COMPETITION COMMISSION OF INDIA

Dated 21.12.2011

In re.

Case No 50/2011

Filed by: Gujarat Textile Processors Association, Surat, Gujarat

Against: Gujarat Gas Company Ltd., Ahmedabad, Gujarat

With

Ref. Case No 2/2011

Filed by: Government of Gujarat

Against: Gujarat Gas Company limited

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

This order shall dispose of Case No. 50/2011 & Ref. Case No. 2/2011, as both were consolidated vide Commission's Order dated 19.10.2011.

2. In Case No. 50/2011 the information has been filed by South Gujarat Textile Processor Association (The Informant) against Gujarat Gas Company Ltd., (The Opposite Party) on 30.8.2011. In the information the informant has submitted that the opposite party was a sole / dominant player in the relevant market of "Compressed Natural Gas Distribution & Transmission" in the cities of Surat, Bharuch and Ankleshwar in the State of Gujarat.

3. The informant alleged that the Opposite Party was 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 OP Company 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 – a price increase of 25% during the year 2010-2011, abusing its dominant position.

4. It is submitted that in the relevant market of CNG, Opposite Party operated as a sole supplier of compressed natural gas. The Opposite Party thus enjoyed a dominant position, having sufficient market power, to influence price and distribution pattern in the relevant market. It is further submitted that BG Asia Pacific Holdings, which is a 100% subsidiary of British Gas PLC, United Kingdom holds 65.12% share in the opposite party. The BG group was located in United Kingdom and spanned across 5 continents.

5. The informant has also stated 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.

6. In ref. Case No. 2/2011 reference has been made by Government of Gujarat under section 19(1)(b) of the Competition Act, 2002 read with Section 4 of the Competition Act, 2002 on 10.8.2011 alleging abuse of dominant position by the Opposite Party because of its increasing the price of Compressed Natural Gas (CNG) and Natural Gas supplied in the district of Surat, Gujarat . It is stated in the reference that GGCL as per its own admission and the information given by it on its website was "the largest private sector player in the natural gas transmission and distribution business" and was thus a monopoly and dominant player. The abuse of dominant position by GGCL is alleged in the natural gas supply market of Surat because of its increase in the price of natural gas and because of absence of competing market forces and because of monopolistic control of natural gas supplies aggregated by GGCL and then distributed within the district of Surat. In the reference an interim relief u/s 33 has also been prayed seeking a restrain on GGCL from abusing their dominant position and not to

impose, collect and enforce the increase in natural gas price undertaken by it, with effect from July 12, 2011.

7. The Commission considered both the matters in its meeting held on 24.8.2011 and decided that comments of the PNGRB be sought. Accordingly letter dated 24.8.2011 was sent to PNGRB along with the copy of information. PNGRB had sent a letter dated 28.09.2011 stating that GGCL is a regulated entity covered under the provisions of PNGRB Act, 2006 and as per the relevant regulations, CCI should take an appropriate view on the matter.

8. The distribution and transmission of Natural Gas is subject to the control & regulation of Petroleum & Natural Gas Regulatory Board Act, 2006. The Act applies to refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas. It also lays down a structure for the establishment of a single City Gas Distributors (CGD) to have a specified marketing and network monopoly. Thus distribution and transmission of Natural Gas is a "Regulated Industry" and the single City Gas Distributors Regulation under the Act displaces competition to create a monopoly.

Section 11 of the PNGR Board Act, 2006, relating to the functions of the Board runs as under:-

"The Board shall"-

(a) protect the interest of consumers by fostering fair trade and competition amongst the entities;

(b) register entities to-

(i) market notified petroleum and petroleum products and, subject to the contractual obligations of the Central Government, natural gas;
(ii) establish and operate liquefied natural gas terminals;
(iii) establish storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations;

(c) authorise entities to-

(i) lay, build, operate or expand a common carrier or contract carrier;
(ii) lay, build, operate or expand city or local natural gas distribution network;

(d) declare pipelines as common carrier or contract carrier;

(e) regulate, by regulations,-

(i) access to common carrier or contract carrier so as to ensure fair trade and competition amongst entities and for that purpose specify pipeline access code;
(ii) transportation rates for common carrier or contract carrier;
(iii) access to city or local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipeline access code;

(f) in respect of notified petroleum, petroleum products and natural gas-

(i) ensure adequate availability;
(ii) ensure display of information about the maximum retail prices fixed by the entity for consumers at retail outlets;
(iii) monitor prices and take corrective measures to prevent restrictive trade practice by the entities;
(iv) secure equitable distribution for petroleum and petroleum products;
(v) provide, by regulations, and enforce, retail service obligations for retail outlets and marketing service obligations for entities;
(vi) monitor transportation rates and take corrective action to prevent restrictive trade practice by the entities;

(g) levy fees and other charges as determined by regulations;

(h) maintain a data bank of information on activities relating to petroleum, petroleum products and natural gas;

(i) lay down, by regulations, the technical standards and specifications including safety standards in activities relating to petroleum, petroleum products and natural gas, including the construction and operation of pipeline and infrastructure projects related to downstream petroleum and natural gas sector;

(j) perform such other functions as may be entrusted to it by the Central Government to carry out the provisions of this Act.

9. It is apparent from reading of Section 11 of PNGR Board Act, 2006, that the Board has enough powers to monitor and regulate the prices of gas. It has powers to take corrective measures to prevent restrictive trade practices by the entities. The Board has also power to secure equitable distribution of the gas.

The opposite party in this case was obliged to maintain price of the Compressed Natural Gas(CNG) as directed by the Board under PNGR Board Act.

10. It is not alleged by the informant or the Gujarat Government that the Opposite Party was charging prices higher than what was prescribed by the Board.

11. Section 4(1) of the Competition Act puts an obligation on the Competition Commission to ensure that no dominant enterprise abuses its dominant position. Section 4(2) of the Competition Act provides as to under what circumstances abuse of dominant position by an enterprise can arise.

12. Where an enterprise directly or indirectly imposes unfair and indiscriminatory condition in the sale, purchase and pricing of goods or services, amounting to abuse of its dominant position. CCI has to act under the Competition Act. However, in the present case the legislature has created a separate regulator for goods and services being provided by the opposite party and the separate regulator has to ensure not only adoption of fair practices by the opposite party but has also to monitor price and take corrective measures to check the enterprise from becoming unfair to consumers and to see that it complies with provisions of PNGR Board Act.

13. It is settled law that where a special law has been enacted by the Parliament for a subject, general law will have no application.

14. Since PNGRB Act is a special legislation for regulating the price mechanism and to ensure fair trade and competition among the entities, the Competition Act cannot be invoked complaining increase in price or unfair conditions.

15. In view of above discussion I am of the opinion that prima facie no case is made out, from the information for investigation and it is a fit case for closure

under Section 26 (2) of the Competition Act. However, it is made clear that nothing stated herein shall preclude the informant from availing remedies as may be otherwise available in law.

16. Secretary may accordingly inform the parties.

Sd/-
Member (D)

Certified True Copy

17/01/2012

P.I.GAHLAUT
ASSISTANT DIRECTOR
Competition Commission of India
New Delhi