

COMPETITION COMMISSION OF INDIA

Dated : 20th December, 2011

Case No. 50/2011

Information Filed by:

Gujarat Textile Processors Association

Information Against:

Gujarat Gas Company

And

Case No. 02/2011

Information Filed by:

Government of Gujarat

Information Against:

Gujarat Gas Company

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

The Commission vide its order dated 19.10.2011 has consolidated the information filed in case no. 50/2011 and 02/2011. By way of the present common order the Commission shall dispose of the above two cases.

2. The facts of case No. 50/2011 and 2/2011, in brief, are as under:-

- 2.1 In case No 50/2011, the information was filed on 30.08.2011 under Section 19(1) (a) of the Competition Act, 2002(the Act) by South Gujarat Textile Processor Association (the Informant) against M/s Gujarat Gas Company Ltd. (the Opposite Party). It has been submitted in the information that the Opposite Party is a sole/dominant player in the relevant market of Compressed Natural Gas Distribution and Transmission in the cities of Surat, Bharuch and Ankleshwar in state of Gujarat.
- 2.2 The Informant has alleged that the Opposite Party is abusing its dominant position by imposing unilateral, unreasonable and arbitrary conditions in the supply of gas under the Gas Supply Agreements entered into between the Opposite Party and the Textile Processing Industries operating in the said area. The Opposite Party amended its gas supply agreement, from time to time, introducing new terms & conditions, e.g. first amendment agreement introduced the concept of 'Net Caloric Value' as a basis of pricing the gas; second amendment introduced the concepts of Restrictive Supply Level (RSL), Daily Contracted Quantity (DCQ) and Excess Gas Price (EGP) while retaining the Minimum Guarantee Off take (MGO) concept, and third amendment agreement changed the basic gas price as well as the mechanism of pricing the gas. The Opposite Party hiked gas prices in the recent past- an increase of 25% during the year 2010-2011.

- 2.3 As per the Informant, the Opposite Party being the sole supplier of Compressed Natural Gas (CNG) in the area of South Gujarat is further abusing its dominant position to reap windfall profits by inflating the price of gas and by creating artificial scarcity of the availability of natural gas.
- 2.4 The Informant has submitted that the Petroleum and Natural Gas Regulatory Board Act, 2006 laid down a structure, for the establishment of a single City Gas Distributor (CGD), with a specified marketing and network monopoly. There were formidable entry barriers for any new entrant which reinforced the virtual monopoly of the Opposite Party. The Informant thus prayed for an inquiry against the Opposite Party and its parent / affiliate company, as a single economic entity, under sections 3 and 4 of the Competition Act, 2002 (herein after 'the Act') and for directions to the Opposite Party to discontinue such anti-competitive conducts.
- 2.5 In case No. 2/2011, on 10.08.2011, a reference was made by the Government of Gujarat under section 19 (1)(b) of the Act alleging abuse of dominant position by the Opposite Party in increasing the price of CNG and natural gas supplied by it in the district Surat of Gujarat. It is stated in the reference that Opposite Party as per its own admission and the information given by it on its website is "the largest private sector player in the natural gas transmission and distribution business" and thus a dominant player. The abuse of dominant position by the Opposite Party is alleged in the natural gas supply market of Surat because of its increase in the price of natural gas, absence of competing market forces and monopolistic control of natural gas supplies aggregated by the Opposite party and then distributed within the district of Surat.
3. The Commission considered both the matters in its meeting held on 24.08.2011 and decided that comments of Petroleum & Natural Gas Regulatory Board (PNGRB) be sought. Accordingly, letter dated 24.08.2011 was sent to PNGRB along with the copy of information. PNGRB vide its letter dated 28.09.2011 stated that the Opposite Party is a regulated entity covered under the provisions of PNGRB Act, 2006 and as per the relevant regulations, Competition Commission of India should take an appropriate view in the matter.
4. In the present matter the allegations levelled against the Opposite Party are in relation to its abusive conduct arising out of its dominance in the relevant market. Section 4 of the Competition Act, 2002 deals with abuse of dominant position and in the facts of the present case, the Informant has made specific averments of contravention of section 4 of the Act. Considering the whole scheme and ambit of the Act, it is manifestly clear that if any entity is found to be engaged in any anticompetitive conduct the Commission has not only mandate but also under a duty to examine such cases to prevent distortion in the competition in the particular market. In the aforesaid context it is the CCI alone which has the jurisdiction to deal with issues of abuse of dominance under section 4 of the Act.
5. It is observed by the Commission that the Opposite Party is enjoying a position of monopoly in the transmission and distribution segment of Compressed Natural Gas and

Natural Gas in the geographical area of Surat District. It is noted by the Commission that there is nothing on record to indicate that the Opposite Party is charging alleged unfair or discriminatory price of gas from the Informant and other consumers. The Informant has also not given any data which suggests that the price being demanded by the Opposite Party is excessive, unfair or discriminatory. The price of gas is uniformly applicable to all the consumers of the Opposite Party. Similarly, the other alleged terms and conditions which have been imposed upon Informant are uniformly applicable to other buyers/ consumers. Thus, it is not discernable from the record that how the alleged amended conditions in the agreements can be termed unfair or discriminatory.

6. Although, the Informant has not given the data of pricing and margins of other companies supplying the similar product in some ~~another~~ geographical market, but as per the information available on public domain, the operating margins of the Opposite Party and Indraprasth Gas Limited (IGL), another company supplying the similar product in another geographical market indicates that the margins of IGL is higher than the Opposite Party. Normally there should not be considerable difference in the margins if both entities are involved in the same type of businesses. The Opposite Party and IGL belong to the same sector with same product portfolio though operating in different geographical areas. Prima facie this fact strengthens the inference that the Opposite Party is not imposing unfair or discriminatory price or condition in sale of relevant product.
7. In view of the above discussion, the Commission prima facie is of the opinion that the conduct of the Opposite Party is not abusive in terms of the provisions of section 4 of the Act and there is no prima facie case made out for referring to the DG for investigation under section 26(1) of the Act. Accordingly, the proceedings of the case no 50/2011 and 02/2011 are hereby closed under section 26(2) of the Act. However, it is made clear that nothing stated herein shall preclude the informant from availing remedies as may be otherwise available in law.
8. Secretary may accordingly inform the Parties.

Sd/-
Member (C)

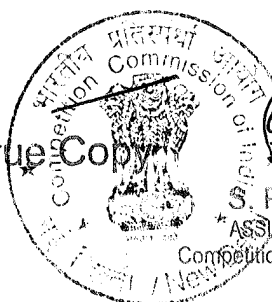
Sd/-
Member (R)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Chairperson

Certified True Copy



S. P. GILL
S. P. GILL
* ASSISTANT DIRECTOR
Competition Commission of India
New Delhi

Ballant
17/01/2012