

**COMPETITION COMMISSION OF INDIA**

14<sup>th</sup> December, 2011

**Case No. 69/2011**

Filed by	Punjab Petroleum Transporters & Tanker Workers Union, Punjab-148001.	Informant
Against	i) Indian Oil Corporation Ltd., Chandigarh, ii) Indian Oil Corporation Ltd., Pipeline Terminal, Sangrur, Punjab. iii) Union of India, through Secretary, Ministry of Petroleum, New Delhi.	Opposite Party

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

The informant, a union of transporters and tank workers, has filed this information alleging abuse of dominant position by Indian Oil Corporation Ltd. (IOL).

The contention of the informant is that IOL for the supply of oil through their agencies used to invite tenders from tank truck owners. In the year 2005, IOL issued a tender brochure which contained clause 11 of terms & conditions. This clause 11 was modified in the tender brochure for the year 2008 and following addition was made in the tender conditions :-

- "d) RO dealer, who owns tank truck/s and has part utilization of offered tank truck/s considering own requirement, can form consortium with other IOC RO dealers who are not having tank trucks and in that event following additional terms shall be applicable.
- i) the tank truck/s offered by the tenderer shall be utilized only for the supplies to RO dealers of the consortium under the arrangement.
  - ii) No change in the consortium shall be permitted during the entire contract period. However, IOC 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 the responsibility of the tenderer to obtain an undertaking from the other consortium RO 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 RO dealers.





- v) In case of any dispute or difference amongst members of the consortium for any reason whatsoever, IOC shall not be responsible for non utilization of the tank truck/s offered by the tenderer.
- vi) IOC shall have the discretion to make alternative arrangement for supplies to consortium members in the event of any exigency subject to any condition that IOC may prescribe.
- e) RO 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) above. These RO dealers shall ear mark 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 tank trucks for their own supplies, the supplies to their outlet shall be made at the discretion of IOC.

It is submitted that the introduction of this additional condition in the tender document created a monopoly of the business in favour of those retail outlets who owned tank trucks while previously the business was evenly distributed amongst all tank truck owners who were transporting oil to retail outlets not having tank trucks. After this condition, the retail outlets having tank trucks cornered most of the business by forming consortium and a huge loss was caused to the members of the informant. It is also stated that the respondent has created an extra barrier to tank truck owners without retail outlets and thus abused its position of dominance. The members of applicant were left with no option but to close the business. The members who were having only oil tank trucks were thus forced to remain out of the market of transportation. They have sought indulgence of the Commission to protect the interests of the petitioners alleging that the amendment made in clause 11 of the tender document was unfair and arbitrary and a abuse of dominant position by IOL. They have prayed for initiating an inquiry under section 26(1) of the Act into abuse of dominant position and requested for issuance of directions to the respondent to treat the applicant at par with retail outlet dealers owning tank trucks.

The relevant market in this case is the market of transportation of petroleum products. IOL is not in this business of transportation. IOL has only storage depots and from these storage depots, oil is to be transported to different retail outlets. If the relevant market is transportation of petroleum products, IOL cannot be a dominant player.

IOL floats tender from time to time for transportation of oil from its depots to retail outlets. The tender conditions were open and applicable to all equally. The only change made by IOL in the tender document of 2008 was that those retail outlets who had their own tank trucks could not only transport oil for their own requirements but could also transport oil to such retail outlets who did not



own tank trucks by forming a consortium. This condition was applicable to all retail outlets equally and for those retail outlets who did not form part of consortium, transportation of oil was to be done by tank truck owners who were attached to any retail outlet and were doing business independently. Merely because business of some party has gone down does not mean that a competition issue has arisen. A competition issue arises only if the case of informant is covered either under section 3 or section 4 of the Competition Act. In order to attract provisions of section 3 or section 4, the informant must establish the relevant product market and geographic market and the dominance in respect of the relevant market of the opposite party. The Commission cannot direct investigation under section 26(1) of the Act on the basis of closure of business of a party. I find no ground to grant the prayers made by the applicant and consider it to be a fit case to close under section 26(2) of the Act.

Secretary to directed to inform all concerned accordingly. )

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

Sd/-  
Member (D)