

Competition Commission of India

Case No. 08/2011

03.05.2011

Mrs. Bellarani Bhattacharya

Informant

against

M/s. Asian Paints Ltd.

Opposite Party

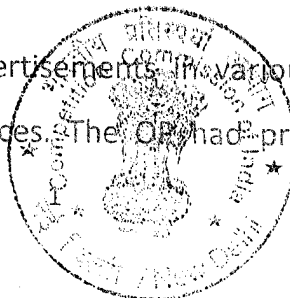
Order under Section 26(2) of the Competition Act, 2002

The present information has been filed under Section 19 of the Competition Act, 2002 (hereinafter referred to as "the Act") by informant Mrs. Bellarani Bhattacharya (hereinafter called as the Informant) alleging abuse of the dominant position and anti-competitive practices by M/s Asian Paints (hereinafter called as 'OP') in violation of section 3 and 4 of the Act.

2. The facts in brief, as stated in the information are as under:-

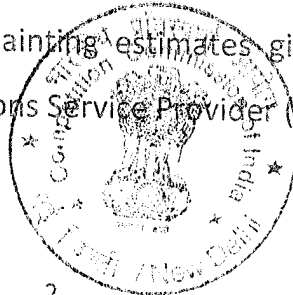
1.1 The informant is a senior citizen residing in Kolkata. The OP is in the business of production and marketing of paints and is also providing home solutions to its customers.

1.2 The OP brought out advertisements in various newspapers offering to provide home paint services. The OP had promised to provide several

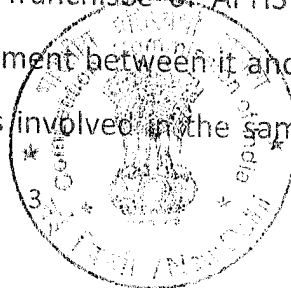


services including supervision of painting by trained painters and also to provide one year warranty in respect of the jobs done. Misled by the publicity the informant contacted OP and entrusted them with the job to paint her house located in Kolkata.

- 1.3 Mr. Jayanta Das representative of OP has given estimates for the works in the months of February, March and April 2009. The representative carried out the painting jobs and billed to the informant a total amount of Rs.1,97,260. The representative also undertook to carry out additional works like wood work and polishing jobs, Electrical jobs, Plumbing jobs, tiles fixing etc. These additional works are taken up by the representative on his behalf.
 - 1.4 The informant later found that the painting jobs were not upto the mark and the representative did not complete all the jobs. Informant has complained about this to the OP. A team comprising of two persons, one from Asian Paints and the second one from Asian Paints Home Solutions were sent by OP to take care of all the painting loopholes at the site.
 - 1.5 After the team's visit the OP replied by mail on 25.09.2010 and clarified all the informant's queries. However, the informant being not satisfied with the OP filed this information before the Commission.
3. The allegations as stated in the information, in brief, are as under:-
- 2.1 The informant has alleged the violations of the provisions of Section 3 and Section 4, in particular Section 3(4)(a) of the Act, by the OP by indulging in tie in arrangement with the service provider.
 - 2.2 It was alleged that the painting estimates given on behalf of the OP, relates to the Home Solutions Service Provider (HSSP).

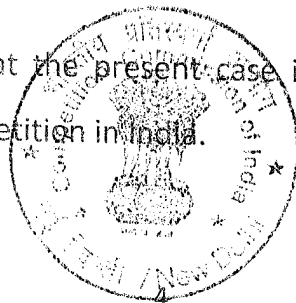


- 2.3 The HSSP has reserved to itself the right to stop the said works unilaterally. No authority whatsoever was given to Informant stop the work abruptly if he finds any issue with the work.
4. The matter was considered by the Commission in its meeting held on 03.05.2011.
 5. The industry of providing painting works to homes is an unorganized one and an unstructured market. There is no specific player who is handling notable business in the relevant market. All the painting jobs done in these areas are done by small entrepreneurs. Providing Home solution services along with selling paints is the recent development in the paint industry. This service has been integrated with selling paints to provide end to end solutions to the customer. All the major companies have started offering these customized solutions to its customers by starting new divisions like Asian Paints' "Home Solutions", Berger's "Lewis Berger's Home Painting Service", Nerolac's "Nerolac Home Stylers" and ICI Dulux's "Paint Easy".
 6. The Relevant Market in this case is **"Providing Home solution services for Painting homes in geographical area of Kolkata."**
 7. Asian Paints Home Solutions (APHS) is one of the divisions of the company. As per the information available in the public domain it has appointed franchisee Color Concepts in Kolkata which specifically takes care of the customers' home solutions requirements. There is no case of tie in arrangement as Color Concepts is a franchisee of APHS. The customer is well aware about the product being offered to him and it is not mandatory to choose the service of home solutions along with buying paints. Color Concepts is a franchisee of APHS and there is nothing on record to indicate any tie-in arrangement between it and Asian Paints. There is no agreement between the enterprises involved in the same activities which can be



treated as anti-competitive. None of the provisions of Section 3(3) and Section 3(4) read with Section 3(1) would be applicable to the said case.

8. The term "dominant position", is defined as a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour. It is noted that providing home solutions by the paint companies is relatively new type of service in the market. Providing painting services is an unorganised industry and currently managed by the local painters. Customers at large do not have any specific preference in choosing a particular painter. Asian Paints does not seem to be in position to operate in itself independently of the competitive forces prevailing in the relevant market or affecting the competitors in the relevant market in its favour. Furthermore, the Informant has not provided any material to establish the dominance of OP in relevant market.
9. From the material available on record there is no *prima facie* case of any agreement between Asian Paints and other paint companies or practice adopted by any association of painting companies operating in the relevant market, thus Section 3(3) of the Act does not apply to the facts of the case. None of the clauses of Section 3(4) read with Section 3(1) is applicable to the facts of the case.
10. There is no *prima facie* violation of Section 4 of the Act by the very fact that there is nothing on record to indicate that Asian Paints is in a dominant position in the relevant market.
11. *Prima facie*, it appears that the present case is an individual consumer dispute having no bearing on competition in India.



12. The IP has also not been able to bring any cogent evidence on record that the opposite parties are indulging in any anti-competitive activities which have appreciable adverse effect on competition. Therefore, the Commission is of the opinion that, prima facie, there is no violation of any provisions of Section 3 and Section 4 of the Act in this matter.
13. The Commission, therefore, is of the view that no *prima facie* case is made out for making a reference to the Director General for conducting investigation into this matter under section 26 (1) of the Act and the proceedings are closed forthwith.
14. In view of the above discussion, the matter relating to this information is hereby closed under section 26(2) of the Competition Act.
15. Secretary is directed to inform the information provider accordingly.

Sd/-
Member (C)

Sd/-
Member (R)

Sd/-
Member (GO)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Chairperson

