



COMPETITION COMMISSION OF INDIA

Case No. 95 of 2013

In Re:

North East India Petroleum Dealers Association

Informant

And

- | | |
|---|-----------------------------|
| 1. Ministry of Petroleum & Natural Gas | Opposite Party No. 1 |
| 2. M/s Indian Oil Corporation Ltd.
New Delhi | Opposite Party No. 2 |
| 3. North East Integrated State Office,
IOCL, Guwahati | Opposite Party No. 3 |
| 4. Guwahati Integrated Divisional Office,
IOCL, Guwahati | Opposite Party No. 4 |
| 5. M/s Hindustan Petroleum Corporation Ltd.,
Mumbai | Opposite Party No. 5 |
| 6. M/s Bharat Petroleum Corporation Ltd.,
Guwahati | Opposite Party No. 6 |

CORAM

**Mr. Ashok Chawla
Chairperson**

**Dr. Geeta Gouri
Member**

**Mr. Anurag Goel
Member**



Mr. M. L. Tayal
Member

Mr. Justice (retd.) S.N. Dhingra
Member

Mr. S. L. Bunker
Member

Appearances: Shri Karma Dorjee, advocate for the informant.

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

The present information has been filed by North East India Petroleum Dealers Association ('the informant') under section 19(1)(a) of the Competition Act, 2002 ('the Act') against Ministry of Petroleum & Natural Gas ('the opposite party No. 1'), M/s Indian Oil Corporation Ltd., New Delhi ('the opposite party No. 2'/ IOCL), North East Integrated State Office, IOCL, Guwahati ('the opposite party No. 3'), Guwahati Integrated Divisional Office, IOCL, Guwahati ('the opposite party No. 4'), M/s Hindustan Petroleum Corporation Ltd., Mumbai ('the opposite party No. 5'/ HPCL) and M/s Bharat Petroleum Corporation Ltd., Guwahati ('the opposite party No. 6'/BPCL), alleging *inter alia* contraventions of the provisions of section 4 of the Act.

2. The informant is stated to be an association of petroleum dealers of the Greater Guwahati unit registered under the Societies Registration Act, 1860 in the name and style of North East India Petroleum Dealers Association, Greater Guwahati Unit. It is stated that the members of the association run retail outlets commonly known as Petrol Pumps in different parts of Greater Guwahati. The machineries and equipments installed in the retail outlets are, however, stated to be the properties of the respective oil companies *i.e.* IOCL, HPCL or BPCL.



3. It is the case of the informant that the oil companies- which are Public Sector Undertakings (PSUs) - have been dealing with petroleum products under agreements with the respective firm and/or individuals. The dealers have been facing hardship and difficulty in operating their retail outlets due to certain high handed actions imposed on the dealers by the oil companies. It is averred that with regard to the said difficulties faced by the dealers due to the abuse of the dominant position on the part of the oil companies, the informant has approached the Commission for redressal of grievances.

4. It is averred in the information that the business is initiated under an agreement between the representatives of the respective oil companies on the one hand and the dealers, as an individual, proprietary concern, partnership firm or incorporated company on the other. It is alleged that though apparently, the contracts are bilateral in nature, factually the terms and conditions embodied in the agreements are grossly one-sided and amount to imposing the same on the dealers in complete abuse of dominant position of the respective companies. The dealers have absolutely no say in the determination of such terms and conditions, making the contract unfair and discriminatory, raising a cause of concern for the dealers association. In this regard, the informant has enclosed with the information a pro-forma Agreement with IOCL embodying the specimen terms and conditions.

5. It is further averred that the oil companies have also issued a set of guidelines under the name and style of Marketing Discipline Guidelines (MDG) which are arbitrarily amended from time to time. These guidelines have not been laid in the House of Parliament nor have they been formulated under Legislative Competence. It is alleged that the Guidelines *inter alia* prescribe penal action to the extent of the very termination of the dealership contract in gross violation of the provisions of Article 19(1)(g) of the Constitution of India and the Law of Contract.



6. It is alleged that these agreements have been imposed on the dealers, due to the dominant position held by the oil companies, the dealers never have had the opportunity to oppose these arbitrary clauses and the same amounts to a constant threat to their business. It was also alleged that the dealers have been compelled to affix their signature upon the one sided Agreement without much protest for carrying on and running the business as a source of livelihood. It is also alleged that recently, dealer members were called upon to sign updated Agreement under a short notice. Having perused the said Agreement, the dealers realized that certain clauses are so dramatically violative of the law that they simply cannot sign the same in acknowledgement of liabilities as well as terms which are absolutely not tenable in the eyes of law.

7. Alluding to the specific instances of contravention of the provisions of the Act, the informant has alleged that the terms incorporated in clauses 42 and 62(a) of the Dealers Agreement incorporating the so called Guidelines known as MDG and making the Director (Marketing) of the oil company as the sole arbitrator to adjudicate upon any dispute or difference arising under the agreement amounts to abuse of dominant position. It is alleged that such guidelines are arbitrary, one-sided and contrary to law & public policy besides being contrary to the letters and spirit of the Act. The guidelines specifically amount to violation of section 4(2)(d) of the Act, alleges the informant.

8. Based on the above averments and allegations, the informant has prayed to the Commission to:

(i) peruse the materials on record and upon satisfaction of the facts and circumstances admit the information by issuing notice to the opposite party oil companies;

(ii) institute an inquiry against the opposite parties and pass an order directing the Director General to carry out an



investigation into the violation/ contravention of section 4 of the Act and submit its report thereon to the Commission;

(iii) direct the opposite parties to refrain from indulging in similar abusive conduct in the future;

(iv) impose such penalty/cost on the opposite parties as may be deemed fit by the Commission; and

(v) pass such other or further or order[s] as may be deemed fit and expedient in the interest of justice.

9. The Commission has perused the information and the material available on record including the written submissions filed by the counsel for the informant. The Commission has also heard the counsel appearing for the informant.

10. The informant has filed the present information alleging abuse of dominant position by the opposite party oil companies viz. IOCL, HPCL and BPCL. At the outset, it may be observed that section 4 of the Act prohibits abuse of dominant position by an 'enterprise' or 'group'. As the law stands today, the concept of 'collective' or 'joint' dominance is not provided in the scheme of the Act, and as such, the allegation as laid cannot be examined. So far as the issue of abuse of dominance by 'group' is concerned, the same can also be summarily disposed of. The term 'group' has been defined in explanation (b) to section 5 of the Act and by virtue of explanation (c) to section 4 of the Act, the term 'group' is assigned the same meaning for the purposes of section 4 of the Act as well. The term 'group', as defined, means two or more enterprises which, directly or indirectly, are in a position to- (i) exercise twenty-six per cent or more of the voting rights in the other enterprise; or (ii) appoint more than fifty per cent of the members of the board



of directors in the other enterprise; or (iii) control the management or affairs of the other enterprise.

11. From the definition of the term 'group', it is evident that for two or more entities to fall within the ambit of the term 'group' as defined, the same *inter alia* need to 'control the management or affairs of the other enterprise'. As the PSUs, which are controlled by the Government, are not controlling the management or affairs of each other, they may not be considered as 'group' *inter se* for the purposes of the Act. Thus, the oil companies do not constitute a 'group' as envisaged under explanation (b) to section 5 of the Act.

12. In the aforesaid backdrop, the Commission has examined the dominance of an individual oil company, if any, in the relevant market in light of the factors mentioned in the Act.

13. From the Agreement For Dealer Control Outlets, it appears that the oil companies are engaged in the business of refining and sale of petroleum products (Petrol/ HSD/ Motor Oil/ Grease *etc.*). Thus, to examine the allegations made by the informant, the relevant market in the present case may be considered as the market for refining and sale of petroleum products (Petrol/ HSD/ Motor Oil/ Grease *etc.*) in India.

14. To assess the dominance, an analysis of the relevant market with respect to installed refining capacity was undertaken. From the data obtained from the website of Ministry of Petroleum and Natural Gas, it appears that the share of public sector undertakings with respect to crude oil refining capacity in 2011 was 62.38% which was further reduced to 56.35% in 2012. The share of private sector with respect to refining capacity was 37.62% and 36.61% during the said period respectively. It may also be pointed out that in 2012 the joint venture share was 7.04%.



15. From the above, it appears that collectively public sector undertakings have a dominant share with respect to refining capacity in comparison to private and joint ventures.

16. Furthermore, on examination of the distribution of installed refining capacity within the public sector undertakings, it is evident that the share of IOCL, in 2011 was 46.37% whereas in 2012, it was reduced to 45.14%. It is also pertinent to note that the share of each individual public sector player other than IOCL is less than 20% for both the years.

17. On examination of the share of IOCL with respect to installed refining capacity for the industry as a whole, it appears that the share of IOCL was only 28.92% in 2011 which was reduced in 2012 to 25.44%.

18. In the aforesaid backdrop of the market structure, it appears that none of the player in the relevant market is in a dominant position. Hence, the issue of abuse of dominant position by any of the oil companies does not arise for consideration.

19. Now, the contravention, if any, by the oil companies of the provisions of section 3(4) read with section 3(1) of the Act may also be examined. It is not in dispute that the oil companies and the dealers are at different stages/ levels of the production chain in different markets. As such, the dealer agreements between oil companies and the dealers may be examined within the discipline of section 3(4) of the Act. To examine the contravention of the provisions of section 3(4) read with section 3(1) of the Act, the impugned clauses of the agreement need to fall *inter alia* in the categories mentioned in section 3(4)(a)-(e) of the Act. The informant appears to be aggrieved by clause 62(a) whereby any dispute arising under the agreement is to be referred to the Director (marketing) of IOCL. Such a stipulation does not appear to fall in any of the aforesaid clauses of section 3(4) of the Act. Even otherwise, nothing unfair or anti-competitive can be gathered therefrom.



20. Furthermore, the informant is specifically aggrieved by clause 42 whereby the Guidelines issued by IOCL are to be observed by the dealers. It appears that the Marketing Discipline Guidelines relate to the following aspects: Procedure for handling of products at Retail Outlets by dealers; Receipt of product; Decanting of product; Stock/ price controls; Quality/ Quantity control measures; Observance of statutory & other regulations; Customer service & general amenities; Industry Guidelines for Sample collection and Testing; Handling of MS/ HSD/ SKO at Company's storage points and Duties of Oil Companies; Quality/ Quantity checks; Sealing/ GPS; Training of dealer/ dealer's staff; Maintenance of Company's equipments at Retail Outlets; Dispensing units – Standardizations of report; Maintenance of pumps & other equipments; Rectification of defects in Dispensing units/ pipeline/ tanks; Detection of presence of water in tanks; Type of Irregularities at Retail Outlets; Adulteration of product and; Short delivery of products *etc. etc.*

21. In the absence of any specific challenge to any such guidelines, it is not readily discernible as to which guideline is perceived to be anti-competitive by the dealers. It appears that the guidelines relate to quantity and quality control aspects and as such the same do not appear to fall foul of any of the provisions of the Act.

22. Further, it may be noted that to establish the contravention of the provisions of section 3(4) read with section 3(1) of the Act, the impugned agreement must be found to cause, or is likely to cause an appreciable adverse effect (AAEC) on competition in India. To determine AAEC, the Commission has to give due regard to the factors mentioned in section 19(3) of the Act. On a *prima facie* competition assessment of the impugned agreement in respect of retail sale of petroleum products, it appears that such an agreement is neither likely to create any barriers to 'new entrants' in the market nor does such an agreement drive existing competitors out of market. The impugned agreement



also does not seem to foreclose competition by hindering 'entry' into the market.

23. From the analysis of the market structure and the averments made in the information, no case of contravention of the provisions of section 3(4) of the Act is made out.

24. No allegation of collusion among the oil companies in having similar clauses in the dealer agreements is made or otherwise disclosed on the material available on record.

25. In view of the above discussion, no case of contravention of the provisions of sections 3 and 4 of the Act is made out against the opposite parties.

26. Looked at from any angle, the Commission is of opinion that no case of contravention of the provisions of the Act is made out against the opposite parties and the information is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.

27. It is ordered accordingly.

28. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Geeta Gouri)
Member



**Sd/-
(Anurag Goel)
Member**

**Sd/-
(M. L. Tayal)
Member**

**Sd/-
(S.N. Dhingra)
Member**

**Sd/-
(S. L. Bunker)
Member**

New Delhi

Date: 11/02/2014