



**COMPETITION COMMISSION OF INDIA**

**Case Nos. 47 and 56 of 2016**

**Case No. 47 of 2016**

**In re:**

**Indian Competition Review  
C-90, Airport Apartments,  
Vikas Puri, New Delhi - 110018**

**Informant**

**And**

- 1. Gateway Terminals India Private Limited (GTIPL)  
GTI House, JNPT, Nhava Sheva, Uran,  
Navi Mumbai, Maharashtra** **Opposite Party No. 1**
- 2. APM Terminals Pipavav/ Gujarat Pipavav Port Ltd. (GPPL)  
Rampara No. 2, Rajula,  
Amreli, Gujarat** **Opposite Party No. 2**
- 3. APM Terminals Inland Services (Main)  
Plot No. 100, Block No. 5, Sector 2,  
Dronagiri Warehousing Complex,  
Navi Mumbai, Maharashtra** **Opposite Party No. 3**
- 4. APM Terminals Inland Services (Annex)  
Block 5-18, Sector 6,  
Dronagiri Warehousing Complex,  
Navi Mumbai, Maharashtra** **Opposite Party No. 4**



5. **APM Terminals Management B.V**  
**Turfmarkt 107,**  
**2511 DP The Hague, The Netherlands**

**Opposite Party No. 5**

**WITH**

**Case No. 56 of 2016**

**In re:**

**Shri Subodh Kumar Sharma**  
**B 5&6 - 4057, Vasant Kunj, Delhi**

**Informant**

**And**

**Gateway Terminals India Private Limited (GTIPL)**  
**GTI House, JNPT, Sheva, Uran,**  
**Navi Mumbai, Maharashtra**

**Opposite Party No. 1**

**APM Terminals Pipavav/ Gujarat Pipavav Port Ltd. (GPPL)**  
**Rampara No. 2, Rajula,**  
**Amreli, Gujarat**

**Opposite Party No. 2**

**CORAM**

**Mr. Devender Kumar Sikri**  
**Chairperson**

**Mr. U. C. Nahta**  
**Member**

**Justice G. P. Mittal**  
**Member**



## **Appearances**

### **In Case No. 47 of 2016:**

**For Informant:** *Mr. Harish Vaidyanathan Shankar and Ms. Nisha Mohandas, Advocates and Mr. Pranav Mehra, Representative of the Informant.*

**For OP 1:** *Mr. Arun Kathpalia, Mr. Arjun Khera, Mr. Dhruvad Das and Mr. Aakarsh Narula, Advocates; Mr. Ravi Gaitonde, COO of GTIPL and Mr. Giriraj Deshpande, C. S., GTIPL*

### **In Case No. 56 of 2016**

**For Informant:** *Mr. K. K. Sharma, Mr. Bunmeet Singh and Ms. Bhanita Patwary, Advocates.*

**For OP 1:** *Mr. Suhail Nathani and Mr. Ravi Sekhar Nair, Advocates and Mr. Kamal Jain, CEO, GTIPL.*

**For OP 2:** *Mr. Suhail Nathani and Ms. Krushika Choudhary, Advocates and Mr. Maarten Hepkema, Representative of APMT.*

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

1. This order shall dispose of the informations filed by Indian Competition Review (in Case No. 47 of 2016) and Shri Subodh Kumar Sharma (in Case No. 56 of 2016) ('**Informants**') under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against Gateway Terminals India Private Limited or APM Terminals, Mumbai ('**GTIPL**'/ '**OP 1**') and APM Terminals, Pipavav or Gujarat Pipavav Port Ltd. ('**GPPL**'/ '**OP 2**') alleging, *inter alia*, contravention



of the provisions of Sections 3 (4) and 4 of the Act. In Case No. 47 of 2016, APM Terminals Inland Services (Main) ('OP 3'), APM Terminals Inland Services (Annex) ('OP 4') and APM Terminals Management B.V. ('OP 5') have been made proforma parties to the case (collectively, OP 1 to OP 5 are hereinafter referred to as 'OPs').

2. As per the informations, GTIPL/ OP 1 is a joint venture between APM Terminals and Container Corporation of India (CONCOR). It is one of the three container terminals operating from Jawaharlal Nehru Port (JNP) at Navi Mumbai having 30 years license to provide container handling services. APM Terminals is a ports and terminals company of the maritime giant the A. P. Moller-Maersk Group and it is one of the largest container terminal operators in the world. OP 2, a public private partnership enterprise located in Gujarat, is stated to be managed and operated by APM Terminals and it is engaged in the activity of handling of containers, bulk and liquid cargo traffic. It is stated that OP 3 and OP 4 are the container freight stations (CFSs) operating within JNP, managed and operated by APM Terminals and OP 5 is the parent company of APM Terminals. As per the Informants, OPs are group companies under the aegis of APM Terminals.
3. It is stated in the informations that JNP is the largest container port in India with container traffic comprising of 89% of the total cargo traffic handled in tonnage during 2014-15 in India. It is run by the Jawaharlal Nehru Port Trust (JNPT), an autonomous body constituted under the Major Port Trusts Act (MPTA), 1963. JNP has five container terminals, out of which three terminals viz. Jawaharlal Nehru Port Container Terminal (JNPCT), Nhava Sheva International Container Terminal (NSICT) and GTIPL are already in operation. It is stated that JNPCT is run by JNPT, NSICT is run by a consortium of P&O Australia Ports, Konsortium Perkapalan Behrad and DBC Group of Companies and GTIPL/ OP 1 is run by APM Terminals and CONCOR. The fourth terminal is being developed on Design, Built, Fund,



Operate and Transfer (DBFOT) basis for a concession period of 30 years by PSA International (PSA) and the fifth terminal has been partially operationalised since April, 2015. It is stated that APM Terminals is the largest shareholder with 43.01% shareholding in GPPL/ OP 2.

4. The Informants have alleged that OP 1 is abusing its dominant position in the market of container terminal services. It is averred that OP 1 is not only leveraging its dominance in the unregulated market for the services of CFSs but also routing/ diverting traffic from its terminal in Mumbai to Pipavav to increase its monopoly profits. This is being done so that APM Terminals can earn more profits by transportation of cargo through Pipavav Railway Corporation Limited (PRCL) in which GPPL/ OP 2 has 39% shareholding. It is further alleged that OP 1 is denying the 'essential facility' of container terminal services to shipping lines who are not using the CFSs service providers of OP 1 or the CFSs service providers preferred by OP 1. As per the Informants, a terminal could be an essential facility offered by a port unless there is competition amongst terminals in the same port. Since other terminals do not impose any competitive constraint on the functioning of OP 1, it is an essential facility at JNP.
  
5. The Informants have suggested the market of container terminal services within JNPT as the relevant market in the present cases and have stated that OP 1 is in a dominant position in the said market. As per the informations, in terms of demand for container terminal services at JNP, the market share of OP 1 in 2014-15 was 45.06% and in 2013-14 was 45.16%. It is submitted that OP 1 is a joint venture between APM Terminals with 74% share and CONCOR with 26% share. APM Terminals is a part of the A. P. Moller-Maersk Group which has presence in 63 ports and terminals and 154 Inland Services locations across the globe. Further, in comparison to its competitors such as JNPCT and NSCIT, OP 1 is vertically integrated. It is also submitted that JNPCT has almost reached its maximum capacity and is no longer



considered as a competitor of OP 1 and owing to decline in the revenue of NSICT, due to increase in royalty by JNPT, it has no motivation to attract traffic and thereby does not pose any competitive constraint upon OP 1. The Informants have stated that vertical integration of OP 1 with its parent company gives it a clear commercial advantage over its competitors. The Informants have also submitted that the consumers are dependent on OP 1 for the container terminal services because of entry barriers in JNP and grant of 30 years long license to OP 1 by JNP.

6. The Informants have alleged that OP 1 is abusing its dominant position by limiting and restricting the services offered by other CFSs with a view to promote its own and select CFSs at JNP, denying market access to other CFSs in order to promote its own or select CFSs, providing berthing window to shipping lines only on the condition that they have to either use the services of its own or select CFSs at JNP and use OP 4 for the container terminal services and its own CFSs at Pipavav port, and using its dominant position in the market of container terminal services at JNP to protect the market of container terminal services at Pipavav port. Accordingly, the Informants have alleged that OP 1 has contravened the provisions of Sections 4(2)(b)(i), 4(2)(c), 4(2)(d) and 4(2)(e) of the Act.
7. Further, the Informants have alleged that OP 1 has entered into arrangements/ understanding with downstream players which is causing appreciable adverse effect on competition in India. It is averred that OP 1 is tying its container terminal services with ancillary services provided by its preferred CFSs at JNP and it is refusing to deal with shipping lines that are not willing to travel towards Pipavav port in contravention of Section 3(4) of the Act.
8. Based on the above submissions, the Informants have prayed the Commission to initiate an investigation into the matters under Section 26 (1) of the Act and



pass a cease and desist order against the OPs for their above said alleged anti-competitive activities.

9. The Commission has perused the available information and additional submissions on record and heard the Informants and OPs on 24.08.2016. Further, on receipt of an application dated 19.09.2016 from CFS Association of India (CFSAI) under Regulation 25 of the Competition Commission of India (General) Regulations, 2009 requesting the Commission to allow it to take part in the proceedings of the present matters, the Commission again heard all the parties including CFSAI on 06.01.2017.
10. The Commission notes that the allegations of the Informants in both the cases are almost similar and primarily directed toward the alleged abusive conduct of OP 1.
11. The Commission observes that the Informants appear to be aggrieved by the alleged abusive conduct of OP 1 in limiting the services of CFSs at JNP, denying market access to the CFSs which are not owned by it, compelling shipping lines to either use the services of its own or select CFSs at JNP and use the services of OP 4 as well as its own CFSs at Pipavav port, and using its dominant position in the market of container terminal services at JNP to protect the market of container terminal services at Pipavav port in contravention of the provisions of Section 4 of the Act. Further, the Informants are aggrieved by the alleged conduct of OP 1 in tying the services of its preferred CFSs along with container terminal services at JNP and refusing to deal with shipping lines that are not willing to travel towards Pipavav port in contravention of the provisions of Section 3(4) of the Act.
12. With regard to the allegations of abuse of dominant position by OP 1, it may be noted that, the position of dominance of an enterprise is to be seen in the context of a relevant market within which such enterprise is allegedly abusing



its dominant position. Accordingly, it is imperative to first determine the relevant market in the instant matters and then to examine whether OP 1 is dominant in that relevant market or not to determine its abuse.

13. Taking into consideration the physical characteristics and end use, prices, consumer preferences *etc.*, the Informants have suggested the market of container terminal services as the relevant product market in these cases. In regards to the relevant geographic market, the Informants have suggested that it should be the geographic area of JNPT, Mumbai. While determining the above said relevant geographic market, the Informants have considered factors such as regulatory barriers, transportation cost, distribution facility at JNP, consumer preferences *etc.* The Commission observes that the allegations of the Informants relate to the market for container terminal services which includes the services provided by CFSs and others services such as handling, storage, loading and unloading of cargo from one mode of transport to another, *etc.* The Commission is of the view that for analysis of the present matters, the container terminal services in ports may be considered as an integrated service. Accordingly, in agreement with the Informants, the Commission is of the view that the relevant product market in the instant matters may be considered as the 'market for provision of container terminal services'. The Informants have suggested the relevant geographic to be considered in the instant matters as the area of Jawaharlal Nehru Port at Mumbai. The Commission is of the view that the conditions of competition for the provision of services for container terminal services are homogenous within Jawaharlal Nehru Port at Mumbai and can be distinguished from the conditions prevailing within the ports located in other parts of India. Accordingly, the relevant market in the instant cases may be considered as the '*market for provision of container terminal services in Jawaharlal Nehru Port, Mumbai*'.





14. In regards to dominance, the Informants have submitted that with market share of 45.06% in 2014-15 and 45.16% in 2013-14 in terms of handling of container traffic, OP 1 is in a dominant position in the above said relevant market. Besides, the Informants have stated that being developed by APM Terminals, a group company of the maritime giant the A.P. Moller-Maersk, the size and resources of OP 1 are much larger compared to its competitors at JNP. In this regard, the Commission observes that presently five container terminals are operating in JNP out of which three terminals viz. OP 1, JNPCT and NSICT are already in operation. Further, Nhava Sheva (India) Gateway Terminal Private Limited ('NSIGTPL'), being developed by DP World, has been partially operationalised since April, 2015 and Bharat Mumbai Container Terminals Private Limited (BMCTPL), being developed by PSA International, is expected to commence its operations by the end of 2017. The Commission observes that the presence of four other terminals viz. JNPCT, NSICT, NSIGTPL and BMCTPL in JNP will act as a competitive constraint upon OP 1 from acting independently in the relevant market. Further, the quay length of BMCTPL is 2000 metres which is larger than the quay length of 712 metres of OP 1 implying that BMCTPL has a higher capacity than OP 1 for loading and unloading of cargo at JNP. Also, based on the information available in the public domain, the Commission observes that the market share of OP 1 on cargo traffic has been declining since the last three years viz. 45.16% in 2013-14; 45.06% in 2014-15 and 41.42% in 2015-16.

15. In regards to the services of CFSs, which is a part of container terminal services, the Commission observes that besides two CFSs being operated by OP 1, there are 33 other players including GDL CFS, PUNJAB CONWARE CFS, BALMER LAWRIE CFS, ULA CFS, SEABIRD CFS and, CONTINENTAL CFS operating at JNP. The presence of such a large number of CFSs indicate that the consumers/ shipping lines have multiple options for the services of CFS at JNP and the presence of such a large number of CFSs act as a competitive constraint upon the CFSs of OP 1 from acting



independently of the market forces in the relevant market. Based on the above, OP 1 is not found to be in a dominant position in the relevant market as delineated above. In the absence of dominance, the Commission is of the view that the alleged conduct of OP 1 need not be examined. In view of the above facts, no case of contravention of any of the provisions of Section 4 of the Act is made out against OP 1 in the present case.

16. With regard to the allegations of the Informants that OP 1 has been tying the services of its preferred CFSs along with container terminal services at JNP and refusing to deal with shipping lines that are not willing to travel towards Pipavav port, the Commission observes that the relationship between the consignees/ shipping lines and CFSs is a purely commercial arrangement and based on contractual understanding between the parties. In this regard, it may be noted that Notification No. 69/2011 dated 03.05.2011 of the Customs Department of the Government of India stipulates that the usage of a particular CFS facility is entirely the prerogative of a consignee and in the absence of the consignee making this choice, the shipping lines may nominate the CFS facility. Thus, the selection of CFS service providers at ports does not always lie with the shipping lines. Further, from the submissions made by OP 1, the Commission notes that OP 1 has also started to provide 'Direct Port Delivery' (DPD) facility to accredited and approved consignees. The aforesaid facility enables OP 1 to directly deliver goods to the consignees without intervention of any CFS operator. Moreover, the Commission observes that, except bald allegations of vertical anti-competitive agreement in the matters, the Informants have not provided any cogent material/ documentary evidence in this regard. Accordingly, the Commission is of the view that no case of contravention of any of the provisions of Section 3(4) of the Act is made out against any of the OPs as well.

17. In the light of the above analysis, the Commission finds that no case of contravention of the provisions of either Section 3(4) or Section 4 of the Act is



made out against any of the OPs in the instant matters. Accordingly, the matters are closed under the provisions of Section 26(2) of the Act.

18. The Secretary is directed to inform all concerned accordingly.

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**Sd/-**  
**(Justice G. P. Mittal)**  
**Member**

**New Delhi**  
**Dated: 08.02.2017**