

COMPETITION COMMISSION OF INDIA

31.8.2010

Case No 27/2010

Filed by: M/s Kishan Cold Storage, Through: Shri Jay Kishor Singh, Advocate

Against: (1) United Bank of India, Bhagalpur Branch, Bihar and (2) Bajaj Allianz General Insurance Co. Ltd., Patna, Bihar.

ORDER UNDER SECTION 26(2) OF COMPETITION ACT, 2002

The informant is a partnership firm in the cold storage business for preservation of foodstuffs. The opposite party No.1 is a bank which has sanctioned loan to the informant. The opposite party no.2 is an insurance company which provided insurance cover to the informant firm.

1. The instant information has been filed by the informant through its counsel on 9.7.2010 under section 19 of the Competition Act alleging that the informant had to purchase the insurance policies through the opposite party no.1 as a condition to get loan from it as the opposite parties entered in tie-in arrangement. The informant has alleged that opposite party no.1 by abusing its dominant position has acted in connivance with opposite party No.2 which has caused the informant huge loss.

2. The informant has supported the allegations by filling relevant material which is enclosed as annexures to the information. Shri Jay Kishor Singh, advocate appearing on behalf of the informant elaborated the case of the informant in the ordinary meeting of the Commission held on 31.8.2010.

3. The relevant facts as culled out from the information are being summarized as under:

3.1 The informant was sanctioned a loan of Rs.1.25 crores by opposite party No.1 vide sanction letter dated 25.11.2004. One of the clauses of the sanction letter was that comprehensive insurance coverage is to be obtained for all possible risks and damages for the entire asset of the cold storage. Accordingly, the informant took a comprehensive insurance coverage from New India Assurance Company dated 23.2.2007 and 31.3.2007 which covered all possible risks and damages.

3.2 The informant sought more credit limit from opposite party No.1 in the year 2008. The opposite party agreed to provide more credit limit upto Rs.2.56 crores to the informant subject to the terms and conditions. The informant was asked to obtain the comprehensive insurance policy from opposite party No.2 having tie up with the opposite party No.1 and the

informant was left with no option but to accede. The opposite party no.1 took three insurance policies from opposite party no. 2 for an on behalf of the informant and the premium amount was debited from the informant's account. The copies of the policies were not provided to the informant and after much persuasion by the informant, only the certified xerox-copies without the terms and conditions were supplied to the informant later.

3.3 That the opposite party no.1 took undue advantage and itself obtained insurance policies at the cost of informant and the policies later turned out to be defective. The insurance policies obtained by the opposite party no.1 for the informant did not cover damages due to power supply fluctuations and no such short coverage was done in the earlier policies directly obtained by the informant. That in the month of May 2008, the power supply of the area where the cold storage of informant is situated became irregular. The continued failure of power supply and continuous break down of plant and machinery resulted in deterioration of potatoes stored in the cold storage.

3.4 That the informant suffered a loss and insurance claim was lodged with opposite party no.2. The opposite party no.2 although admitted the loss but opined that the loss was not attributable to it as the specific policy covering the loss on account of power supply was not taken.

4. The informant has alleged that a comprehensive insurance policy covering all possible risk in the business of cold storage was to be obtained as a pre-condition for availing the loan facilities. It has been alleged that the agreement between opposite party no 1 and 2 is a tie-in arrangement as the informant had to purchase policies through opposite party no. 1 as a condition to get the loan from the bank which has caused appreciable adverse effect on the business of the informant and the opposite party no. 1.

5. The informant has prayed for the following reliefs:

- (i) Initiate the inquiry into agreements and dominant position of the opposite party no. 1 and the opposite party no. 2 pertaining to the transaction inflicted on the informant.
- (ii) Declare that the practice of the opposite party nos. 1 and 2 are in contravention of section 3 and 4 of the Competition Act, 2002.
- (iii) Direct that the informant should be compensated at least a loss of Rs. 1.70 crore by the opposite parties jointly or severally.
- (iv) Award the compensation of Rs.5,00,000 in favour of the informant against the opposite parties for the harassment and mental agony suffered on account of the arbitrary action of the opposite parties.
- (v) Award the cost of litigation in favour of the informant against the opposite parties and

(vi) Pass any other order or orders as the Commission may deem fit and proper to meet the ends of justice.

Interim relief :

(i) Restrain the opposite party no. 1 from taking any coercive steps of recovery pending inquiry of the Commission.

(ii) Pass any other order or orders as the Commission may deem fit and proper to meet the ends of justice.

6. The Commission considered all the relevant material placed on the record and the submissions of the authorized representative of the informant made in the ordinary meeting of the Commission held on 31.8.2010.

7. On examining the entire material on the record in detail, it is evident that the main grievance of the informant is that the opposite party no. 1 had taken defective insurance policy in tie-in arrangement with the opposite party no. 2 which did not cover breakage of plant and machinery and deterioration in the quality foodstuff stored in the cold storage due to irregular power supply and the interest of the informant was not protected.

8. In view of the above, and after considering the entire material and submissions of authorized representative of the informant, the Commission is of the opinion that the allegations as made in the information and the reliefs as prayed by the informant do not fall within the ambit of Competition Act, 2002. The Commission is of the view that the case on these facts appears to be not a case of abuse of dominance. The informant has also not been able to place any credible or cogent evidence/material to show or establish the infringement of section 3 or 4 of the Act in this case and hence the allegations made by the informant have remained unsubstantiated and uncorroborated. Moreover, the cause of action is prior 20.5.2009, i.e. prior to the Competition Act, 2002 coming into existence. 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 relating to this information are required to be closed forthwith.

9. In view of the above, the matter relating to this information is hereby closed under section 26(2) of the Competition Act.

10. Secretary is directed to inform the informant accordingly.