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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 61 of 2012

In Re:

**Indian Foundation of Transport
Research and Training**

Informant

And

1. Shri Bal Malkait Singh, President

All India Motor Transport Congress

Opposite Party No. 1

2. Shri G. P. Singh, Spokesperson

All India Motor Transport Congress

Opposite Party No. 2

CORAM

**Mr. Ashok Chawla
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

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



Appearances: Shri S.P. Singh, President of Indian Foundation of Transport Research and Training (IFTRT) for the Informant.

S/ Shri Rajesh Gupta and Navin Gupta, Advocates for All India Motor Transport Congress (AIMTC).

Order under Section 27 of the Competition Act, 2002

1. The present information under section 19(1)(a) of the Competition Act, 2002 ('the Act') was filed by Indian Foundation of Transport Research and Training ('the Informant'/ IFTRT) against Shri Bal Malkait Singh, President, All India Motor Transport Congress ('the Opposite Party No. 1'/ OP-1/ AIMTC) and Shri G. P. Singh, Spokesperson, All India Motor Transport Congress ('the Opposite Party No. 2'/ OP-2) alleging *inter alia* contravention of the provisions of section 3 of the Act.

Facts

2. As per the Information, the Informant is a registered society working in the field of road transport, automotive sector and trucking industry for over a decade and assisting the government and other agencies to have efficient, cost effective, safe and environment friendly road transport system in the country. It is stated that AIMTC is an apex body of road transporters consisting of passenger and cargo transporters.
3. The Informant has alleged that AIMTC has uniformly increased the truck freight by 15% across the country on account of diesel price hike of Rs. 5/- per litre w.e.f. 14.09.2012.
4. According to the Informant, such action by AIMTC is clear violation of the provisions of the Act and restricts the free and fair play of the market forces



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in the country. The Informant has also filed some newspaper reports in support of its averments.

5. Further, as per the Informant, AIMTC has a track record of instructing its constituents to jack up freight charges on account of increase in input costs such as diesel price. A cease and desist order was passed by the MRTP Commission on 31.08.2006 whereby AIMTC was directed to restrain from such restrictive practices.

Directions to the DG

6. The Commission, after considering the entire material available on record, *vide* its order dated 10.01.2013 passed under section 26(1) of the Act directed the Director General (DG) to cause an investigation to be made into the matter and to submit a report.

The DG Report

7. The DG, after receiving the directions from the Commission, investigated the matter and submitted the investigation report dated 11.12.2013.
8. The report of the DG was considered by the Commission in its ordinary meeting held on 02.01.2014. On a consideration of the report, the Commission *vide* its order dated 11.02.2014 directed the DG to further investigate the matter. The DG was directed to examine the conduct of the officer bearers of AIMTC for fixing individual responsibilities. Besides, the conduct of state associations and their office bearers was also ordered to be investigated. The DG, after receiving the directions from the Commission, further investigated the matter and submitted the supplementary investigation report on 15.07.2014.



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Consideration of the DG reports

9. The main investigation report as well as the supplementary report of the DG were considered by the Commission in its ordinary meeting held on 06.08.2014 and it was decided to send electronic copy of the reports to the Informant and the Opposite Parties as also to the office-bearers of AIMTC and the other state associations/ federations as identified by the DG for filing their respective replies/ objections/ financial statements/ profit and loss accounts/ turnover/ Income Tax Returns.
10. It may be noted that the DG, apart from AIMTC, found the following associations/ federations to be in contravention of the provisions of section 3 of the Act: Chennai Goods Transport Association, Maharashtra Heavy Vehicle & Interstate Container Operators Association, Kumayun Motor Operators Co-operative Union Ltd., Navi Mumbai Transport Association, Jharkhand Trunk Owners Association and Lorry Owners Welfare Federation, Kerala. Besides, the DG identified the officer bearers of such associations for the purpose of fixing responsibilities under section 48 of the Act.

Reply of AIMTC

11. AIMTC filed its reply/ objections to the investigation reports. An additional affidavit dated 28.11.2014 on behalf of AIMTC also came to be filed by one Shri Navin Gupta. The same shall be dealt with while analyzing the issues arising in the present case. The Informant has supported the findings of the DG.

Analysis

12. The Commission has perused the information, reports of the DG, reply/ objections filed on behalf of AIMTC as also the other material available on



record. On a careful consideration of the matter, the following issue arises for consideration in the present case:

Whether AIMTC has contravened the provisions of section 3 of the Act?

Issue: Whether AIMTC has contravened the provisions of section 3 of the Act?

13. It appears that the Informant is aggrieved by the conduct of AIMTC in allegedly giving a direction to the member transporters to uniformly raise the truck freight rates by 15% across the country on account of and consequent upon the diesel price hike of Rs. 5 per litre announced by public sector oil marketing companies w.e.f. 13.09.2012.
14. To investigate the matter, the DG framed various issues and on consideration of the material collected during the course of investigation concluded that there was a meeting of mind/ action in concert amongst the members of the association to fix the price consequent upon hike in diesel prices. It was also noted by the DG that the statements made by the President and the Spokesperson of the association in press were directions/ message to the members conveying the decision of the executive body. It was further concluded that the announcement in public to increase the freight charges had a major role in determining the prices of truck rentals indirectly. Lastly, it was noted by the DG that AIMTC acted in a “cartel like” manner by asking its members to effect 15% increase in freight charges across the country ignoring the actual effect of the diesel price hike. As such, the act of AIMTC was considered by the DG to be in contravention of the provisions of section 3(3)(a) of the Act.
15. AIMTC criticised the investigation conducted by the DG by arguing that no material evidence came up before the DG wherefrom allegations against AIMTC would be sustained. It was submitted that there was no agreement involving AIMTC and/ or its office bearers or members *vis-à-vis* provision of



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services. It was argued that there was no meeting of mind by or between AIMTC and its members, nor had any one of them committed or attempted to commit any act either on 14.09.2012 or at any time thereafter which could have impacted the market.

16. It was vehemently argued that far from any evidence against AIMTC and its members, nothing came on record to even remotely show that there was overall increase in truck fare on 14.09.2012 as a consequence of hike in diesel prices by Rs. 5 per litre with effect from 13.09.2012, or that on 14.09.2012 the market fares were increased by 15% in comparison to rates that existed on 13.09.2012.
17. Grievance was also made by AIMTC about reports of the DG on the ground that the DG relied upon *inter alia* the material supplied by the Informant and media reports *etc.* It was alleged that the material supplied by the informant was neither authentic nor based on any proof or evidence and was merely in the nature of hearsay. It was also pointed out that media reports did not provide any authentication to the allegations and at best it could have prompted the investigator to probe into reality by studying the market.
18. It was also argued that the Office of the DG is a statutory body under the Act to aid and assist the Commission in investigating into the matter. As an investigating agency of the Commission, the DG was duty bound to carry out surveys, collect material and evidences *etc.* and to record its findings *vis-a-vis* the allegations for which the investigation was ordered.
19. Reference was made to the various provisions of the Act including the provisions as contained in sections 36 and 41 of the Act to contend that the statute confers all the powers upon the investigator to carry out a meaningful investigation. However, it was alleged that the DG did not make any attempt to carry out the genuine investigation into the matter.



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20. It was forcefully submitted that none of the office bearers of the AIMTC had made any statement to the media that with effect from 14.09.2012 truck fares will be increased by 15%. It was argued that the investigator failed to appreciate that the steep, abrupt and unprecedented hike in diesel price would naturally have sharp reactions in the public and media. Accordingly, media interviewed the officer bearers of AIMTC to gather their opinion on the issue. In the interview, the officials of AIMTC gave their views that hike in diesel prices directly or indirectly affect all sectors and services including the truck operating costs. However, no specific statement was given that as a consequence of diesel hike truck fares will be hiked by 15%. As there was no statement directly or indirectly made by officials of AIMTC, there is no question of AIMTC or its officers having issued a “diktat” of any kind to its members. Moreover, it was pointed out that as there was no alleged increase in the truck fares, the DG was wholly in error to draw conclusions based on presumptions. It was also pointed out that none of the newspapers which covered the news had quoted the officials of AIMTC. The media reporting was from sources of Press Trust of India (PTI) based on its assessment and not as a consequence of any statement of any office bearer of AIMTC.
21. On the issue of similarity of news in various newspapers, it was clarified that AIMTC did not give any statement to any individual news channel or newspaper, but made a press release for PTI. Various news agencies collected the news from PTI and, as such, the reporting was bound to be similar. It was also argued that merely because various newspapers have made similar reporting, it would be an absurdity to draw an inference that it is pursuant to statements of officials of AIMTC or must have been from officials of AIMTC.
22. It was also argued that media reports are in themselves not conclusive pieces of evidence and in the absence of material substantiation and corroboration, the same cannot form the basis of any opinion against a party, nor can the same lead to any penalty or adverse remarks.



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23. In the additional affidavit, it was sought to be clarified that AIMTC did not pass any resolution exhorting its members to increase fare in any manner. It was argued that the association has nothing to do with the truck fares nor is it instrumental in determining truck fares in any other manner. Objection was also taken to the investigation on the ground that the DG failed to investigate as to whether fares had actually gone up by 15% or not. It was pointed out that in reality the truck fares did not rise as alleged.
24. In view of the above submissions, it was prayed that the DG reports, being legally untenable and wholly unsubstantiated, are liable to be rejected and the information be dismissed accordingly.
25. The Commission has perused the material available on record besides hearing the counsel for the appearing parties.
26. The gravamen of the information filed by IFTRT against AIMTC centres around the alleged anti-competitive conduct of the latter in giving alleged arbitrary direction on 14.09.2012 to its trucker members to increase the truck freight by 15% across the country on account of and consequent upon the hike in diesel prices by Rs. 5 per litre which was effected by public sector oil marketing companies with effect from 13.09.2012. Reference was also made to an order passed by the erstwhile the MRTP Commission against AIMTC on 31.08.2006 in RTPE No. 03 of 2000 for issuing a circular to its members for increasing the freight rates. It was pointed out that a cease and desist order was passed against the association by the MRTP Commission directing it not to indulge in such practices and further not to repeat the same in future.
27. It may it may be noted that competition law while prohibiting anti-competitive agreements defines the term “agreement” in section 2(b) of the Act in a very inclusive and expansive manner. It may be noted that the term “agreement” has been defined very widely by including any arrangement or understanding or action in concert whether or not such arrangement or



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understanding or action is formal or in writing or whether or not such arrangement or understanding or action is intended to be enforceable by legal proceedings. It is no doubt more often the case that the evidence in respect of anti-competitive agreements will normally be only fragmentary and sparse, and as such it is often necessary to reconstitute certain details by deduction. In most cases, the existence of an anti-competitive practice or agreement or decision has to be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of the existence of an agreement.

28. In view of this legal position, the Commission is of opinion that nothing significant turns upon the submissions made on behalf of AIMTC that since no written circular was issued to the members exhorting them to increase the freight rates consequent upon the hike in diesel prices, provisions of the Act could not have been contravened by the association. The Commission holds that even *de hors* the written circular or directions if the material on record indicates a concerted action, it may be enough to hold contravention of the provisions of the Act.
29. In this backdrop, the material collected by the DG during the course of investigation may be examined. In this regard, it may be noted from the statement of Shri Bal Malkait Singh, President of AIMTC recorded before the DG, that a press conference was called by Shri Kultaran Singh Atwal, Vice-President of AIMTC at the association's head office at 1/16-A, Asaf Ali Road, New Delhi-110002 on 14.09.2012. After the press conference, a press release was issued to media persons who were present and attended the said press conference. For felicity of reference, it would be appropriate to quote the same hereinbelow:

Press Release

The Chief Bureau

Print & Electronic Media

September 14, 2012



The 13 / 9 is the black day for the road transport sector and the COMMON MAN of India, Disregarding all plausible alternatives, the Government has triggered the tsunami of inflation by going ahead with its decision of steep hike of Rs. 5/litre of diesel. Its imminent fallout is too strong to contain and we seek help from our friends from Print & Electronic media to highlight the correct picture to the nation as the going is getting tough again.

The truckers, transporters community and the people engaged in this sector are an inalienable part of the "AAM AADMI" community and are living on the edge.

The road transport sector expresses its pain and resentment at the decision of the Central government to affect a sharp increase in diesel price. The government's decision will have the greatest dampening effect on the economy apart from spirally increasing the all round inflation. There is heightened concern over the deteriorating condition of the transporters coupled with double whammy of Corruption and Taxation that are impinging on their very survival.

Diesel prices in India are out of sync with the paying capacity of the common man and the new decision would send inflation, already touching double digits, spiraling out of control. The imminent increase in diesel price will only aggravate the situation. The decision would not only unleash uncontrollable inflationary forces, resulting in an all- round and back-breaking hike in the prices of all essential commodities particularly food costs, household essentials and travel bills of office employees and self. The move would seriously retard the already slack pace of economic growth. The road transport fraternity strongly condemns and deploras



the current stand taken by Government and demand it to be reversed in the interest of Common Man of India,

The road transport industry will not be able to absorb imminent hike in Diesel prices and suggests that the Central & State Governments should reduce the Excise, Custom Duty & VAT on diesel, which constitutes around 50% of the diesel cost.

We have time and again demanded that there should be Uniform diesel price across the country. Because of the differential pricing in different states there is wide variance in prices of diesel that also impacts our transportation operations,

The Government of Goa has made a prudent decision to adjust its taxes in the interest of AAM AADMI and we request the state governments to not only emulate the example set by Goa Government but the Central Government should also adjust custom & excise duties in light of fluctuating crude prices.

We, therefore, appeal to the members of country's print & electronic media to support the just cause of Road Transport fraternity also, which is adversely affected by the retrograde policies that ultimately leads to increase of hardships of the Common Man, while all blame is put on the industry.

The current hike of 12% by the government and its claim to bring its budget deficit under control and win back the trust of foreign investors is misplaced. The hike has been affected at the cost of the Common Man. The fiscal deficit could be controlled by alternative means and containing scams that run into lacs of crores of rupees, which could well



compensate that deficit. Perhaps the Government's principle role of public welfare has eroded and is leading to more corporatization.

We are sure that our trade will not be able to absorb the cumulative effect of all these decisions and it may lead to some strong reaction which may be unwarranted for all the segments of the Society, Trade, Commerce and Industry. The road transport fraternity of India is not at all happy or will lie low if the steep hike of diesel prices is pushed through. An emergent managing committee meeting is being convened at Mumbai on Tuesday 18/09 to take a decision on future course of action which may lead to indefinite suspension of transport operations pan India.

-Sd-

*Kultaran Singh Atwal
Vice-President- AIMTC*

-Sd-

*Gurinder Pal Singh
Former President &
Spokesperson- AIMTC*

30. Subsequently, various press reports appeared in the media indicating that President and Spokesperson of AIMTC had given statements suggesting that freight charges will be increased by 15% if the hike in diesel prices is not rolled back by the Government. These media reports have been annexed by the DG to the investigation report and it is not necessary to refer them in any greater detail and it would be sufficient if a gist thereof is noticed:

Statement of Shri Bal Malkait Singh, President, AIMTC as reported in The Economic Times:

"The hike in diesel prices has jacked up our cost of operations by almost 15 percent. It will be difficult for us to absorb and will pass on the hike to the customers".



Statement of Shri Gurinder Pal Singh, Spokesperson, AIMTC as reported in Business World:

“We have decided to pass on the burden of increase in diesel price hike to customers. The freight charges will be increased with immediate effect by 15% across India.”

31. It can be noticed that the statements of these two different officers of AIMTC given at two different locations (Mumbai and Delhi) on almost similar lines were reported by the media in a similar manner. It is difficult to accept that such similar statements containing identical signals could be issued by two very senior and responsible officials of the association without any prior consultations or mandate of the association. This could not have been the situation unless there has been some form of communication or discussion amongst the members of the association resulting into such statements through these officials. Thus, it is evident that there was a meeting of mind amongst the members of the association to fix/ increase the freight rates consequent upon hike in diesel prices.
32. The Commission also finds no force in the bald denials on behalf of AIMTC disputing such statements in as much as it has not been shown by these two officials of the association that they ever protested such reporting in the media which have now been described as misleading. Such silence on their part is particularly beyond comprehension in as much as previously the association has been restrained by the MRTP Commission from indulging in such type of conduct and as such these officials ought to have been sufficiently educated about the gravity of the reporting in the media which was attributed to them. Had they not issued such statements, in the normal course of behavior, they would have strongly objected to such reporting as the consequences of such conduct are well known.



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33. Further, the Commission may examine the issue as to whether the statements made by President/ Spokesperson of the association in press can be considered as binding direction to its members. In this connection, it was submitted before the Commission that any direction issued by AIMTC to its members is not legally binding upon the members.
34. On a careful consideration of the matter, the Commission is of considered opinion that the plea is purely disingenuous. It is an admitted position that AIMTC is an apex body of transporters (both cargo and passenger) serving the industry for the last about 76 years representing approximately 75 Lacs truckers and approximately 40 lakhs bus, tourist taxi and maxi cab operators. It is also an umbrella body covering over 2500 taluka, district and state level federations and transport associations. In this backdrop, any signal coming from the highest officials of the association has a great persuasive effect which, as will be shown later, has also translated into action. In any event, under the competition law any agreement including practice or decision which causes or is likely to cause appreciable adverse effect on competition is frowned upon. The question whether such a decision was actually carried or implemented is beside the point, though this aspect may have some bearing while quantifying the penalties upon the defaulting entities. Thus, though the Commission is of opinion that the decisions and directions made or issued by AIMTC not only have a great persuasive value due to its pan-India representative character but also in fact were acted upon by the members of the association, as will be shown in the order.
35. The DG in the main as well as supplementary investigation reports also examined the effect of the impugned announcements in public by the officials of AIMTC to increase the freight charges upon the prices of truck rentals. It cannot be disputed that any announcement made by the association hailing the members to increase the freight rate could directly or indirectly result in determination of prices of services. For the reasons stated earlier, it is not necessary to dilate any further on this aspect as the DG has submitted the



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detailed analysis in this regard and which has not been seriously disputed by AIMTC. Suffice to note that the impact of announcement of AIMTC can be seen in the findings of the DG supplementary investigation report which notes that state associations like Chennai Goods Transport Association, Maharashtra Heavy Vehicle & Interstate Container Operators Association, Kumayun Motor Operators Cooperative Union Ltd and Navi Mumbai Transport Association, Jharkhand Truck Owners Association and Lorry Owners Welfare Federation of Kerala not only communicated to their members for effecting an increase in freight charges but also, in some cases, to participate in the nationwide strike. Announcement of AIMTC to increase freight rates was also a signal to the demand side so that expectations of increase in freight rates could be formed, which would aid in actual increase on the ground. Therefore, the Commission is of considered opinion that the impact of announcement of AIMTC is quite clear in terms of state associations taking a cue and directing their members an increase in the freight rates. This is fortified by the admission of Pondicherry Goods Transporters' Association, as noted below, wherein it has admitted as to how it functions on the advice of AIMTC given through press/ media or telephone calls. Thus, there cannot be a stronger evidence of the impact of announcement of AIMTC upon its members and ultimately upon the freight rates charged by individual truckers.

36. There are some other aspects also which strengthen and corroborate the existence of an agreement amongst members of AIMTC to fix prices in respect of freight rates charged by individual truckers.
37. It may be noted that AIMTC had given a call for nationwide strike on 20.09.2012. In this connection, it may be noticed from the Press Release dated 14.09.2012 that AIMTC was contemplating indefinite suspension of transport operations pan-India. Further, it may be observed from the Press Release dated 18.12.2012 issued by AIMTC that it decided at its emergent meeting held at Mumbai to go for one-day suspension of operations pan-India



from midnight of 19.09.2012 so as to mark its protest against the hike in diesel prices. It would be appropriate to notice the release and same and is quoted below:

Press Release

The Chief Bureau

September 18, 2012

Print & Electronic Media

The 13/ 9, the black day for the COMMON MAN and the road transport sector of India. Disregarding all plausible alternatives, the Government has triggered the tsunami of inflation by going ahead with its decision of steep hike of more than Rs 5/litre of diesel. Its imminent fallout is too strong to contain and we seek help from our friends from Print & Electronic media to highlight the correct picture to the nation as the going is getting tough again,

The diesel hike has already shot up the operations cost of the transport sector, which is already reeling under the ever increasing prices of Toll, Tyres, Third Party Insurance premium, Spare parts & Lubes, Establishment cost not to mention the extortion and fleecing of money en route by the corrupt officials. They find it very hard to carry on their business.

70% of the trucking population constitute single trucker owners and more than 85% constitute the truckers, transporters community and the people engaged in this sector like helpers, labours, mechanics etc. who all are an inalienable part of the "AAM AADMI" community and are living on the edge.



The government's decision will have the greatest dampening effect on the economy apart from spirally increasing the all round inflation. There is heightened concern over the deteriorating condition of the transporters coupled with double whammy of Corruption and Taxation that are impinging on their very survival.

The current hike of 12-14% in diesel price by the government, its claim to bring its budget deficit under control and win back the trust of foreign investors is misplaced. The hike has been affected at the cost of the Common Man. The fiscal deficit could be controlled by alternative means and containing scams that run into lacs of crores of rupees, which could well compensate that deficit. It gives away money be it Rs, 1.86 crore in the Coal gate Scam, Rs 1.76 lakh crore in the 2G scam and the Rs 70,000 crore in the Common-Wealth Game scam, leave alone the small ones and recovers the losses and fix treasury in this way. These definitely could change the dynamics of India's economy. Perhaps the Government's principle role of public welfare has eroded and is leading to more corporatization & welfare of self when public money is squandered in such extent. Subsidy given to public is just a fraction of Black money in foreign banks. Why govt. did not show courage to act against Black Money. It is not surprising at all that that Government have lost sensitivity to the hardships of the common people.

The road transport industry will not be able to absorb imminent hike in Diesel prices and suggests that the Central & State: Governments should reduce the Excise, Custom Duty & VAT on diesel, which constitutes around 50% of the diesel cost.



The Government of Goa has made a prudent decision to adjust its taxes in the interest of AAM AADMI and we request the state governments to not only emulate the example set by Goa Government but the Central Government should also adjust custom & excise duties in light of fluctuating international crude prices.

We have time and again demanded that there should be Uniform diesel price across the country. Because of the differential pricing in different states there is wide variance in prices of diesel that also impacts our transportation operations. A correction in diesel price across the country should be made & the price of diesel should not differ from State to State for example Delhi diesel price compare to Karnataka Diesel price has a difference of Rs. 6. The transporters are the worst affected by the differential pricing in different states as the vehicles travel through-out the country and at times they have to fill the tanks at a higher price of diesel than what they have quoted to their clients in their home states.

We, therefore, appeal to the members of country's print & electronic media to support the just cause of Road Transport fraternity also, which is adversely affected by the retrograde policies that ultimately leads to increase of hardships of the Common Man, while all blame is put on the industry.

The decision has already unleashed uncontrollable inflationary forces, resulting in an all-round and back-breaking hike in the prices of all essential commodities particularly food costs, household essentials and travel bills of office employees and self. The move would seriously retard the already slack pace of economic growth. The road



transport fraternity strongly condemns and deplores the current stand taken by Government and demand it to be Reversed or Central & State Taxes be reduced in the interest of Common Man of India.

All India Motor Transport Congress, the mother body of the road transport fraternity of India, has therefore decided at its Emergent Meeting held at Mumbai to go for one day suspension of operations pan India from midnight of September 19, 2012 so as to mark its protest. We allow the government 30 days window period to roll back the diesel hike and to redo the wrongs done to the Common Man and our sector.

AIMTC Managing Committee will meet again in 20 days time to assess the Government response and would take a call suitably.

-Sd-

President

All India Motor Transport Congress

38. From the tenor of the press release, it is obvious that AIMTC, which described itself as “mother body” of road transport fraternity in India was calling emergency meetings and taking decisions to suspend operations pan-India. In such a scenario, it is futile for the association to contend that its decisions do not have any binding value for its members and it is purely a non-political, non-religious and non-profitable organization committed to work for the development of road transport and for the welfare of the people associated with this industry.
39. The Commission notes that in terms of the provisions contained in section 3(1) of the Act, no enterprise or association of enterprises or person or



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association of persons can enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Section 3(2) of the Act declares that any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void. Further, by virtue of the presumption contained in subsection (3), any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which-(a) directly or indirectly determines purchase or sale prices; (b) limits or controls production, supply, markets, technical development, investment or provision of services; (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way; (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition.

40. Thus, in case of agreements as listed in section 3(3) of the Act, once it is established that such an agreement exists, it will be presumed that the agreement has an appreciable adverse effect on competition; the onus to rebut the presumption would lie upon the opposite parties. It has already been shown that AIMTC through its impugned action has tried to determine the price of freight rates and, as such, such action squarely fell within the presumption raised in section 3 (3) of the Act.
41. In the present case, AIMTC could not rebut the said presumption. It has not been shown as to how the impugned conduct resulted into accrual of benefits to consumers or made improvements in production or distribution of goods in



question. Neither, the association could explain as to how the said conduct did not foreclose competition.

42. The Commission is constrained to note that the impugned conduct of AIMTC is not only anti-competitive and in contravention of the provisions of section 3 of the Act but it also has a cascading impact through various state level associations affiliated to it in the market setting the chain reaction in motion. These state associations were only the foot soldiers in implementing this process of distortion at the local level.
43. The Commission also observes that the print and electronic media also became an easy purveyor of the anti-competitive conduct resorted to by AIMTC in as much as instead of issuing circulars calling upon the members to increase the freight rates, AIMTC changed its tack by issuing press releases through a news agency reflecting its intent alongwith briefings given by the senior officials of the association to the media to clarify the penumbra in the press release *i.e.* fixing of price *etc.* In fact, such *modus operandi* adopted by AIMTC was laid bare by Pondicherry Goods Transporters' Association- a life members of AIMTC- in the documents filed before the Commission. It was categorically mentioned therein that the association acts and operates or suspends business as per the guidelines issued by AIMTC through media/ press and instructions given over phone. For felicity of reference, the relevant para of the reply dated 30.10.2014 of Pondicherry Goods Transporters' Association may be noticed:

We act or operate or suspend our business as per the guidelines given by AIMTC through Media/ Press and their instructions over phone.



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We have consulted with the neighbor Association regarding increase in diesel price by the oil companies period from 13.09.2012 to 30.09.2012 and decided to act as per AIMTC guidelines.

We have directed our members regarding diesel price increase and advised to increase the rates in freight competitively and instructed the Transport annual contract carriers to appeal their customers to little more freight since the some members are operating with huge loss because of the diesel increase.

44. Such a categorical admission by one of the life members of AIMTC completely belies the stand taken by AIMTC that its decisions are not binding upon the members and it is purely a non-political, non-religious and non-profitable organization committed to work for the development of road transport and for the welfare of the people associated with this industry. In such a scenario, it is not difficult to envisage that the situation cannot be any different in respect of other member associations. Resultantly, the Commission has no hesitation in holding that AIMTC through its press releases/ media briefings/ telephone calls was instrumental in persuading its member associations to fix freight rates. It is also apparent that members associations were in touch with each other to discuss the issue of increase of freight rates and also directed their respective member to act accordingly. Such collusive and concerted practices distorted the market dynamics and led the truckers to increase the prices through the decisions of associations instead of pricing the services through the market forces of demand and supply.



45. In view of the above discussion, the Commission is of opinion that AIMTC through its impugned act/ conduct has contravened the provisions of section 3(3)(a) read with section 3(1) of the Act, as detailed above.
46. Resultantly, AIMTC is directed to cease and desist from indulging in the act/ conduct which have been found to be in contravention of the provisions of the Act in this order and in particular it is directed to refrain from issuing any announcements/ directions/ circulars *etc.* to its members which may contravene the provisions of the Act.
47. Furthermore, in terms of the provisions contained in section 27(b) of the Act, the Commission may impose such penalty upon the contravening parties, as it may deem fit which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse.
48. It is evident that the legislature has conferred wide discretion upon the Commission in the matter of imposition of penalty as can be noticed from the phraseology employed in the provision noted above.
49. It may be noted that the primary objectives behind imposition of penalties are: to impose penalties on infringing undertakings which reflect the seriousness of the infringement; and to ensure that the threat of penalties will deter both the infringing undertakings and other undertakings that may be considering anti-competitive activities from engaging in them.
50. The Commission is also conscious of the fact that any unfair and anti-competitive increase in price of freight rates has a cascading and inflationary impact upon the goods and services consumed by common man. Thus, the Commission deems infraction of competition law with much more seriousness in respect of such conduct which ultimately impacts the common man besides distorting the competitive process in the market. Needless to add



or point out, AIMTC also suffered orders of the MRTP Commission in the past for similar conduct. No mitigating factor has been shown by AIMTC or is otherwise found to be present. Considering the totality of facts and circumstances of the present case, the Commission decides to impose penalty on AIMTC @ 10% of the average turnover of the last three years. The total amount of penalty is worked out as follows:

(In Rs.)

S. No.	Name	Turnover for 2010-11	Turnover for 2011-12	Turnover for 2012-13	Average Turnover for three years	@ 10% of average turnover (Rounded off to nearest Rupee)
1.	AIMTC	7,942,376	26,314,406	8,478,860	14245214	1424521

51. The Commission further directs AIMTC to deposit the penalty amount within 60 days of receipt of this order.
52. Before concluding, it may be noted that the Commission while forwarding electronic copy of investigation reports to AIMTC, also forwarded the same to the identified state associations and their office bearers for filing their respective replies and financial statements. As some of such entities have not filed the requisite information, the Commission decides to pass an appropriate order separately *qua* such entities and persons.
53. It is ordered accordingly.
54. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson



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

**Sd/-
(Sudhir Mital)
Member**

**Sd/-
(Augustine Peter)
Member**

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

New Delhi
Date: 16/02-/2015