COMPETITION COMMISSION OF INDIA

Case No. 04 of 2018

***In Re*:**

National Association of Container Freight Stations, Chennai Chapter
BWC Towers, No 46/2, (37/2), 2nd Floor,
North Beach Road, 3rd Line, Clive Battery,
Chennai - 600001 **Informant**

And

Trailer Owners Association
125/64, East Madha Church Street,
Royapuram, Chennai - 600013 **Opposite Party No. 1**

Trailer Organisers Association
163, S. N. Street, Royapuram,
Chennai - 600013 **Opposite Party No. 2**

Port Contractors Welfare Association
New # 23, Old # 9, North Madha Church Street,
Royapuram, Chennai - 600013 **Opposite Party No. 3**

Chennai Trailer Owners Association
1, South Madha Church Street,
Royapuram, Chennai - 600013 **Opposite Party No. 4**

Tamil Nadu Trailer Owners Association
153, Solaiyappan Street,
Old Washermanpet,
Chennai - 600021 **Opposite Party No. 5**

Royapuram Trailer Owners Association
4B, Vasanth Apartment, 192/110,
M.S. Koil Street, Royapuram,
Chennai - 600013 **Opposite Party No. 6**

Interstate Container Transport Owners Association
152/255, Thambu Chetty Street,
Thambu Chetty Street,
Chennai - 600001 **Opposite Party No. 7**

Confederation of Surface Transport
D-37, DMDA Truck Terminal,
G. N.T. Road, Madhavaram,
Chennai - 600010 **Opposite Party No. 8**

Chennai Harbour Trailer Owners Association
I, South Madha Church Street,
Royapuram, Chennai - 600013 **Opposite Party No. 9**

Chennai Kanchi Rhiruvakkur Trailer Owner Welfare Association
101/52, East Madha Koil Street,
Royapuram, Chennai - 600013 **Opposite Party No. 10**

Chennai Thuraimugam Trailer Lorry Driver Anna Thozhilalalsangam
55, S. N. Chetty Street,
Tondiarpet, Chennai - 600081 **Opposite Party No. 11**

Chennai Thuraimuga AITUC Tractor Trailer and Articulated Driver
48, Prakashan Salai, Broadway,
Chennai - 600108 **Opposite Party No. 12**

<u>CORAM</u>

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Present:

For National Association of Container Freight Stations (Informant): Mr. T Sundar Ramanathan, Authorised Representative
Mr. Vivek Pandey, Legal Counsel
Mr. Adarsh Ramanujan, Legal Counsel
Mr. Navneet Dogra, Legal Counsel

For Trailer Owners Association (OP-1): Mr. P. K. Sabapathi, Advocate

For OP-2 to OP-12: None

Order under Section 27 of the Competition Act, 2002

Information

1. The Information in the present case has been filed by the National Association of Container Freight Stations, Chennai Chapter (hereinafter, the 'Informant'/'NACFS') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the 'Act') against M/s Trailer Owners Association (hereinafter, 'Opposite Party No. 1'/ 'OP-1'), M/s Trailer Organisers Association (hereinafter, the 'Opposite Party No. 2'/ 'OP-2'), M/s Port Contractors Welfare Association (hereinafter, 'Opposite Party No. 3'/ 'OP-3'), M/s Chennai Trailer Owners Association (hereinafter, 'Opposite Party No. 4'/ 'OP-4'), M/s Tamil Nadu Trailer Owners Association (hereinafter, 'Opposite Party No. 5'/ 'OP-5'), M/s Royapuram Trailer Owners Association (hereinafter, 'Opposite Party No. 6'/ 'OP-6'), M/s Interstate Container Transport Owners Association (hereinafter, 'Opposite Party No. 7'/ 'OP-7'), M/s Confederation of Surface Transport, Madhavaram, Chennai (hereinafter, 'Opposite Party No. 8'/ 'OP-8'), M/s Chennai Harbour Trailer Owners Association (hereinafter, 'Opposite Party No. 9'/ 'OP-9'), M/s Chennai Kanchi Rhiruvakkur Trailer Owner Welfare Association (hereinafter, 'Opposite Party No. 10'/ 'OP-10'), M/s Chennai Thuraimugam Trailer Lorry Drivers Anna Thozhilalalsangam (hereinafter, 'Opposite Party No. 11'/ 'OP-11') and Chennai

Thuraimuga AITUC Tractor Trailer and Articulated Drivers (hereinafter, 'Opposite Party No. 12'/ 'OP-12') [hereinafter, collectively, referred to as the 'Opposite Parties'/'OPs'], alleging contravention of the provisions of Section 3 of the Act.

2. As per the information, the Informant was established in April 1994 in the Union Territory of Chandigarh. Its Chennai Chapter has 32 members, where the issues alleged in the information had arisen. Members of the Informant consist of operators either of Inland Container Depots (ICD) or Container Freight Stations (CFS), which are custom bound in-transit facilities. Though CFS is located near the port and ICD is located in the hinterland, for the purposes of this case, ICD and CFS have been collectively referred to as 'CFS'. The CFS helps in the decongestion of ports as it acts as a hub in the logistics chain, wherein the custom formalities for containerised cargo and less than container loads (LCL) can be completed. It is that point from which the consignments are cleared for domestic consumption by the respective importers upon compliance with requisite formalities, and before such clearance, the import is not considered complete under the Customs Act, 1962.

3. The Opposite Parties (OP-1 to OP-12) comprise various associations under which trailer owners, drivers and other personnel engaged in their services are organised. Movement of goods and containers from port to CFS during import and from CFS to port during export is done through trailers, i.e. the members of the OPs. Thus, the members of the Informant, as per the Information, are dependent upon the members of the OPs for continuous movement of goods, since the CFS are stated to have the space to accommodate 3 days' storage, at most.

<u>Brief facts of the case</u>

4. The Informant has alleged that the decisions taken by the OPs in various meetings during 2010 to 2018 are anti-competitive. The first meeting which the Informant has alleged to be anti-competitive is dated 07.07.2010, wherein it was decided that none of the members of the Informant could ply more than 20 trailers

of their own for movement of containers, and such ceiling should include their sister concerns as well. This meeting was attended by the members of the Informant, the Chennai Port Trust and six transport owners associations (TOAs).

5. The second meeting which the Informant has alleged to be anti-competitive was held on 09.08.2014, wherein it was decided that, w.e.f. 01.09.2014, the individual rate for trailer services will be increased across the board, i.e., by ₹900/- for 20 feet containers and by ₹ 1400/- for 40 feet containers. The rates were to be further revised on 31.03.2016 and it was decided that, during the said period, there should be no stoppage in movement of containers. On the same date, a trade notice was published for and on behalf of the OPs to notify the decisions taken at the meeting. The said meeting was stated to be called by the Chairman, Chennai Port Trust, and it was attended by the members of the Informant and various TOAs.

6. Thereafter, a letter dated 27.01.2015 was issued by the Chennai Trailer Owners Association, i.e.,14 Associations and 3 unions, to all the CFS, restricting CFS operations in terms of maximum number of vehicles that they can operate and by declaring that the CFS shall not increase their existing fleet. The reply dated 30.01.2015 was issued by NACFS to the abovementioned letter dated 27.01.2015 from Chennai Trailer Owners Association refuting the decision taken by the associations as being arbitrary and against the interest of its members.

7. Another meeting was stated to be conducted on 14.02.2015 by All Transport Owners Association and Driver and Cleaner Union for declaring that decisions must be taken by all the 14 associations jointly and not by any one association by itself. Also, it was decided that the problems between the members and problems related to business have to be discussed with CFS, customs house agents (CHA) and contractors and the decision should be taken accordingly.

8. A letter was also issued to the Chairman, Chennai Port Trust, dated 16.02.2015

informing the decision taken in the meeting conducted by All Transport Owners Association and 3 Trade Unions, reiterating the restrictions on the CFS that only 20 trailers can be plied and that the existing fleet cannot be increased. Further, the CFSs were supposed to carry their own exports only and not the exports of any other CFS.

9. A letter dated 10.03.2016 was written by NACFS to the Chief Commissioner of Customs explaining the disruptions caused due to frequent strikes by the transporters and meeting with their unreasonable demands.

10. A notice dated 07.04.2016 was also stated to have been released by NACFS that they would withdraw from the transport activity from 02.04.2016 in order to yield to the pressure of the OPs to not to be involved in transportation. However, as a result of the intervention of Customs and some other trade bodies, NACFS agreed to carry on the activity of transportation.

11. Thereafter, on 17.04.2017, a letter was issued by some of the OPs, namely, OP-1 to OP-8, OP-10, and Tamil Nadu Taraus Containers Transport Owners Association to NACFS stating that tariffs for EXIM transport of containers agreed in 2014 were to be maintained. Also, CFS operators and members of the OPs were not entitled to commercially negotiate to reduce the rate from what was decided in 2014. The payment was to be made by a CFS operator to member of the OPs within 15 days, and if any negotiation was found to be continued by NACFS, the OPs would allegedly engage in non-cooperation in any export/ import delivery transport service with that specific member of the Informant.

12. NACFS responded to the aforesaid letter on 19.04.2017, stating that the tariff was not agreed upon in any meeting and the same is subject to mutual agreement between an individual trailer owner and a CFS operator. Additionally, any issue related to billing or delay was to be sorted out between an individual trailer owner and a CFS operator and should be mutually negotiated. On 07.02.2018, another letter was

issued by the OPs to NACFS, wherein it was stated that a meeting was held by the OPs on 05.02.2018 and it was found that the members of NACFS paid lesser rates than the tariff decided on 09.08.2014 to various trailer owners. The OPs accordingly conveyed to NACFS that the tariff will be increased by a further 20%, in addition to the rates decided on 09.08.2014 to allegedly account for the ongoing and day to day price increase in diesel, spares, insurance, tyres etc. It was also stated that members of the Informant shall make payment to the members of the said OPs within 15 days. Also, a limit was imposed whereby each member of the Informant could only ply a maximum of 20 trailers of their own. The letter also stated that if a joint meeting was not conducted within 7 days, the OPs would take an alternative step to seek a remedy.

13. The Informant replied to the letter dated 07.02.2018 on 24.02.2018, reiterating in support of individual negotiations. Pursuant to the said reply, the OPs issued a strike notice on 02.03.2018 to Chennai Port Trust pursuant to a decision taken at a joint meeting of the OPs held on 26.02.2018. The said notice contained a threat to go on an indefinite strike from 6 AM on 19.03.2018 until NACFS agrees with the demands of the OPs. NACFS alleged that such interference by the OPs in the tariffs for trailers, which is the prerogative of commercial negotiation between an individual CFS operator and respective transporter, and alleged threats of strike, amounts to violation of Section 3(3)(a) of the Act.

14. NACFS also alleged that restriction was imposed by the OPs upon its members and their sister concerns not to ply more than 20 trailers of their own for movement of containers and any requirement over and above 20 trailers had to be fulfilled through the TOAs. NACFS also alleged that the OPs gave threats of strike on non-fulfilment of conditions levelled by them and such conditions/ threats by the TOAs were stated to be restrictive within the meaning of Section 3(3)(b) read with Section 3(1) of the Act.

15. The Commission heard NACFS and the OPs in the preliminary conference held on 06.06.2018, and *vide* order dated 26.06.2018, passed under Section 26(1) of the Act, directed the Director General ('DG') to cause an investigation into the matter with respect to alleged contravention of the provisions of Section 3 of the Act and submit its report.

16. NACFS also filed an application dated 23.09.2019 under Section 33 of the Act stating that the OPs and their members have engaged in collusive anti-competitive conduct by going on a strike since 16.09.2019, as a means to pressurise the Informant and their members to accept the unilateral and anti-competitive terms, despite the ongoing investigation by the DG. However, *vide* order dated 01.10.2019, the Commission rejected the said application, observing that the Informant had failed to demonstrate a case stronger than a mere *prima facie* opinion for investigation, irreparable loss, and balance of convenience in their favour, as envisaged in the Hon'ble Supreme Court's decision in *CCI vs. SAIL* (2010 CompLR 0061 SC).

<u>Observations and Findings of the DG</u>

17. After seeking extensions, the DG submitted the Investigation Reports to the Commission on 22.02.2021 and 09.04.2021, in confidential and non-confidential versions, respectively.

18. The DG noted that the Chennai Port is the 2nd largest port in terms of cargo handled in India. The port serves the geographical regions of Tamil Nadu, Pondicherry, South Andhra Pradesh and parts of Karnataka and has now emerged as hub on the east coast of India. A CFS is an extended arm of the port where containers are stuffed, de-stuffed and aggregation/segregation of export/import cargo takes place till completion of their examination and clearance. With the growing volume of international trade, the need for expeditious clearance of goods at the port within the minimum possible time has been gaining importance. This is more so when the ports

are facing congestion at their premises. To move the container from port to CFSs, the CFS operators either use their own trailers or hire the services of various trailer owners and for the same, CFS operators enter into contracts with individual transporters. When CFS operators hire the services of trailer owners/transporters, trailer owners/transporters raise the bill in favour of the respective CFSs.

19. The DG further observed that the members of the Informant are mainly aggrieved by the OPs alleged involvement in fixing the prices for transportation of containerised cargo from port to CFS or vice versa by way of conducting meetings of various trailers/ trucks associations. As per the Informant, fixing the prices for transportation of containerised cargo from port to CFS or vice versa is the sole prerogative of CFS operators and individual trailer owners/transporters.

20. The impugned meeting dated 09.08.2014 was held between the members of Chennai Trade Coordination Committee (CTCC) and members of Trailer Owner Association ('TOA'/OPs) at Chennai Port Trust. On behalf of CTCC, the National Association of Container Freight Stations (NACFS/Informant), Chennai Customs House Agents Association (CCHAA), Chennai Ennore Port Steamer Agents Association (CEPSAA), South Indian Chamber of Commerce & Industry (SICCI), Chennai Container Terminal Pvt. Ltd. (CCTL), Madras Chamber of Commerce & Industry and PSA Sical Terminal (CITPL) participated in the meeting. On behalf of TOAs (OPs), the said meeting was attended by OP-1, OP-2, OP-3, OP-4, OP-6, OP-7, OP-8, OP- 11, OP-12 and Thamizhga Trailer Owners Association. The OPs are different trailer/truck owner/driver associations. The impugned meeting was held under the Chairmanship of the then Chairman of Chennai Port Trust, wherein the freight tariffs were discussed in order to iron out the differences between members of the Informant and the OPs and to ensure smooth functioning of the transport business. Chennai Port Trust facilitated the meeting in its premises for the parties to come together for a discussion since the issue was of commercial interest to the port and involved smooth functioning of port services.

21. The minutes of the said impugned meeting dated 09.08.2014 are stated as under:

"………
A joint meeting was held on 9th August, 2014 at Chennai Port Trust administrative building premises facilitated by Chennai Port Trust Authorities and chaired by Chairman Shri Atulya Misra, M. The discussion concluded with the following relating to transportation of containers from/ to the Port of Chennai.
1. For carriage transportation of (import/export) containers between ChPT and CFS increased by INR900/ 20' & INR 1400/40' from the existing rate.
2. Effective date of implementation of revised rates will be 1 Sept 2014.
3. Next revision will be due on 31 Mar 2016 through mutual discussion and agreement of stakeholders of CTCC.
4. Existing procedure for carriage of Container(s) will continue to follow.
5. No stoppage on movement of containers by any stakeholders and the transport Operating Associations during the ensuing period and all concerns to be addressed through joint meeting of all stakeholders of CTCC.
……………………………."

22. From the reply of the Informant, the DG deduced that its members did not agree to the increase in price. Rather, the increase in price was allegedly forced and coerced upon the CFSs on the threat of strike and actual strikes. The DG also observed that the hike in the price had no correlation to the rise in price of fuel, insurance, spare, tyres, repair and maintenance, driver salary, etc. The Informant also submitted that the different CFSs are located at different locations, some within 10 kms from the port and the others beyond 50 kms from the port and in this scenario, to have a common increase without taking into consideration the most important factor in consideration, i.e. the distance, clearly brings to light that there is no rationale in the common increase in price. Further, the DG observed that the OPs had issued a Notice thanking the Chairman of the Chennai Port Trust and informing their members that the existing transport tariff shall be increased by ₹900/- and ₹ 1400/- for 20'ft. and 40'ft. trailers, respectively. This, as per the DG, showed that the OPs not only convinced/ forced the Informant to increase the rates but also communicated to its members to follow the same.

23. The DG noted that the members of the OPs were in identical or similar provision of

services, and through this meeting, they have suggested an increase in freight tariffs, which may result into indirectly determining the prices for providing their services. To further corroborate, the DG collected data related to the transportation rates charged by the respective CFSs for 20 and 40 ft. trailers in the period between 2013 and 2018 and observed that the engagements of transporter/members of the OPs are done on increased agreed rates by a majority of the CFS operators, which supported the allegation of the Informant that the OPs were not allowing the CFS operators to reduce the rate from what was decided by the OPs. It was also noted that, though some of the CFS operators did not increase the prevailing rates as decided in the meeting dated 09.08.2014, they did increase the rates to a certain extent.

24. The DG also noted that the Informant insisted, *vide* various letters to the OPs, that the tariffs should be mutually agreed between the individual transporter and the respective CFS operators independently. Further, the DG observed that, though NACFS attended the meeting dated 09.08.2014 wherein rates were fixed it does not negate the allegation that the OPs have unilaterally fixed the prices. Even the presence of other stakeholders does not dilute the allegation of the Informant. Rather, it appears from the record that the stakeholders, by participating in the meeting, wanted to ensure seamless movement of the containers.

25. The DG also highlighted that, though the Chairman of the Chennai Port Trust attended the meeting dated 09.08.2014, his presence appeared to be forceful at the behest of threat of strikes by the OPs. Therefore, his presence may have been to safeguard the seamless movement of work without any disruption at the Chennai Port. OPs, as per the DG, may have pressed for the presence of a government official to have an impression of binding effect on members of the Informant. Thus, the DG opined that the decision taken in the meeting held on 09.08.2014, to increase the tariffs, does not seem to be a free decision taken by market forces independently in a competitive market.

26. The DG also noted that two more meetings were held on 19.04.2018 and 11.05.2018 amongst the stakeholders of the Chennai Port. The meeting was organised by Chennai Trade Facilitation Committee and attended by NACFS, some of the OPs and CCBA. *Vide* meeting dated 19.04.2018, it was, *inter alia*, decided for a 10% increase in rates over the 2014 agreement from 01.05.2018, pending payment up to 31.03.2018 should be settled by 30.04.2018 and by a maximum of 15.05.2018, the bill would be raised by TOA as per the 2014 agreement tariff w.e.f. 05.04.2018. In the second meeting held on 11.05.2018, the points of the meeting held on 19.04.2018 were discussed. The said meeting was also organised by the Chennai Trade Facilitation Committee and was attended by NACFS, some of the OPs and CCBA. It was informed during the meeting that regarding the payments issue, some CFSs have released while some have not released the payments. Revised prices for the implementation of the 2014 agreement were also stated to be not agreed by some CFSs so far. It was also narrated in the minutes of the meeting that "*NACFS requested the TOA members that the matter would be discussed with the CFSs regarding the clearance of pending payment as well as implementation of price individually and in case if not cleared requested them to issue the details. On receipt of same it will be updated*".

27. From the above meetings, the DG deduced that the OPs were not only imposing the prices on members of the Informant but rather, seeking 10% increase in the tariff rate fixed in 2014. This collective demand to increase the tariff was found to be anti-competitive by the DG as no liberty was given to each CFS and the transporter to fix their tariff as per the load, volume of business, distance of CFS from port and vice versa, *etc*. Further, the DG also opined that the fact that members of the Informant were not making timely payments to the members of OPs doesn't absolve the OPs from their anti-competitive behaviour of fixing the prices.

28. Based on the evidences and analysis, *inter alia,* minutes of the meetings of the various associations held on 09.08.2014, 19.04.2018 and 11.05.2018 and various

letters exchanged between the Informant and the OPs, the DG concluded contravention of the provisions of Section 3(3)(a) read with Section 3(1) of the Act by OP-1 to OP-10.

29. As regards the allegation that the OPs have restricted the members of the Informant from plying not more than 20 trailers, the DG observed that such a decision was taken in the meeting held on 07.07.2010. The said meeting took place at the Southern India Chamber of Commerce premises at Chennai and was attended by members of the Informant and OPs, Chennai Custom House Agents Association (CCHAA) (now known as Chennai Customs Brokers Association, CCBA), Chennai Ennore Port Steamer Agents Association (CHENSAA), South India Chamber of Commerce and Industry (SICCI) and Chennai Container Terminal Pvt. Ltd. (CCTL). In the said meeting, it was categorically decided that the CFS Operators can ply their vehicles to the maximum of 20 and that any requirement over and above the 20 vehicles used by them should be given only to members of any of the six TOAs.

30. The DG observed that the restriction of not plying more than 20 trailers, as decided in the meeting held on 07.07.2010, is an anti-competitive condition as it amounts to controlling the provisions of transport services at Chennai Port. The DG also highlighted that it was decided that the existing fleet should continue till the next review meeting and it would be reviewed in next review meeting only. This, as per the DG, showed that OPs were controlling the market of provision of transport services by the members of the Informant for a particular period unless it is reviewed. The minutes of meeting dated 07.07.2010 are as follows:-

"………

- *The CFS Operators can ply their vehicles to the maximum of 20. The CFS Operator should not increase existing fleet more than the existing fleet.*
- *The existing fleet should continue till the next review meeting. The ceiling fixed per CFS vehicles shall include their/ their sister concern vehicles.*
- *Any requirement over and above the 20 vehicles used by them should be given only to the members of any of the six TOAs.*
- *The CFS operator can use any number of members of the six TOAs to ensure their work in time.*

- *This resolution is applicable for the movement of containers to and from of Chennai Port Trust.*

…………..."

31. The DG emphasised that the Chairman of Chennai Port Trust confirmed that the transport requirement of the CFSs and the EXIM Traders is met from the vehicle population available in the region. The Chennai Port issues passes for entry of the trailers and drivers, and these passes are issued only if endorsement is done by one of the trailer associations. Therefore, the possibility of hiring outside trailers is also minimal. Based on this, the DG deduced that since issuance of gate pass is subject to endorsement by one of the trailer owner associations, the same would facilitate the condition of not plying more than 20 trailers per CFS.

32. Further, the DG noted that out of 28 CFS operators, only 3 had more than 20 trailers, and the rest of the CFS operators had either 20 or less than 20 trailers. This, according to the DG, shows that the restrictive condition of not plying more than 20 trailers was followed by most of the members of the Informant.

33. The DG also highlighted the letter dated 07.02.2018 by the OPs to President, NACFS, where the issue of plying not more than 20 trailers was mentioned as a point to be discussed which, according to the DG, showed that the issue of not plying more than 20 trailers was on the agenda of the OPs. The DG also noted that feeling aggrieved by the conduct of some of the members of the Informant for not following the fixed rates and restriction w.r.t. numbers of trailers to be run by each CFS, the members of the OPs issued a strike notice on 02.03.2018 to be held on 19.03.2018. Consequently, the OPs decided to go for an indefinite stoppage of trailers from 19.03.2018 onwards. Further, the DG found that the vehicle movement of the trailers outside the port was stopped on 19.03.2018 by the OPs. Meanwhile, on 19.03.2018 itself, a meeting was convened with the stakeholders to resolve the issues between NACFS and TOAs. Subsequently, based on the discussions/negotiations, the strike was called off on the same day, i.e. 19.03.2018. The said negotiations pertained to

increase in the tariffs, payment of dues by CFS within 30 days from the date of receipt of the bill and number of trailers that each CFS can ply. As per the minutes of the said meeting, *'there was a deep discussion on the 20 Trailers fixation as imposed by the TOA to be plied by each individual member of the NACFS. The NACFS suggested to increase 30 trailers per CFS. It was agreed that the co-ordination committee shall decide upon this issue. Meantime, the NACFS should ply only 20 Trailers as per the 2010 agreement.'*

34. Based on the above discussion and minutes of meetings, the DG concluded that the conduct of OP-1 to OP-10 in imposing restrictive condition of not plying more than 20 trailers is in contravention of Section 3(3)(b) of the Act as it amounts to limiting and controlling the provision of transportation services by the members of the Informant at Chennai Port.

35. Thus, the DG found contravention of the provisions of Section 3(3)(a) and 3(3)(b) read with Section 3(1) of the Act by OP-1 to OP-10. No contravention, however, was found against OP-11 and OP-12.

36. On 12.05.2021, the Commission considered the Investigation Reports of the DG in its ordinary meeting and decided to forward a copy of the non-confidential version of the Investigation Report in electronic mode to the Informant and OP-1 to OP-10, for filing their respective objections/suggestions thereto. Since no contravention was found by the DG against OP-11 and OP-12, the Commission decided not to send the Investigation Report to these parties at that stage. The hearing in the matter was scheduled on 14.07.2021.

37. Subsequently, OP-1 moved an application dated 18.06.2021 seeking extension of time by 6 weeks for filing its objections/suggestions to the Investigation Report on the ground that its general body meeting could not be conducted due to the COVID-19 situation for discussing the response to the Investigation Report. After

considering the said application filed by OP-1, the Commission, in its meeting held on 29.06.2021, decided to grant additional time to the OPs as well as Informant to file their respective objections/suggestions to the Investigation Report. The Commission further decided to postpone the hearing of the parties on the Investigation Report to 31.08.2021.

38. On 31.08.2021, OP-1 and the Informant appeared before the Commission through their duly authorised legal representatives. The learned counsel for OP-1 pressed upon its application filed on 27.08.2021, requesting for grant of additional time of 12 weeks for filing its objections/suggestions to the Investigation Report, citing the difficulties arising from the COVID-19 pandemic. The learned counsel for the Informant requested that the Investigation Report also be sent to OP-11 and OP-12, who were earlier not served with the Investigation Report, even though no contravention was found by the DG against them in the Investigation Report. It was submitted that, since these parties participated in the impugned meetings, albeit passively, which is the basis of finding contravention against other OPs, their participation in the proceedings may be necessary. In view of the said averments, the Commission decided to forward a copy of the non-confidential version of the Investigation Report to OP-11 and OP-12 to invite their objections/suggestions thereof. Further, in view of the request being made by OP-1, the Commission decided to grant 8 weeks' time to the parties for filing their respective objections/suggestions to the Investigation Report. The Commission further decided to hear the parties on the Investigation Report on 18.11.2021.

39. None of the OPs filed their objections/suggestions to the Investigation Report within the prescribed timeline. The Informant filed its suggestions/objections to the Investigation Report on 15.11.2021, craving leave to file additional response, in case any objections/suggestions are filed by any of the OPs. *Vide* email dated 15.11.2021, adjournment request was made by OP-1 seeking extension of time by 6 weeks for filing its objections/suggestions to the Investigation Report, stating that it could not

convene the meeting of its members due to the government restrictions on large gatherings given the prevailing COVID-19 pandemic. The Commission allowed additional time and fixed the hearing on 02.02.2022.

40. Thereafter, *vide* email dated 31.01.2022, the learned counsel for OP-1 again requested adjournment of the hearing scheduled on 02.02.2022, stating that the counsel for OP-1 as well as the staff have been affected with COVID-19 successively and were at home in quarantine. OP-1 also requested one last opportunity for filing its counter/objections to the Investigation Report, and consequently sought adjournment of the virtual hearing scheduled on 02.02.2022. The Commission considered the said request of OP-1 and allowed the same. The OPs were given time till 28.02.2022 to file their suggestions/objections to the Investigation Report and the Informant was given time to file its rejoinder to such response, if any, by 14.03.2022. The hearing in the matter was rescheduled on 30.03.2022.

41. On 30.03.2022, the Informant and OP-1 were represented by their respective legal representatives. The learned counsel for the Informant concluded its oral submissions on the Investigation Report and undertook to file the synopsis of the same within 2 weeks. The learned counsel for OP-1 requested that additional time be granted to OP-1 to file its written objections to the Investigation Report and also requested another opportunity to advance oral arguments in a hearing.

42. The Commission observed, in the said order, that OP-1 had sought several extensions of time from the time the Investigation Report was shared with it. All such requests had been entertained by the Commission and the pre-scheduled hearing was adjourned in view of the requests made by OP-1. Though OP-1 filed its financial statements for all three financial years as directed by the Commission by 02.08.2021, no objections/suggestions to the Investigation Report of the DG were filed. However, in the interest of justice, the Commission decided to grant one last

opportunity to the OPs to file their written submission/suggestions/objections to the Investigation Report and to furnish copies of their audited balance sheets and profit and loss accounts(s)/ income and expenditure account(s) for the last three financial years. The Informant was also given liberty to file additional response to the objections/suggestions filed by the OPs, latest within 2 weeks thereafter, with an advance copy to the OPs.

43. In pursuance of the liberty granted, OP-1 filed its objection to the Investigation Report on 28.04.2022. Subsequently, on 17.05.2022, the Informant filed its reply to the suggestions/objections dated 28.04.2022 filed by OP-1 to the Investigation Report.

44. The crux of the responses/submissions/objections made by NACFS and OP-1, including the oral submissions of NACFS, are summarised below.

<u>Replies/Submissions of the Parties</u>

Trailer Owners Association/OP-1

45. OP-1 stated that all the conclusions/findings/observations of the DG against OP-1 are purely on conjectures, assumptions and presumptions, and not supported by any concrete material. None of the practices of OP-1 and its members fall within the categories of Section 3(3) or Section 3(1) of the Act. It has been stated that the members of NACFS play a dual role of CFSs and transporters. Around 16 CFSs operating in Chennai own more than 417 trailers by themselves. Transportation work is allotted to these CFS transporters on a priority basis, and the leftover work, if any, is given to the members of OP-1 and the members of any other trailer owners association. Members of OP-1 operate only transportation business and no other business, and thereby, are solely dependent upon the income derived from the transport business for their livelihood, payment to their drivers/ cleaners, repayment of loans from financial institutions, upkeep of the trailers etc. Therefore, CFS- members of NACFS are in a dominant

position, and the members of OP-1 are in a subservient position (wanting to earn their livelihood and make both ends meet) and are being made to accept the terms and conditions thrust upon them by the members of NACFS.

46. OP-1 has not interfered with the commercial dealings of its individual members with any of the members of the NACFS. The Informant has not produced any evidence to substantiate their allegation that OP-1 had ever indulged in any of the commercial dealings of its individual members with any of the CFSs at any point of time.

47. On the issue of price fixing allegation under Section 3(3)(a) of the Act, OP-1 has stated that the meeting dated 09.08.2014 was held at Chennai Port Trust premises, chaired by then Chairman of Chennai Port Trust, Shri Atulya Mishra, I.A.S., to discuss the transportation of containers from/to Port of Chennai. The members of the Chennai Trade Coordination Committee (CTCC) and members of all trailer owners association were present. The Informant/ NACFS was also present, through its Chairman, Shri M.S. Arun, in a dual capacity, representing CFSs as well as transporters /trailer owners. In the said meeting, it was mutually decided to increase the carriage/transportation of import/export containers between Chennai Port Trust and CFSs by Rs. 900/- for 20 feet trailers and Rs. 1400/- for 40 feet trailers from the existing rate. The effective date of implementation of revised rates was decided to be 01.09.2014. It was also decided that the next revision would be due on 31.03.2016 through mutual discussion and agreement of stakeholders of CTCC. It was further mutually decided that all concerns have to be addressed through joint meeting of all stakeholders of CTCC. Thus, the decisions taken thereon were binding on all concerned.

48. OP-1 stated that, in spite of the mutual agreement, the members of NACFS neglected to honour the agreement. Therefore, all the trailer owners associations, through a joint letter dated 17.04.2017, had requested the members of NACFS

to comply with the 2014 agreement/MoU and further requested the operators of CFSs to make payment of the transport charges within 15 days of raising the invoice. The trailers owners associations had also expressed their anguish regarding the conduct of the members of NACFS engaging fresh/new transporters by side-lining existing transporters, whenever they requested payment of the transportation charges for the works already undertaken/carried out. The trailer owners associations had requested NACFS to organise a joint meeting between NACFS and all the trailer owners association to resolve various issues. In response to the said joint letter, NACFS sent a reply dated 19.04.2017 and contended that all issues would have to be sorted out among the individual members. The very wordings of the said reply, which was sent after a delay of more than three years, shows that the same was an afterthought to wriggle out of their commitment made before the Chairman of Chennai Port Trust in 2014.

49. OP-1 contended that it had also submitted a comparative chart of increase in the prices of diesel, insurance, tyres, spare parts, driver/cleaner charges, etc. between 2009 and 2018 before the DG, to justify the increase in price, which has not been considered.

50. OP-1 also averred that the members of NACFS, who also own trailers, charge anywhere upto Rs. 11000/- for 20 feet trailer and upto Rs. 13000/- for 40 feet trailers, as handling charges/PNR movement charges, in their respective bills raised in favour of importers/exporters or their agents, in addition to the handing charges levied separately by them for CFSs. Thus, the members of NACFS pay to the members of OP-1 a paltry sum pittance compared to what is being charged by members of NACFS.

51. OP-1 further alleged that the DG has not considered the cartelisation amongst the members of NACFS, whereby these members have been indulging in the reduction of fare/cost for the service of transportation availed by them from the transporters/trailers on the basis of their unilaterally fixed rates/tariffs. OP-1 has

also submitted documents at the time of investigation, evidencing non-payment of the legally entitled dues of transportation charges (bill raised) from the different CFSs – members of NACFS, running to lakhs of rupees for more than two to three years, thereby crippling the trailer owners/transporters financially.

52. On the issue of restriction of trailers owned and operated by members of NACFS under Section 3(3)(b) of the Act, OP-1 has submitted that the CFSs came into existence around the year 1994 and initially did the business of loading and unloading. In or about 2002, the CFSs slowly encroached upon the business of transportation also, in addition to their regular CFS operations. OP-1 has submitted that, out of 35 members of NACFS, 17 own about 417 trailers, which take 60% of overall transportation business unto themselves. The balance 18 CFSs give the remaining 40% of the work of transportation to the members of OP-1 and the members of other trailer owners associations. There are about 4000 families of owners and about 5000 families of labourers dependent solely on the meagre income derived in the business of transport. Also, the observation of DG that only three CFSs own more than 20 trailers and that the other 25 CFSs own either 20 or lesser trailers is without any basis.

53. OP-1 further claimed that the alleged restrictions of plying 20 trailers by CFSs has never been enforced/followed by any member of NACFS, and each of them continued to ply their own trailers in full strength. OP-1 and other trailer owners associations had to be mute spectators of the non-compliance of the mutually agreed terms and conditions, wherein CFSs/NACFS are signatories. Neither had the members of OP-1 ever resorted to any strike nor blocked any entrance to the port or prevented anyone from operating their respective trades at any point of time. NACFS has not produced any evidence to substantiate these allegations.

54. OP-1 also stated that the observation of the DG that the members of OP-1 have 2336 trailers, all 40 feet, owned by 810 members of OP-1, is baseless and without

any substance. The members of OP-1 own about 1200 trailers alone, with both 20 feet and 40 feet trailers.

55. Based on the aforesaid averment, OP-1 has prayed for dismissal/closure of the present matter.

NACFS/Informant

56. The Informant submitted its response to the Investigation Report on 15.11.2021 and agreed with the conclusion of the DG regarding contravention of the provisions of the Act by OP-1 to OP-10. The Informant also reiterated the evidence against these OPs captured in the Investigation Report, which are not detailed herein.

57. The Informant, however, objected to the conclusion of the DG exonerating OP-11 and OP-12 and alleged that the call for strikes and lockouts given by the associations shows the involvement of OP-11 and OP-12. The Informant further stated that OP-11 and OP-12 and their members have been operating for several years and are very well aware that their actions of strikes and lockouts will result in complete stoppage of work at the port. Therefore, OP-11 and OP-12 cannot be ignored as some sort of fringe players. Moreover, the Informant argued that OP-11 and OP-12 are the associations of drivers which attended the meeting dated 09.08.2014. The Informant relied upon a European case law (*Aalborg Portland and Ors. v. Commission, joined cases C-204/00 P*), according to which it is sufficient to show that the undertaking concerned has participated in the meetings at which anti-competitive agreements were concluded to prove the requisite standard that such undertaking had participated in the cartel. Once such participation is shown, the burden shifts on such party to demonstrate that its intention in participating in such meetings was different than the other cartel members. The Informant also submitted that no analysis has been done by the DG to explain whether the members of OP-11 and OP-12 benefited from the

decision of price increase by the alleged cartel of trailer owners, as the increase in price was by extension, also beneficial to the drivers. Finally, the Informant submitted that if OP-11, OP-12 and their members are not held liable or responsible, there is a great likelihood that the other OPs may circumvent the provisions of law by instigating OP-11 and OP-12 to engage in strikes and lockouts. This is because OP-1 to OP-12 are acting in collusion with the other OPs. Therefore, it is necessary that OP-11 and OP-12 are also held liable and responsible for the consequences of their actions.

58. In its rejoinder dated 17.05.2022, filed in response to the submissions/objections of OP-1, NACFS denied all assertions placed on record by OP-1. The Informant has stated that the averments made by OP-1 in its reply are wholly devoid of merit and some of the facts which have been raised in the reply are deliberately misleading. Chennai Port has had a practice of issuing passes for the entry of trailers and drivers, and these passes are issued only if the endorsement is done by one of the trailer associations. Therefore, the Informants even if they want to run the trailers are at the mercy of the Opposite Parties as they cannot run trailers unless it is endorsed by the Opposite Party Association.

59. The Informant also stated that the factum of using strikes and lock-outs to make the members of the Informant agree to their illegal demands is evidenced by the documents and evidence on record. On 09.08.2014, the members of the Informant were made to agree to an across- the- board increase in prices, and because the prices were fixed across the board, the OPs agreed in the minutes of the meeting dated 09.08.2014 that there shall be no stoppage of movement of containers. Therefore, the stoppage of movement was always used as a threat to make the members of the Informant agree to the increase in prices without taking into consideration any parameters. The Informant has also highlighted instances of strikes undertaken by the OPs.

60. The Informant also relied upon the evidence contained in the Investigation Report to state that a majority of the members of the Informant agreed to the increased rates fixed by the OPs after the 09.08.2014 meeting. Further, it is also stated that the evidence on record brings out that only 3 out of the 28 CFS operators have more than 20 trailers, which shows that the members of the Informant were forced to accept the restrictive condition of plying up to 20 trailers. Therefore, it is clear that the OPs have used the illegal and anti-competitive practice of strikes and lockouts to collectively fix higher prices and restrict the competition and supply in the form of a cartel, and thereby act in violation of the provisions of Section 3 of the Act.

61. The Informant objected to OP-1's assertion that members of NACFS are in a dominant position and members of OP-1 are in a subservient position and are being made to accept the terms and conditions thrust upon them by the members of NACFS. Such averments are stated to be entirely contrary to the evidence before this Commission, which shows the movement of goods and containers from CFS to port substantially through trailers operated by the Opposite Parties.

62. The Informant further submitted that trailers are the only source of transportation for the movement of containers from the port to the CFS (except of CONCOR which moves a small quantity of containers by rail) and there is no other mode of transportation which can take care of such movement from the port to the CFS, and vice versa. Hence, the members of the Informant are heavily dependent on the OPs.

63. The Informant also objected to the averment of OP-1 that it has not interfered with the commercial dealings of its individual members with that of the CFSs. Various meetings on record show that the OPs have effectively been involved in fixing prices and ensuring that their members do not face competition from the CFS by fixing prices and using strikes as a mechanism to ensure that there is compliance of their anti-competitive demands.

64. The Informant disagreed with OP-1's submission that the agreement/consensus reached during the meeting held on 09.08.2014 was mutual and with free consent of the Informant. It is stated that the members of the Informant utilise the services of the OPs for transportation, as the Container Terminals in Chennai Port have limited space for storing containers. At any point of time, they have space for a maximum 3 days of storage. After this, they will not be able to handle any more vessels till the containers already landed are cleared, either directly to the importers factory or to the CFS. Since this is a very important chain in the logistics, the Informant and their members are entirely dependent upon the OPs for movement of the containers. Unfortunately, the OPs illegally leverage this position and take illegal advantage of this situation, resorting to various anti-competitive practices such as collective boycott and strikes and complete lockout/blockage of gates preventing all movements of goods in and out of the port and force and coerce the Informant and its members to agree to their illegal demands of increased prices, etc.

65. Based on the aforesaid averments, the Informant has prayed that the findings of the DG be affirmed, whereby OPs have been found to be indulging in contravention of the provisions of Section 3(3)(a) as well as Section 3(3)(b) of the Act. The Informant has also prayed for an imposition of penalty on the OPs and a direction for cease and desist from indulging in anti-competitive conduct.

Observations and Findings of the Commission

66. The Commission has examined the material available on record, including the Information, Investigation Report, submissions made by the Informant, including the oral submissions, and the response filed by OP-1. Despite several opportunities having been granted to OP-2 to OP-12, none of these OPs have filed any submissions/response to the Investigation Report, nor did they appear in any of the hearings before the Commission. In view thereof, the Commission decided to proceed *ex-parte* with regard to such OPs.

67. The Commission at the outset notes that there are two allegations raised against the OPs in the Information. The first one pertains to interference by the OPs in the fixation of tariffs for trailers and not allowing CFS operators to reduce the rate from what was decided by OPs, in contravention to the provisions of Section 3(3) (a) read with Section 3(1) of the Act. The second allegation is with regard to restriction imposed upon the members of the Informant/NACSF and their sister concerns by mandating them not to ply more than 20 trailers of their own for movement of containers, in contravention of the provisions of Section 3(3)(b) read with Section 3(1) of the Act.

68. Thus, the main issue before the Commission is whether there was any collusive/anti-competitive conduct on the part of the OPs on account of the aforesaid activities, which amounted to a contravention of the provisions of Section 3(3) read with Section 3(1) of the Act. On the basis of the observations recorded earlier, the DG has found OP-1 to OP-10 to be contravening the provisions of Section 3(3)(a) [price fixation] as well as 3(3)(b) [limiting/controlling the provisioning of services] read with Section 3(1) of the Act. As regards OP-11 and OP-12, the DG has not found any contravention to be made out, which are stated to be associations of only drivers who provide driving services to different transport companies. In this regard, the Commission notes the finding of the DG.

69. Before delving into the specific allegations mentioned against OP-1 to OP-10, the Commission finds it worthwhile to look into the legal architecture of Section 3 of the Act under which these allegations have been raised. Section 3(1) of the Act prohibits any agreement in respect of production, supply, distribution, storage, acquisition or control of goods, provision of services, which causes or is likely to cause an 'appreciable adverse effect on competition' (AAEC) within India. Section 3(3) deals with horizontal agreements, including *practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels,* operating at the same level of production, supply or distribution, *etc.*

70. Section 3(3)(a) and (b), as enshrined under the Act, are reproduced below:

Section 3(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) xx

(d) xx

shall be presumed to have an appreciable adverse effect on competition.

xx

71. Both the allegations raised in the present matter fall under the category of *decision taken by, any association of enterprises or association of persons*, which are presumed to be having an appreciable adverse effect on competition (AAEC). Generally, in cases concerning horizontal arrangement/collusive conduct falling under Section 3(3) of the Act, the most difficult task is to establish the existence of the agreement/arrangement/understanding amongst the parties, because such agreements are often perpetrated in secrecy. In the present case, however, the existence of the agreement, *i.e.* the fixation of price, is not under challenge. The DG has found enough evidence that the prices were increased and certain restrictions were imposed collectively by OP-1 to OP-10 through association meetings from 2014 till 2018. OP-1, the only OP that filed response to the Investigation Report, has admitted to these meetings. Rather, it has sought to justify its participation in such meetings by citing the prevailing circumstances at the time when such meetings took place and the mutual nature of such meetings where, admittedly, the members of the Informant also participated. Further, many such meetings were organised at the premises of the Chennai Port Trust and with its knowledge. Circulars were issued

by these OPs after the said meetings, which have been received and responded to by the Informant. Thus, the Commission finds no purpose being fulfilled by reiterating the minutes of the meetings and the discussions that took place, which have been amply elucidated in the DG findings detailed *supra*. It suffices to say that the minutes of various meetings and various letters exchanged between the Informant and these OPs, relied upon by the DG, establish that the prices for container trailer services were being fixed and increased from time to time, collectively by the OPs, and also that a decision was taken to restrict the number of trailers plied/operated by the members of the Informant and their sister concerns. Section 3(3) being presumptive in nature, the presumption of these practices/decisions taken at the association meetings resulting in AAEC has arisen.

72. The pertinent question before the Commission is whether OP-1 to OP-10 have been able to rebut the said presumption so as to absolve them of the liability that has arisen. In this regard, it is observed that OP-2 to OP-10 have not filed any response to the Investigation Report while OP-1 has filed its submissions. As can be noted from the submissions filed by OP-1, the justifications/reasons offered by it falls into three broad categories. Firstly, it has been stated that there was an increase in the price of fuel, insurance, spares, tyres, repair and maintenance, driver salary, labour charges, *etc.*, besides inflation factor from 2010 to 2014 and from 2014 to 2018, which has not been considered by the DG. Though such increase has not been stated as a justification of collusive conduct, OP-1 has claimed that this provides some perspective on the reasonability of price increase. Secondly, OP-1 has brought forward their plight and financial considerations such as inordinate delay on the part of CFS in clearing the dues to use transportation services of the members of the TOAs; CFSs entering the transportation business, and thus, sidelining members of the TOAs, whose only means of survival was through these transportation services, *etc.* Thirdly, OP-1 has stated that the decisions taken at the impugned meetings were mutual decisions which had an active involvement of the members of the Informant and the Chennai Port Trust, and thus, the same cannot be held as unilateral price

increases on the part of the OPs. The Commission will deal with each of these in the ensuing paras.

73. The Commission observes that, through the first and second justification cited above, OP-1 has tried to demonstrate the role of associations as an instrument to further the economic and social well-being of its otherwise small members having unequal bargaining power. On one hand, OP-1 has cited the comparative increase in the prices of diesel, insurance, tyres, spare parts, driver/cleaner charges, inflation, *etc.* between 2010 and 2018, and on the other hand, it has brought forward the plight and financial distress of its members. The following submission by OP-1, made before the DG as well as before the Commission, demonstrates this plea:

> "*The payment of Transportation Fare(s) by CFS – Members of NACFS (IP) - to Transporters (OPs) takes months together and in some cases years together. The payment is not made inspite of repeated requests by individual transporters to individual CFSs, thereby crippling the Transporters altogether and chasing them away from the business of transportation by compelling them to sell off their Trailer(s) to meet their financial needs. Whenever our individual members request for the long outstanding payments from the individual CFSs, our members are threatened with stoppage of further job work of transportation or they are sidelined by not giving transportation job work or no payment is made for years together and thereby make the business of our Members cripple.*"

74. OP-2, though did not come before the Commission, had submitted before the DG during the investigation stage that "*the Informant though received the payments for the trailer service charges from the concerned Importers, but they deliberately did not disburse the same to the concerned Trailer owners and temporarily misappropriating the trailer service charges and paying the same to the concerned Trailer owners according to their whims and fancies.*"

75. Further, OP-1 has stated that the transportation business is the only means of survival for the members of various associations which have been made OPs in the present matter, thereby making such members solely dependent upon the income derived from the transport business for their livelihood, for payment to their drivers/cleaners, repayment of loans from financial institutions, upkeep of the trailers etc. Further, CFSs were entering the transportation business, and thus, sidelining members of TOAs.

76. Before examining these two justifications offered by OP-1 within the framework of the Act, the Commission observes that, in an earlier matter, namely, *Advertising Agencies Guild v. IBF & its Members, Case No. 35 of 2013*, the Commission had examined the role of trade associations and the legitimacy of actions taken by them under the Act. The relevant para therefrom is excerpted below:

> "*7. Undoubtedly, there has been a collective action by OP 1 and its members but primarily the trade associations are for building consensus among the members on policy/other issues affecting the industry and to promote these policy interests with the government and with other public/private players. Such activities may not necessarily lead to competition law violation. To perceive otherwise will render the trade association bodies as completely redundant, being opposed to competition law. The trade association provide a forum for entities working in the same industry to meet and to discuss common issues. They carry out many valuable and lawful functions which provide a public benefit e.g. setting common technical standards for products or interfaces; setting the standards for admission to membership of a profession; arranging education and training for those wishing to join the industry; paying for and encouraging research into new techniques or developing a common response to changing government policy. Therefore, membership and participation in the collective activities of a trade association cannot by*

itself amount to violation of competition law as such. However, when these trade associations transgress their legal contours and facilitate collusive or collective decision making with the intention of limiting or controlling the production, distribution, sale or price of or trade in goods or provision of services as defined in section 2(c) of the Act, by its members, it will amount to violation of the provisions of the Act."

77. Guided by the aforesaid broad parameters, the Commission finds that, in the present matter, the thin line has been transgressed by OP-1 to OP-10. Fixing prices and restricting provision of services under the aegis of trade associations cannot be held as a legitimate activity under the Act. Moreover, these justifications cannot be used as a reason to decide and enforce a blanket increase in prices, collectively by the OPs. Decisions related to price fixing and output restriction amongst those engaged in similar trade are recognized as some of the most pernicious anti-competitive conduct. Apparently, owing to their pernicious nature, the Act raises a presumption of such conduct resulting into an AAEC.

78. While the Commission may tend to have a sympathetic inclination towards certain difficulties, which has been expressed by OP-1 that its members face and is cognizant of the facilitative role of trade associations in furthering the collective interests of its members to alleviate the hardships, if any, the Commission cannot be oblivious to such Association providing its aegis to facilitate coordinated conduct which are otherwise falling foul of the provisions of the Act.

79. Further, as regards the third justification offered by OP-1, i.e. the decisions taken at the impugned meetings were mutual decisions which had an active involvement of the members of the Informant and the Chennai Port Trust, the Commission is hesitant to accept this as a justification for a conduct falling under Section 3(3)(a) and (b) of the Act. The rebuttal of the presumption of AAEC that exists in such cases or is likely to exist, thereby distorting competition, needs to be dispelled by

providing concrete evidence to the satisfaction of the Commission on the redeeming nature of the alleged conduct. It has to be shown that the impugned conduct, rather than harming competition has resulted in accruing benefits to consumers or achieving improvements in the production or distribution of goods or provision of services or promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services. Tested on these parameters, the justification offered by OP-1 does not in any manner rebut the presumption of AAEC but has been an attempt possibly to provide succor to its members and nothing more. The participation of Informant or Chennai Port Trust cannot alter the characterisation of an otherwise collusive conduct/practice. Neither can it dilute the responsibility of the associations involved in such collusive decision making. In a competitive market, the prices of goods or services should ideally be determined by a free interaction between demand and supply forces. Any collective collusive action can manipulate the market outcomes under which the independent decisions between each buyer and seller could have been reached. Seen in this light, the collective action by TOAs has manipulated the market forces and narrowed the scope of competition.

80. In this regard, the Commission also notes the submissions made by the Informant that the OPs were using strikes and lock-outs as a means to make the members of the Informant agree to their illegal demands. Further, since the Chennai Port was following a practice of issuing passes for the entry of trailers and drivers only when such passes were endorsed by one of the trailer associations (OPs), members of the Informant had no option but to agree to the demands of the OPs. Further, the DG had observed that, though the Chairman of the Chennai Port Trust chaired the meeting dated 09.08.2014, his presence seems nothing more than an attempt to safeguard seamless movement of work without any disruption at the Chennai Port.

81. The Commission thus does not find any of the justifications offered by OP-1 to be sufficient to rebut the presumption and discharge the burden of proof that was on it

considering the nature of its submissions and evidence in support thereof. In the event thereof, the Commission concludes that the conduct of OP-1 to OP-10 has led to a contravention of the provisions of Section 3(3)(a) and Section 3(3)(b) read with Section 3(1) of the Act.

ORDER

82. In view of the foregoing, the Commission holds that the decisions taken by OP-1 to OP-10, for the reasons adumbrated in this order, are in contravention of the provisions of Section 3(3)(a) and Section 3(3)(b) read with Section 3(1) of the Act. Accordingly, the Commission directs OP-1 to OP-10 to cease and desist in respect of the anti-competitive conduct committed by it and which has been found to be in contravention of the provisions of the Act.

83. However, on a holistic assessment, and taking into consideration the submissions of OP-1 as recorded earlier in this order, the Commission is of the considered view that a cease-and-desist order under Section 27 of the Act would sub-serve the ends of justice in the matter.

84. During the course of investigation, NACFS/Informant has submitted the rates of some CFSs operators which they are paying to the transporters under their contract and has sought confidentiality on those rates in terms of Section 57 of the Act read with Regulation 35 of the Competition Commission of India (General) Regulations, 2009 ('General Regulations'). The Commission notes that such information has been accorded confidential treatment by the DG on 22.02.2021 and investigation report has been prepared in two version. The Commission however has not used any confidential information submitted by Informant in this order. Thus, without dilating into the merits of the confidentiality request, the Commission decided to grant confidential treatment to such information for a period of 3 year from the date of this order, subject to Section 57 read with Regulation 35 of the CCI (General) Regulations 2009 as amended.

85. The Secretary is directed to inform the parties accordingly.

Sd/-
Ashok Kumar Gupta
(Chairperson)

Sd/-
Sangeeta Verma
(Member)

Sd/-
Bhagwant Singh Bishnoi
(Member)

New Delhi
Date: 20/07/2022