so that all the affected consumers of these banks may get relief from cartelization and their abuse of dominating position. It was further averred that all other bankers are also following same practices only due to liberal and loose policy of the RBI.

Decision

12 The Commission has carefully considered the material submitted by the informants, the report of the DG, the replies filed by the opposite parties as well as that of Shri Shiv Kumar Gupta, one of the informants and all other relevant materials and evidence available on record.

13 Considering the facts and circumstances of the case, it is noted that the common issue observed in all these 5 cases is that the above said banks are charging differential rate of interest from new customers qua existing customers or they are not passing on the benefit of reduced rate of interest to existing customers who had taken home loan on floating rate of interest basis.

- 14 It is noted that the spread, which is based on various factors like profile of the customers, his credit history, repayment capability and nature of property, differs from customer to customer and is also dependant upon the conditions negotiated between the lender and the borrower whereas the other component of the floating rate interest i.e. bench mark/ reference rate is more or less constant for the entire loan period margin.
- 15 It is also noted that since the different customers have different loan requirements it is not feasible for the banks to have an uniform common spread for all the customers. It cannot be denied that the upward movement in the interest rate may have affected the customers adversely by increase in the EMI and tenure of the loan. However, it is also a fact that the banks have not increased the interest rates arbitrarily but due to prevalent market conditions. There is no evidence or reason to dispute the finding of the DG that such increase in the interest rates cannot be attributed to any agreement or practice which leads to contravention of Section 3(3) of the Act. Similarly, there is no such agreement between enterprises or persons at different levels or stages of the production chain in different markets that can be said to cause appreciable adverse effect on competition in India in the context of Section 3(4) read with Section 19(3) of the Act.
- 16 It is further noted that the DG report has concluded that the HDFC and ICICI Bank are not in a position to unilaterally influence the Indian housing sector in their favour as owing to the presence of numerous other players the home loan/mortgage market is not limited or restricted or solely dependent upon the above said two banks. Since the HDFC and ICICI Bank, individually, cannot be said enjoy dominant position in the home loan market, violation of Section 4 of the Act by them cannot be established. The Commission finds that in absence of any evidence to the contrary there are no reasons to disagree with the conclusion given by the DG in this regard. Therefore, there is no contravention of Section 4 of the Act in the instant case.

- 17 After analyzing the entire material available on record the Commission comes to the conclusion that no violation of either Section 3 or Section 4 of the Act is established against the opposite parties. In view of the above findings the matter relating to the said information is disposed off accordingly and the proceedings are closed forthwith.

- 18 The Secretary is directed to inform the parties accordingly.

Member (G)

Member (P)

Member (GG)

Member (AG)

Member (T)

Chairperson