

**IN RE: SAINATH AUTOLINKS PVT. LTD. (INFORMANT) AND STATE BANK OF INDIA
(OPPOSITE PARTY I), STATE BANK OF INDIA DURGAPUR (OPPOSITE PARTY II)**

Decision date: 11/10/2019

Keywords: abuse of dominant position, banking sector

Rule: Sec. 4 of the Competition Act, 2002.

The Informant was an authorised dealer of Maruti Suzuki India Limited (Maruti Suzuki) located in Durgapur, West Bengal. OP-1 was a scheduled commercial bank in public sector having its registered office at Mumbai and branches spread across the country, one of them being OP-2. The Informant had submitted that it opened a Supply Chain Finance Unit ('SCFU') account with OP-2 on 14.10.2011. As per the terms and conditions of the said SCFU account, Maruti Suzuki would dispatch cars to the Informant after receipt of payment from OP-2; thereafter, the Informant would deposit the sales proceeds of cars into the said account.

On 23.07.2018, OP-2 was said to have sent an e-mail to the Informant stating that a reconciliation and audit exercise was undertaken with respect to the aforesaid SCFU account for the financial year 2013-14, wherein it was found that one credit entry was captured twice and one debit entry was missed. After due reconciliation of the entries, the Informant was liable to pay a sum of Rs. 2.13 Crore to OP-2. The Informant was compelled to pay the aforesaid amount after OP-2 threatened to transfer said account to Non-Performing Asset (NPA) category.

The Informant, citing the provision regarding enhanced penal interest, had alleged that terms and conditions of the letter of arrangement dated 24.01.2018 signed between OP-2 and the Informant were unfair, discriminatory and favours the OPs. The Informant had also averred that OPs were in a dominant position in the banking sector and that they have abused their dominant position in contravention of Sec. 4 of the Act.

ANALYSIS OF THE COMMISSION

RELEVANT MARKET

The Commission observed that in terms of Priority Sector Lending requirements, RBI had allowed banks to classify loans to Micro, Small and Medium Enterprises (MSMEs), for both manufacturing and service sectors, as priority sector loans. Further, the Central Government

accords special treatment/incentives to MSMEs as identified under Micro, Small & Medium Enterprises Development (MSMED) Act, 2006. Accordingly, the Commission opined that, keeping in view the facts projected by the Informant against the OPs and in light of the regulatory classifications adopted by the Government/ RBI, the relevant product market in this case be delineated as '*market for provision of loans to MSMEs*'.

In this case, the Commission notes that the Informant was a business entity based in West Bengal. Although, various banking/ financial services were offered by banks on a national scale, however, from the supply side, especially for loan products, consumers of banking services like the Informant generally prefer banks/ finance institutions with a local presence. Accordingly, the Commission defines the relevant geographic market in this matter as 'State of West Bengal'. In view of the above discussion, the relevant market in the instant matter was 'market for provision of loans to MSMEs in State of West Bengal'.

ASSESSMENT OF DOMINANCE

The Commission notes that the Informant had not provided any evidence to show the dominant position of the OPs except for stating that State Bank of India, being the bank of the Central Government and governed by State Bank of India Act, enjoys dominant position in the commercial market. As against this, from the information available in public domain (*i.e.* State Level Bankers Committee data pertaining to West Bengal), the Commission notes that market share of OPs in MSME loan category in State of West Bengal for the period 2018-19 was around 11%. Furthermore, banking sector in West Bengal seems to be characterized with presence of several national level banks such as State Bank of India, HDFC Bank, Punjab National Bank, ICICI Bank, Allahabad Bank, Bank of India, Canara Bank, Central Bank of India, Syndicate Bank, UCO Bank, Axis Bank, Yes Bank *etc.* Thus, considering the large number of players operating in the relevant market, the OPs do not seem to have the ability to operate independently of the competitive forces. In the absence of dominance, the issue of abuse of dominant position against the OPs did not arise.

CONCLUSION

In view of the foregoing, the Commission was of the view that no case of contravention of the provision of Section 4 of the Act was made against OPs and the matter was ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.