

Competition Commission of India

Case No.18/2009

Date 29.12.2010

Mr. Dhruv Suri

Informant

Mundra Port & Special Economic Zone Ltd.

Opposite Party

Order under section 26(6) of the Competition Act, 2002

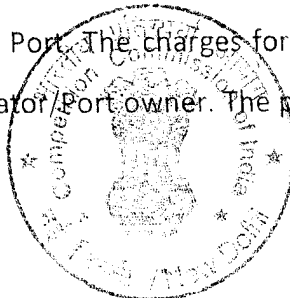
The present information has been filed under Section 19 of the Competition Act, 2002 (hereinafter referred to as 'the Act') against Mundra Port and Special Economic Zone Limited, Ahmedabad (hereinafter referred to as 'opposite party') under section 19 of the Act.

2. The facts in brief, as stated in the information are as under:-

2.1 Opposite party is the Port Service Provider, promoted by the Adani Group and is the owner and the administrator of the Mundra Port. It is India's largest private port.

2.2 In a port there are container terminals which provide services like stevedoring, container storage at terminal yard, shifting of cargo etc. There are two container terminals in Mundra port, one operated by opposite party itself which commissioned its operations in 2007. The other terminal, established in 2003, is operated by Mundra International Container Terminal (MICT).

2.3 As the opposite party is a port owner, it provides the pilotage and berthing services to all the vessels calling at Mundra Port. The charges for these services are collected by opposite party as Port Administrator/Port owner. The pricing of services forms a critical

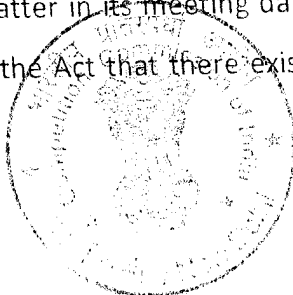


component for shipping line when determining whether to call at a particular port or not.

- 2.4 The opposite party is the only Service Provider at Mundra Port for Marine and infrastructure services for the ships coming into Mundra Port. The tariff published periodically by opposite party for usage of these services at Mundra Port is applicable to both terminals equally.
- 2.5 It has been alleged by the informant that the opposite party, as the provider of port services, though ostensibly charging the same tariff to shipping lines for both terminals, has started giving shipping lines rebates on these charges if they opt to call at its terminal. This practice is persuading, distorting and manipulating the market.
- 2.6 The informant has alleged that the opposite party is abusing its dominant position in one market i.e. the market for supplying services like pilotage, berth ^{9.11.1} higher for incoming ships at Mundra Port to affect another vertical market i.e. purchaser market.
- 2.7 The informant has alleged that the opposite party has;
- a) By imposing an unfair and discriminatory condition in the purchase of goods or services contravened provisions of section 4 (1) and 4 (2) (a) (i) of the Competition Act, 2002;
 - b) By imposing a limitation or restriction in the production of goods or provisions of services or market therefore contravened provisions of section 4 (1) and 4 (2) (b) (i) of the Competition Act, 2002;
 - c) Used its dominant position in one market to unfairly enhance and distort another vertical market in its favour.

ORDER UNDER SECTION 26 (1) OF THE ACT AND INVESTIGATION BY DIRECTOR GENERAL

3. The Commission considered the matter in its meeting dated 30.03.2010 and having formed an opinion under Section 26(1) of the Act that there exists a prima facie case, referred the

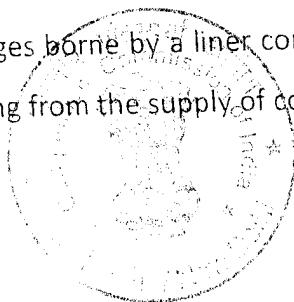


matter to the Director General (DG) for investigation vide order dated 30.03.2010. DG was directed to submit his report within 45 days of the receipt of the Commission's order.

4. The DG after receiving the direction from the Commission got the matter investigated and submitted his report dated 18.10.2010 to the Commission.

REPORT OF DG

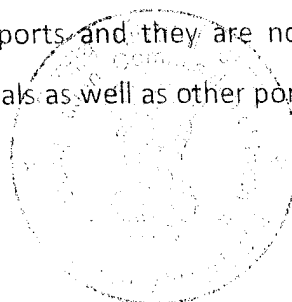
5. Keeping in view that the issue in instant case is related to the abuse of dominant position by an enterprise, the DG identified following issues for investigation :-
- a) Fact finding about the dominant position enjoyed by the opposite party including delineation of relevant market.
 - b) Examination of the abuse of dominant position by the opposite party on account of its action of giving shipping line rebates on port/marine charges to those who call at its own container terminal at Mundra Port.
 - c) Violation of the provisions of the Act relating to abuse of dominance.
6. The DG has delineated the relevant market in the present case as *the market for port services covering the geographical area spread between Gujarat and Mumbai.*
7. During the course of investigation the DG sought responses from the opposite party, its competitors MICT and some of customers of port services (shipping companies). The gist of replies filed by the opposite parties and others before the DG is given below for proper appreciation of the issues involved in this matter.
- 7.1 MPSEZ has submitted that it was constrained to offer discounts/rebates with respect to marine charges in order to meet the competition from the established container terminal MICT operating on the same port. Secondly the rebates account for a small fraction of the total charges borne by a liner company and are directly correlated with the cost efficiencies arising from the supply of combination of services.



7.2 The MICT has stated that though its business has been adversely affected after the commencement of MPSEZ container terminal but it has not attributed the dip in their business volume solely to the discounts offered by MPSEZ in port services. According to MICT its business has shown negative growth in 2009 and 2010 mainly because of competition and due to recession.

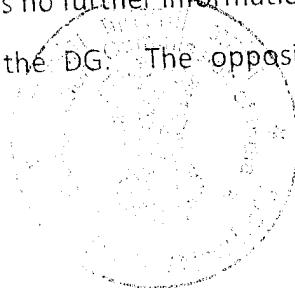
7.3 The Shipping Companies (customers of port services) have submitted that discount offered on port related charges is not a determinative factor in opting for a container terminal. They have further stated that choosing a terminal depends on other ancillary factors like berthing their vessel and various business needs.

8. DG has noted that the ports in Mumbai including Jawahar Lal Nehru Port Trust (JNPT), Nhava Sheva International Container Ltd. (NSCIT), Gate Way Terminal India (GTI) and Mumbai Port Trust (MPT) control a market share of 74% amongst them while the share of Gujarat based ports namely Kandla, Mundra and Pipava have 26% share in the port services. The Mundra port share in the western region is 17% and is shared between MICT and Container Terminal operated by opposite party at 11% and 5% respectively. Based on this market share, the opposite party cannot be regarded as a dominant player in the relevant market based on market share.
9. DG has also noticed that in the year 2009-10, opposite party's business increased to 2,95,575 Twenty -foot Equivalent Units (TEU) while MICT made a business of 6,28,623 TEUs. Therefore, in terms of size and resources also it does not enjoy dominant position over the other ports in the western coast of India.
10. It has been further stated by DG that, the operation by opposite party started in the year 2001, however, its container terminal became operational, only in 2008, whereas MICT started its container terminal in July, 2003. The container terminals at Kandla and Mumbai were all set up much earlier. Further, as per the sea route, shipping lines prefer Bombay based ports over Gujarat based ports and they are not dependent on MPSEZ. Though, opposite party offers cargo terminals as well as other port services, it is not the sole provider



of these services, as other ports are also providing the bouquet of services. Opposite party's container terminal therefore, does not enjoy any commercial advantages over its competitors.

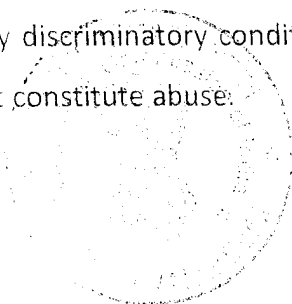
11. DG has observed that there are serious entry barriers in the port business in terms of financial risks, high cost of capital entry and other government legal barriers. However, these barriers cannot be attributed to the conduct of opposite party. As there are a number of port operators operating in the relevant geographic market, the DG has not considered this factor for assessing the dominant position of the opposite party in the present case. As per DG report since all the port operators are contributing to the economic development of the country they are at the same footing.
12. After analyzing the evidence collected during the course of investigation the DG has concluded that discount and rebates offered by opposite party is a common and well accepted business practice and that service providers commonly use the synergies arising from their downstream or upstream integration to offer combination of services. DG, has further concluded that in the relevant market of port services, opposite party is not a dominant player in terms of the parameters set out in Section 19(4) of the Act. DG has also come to the conclusion that there is no evidence of adoption of any exclusionary practice by opposite party, which may be termed as an abuse. Therefore, it has been finally concluded by the DG that there is no substance in the allegations leveled by the informant that opposite party has abused its dominance position by imposing unfair and discriminatory conditions in contravention of section 4 of the Act.
13. The Commission in its meeting dated 09.11.2010 decided to send a copy of the DG's report to the informant as well as the opposite party for filing their objections / replies. The parties were also directed to appear before the Commission, if they so desire, on 09.12.2010.
14. The opposite party through its advocate namely Economic Law practice filed a letter dated 07.12.2010 and stated that it has no further information or objections to file other than what it has already placed before the DG. The opposite party requested to conclude the



proceeding by passing necessary orders. The informant neither appeared before the Commission on the date fixed nor filed any objections. Thus, the Commission decided to dispose of the matter on the basis of material available on record.

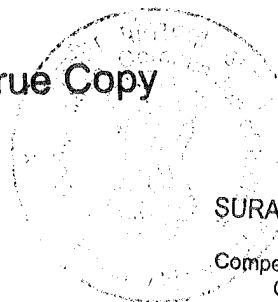
Decision

15. The Commission has carefully considered the information, the report of DG, the documents annexed with the report and the relevant provisions of the Act and is of the view that the DG has correctly defined the relevant market in his report. While determining the relevant market in the present case DG has taken into consideration all the parameters, which are necessary for the determination of relevant geographic market and relevant product market.
16. On close scrutiny of the evidence and material available on record it can be seen that opposite party is offering discount rates only to derive operational efficiencies by streamlining their services. This decision appears to have been taken to improve its bottomline. The first mover advantage lies already with the MICT. There is a longstanding relationship with their clients and port discounts alone cannot be said to be sufficient reason for their clients to shift to other terminal. This conclusion is also supported by the fact that on enquiries made from the Shipping Companies it has been stated by them that decision to opt for any port terminal is taken on various factors like business need and the services offered by the port and port related charges are not determinative factors.
17. It is also observed by this Commission that there are two container terminals at Mundra Port, one is operated by the opposite party and the other by MICT. There is intense inter-port competition between the opposite party and MICT and others for attracting liner traffic on India's West coast. Commission finds force in the contention of the MPSEZ that the discounts were being offered by the OP essentially to meet the stiff competition from MICT, which was the incumbent terminal in Mundra Port and SEZ Ltd., as also from other more established ports on western coast such as Mumbai, JNPT etc. As such as per Explanation to section 4(2) (a) of the Act, any discriminatory condition or price which may be adopted to meet the competition shall not constitute abuse.



18. It is pertinent to mention here that with the abysmal market share of 5% in the relevant market the opposite party cannot be said to be in a dominant position by any stretch of imagination.
19. Furthermore, it is seen that in the year 2009-10, the business of opposite party was 2,95,575 TEUs whereas MICT had done 6,28,623 TEUs. With almost double the volume compared to its competitor, the MICT is in much better position to offer exclusive services with lower rates because of its high volumes. Therefore, in terms of size and resources in the western coast of India, opposite party does not enjoy dominant position over the other container terminals. As far as the question of bouquet of services being offered by opposite party is concerned, there are other ports which are offering similar services.
20. On the basis of foregoing analysis and evaluation of evidence available on record, the Commission is of the view that no contravention of section 4 of the Act by the opposite party is established and the allegations made in the information have no substance. Therefore, the Commission is in agreement with the DG's report and hence, the matter is liable to be closed forthwith.
21. Accordingly, the present case is hereby closed under Section 26(6) of the Competition Act, 2002.
22. Secretary is directed to inform the parties, accordingly.

Certified True Copy



SP Gahlaut
10/26/2011
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Government of India
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