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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

C. Nos. 100 of 2013, 49 of 2014 & 89 of 2014

C. No. 100 of 2013

In Re:

- | | |
|----------------------------------|-----------------|
| 1. Shri Sharad Kumar Jhunjunwala | Informant No. 1 |
| 2. Shri Amit Choudhary | Informant No. 2 |
| 3. Shri Shib Shankar Das | Informant No. 3 |

And

- | | |
|--|----------------------|
| 1. Union of India
Ministry of Railways
Through Chairman, Railway Board
Rail Bhawan, Raseena Road
New Delhi-110001. | Opposite Party No. 1 |
| 2. Indian Railway Catering and
Tourism Corporation Ltd.
Through Secretary
9 th Floor, Bank of Baroda Building
16 Parliament Street, New Delhi-110001. | Opposite Party No. 2 |



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WITH

C. No. 49 of 2014

In re:

Shri Ismail Zabiulla

Informant

And

- 1. Union of India, Ministry of Railways
Rail Bhawan, New Delhi-110001** **Opposite Party No. 1**
- 2. The Chairman, Railway Board
Rail Bhawan, New Delhi-110001** **Opposite Party No. 2**
- 3. The Member Traffic
Railway Board, Rail Bhawan
New Delhi-110001** **Opposite Party No. 3**
- 4. The Additional Member
Directorate of Tourism and Catering
Railway Board, New Delhi-110001** **Opposite Party No. 4**
- 5. The Director, Tourism and Catering
Railway Board, New Delhi-110001** **Opposite Party No. 5**
- 6. The Chief Commercial Manager
Office of the CCM Catering PB/PS
South Western Railway,
Gadag Road, Hubli-580020** **Opposite Party No. 6**
- 7. The Chief Commercial Manager
Office of the CCM Catering PB/PS**



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- Southern Railway, Chennai-600003** **Opposite Party No. 7**
- 8. The Chief Commercial Manager**
Office of the CCM Catering PB/PS
South Central Railway, Rail House
Lancer lines, Secunderabad-500071 **Opposite Party No. 8**
- 9. The Chief Commercial Manager**
Office of the CCM Catering PB/PS
Eastern Railway, Koilaghat, Kolkata-700001 **Opposite Party No. 9**
- 10. The Chief Commercial Manager**
Office of the CCM Catering PB/PS
South Eastern Railway,
Garden Reach Road, Kolkata-700043 **Opposite Party No. 10**
- 11. The Chief Commercial Manager**
Office of the CCM Catering PB/PS
Northern Railway,
Baroda House, New Delhi-110001 **Opposite Party No. 11**
- 12. The Chief Commercial Manager**
Office of the CCM Catering PB/PS
Central Railway, Mumbai-400001 **Opposite Party No. 12**
- 13. The Chief Commercial Manager**
Office of the CCM Catering PB/PS
North Eastern Railway
Gorakhpur-273012 **Opposite Party No. 13**
- 14. The Chief Commercial Manager**
Office of the CCM Catering PB/PS



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- Northeast Frontier Railway
Kamrup District, Maligaon, Assam-781011** **Opposite Party No. 14**
- 15. The Chief Commercial Manager
Office of the CCM Catering PB/PS
Western Railway, Churchgate
Mumbai-400020** **Opposite Party No. 15**
- 16. The Chief Commercial Manager
Office of the CCM Catering PB/PS
East Central Railway, Hajipur-844101** **Opposite Party No. 16**
- 17. The Chief Commercial Manager
Office of the CCM Catering PB/PS
East Coast Railway
Bhubaneswar-751017** **Opposite Party No. 17**
- 18. The Chief Commercial Manager
Office of the CCM Catering PB/PS
North Central Railway
Subedarjung, Allahabad-211011** **Opposite Party No. 18**
- 19. The Chief Commercial Manager
Office of the CCM Catering PB/PS
North Western Railway, Jaipur-302017** **Opposite Party No. 19**
- 20. The Chief Commercial Manager
Office of the CCM Catering PB/PS
South East Central Railway
New Zonal Building, Bilaspur-495004** **Opposite Party No. 20**



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**21. The Chief Commercial Manager
Office of the CCM Catering PB/PS
West Central Railway, Jabalpur-482001**

Opposite Party No. 21

WITH

C. No. 89 of 2014

In re:

Shri Yaseen Basha

Informant

And

1. Union of India

**Through Secretary
Ministry of Railways
Room No. 239, Rail Bhawan
New Delhi-110001**

Opposite Party No. 1

2. The Chairman, Railway Board

**Room No. 239, Rail Bhawan
New Delhi-110001**

Opposite Party No. 2

3. The Director, Tourism and Catering

**Room No. 503, Rail Bhawan
Railway Board, New Delhi-110001**

Opposite Party No. 3

4. The Chief Commercial Managers

**Office of the CCM Catering PB/ PS
All Zonal Railways, under Ministry of Railways
Railway Board, New Delhi-110001**

Opposite Party No. 4



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CORAM

Mr. Ashok Chawla
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. M. S. Sahoo
Member

Appearances: Shri Sharad Kumar Jhunjunwala, Informant-in-Person in Case No. 100 of 2013.

Shri Ismail Zabiulla, Informant-in-Person in Case No. 49 of 2014.

Shri M. M. Sharma and Ms. Deepika Rajpal, Advocates for Ministry of Railways and IRCTC alongwith Shri Jagdish Goyal, Law Officer of IRCTC.

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

This common order shall dispose of the informations filed in C. Nos. 100 of 2013, 49 of 2014 and 89 of 2014 as similar issues are involved in these cases.



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Facts

Case No. 100 of 2013

1. The information in this case was filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') by Shri Sharad Kumar Jhunjunwala ('the Informant No. 1'), Shri Amit Choudhary ('the Informant No. 2') and Shri Shib Shankar Das ('the Informant No. 3') against Ministry of Railways ('the Opposite Party No. 1') and Indian Railway Catering and Tourism Corporation Ltd. ('the Opposite Party No. 2'/ IRCTC) alleging *inter alia* contravention of the provisions of sections 4 of the Act. The Informants appear to have been adversely affected by the alleged arbitrary and unfair acts of Indian Railways and IRCTC ('Indian Railway Group').
2. The Informants averred that the Indian Railway Group was abusing its dominant position by imposing unfair and discriminatory conditions in sale of e-tickets and also imposing unfair and discriminatory price in sale of these tickets. Ticket fares in Rajdhani and Shatabdi trains have in-built component of catering charges which amounts to tie-in sales. Railways Group is alleged to be imposing unfair terms in re-purchase of its tickets in the form of cancellation charges which are penal in nature. Further, the provision of IRCTC agents is stated to be restricted. Technical and scientific development in form of public announcement system and automatic ticket checking have been limited to only selected premium trains. Also, the technical development has been limited by restricting the available services on IRCTC portal.
3. The allegations made by the Informants against the Opposite Parties are as under:
 - (i) IRCTC is charging a premium on the e-ticket price and earning huge profits. IRCTC provides only the facility for transacting with Indian Railways' PRS System through internet. For this facility, service



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charge is charged over and above the normal ticket price. In addition to above mentioned charges, if ticket is booked through IRCTC authorized agents, an extra agent service charge, is also levied. Then there is a payment gateway charges for making online payment to purchase e-tickets. Very recently Railway Group has started a new e-Wallet scheme to address the problem of failed transactions. However, this scheme has been kept optional and under the scheme many unfair conditions including payment of transaction fee has been imposed.

- (ii) The service charge imposed on e-Tickets is non-refundable, even if the passenger needs to cancel the ticket. The service charge is an extra-burden on the passenger over and above the cancellation charges imposed as per Railway rules.
- (iii) In case of tickets booked through internet, no concession is permitted except for senior citizens. Reservation of tickets with break journey is not allowed for e-Tickets. Maximum of 10 tickets can only be booked per month.
- (iv) Under Tatkal Quota, a huge inventory of available tickets is hoarded, based on type of train and class of travel. The Tatkal quota tickets are sold at huge premium of upto Rs.400 over and above the normal price. The booking of these tickets start only one day in advance, creating artificial scarcity and gives rise to numerous illicit practices by touts and agents.
- (v) Unfair and discriminatory cancellation and clerkage charges: Clerkage is a charge levied for the clerical work rendered in refund of fares on cancellation of unreserved, wait-listed & RAC tickets. The present amount of clerkage charge is Rs. 30 per passenger, except for second class unreserved tickets where it is Rs. 15. Similarly, if the ticket is presented for cancellation more than forty eight hours in advance of



the scheduled departure of the train, cancellation charges of upto Rs.120 are deducted from the amount refunded.

(vi) Compulsory food in Rajdhani and Shatabdi Express: The ticket price for Rajdhani and Shatabdi trains has the component of catering charges in-built. No option is provided to the passenger and the passenger is compulsorily required to pay the ticket prices inclusive of catering charges, which artificially inflates the railway journey ticket price and amounts to tie-in sales.

(vii) Limiting provision of IRCTC agents: The Railway Group has limited the availability of IRCTC agents by charging unreasonable fees for appointment as agents. The one-time fee of Rs.20,000 and annual fee of Rs.5,000 is prohibitive for people desirous of becoming agents. There is little or no economic rationale for this and it acts as an entry barrier and leads to overcharging of customers. The entire fee-scheme is geared towards rewarding the big entities with multiple locations, with discounts of upto 95%. This further act as a barrier for the smaller agents.

(viii) Long-term contracts for food vendors at railway stations: There is usually a single food court monopoly at the larger stations, created by the Railways itself. There is effectively no competition for these food courts and people who cannot afford the expensive meals at these outlets have no other alternative.

(ix) Restriction in Technical and Scientific Development: The public information system on trains is wholly inadequate. There is a rudimentary system available on the Rajdhani Express and other such Express trains. There is a discrepancy between the features and facilities available on the IRCTC website and those available on the Agent's websites. There have been virtually no gains made in increasing train speed and reducing the duration of travel on the



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trains. Special preference is granted to premium trains over other trains, unfairly discriminating against passengers of other trains. The Railways has abused its dominant position by not making adequate efforts to improve safety features, increase the frequency of trains *etc.* Any decision on these issues is usually made from a political perspective, rather than keeping in mind the best interest of the travellers. By not improving such crucial technical capabilities, the Railways has further abused its dominant position and restricted technical and scientific development in this field.

4. Based on the above averments and allegations, the Informants filed the present information seeking investigations into the allegations.

Case No. 49 of 2014

5. The information in this case was filed under section 19(1)(a) of the Act by Shri Ismail Zabiulla against Ministry of Railways and its various officials, as mentioned above, alleging *inter alia* contravention of the provisions of sections 4 of the Act.
6. The Informant is aggrieved of the conduct of Indian Railways in not following the new Catering Policy 2010 wherein it was laid down that Mobile Catering and Base kitchen will be set up at railway stations through two different tender processes.
7. The Informant states that the new Catering Policy 2010 introduced by Ministry of Railways on 21.07.2010 to improve the service and quality of food and beverages supplied to passengers travelling on trains is binding on all the Opposite Parties named in the information.
8. It is stated in the information that clause 4.1 of the Catering Policy which provides for 'Quality Assurance Programme'. It provides that 'Standard Bidding Document' (SBD) shall be drafted by the Railway



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Board by engaging professional agency. That M/s RITES Ltd. was awarded the work to draft two SBDs to implement tender process for various catering contracts. The said SBDs were for Mobile/ on-board catering services through pantry cars and for Base Kitchens.

9. The Informant has cited a letter dated 29.08.2011 issued by Railway Board to Indian Railways which refers to setting up of Mega/Medium & Mini Base Kitchens at railway stations. The letter states that the Mega/Medium Base Kitchens shall be managed through licensees until the department to manage it is created under the Policy. It was also mentioned in the said letter that some of the Zonal Railways on their own initiative have planned to set Base Kitchens through various means based on local conditions. The letter stated that so far about 12 Mega Base Kitchens have been identified. It further stated that with new trains being introduced, the catering facilities need to be upgraded periodically. Accordingly, Railway Board proposed to issue SBD to facilitate the Zonal Railways to award contracts for next 5 years or so.
10. The Informant has alleged that the Opposite Parties have not issued SBDs for on-board Catering Contracts and Base Kitchens from 2010 to 2013. That they have only been extending the licenses for on-board catering contractors since 2010. It was stated that SBD was issued on 02.01.2013 and modified on 12.03.2013 by the Opposite Party No. 5 for award of contracts for catering services on Rajdhani /Duronto/ Shatabdi and other Mail/Express trains. As per the modified version, the licensees (mobile/on-board licensees) shall be responsible for setting up Base Kitchens and directed all Zonal Railways *i.e.* Opposite Party Nos. 6 to 21 to implement the tender process for award of on-board catering contract without issuance of SBD for establishment of Base Kitchens. It is alleged that the Opposite Parties have favoured the existing licensees by permitting them to establish Base Kitchens which is a separate unit and market and thereby have acted contrary to the Catering Policy and



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the Act.

11. The Informant has further alleged that the ceiling limit of 10% as mentioned in the Catering Policy has been bifurcated by the Opposite Parties. The ceiling limit is stated to be for the purpose of preventing monopoly by a company/firm/ individual holding of major/minor units. That the said policy is very clear regarding Mobile Units and Base Kitchens. Clause 19.3.4 of the Policy provides that all Mobile Units and Base Kitchens shall be managed departmentally progressively in a phased manner. Until the departmentalization is completed, a licensee will be allowed to hold a maximum of 10% of similar category of major units over Indian Railways.
12. The Informant has alleged that the Opposite Parties have created a monopoly in the railway catering services and therefore, SBD and the modification thereunder should be quashed.
13. The Informant has also alleged that the Railways is compelling the passengers/ public to purchase food items which are included in their ticket prices for Rajdhani, Shatabdi and Duranto and that they have no option but to pay the extra charges imposed on them.
14. Based on the above averments and allegations, the Informant has filed this information against the Opposite Parties and the on-board catering contactors for alleged contravention of the provisions of the Act.

Case No. 89 of 2014

15. The present information has been filed by Yaseen Basha ('the Informant') under section 19(1) (a) of the Competition Act, 2002 ('the Act') against Union of India, Ministry of Railways ('the Opposite Party No. 1'), the Chairman, Railway Board ('the Opposite Party No. 2'), the Director, Tourism and Catering ('the Opposite Party No. 3') and the



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Chief Commercial Managers ('the Opposite Party No. 4') alleging *inter alia* contravention of the provisions of sections 3 and 4 of the Act.

16. As per the averments made in the information, the Informant has filed the instant information to protect the *bonafide* interests of railway passengers.
17. It is stated in the information that the Opposite Parties have abused their dominant position and compelled millions of passengers to purchase food and food items from their on-board caterers by way of selling travelling tickets for Rajdhani, Shatabdi, Durgam and other trains which have the component of catering charges "built-in" and no option is provided to the passengers who are compulsorily required to pay the ticket prices inclusive of catering charges.
18. It is alleged that the discriminatory condition *i.e.* "tie-in arrangements/ tying/ built-in" that compels and forces the public to purchase catering services along with the principal product travelling ticket, is merely arising out of impugned direction bearing No. 2010/ TG.III/600/ 12/ SBD/Pt. IV dated 02.01.2013 and the same is revealed from its Master License Agreement, which in Article 4 provides as follows:

Article 4.1 Revenue to the Licensee and License Fees to the Railways

"In respect of Rajdhani/ Shatabdi/ Durgam trains, catering charges are built-in with ticket fare...."

Article 4.4 Payment of Taxes

"For Rajdhani/ Shatabdi/ Durgam trains, where meals costs are included in the Railways ticket fare...."

19. It is alleged that to compel a buyer to purchase some product (catering) which he does not want, alongwith the principal product (tickets) is



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clearly in violation of the provisions of section 3(4)(a) read with section 3(1) and section 4 of the Act.

20. It is further stated in the information that the impugned action of the Opposite Parties has been challenged by one of the aggrieved person before the Hon'ble High Court of Karnataka and the Hon'ble High Court of Karnataka has stayed the impugned direction in WP No. 53207 of 2014.
21. Allegations of criminal conspiracy, fraud and embezzlement have also been levelled against the Opposite Parties in this regard.
22. Based on the above averments and allegations, the Informant has filed the present information against the Opposite Parties for the above detailed alleged contravention of the provisions of the Act with a prayer seeking to quash the impugned direction dated 02.01.2013.

Directions to the DG

23. The Commission after considering the entire material available on record *vide* its order dated 28.02.2014 passed under section 26(1) of the Act in Case No. 100 of 2013 directed the Director General (DG) to cause an investigation to be made into the matter.
24. Subsequently, the Commission passed order under section 26(1) of the Act in Case No. 49 of 2014 on 12.09.2014 directing investigation by the DG. In the said order, it was specifically noted by the Commission that so far as the grievance of the Informant pertaining to violation of the catering policy is concerned, no competition issue was found to be disclosed by the Informant. Accordingly, the Commission directed the DG to cause an investigation to be made into the matter on the limited issue *i.e.* compulsory charging from the passengers for catering facilities



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by including the catering charges in the ticket prices in respect of certain trains. Further, the Commission directed this information to be clubbed with Case No. 100 of 2013 where *inter alia* a similar issue was pending investigation before the DG.

25. During the course of investigation, the Commission forwarded General Complaints No. 3396 filed by Shri Anil Kumar Jain, No. 3755 filed by Shri Prakash Binani, No. 3784 filed by Shri Ram Bhagat and No. 3949 filed by Shri Sukhjeet Singh to the Office of the DG. Treating them as third party information, the same were also dealt with by the DG while addressing the allegations in the report.
26. The DG, after receiving the directions from the Commission, investigated the matters and filed a common investigation report in all these cases on 10.03.2015.
27. Further, the Commission received one more information by way of Case No. 89 of 2014 which contained identical allegations. As such, the Commission *vide* its order dated 23.04.2015 decided to club this information with Case No. 100 of 2013 and Case No. 49 of 2014 in terms of the provisions contained in section 26(1) of the Act read with regulation 27(1) of the General Regulations. Accordingly, the Commission forwarded a copy of the consolidated investigation report of the DG submitted in the previous two cases to the Informant in the present case as well for enabling him to file his suggestions/ objections.

Investigation by the DG

28. It was noted by the DG that Indian Railway and IRCTC are covered under the definition of “enterprise” as defined in section 2 (h) of the Act and they were found to form a “group” within the meaning of the term as used and defined in section 4 read with Explanation (b) to section 5 of



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the Act. Further, the DG delineated the relevant market as “transportation of passengers through railway across India including the ancillary segment like ticketing, catering on board, platform facilities *etc.* provided by Indian Railways”. These Opposite Parties were found to be dominant in the said relevant market as they were found to operate independently of competitive forces prevailing in the relevant market.

29. Investigation, however, did not establish any violation of the provisions of section 4 of the Act.

Consideration of the DG report by the Commission

30. The Commission in its ordinary meeting held on 31.03.2015 considered the investigation report submitted by the DG in Case No. 100 of 2013 and Case No. 49 of 2014 and decided to forward copies thereof to the parties for filing their respective replies/ objections thereto. Subsequently, the Commission decided to club the information filed in Case No. 89 of 2014 with the above two cases and, as such, a copy of the consolidated investigation report submitted by the DG in Case No. 100 of 2013 and Case No. 49 of 2014 was also forwarded to the Informant in this case as well for filing suggestions/ objections. The Commission also granted opportunity of oral hearing to the parties and accordingly, the matter was listed on various dates for hearing the parties. On 28.05.2015, the Commission heard the submissions made by Shri Sharad Kumar Jhunjunwala, the Informant No. 1 in Case No. 100 of 2013 who appeared in person. Besides, the Commission also heard the submissions made by the counsel for the Opposite Parties on this date. Further, the matter was again listed for hearing on 14.07.2015 when the Informant in Case No. 49 of 2014 appeared in person and made submissions and the counsel for the Opposite Parties were also heard. However, despite notice, the Informant in Case No. 89 of 2014 did not appear for oral hearing on these dates and only filed written submissions which were



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taken on record.

Replies/ Objections/ Submissions of the parties

31. On being noticed, the appearing parties filed their respective replies/ objections/ submissions to the report of the DG besides making oral submissions.

Replies/ objections/ submissions of Ministry of Railways/ IRCTC

32. In a brief common reply, it was prayed by these parties that the Commission uphold the findings made in the DG investigation report on the issues raised therein and close the cases filed by the Informants under section 26(6) of the Act reserving their right to file a rejoinder/ response to the objections/ suggestions, if any, filed by the Informants.

Replies/ objections/ submissions of the Informants in C. No. 100 of 2013

33. The Informants in Case No. 100 of 2013 filed preliminary objections dated 23.04.2015 stating therein *inter alia* that IRCTC was taken as a separate entity by the DG in the investigation report whereas both Ministry of Railways and IRCTC are part of the same group referred to as “Railway Group” in the original information. It was also submitted that the report of the DG should contain findings on each of the allegations made in the information even though many allegations have not been considered by the DG. It was further alleged that the DG has simply relied upon the statements made by the officials of the Opposite Parties in concluding that the alleged conducts are not abusive. It was also alleged that the DG has not applied its independent mind and no expert opinion was also sought or relied upon. Grievance was also made of the fact that extraneous factors were considered by the DG.
34. Subsequently, detailed objections/ suggestions dated 25.05.2015 were filed by these Informants to the DG report. It was submitted that almost



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all of the findings in the report are totally one sided and without any objective analysis of the evidence/ information. That all assertions made by Railway Group in response to the queries posed to them have been taken at face value without any further enquiry. It was further submitted that the DG has abused its power by analyzing issues and giving findings on issues, which were not even raised by the Informants and thereby attempted to eclipse the real issue. It was also stated that no opportunity of cross-examination of the witnesses was given by the DG to the Informants under the provisions of the Evidence Act, 1872 and regulation 41(5) of the General Regulations.

35. It was pointed out that the DG did not give any findings on any of the specific issues relating to contravention of section 4(2)(b)(ii) of the Act. The Informants claimed that some documents which were collected during the investigation were missing from the report. It was further pointed out that the DG has failed to analyze the alleged abusive practices as the conduct of Railway Group and instead took a restricted view as if IRCTC was totally unrelated to Indian Railway which was apparently against the express provisions of the Act. Therefore, it was submitted that the DG's finding should be rejected on this basis only.
36. It was alleged that Railway Group has in an unfair manner mandated IRCTC to levy service charges over and above the price of the ticket available at computerized reservation counters across the country. The Informants stated that the benefits of e-ticketing help the whole of nation and that penalizing for the use of e-tickets by levying service charge in addition to what the passenger needs to pay appeared to be unfair. That instead of reimbursing the cost incurred by IRCTC for providing service on its behalf, IRCTC is made to share 20% of its gross earning with Indian Railway.
37. With regard to the issue of service charge being non-refundable, it was



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submitted that in case of cancellation of waitlisted ticket, Railway Group deducts clerkage charges and hence passenger using IRCTC services loses an extra 40% to 150% on account of non-refundable service charges when in real terms the Railway Group is substantially saving on clerkage charges as e-ticketing is far more efficient than ticket booked at the counter.

38. Also, it was alleged that the commission for IRCTC's agents is deducted from the passengers whereas Railway Group as the principal should have paid. The Informants pointed out that when issues are raised, IRCTC tries to take advantage of either public policy or profit motive depending on its convenience for justification.
39. On the issue of e-wallet scheme, the Informants submitted that the DG did not notice that a failed transaction on the part of IRCTC amounts to deficiency in services and also ruins the travel prospect of a passenger. Comparison was drawn to e-commerce websites like online stock broking websites where, according to the Informants, similar facility is available but no additional charges are levied for the same unlike IRCTC.
40. Challenging the DG's finding that the tatkal scheme was justified since Railway Group incurred losses, the Informants referred to '*Interim Report of the Committee for Mobilization of Resources for Major Railway Projects and Restructuring of Railway Ministry and Railway Board*' wherein many areas were highlighted to improve and bring about efficiency. It was submitted that these reforms would have automatically taken care of the losses incurred by IRCTC. It was further submitted that the losses incurred by Railway Group do not give them the license to impose unfair conditions and impose such pricing on the passengers.
41. It was contended that the charge structure on calls made to Railway



Inquiry No. 139 was discriminatory since calls charges originating from metros would be different from any other area. That there's no reason as to why an amount of Rs. 3 per message is charged when the actual cost incurred is negligible.

42. It was argued that the DG's finding that the allegation of compulsory sale of food items in the train amounts to tie-in arrangement has no merit, was without analysis. Also, on the issue whether any market barrier was caused by IRCTC agent due to unreasonable fees, it was submitted that the DG did not give any finding on the same and also did not consider the original information filed by the Informants on this issue. It was also argued that the Opposite Parties were placing restrictions on technical and scientific development in Indian Railways in various ways like limited features and facility on IRCTC website, restriction on the use of public announcement system, improper regulation of temperature in Air conditioned compartments, *etc.*
43. In view of the above, the Informants prayed that the Commission further investigate this matter with the help of experts and also consider Ministry of Railways and IRCTC as a group for the purpose of the same.

Replies/ objections/ submissions of the Informant in C. No. 49 of 2014

44. The Informant in this case appeared in-person before the Commission during the hearing and also filed a brief memo containing the submissions.
45. It was argued that the DG investigated the case under section 4 of the Act only and no investigation was conducted under the provisions of section 3 of the Act. It was argued that the Informant raised the plea of "tying" which should have been investigated under section 3(4)(a) of the Act. It was stated that the Opposite Parties by compelling a buyer to purchase some product (catering) which he does not want, alongwith the



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principal product (tickets) have contravened the provisions of section 3(1), (2), (4) (a) of the Act. It was also argued that the impugned act also contravened the Fundamental Right enshrined under the Constitution of India. Further, it was argued that the report of the DG is wholly arbitrary, discriminatory, unfair and unjust and further investigation is warranted to properly adjudicate the case.

46. It was further contended that a similar matter (Ticket and Catering Charges-“built-in/ tying” arising out of impugned direction *vide* SBD dated 02.01.2013 which is challenged before this Commission) is pending before the Hon’ble Supreme Court of India *vide* Transfer Petition 911-921/2014 tagged with Special Leave Petition 9921-24/2014. It was pointed out that these SLPs and Transfer Petitions have been filed by the Opposite Parties and are likely to be listed on 28.07.2015. It was alleged that the Opposite Parties have suppressed the said fact and as such the matter may either be sent back for re-investigation or be adjourned to await the ruling of the Supreme Court as the question of law involved in the present case as well as in the said petitions/ proceedings is either same or substantially the same.
47. Subsequently, an identical memo dated 14.07.2015 was also filed by the Informant in C. No. 89 of 2014.

Rejoinder on behalf of Ministry of Railways/ IRCTC to the written submissions dated 25.05.2015 filed by the Informants in Case No. 100 of 2013

48. The Opposite Parties in their rejoinder dated 27.05.2015 stated that despite after admitting to several portions of the DG report, the Informants have raised technical objections which were not sustainable in the eyes of law. It was also stated that the DG had fully addressed all the contentions raised by the Informants and has investigated the matter in all aspects in detail before arriving at its findings.



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49. Apart from agreeing with the DG's finding that the allegations of tie-in arrangement, market barrier, monopoly and technical restrictions stood negated, the Opposite Parties have made the following submissions.
50. It was submitted that the comparison of catering rates with Haldiram was necessary to fully examine the allegation of unfair pricing, if any, which was inherent in the allegation of tie-in sales. That the chart provided by the Opposite Parties clearly showed that the price charged by them for providing a particular menu was much lesser than the price at which a passenger will be required to pay for such services. It was further submitted that service charge by IRCTC agent was justified because an agent incurs several other expenditures like electricity, rent, internet, integration fees, annual maintenance *etc.* and it cannot be expected that they provide such service free of cost.
51. With regard to the averment on reservation charges being included in the ticket price and depending on the location where the ticket has been issued, it was submitted it has no relevance in e-ticket booking either through IRCTC website or IRCTC's appointed agents as the service charges for the same are fixed and do not depend upon the station of booking.
52. It was also argued that e-ticketing was a value added service, for it has made it convenient for common man to book tickets who usually faces hardship otherwise. Furthermore, the levy of service charge for the use of e-ticket was justified considering the advantages the service provides to the common man. It was stated that IRCTC as a subsidiary of the Railway Ministry is both an arm of the Ministry of Railways and an independent enterprise in its own right which has to finance itself for the maintenance of day-to-day services for the common man. It was submitted that the cost of rail transportation or the cost of e-tickets including service charges are highly subsidized and cannot be compared



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with the business model of other online markets.

53. On the issue of service charge being non-refunded on cancelled tickets, it was reiterated that the same was objectively justified. It was further submitted that the e-Wallet Scheme was introduced for facilitating faster e-bookings on websites and to reduce transaction failures done through net banking. That the one time registration fee of Rs. 250 was in line with the existing practice on other e-Wallet schemes. However, it cannot be compared with other e-commerce websites on the issue of transaction charges as the main product *i.e.* the e-ticket sold is different from the rest.
54. Also it was stated that limitation on the number of tickets upto ten and cancellation/ clerkage charges were policy matters and were also non-delegable function of the Government. Therefore, it cannot be relegated under the provision of section 4 of the Act. It was argued that in view of the availability of other options to the passengers, the 139 inquiry telephone number, the franchise for which is given on competitive basis to private vendors by the Opposite Parties, it cannot be considered unfair.
55. In view of the above, it was submitted that no competition issues in general and abuse of dominant position in terms of the Act were made out against the Opposite Parties.

Analysis

56. The allegations in these informations, which were ordered to be investigated by the Commission, essentially pertain to the conduct of Indian Railways (IR) and IRCTC in the market of transportation of passengers through railways.
57. Before examining the matter on merits, the Commission notes that one



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of the Informants sought adjournment on the ground that similar issue is pending adjudication before the Hon'ble Supreme Court of India. It may be observed that in the present proceedings the Commission is examining the alleged anti-competitive conduct of the Opposite Parties in terms of the provisions contained in section 4 of the Act - an exclusive jurisdiction vested in the Commission. The Informant has not been able to convince the Commission as to the nature of proceedings which are stated to be pending before the Hon'ble Supreme Court of India and the purported similarities. In these circumstances, the Commission does not find any merit in the plea raised by the said Informant and the same is rejected.

58. On a careful perusal of the informations, the report of the DG and the replies/ objections filed and submissions made by the parties and other materials available on record, the following issues arise for consideration and determination in the matter:

- (i) What is the relevant market in the present case?
- (ii) Whether the Opposite Parties are dominant in the said relevant market?
- (iii) If finding on the issue No.(ii) is in the affirmative, whether the Opposite Parties have abused their dominant position in the relevant market?

Relevant Market

59. While delineating the relevant product market, the DG analyzed the various factors enshrined in section 19(7) of the Act. It was noted in the report that the service provided in this case is transportation of passengers from one station to another across the rail network of the



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country. This service bears a unique character and is distinguishable from other modes of transportation. Presently, this service is being provided only by Indian Railway (IR).

60. Further, it was noted that pricing of passenger ticketing on Railways is done annually through the exercise of rail budget which is passed by the Parliament. The basis of pricing is supposed to be on cost plus basis, however there is a subsidy component in the ticket pricing as the Indian Railways also discharges the social objective of offering cheap transportation to passengers across India. The passenger ticket price is cross-subsidized by rail freight. As a result of policy, the pricing of passenger ticketing is completely regulated keeping in view the geographic, demographic and socio-economic profile of the country's population which makes it distinguishable from other modes of travel. Lastly, it was observed that a consumer proposing to carry out the travel through Railways bases his/ her decision on various factors such as travel budget, distance of travel, time at disposal, safety of travel *etc.* compared to other modes of travel *viz.* road and air. Once such a choice is made, there is very low likelihood of the consumer changing his preference. The Indian Railways has a wide transportation network across India and offers a number of train options across its network providing flexibility of structuring travel plan to the consumers. Further, in recent times, differentiated pricing schemes such as Tatkal Scheme, have been introduced providing the choice of train travel to last minute travel planner. Thus, the consumer preference for train travel is not normally substitutable by other modes but for exceptional situations.

61. The Commission observes that due to various unique characteristics including travel comfort, safety, pricing, particular consumer preference, reach and distance *etc.*, the service of rail passenger transportation in India may be considered as a separate market. Accordingly,



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transportation of passengers through railways in India appears to be the relevant market in the present case. Such market would also include the ancillary segments like ticketing, catering on board, platform facilities *etc.*

62. In view of the above, the Commission agrees with the delineation of the relevant market by the DG as “transportation of passengers through railways across India including the ancillary segments like ticketing, catering on board, platform facilities *etc.* provided by Indian Railways”.

Dominance

63. At the outset, it may be noted that Ministry of Railways (MoR) 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.
64. As such, this market is solely catered by passenger segment of Indian Railways within the geographic territory of India thereby placing the Indian Railways in dominant position enabling it to operate independently of competitive forces and affect its consumers and relevant market in its favour.
65. Due to the statutory and regulatory framework, the dominance of Indian Railways in this market is undisputable. Indian Railways has itself described it as ‘the premier transport organization in the country is the largest rail network in Asia and the world’s second largest under one management’.
66. The DG, while assessing the dominance, examined the various factors enumerated in section 19(4) of the Act and found IR and IRCTC as a “group” to be dominant therein.
67. There is no doubt that Indian Railways is the main entity undertaking



railway transportation of passengers in the country and therefore undisputedly commands the largest market share. It is having monopoly over railway operations in India. Presently, there are no competitors present in the relevant market even though there are no legal barriers to entry of competitors, subject to policy decision being taken by the government in this regard. The Railways Act, 1989 does not reserve the rail transport sector, freight or passenger, solely for the public sector.

68. It may be noted that Ministry of Railways (MoR) through Railway Board administers IR. Further, IRCTC is stated to be incorporated as an extended arm of IR and being 100% owned subsidiary of MoR; the Commission is in agreement with the DG that MoR (IR) and IRCTC form “group” for the purposes of the Act.

69. Thus, these Opposite Parties are dominant in the relevant market as defined *supra*.

Abuse

70. Various allegations of abuse were made in the informations such as imposition of unfair and discriminatory conditions in sale of e-tickets; Rajdhani and Shatabdi ticket fares having in-built component of catering charges amounting to tie-in sales; imposition of unfair terms in re-purchase of tickets in the form of cancellation charges; and restrictions on provision of agents *etc.*

71. The DG identified the following issues for the purposes of investigation:

- (i) Unfair/ discriminatory conditions in Passenger Reservation System
- (ii) Compulsory provision of food
- (iii) Market barrier for IRCTC agents



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- (iv) Monopoly of food courts at the large railway stations
- (v) Restrictions on technical and scientific development in Indian Railways
- (vi) Restriction on private players providing meals through e-catering in trains with no pantry facility

72. It would be appropriate to examine these issues *seriatim*:

Unfair/ discriminatory conditions in Passenger Reservation System

73. The various alleged unfair and discriminatory conditions imposed by the Opposite Parties through its Passenger Reservation System (PRS) may be examined under the following heads:

Services charges imposed on e-tickets

74. After a perusal of the entire material on record, it appears that the Informants are aggrieved of *inter alia* imposition of service charges by IRCTC on tickets booked online through the PRS system. It has been alleged by the Informants that IRCTC is charging a premium on the e-ticket price and earning huge profits.

75. The DG did not find any contravention on this count.

76. At the outset, the Commission notes that IRCTC provides only the facility for transacting with Indian Railways' PRS System through internet; and e-ticket prices are fixed by Ministry of Railways in consultation with the Railways Board and IRCTC. It may be pointed out that in the year 2007, a study of the cost analysis of internet ticketing was conducted by IRCTC to analyze costing of internet ticketing. Based on this study, recommendations relating to pricing of e-tickets were made to Ministry of Railways. Through a circular dated 21.06.2007, the Railway Board fixed the services charges levied on e-tickets. This



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circular was later on adopted and reflected in the railway budget of the FY 2010-11.

77. Further, the Commission notes that it is optional for the customers to book tickets either through the internet or at the manual PRS counters of the Indian Railways. The DG's investigation has revealed that a large number of manual PRS counters have been commissioned across India. This is clearly demonstrative of the availability of alternatives to the prospective customers of Indian Railways.
78. The Commission also notes that e-ticketing facility is an additional value added service offered by IRCTC. As a condition precedent to using its services, IRCTC requires prospective customers to agree to certain terms and conditions in its user agreement. It may be pointed out that payment of service charges is clearly mentioned as one of the terms and conditions. Therefore, any customer wishing to avoid the payment of service charges may not register himself with IRCTC, thereby, making it amply clear that a customer does have the option to book tickets (through manual PRS counters) without paying any service charges.
79. On this basis, the Commission observes that levy of service charges on e-tickets does not amount to an abuse of dominant position by the Opposite Parties.
80. Even otherwise, it may be noted that the service charges levied on booking of e-tickets cannot be termed as unfair in as much as the same are realized to meet the following heads:
- Administrative cost;
 - Maintenance cost of IT hardware and software;
 - Technical Manpower Costs of Service Providers;



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- Recurring expenditure like rent , electricity charges, internet bandwidth charges;
 - Cost of offices and zonal level co-ordination with railways;
 - Cost of investments in capacity enhancement and also replacement of obsolete IT equipments; and
 - Credit cost (amount paid by IRCTC in advance to IR. IRCTC receives the payment of booked ticket after 3-4 days in its account).
81. It may also be observed that such service charges are only nominal as IRCTC levies a nominal service charge of Rs.10 plus Service Tax (per ticket) in case of booking e-ticket of Second Class and Sleeper Class and Rs.20 plus Service Tax (per ticket) in case of all other classes (1AC,2AC,3AC,CC,3E,FC) irrespective of the number of passengers booked on an e-ticket.

Additional charges if e-tickets booked through IRCTC agents

82. It was alleged by the Informant that apart from service charges levied by IRCTC, an additional agent service charge is levied upon the passengers who are unable to use IRCTC website and instead use the services of IRCTC authorized agents. It was alleged that such levy from the poor passengers is unfair, discriminatory and arbitrary besides adversely affecting the passengers of rural areas. The DG did not find any contravention.
83. It may be noted that according to the *New Policy for E-Ticketing Service Providers of 2013*, IRCTC appoints E-Ticketing Service Providers which are referred to as Principal Service Providers (PSPs) and Retail Service Providers (RSPs). RSPs are the sub-agents of PSPs, appointed by PSPs, in which IRCTC has no role. Further, IR also appoints Rail Travelers' Service Agents (RTSAs) under section 60 (g) of the Indian Railways Act, 1989. Authorized RTSAs (registered with IRCTC) can



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also book e-ticket through IRCTC website for a customer. It was stated that the Agent Service Charges are regulated and fixed by IRCTC as per the policy of Ministry of Railways. An IRCTC Authorized Agent *i.e.* authorized RTSAs, PSPs, and RSPs can realize following nominal amounts from passengers in addition to IRCTC's service charge :

- In case of Second / Sleeper Class: Rs. 10/- per ticket (PNR).
- In case of other than Sleeper Class: Rs. 20/- per ticket (PNR).

84. It may be noted that booking of e-tickets through authorized agents is an additional and optional facility made available to the passengers. A person not willing to avail such services may book the tickets by self through e-ticketing or at PRS counters. It appears that only 16% of e-ticket booking is done through such agents and the remaining 84% is being done by individual users. This extra nominal levy can hardly be said to be unfair or discriminatory in as much as an authorized IRCTC agent incurs expenditure like Rent, Electricity Charges, Internet Bandwidth Charges, Integration fee and annual maintenance charges (to be paid to IRCTC) and Manpower *etc.* It may also be pointed out, as submitted by the Opposite Parties, that there is no agent service charge for cancellation of ticket.

85. In view of the above, the Commission observes that levy of extra service charges on e-tickets booked through agents does not amount to an abuse of dominant position by the Opposite parties.

Payment of gateway transaction charges

86. It was also alleged by the Informant that passengers are forced to bear payment gateway charges depending upon the mode of payment chosen by the passenger. The Informants have also alleged that levy of payment gateway charges (ranging from 1.8% to a fixed amount of Rs. 10/-) on online payments for e-tickets amounts to imposition of unfair and



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discriminatory conditions by the Opposite Parties. In this context, the Informants referred to the RBI Guidelines relating to the NEFT transaction charges.

87. It was stated by the Informant that in many service sectors instead of levy of extra charges, discounts are offered for online transactions. Further, it was pointed out that IRCTC has launched an online shopping website and there are no payment transaction charges for making payments for online shopping. Thus, it was alleged gateway charge levied on e-ticketing is unjustified.
88. The DG did not find any contravention.
89. The Commission notes that the Informants' allegations are misconceived and misplaced. Payment gateway charges are fixed and levied by banks in accordance with RBI circulars and guidelines; and IRCTC has no role to play insofar as payment charges are concerned. IRCTC offers payment gateway options, including, Credit Cards, Debits cards, Cash Cards, Rupay Cards and Net Banking, to customers booking online tickets. It may be noted that IRCTC separately enters into agreements with banks for facilitating e-ticketing.
90. In this regard, a reference may be made to the statement of Shri S. Sunil Kumar, General Group Manager, Internet Ticketing, IRCTC (at page 44 of the DG Report).

“Q8 Please clarify as to who decides the bank charges which are debited against customer using e-booking facility and whether any agreement with any bank has been entered into by IRCTC.

Ans. Bank transaction charges are decided by the banks and are collected by bank themselves separately from the customer. IRCTC sends the request of collecting train fare plus service charge of IRCTC



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alongwith service tax on service charge to the bank to be collected from customer and to be credited into IRCTC account. Banks levy transaction charge separately depending upon type of payment instruments used. The agreements are signed with banks for working of the system. A sample copy of such agreement has already been submitted with our reply dated 10.09.2014”

91. Further, the Commission notes that the Informants have erroneously drawn references to NEFT transaction charges as IRCTC does not offer NEFT as a payment gateway on account of the restrictions on transfer of funds in non-banking hours.
92. In view of the above, the Commission rejects the allegations put forth by the Informants relating to levy of payment gateway charges.

E-Wallet Scheme

93. The Informant also laid challenge to the e-wallet scheme introduced by IRCTC. It was alleged that the e-Wallet scheme, launched to address the problem of failed transactions, is based on unfair pricing and conditions in contravention of Competition Law. It was alleged that IRCTC has found this as a new mode of revenue generation. Under this scheme, registration fee is Rs. 250/- (one time) and transaction charges are Rs. 5/- (per transaction). Maximum value that can be stored in e-Wallet is Rs. 5000/- which is subject to no cash refund and redemption. It was also pointed out that the scheme is not available during 8 am to 12 pm and any amount transferred erroneously by the customer is not refunded.
94. The DG did not find any contravention.
95. From the DG report, it may be observed that e-wallet Scheme was launched by IRCTC in February 2014, in the interest of its subscribers/ customers, to make the payment process fast and to reduce transaction



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failures due to bank payment related problems. Under this scheme, user can deposit money in advance with IRCTC which can be used as a payment option, along with the other online payment gateway options available on IRCTC website. This is a voluntary option provided on the demand of IRCTC subscribers to reduce the time taken in the process of effecting online payment through other normal payment gateways provided by the banks, which some time fail due to technical reasons. Noticeably, in case of any ticket cancellation, the due refund is credited to the e-wallet account the very next day. A user has to pay a nominal one time registration charges of Rs. 250 under this scheme. User can deposit minimum amount of Rs. 100/- and maintain maximum amount of Rs.10000/- in the e-wallet account. As per the policy of the Railway Board, there is a time restriction on individual subscribers for the bookings made through e-wallet Scheme and the booking is not available from 8:00 am to 12:00 pm. For this additional service, IRCTC charges a transaction charges of Rs. 5/- per transaction. The e-wallet scheme is stated to gain popularity and as on April 07, 2014, around 32,000 users are stated to have registered for the e-wallet scheme.

96. E-wallet scheme is a closed system pre-payment instrument. Being a closed system payment, the amount credited to e-wallet can be used only for services available at IRCTC website and not for any other purpose. Further, as per guidelines of RBI, such instrument does not permit any redemption or cash withdrawal. The scheme is entirely a voluntary option, the main advantage being a near guaranteed successful booking as it bypasses problem of failed gateway transactions involving banks. It was also informed that the scheme has been very popular and from 41 users at the time of launch in August 2012 till date there are 43031 registered users. In respect of the reason why no booking between 8 am to 12 pm is permitted using e-wallet, it was informed that the same has been stipulated as per directions of Railway Board dated 04.03.2014.



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97. In view of the above, no case, whatsoever, of contravention of the provisions of the Act is made out against the Opposite Parties.

Service Tax

98. The Informant alleged that although an abatement of 70% has been permitted, IRCTC has been charging full service tax on the purported service charge levied by it for booking e-tickets.

99. The DG did not find any contravention.

100. The Commission is of opinion that the entire allegation made by the Informant is misplaced. In the process of issuance of e-tickets, two elements of services are involved. One, booking of journey ticket on PRS and; Second, providing Value Added Service through e-ticket platform by IRCTC charging a service charge of Rs. 10 or 20 for six passengers or part thereof as the case may be irrespective of the value of the ticket. Ministry of Finance has levied service tax on both services individually and provided abatement only in respect of transportation of passengers *i.e.* fare of passenger to the extent of 70% *vide* notification No. 13 of 2012-Service Tax dated 17.03.2012. No abatement is provided in respect of Value Added Services in the form of providing e-ticket platform charging service charge. IRCTC accordingly charges service tax on the service charges and remits the said amount to the Service Tax Directorate in accordance with the instructions issued from time to time.

Service Charges non-refundable in case of cancellations

101. The Informant has alleged that service charges imposed on e-tickets booked through IRCTC portal are non-refundable in case of cancellations. This is alleged to be arbitrary and unfair.

102. The DG did not find any contravention.

103. The Commission is of opinion that the allegation is thoroughly



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misconceived. As noted by the DG in the investigation report, service charge is levied by IRCTC only on booking e-ticket and no further service charge is levied if e-ticket is cancelled. IRCTC incurs operational costs for operating the e-ticket service for customers and for the same IRCTC levies a one-time nominal service charge. Once a passenger booked the e-ticket, it avails various other services like SMS, VRM *etc.* After the cancellation of e-ticket, IRCTC provides a safe and secure mechanism for refund of money automatically to the passenger's bank account. Since, IRCTC incurs cost for these services, which would have already been rendered to the passenger at the time of cancellation, refund of the service charges on cancellation does not appear to be justified.

Limit on number of e-ticket transactions

104. The allegation of the Informant relating to the restriction on number of transactions per month upon passengers was found to be devoid of merit by the DG.
105. The Commission notes that as per the policy of Ministry of Railways, an individual user can book a maximum of ten tickets in a calendar month using the IRCTC Account. The said restriction was stated to have been imposed in order to prevent the misuse of ticketing system for commercial gains in order to protect the interest of consumer. As the measure is to minimize the involvement of touts, no fault can be found therewith.

Tatkal quota/ premium Tatkal/ VIP quotas

106. The Informant alleged that Tatkal Quota scheme of the Opposite Parties is unfair, arbitrary, blatant abuse of dominance and cannot stand the scrutiny of Competition Law. It has stated that Tatkal Quota currently stands at almost 30% of the total capacity of the train. It is being sold at an unfair price in the name of Tatkal quota and charging Tatkal charges as a percentage of fare @10% of basic fare for Second Class and 30% of



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basic fare for all other classes subject to minimum and maximum Tatkal charges. Further, Tatkal quota tickets can be booked only one day in advance and booking starts at 10 am, resulting in chaos and confusion. Moreover, it is impossible to log on to the IRCTC's website of IRCTC and book ticket during Tatkal booking timings.

107. Further, the Informant *vide* letter dated 15.12.2014 has submitted that the Opposite Parties have launched Premium Tatkal Quota and Special Train Quota on dynamic pricing. Some of features of these trains are that only e-tickets will be permitted for booking, no refund and cancellation is allowed, waitlist booking is not allowed, agents are not allowed to book tickets *etc.* These quotas have resulted in unfairly burdening the ordinary passenger whereas these trains run without touching the VIP/ HQ quota. Moreover, the Opposite Parties are reserving VIP/ VVIP /emergency quota free of charge but charge premium from ordinary passengers for blocking tickets for them.

108. The DG did not find any contravention on either of the counts.

109. From the DG report, it appears that the power of earmarking of Tatkal accommodation in different classes has been delegated to Zonal Railways who take a decision in this regard keeping in view the utilization pattern in that class during the previous financial year as well as availability of accommodation. The accommodation so earmarked, however, in no case should exceed the maximum Tatkal accommodation permissible, which is as under:

Classes	Maximum Tatkal accommodation which can be earmarked in a train
Executive Class	5 Seats per coach
2AC	10 Berths per coach
3AC	16 Berths per coach



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AC Chair Car	16 Seats per coach
SL	30% of the accommodation
Reserved Second Sitting (2S)	10% of the accommodation

110. It has also been pointed out in the DG report that the Tatkal Scheme as well as Tatkal charges have been part of railway budget duly approved by the Parliament. Apart from meeting the objective of last minute travel planning arising due to unforeseen events in family, business, students travelling for examinations/ interviews *etc.* no fault can be found in levying Tatkal charges against these earmarked seats, especially considering huge losses faced by railways year after year. As per the Rail Budget 2014-15, passenger fares have been consistently kept lower than cost and the resulting loss per passenger kilometer increased from 10 paisa per km in 2000-01 to 23 paisa in 2012-13.

111. Similarly, so far as premium Tatkal and special premium trains are concerned, it may be observed that these are recent initiatives of dynamic pricing introduced by railways. It may be noticed from the DG report that the premium Tatkal scheme was introduced from 01.10.2014 in some of the selected trains (more than 100). This is booked only through self e-booking, agents are not allowed to use this reservation system and 50% of existing accommodation of Tatkal quota is earmarked as premium Tatkal quota. It is being sold on dynamic pricing. After booking of Ist 50% of the Tatkal quota under Tatkal scheme the subsequent 50% of the Tatkal quota, defined as premium Tatkal quota shall be sold on dynamic pricing. The ceiling limit is three times of base fare (basic fare plus Tatkal fare). The scheme was introduced as a value added service to cater to the needs of the passengers who plan their journey at the eleventh hours, at the same time to earn more revenue to fill the gap of the losses to a certain extent incurred on all passenger trains. Since the railways are incurring heavy



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losses on passenger services, hence such differentiated pricing cannot be equated with abuse of dominance. The Commission is in agreement with the conclusions of the DG.

Imposing unfair and discriminatory cancellation/ clerkage charges

112. The allegations of the Informant on these heads were not found to be established by the DG and the Commission is in agreement with the conclusions drawn by the DG in this regard.

113. It may be noted that there are two distinct types of charges viz. clerkage charge and cancellation charge. As per the *extant* rules, a clerkage charge per passenger for cancellation of unreserved, waitlisted and RAC ticket at the rate of Rs. 15/- for unreserved second class and Rs. 30/- for reserved second class and other classes is levied.

114. On the other hand, cancellation charge is deducted in case of cancellation of a confirmed ticket. This is variable depending upon the time of cancellation. In case of cancellation more than 48 hours in advance of scheduled train departure, a flat rate of cancellation charge is levied for example Rs. 100/- for Second AC, Rs. 60/- for Sleeper Class. Between 48 hours to 6 hours, it is 25% of total fare while within 6 hours and upto 2 hours after the departure of train the cancellation charges are 50%.

115. It may be noted that the relevant charges are imposed as per the Railway Passenger (Cancellation of ticket and Refund of fare) Rules 1998 framed under the Railways Act, 1989. As the levy is statutory in nature and even otherwise no irrationality can be found therein, the entire challenge of the Informant on this count falls flat.



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Imposition of premium charges on calls made on Railway Inquiry No. 139

116. The Informant alleged that there is no rationale in levy of premium charges on calls made on Railway Inquiry No. 139. The charge structure is discriminatory and amounts to abuse of dominance.

117. The DG did not find any contravention.

118. The Commission is of opinion that Integrated Train Enquiry System (ITES) through 139 is an alternative mode of value added service to ascertain real time information about a train. Railways have multiple mechanisms for disseminating information to passengers. These include Railway's website, time table, station enquiry, public address system at Railway stations. In addition, IVR/SMS based enquiry system on 139 has also been provided since 2007. IRCTC is managing Interactive Voice Response System (IVRS) based Rail Enquiry System which provides service like PNR enquiry, Train running status, Fare enquiry, Berth availability etc., for the convenience of passenger. Accordingly, as per the Railway Board letter No. 04/TG-IV/10/Enq/10/Comm dated June 30, 2006, IRCTC is managing the enquiry service of Indian Railway Rail Sampark 139 under Public Private Partnership (PPP) with entire cost of infrastructure and operation being borne by the PPP franchisee. The service provider has been appointed based on open tender. Since, service provider has made investment in the project, it was not found feasible to make it toll free. The 139 service operates with single number across India involving revenue sharing among Telecom Service Providers (TSP) whereas no STD charge is levied on the customer.

119. In view of the above, there is no force in the allegations made by the Informant in this regard.



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Compulsory provision of food

120. The Informant has alleged that in trains like Rajdhani/Shatabdi/Duranto the Opposite Parties are providing on board food as a compulsory precondition and the price of compulsory food is included in ticket. The compulsion to buy food with ticket is unfair for all the category of passengers as they are not given any choice, also whether they avail the services actually or not. Therefore, treating unequal's equally in itself is discrimination and assuming all the railway passenger has the same food choice is itself discriminatory.

121. The DG did not find any contravention.

122. From the statement recorded by the DG of Shri Kailash Prasad Yadav, Director (Tourism and Catering), Ministry of Railways, it appears that Rajdhani/ Shatabdi/ Duranto trains are designed as premium products of railways which give fast, assured and comfortable journey to the passengers. There are 1200 odd trains in the Indian Railways in which catering services are provided either through mobile catering or through static catering available at *en route* stations. There are only 61 trains (Rajdhani-20, Shatabdi-22, Duranto-19) in which compulsory catering is provided. This is only 5% of the total trains in which catering is not compulsory. The compulsory catering is provided in these premium trains because they have very limited stoppages and for short duration where it is not possible to provide quality catering from outside. The coaches of these trains are especially designed with hot cases and cold cases to provide fresh and hot meals/beverages to the passengers. If the passengers are allowed to carry their own food then the business of quality catering services in these premium trains will become financially unviable and in case of late running of these trains/ disruption of traffic those passengers who carry their limited food will not get food items in such trains. The situation may lead to public complaints against the



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railways. Allowing food from outside may lead to security, safety and hygiene problem in these premium trains.

123. On a careful perusal of the statement and analysis made by the DG, the Commission is of opinion that the rationale provided by the Opposite Parties cannot be said to be irrelevant. Moreover, the DG appears to have conducted a comparative study of the menu provided by the Opposite Parties in light of the prevailing market rates of the items included therein and opined that charges of excessive catering rates against IRCTC cannot be sustained.

Market barrier for IRCTC agents

124. The Informant alleged that IRCTC has limited the availability of authorized agents by creating entry barriers in the form of baseless, unjustified fees and charges and imposing other conditions for appointment of authorized agents. The whole system of appointing agents has been designed with the sole purpose of earning more and more profit by exploiting dominant position of the Opposite Parties. The fee charged under IRCTC schemes (B2B Scheme, IATA Scheme and Internet Café Scheme) for appointing agents is huge and potential agents especially in rural areas who cannot afford such high fees are completely kept out due to this entry barrier.

125. The DG did not find any contravention.

126. On a careful perusal of the DG report, it appears that International Air Transport Association (IATA) is the trade association for the world's airlines, representing some 240 airlines or 84% of total air traffic. Its members are the firms/ companies primarily engaged in substantial air ticketing turnover. Any accredited agents of IATA can transact through IRCTC after entering into a formal agreement with IRCTC. The IATA agents and/or members have to pay a onetime entry fee of Rs. 20,000/-



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to IRCTC of which Rs. 10,000/- will be refundable if agent/member voluntarily withdraws from the arrangement with IRCTC. It is important to note that, these firms have air ticketing as primary business and rail tickets are only to supplement their bouquet of service. Since IATA members are firms with substantial air ticketing turn over, mainly from the bookings for airlines, the onetime fee of Rs. 20,000/- cannot be considered as a high fee to act as barrier for entry into the supplementary market of bookings of railway tickets by them.

127. It may also be noticed from the DG report that IRCTC appoints Principal Service Providers (PSPs) who in turn appoint Retail Service Providers (RSPs). This model helps IRCTC in providing service to passenger through multiple retail outlets while having agreement with only the PSPs. The PSPs are required to adhere to the Terms and Conditions as contained in the Agreement and also to ensure their compliance by the RSPs appointed by them. The Integration charges and renewal charges for the IATA and the Internet café scheme are incomparable being two entirely different models. While IATA firm operates only one counter, an Internet Café firm operates large number of counters. The administrative work involved at IRCTC remains similar in both cases thereby making IATA costlier from IRCTC perspective.

128. It was noted by the DG that the entry fee of Rs. 20,000/- which is meant for IATA members under the IATA scheme cannot be applied in the case of the PSPs for the Internet Café scheme since the number of outlets (500) is quite large and therefore, considering the volume of business expected from the 500 outlets of PSPs, IRCTC has determined a fee of Rs. 5 Lakh *i.e.* Rs. 1000/- per retail outlet of the PSPs, which appears to be justified. Thus, it was concluded by the DG the allegation of IRCTC having allowed a discount of 95% on the PSPs appears to be lacking substance.



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129. Further, the allegation about concentrating agents among few corporates, was found to be factually incorrect by the DG. It may be noted that IRCTC has about 90 PSPs out of which about 50 PSPs are in operation with about 65000 active RSPs. The geographical spread of PSP and RSP is also nationwide. There is no such concentration of RSPs of a particular PSP in a given geographical area. Moreover, the service charges and services to be given are pre-defined and there is no possibility of customer choice getting limited as alleged.

130. In view of the above, the Commission does not find any substance in the allegations made by the Informant on the ground under consideration either.

Monopoly of food courts at the large railway stations

131. The Informant is also aggrieved of the duration of license granted to food courts at the railway stations terming the same as very long. The duration should be short so that others could be given a chance to run these food courts. There is effectively no competition for these food courts and people who cannot afford the expensive meals at these outlets have no other option.

132. The DG did not find any contravention.

133. It may be pointed out that on the allegation made by the Informant relating to long term contracts, it was observed by the DG that as per Para 3.3 of the Catering Policy, 2010 IRCTC is responsible for running of food plaza, food court and fast food unit. The basis for this has been explained on the fact that IRCTC was created to develop expertise and domain knowledge in the field of catering *etc.* without the fetters of government department. The above various types of food units are allotted by IRCTC to the food vendors on open tender basis. It is important to note that Indian Railways/ IRCTC only grants the space for



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a certain period on license basis. The licensee will have to construct the building in consonance with existing bye laws of the State. Indian Railways/IRCTC requires a food vendor to have various qualifications requirement included in the “scope of work” of the tender document. This, *inter alia*, requires a food vendor to make investments in setting up the building and other infrastructure and to follow various procedural guidelines for establishing its business and then operating the food plaza or food court, as the case may be, profitably. It may be noted that besides the quality standards, the items to be included in the menu, price of each food items, whether served on the food stall on the railway station or inside the trains are also fixed by the Railway Board/ Zonal Railways, and mentioned in the Tender document itself. Hence, a food vendor which has constructed building and catering infrastructure and is required to serve multi-cuisine food including the cheaper Jan Ahaar meals is investing huge amount of money and human resources (cooks, waiters *etc.*) will have a legitimate expectation to have a Return on Investment (RoI). In fact, the Opposite Parties have categorically submitted that in recent times, the Opposite Parties are not receiving applications from the potential bidders for ‘setting up, operation & management of food plazas/courts *etc.*’, due to the fact that the duration of the contract (*i.e.* in most cases 5 years, except in case of food plaza which is 9 years) and the gestation period is short and have a poor RoI.

134. Further, on the allegation in respect of single food court monopoly at the larger stations, it was noted by the DG that the allotment and contract management of food units is made through open, competitive, two-bid tendering system, (financial and technical bids) duly following all the procedures/instructions issued by Government of India/Railway Board from time to time. Further, there are a variety of other food outlets made available for the public at the larger stations such as Fast food units, Jan Ahaar, Food Plaza, Food Courts, Refreshment Rooms, AVMs at



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category A stations and Refreshment Rooms, Fast Food Units, Jan Ahaar Outlets, Cell Kitchens, Snack Bars, AVMs at category B stations. The most important point noted is that the license is not exclusive in nature and the Opposite Parties are free to appoint sub-licensees from the open market in case of any violation of the terms of license by any licensee or receipt of complaint from passengers on the quality of food served *etc.* Considering the limited space at the railway stations, it is technically not possible to open many food courts/stalls/plazas *etc.* and it is seen that there is usually an adequate number of a variety of small food units available. Further, as submitted by the Opposite Parties the catering policy also sets out the ceiling limits on holding of catering licenses which ensures that no single vendor can have a monopoly or dominant position in the catering business in India.

135. Lastly, the tariff/prices of each item in the menu to be served by food vendors on the railway station as well, as on board the trains is strictly regulated by the Railway Board/ Zonal Railways considering the common passengers, visitors arriving at the Railway stations or travelling in the trains. There cannot be any huge profit element for the vendors which are noticed from the poor responses to the bids offered, as mentioned above. Further, even the Food Plazas, which are set up even outside the railway station, in the circulating area within the precincts of the railway station are also required to serve the cheaper Jan Ahaar meals.

136. The Commission is in agreement with the analysis and the conclusions drawn by the DG.

Restrictions on technical and scientific development in Indian Railways

137. The Informant has made some general allegations against IR. It was alleged that the public information system on trains is wholly inadequate. There is a rudimentary system available on the Rajdhani



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Express and other such Express trains. Railways has launched its owned packaged drinking water branded as Railneer. It has refrained from providing safe drinking water in trains. There is a discrepancy between the features and facilities available on the IRCTC website and those available on the Agent's websites. There have been virtually no gains made in increasing train speed and reducing the duration of travel on the trains. Special preference is granted to premium trains over other trains, unfairly discriminating against passengers of other trains. The Railways has abused its dominant position by not making adequate efforts to improve safety features, increase the frequency of trains *etc.* Any decision on these issues is usually made from a political perspective, rather than keeping in mind the best interest of the travelers. By not improving such crucial technical capabilities, the Railways has further abused its dominant position and restricted technical and scientific development in this field.

138. The DG did not find any contravention.

139. The Opposite Parties in the reply filed before the DG have pointed out the various steps have been taken by them from time to time to improve passenger amenities.

140. The Commission is of the opinion that the allegations are general and vague in nature. Besides, IR has highlighted the various steps taken to improve the services and as such the question of contravention does not arise.

141. So far as the allegation of the Informant relating to provision of packaged drinking water under the brand Railneer is concerned, it may be noted that Director (Catering & Tourism), Railway Board in his deposition before the DG denied the suggestion that it is the only



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Packaged Drinking Water (PDW) which is sold in the trains or railway premises. It was pointed out that Railneer is only a fraction of the total demand of PDW and more than 100 other private brands of PDW have been approved by zonal railways and they are selling the water bottles in various trains/stations. Further, when enquired regarding the steps taken to provide RO/ filtered water on the railway station/trains which is more environment friendly and economic alternative it was stated that there are stations in Indian Railways network where the water dispensing units fitted with RO/ Aquaguard are available either through charitable organization or by railways. There is also a proposal in the budget to provide water dispensing machine at railway stations and in the trains. The implementation is looked after by the Traffic Commercial Directorate and Mechanical Coaching Directorate stations. It is also seen that in the present rail budget 2015-16 an amount of Rs. 12500/- crore has been proposed to be invested in passenger amenities over a period of four years *i.e.* 2015-2019. The major thrust areas under this includes improved cleanliness, disposable bed rolls, 24x7 helpline number 138, toll free number 182 for security complaint, new ticketing initiatives, wi-fi in B Category stations also, improved station facilities, redesign of coaches for comfortable travel *etc.* Further technological improvements have also been proposed including high speed trains, bullet train *etc.* However these are budget announcements and it has been seen from the past rail budget announcements, not all schemes announced do actually take off. For instance as per rail budget 2014-15 it was announced to increase IRCTC server capacity to support 7200 tickets per minute. However it is seen that presently only 3000 tickets per minute are being generated. In this regard it was asked as to what is the follow up mechanism for tracking fulfillment of budgetary announcement. This has been replied to by IRCTC stating that IRCTC got a new portal made live with its server having a capacity of 7200 tickets per minute, matching the budget announcement.



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142. In view of the above, the conclusion drawn by the DG that the passenger services offered by Indian Railways have a long way to go in terms of improved performance, even though the passenger services burden the Railways with an annual loss of Rs. 23,000/- crore and are heavily subsidized by freight traffic, cannot be disagreed with. As pointed out by the DG, for every passenger/ km, railways incurs a loss of 23 paise. The poor operating ratio of IR in respect of passenger services is on account of the subsidized fares as well as loaded systemic costs such as huge wage bill *etc.* The main dilemma of railways has been choosing between commercial and social viability. Accordingly, while there is a vast scope for technological and scientific improvement in passenger services, however the allegation does not tantamount to abuse of dominance by Railways.

Restriction on private players providing meals through e-catering in trains with no pantry facility

143. In the general complaint No. 3755 filed by Sh. Prakash Binani, has stated that it is running online service portal namely www.raildarbar.com wherein it connects passengers travelling on long distance train without pantry to order meals of their likes from popular restaurants of a location. It has alleged that it is neither vending nor hawking on railway premises and passengers get to know about its services through social media but when the parcel is being delivered on request of passengers the railway authorities harass the delivery person.

144. In this regard, it may be seen from the deposition of Shri Yadav, Director, MoR that as per the provision of section 144 read with section 147 of the Railways Act, 1989, sale of food items in the Railways premises without license and authority is a punishable offence and railways are taking appropriate action against these unauthorized vendors who are selling food items in trains through various web portals.



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Railways has also started E-catering for 143 trains which are not having pantry cars on 23.01.2015 in which passengers can order food of their choice through e-mail, SMS and by call. This pilot project has been started in order to integrate the bonafide catering service providers through IRCTC. After successful completion of this pilot project, e-catering facility will be extended to other trains also. These service providers may approach IRCTC to get themselves integrated and they can provide food items legally in due course

145. In this background, nothing more survives in the allegation which warrants any further examination.

Conclusion

146. In view of the above discussion, the Commission is of the opinion that no case of contravention of the provisions of section 4 of the Act is made out against any of the Opposite Parties. As the Commission has examined the rationale and justification advanced by the Opposite Parties in great detail and has agreed therewith, nothing turns upon the plea raised by some of the Informants that the matter was not examined in terms of the provisions of section 3 of the Act.

147. Before concluding, it may be noted that though the Commission has not found any violation in the instant matter, it is of the considered view that charging of service charge for the use of e-ticking may affect the consumers' interests. In terms of the explicit mandate of the statute as also in view of the provisions contained in section 18 of the Act, the Commission is bound to protect the interests of consumers.

148. It is noted that online ticketing has reduced the hassle of buying/ selling tickets through outlets and customers no longer have to drive down or stand in long queue to get their tickets booked. It has other benefits like user friendly approach, booking tickets for other persons located in other



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cities who are unable to book tickets themselves, digitally stored tickets in the database, saves paper, convenience of changing/ cancelling tickets, payment by card, *etc.* In other words, e-ticketing has only enhanced the efficiency in providing ticketing services to the passengers. However, service charges for the use of such facility seem to go against the interest of the consumers and moreover, it is non-refundable even in case of cancellation. The very purpose of e-ticketing is to enhance efficiency and provide better services to the passengers *i.e.* ultimately for the consumers' welfare. Needless to say that e-ticketing needs to be promoted as it allows substantial savings in costs to the Railways who otherwise will have to make necessary arrangements for booking at reservation centres, involving investment in infrastructure and personnel. While it adds to the convenience and saving of time and efforts of consumers, it is also a source of savings for the Railways. Besides, e-ticketing is an advancement in technology which needs to be promoted whole heartedly, rather than discouraged by imposing fees and other restrictions on it. The electronic ticketing system is a typical service innovation made through the adoption of computerized systems and processes which streamlined, qualified and reduced the amount of manual processes in the operations leading to improvements in service quality. Thus, innovation in delivery of services needs to be encouraged and promoted.

149. In view of the above, the Commission hopes and trusts that the Railways may do away with service charges and other unnecessary restrictions on booking of e-tickets which may not affect its revenues in any significant manner. In fact, it may result in net savings eventually. There is a case for rapidly promoting e-ticketing facilities. The Commission also notes that though the service charges imposed are not high, total exclusion of the same may advance the causes noted above and may particularly be beneficial to the larger section of society. It is hoped that the concerned



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authority would give due consideration to this issue and would ensure that fees and other charges are efficiently and effectively levied on the passengers.

150. The Secretary is directed to inform the parties accordingly. A copy of this order may also be forwarded to Ministry of Railways to examine the issue highlighted in this order.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

New Delhi
Date: 10/08/2015



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Per: M. S. Sahoo, Member

- 1 I have gone through the order prepared by the learned Members and agree with their findings and determination of issues except in respect of service charge levied by OP2 on sale of passenger tickets in electronic mode. Given the undisputed and admitted facts that the OPs are parts of the Railway Group and they are dominant in the relevant market, the only issue to be determined is that whether the conduct of the OPs in levy of service charge on the sale of tickets in electronic mode, amount to abuse of dominance under section 4 of the Act.
2. The informants had made allegations of anti-competitive conduct under sections 3 and 4 of the Act against the OPs. Based on a prima facie view, the Commission had ordered investigations into the alleged anti-competitive conduct under section 4 of the Act.
3. I have carefully considered:
 - a. the informations in cases No. 100 of 2013, 49 of 2014 and 89 of 2014;
 - b. the investigation report dated 09.03.2015 of the learned DG in these matters;
 - c. the joint reply dated 30.07.2015 of the opposite parties (OPs);
 - d. the oral submissions of the informants and of the learned counsel for the OPs on 28.5.15 and 14.07.2015; and
 - e. other material available on record.
4. While concurring with the findings of the investigation by the learned DG in support of service charge on sale of tickets in electronic mode, the OPs have generally submitted as under:
 - (i) the sale of passenger tickets in electronics mode is a value added service;



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- (ii) the OPs incur additional cost to render this value added mode of sale of tickets;
- (iii) the customers have an option to buy tickets otherwise; and
- (iv) the Railway Group incurs substantial loss on passenger services.

5. The undisputed facts are that the OPs use two modes of sale of tickets from passenger reservation system (PRS). These are: (i) brick-mortar mode, and (ii) electronic mode. Both the modes access PRS for reservation of passenger tickets to supply reserved tickets to customers. Each mode sells approximately 50% of total tickets sold by the OPs together. A brief description of these two modes is as under:

(i) Brick-mortar Mode: The OPs sell tickets from manual counters at 3,160 locations at the end of June 2014. This requires the OPs to incur expenses on premises, computers and printers, furniture, internet, booking personnel, electricity, paper for tickets, and other logistics. This requires the customers to travel to and from these locations to buy tickets and spend time and money on such travel.

(ii) Electronic Mode: This mode sells tickets from PRS to customers through the internet. This requires the OPs to incur costs on development and maintenance of electronic systems and operational costs associated with sale of tickets. This does not require much physical infrastructure and people. One variant of this requires the customer having an electronic card for payment to either visit an internet café or use his own facilities (computer, internet, electricity, paper, premises) for purchase of tickets through the internet. The other variant requires the customer to approach an authorised agent (of the OPs), who accesses the PRS through internet to purchase tickets for her. The first variant sells about 84% of tickets while the balance 16% is sold through the second variant. Both the variants require the



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customers to pay a service charge to OP2 over and above the ticket price.

6. Let us look at the costs and revenues of both the modes to OPs as they have justified service charge in view of costs they incur for provision of services in electronic mode. The Annexure III to the report of the learned DG, which has been provided by the OPs, in support of the costs incurred by them, is misleading. The Annexure III presents an estimate of variable costs of Rs.17 per ticket as of 2007 based on several assumptions, such as, a maintenance charge of Rs.9 per ticket, an internet charge of Rs.3 per ticket, etc. These assumptions and estimates are unrealistic, as borne out by the fact provided by the OPs themselves in the same annexure. They have submitted that total cost (not variable cost) per ticket for 2013-14 is Rs.7.22. Even this figure of Rs.7.22 cannot be relied upon as it subsumes 'tax expenses' of Rs.55.40 crore. It is intriguing that the OPs have claimed tax liability, which is an appropriation (please see page 480 of reply of the OPs), as part of the cost. If this tax liability is removed, the cost per ticket reduces to Rs.3.71. Nevertheless, this cost structure has enabled OPs to make an operational profit of Rs.171 crore from service charges on sale of 50% of tickets in electronic mode during 2013-14. This is over and above the savings on account of expenses which OP1 would have incurred on buildings, air-conditioning, electricity, furniture, staff, etc. for selling these tickets in brick-mortar mode. Further, it is to be borne in mind that the cost of servicing an additional ticket in brick-mortar mode is significant while that in electronic mode is insignificant. If OPs were to sell more tickets in electronic mode, they would not incur significant additional costs while they would save significantly if they sell less tickets on brick-mortar mode.

7. The material available on record does not quantify the costs incurred by the customers for purchase of tickets in these two modes. Depending on various factors, including the location of the customers and access to both the modes, one mode could be cheaper or costlier for her than the other. If one mode is clearly cheaper for all customers, close to 100% of tickets would be sold through that mode. Since 50% of tickets are bought on each of the modes, one mode is not clearly cheaper than or superior to the other from customer perspective. For customers of 50% of tickets, brick-mortar mode is cheaper and for the customers of balance 50% of tickets, electronic mode is cheaper. This choice of customers factors in value addition, if any, provided by the OPs in the electronic mode. This also factors in the cost of discomfort, if any, in both the modes, the implicit costs of own resources used to book tickets, and the explicit financial costs. The financial cost is a major component of total costs and usually carries relatively more weightage in choice, particularly for customers with inadequate economic means. If there were no service charges in electronic mode, the total cost for a customer would be less which would induce more customers to use electronic mode.
8. The following table captures the above analysis of costs and benefits to parties:

Perspective	Modes of Sale of Tickets	
	Brick-Mortar Mode	Electronic Mode (with Service Charge)
Customers	Cheaper for 50% of tickets	Costlier for 50% of tickets
Opposite Parties	Costlier	Cheaper
Marginal Cost to OPs of Selling an Additional Ticket	Significant	Insignificant



9. It has been alluded by the OPs that the Railway Group incurs an annual loss of Rs.23,000 crore on passenger services and they are levying a service charge on sale of tickets in electronic mode, which is a value added service and which entails costs, to recoup the loss partially. This argument does not justify the conduct. The loss is no reason to price relatively higher an otherwise less costly electronic service. The value addition is debatable as customers of 50% of ticket do not prefer electronic mode. While it adds to the convenience of some customers, it also requires efforts and resources on their part to avail this service. Contrary to claim of additional costs, it saves substantial costs for the OPs which they would otherwise incur in brick-mortar mode of service.

10. An enterprise usually reduces the loss by using a more efficient means of rendering a service and / or by selling the service at a higher price. It charges less for a less costly mode of rendering service. It charges the same or less for a service transacted or rendered in electronic mode. This improves efficiency of resource use for the enterprise and the economy and also welfare of customers. In the matter under consideration, I find that the OPs are charging a higher price for the service in electronic mode which costs them less. Consequently, they are encouraging the brick-mortar service mode which costs them more. They are thus penalising the more efficient electronic mode, and incentivizing the less efficient brick-mortar mode of service. The outcome is that customers for 50% of tickets do not prefer electronic mode and factors supporting this choice include the service charge, and the OPs sell 50% of tickets in brick-mortar mode which is costly for them.



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11. I find that the OPs have adopted a practice that charges more for electronic service and less for brick-mortar service. It distorts choice of customers in favour of brick-mortar service and thereby penalises the use of technology which conserves resources for the OPs as well as the economy. It charges more for less costly service and thereby promotes use of more costly service. This is unfair to the OPs themselves, the economy and also the customers. It restricts the use of technology to the prejudice of customers. I, therefore, find that the OPs have imposed unfair price in sale of tickets in electronic mode compared to that in brick-mortar mode, while the former mode is cheaper and conserves resources, and thereby violated the provisions of section 4(2)(a)(ii) of the Act. The OPs have also restricted the use of technology in rendering services relating to sale of passenger tickets to the prejudice of customers, and thereby violated the provisions of section 4(2)(b)(ii) of the Act. I thus find the conduct of OPs in respect of service charges on sale of tickets in electronic mode to be violative of the provisions of section 4 of the Act.
12. I, therefore, direct the OPs under section 27 of the Act to:
- cease and desist from charging the service charge on sale of passenger tickets in electronic mode; and
 - consider promoting use of technology by incentivising sale of tickets in electronic mode.

New Delhi
10.08.2015

Sd/-
(M. S. Sahoo)
Member