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COMPETITION COMMISSION OF INDIA

Case No. 33 of 2021

In Re:

**Ms. Sanyogita Singh
1st Floor, Galaxy Tower, Adjoining to KD Tower
Block – D, Sector – 44
Noida – 201301.**

Informant

And

- 1. Hindustan Petroleum Corporation Limited
HPCL, Loni, LPG RO, Village Tilla, Shahabhjpur
P.O. Loni, District Ghaziabad – 201 102
Uttar Pradesh** **Opposite Party No. 1**
- 2. Hindustan Petroleum Corporation Limited
(Central Procurement Organization – Mktg.)
9th Floor, Marathon Futurex Building, ‘A Wing’
Mafatlal Mills Compound, N. M. Joshi Marg
Mumbai – 400 013, Maharashtra** **Opposite Party No. 2**
- 3. Hindustan Petroleum Corporation Limited
3rd Floor, UCO Bank Building
Parliament Street New Delhi – 110 001** **Opposite Party No. 3**
- 4. Hindustan Petroleum Corporation Limited
Petroleum House, 17, Jamshedji Tata Road
Mumbai – 400 020, Maharashtra** **Opposite Party No. 4**
- 5. Hindustan Petroleum Corporation Limited
Hindustan Bhawan, 8, Shoorji Vallabhdas Marg
Ballard Estate, Mumbai – 400 001, Maharashtra** **Opposite Party No. 5**
- 6. The Chairman & Managing Director
Hindustan Petroleum Corporation
Hindustan Bhawan, 8, Shoorji Vallabhdas Marg
Ballard Estate, Mumbai – 400 001, Maharashtra** **Opposite Party No. 6**
- 7. Ministry of Petroleum & Natural Gas
Shastri Bhawan, Dr. Rajendra Prasad Road
New Delhi – 110 001** **Opposite Party No. 7**



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CORAM

Ashok Kumar Gupta
Chairperson

Sangeeta Verma
Member

Bhagwant Singh Bishnoi
Member

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

1. The present Information has been filed by Ms. Sanyogita Singh (**'Informant'**) under Section 19(1)(a) of the Competition Act, 2002 (the **'Act'**), against Hindustan Petroleum Corporation Limited through its various offices which have been arrayed as the Opposite Party Nos. 1 to 6. For felicity of reference, they shall be collectively referred to as **'HPCL'/'Opposite Party'/'OP'** hereafter. The Ministry of Petroleum and Natural Gas has been impleaded as Opposite Party No. 7 in the matter. The Informant has alleged, *inter alia*, contravention of the provisions of Sections 3 and 4 of the Act against the OPs.
2. The Informant is stated to have devoted her life to serving the common public through her personal funds and resources.
3. The Informant states that OP-1 is the Zonal/Regional Office of HPCL and had organized a pre-bid meeting in respect of the tender floated for the procurement of transportation of packed LPG gas cylinder by road from its Loni bottling plant. OP-2 is the Central Procurement Organization/Division of HPCL and issued Tender No. 20000806-HD-10157 (Tender for transportation of LPG Gas Cylinders) dated 30.12.2020. OP-3 is the Central Governing Office of OP-1 and OP-2. OP-4 is the Registered Office of OP-1. OP-5 is an Administrative Office of OP-1. OP-6 is the Chairman & Managing Director of HPCL. OP-7 is the governing Ministry of this Public Sector Undertaking.
4. The Informant avers that OP had floated Tender No. 20000806-HD-10157 dated 30.12.2020 for transportation of packed LPG gas cylinders by road from its bottling



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plant in Loni for a period of five years, with effect from 01.07.2021 to 31.06.2026, and a total of 106 bidders participated in the said tender issued by OP.

5. The Informant further avers that the distributors/dealers of HPCL have invested their hard-earned money in the “HPCL gas cylinders transportation market” to operate truck-appointed drivers and other staff for the trucks, incurring regular maintenance costs for the same and resulting in huge infrastructural costs to provide exemplary service to HPCL and its valued customers through the operation of the said trucks.
6. The Informant states that, in the said tender, OP had sought LPG transporting trucks for the road transportation of packed LPG cylinders (filled/empty) of different capacities, such as 5kg/14.2 kg/19 kg/35 kg/47.5 kg/425 kg/composite cylinders or any other capacity from its Loni LPG bottling plant to its distributors within the State of Uttar Pradesh and Union Territory of Delhi through trucks having a capacity of 342 or 504 cylinders each.
7. The Informant further states that distributors of HPCL gas transporters also participated in the said tender. However, OP intentionally avoided utilizing the trucks of distributors of HPCL gas transporters, and it neither considered the bids of the distributors of HPCL gas transporters nor tried to negotiate the price(s) from the other bid participants to save government revenue in pursuance of the terms mentioned under Clause 11 of the said tender.
8. The Informant alleges that OP accepted the bids from the HP gas distributors/dealers’ competitors, i.e., distributors/dealers of Bharat Petroleum Corporation Limited and Indian Oil Corporation Limited (IOCL–Indane), in the aforesaid tender and disqualified/rejected the bidding of HP gas distributors/dealers during the evaluation process, stating that they have quoted a higher rate.
9. The Informant further alleges that OP selected a group of transporter(s) from the distributors/dealers of Indane as an L-1 successful bidder without negotiating with other bidders, and intentionally did not give preference to its distributor, i.e., HP gas distributor’s/dealer’s transporters, in the said tendering process, thereby causing irreparable financial loss to them.



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10. Lastly, the Informant alleges that OPs have adopted anti-competitive activities in the said tender proceedings by favouring the group of transporter(s)/bidder(s) who have quoted “cartel rates” in their bids, and OP has intentionally concealed the fact and accepted the prohibited “cartel rate” quoted by the group of transporter(s) from the distributors/dealers of IOCL without any price negotiation, as required.
11. Accordingly, the Informant has, *inter alia*, prayed to the Commission to cancel the selection of L-1 bidders and issue a fresh tender by incorporating a clause containing preferential terms in favour of the distributors/dealers of HPCL LPG gas and pass any other appropriate orders in favour of the LPG gas distributors of OP.
12. The Commission considered the present Information in its ordinary meeting held on 11.11.2021 and decided to pass an appropriate order in due course.
13. Having considered the averments and allegations made in the Information, the Commission notes that the Informant is primarily aggrieved by the conduct of HPCL in selecting Indane Gas transporters as its L-1 bidder without considering HP distributors/dealers gas transporters in the tender floated for the procurement of service of transportation of packed LPG cylinders from its Loni bottling plant.
14. Before delving into issues raised by the Informant, it would be appropriate to understand the LPG transportation market. The Commission notes that Liquefied Petroleum Gas (LPG) comes from natural gas processing and crude oil refining. It is liquefied under modest pressure, then stored and transported in bulk tanks or LPG gas cylinders. The transported LPG can be propane, butane or a mixture of the two. LPG transportation is commonly done by ship, rail, pipeline, truck and other smaller vehicles. Transporting gas cylinders is done by truck, or LPG transport in bulk is done with tankers. LPG exists as either a gas (vapour) or a liquid when it is under a modest amount of pressure in gas bottles, cylinders, tanks and larger LPG storage vessels. One of the key advantages of LPG is its portability, and given that gaseous LPG has a volume 270x times that of liquid LPG, it is almost always transported in its more compact liquid state. LPG can be supplied at virtually any place where people can go, and delivery methods can be extremely basic, requiring less capital investment compared to other forms of petroleum products. LPG is considered a



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cleaner, safer and more reliable energy form compared to other available energy sources.

15. In the aforesaid backdrop, the Commission notes that the present case emanates from the tender floated by HPCL for the procurement of service of transportation of packed LPG cylinders from its Loni bottling plant by road. From the tender documents, the Commission observes that OP had mentioned the estimated requirement of trucks for the entire sector to be around 262 trucks for the State of Uttar Pradesh and 71 trucks for the Union Territory of Delhi for a period of five years, with effect from 01.07.2021 to 31.06.2026.
16. At the outset, the Commission notes that the Informant has not provided any information with regard to the dominance of the OP in the relevant market. The Commission notes that the Informant has neither provided any data or material to show the dominance of OP nor defined the relevant market.
17. Be that as it may, with regard to the relevant product market, the Commission notes that the OP floated the tender for procurement of service of transportation of packed LPG cylinders from its Loni bottling plant by road. Further, considering the allegations made by the Informant in respect of the impugned tender, it would be appropriate to define the relevant product market in the present case as '*procurement of service of transportation of packed LPG cylinders by road*'.
18. With regard to the relevant geographic market definition, it is noted that the tender was floated by OP for procurement of service of transportation of packed LPG cylinders by road from the Loni bottling plant in the State of Uttar Pradesh and the adjoining Union Territory of Delhi. However, as per the tender conditions, truck owners with required qualifications as mentioned in the said tender can also participate from all over India. Therefore, the relevant geographic market would be the whole of India. Thus, the relevant market in the present case can be considered as the "*procurement of service of transportation of packed LPG cylinders by road in India*".



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19. Having identified the relevant market, the Commission would now proceed to determine OP's dominance in the relevant market.
20. The Commission further notes that public sector oil marketing companies (IOCL, BPCL and HPCL) together have 27.59 crore active LPG customers in the domestic category, which are being served by 24,382 LPG distributors. They also have a total of around 195 LPG bottling plants all over India with a rated bottling capacity of around 18.9 million metric tonnes per annum (MMTPA).
21. As per the information available in the public domain, in the year 2017–18, 48 LPG bottling plants have been operated by OP, whereas its competitors IOCL and BPCL operated 91 and 52 LPG bottling plants, respectively. Thus, OP does not appear to be dominant with respect to the number of bottling plants. Therefore, OP's requirements for availing the service of trucks for transporting LPG cylinder is also less compared to its competitors, *i.e.*, Indane (IOCL) and BPCL.
22. From the market construct and structure which is characterised by presence of three OMC PSUs players and considering the market share of OP in operating bottling plants as noted above, the Commission is of the opinion that OP does not appear to be dominant in the relevant market as defined *supra*. In view of the foregoing, the Commission concludes that, *prima facie*, it appears that OP is not dominant in the relevant market. Given that OP is not a dominant firm, it is unnecessary to examine if the alleged conducts constitute an abuse of dominant position under the provisions of the Act. Even otherwise, the grievance raised by the Informant seeking preferential treatment for HPCL gas distributors in respect of the procured services, on the face of it, is antithetical to the very norms and spirit of competition law.
23. Further, the Informant raised the issue of OP selecting Indane transporters as L-1 bidders. Upon perusing tender documents, the Commission notes that there is no restriction of participation for HPCL gas transporters in the above tenders. Moreover, from the information gathered from the public domain, it appears that the procurement norms of other OMC PSUs such as IOCL and BPCL also similarly enable participation by distributors of any OMC PSUs and, as such, it cannot be the



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- case that HPCL distributors are locked-in with HPCL only to provide their trucking services.
24. In relation to the allegation of cartelization, the Commission notes that the Informant has not only failed to elaborate even the details of the parties which have allegedly cartelized but has also failed to provide any details in support thereof. In fact, out of seven OPs, six are different offices of HPCL, and the seventh OP is the administrative Ministry of OMC PSUs. The Informant has singularly failed to identify or array any cartel participants, much less indicate the *modus* and the details in respect of any such purported cartel.
25. Thus, the Commission concludes that the issues raised by the Informant in the present context do not involve any competition concerns.
26. In view of the above, the Commission is of the view that no case is made out against the Opposite Parties for contravention of the provisions of Sections 3 and 4 of the Act, and the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
27. The Secretary is directed to communicate to the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Date: 17/11/2021
New Delhi