



**COMPETITION COMMISSION OF INDIA**

**Case No. 87 of 2014**

**In Re:**

**Bharat Garage  
Through its Partner  
Shri Suresh Mohanlal Mehta  
651, Chirag Nagar,  
Ghatkopar (W), Mumbai**

**Informant**

**And**

**Indian Oil Corporation Ltd.,  
Indian Oil Bhavan,  
G-9, Ali Yuwar Jung Marg,  
Bandra (E), Mumbai**

**Opposite Party No. 1**

**Mahanagar Gas Limited  
Sion, Mumbai, also at  
MGL House, G-33 Block,  
Bandra-Kurla Complex, Bandra (E)  
Mumbai**

**Opposite Party No. 2**

**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

Ms. Neela Gokhale, Advocate

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

1. The present information is filed by Bharat Garage, a partnership firm, through its partner Mr. Suresh Mehta (hereinafter referred to as the “Informant”) under section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as “the Act”) against Indian Oil Corporation Limited (OP-1) and Mahanagar Gas Limited (OP-2) alleging, *inter alia*, contravention of the provisions of sections 3 & 4 of the Act.
2. As per the information, the Informant is a partnership firm registered under the Indian Partnership Act, 1932 and is engaged in the business of distribution of Compressed Natural Gas (CNG). Earlier, it was engaged in the dispensation of petrol and petroleum & other allied products of the erstwhile IBP Co. Ltd. (hereinafter referred to as the “IBP”) which has now amalgamated with OP-1. The dealership agreement between the



Informant and the erstwhile IBP Co. Ltd. was executed on 24/09/1984 whereby the Informant was to distribute and sell the products of the IBP Co. Ltd. at its site.

3. It is submitted that pursuant to the orders passed by the Hon'ble Supreme Court in the matter of *M. C. Mehta verses Union of India*, as well as certain other orders passed by the Bombay High Court, the OP-2 was charged with the function of ensuring adequate supply of CNG to customers in the state of Maharashtra. In order to discharge this function, the OP-2 executed agreements with dealers and oil companies for distribution of CNG. It is stated that OP-2 has the sole authority and right to distribute/ procure CNG in the Greater Mumbai Region.
4. It is submitted that due to increase in demand for CNG supply, the Informant approached OP-2 in order to get permit for distribution/ dispensation of CNG from its dispensation unit. However, OP-2 informed the Informant that it had entered into an agreement with IBP on 12/09/2002 and since the Informant was a dealer of IBP/ OP-1, it would not be possible for OP-2 to permit supply of CNG directly to the Informant at its outlet without no objection from IBP. On approaching IBP/ OP-1, the Informant was advised to procure supply of CNG through it only. In such an eventuality, OP-1 shall have the right to charge commission from the total commission receivable by the Informant from OP-2.
5. The Informant is alleged to have discontinued its business of sale of petrol and diesel from its unit and carried out necessary changes for providing infrastructure for installation of CNG plant which commenced from 13/03/2004. It is submitted that despite having reservations, the Informant



started the dispensation of CNG from its unit with IBP/ OP-1 acting as intermediary for procuring CNG from OP-2.

6. It is further submitted that the Informant repeatedly requested the IBP/ OP-1 to review the above said arrangement on the basis of the fact that the Informant itself is the owner of the dispensation site and has invested a substantial amount in the unit. The IBP/OP-1 is alleged to have refused to concede to its request and continued to charge commission from the total commission receivable by the Informant from OP-2. The Informant has submitted that this act of the IBP/ OP-1 is abuse of its dominant position which has rendered it vulnerable and exploitable. It is submitted that in these circumstances, the Informant decided to terminate its dealership agreement with the IBP/ OP-1 and conveyed its intention to surrender the dealership *vide* letter dated 12/04/2005. The Informant also requested the refund of security deposit from OP-1 within the notice period.
7. It is alleged that the OP-1, *vide* its letter dated 10/05/2005, rejected the termination of the dealership agreement on the ground that abrupt withdrawal of dealership by the Informant will cause prejudice to the public interest. In response to the said letter dated 10/05/2005, the Informant replied that it intends to seek direct supply of CNG from OP-2.
8. Accordingly the Informant is stated to have requested OP-2, *vide* its letters dated letters dated 13/05/2005, 18/05/2005 & 25/05/2005, to supply CNG directly to it. OP-2 is alleged to have rejected the request of the Informant on the ground that OP-1 has communicated not to deal with the Informant directly. It is submitted by the Informant that this act of OP-1 amounts to clear abuse of dominant position which is in violation of the provisions of the Act. It is alleged that OP-1, *vide* its letter dated 26/05/2005, threatened OP-2 that any step taken by OP-2 for accepting such proposals from any



dealer/ Informant will vitiate the relationship between OP-1 and the oil companies which can be a set back to the expansion of CNG Network in the city.

9. It is further submitted that the IBP had approached other PSU oil companies and all of them together, through state level Coordinator of the oil companies, addressed a letter dated 20/05/2005 to OP-2 asking it not to entertain any such proposal from PSU oil company dealers. It is alleged that PSU oil companies have formed a cartel and are abusing their dominant position against the dealers. It is submitted that this act of OP-1 amounts to clear abuse of dominant and also shows that PSU oil companies have formed a cartel.
10. The Informant has cited another example of abuse of dominant position by IBP. It is alleged that IBP applied to the District Collector of Mumbai for acquiring the site of the Informant. It is stated that the only intention was to compel the Informant to continue the arrangement whereby IBP could get the share in the commission, failing which it faced the risk of acquisition of the site.
11. It is submitted that the Informant entered into an interim arrangement with the IBP/ OP-1 and agreed to pay the latter 5% of the amount received by way of commission from OP-2. However, IBP allegedly demanded higher commission, *vide* its letter dated 25/10/2005, in the name of "Industry Norms" and asked an amount of Rs.2,57,497/- (calculated upto 17/10/2005) towards its share in the commission received from OP-2. The Informant is stated to have agreed to pay the said amount only if the IBP instructs OP-2 to supply CNG directly to the Informant.



12. It is submitted that OP-2 is supplying CNG directly to many other dealers but is depriving the Informant of the same. Thus, OP-1 and OP-2 alleged to have abused their dominant position and caused appreciable adverse effect on competition.
13. It is alleged that the IBP filed a suit in High Court at Bombay for the recovery of the amount which allegedly was not paid by the Informant towards IBP share in the commission received from OP-2. The said suit is now transferred to and pending in the City Civil Court in Mumbai.
14. It is submitted that the Informant also filed a suit for declaration of agreement dated 12/09/2002, executed between the Opposite Parties, as void since the same was based on fraudulent representations and not binding on the Informant. The suit is pending before the City Civil Court in Mumbai.
15. It is alleged that the agreement dated 12/09/2002 (purportedly continues to operate after its extension) and another agreement dated 04/02/2009 (executed between the Opposite Parties) contravenes the provisions of the Act since OP-1 has made misleading claims in the said agreement. OP-1 is stated to have claimed that the site is its absolute property and that it will be responsible and liable for all the acts of the third party dealers.
16. Based on the above averments, the Informant has alleged that the conduct of the Opposite Parties is violative of the provisions of section 3 & 4 of the Act and has prayed, *inter alia*, for quashing of the agreement dated 12/09/2002.



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17. The Commission has perused the material placed on record including the information and heard the counsel on behalf of the Informant.
18. In the present case, as can be gathered from the allegations made by the Informant and the reliefs sought, the Informant is primarily aggrieved by the agreement dated 12.09.2002 which allegedly contravenes the provisions of section 3 of the Act. The Commission notes that the grievances of the Informant pertain to the charging of commission by OP-1, issue regarding the termination of agreement between Informant and OP-1, non-supply of CNG directly to it by OP-2 and misleading claims made by OP-1 as regards ownership of the site, in the above said agreement. All these issues, *prima facie*, do not point to any activities/conduct contravening provisions of section 3 or 4 of the Act.
19. The Commission is of the view that due to the facts and circumstances of the present case including the dispute regarding ownership of the site between the Informant and the OP-1, the act of non-supply of CNG directly to the Informant by OP-2 does not *prima facie* appear to be in contravention of the provisions of section 4 the Act.
20. The Informant has also alleged contravention of section 3 of the Act. The Informant has also alleged that OP-1 and OP-2 are working as a cartel and denying it direct supply of CNG from OP-2. The Informant has alleged that the agreement dated 12/09/2002 executed between OP-1 and OP-2 is anti- competitive and limits the production/ supply of CNG and causes an appreciable adverse effect on the competition. The Commission notes that the agreement in question is an agreement between OP-1 and OP-2



whereby OP-1 would be selling the product of the OP-2 through its outlets. It is not exclusive in nature, thus such an agreement does not seem to be anti-competitive in nature. In this regard, Commission would like to state that ordinarily a cartel exists between firms at the same level of production and not between an upstream and downstream firm as is the case in the instant matter.

21. The Commission also observes that the Informant and OP-1 are parties to several proceedings pending before various courts. It is also pertinent to mention that the Informant has already approached the City Civil Court in Mumbai, seeking relief of declaration of agreement dated 12/09/2002, as void. The proceedings are currently pending before the Mumbai court. It appears that the Informant is indulging in forum shopping as he is seeking the same relief from the Commission also.

22. In view of the foregoing, the Commission is of the considered view that Opposite Parties, prima facie, do not appear to have contravened any of the provisions of section 3 and 4 of the Act. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

23. 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**  
**Dated: 24.02.2015**