



COMPETITION COMMISSION OF INDIA

Case No. 30 of 2018

Mr. Meet Shah

B-4, Anmol Apartment
Near Ishwar Bhuvan, Navrangpura
Ahmedabad- 380014
Gujarat

Informant No. 1

Mr. Anand Ranpara

7-Jagnath Plot Corner,
Dr. Radhakrishnan Road
Rajkot- 360001
Gujarat

Informant No. 2

And

Union of India, Ministry of Railways

Through the Chairman, Railway Board
Rail Bhavan, Raisena Road,
New Delhi- 110001
Delhi

Opposite Party No.1

Indian Railway Catering and Tourism Corporation Ltd

Through the Chairman and Managing Director
B 148, 11th Floor, Statesman House,
Barakhamba Road,
New Delhi- 110001
Delhi

Opposite Party No. 2

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member



Present:

- For the Informants: : Mr. Meet Shah, Informant in person
: Mr. Anand Ranpara, Informant in person
- For OP-1 & OP-2 : Mr. Manas Kumar Chaudhuri, Advocate
: Mr. Pranjal Prateek, Advocate
: Ms. Swati Bala, Advocate
: Mr. Jagdish Goyal, Law Officer, OP-2

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

1. The present information has been filed by Mr. Meet Shah and Mr. Anand Ranpara (**Informants**) under section 19(1)(a) of the Competition Act, 2002 (**the Act**) against Ministry of Railways and Indian Railway Catering and Tourism Corporation Ltd. (**the Opposite Parties**), alleging contravention of provisions of Section 4 of the Act.

A. Facts and allegations

2. Brief facts and allegations in the present case are summarised as under:
 - a. The Informants *i.e.*, Mr. Meet Shah and Mr. Anand Ranpara are individuals residing in Ahmedabad and Rajkot, respectively.
 - b. OP-1 is the Ministry of Railways, which controls Indian Railways, a departmental undertaking of the Government of India which is administered by the Railway Board. The Ministry of Railways through Railway Board also owns and administratively controls a large number of Public Sector Undertakings including IRCTC.
 - c. OP-2, IRCTC is a public sector enterprise incorporated under the Companies Act, 1956 and is stated to be an extended arm of Indian Railways. OP-2 is, *inter-alia*, engaged in online ticketing operations of Indian Railways.
 - d. OPs have a website for sale of e-tickets, *i.e.* <https://www.irctc.co.in/nget/train-search> (“**Official Website**”). The official website provides the breakup of the total



fare per passenger. The total fare per passenger comprises base fare, reservation charge, superfast Charge (if applicable) and total GST (if applicable).

- e. As per the pricing policy of OPs published on the official website, rounding off to the next higher multiple of Rs. 5 is included in base fare. Base fare has two components, i.e. actual base fare (the base fare arrived at before rounding off to the nearest multiple of Rs. 5) and total base fare (the base fare arrived at after rounding off to the nearest multiple of Rs.5).
- f. The Informants have alleged that OPs round off the actual base fare to the next higher multiple of Rs.5 to arrive at the total base fare. For example, as per the official website, the total fare per passenger of the Sleeper Class of Ashram Express from Ahmedabad to Delhi is Rs.475 (Base fare: Rs. 425, Reservation charge: Rs.20 and Superfast charge: Rs.30). The actual base fare for the aforesaid journey could be Rs.421, Rs.422, Rs.423 or Rs.424. The total base fare for the said journey is Rs. 425 (after rounding off to the next multiple of 5).
- g. The relevant product market was defined in the Information as the “*e-payment service for online rail ticket booking*”. Further, as the sale of tickets over the internet is not geographically limited, the relevant geographic market was defined as the “*whole of India*”. Accordingly, the relevant market was defined by the Informant as “*e-payment service for online rail ticket booking in India*”.
- h. OPs are stated to be in a dominant position in the relevant market as they are the only ones empowered to ‘*determine the pricing of e-tickets*’. It was alleged that consumers have no choice other than agreeing to the arbitrary, unreasonable and unfair terms and conditions of OPs. Further, due to the statutory and regulatory framework, the dominance of OPs is indisputable.
- i. A large number of e-tickets are booked everyday by passengers through the official website and charging the amount by rounding off to the next multiple of Rs.5 is an unfair condition/price in the sale of e-tickets resulting in unfair income to Indian Railways every day. If one e-ticket is booked for multiple passengers from the



सत्यमेव जयते



same account for the same journey in the same train, the actual base fare for every passenger would be rounded off to the next multiple of Rs. 5. The Informant has explained that if for instance, the actual base fare for a journey is Rs.7 per passenger and four tickets are to be booked then the actual base fare should be Rs. 28 (Rs. 7 X 4), which after rounding off ought to be Rs. 30. However, the OPs round off the actual base fare for each passenger separately with the result that each individual ticket is rounded off to Rs.10 making the charge Rs.40 for all four tickets instead of Rs.30.

- j. It has been further stated that there is no need of rounding the actual base fare to the next multiple of Rs.5 as the e-portal provides facility to make payment of any amount whatsoever, making even transfer of a paisa electronically feasible. Also, lakhs of passengers book e-tickets every day. By resorting to the aforesaid pricing policy, the OPs receive lakhs of rupees over and above the actual base fare.
- k. In view of the foregoing, OPs were alleged by abusing their dominant position by charging higher price than actual base fare for the sale of e-tickets in contravention of Section 4 of the Act. Accordingly, the Informants prayed to the Commission to direct the OPs to discontinue the practice of charging higher amount by virtue of its dominant position and impose such penalty on the OPs as it may deem fit; and pass such other order or issue such direction as it may deem fit.

B. Order under Section 26(1) of the Act

3. The Commission, *vide* its order dated 09.11.2018, was of the opinion that there existed a *prima-facie* case of contravention of provisions of Section 4 of the Act by the OPs. The Commission found that OPs are rounding off the actual fares for the online bookings without any plausible justification and this *prima-facie* amounted to imposition of unfair condition in the market for sale of rail tickets in India, particularly for online booking of rail tickets, in contravention of provisions of Section 4(2)(a)(i) of the Act. Accordingly, the Commission directed the Director General (DG) to cause an investigation in the instant matter and submit the Investigation Report.



C. Findings of investigation

4. The DG pursuant to its investigation submitted the Investigation Report to the Commission on 19.07.2019. The major findings recorded in the Investigation Report are summarised as under:

- a. *OPs as an enterprise*: OP-1 and OP-2 carry out commercial activities and are covered within the definition of enterprise under Section 2(h) of the Act. Reliance has been placed upon the judgment of the Hon'ble High Court of Delhi passed in Writ Petition (C) No. 993/2012 (UOI vs CCI & others) dated 23.02.2012, wherein the Hon'ble High Court, while distinguishing between sovereign functions and non-sovereign functions, has held Indian Railways to be an '*enterprise*' under Section 2(h) of the Act.
- b. *Relevant market*: The relevant product market has been defined as "*the market for sale of tickets by railways*" even though the allegations in the present case only relates to abusive conduct of OPs in e-ticketing services as competition assessment for the purpose of the present case would remain the same as OPs are the only providers of these services through online as well as booking through counters. Relevant geographic market has been defined as whole of India as conditions of competition are homogenous across India. Accordingly, the relevant market has been defined as "*market for sale of tickets by railways in India*".
- c. *Dominant position of OPs*: OP-1 is the sole entity that undertakes transportation of passengers and goods in the country through railways. OP-2, being an extended arm of OP-1, is the only agency selling online tickets of Indian Railways in the relevant market. Based on the analysis of factors under the provisions of Section 19(4) of the Act, investigation revealed that OPs are able to operate independently of the competitive forces prevailing in the relevant market and as a group enjoy dominant position in the relevant market.
- d. The policy of rounding off of passenger fare was first introduced *vide* circular dated 14.03.1995, issued by the Ministry of Railways, pursuant to announcement made by the Minister in his Budget Speech in the Parliament. Rounding off of fares was



सत्यमेव जयते



applicable for second class ordinary and second class, sleeper class (M/E and ordinary) and Rajdhani and Shatabdi Express Trains. Further w.e.f. 01.04.2009 the policy of rounding off to next higher multiple of Rs. 5 of passenger fare was additionally extended to Duronto Trains. From 01.04.2012, the policy was extended to all First Class, AC-II Tier and AC First Class including Executive Class. *Vide* circular dated 11.01.2013, the rounding off of passenger fares to the next higher multiple of Rs.5 was applied to all class of trains except second class ordinary (suburban) w.e.f 22.01.2013. However, in case of second class (suburban) fare, the chargeable fares were also rounded off to the next higher multiple of Rs.5 except where the last digit (i.e. in unit's place) of the figures are "1" or "6". In such cases, the fares are rounded off to the immediate lower multiple of Rs.5. Presently this policy is applicable. OP-2/IRCTC stated that it only provides the facility of online platform for transacting with OP-1's passenger reservation system through internet for passengers to book the tickets. OP-2, on the date of filing of information, did not charge any service charge or commission or fee at present for internet ticketing from its customers.

- e. Investigation found that railway tickets can be booked through IRCTC website, mobile apps, ticket counters and registered agents. Ticket sales can be classified into reserved and unreserved segment and bulk of tickets are sold in unreserved sector. Both reserved and unreserved tickets can be booked online or at the ticket counters. For the period 2015-2016 to 2018-19 (upto December 2018) the number of tickets booked through counters are approximately 784 crores more as compared with tickets booked online. Thus, the figures reveal that the number of tickets booked through offline counters is much larger than the tickets booked through online means.
- f. As per the Investigation Report, the data provided by OP-1, during the course of investigation, revealed that total revenue generated from rounding off was Rs.220.79 crore from November 2017 to February 2019, whereas during the said period the net earnings from sale of tickets was Rs.46,083.74 crore. Thus, the percentage of income from rounding off against total earnings came to 0.48% for the period from



सत्यमेव जयते



November 2017 to February 2019. Further, rounding off in non-suburban trains of OP-1 earned Rs.523.98 crores in the 2014-15, Rs.507.39 crores in 2015-16, Rs.502.14 crores in 2016-17 and Rs.485.94 crores in 2017-18. Investigation thus concluded that the income generated from rounding off was miniscule portion of the receipt of total passenger fare.

- g. The justification provided by OP for rounding off of fares, during the course of investigation was that *firstly* rounding off of passenger fare to the next higher multiple of 5 makes it a simpler number to understand and work with. Since millions of tickets are booked through PRS, making available the exact change at the counters for each of the transaction has logistical issues. Ministry of Railways therefore decided in favour of rounding off of fares in order to reduce the transaction time and make the booking system quicker and efficient at the ticket counters. *Secondly* Indian Railways in the larger social and national interest, bears huge social obligation costs by making available cheap and affordable transport facilities to passengers across India. Because of the cost of this social obligation, the pricing of rail tickets includes a large component of subsidy and the ticket pricing is not based on a cost plus formula. The pricing of passenger ticketing has been kept consistently lower than cost, resulting in losses of approximately 37 paise per 10 kilometres in 2017-18. Charges for passenger fares are only around 50% of the cost of service i.e. cost comes to 73 paise per 10 kilometres against the actual charges of 36 paise per 10 kilometres. *Thirdly* OP-1 justified the rounding off by stating that passenger fare has not increased substantially in the last decade, therefore rounding off of fares is not unfair. *Fourthly* OP-1 mentioned that the practice of rounding off also applies to the kilometres travelled by passenger *i.e.* the same base fare applies corresponding to a fixed distance slab. This implies that a passenger travelling 309 kilometres pays the same base fare as that paid by a passenger travelling 310 kilometres. Lastly OP-1 justified rounding off by mentioning that it brings convenience in making calculations for accountancy purposes. OP-1 also stated that fare policy applies to each individual passenger or each rail ticket, irrespective of it being booked individually or in a group. The Commercial circular No.6 of 2013 does not create any distinction between individual or group booking as that would result in



discriminatory pricing. The authorised officer of OP-1, during the course of investigation, justified the rounding off of fares on the grounds of a) logistic issue relating to handling of exact change at the ticket counters as lakhs of tickets are booked daily, b) rationalization of passenger fares due to huge deficit between cost incurred and revenues realized in passenger segment, c) no increase in passenger fares in last decade and d) huge social obligation cost incurred by railways.

- h. *Abuse of dominant position by OPs:* According to investigation the allegations of the Informants that rounding off of passenger fares to the next higher multiple of Rs.5 in the sale of online tickets by OPs does not amount to abuse of dominant position on account of the following reasons:
- i. While rounding off to the multiple of Rs. 5 can be a plausible explanation for efficient booking of ticket at the ticket counters, this, does not justify the rounding off practice in case of tickets booked through online mode. In online mode, payment up to exact paisa can be made by the customer and, therefore, it may appear to be unfair to an online customer. But the larger picture is to be seen wherein Railways heavily subsidizes the price paid by passengers.
 - ii. The Railways, in larger social and economic interest heavily subsidize passenger services as part of its social service obligations. Social service obligations consist of several components including concessions in passenger fare, loss on account of pricing of fares below cost, loss on account of suburban rail services, etc. The total cost incurred on social service obligation by Indian Railways is huge as compared to the passenger earnings. From 2013-14 to 2017-18, Railways has incurred losses of Rs. 32,120 crores, Rs. 33,560 crores, Rs. 35,959 crores, Rs. 29,639 crores and Rs. 32,358 crores, respectively on its social service obligation.
 - iii. Rounding off of passenger fare is done by the Railways in order to bridge the huge deficit between the cost of service and income from service in passenger segment. Report of Standing Committee of the Parliament on Railways for 2017-



सत्यमेव जयते



18 and Comptroller and Auditor General (“CAG”) in its Report on Railway Finances, 2018, has also highlighted this aspect in their reports.

- iv. Ticket sales for the period 2014-15 to 2018-19 revealed that the bulk of total ticket transactions is very high at the counters as compared with the online sale of tickets. For instance, in 2017-18, out of total number of tickets sold (319.35 crores), the proportion of number of tickets sold at the counters was 81% (258.08 crores) whereas 19% (61.27 crores) were sold online. Investigation also showed that the bulk of the total tickets booked in any given year are in unreserved segment and these are predominantly cash transactions.
- v. Investigation found that in the reserved segment, there has been an increase in the sale of online tickets and therefore, the benefits from online booking of tickets were also looked into. Online customers have many advantages over the offline customers. In fact, the opportunity cost of the offline customers is very high as compared to the online customer. The offline customer has to spend much more time, money and resources to book the tickets at the counters as compared to the online customer.
- vi. Revenue received by Railways from rounding off in reserved segment was less than 1 percent of its total receipts (0.48%), and it was around 2% in unreserved segment (2.43% in non-suburban & 1.29% in suburban). On the passenger side, it was found that the financial burden of rounding off amount, considering the maximum rounding off amount (Rs.4), to the total cost of ticket, was less than 1 percent (0.36%) of the average ticket price for the period 2014-15 to 2018-19. Accordingly, OP-1 recovers a very small fraction of its revenue from rounding off of passenger fares. Also, there is no significant financial burden on the passenger, when one compares the rounding off amount to the average ticket cost.
- vii. Rounding off fares by railways, being a part of fare rationalization cannot be looked at in isolation but has to be understood in the larger framework. A vital role is being played by the Indian Railways in the larger economic and social



context of the country. The provisions of Railway Act, 1989 provide for transportation facilities by private parties other than State. However, in the larger national interest, to address the socio-economic needs of the country, rail transport is operated by the State. Thus, Indian Railways, being a state entity, the social service obligations performed by OP-1 are guided by the doctrine of welfare state as enshrined in the Constitution of India. Indian Railway being a State entity, has the obligation to ensure that its actions are fair, equitable and non-discriminatory.

- viii. The pricing of passenger fares manifests this principle of state action and is, therefore, non-discriminatory. It is based on the logic of pricing per passenger that is to treat everyone on an equal footing. This means that for same distance and for same class of travel same fare will be charged from passengers. This uniformity in tickets pricing is irrespective of different modes of booking- online or offline/counter and different modes of payment – cash or cashless. Therefore, the passenger fare pricing of Indian Railways treats all passenger in same manner and ensures uniformity and is fair and non-discriminatory.
- ix. In view of the foregoing, the investigation was of the view that there is no violation of provisions of Section 4 of the Act by the OPs.

5. The Commission, in its meeting held on 05.09.2019, considered the Investigation Report submitted by the DG and decided to forward copies of the same to the Informants and OPs for filing their suggestions/objections/ thereto. The date of hearing of the parties on the Investigation Report was fixed for 26.09.2019. Thereafter, at the separate requests of Informants and Opposite Parties seeking extension of time and adjournment of hearing on the Investigation Report, the final hearing was rescheduled to 13.11.2019. Accordingly, the Commission heard detailed submissions of the parties on the Investigation Report on 13.11.2019, and directed them to file their respective written arguments in brief.



D. Objections filed by the Informants

6. Informants filed their objections to the Investigation Report on 07.10.2019. Informants also filed their supplementary submissions on 27.11.2019, along with synopsis of oral arguments made by them in the hearing held on 13.11.2019. A summary of the objections as well as written submissions filed by the Informants is as under:

- a. DG has erred by not verifying the transaction time and efficiency claimed by the OPs as no documentary evidence has been produced to substantiate this claim.
- b. There are many ways to arrange for currency exchange. According to Reserve Bank of India, there are more than 4,400 currency chest branches and more than 3,700 small coin depots from where currency change can be collected as per requirements.
- c. Social service obligation cannot be a factor to determine an anti-competitive conduct of an enterprise within the competition jurisprudence. The intent of the Parliament was not to exempt enterprises from anti-trust scrutiny on the ground of social service, barring a few exceptions.
- d. The DG has strongly relied on statistics reflecting the loss being suffered by the Indian Railways. Exempting loss-making entities from anti-trust scrutiny would be contrary to the objectives of the competition law.
- e. There is no need to unnecessarily burden consumers with additional charges when the loss in passenger fare is cross-subsidized with revenue generated from other sources. No documents have been produced to record the profits generated collectively from all the sources of the Indian Railways barring a few passing references in the Investigation Report, nor did the DG investigate this aspect.
- f. The Indian Railways, by not substantially increasing the fare, are merely discharging their lawful duty to the public at large. Rounding off for accountancy purposes is irrational. It was claimed before the DG that rounding off was one part



सत्यमेव जयते



of passenger fare rationalization. However, no documents have been produced to substantiate the claim.

- g. The report of 22nd Standing Committee on Railways (2018-19) and reports in previous years, recommended that OP-1 find alternative legitimate sources for generation of revenue such as commercial utilization of vacant land, advertisements at Railway Stations and on trains, through catering *etc.*, with a view to compensate the loss. To the contrary, the OPs found an illegitimate source of income i.e. by way of rounding off.
- h. OPs as well as the DG relied on Sections 30 and 31 of the Railways Act, 1989 to justify the policy of rounding off. Neither Section 30 nor Section 31 of the Railways Act, 1989 permits / authorizes the OPs to round off the passenger fare. Section 30 empowers the Central Government to fix merely the rates for carriage of passengers and goods. Similarly, Section 31 empowers the Central Government to classify or re-classify any commodity for the purpose of determining the rates and to increase or reduce the rate.
- i. There will be no discrimination between passengers booking tickets online and offline since the Constitution of India allows reasonable classification. Differentiating between online and offline ticket is a reasonable classification on the ground that online booking has various advantages.
- j. OPs have already differentiated in a number of ways between passengers with online tickets and passengers with physical tickets, but OPs are reluctant to do the same with the policy of rounding off. For instance, the passenger booking tickets online pays an additional Convenience Fee included in the total fare. The passenger booking tickets offline do not pay any such charge. Further, it is also irrational as to why the OPs are determined to round off the fare when the Convenience Fee is not rounded off.
- k. The DG failed to note that distinguishing the unreserved tickets segment with reserved tickets segment is absurd and unfair. The DG has compared two segments having glaring differences. A variety of factors come into play which



सत्यमेव जयते



differentiates passengers with unreserved and reserved tickets. These are frequency of travel, distance of travel, cost of travel, availability of seat, amenities etc.

1. An anti-competitive conduct cannot become pro-competitive on the basis that it does not substantially harm the consumers. Further, the DG does not have the jurisdiction to conclude that 0.48% (reserved sector), 2.5% - 3% (non-suburban sector) and 1.5% - 2% (suburban sector) do not affect the consumers at large; nor did the DG substantiate such claim of OP-1. Nevertheless, Rs. 220.79 crores in 1 year & 4 months in reserved sector is a huge amount. Similarly, Rs. 2205.12 crores (non-suburban sector) and Rs. 221.04 crores (suburban sector) in 4 years & 10 months earned through rounding off is not an amount that can be ignored.
- m. In the states of Andhra Pradesh & Karnataka Tamil Nadu, fare charged by State Road Transport Corporation (SRTC) is rounded off to the next higher multiple of 0.50 Rs. or Re. 1 depending on the class of service. Similarly, in Odisha & Uttar Pradesh, fare charged by SRTC where there is a fraction of less than 50 paise chargeable from a passenger are rounded to the nearest lower rupee and where the fare is 50 paise or more it is rounded up to the next higher rupee. SRTC rounds off the fare with a meagre amount since circulation of coins worth Paisa is extremely limited, restricted and also demonetized in some cases. The fare is also rounded off to the nearest lower rupee. Thus, rounding off the fare every time to the next higher multiple of Rs. 5 as done by the OPs seems unreasonable.

E. Submissions of OPs

7. OPs filed their reply to the objections filed by the Informants on 01.11.2019. After the conclusion of hearing before the Commission, OPs filed their written submissions on 22.11.2019. A summary of the replies and written submissions filed by OPs, is as under:
 - a. Informants have not been able to explain how the rounding off policy is unfair or discriminatory so as to amount to abuse of dominant position under Section 4 of the Act. Further, Informants failed to prove how the rounding off policy or the revenue earned by OP-1 is exorbitant or unfair. On the contrary, the revenue



सत्यमेव जयते



earned by way of rounding off the base fare to arrive at the final chargeable base fare is far from being exorbitant or unfair for the reason that Indian Railways is operating at 'much too less' rather than 'much too high' of its cost of operating the passenger railway services.

- b. Rounding off is done on the base fare to the next higher multiple of 5 after adding other charges is not illegal. It is well within the power and discretion of OP-1, operating as a commercial and policy making enterprise, to determine the passenger fares. OP-1 is well within its right to adopt the rounding off policy as part of rationalisation of passenger fares. Railway Board has been invested with all the powers and functions under Section 30 and 31 of the Railways Act, 1989 to determine passenger fare including base fare and all other components or policies by way of a gazette notification.
- c. The term 'rates' is a broad term to cover base fare and other charges including the rounding off methodology to arrive at the final chargeable fare. The provisions are enabling provisions while the actual rates/fares are determined by way of commercial circulars and Indian Railway Conference Association 'coaching tariffs' issued by OP-1 from time to time.
- d. Any challenge to the legality of the rounding off policy would require an interpretation of and finding on Section 30 of the Railways Act, which lies outside the purview of the Competition Act. OP-1 is the policy maker while Indian Railways is the commercial wing of OP-1. The policy making power of OP-1 on how to arrive at the passenger fare and what methodology should be adopted are beyond the purview of Competition Act unless the fare is unfair or discriminatory and adversely affects the interests of consumers.
- e. Courts can interfere into a policy decision only if it is patently arbitrary, discriminatory or *malafide*.
- f. Base fare and final chargeable fare should not be seen in disjunction to single out any one component or methodology of pricing and alleged to be unfair based on nature of that component or methodology itself without anything more. A



सत्यमेव जयते



component could be unfair or discriminatory only if the final price is excessive *vis-à-vis* the cost and exploitative or discriminatory without any rational basis.

- g. Providing exact change at railway counters is time consuming is a fact, evident by itself and does not require verification. Rule for rounding-off of passenger fare was implemented not because of the inconvenience of handling change. The convenience of fares in whole numbers is at best only a supporting factor and a positive fall-out of the decision. It was a part of passenger fare rationalisation done by the OP-1 under the powers vested to it by Sections 30 and 31 of the Railways Act, 1989, and that the primary reason for this rule is bridging the gap between cost of service and cost recovery for the loss-making passenger segment. Further, since the rationalisation of passenger fare is a continuous and ongoing process it explains the evolution of rounding off of passenger fare since 1995.
- h. Social service obligation is an objective justification which should be part of consideration while assessing the allegations of abuse made by the Informants. Assessment of dominance and objective justification under Section 4 is bound by Section 19(4)(k) of Act, *i.e.*, social obligations and social costs.
- i. The losses incurred by Indian Railways to the tune of Rs. 35,959 crores in the FY 2015-16 as part of its social obligation by providing passenger services below the cost assumes significance against the core allegations of the Informants that the Indian Railways has reaped unfair benefits by earning exorbitant, unreasonable and unfair income. All the relevant factors including the social service obligation of the Indian Railways should be holistically considered and assessed before arriving at a conclusion of abuse of dominance against it.
- j. The charges for passenger fares are far below the cost of service, while freight operations have remained profit bearing. But it should not be construed that passenger services should continue to make huge losses and be financially dependent on other sources of revenue of the Indian Railways.
- k. The rounding off being part of rationalisation is also reflected by the statement of Hon'ble Railway Minister in the Budget speech of FY 2012-13. It was noted by



सत्यमेव जयते



him that the revisions owing to the rounding off policy “*will have marginal impact on the fares*”, that the “*proposed adjustments do not even cover fully the impact of increase in fuel prices during the last eight years*”; and that “*the additional revenue will help the railways provide better, cleaner and safer services*” to passengers.

- l. Rounding off methodology is part of the passenger fare rationalisation and a way of arriving at the final chargeable passenger fare. It has to be applied uniformly to all modes of issuing tickets. The ability to collect exact amount through online mode of payment is not a decisive factor to conclude that rounding off should not be applied to online booking.
- m. Anticompetitive analysis cannot be done in isolation and without considering all the relevant factors having a bearing on the matter. The Informants, without any rhyme or reason, have assumed that there is harm to consumers, but that harm is not substantial. The DG has nowhere concluded that consumers are being harmed by the rounding off policy, therefore, no question of quantum of harm arises. The allegation of “*consumer harm*” cannot be made in vacuum but must necessarily be supported by corroborative evidence.
- n. The suggestion of the Informants to compare the rounding off policy of the Indian Railways with those of SRTCs is unjustifiable. The Informants themselves agree that the services provided by the Indian Railways are not substitutable with other transport facilities of the States, yet they assert that a comparison will bring clarity to the matter.
- o. No case has been made out against OP-2 by the DG nor have the Informants made any specific case against it. Thus, the matter against IRCTC should be closed.

F. Analysis and findings of the Commission

8. The Commission notes that the present case revolves around the policy of the OPs pertaining to rounding off of base fares to the next higher multiple of Rs. 5, which is alleged to be unfair and discriminatory and thus in abuse of dominant position by OPs, in contravention of provisions of Section 4 of the Act.



9. Upon perusal and consideration of the Investigation Report and objections/suggestions filed by the parties, the following issues arise for determination in the present matter:

Issue 1: What is the relevant market?

Issue 2: Whether OPs are in a dominant position in the relevant market?

Issue 3: If answer to Issue 2 is in affirmative, whether the alleged conduct is in contravention of provisions of Section 4 of the Act?

Issue 1: What is the relevant market?

10. The Informant delineated the relevant product market in the present case as the “*e-payment service for online rail ticket booking*”. As regards the relevant geographic market, the Informants stated that as the sale of tickets electronically over the internet is not geographically limited, the relevant geographic market has been defined as the “*whole of India*”. Accordingly, the relevant market has been defined as “*e-payment service for online rail ticket booking in India*”. The DG defined the relevant market as “*the market for sale of tickets by railways in India*”.
11. In this regard, the Commission notes that the alleged abusive conduct in the present case pertains to conduct of charging of higher prices by the OPs by rounding off actual base fares to the next higher multiple of Rs. 5 in the online sale of e-tickets. The Informants are thus, consumers of services relating to sale of e-tickets by the OPs. The customers of OPs have an option to book tickets either through internet through e-payment method or at the manual Passenger Reservation System (**PRS**) counters of Indian Railways. Purchasing tickets from counters is a traditional method and a lot of people in India do so from PRS counters directly. Further, the fare of tickets bought online or through PRS counters are comparable and a consumer can switch between these channels, without incurring significant cost. However, the characteristics of buying the tickets online and through PRS counters may be distinct and could also constitute a separate market. In addition, the allegations in the present case pertains to abusive conduct of the OPs in e-ticketing services.



12. The Commission notes that irrespective of whether the relevant product market is restricted to online booking of rail tickets through e-payment method or is considered along with physical mode, the competition assessment in the present case would remain the same as the OPs are the only providers of service in both the markets. In view of this, the Commission concurs with the DG that the relevant product market may be defined as the “*market for sale of tickets by railways*”.
13. In relation to the relevant geographic market, the Commission notes that the relevant geographic market in the present case would be the “*whole of India*” as the conditions of competition are homogenous across India.
14. Accordingly, the Commission notes that relevant market for the purpose of competition assessment in the present case is “*market for sale of tickets by railways in India*”.

Issue 2: Whether OPs are in dominant position in the relevant market?

15. With regard to dominant position of the OPs, the Commission notes that the underlying principle for assessing dominance of an enterprise is linked to the market power enjoyed by the enterprise. An enterprise is regarded as dominant if it enjoys a position of strength in the relevant market, which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour.
16. The Informants have stated that the OPs are in a dominant position in the relevant market as they are the sole players and are empowered to determine the pricing of e-tickets. It has also been stated that consumers have no choice but to agree to the unfair terms and conditions of the OPs. Further, due to the statutory and regulatory framework, the dominance of the OPs is indisputable.
17. The DG observed that OP-1 is the parent Ministry for Indian Railways that undertakes transportation of passengers and goods in the country. OP-2, a subsidiary of OP-1, is the only agency selling online tickets of Indian Railways in the relevant market. Based on



the analysis of factors under the provisions of Section 19(4) of the Act, the investigation revealed that OPs as a group enjoy dominant position in the relevant market.

18. In this regard, it is noted that the Commission, in its earlier decision dated 10.08.2015 in Case Nos: 100 of 2013, 49 of 2014 and 89 of 2014 (*Shri Sharad Kumar Jhunjhunwala and others Vs. Union of India and others, Shri Ismail Zabiulla Vs Union of India and others and Shri Yaseen Bala Vs. Union of India and others*), observed that OP-1 and OP-2 constitute a “group” for the purposes of the Act and are in a dominant position in the market for transportation of passengers through railways across India, including the ancillary segments like ticketing, catering on board, platform facilities, etc., provided by Indian Railways. The Commission, in the aforesaid decision, noted that OP-1 through the Railway Board administers Indian Railways, which owns and operates India’s rail network/ transport. The Railway Board exercises all the powers of Government of India in relation to railways. As per the said decision, the market of transportation of passengers through railways across India including the ancillary segments like ticketing, catering on board, platform facilities, etc., provided by Indian Railways is solely catered by the Indian Railways within the geographic territory of India, thereby placing the Indian Railways in a dominant position, enabling it to operate independently of competitive forces and affect its consumers and relevant market in its favour. The Commission also found that due to the statutory and regulatory framework, the dominance of Indian Railways in this market is undisputable. Based on the above, the Commission notes that OPs enjoy dominant position in the ‘*market for sale of tickets by railways in India*’.

Issue 3: If answer to Issue 2 is in affirmative, whether the alleged conduct is in contravention of provisions of Section 4 of the Act?

19. The Informants alleged that OPs are abusing their dominant position by imposing unfair and discriminatory conditions by rounding off the base fares to the next multiple of Rs. 5 in the sale of e-tickets. It has been stated that there is no need to round off the base fare to the next multiple of Rs. 5 in online transactions as the actual amount, whatsoever it may be, can be paid by the passenger. Further, Informants stated that this policy is applied per passenger even if more than one passenger is booked in a single ticket. Even if more



than one ticket is booked by the same account for the same journey in the same train, the actual base fare would be rounded off to the multiple of Rs. 5 per passenger. Informants have therefore alleged that OPs have abused their dominant position, which is contrary to the provisions of Section 4 of the Act.

20. Before getting into the analysis of the abuse of dominant position by the OPs, it is necessary to discuss the policy of rounding off fares of OP-1.
21. The policy of rounding off passenger fares was first introduced in 1995 *vide* circular dated 14.03.1995 issued by the Ministry of Railways (Railway Board). This circular was issued pursuant to the announcement made by the Minister of Railways in his budget speech in the Parliament. The rounding off of passenger fare as introduced *vide* said circular contained following provisions:

“Second Class Ordinary and Second Class (Mail/Exp) – The fraction of 50 paise or more will be rounded off to the next higher multiple of rupee and the fraction of less than 50 paise to be dropped.

Sleeper Class (M/E and Ordinary) – First Class (Mail/Exp and Ordinary), AC Chair, AC-III Tier Sleeper and AC First Class – All fractions to be rounded off to the next higher multiple of rupee.

Rajdhani and Shatabdi Express Trains – The total charges per passenger recovered on a ticket to be rounded off to the next higher multiple of Rs. 5.”

22. With effect from 01.04.2009, the policy of rounding off to the next higher multiple of Rs. 5 of passenger fares was extended to Duronto trains apart from Rajdhani and Shatabdi trains. From 01.04.2012, the policy was extended to First Class, AC-II tier and AC First Class including Executive class.
23. *Vide* Commercial circular No.6 dated 11.01.2013, the rounding off passenger fares to the next higher multiple of Rs. 5 was applied to all classes except Second Class Ordinary (Suburban) with effect from 22.01.2013. However, in case of Second Class (Suburban) fare, the chargeable fares were also rounded off to the next higher multiple of Rs. 5 except where the last digit (i.e. in unit's place) of the figures are '1' or '6'. In such cases, the



fares are rounded off to the immediate lower multiple of Rs. 5. The policy of rounding off, which is applicable, is extracted as under:

“I. Fares for all classes except Second Class Ordinary (Suburban). Chargeable Fares, as obtained after adding Miscellaneous Charges like Reservation Fee, Supplementary charge for Superfast trains, Catering Charge, Service Tax etc. to the Basic Fare, will be rounded off to the next higher multiple of Rs. 5.

II. Second Class (Suburban) Fares Chargeable Fares for Second Class Suburban passengers, as obtained after adding applicable miscellaneous charges like MUTP Surcharge (as and where applicable) etc. to the Basic Fare, is proposed to be rounded off to the next higher multiple of five rupees, except that in cases where either '1' or '6' comes up as the last digit (i.e. in unit's place) it was be rounded off to the immediately lower multiple of rupees 5, i.e. 11.00, 21.00, 31.00, etc. would respectively become rupees 10.00, 20.00, 30.00, etc. and 6.00, 16.00, 26.00 etc. would respectively become rupees 5.00, 15.00, 25.00 etc. And, Fare values ending in rupees 2, 3 or 4 would be getting rounded off to rupees 5 and those ending in rupees 7, 8 or 9 to rupees 10 and so on and so forth.

24. OP-1 gave its justification for rounding off passenger fares, which has been stated above in detail and not repeated for the sake of brevity. OP-2, in its response, stated that it has no role in determination of passenger fares.
25. The Commission notes that OP-1 has contended that rounding off of passenger fare was part of the passenger fare rationalisation done by it in terms of policies vested under Sections 30 and 31 of the Railways Act, 1989. The Commission also notes that OP-1 has laid great emphasis on the fact that it being a state entity, the social service obligations performed by it is guided by the doctrine of welfare state as enshrined in the Constitution of India.
26. Amongst the reasons stated by OP-1 for rounding off of passenger fare is to partially bridge the deficit between cost of service and income from service in passenger segment. Investigation has revealed that Standing Committee of the Parliament on Railways for the FY 2017-18 and CAG in its Report on Railway Finances, 2018 has highlighted these aspects in their reports. Further, the financial data submitted by OP-1 during the course of investigation also supports the contention of OP-1. The investigation has also found that the conduct of OP-1 in rounding off fares is non-discriminatory and is based on the logic of pricing per passenger *i.e.* to treat each passenger on equal basis. This implies that



for the same distance and for the same class of travel, same fare will be charged. Further, uniformity is maintained irrespective of different modes of booking viz. online or offline/ counter and different modes of payment, cash or cashless.

27. The Commission observes that rounding off of fares by OP-1 appears to be a policy decision of OP-1, which was even placed before the Parliament of India, by the then Railway Minister in the year 1995. Thus, this issue has received consideration of OP-1 at the highest level and the policy has been in place since long. Further, the decision of rounding off has been made in a transparent manner and applied uniformly without there being any discrimination *qua* passengers of OP-1. With respect to submissions of OP-1 that such rounding off is effected in terms of the provisions of Sections 30 and 31 of the Railways Act, 1989, the Commission observes that it is not necessary to delve into that aspect, as the Commission has noticed that rounding off has been explained by OP-1, to give effect to its policy decision based on relevant and *bonafide* justifications. Thus, in the present case, the policy has been stated to be duly backed by commensurate social and commercial justification and thus such conduct cannot be classified as exploitative abuse by a dominant enterprise. The Commission duly notes that generally the plea of recouping of losses cannot be an objective justification, in the face of an alleged abuse by a dominant undertaking, nor can requirement of performance of every social obligation be a defence to an alleged anti-competitive conduct. Each instance of alleged abuse and any justification offered by a dominant enterprise will have to be carefully sifted through the sieve of competition law, to ensure that conduct which is detrimental to, and which adversely affects competition in the market and its constituents, including consumers, receives a corrective action. In the present case, however, the facts as brought out in the investigation indicate that rounding off has efficiency parameters and helps the OPs to service their passengers better, especially those passengers who book tickets through offline mode, as many a time each minute saved helps the queue move faster at the ticket counter. In addition, it saves huge time and effort by OP-1, especially of logistics and infrastructure. Rounding off of fares though on first blush may appear to be unfair *qua* passengers, but on a fair assessment and on weighing the scale evenly, does not seem to have potential to adversely affect the interest of consumers from a competition standpoint, particularly when there is no evidence that any of the passengers have been discriminated



against *vis-à-vis* the others. One aspect that has weighed with the Commission in arriving at this decision is also that investigation has brought out that number of offline tickets booked are substantial in comparison to online booking. With regard to allegations against OP-2, there is no evidence of any specific contravention on the part of OP-2 as it has merely followed the decision of OP-1. Accordingly, the Commission is convinced that in the facts of the present case, no case of contravention of the provisions of Section 4 of the Act arise against OP-1 and OP-2.

28. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Dated: 03/02/2020