



COMPETITION COMMISSION OF INDIA
C. No. 02 of 2015

In Re:

Matha Timbers Private Ltd.
6D/2, Sivalaperi Road, Palayamkottai,
Tirunelveli District,
Tami Nadu

Informant

And

Tamil Nad Mercantile Bank Ltd.
57, V. E. Road, Thoothukudi,
Thoothukudi District,
Tamil Nadu

Opposite Party

CORAM

Mr. Ashok Chawla
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member



Appearances:

*For the Informant: Shri Ranjan Sardana and
Shri Paari Vendhan, Advocates*

Order under section 26(2) 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 Matha Timbers Private Ltd. ('the Informant') against Tamil Nad Mercantile Bank Ltd. ('the Opposite Party') alleging *inter alia*, contravention of the provisions of section 4 of the Act.
2. As per the information, the Informant is a company registered under the Companies Act, 1956 and is engaged in the business of import, distribution and sale of timber.
3. It is stated by the Informant that the Opposite Party operates in India as a private sector bank which, apart from providing common banking services, claims to be the best Indian bank providing services of Foreign Letter of Credit ('FLC') *etc.* It is submitted that the Opposite Party heavily relies for its profits on loans and other similar advances like Cash Credit ('CC') which it provides to companies like the Informant. As per the Informant the relevant market in the present case is the 'market for provision of FLC, CC and other similar banking services relating to foreign exchange transactions'. It is submitted by the Informant that the relevant geographic market is the state of Tamil Nadu. It is also averred that the Opposite Party is dominant in the state of Tamil Nadu by virtue of its vast finances and outreach in the State.
4. Based on the detailed allegations in the information, the Informant has submitted that the Opposite Party has grossly abused its dominant position and adversely effected competition on account of its monopolistic, restrictive and anti-competitive practices in contravention of 4(2)(a)(i), 4(2)(b)(i), 4(2)(c) and



4(2)(d) of the Act. The informant submitted various instances of alleged abuse by the Opposite Party including the following:

- i. The Opposite Party abuses its dominance by incorporating onerous terms in the loan agreements/ sanction letters such as clause 5, pursuant to which persons like the Informant are forced to confine all their banking transactions to the Opposite Party alone.
 - ii. The Opposite Party imposes supplementary obligations in its contracts which, by their nature or according to commercial usage, have no connection with the subject of the contracts such as buying 72 life insurance policies for the Informant's directors from the insurance providers of whom the Opposite Party is an agent bank.
 - iii. By virtue of its dominance, the Opposite Party is blatantly violating RBI norms by charging exorbitant interest rates.
 - iv. The Opposite Party deliberately failed to deposit the entire TDS amount with the Income Tax Department after deducting the same from the Informant's fixed deposit account, thereby making the Informant liable to pay the penalty under the Income Tax Act, 1961.
5. Accordingly, the Informant has prayed, *inter alia*, for the initiation of inquiry against the Opposite Party for abusing its dominant position in the relevant market.
6. The Commission has perused the material placed on record and heard the counsel for the Informant. The Informant is primarily aggrieved by the Opposite Party's alleged abusive conduct of imposing unfair terms and conditions in its loan agreements/ sanction letters. Having regard to the facts



of the case, the dominance of the Opposite Party has to be analysed and it would therefore be appropriate to first define the relevant market.

7. As per the provisions of section 2(r) of the Act, 'relevant market' means the market which may be determined by the Commission with reference to the relevant product market or relevant geographic market or with reference to both markets. In view of the facts of the present case, the relevant product market may be taken as the market for *provision of working capital facilities by banks*.
8. The Commission notes that the Informant is a business entity based in Tamil Nadu. Although banking services are offered by banks on a national scale, business entities may prefer banks with a local presence given the convenience factors particularly in case of Letter of Credit *etc.* where considerable documentation is involved in the process. Accordingly, for the purpose of preliminary analysis, the relevant geographic market in the present case may be limited to the State of Tamil Nadu. Thus, the relevant market in the present would be the market for *provision of working capital facilities by banks in the state of Tamil Nadu*.
9. After delineation of the relevant market, the Commission proceeds to assess whether the Opposite Party enjoys a dominant position in the said relevant market. In this regard, it is noted that admittedly the Informant was previously availing services provided by the State Bank of India ('SBI'), Palaymkottai Branch, Tirunelveli, before switching to the Opposite Party allegedly on the basis of the promising representation made by the bank. It appears that many banks including SBI and the Opposite Party operate in the State of Tamil Nadu and offer working capital facilities. Even if the relevant geographic market were to be narrowed further to a local level or expanded to include the whole of India, *prima facie*, the Opposite Party does not appear to be dominant. Moreover, no material has been placed on record to show that the



Opposite Party operates independently of the competitive forces prevailing in the relevant market or that it can affect its competitors or consumers or the relevant market in its favour.

10. In view of the above, the Commission is of the opinion that the alleged dominant position of the Opposite Party is not established in the present case. Therefore, the conduct of the Opposite Party need not be examined under the provisions of section 4 of the Act.
11. In the light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against the Opposite Party in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.
12. The Secretary is directed to inform all concerned accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi

Date: 24/ 03 /2015