

COMPETITION COMMISSION OF INDIA
(Case No. 47 of 2012)

Dated: 13.12.2012

IN THE MATTER OF:

M/s Mineral Enterprises Limited

....Informant

v.

Ministry of Railways, Union of India

....Opposite Party No. 1

The Railway Board

....Opposite Party No. 2

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

The present information has been filed by M/s Mineral Enterprises Limited ('the informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Ministry of Railways, Union of India ('OP No. 1') and The Railway Board (OP No. 2) alleging *inter-alia* contravention of Section 4 of the Act.

2. The informant is a duly registered company engaged in varied activities including mining, logistics and infrastructure development. Its core area of business comprise of mining, trading and exports of iron ore. For transportation of iron ore extracted from the mines of the informant, it uses the services of rail transport, owned and controlled by opposite parties.

3. Prior to the enactment of Indian Railways Act, 1890, rail transport was largely managed by private players with the interference of Government being limited to coordination, regulation and apportionment of claims amongst the railways companies. Subsequently the Railways Act, 1989 was enacted, which empowered the Central Government to fix rates for carriage and passengers and goods by the Railways, to classify or reclassify any commodity for the purpose of determining the rates to be charged for the carriage of such commodity etc. OP No. 2 prescribes the freight circulars for any commodity by obtaining the sanction of the Central Government, in terms of the Indian Railways Act, 1890. Empowered so under the Indian Railways Act, OP No. 2 issued various rate circulars or rate instructions ('rate instructions') adjusting the freight rates during April 2003 and 2012. OP No. 2 also reclassified the iron ore based upon its end use, thereby imposing different freights on iron ore based on its end use. The iron ore meant for domestic consumption for manufacture of iron and steel was charged at a lower rate and iron ore transported for other

domestic purpose or for export purpose attracted a higher freight. Aggrieved by this classification, the informant approached this Commission alleging abuse of dominant position by the opposite parties under section 4 of the Act.

4. It is stated that the unfair and discriminatory levy imposed by the railways based on end use was affecting the competition in the sector in an adverse manner and amounted to a contravention of section 4(2) of the Act.

5. The informant has not clearly defined the relevant market. It appears from the submissions of the informant that the relevant market may be defined as 'containerized transport of commodities by Railways in India'. In this market, the Opposite Parties are alleged to have a dominant position. The informant has alleged that the reclassification of iron ore on the basis of end use was unfair in itself. The informant has also alleged that charging different freight for same commodity amounts to abuse of dominant position by the Opposite Parties as the classification was not based on a reasonable basis or intelligible differentiation. The informant has, therefore, prayed the Commission to order DG investigation to analyze the conduct of the Opposite Parties.

6. The Commission has perused the information on record and heard the counsel for the informant at length. The informant challenged the rate circulars/instructions issued by OP No. 2. The relevant question is whether the issuance of rate instructions by OP No. 2 amounts to abuse of dominant position or not. Without going into the determination of relevant market and assessment of dominance of the Opposite Parties, the Commission is of the view that no *prima facie* case has been made out by the Informant. Based upon the information submitted and the arguments of the counsel of the Informant, the Commission is of the view that in exercise of its function of re-classification and revision of rates/freight no *prima facie* violation of the provisions of the Act has been established. The impugned rate instructions issued by OP No. 2 pertain to revisions of rates/freight and reclassification of commodities. This power of re-classification and revision of rates/freight is entrusted to the Central Government under section 31 of the Railways Act, 1989. Section 31 of the Railways Act, 1989, states as under:

Section 31. Power to classify commodities or alter rates.- The Central Government shall have power to—

- (a) classify or reclassify any commodity for the purpose of determining the rates to be charged for the carriage of such commodities; and*
- (b) increase or reduce the class rates and other charges.*

7. The Commission is of the view that the OP No.2 was exercising the aforesaid statutory functions when it reclassified and revised the rates/freight of commodities transported by railways in India. The exercise of such functions by itself, in the absence of any other cogent evidence establishing that such conduct is in violation of the provisions of the Act, does not justify a direction by the Commission to recommend the DG to investigate and analyze the conduct of the Opposite Parties.

8. By above statutory provision, the legislature has authorized the Central Government to classify and revise rates/freight with respect to carriage of passenger and goods. The impugned rate instructions/circulars issued by OP No.2 were uniformly applicable for all the entities who wanted to avail the services of Indian railways for transporting their goods. A function of an enterprise may be anti-competitive in nature if such function is in violation of any of the provisions of the Act. However, in the absence of any *prima facie* case of violations of the provisions of the Act, being made out on the basis of available material, the Commission is of the view that no interference is warranted by the Commission in this case.

9. In view of the foregoing, the Commission deems it fit to close the proceedings in the above case under section 26(2) of the Act.

10. The Secretary is directed to communicate the decision of the Commission to all concerned accordingly.

Sd/-
H.C. Gupta
(Member)

Sd/-
Anurag Goel
(Member)

Sd/-
M.L. Tayal
(Member)

Sd/-
Ashok Chawla
(Chairperson)

Sd/-
Geeta Gouri
(Member)

Sd/-
Justice (Retd.) S.N. Dhingra
(Member)