



**COMPETITION COMMISSION OF INDIA**

**Case No. 100 of 2013**

**In Re:**

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

**And**

- |  |                             |
|--|-----------------------------|
| <b>1. Union of India, Ministry of Railways</b>                     | <b>Opposite Party No. 1</b> |
| <b>2. Indian Railway Catering and<br/>Tourism Corporation Ltd.</b> | <b>Opposite Party No. 2</b> |

**CORAM**

**Mr. Ashok Chawla**  
**Chairperson**

**Dr. Geeta Gouri**  
**Member**

**Mr. Anurag Goel**  
**Member**

**Mr. M. L. Tayal**  
**Member**

**Mr. Justice (retd.) S.N. Dhingra**  
**Member**

**Mr. S. L. Bunker**  
**Member**



**Present:** Informants – in – person.

**Order under section 26(1) of the Competition Act, 2002**

The present information was filed under section 19(1)(a) of the Competition Act, 2002 ('the Act') against Ministry of Railways, Union of India ('the opposite party No. 1'/ MOR) and M/s Indian Railway Catering and Tourism Corporation Ltd. ('the opposite party No. 2'/ IRCTC) alleging *inter alia* contravention of the provisions of section 4 of the Act.

2. MOR controls Indian Railways (IR), a departmental undertaking of Government of India which is administered by Railway Board that reports to MOR. While IR performs the economic role of an enterprise, MOR is vested with the role of policy formulation related to the railway industry in India.

3. The allegations of the informants essentially relate to the conduct of Indian Railways with respect to the services provided by IRCTC, a subsidiary and group company of Indian Railways.

4. The allegations made by the informants against the opposite parties are summarized below:

(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 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 acts 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 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.

5. Based on the above averments and allegations, the informants have filed the present information seeking investigations into the allegations.

6. The Commission perused the facts highlighted in the information and heard the informants at length. The information has primarily alleged abuse of dominant position by the opposite parties under section 4 of the Act.



7. Section 2(r) read with section 19(5) of the Act requires determination of relevant market with due regard to the relevant geographic market and relevant product market. Section 2(t) defines relevant product market as ‘a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reasons of characteristics of the products or services, their prices and intended use’. Further section 2(s) defines relevant geographic market as ‘a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogeneous and can be distinguished from the conditions prevailing in the neighboring areas’. Considering these provisions of the Act and various unique characteristics of rail transport including travel comfort, safety, pricing, particular consumer preference and reach and distance etc. the services of rail passenger transportation in India is considered as a separate market. Accordingly, considering facts of the case, ‘transportation of passenger through railway in India’ appears to be the relevant market in the present case. Such market would also include the ancillary segment like ticketing, catering on board, platform facilities etc.

8. The above 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 consumer and relevant market in its favour. Due to the statutory and regulatory framework, the dominance of Indian Railways in this market is indisputable. The Commission has also considered material relating to alleged abusive conduct by IR and IRCTC. The allegations of compulsorily charging for catering facility in Rajdhani & other trains and of unfair conditions in sale of Rajdhani/ Shatabdi/ Duranto catering and travel services and of levying premium charges for calls made to 139 and of limiting the provisions of IRCTC authorized agent services and of limiting and restricting technical and scientific development in relation of booking of e-



ticket using IRCTC platform; service charge imposed on e-tickets being non-refundable even if the passenger needed to cancel the ticket; e-wallet scheme with unreasonable conditions appear to be some of their conducts mentioned in the information which *prima facie* appear to be abusive in contravention of the provisions of section 4 of the Act.

9. In view of the foregoing discussion, the Commission is of opinion that *prima facie*, a case of contravention of the provisions of the Act is made out against IR and IRCTC.

10. Accordingly, the Commission directs the Director General (DG) to cause an investigation to be made into the matter and to complete the investigation within a period of 60 days from receipt of this order.

11. The DG is also directed to investigate the role (if any) of the persons who were in charge of, and were responsible to the companies for the conduct of the businesses of such companies, after giving due opportunity of hearing to such persons.

12. It is, however, made clear that nothing stated herein shall tantamount to an expression of final opinion on the merits of the case and the DG shall conduct the investigation without being influenced by any observations made herein.

13. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of the DG forthwith.

14. It is ordered accordingly.



सत्यमेव जयते



**Sd/-  
(Ashok Chawla)  
Chairperson**

**Sd/-  
(Geeta Gouri)  
Member**

**Sd/-  
(Anurag Goel)  
Member**

**Sd/-  
(M. L. Tayal)  
Member**

**Sd/-  
(S.N. Dhingra)  
Member**

**Sd/-  
(S. L. Bunker)  
Member**

New Delhi

Date: 28/02/2014