COMPETITION COMMISSION OF INDIA

CASE REF: **Case No. 69/2011**

14th December, 2011

Filed by (Informant): Punjab Petroleum Transporter & Tanker Workers Union, Sangrur, Punjab.

Against (Opposite Party)

1. Indian Oil Corporation Ltd, Chandigarh
2. Indian Oil Corporation Ltd, Pipeline Terminal, Sangrur, Punjab
3. Ministry of Petroleum, New Delhi

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

1. The present information has been filed by Punjab Petroleum Transporter & Tanker Workers Union (hereinafter referred as the "Informant") on 02.11.2011 under Section 19(1) (a) of the Competition Act, 2002 (hereinafter referred as the "Act") against Indian Oil Corporation Ltd (hereinafter referred as the "IOCL") for abuse of its dominant position in the tendering process for procurement of transportation service for supply of its oil products. The Ministry of Petroleum (hereinafter referred as the "MoP"), Government of India has been made party in the case by the informant.

2. **Facts and Allegations**

2.1 As per the information, the Opposite Party, IOCL is a leading public sector registered company in India and is engaged in marketing of petroleum products through its retail outlets in India. The informant is a registered union of the Punjab Petroleum Transporter & Tanker Workers and is engaged in the transportation of the petroleum products of IOCL from

its Pipeline Terminal situated at Sangrur, Punjab to its retail outlets situated at different places in India.

2.2 As per the information, for its business operations IOCL requires the transportation services provided by the informant. As a practice, the transportation services are procured by IOCL by following an open tendering process wherein all the eligible service providers are given a chance to participate in the bidding process. The present allegation of the informant relates to certain alleged unfair conditions in the tender notification.

2.3 As per the informant, in the year 2005 IOCL issued a tender brochure for procurement of the transportation services for transportation of its petroleum product for the year 2006-08. As per the information clause 11 of the said tender stipulates following conditions:

(a) Tenderer must own at least one tank truck in their name i.e. in the name of the firm or partner or director or proprietor. Additional tank trucks offered may be owned or attached. For award of contract, preference will be given to the tank trucks owned by the tenderer.

(b) In case of attached tank trucks offered by the tenderer, owners of such tank trucks should execute affidavit attaching the tank truck with the tenderer for the full period upto last date of the proposed agreement period. Format of affidavit is enclosed with tender form. Oil Companies will not deal with the owners of the attached tank trucks. For any claim, losses, damages, etc. for the attached tank truck, the liability will solely rest with the tenderer."

2.4 The informant has submitted that as per the above clause all the transporters whether they are the Retail Outlet dealers owning tank trucks or transporters owning tank trucks were at par to compete in the open market for the transportation of the product to be supplied by the Indian Oil Corporation and there was no discrimination.

2.5 In the year 2008, IOCL has issued a tender having No. PSO/OPS/POL/BULK/2008/SSR/01 for transportation of its oil products for the year 2008. In the said tender brochure, IOCL has modified the terms and conditions of clause 11 and added certain further conditions. Such conditions include:

a. Tenderer should offer minimum five tank trucks out of which minimum two tank trucks should be owned by the tenderer in its name i.e. in the name of the firm or partner or company or proprietor. Additional tank trucks offered may be owned or attached.

b. In case of attached tank trucks offered by the tenderer, owners of such tank trucks should execute affidavit attaching the tank truck with the tenderer for the full period up to last date of proposed agreement period. The IOCL shall not deal with the owners of the attached tank trucks. For any claim, losses, damages etc for the attached tank truck, the liability shall solely rest with the tenderer.

c. Retail Outlet dealer/Direct Customer may offer tank trucks as per requirement for their own supplies only and all the tank truck should be owned by the Retail Outlet Dealer/ Director Customer.

d. Retail Outlet dealer, who owns tank trucks and has part utilization of offered tank truck/s considering own requirement can form consortium with other IOCL Retail Outlet dealers who are not having tank trucks and in that even following additional terms shall be applicable:-

i. The tank truck/s offered by the tenderer shall be utilized only for the supplies to Retail Outlet dealers of the consortium under the arrangement.

ii. No change in the consortium shall be permitted during the entire contract period. However, IOCL at its sole discretion may allow reconstitution in the consortium considering operating feasibility on prior written request of the tenderer or on its own at any time during the contract period.

iii. It is responsibility of the tenderer to obtain an undertaking from the other consortium Retail Outlet dealers as per the performa enclosed in this tender document and submit the same along with the tender.

iv. It shall be entirely responsibility of the tenderer to resolve the disputes, if any, amongst the consortium Retail Outlet dealers.

v. In case of any dispute or difference amongst members of the consortium for any reason whatsoever, IOCL shall not be responsible for non-utilization of the tank truck/s offered by the tenderer.

vi. IOCL shall have the discretion to make alternative arrangement for supplies to consortium members in the event of any exigency subject to any condition that IOCL may prescribe.

e. Retail Outlet dealer desirous to offer tank trucks more than their own requirement shall fulfill the norms of minimum offer of tank trucks and minimum owned tank trucks as per clause 11(a). These Retail Outlet dealers shall earmark the owned tank trucks as per requirement for their own supplies and these tank trucks shall not be used for other

transportation work. In case the RO dealer not ear-marking trucks for their own supplies, the supplies to their outlet shall be made at the discretion of IOCL.

2.6 As per the informant, the above conditions in the tender show that the Retail Outlet dealers having oil tankers were permitted to formulate the consortium and were entitled to add two petrol pumps who did not own any tank truck. The informant has alleged that by imposing the above stated conditions in the tender brochure, IOCL has favoured the Retail Outlet (RO) Dealers owning tank trucks to form a consortium with the other Retail Outlet Dealers who do not own the tank trucks.

2.7 Further, it has been stated that in the peak season *i.e.* starting from 15th April till 15th July and from 15th Oct till 31 Dec. the transporters with tank trucks are getting limited business of transportation of the product as the Retail Outlet Dealers owning tank trucks are not able to supply as per the demand. During the rest of the season, the whole business of transportation of the product is captured by the Retail Outlet Dealers owning the tank trucks because of the preference given to them by the IOCL to form a consortium for the supply of the product with the other Retail outlet dealers not owning the tank trucks. As a result, the Retail Outlet Dealers with tank trucks are earning three times higher than the informant who is having only tank trucks. Furthermore nothing was taken into consideration during that period regarding the return trip distance which was causing loss to the Tank Trucks owners. The RO dealers had formed a consortium with nearby outlets and the tank truck owners had to make supplies to outlets situated comparatively at far off places. IOCL created two classes for the transportation of the product, one with the Retail Outlet and one without the Retail Outlet. The class with the Retail Outlet owning the tank trucks was given benefits of forming the consortium and in a way monopoly was created by the IOCL in favour of the Retail Outlet Dealers. Thus, IOCL has abused its dominant position by discriminating between the owners of the tank trucks with the Retail Outlet and without the Retail Outlet.

2.8 The informant has approached the IOCL to stop the line of action being taken during this period and for closing the arrangement of consortium between the Retail Outlet Dealers and to equalizer the return trip distance but to no effect.

2.9 Further, on 11.10.2011, IOCL published a tender having No. PSO/OPS/POL/TT/MS-HSD/BULK/2011/03 for procurement of transportation service for the year 2012-2013. The

said tender notice also contained the same unfair terms and conditions as in 2008 tender notice.

2.10 It has been alleged by the informant that instead of addressing the grievance of the informant who are only owners of tank trucks, IOCL has again allowed the Retail Outlet Dealers who have tank trucks to formulate consortium with the Retail Outlet Dealers who do not have tank trucks. Rather the Retail Outlet Dealers with oil tankers have been given a free hand in the transportation of the oil products. It has resulted into four time gains to the Retail Outlet Dealers having their own Oil tankers and 75% loss to others like the informant who have only tank trucks.

2.11 The informant further alleged that IOCL have created a barrier to the tank trucks owners without Retail Outlet(s) and it has forced the informant to oust from the competition by giving special benefits to the Retail Outlet Dealers with oil tank trucks. It is averred that they are left with no other option but to close their business as they are not in a position to complete in the market due to unfair and discriminatory situation created by IOCL.

2.12 The informant has alleged that the said action of IOCL has created monopoly situation for the Retail Outlet Dealers having oil tank trucks and the other persons like the informant have been forced to withdraw from the market as they cannot compete in the market. As per the informant their livelihood right has been snatched by IOCL through imposition of unfair and discriminatory conditions in the tender notification.

2.13 The informant has stated that such discriminatory and unfair conditions are not there in the procedure for transportation of products in other companies involved in the same business like Bharat Petroleum and Hindustan Petroleum.

2.14 As per the informant, the said act of IOCL has adversely affecting the competition in the market by giving special benefits and preference to the Retail Outlet Dealers owning the tank trucks.

2.15 In addition to the above in 2009-2011, IOCL has allowed the transporters to transport the petroleum products who did not even participate in the tender like Sahota Filling Station, Kurali Distt. Ropar, Taiwan Kishan Service Station, Banaur Distt. Patiala, Dev Filling Station, Bassi Pathanan Distt., Fatehpur, Sahib Bhangu Filling Station, Morindo Distt, Ropar and Jasbir Filling Station, Bhateri Distt, Fatehgarh Sahib.

3. The Informant sought for the following relief:

i. To pass an order to initiate an inquiry in the matter;

ii. To direct the Opposite Party for the discontinuation of all the arbitrary clauses in the agreement;

iii. To direct the Opposite Party to modify the tender to the extent and in manner as may deem fit;

iv. To impose penalty on the Opposite Party;

v. To award compensation for the loss of revenue;

vi. To issue directions for restraining the opening of the tender fixed for 08.11.2011; and

vii. To pass any such other order as the Commission may deem fit.

5. The essence of allegations of the informants in the present matter is that being the dominant enterprise in the relevant market, IOCL is imposing unfair and discriminatory terms and conditions in the tender notification for procurement of transport service provided by the tank truck owners which amounts to abuse of dominant position by IOCL under the provisions of Section 4 of the Act. Thus, in the present matter, for the purposes of *prima facie* evaluation under section 19 (4) read with section 19(5), the relevant market may be delineated as **"services for transportation of petroleum products by tank trucks in India".**

6. It is observed from the information that IOCL is a registered company and is engaged in marketing of petroleum products through its retail outlets in India. The activities performed by IOCL are covered in the definition of enterprise as given in Section 2 (h) of the Act.

7. For applicability of the provisions of Section 4 Act in the matter, the dominance of the Opposite Party in relevant market is a *sine qua non.* From the information submitted by the informant and available on record it is appears that the Opposite Party in the present case , *prima facie,* are not in a dominant position in the relevant market. Tank truck transportation service is procured by other oil marketing companies in India as well as some other enterprises dealing in bulk petroleum products. The informant itself states that other oil marketing companies do not have such clauses in their tenders. Thus, there is no *prima facie* indication that IOCL has the ability to operate independently of market forces as a purchaser of tank truck services.

8. Moreover, IOCL is the purchaser of tank truck transportation services and a purchaser/buyer has every right to prescribe terms and condition for purchase of commodities in the market. Expression of consumer preference for goods or services or prescription of terms and conditions in the tender notice cannot be considered as discriminatory and therefore, *prima facie* is not violation of the provisions of Section 4 of the Act in the matter by IOCL.

9. Further, from the perusal of the information it is aptly clear that the matter is not covered under the provisions of section 3 (3) of the Act since there is no allegation of a horizontal agreement between IOCL and other enterprises engaged in similar or identical trade. Furthermore, there is no restriction on the tank truck owners to supply their services to any other enterprise. There is no *prima facie* indication that the suppliers of tank truck services are being subject to any anti-competitive vertical restraint by IOCL. Therefore, there is no *prima facie* contravention of section 3(4).

10. In view of the above, and after considering the entire material on record, the Commission is of the opinion that no *prima facie* case of contravention of provisions of either section 3 or section 4 of the Act is made out for making a reference to the Director General for conducting investigation into this matter under section 26 (1) of the Act and the proceedings relating to this information are required to be closed forthwith under section 26(2) of the Competition Act.

11. Secretary is directed to inform the informant accordingly.

Sd/-
Member (G)

Sd/-
Member (R)

Sd/-
Member (GG)

Sd/-
Member (AG)

Sd/-
Member (T)

Sd/-
Chairperson

Certified True Copy

05/01/2012

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