

COMPETITION COMMISSION OF INDIA

Case No. 8 of 2013

10/04/2013

Mr. Keerthy Krishnan & Others

Informants

and

Bharat Petroleum Corporation Limited (BPCL) Mumbai OP-1

Regional LPG Manager (South) BPCL, Chennai OP-2

Territory Manager, BPCL, LPG filling Plant Kochi Refinery OP-3

Territory Manager, BPCL, LPG Bottling Plant Coimbatore OP-4

(collectively 'Opposite Parties')

ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT, 2002

Informants are LPG Cylinder Transporters of Public Sector Oil / LPG Marketing Companies in the State of Kerala and Tamil Nadu engaged in the business of transportation of LPG Cylinders for the last two decades. The opposite parties comprise of OP 1, the oil marketing company, and its various officials.

2. As per the facts stated in the information, OP 1 generally used to call for tenders for transportation of packed LPG Cylinders from their bottling plants to various distributors across the states. The tenders were called under the two-way format by calling for a credential bid and a price bid before awarding the routes to the transporters. As per the existing format the transporters had to fulfill certain conditions including the ownership of the trucks, capacity of the trucks, specification of the trucks and most importantly the age of the trucks to be eligible for being considered for the award of tender.

3. After expiry of the tender in the year 2012, the opposite parties initiated steps to introduce the system of reservation of routes to the LPG distributors and also in fixing the lower ceiling rates for them for the period 2012 – 2015. On becoming aware of the introduction of new clauses, the informants submitted a representation to the opposite parties requesting them not to introduce the new clauses on the ground of them being in violation of the provision of the Competition Act, 2002 ('the Act').

4. The informants contended that since the distribution of LPG cylinders was a distinct and separate service from the transportation business of LPG cylinders, there was no logic or rationale in reserving the contract for transportation to the distributors. The Informants also

raised the issue that the profit making locations were being reserved for distributors, who were covering 65% of the total work effective kilometer with 50% trucks whereas the trucks of the informants were forced to operate for 35% of the total work with 50% trucks.

5. Despite the representation of the informants, the opposite parties called for credential as well as price bid for transportation of packed LPG cylinders only ex. LPG bottling Plant, BPCL Kochi, and PMC bottling plants at Palakkad (KSCCF) and Kannur (MFC). The opposite parties did not call for tenders for all the distribution agencies in the State of Kerala. Presently 85 trucks were running from the Kochin bottling plants to various locations. The opposite parties called bids only for 45 trucks of 306 capacity and 8 trucks of 450 capacity, thus, reducing the tender by nearly 50 per cent. Thereafter, the informants realised that the opposite parties had contacted the LPG distributors and requested them to submit an expression of interest for engagement of box lorries for packed LPG transportation Ex. Kochi Bottling plant. This way OP 1 reserved certain routes for the LPG distributors without calling for tenders which, according to the informants, was anti competitive in nature.

6. The informants alleged that the action of the opposite parties was in violation of Section 4 of the Act as the opposite parties were abusing their dominant position by directly imposing unfair and discriminatory conditions for services and indulging in practices resulting in denial of market access to the complainants. The informant further alleged that since OP 1 reserved 50% of the routes for the distributors and entered into exclusive distribution agreement with those distributors, thereby contravening the provisions of section 3(4)(c) of the Act.

7. On the basis of aforesaid facts and circumstances, the informants have prayed the Commission to initiate an inquiry under the Act against opposite parties about their activities particularly in regard to the reservation of routes to the distributors by relaxing the conditions in the tender.

8. The Commission examined the information and heard the informants at length. The informants alleged contravention of Sections 3(4) and 4 of the Act. Dealing firstly with Section 4, the allegations of the informant relates to the abuse of dominant position of OP 1 in procuring the truck transportation services for transportation of LPG Cylinders. It may be noted that the informant had not defined the relevant market in which the opposite party is alleged to be dominant. On perusal of the information on record, the relevant product market in the instant case appears to be market for 'transportation of goods by trucks' where the Informants are the service providers and OP 1 is the service procurer. As far as relevant geographic market is concerned, it is the whole of India. The informants/truck operators can

provide their services anywhere in India after procuring relevant licenses. Thus, the relevant geographic market in this case would be the territory of India.

9. Considering the relevant product market and relevant geographic market as defined above, the relevant market in the present case would be “*the services of transportation of goods by trucks in the territory of India*”. In this relevant market, OP 1 is not the only service procurer in this relevant product market. Besides OP 1, the Informants can also provide their services to other parties. Trucks are not only used for transportation of LPG Cylinders but can also be used for transportation of other goods and services. Transportation of LPG Cylinders does not require specially designed trucks and the same trucks can be used for transporting other types of goods and services. Thus, the submission of the informant that the truck transportation services is especially utilised by the LPG Cylinder transporters is not acceptable. In this relevant market, apart from other Oil Marketing Companies there are also other players which hire the services of trucks for transportation of goods by road. There are many other sectors such as cement, cereals, etc which depend upon truck transport agencies for transportation of their products. Thus, it appears that there are enough players for hiring truck transportation services in the India. So, OP 1 does not *prima facie* appear to be a dominant procurer of the services of trucks for transportation of goods.

10. Since, OP 1 does not appear to be a dominant buyer/procurer of the services of trucks for transportation of goods by road as alleged by the Informants, the question of abuse of dominance by it does not arise. Even otherwise, none of the provisions of Section 4 of the Act are applicable in the instant case. It is the sole discretion of OP 1 to decide as to how it wants to perform the operation of distribution of LPG cylinders. It could distribute the goods on its own or through a tender by hiring transport services. The decision of OP 1 to introduce changes in the existing practice of delivery of LPG cylinders, based on hiring transport services selected through a tender, to a new model which is partly based on open tender and partly based on agreement with its distributors cannot be inferred to be anti-competitive or denial of market access. Therefore, the facts stated in the information do not provide sufficient material to initiate an investigation for contravention of section 4 of the Act.

11. With regard to Section 3(4) of the Act, it has been averred in the information that the conduct of OP 1 pertaining to reservation of routes for the truck transportation service to its distributors and fixing lower ceiling rates for them amounts to tie-in arrangement which is in violation of section 3(4) of the Act. From the information supplied by the Informants *prima facie* it does not appear to be a case of tie-in arrangement, exclusive supply agreement or exclusive distribution agreement, between OP 1 and its distributors. So far as conditions of

tender are concerned, OP 1 has business liberty for any changes in the tender for its own interests and can procure services from service providers other than the Informant. This is a legitimate business decision which need not be interfered with. Besides, the presence of other buyers of the services of the informant indicates that there is no appreciable adverse effect on competition as such. Thus, *prima facie*, the Commission is of the view that there was no violation of the provisions of section 3(4) of the Act.

12. It may also be relevant to note here that the issues and allegations in the present case are to some extent similar with the issues in case no 69/2011 wherein Punjab Petroleum Transporter & Tanker Workers Union had alleged that by imposing some unfair conditions in the tender notice IOCL had abused its dominant position in the market of tanker truck transportation services in India. The Commission in that case also held that IOCL was not a dominant player in the relevant market of services of transportation of petroleum products by tank trucks in India and the conditions of the tender notice of IOCL were not unfair. Accordingly, the Commission closed the case under Section 26 (2) of the Act.

13. On the basis of aforesaid, the Commission is of the view that there does not exist a *prima facie* case for directing DG to investigate the matter. There is no case either under section 3 or under section 4 of the Act. The case deserves to be closed under section 26 (2) of the Act and is accordingly hereby closed.

14. The Secretary is directed to communicate the decision of the Commission to all concerned accordingly.

Sd/-
H.C. Gupta
(Member)

Sd/-
Geeta Gouri
(Member)

Sd/-
Anurag Goel
(Member)

Sd/-
M.L. Tayal
(Member)

Sd-
Justice (Retd.) S.N. Dhingra
(Member)

Sd/-
Ashok Chawla
(Chairperson)