FIFTY-THIRD REPORT

STANDING COMMITTEE ON PETROLEUM & CHEMICALS (2003)

(THIRTEENTH LOK SABHA)

MERGER AND ACQUISITION OF OIL AND GAS COMPANIES

MINISTRY OF PETROLEUM AND NATURAL GAS

[Action Taken by the Government on the recommendations contained in the Forty-Second Report (Thirteenth Lok Sabha) of the Standing Committee on Petroleum & Chemicals (2003) on `Merger and Acquisition of Oil and Gas Companies']

Presented to Lok Sabha on 16.12.2003

Laid in Rajya Sabha on 16.12.2003

LOK SABHA SECRETARIAT
NEW DELHI

December, 2003/ Agrahayana, 1925 (Saka)

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COMPOSITION OF THE
STANDING COMMITTEE ON PETROLEUM AND CHEMICALS (2003)

SHRI MULAYAM SINGH YADAV – Chairman
Prof. Ram Gopal Yadav - Acting Chairman

MEMBERS
LOK SABHA

3	Shri Ashok Argal
4	Shri Ramchander Bainda
5	Dr.(Smt.) Suguna Kumari Chellamella
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15	Shri Ashok N. Mohol
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18	Shri Mohan Rawale
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25	Dr. Ram Lakhan Singh
**26	Dr. Ramesh Chand Tomar
27	Shri Shankersinh Vaghela
28	Shri Rathilal Kalidas Varma
29	Shri A.K.S. Vijayan
30	Dr. Girija Vyas
31	Shri Dinesh Chandra Yadav

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* ***Nominated w.e.f. 21st February, 2003.***
** ***Nominated w.e.f. 26th February, 2003.***

RAJYA SABHA

32 Shri Balkavi Bairagi
33 Shri Ram Nath Kovind
34 Shri Anil Kumar
35 Shri Rajiv Ranjan Singh 'Lalan'
36 Shri Moolchand Meena
37 Shri Dipankar Mukherjee
38 Shri Pritish Nandy
39 Shri Kripal Parmar
40 Shri Ahmed Patel
***41 Shri Lajpat Rai
42 Shri V.V. Raghavan
43 Ms. Mabel Rebello
44 Shri Yadlapati Venkat Rao
45 Shri Thanga Tamilselvan

SECRETARIAT

1.	Shri P.D.T. Achary	-	*Additional Secretary*
2.	Shri P.K. Grover	-	*Director*
3.	Shri P.D. Malvalia	-	*Under Secretary*
4.	Smt. Madhu Bhutani	-	*Senior Executive Assistant*

****** Nominated w.e.f. 3rd September, 2003.***

SUB-COMMITTEE ON PETROLEUM

A SUB-COMMITTEE OF THE STANDING COMMITTEE ON PETROLEUM & CHEMICALS (2003)

Shri Mulayam Singh Yadav — *Chairman*

Prof. Ram Gopal Yadav — *Acting Chairman*

Shri Dipanker Mukherjee — *Convenor*

MEMBERS

Lok Sabha

4. Shri Ashok Argal
5. Dr. (Smt.) Suguna Kumari Chellamella
6. Smt. Sheela Gautam
7. Shri Paban Singh Ghatowar
8. Shri Bijoy Handique
9. Shri Ram Sajivan
10. Shri Shyama Charan Shukla
11. Shri Prabhunath Singh
12. Shri Shankersinh Vaghela
13. Shri Ratilal Kalidas Varma

Rajya Sabha

14. Shri Anil Kumar
15. Shri Rajiv Ranjan Singh 'Lalan'
16. Shri Ahmed Patel

SECRETARIAT

1.	Shri P.D.T. Achary	—	*Additional Secretary*
2.	Shri P.K. Grover	—	*Director*
3.	Shri P.D. Malvalia	—	*Under Secretary*
4.	Smt. Madhu Bhutani	—	*Senior Executive Assistant*

INTRODUCTION

I, the Chairman, Standing Committee on Petroleum & Chemicals (2003) having been authorised by the Committee to submit the Report on their behalf, present this Fifty-Third Report on Action Taken by Government on the recommendations contained in the Forty-Second Report (Thirteenth Lok Sabha) of the Standing Committee on Petroleum & Chemicals (2003) on 'Merger and Acquisition of Oil and Gas Companies'.

2. The Forty-Second Report of the Committee was presented to Lok Sabha on 8th May, 2003. The Action Taken Replies of Government to all the recommendations contained in the Forty-Second Report were received on 20th October, 2003. The Sub-Committee on Petroleum & Chemicals considered the Action Taken Replies received from the Government and adopted the Report at their sitting held on 15th December, 2003.

3. The Standing Committee on Petroleum and Chemicals (2003) considered and adopted this Report at their sitting held on 15th December, 2003. The Committee place on record their appreciation of the work done by the Sub-Committee on Petroleum.

4. An analysis of the action taken by the Government on the recommendations contained in the Forty-Second Report (Thirteenth Lok Sabha) of the Committee is given in Appendix-III.

5. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

6. The Committee place on record their appreciation for the valuable assistance rendered to them by the officials of the Lok Sabha Secretariat attached to the Committee.

NEW DELHI
December 15, 2003
Agrahayana 24, 1925 (Saka)

PROF.RAM GOPAL YADAV
Acting Chairman
Standing Committee on
Petroleum & Chemicals.

CHAPTER – I

REPORT

This Report of the Committee deals with the action taken by the Government on the recommendations contained in the Forty-Second Report (Thirteenth Lok Sabha) of the Standing Committee on Petroleum & Chemicals (2003) on `Merger and Acquisition of Oil and Gas Companies' which was presented to Lok Sabha on 8th May, 2003.

2. Action taken notes have been received from the Government in respect of all the 21 recommendations contained in the Report. These have been categorised as follows:-

(i) Recommendations/observations that have been accepted by the Government:-
Sl. Nos. 9, 10, 11, 12, 17 and 19.

(ii) Recommendations/ observations which the Committee do not desire to pursue in view of the Government's replies:
Sl. Nos. 13 and 14.

(iii) Recommendations/ observations in respect of which replies of the Government have not been accepted by the Committee.
Sl. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 15, 16, 20 and 21.

(iv) Recommendations/ observations in respect of which final replies of the Government are still awaited:
Sl. No. 18.

3. The Committee desire that the final replies in respect of the recommendation for which only interim reply has been furnished by the Government should be furnished expeditiously.

4. The Committee will now deal with the action taken by the Government on some of their recommendations.

A. DISINVESTMENT POLICY REGARDING PUBLIC SECTOR UNDERTAKINGS

(Recommendation Sl. No. 1, Para No. 1)

5. The Committee had noted that some of the PSUs under the administrative control of Ministry of Petroleum and Natural Gas were showing very good performance and were ahead of the private sector not only in terms of sales growth but also operating profit. As per an estimate, while the private sector operating profits grew by 9.8 per cent during 1996-2001, the public sector showed a higher growth of 15.00 per cent. However, PSUs were lacking in utilisation of assets and the reasons could be ascribed to bureaucratic hurdles. The Committee had also noted that there was a vast scope for PSUs to unlock the value in assets turnover. If given freedom to perform, PSUs had the potential to compete with private sector at international level. This Committee had therefore opined that PSUs be categorized in two groups, profit making and loss incurring. Profit making PSUs should be given freedom to perform and should not be disinvested. Government might have a different policy for loss making units but in their case also efforts should be made to revive them.

6. The Ministry of Petroleum and Natural Gas has clarified the position in this regard as under:-

> "The present disinvestment policy of Government that all PSUs would be classified as strategic and non-strategic and only those PSUs, which are not strategic would be disinvested has been evolved over a period of time after taking into account the recommendations of the expert committees like "Rangarajan Committee" and "Disinvestment Commission headed by Shri G.V. Ramakrishna". If the Government were to disinvest only the loss making units, it would not be possible to realise some of the important objectives of disinvestment. In view of the above, the Government has classified all the PSUs as either 'strategic' or `non-strategic'. The present disinvestment policy does not envisage disinvestment of only profit making units. Government have successfully disinvested loss making units like Modern Foods, Paradeep Phosphates Ltd., units of India Tourism Development Corporation Ltd., Jessop & Co. Ltd., etc. However, realizing the importance of restructuring for the successful disinvestment of loss making PSUs, Government is in the process of formulating a comprehensive financial restructuring scheme for loss making PSUs as a prelude to their disinvestment. In view of the

above, Government is not in a position to accept the recommendation of the Committee for not disinvesting profit making PSUs."

7. The Committee regret that the Government have not gone into the spirit of the recommendation. The thrust of the Committee's recommendation was that the oil sector PUSs which are making huge profits, have vast scope to unlock the value in assets turnover and have potential to compete with private sector at international level should not be disinvested. They should rather be encouraged and given free hand to perform. The Committee, therefore, reiterate that the Government should refrain from disinvestment of profit making oil PSUs.

B. GRANTING MORE FREEDOM TO OIL SECTOR PSUs

(Recommendation Sl. Nos. 2 and 3, Para Nos.2 and 3)

8. The Committee while commenting upon the objectives of disinvestment in HPCL and BPCL had stated that all PSUs under the administrative control of Ministry of Petroleum and Natural Gas are profit making. This Committee had earlier examined the relevance of disinvestment in Petroleum Sector especially in HPCL and BPCL and in their Reports presented to Parliament had dealt with various issues involved in disinvestment. The Committee had also observed that oil companies were engaged in raising infrastructure in the form of creating port facilities, terminals, depots, LPG bottling plants, product pipelines, construction of roads connecting ports and other installations,etc. and as such were fulfilling the objective of disinvestment. The Committee had also pointed out that these oil companies were already contributing huge amount to the national exchequer for better deployment and that the oil sector had already contributed the largest share to the national exchequer through disinvestment. The total receipts from disinvestment of PSUs between 1991-2000 were to the tune of Rs. 26148 crore. Out of this about 49% i.e. Rs. 12867 crore were realized from oil sector. During 1998-2000 as against the total of Rs. 9070 crore realized from disinvestment the oil sector alone contributed Rs. 7217 crore, which amounts to 80% of the total. The oil sector had contributed substantially

and had fulfilled the objectives of disinvestment so far as unlocking of the resources of oil companies was concerned. The Committee had also highlighted the fact that these oil companies had created huge assests without any investment from the Government. As per an estimate replacement cost on assets of these companies was between Rs 20000 crores to 25000 crores each. The Committee had also observed that assets created by them were national assets and they should be enabled to retain these assets.

9. The Committee in their earlier Reports had also emphasised that oil was a strategic sector and like other strategic sectors oil companies should not be disinvested. The Committee were glad that Minister of Petroleum and Natural Gas himself had admitted that oil was a strategic sector. The Committee had, therefore, recommended that Government should formally declare oil sector as strategic sector and oil companies should be taken out of the list of PSUs slated for disinvestment.

10. The Government while replying to these observation stated as under:-

> "The main objective of disinvestment is to put national resources and assets to optimal use and in particular unleash the productive potential inherent in public sector undertakings. Government has taken the decision to disinvest BPCL/ HPCL, which are operating in a non-strategic sector. Though oil sector is one of the important sectors of the economy, it is not considered as a strategic sector. The oil sector can grow only with increasing competition, which is key for efficiency. The X Five Year Plan document calls for disinvestment of some of the Oil PSUs so that they can compete with private and multinational companies. The infrastructure created by HPCL/ BPCL could be more productively utilized by these companies when they are freed from hurdles faced by them as a PSU. The disinvestment of Oil PSUs is also consistent with the Government's policy on infrastructure where it has been the policy of the government to encourage private initiative in creation and building up of infrastructure in various sectors of the economy such as Ports, Power, Highways, etc. Moreover, Exploration and Production, Pipelines and Refining are all open to private sector participation. Government has also envisaged private operators in retail in its Hydrovision 2025 policy. In fact, license for retail of petroleum products has been granted to two private sector players."

11. In regard to the declaration of Oil Sector as strategic, the Ministry of Petroleum and natural Gas has submitted the following reply:-

> "As already mentioned, Government had classified the PSUs as strategic and non-strategic after careful consideration in March 1999 and as per the above classification Oil sector is considered as non-strategic. When the entire oil sector is being opened up for private sector participation/ investment, there is little merit in treating the sector as strategic under the Disinvestment Policy."

12. The Committee do not agree with the Government's contention that oil sector is not considered as a strategic sector. In their earlier Reports also, the Committee have been emphasising that oil / gas as the major energy sources be treated as strategic sector. In fact Acquisition Acts were enacted to have the control of the Government on Oil Sector to maintain adequate supply of petroleum products at reasonable prices throughout the country. Oil Sector should, therefore, be treated as strategic sector.

13. The Committee are not against competition in this sector what they would like to stress again is that the oil companies in the public sector should not be disinvested merely on the ground that they are to be freed from hurdles faced by them as PSUs to enable them to compete. Many of the oil PSUs have acquired the status of Navratnas and therefore, instead of disinvesting them the Government should ensure that such hurdles - bureaucratic or procedural – are removed and the public sector oil companies are given more autonomy and freedom in decision making and operations. The Committee, therefore, reiterate that in order to retain the huge national assets created by these oil companies without any investment by the Government, they should not be disinvested.

C. DISINVESTMENT IN HPCL AND BPCL

(Recommendation Sl. Nos. 4 to 6, Para Nos. 4 to 7)

14. While not agreeing to the Government proposal to disinvestment in HPCL and BPCL, the Committee had pointed out that HPCL and BPCL came into being after nationalisation of some private companies through Acts of Parliament. These Acts vested the ownership of the assets of erstwhile private companies in the Central Government or Government Companies. The Private Oil Companies were acquired for a purpose which was manifested in the form of policy declaration. This declaration of policy was endorsed by Parliament when the Bill was passed. The Committee had also pointed out that Acquisition Acts were enacted to achieve the objectives viz. that the acquired companies shall remain under the control of the Government. The decision to disinvest HPCL and BPCL would mean losing the Government's effective control over these companies and leaving their control in the hands of the private companies. This would be contrary to the enactment made earlier by Parliament. The Committee had, therefore, recommended that if the very basis of the enactment has to be altered sanction of Parliament must be taken.

15. The Government in their reply furnished to the Committee have stated as under:-

> "Writ Petitions were filed in the Supreme Court challenging the decision of the Government to disinvest in HPCL and BPCL. The Supreme Court in its judgment pronounced on 16.9.2003, has restrained the Government from proceeding with disinvestment in HPCL and BPCL without appropriate amendment in the acquisition acts. In view of the Court's judgment, the Government has called off further action in the process of disinvestment in HPCL and BPCL."

16. The Committee in their 28th and 36th Reports (13th Lok Sabha) had recommended that HPCL and BPCL should not be disinvested. In their 42nd Report (13th Lok Sabha) on `Merger and Acquisition of Oil and Gas Companies' which was presented to Parliament on 8th May, 2003, the Committee had also given their unanimous view that the Acquisition Acts were enacted to achieve the objective viz. that the acquired companies

shall remain under the control of the Government. The decision to disinvest HPCL and BPCL would amount to altering the very basis of these enactments. The Committee had, therefore, recommended that if at all HPCL and BPCL were to be disinvested, sanction of Parliament must be taken. The Government did not pay heed to the unanimous recommendation of the Parliamentary Committee. However, when Writ Petitions were filed in the Supreme Court challenging the decision of the Government to disinvest in the HPCL and BPCL, the Supreme Court in its judgment pronounced on 16th September, 2003 restrained the Government from proceeding with disinvestment in HPCL and BPCL without appropriate amendment in the Acquisition Acts. It was then that the Government called off further action in the process of disinvestment of HPCL and BPCL. The Committee regret this attitude of the Government of ignoring the unanimous view of the Parliamentary Committee which called for sanction of Parliament before going in for disinvestment in HPCL and BPCL. This amounts to dilution of the Legislature which forced the Judiciary to step in and remind the Executive of the authority of the Parliament. The Government is understood to have again moved the Supreme Court for a review of its judgment. However, this Committee reiterate their earlier stand that sanction of Parliament is mandatory before a decision to disinvest HPCL and BPCL is taken.

D. VERTICAL INTEGRATION OF OIL COMPANIES
(Recommendation Sl. No. 7, Para No. 8)

17. The Committee had emphasised that the world economic situation was changing fast and protectionism was giving way to liberalism. With the globalisation of economy, small economic entities were disappearing. Oil and Gas industry was witnessing changes. All the major energy companies in the world were vertically integrated and it was beneficial to have an integration in the various segments of the Hydrocarbon Vision. The Hydrocarbon value-chain was the basis for vertical integration, in the oil and gas industry.

18. All global oil and gas majors were vertically integrated covering all the major segments of the value chain. In recent years, there had been mergers of the vertically integrated global majors such as Exxon-Mobil, BP-Amoco-Avco-Castrol, Chevron-Taxaco and Total-Fina Elf. These mergers created cost efficiencies. If these global companies happened to do business in India, IOCL shall be the only marketing company in public sector compete with them. To enable IOCL to compete with such global companies, the Committee had recommended that it should be given more functional autonomy.

19. Listing the various advantages of vertical integration, the Committee had recommended that a Committee of Chairmen of ONGC, IOCL and GAIL be constituted to study and suggest vertical integration of Oil and Gas Companies, the Government in their reply have stated as follows:-

> "The Government have delegated decision-making authority to the Board of Directors of Navratna PSUs to undertake capital expenditure programmes for their own projects. This has helped IOC in taking timely and speedy decisions on investment in major projects. However, in so far as equity investment in joint ventures and subsidiaries is concerned, the Government guidelines stipulate certain limits, i.e., equity investment should not exceed (i) Rs. 200 crore in one project, or (ii) 5% of net worth in any single project, or (iii) 15% of net worth in all projects put together, beyond which such project proposals will require Government approval. It has been clarified by Department of Public Enterprises recently as follows:
>
> > 'The ceiling of 15% of the Net Worth of the PSE on investments in all joint ventures/subsidiaries is exclusive of the investments made through the directives of the Government.'
>
> While delegated decision-making authority has helped IOC to a certain extent in taking speedy and timely investment decisions, as IOC is a Government company, it's proposals of mergers and acquisitions beyond the delegated powers are considered and approved by the Government. Government will review the impact of recent DPE circular after some time. In case it becomes a constraint in IOC's plan for growth and business diversification, appropriate modifications in the existing delegation of powers to Navratna PSUs will be worked out in consultation with Department of Public Enterprises."

20. In regard to vertical integration of companies, the Government have stated as under:-

> "Formation of a mega company has not been accepted as a policy for the following reasons:-
>
> (a) Manpower management in a company of such huge proportions would pose problems and difficulties. This may slow down investment and execution of projects by these companies.
>
> (b) The individual company's work culture and environment may lead to difficulties in efficient operations.
>
> (c) Merger may cause a decreased in the shareholder value of the individual companies.
>
> (d) Similar results can be achieved by developing a consortium approach in issues requiring coordinated activity.
>
> In view of the above, Ministry does not support any change in the structure of PSUs as is being recommended."

21. The Committee are not satisfied with the reply furnished by the Government. They have not cared even to set up a Committee to study the issue of vertical integration of oil companies as suggested by this Committee. It has simply been stated that the Ministry does not support any change in the structure of PSUs. The Committee express their unhappiness over this attitude of the Government. As already emphasised, Government should seriously think about achieving vertical integration in this sector in order to withstand competition and effect cost efficiencies. The Committee also reiterate that a Committee of Chairmen of ONGC, IOCL and GAIL be constituted to study this issue in detail without any delay and the Committee be apprised of its outcome.

22. The Committee also recommend that IOC should be given more functional autonomy to enable it to compete with global companies. The relevant guidelines stipulating certain limits on investments by Navratna Companies should be reviewed and modified at the earliest.

E. ACQUIRING THE SHARES BY OIL COMPANIES

(Recommendation No. 12, Para No. 13)

23. The Committee had observed that Government had taken some important policy decisions with regard to merger and acquisition of public sector oil and gas companies, and allowed them to buy each other's shares to develop business synergy among oil and gas companies. However, as per guidelines issued by the government in July, 1997, Navratna PSUs could invest in the equity of another company subject to the condition that the investment should not either exceed Rs. 200 crore in one project or 5% of its net worth in a single project or 15% of the net worth in all such projects put together . The Committee felt that these restrictions had become cumbersome and should be revised to enable the Navratna PSUs to have greater powers in acquiring shares in other companies. The Committee had therefore recommended that Government should revise the guidelines in this regard.

24. The Government responded to this observation as under:-

> "The limit on equity investment in joint ventures/ subsidiaries by the Navratna Oil PSUs prescribed by the Government is intended to balance risks and returns associated with project investment. The existing limits may be examined in the context of the liberalization of the oil sector and the need for strategic alliance of the oil PSUs to minimize business risks and achieve the desired growth under volatile market conditions. Accordingly, modifications in the existing guidelines to facilitate greater flexibility in the decision making authority of the Board of Directors of Navratna Oil PSUs are required to be finalized in consultation with the Department of Public Enterprises, Ministry of Heavy Industry."

25. The Committee are happy to note that Government have agreed that the existing limits of investment by Navratna PSUs need to be examined. The Committee have been informed that these limits may be examined in

the context of the liberalisation of oil sector and the need for strategic alliance of the Oil PSUs. The Committee, therefore, desire that an early decision should be taken by the Government in this regard in consultation with the Department of Public Enterprises under intimation to them.

F. BIDDING BY PSUs IN THE PROCESS OF DISINVESTMENT
(Recommendation Sl. Nos. 15 and 16, and Para Nos. 16 and 17)

26. The Committee had noted that Government of India, Ministry of Disinvestment vide their O.M. No.4 (32)/2002 dated 18th September, 2002 had imposed an embargo whereby Central Public Sector Undertakings and Central Government owned Cooperative Societies where Government's ownership was 51% or more were not permitted to participate as bidders in the disinvestment of other PSUs. In accordance with this OM, ONGC was forbidden to bid in the HPCL disinvestment. However, ONGC and the Ministry of Petroleum and Natural Gas had made out a strong case for allowing the former to bid in the process of disinvestment in HPCL. In the Committee's view, Government's embargo was not only arbitrary in nature but in essence negated the very concept of competition. Government in such matters should perform the role of a referee instead of a player. Moreover, Government's policy was not uniform and consistent, as they had reportedly allowed IFFCO/ KRIBHCO to bid in disinvestment of National Fertiliser Limited. Thus this embargo also ran counter to the essence of right to equality. The Committee had strongly disapproved of this approach of the Government and recommended that the above. OM be withdrawn immediately.

27. The Committee in principle had strongly opposed disinvestment in any oil company and instead recommended their acquisition and merger. However, in case the Government decided to go ahead with disinvestment in HPCL, the Committee felt that there was no valid ground in restraining ONGC to bid for HPCL and therefore, strongly recommended that ONGC be allowed to bid for this company.

28. In response to the observations of the Committee that ONGC must be allowed to bid for HPCL, the Ministry submitted its reaction as under:-

> "The objective of disinvestment is to put national assets to optimal use and to unleash the productive potential inherent in public sector enterprises. Ownership of one PSU by another PSU defeats that very objective. It has, therefore, been decided by the Government that as a general policy, central public sector undertakings and Central Government owned cooperative societies (i.e. where Government's ownership is 50% or more would not be permitted to participate in the disinvestment of other PSUs as bidders). If in some specific case any deviation from these restrictions is considered desirable in public interest, the Government considers the same. It has been contended by ONGC that its participation in the disinvestment process of HPCL will bring about vertical integration in the oil sector thereby ensuring cash flow and maintaining market share in a highly open and competitive sector. In case ONGC takes up HPCL, HPCL gets returned in the public sector and between IOC and ONGC (having taken over HPCL) it would be a public sector in the exploration, refinery and retail sector which runs totally counter to competition, the principles stated in HV 2025 and the whole philosophy behind dismantling of APM. Therefore, it has been decided not to allow any PSU to bid for HPCL.
>
> Government decided to permit IFFCO and KRIBHCO to participate in the disinvestment process of National Fertiliser Ltd. in pursuance of Government's decision that case-by-case exceptions could be considered. Permitting IFFCO and KRIBHCO to participate in disinvestment of NFL was therefore an exception as permitted by Government policy, not a rule."

29. The Committee are not convinced by the reply of the Government that ownership of one PSU by another PSU does not serve the purpose of disinvestment. In Committee's view if any PSU is allowed to bid for HPCL it will fulfil the objective of facilitating vertical integration of business and also enhance the capacity of public sector oil companies to compete with the private companies and MNCs in the international market. The Committee therefore desire that the Government decisions need to be consistent as well as transparent. Making exceptions on a case to case basis like permitting IFFCO and KRIBHCO to participate in disinvestment of National Fertilisers Limited and restraining others viz. ONGC from doing so should be backed by solid reasons. The Committee once again urge the

Government that, Government should finalise a consistent and transparent policy to obviate the necessity of exceptions. They reiterate that the O.M. dated 18th September, 2002 refraining PSUs with Government's ownership of 51% or more from bidding in the disinvestment of other PSUs, should be withdrawn.

(G) ENTRY OF OIL PSUS IN RETAIL BUSINESS

(Recommendation Sl. No. 18, Para No. 19)

30. The Committee had noted that both the ONGC and GAIL had approached the Government to permit them to undertake retail business in the country. This committee had also earlier recommended that their requests should be granted immediately. But surprisingly, on the pleas of private LPG operators, requests of ONGC and GAIL were kept pending. On the one hand, the Government was allowing private players in retail business claiming creation of conditions for generating competition in retailing business in oil industry for the benefit of common consumer and on the other hand decisions on PSU companies were being delayed unnecessarily. The Committee did not find any valid reason for delaying decision in this regard and had recommended that quick positive decision be taken.

31. In their reply the Government have stated that they have not taken any final view on this.

32. There has been inordinate delay in taking a decision to permit ONGC and GAIL to undertake retail business in the country. In the Committee's view if Government permit these PSUs to enter into retail business it will not only give rise to increased competition but would also improve the customer services. The Committee, therefore, desire that the Government should take a positive decision in the matter at the earliest and inform the Committee accordingly.

H. IMPORT OF PETROLEUM PRODUCTS

(Recommendation Sl. Nos. 20 and 21, Para Nos. 21 and 22)

33. The Committee had noted that there was already about 20% excess refining capacity than the demand. As per an estimate, during the 10th Plan, excess refining capacity might exceed 40% than demand. Although, Oil Companies had exported the petroleum products during the last few years but the overall scenario of export was not very bright. Moreover, a private company which had been given authorisation to set up retail outlets had sought Government's permission to import petroleum products. In Committee's view this emerging situation of supply and demand coupled with permission to import was intriguing and not in the international interest. The Committee had, therefore, recommended that Ministry of Petroleum & Natural Gas should take up with the Ministry of Commerce the necessity to impose restrictions on import of petroleum products especially on transportation fuel. The Commerce Ministry should frame the Exim Policy in a manner so as to discourage the import of this fuel. The Committee had further recommended that only a PSU Oil Company should continue to remain as State Trading Enterprise for import of these products and the Government should not lift the restrictions presently imposed on import in the name of providing competitive regime.

34. The Government in their reply has stated as follows:-

> "Against the refining capacity of 116.97 MMTPA (Million Metric Tonnes Per Annum) as on 1.4.2003, the consumption of petroleum products during 2002-03 was around 103.7 MMTPA. The projected refining capacity by the end of the 10th Plan is also more than the projected domestic demand.
>
> 2. The ongoing process of economic liberalisation calls for more and more liberal Exim policy. Uptil 31-03-2003, under the Exim policy, imports of transportation fuels were allowed only through IOC as State Trading Enterprise (STE). The issue of opening up of the imports of transportation fuels was examined by the government. It was felt that full and complete removal of the STE condition from the imports of transportation fuels at this stage may go against the interest of domestic producers and, therefore, may not be advisable. However, the case of companies who have been granted marketing rithts for transportation fuels in terms of MOP&NG's guidelines dated 8.3.2002 would need to be treated differently.

3. It may be stated that with a view to increase competition in the marketing of transportation fuels, the Government has decided to grant authorisation to new players, including private companies, to market transportation fuels subject to the condition that such players meet the criteria laid down in MOP&NG's guidelines dated 8.3.2002. These guidelines inter alia lay criteria for making investment in the eligible assets as a condition for considering granting the authorisation to market transportation fuels. The investment criteria laid down under these guidelines is quite stringent so as to ensure that only serious players are allowed in the marketing of transportation fuels. It may be appreciated that in a deregulated scenario, it would be unfair to put any restrictions on the mode of sourcing of products by the companies who have been allowed to market the transportation fuels after meeting the laid down criteria.

4. In view of the above, the Exim policy has been amended effective 01-04-2003 to allow the companies, who have been granted market authorisation under the aforesaid guidelines of 8.3.2002, to import transportation fuels directly without going through the State Trading Enterprise (STE) route. All other imports of transportation fuels would be through IOC as STE. Thus, the existing Exim policy is quite balanced i.e. while on one had it allows direct imports of transportation fuels by companies having authorisation from MOP&NG to market such products, on the other hand for other imports it prescribes STE route."

35. In view of the emerging scenario the Committee had specifically recommended that the Ministry of Petroleum & Natural Gas should take up with the Ministry of Commerce the necessity to impose restrictions on the import of petroleum products especially on transportation fuel. They had also recommended that the Government should not lift the restrictions presently imposed on import in the name of providing a competitive regime. But the Committee are unhappy to observe that the Government has not paid any heed to their recommendation. Uptil 31.3.2003 under the Exim policy, imports of transportation fuels were allowed only through IOC as State Trading Enterprise (STE). But with effect from 1.4.2003, the companies who have been granted market authorisation have been allowed to import transportation fuels directly without going through the State Trading Enterprise (STE) route. The Committee express their apprehensions over the permission to import transportation fuel directly by Companies who have been granted market authorisation. They, therefore, desire that this policy should be reviewed and all imports of petroleum products especially transportation fuel should be made only through a PSU oil company.

CHAPTER II

RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Recommendation (Part II, Para No. 10)

In the opinion of the Committee, mergers of companies in the oil and gas sector is the need of the hour. It is reported that Government are thinking of merging various financial institutions. In India, oil and gas companies had been engaged in integration earlier also. The first oil company in India, Burma Oil Co. later renamed as Assam Oil Company (AOC) was vertically integrated for exploration and production, refining, transportation and marketing. Government created India Refineries Limited in 1958 for refining business and Indian Oil Company in 1959 for marketing business. Later both these were merged to form Indian Oil Corporation Limited in 1964. There have been several mergers like Kochi Refinery Limited with BPCL, Chennai Petroleum Corporation Limited and Bongaigaon Refineries Petrochemicals Ltd. with Indian Oil Corporation within the same sector of refining and marketing. On disinvestment, IBP was taken over by IOCL in the same sector of marketing. HPCL and BPCL together control around 45% of the market but they are not vertically integrated companies. The Committee after careful consideration of various factors recommend strongly that both these companies should be merged.

Recommendation (Part II, Para No. 11)

Dr. Sengupta Committee had recommended that the possibility of a combination of Hindustan Petroleum Corporation Ltd. (HPCL), Bharat Petroleum Corporation Ltd. (BPCL), Indo-Burma Petroleum (IBP), Cochin Refinery Ltd. (CRL), Madras Refinery Ltd. (MRL) and Numaligarh Refinery Ltd. (NRL) should be explored through an umbrella of a holding company. As per this Committee, this new entity will be equal in size to IOC and would not only provide good competition but could also

emerge as a global player in competition with the international oil majors. The Standing Committee on Petroleum and Chemicals in their 10th Report on Demands for Grants of Ministry of Petroleum and Natural Gas presented to Lok Sabha on 22nd April, 1999 had also recommended that all Navratna Oil Sector PSUs should form a mega company. The Government without ascribing any reason did not agree with this recommendation. The global trend has been on vertical integration followed by mergers of similar companies to create formidable global business. No country with substantive indigenous oil and gas industry operates on the model of sectoral companies. Even in China, the sectoral companies were merged to create integrated majors. The Committee after carefully examining all factors prevailing in the international oil market today, recommend that after merging HPCL and BPCL, modalities should be worked out for their merger with ONGC. This merged company will be an integrated mega venture. Such a move could no doubt generate huge cost savings.

Reply of the Government

No proposals were initiated/received from BPCL/HPCL by the Government in respect of merger of HPCL and BPCL and make it a mega venture.

2. HPCL and BPCL have been performing in a competitive manner *vis-a-vis* other oil companies. Keeping in view the need to ensure competition in the domestic oil market, the recommendation of merging HPCL and BPCL was not found appropriate. Subsequently, Government decided to disinvest HPCL through strategic sale and BPCL through public issue. In the meantime, Writ Petitions were filed in the Supreme Court against the Government decision on disinvestment of HPCL and BPCL. The Supreme Court has restrained the Government from proceeding with the disinvestment of the PSUs without appropriate amendment in the Acquisition Acts passed by the Parliament.

3. Insofar as ONGC is concerned, it has already acquired 71.63% stake in Mangalore Refinery and Petrochemicals Ltd. (MRPL) and 23% in Mangalore-Hasan-Bangalore Pipeline Company. ONGC/MRPL has also been authorised to open retail making outlets in the country. Thus, ONGC is poised to become a vertically integrated company in the hydrocarbon value chain.

4. Besides, wherever necessary, the Navaratna companies form a consortium to undertake various projects.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003—Mkt./Fin.II dated 17.10.2003]

Recommendation (Part II, Para No. 12)

The Committee further recommend that Governement should extend all help to this mega venture to do business not only in India but at the international level too. This company can have interest in green field investments not only in India but also in other countries where there are unexplored sources of hydrocarbon.

Reply of the Government

All Indian PSUs are welcome to undertake exploration and production of hydrocarbons abroad, and appropriate assistance and guidance will be given by the Ministry in terms of India Hydrocarbon Vision-2025.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003—Mkt./Fin.II dated 17.10.2003]

Recommendation (Part II, Para No. 13)

Government claim to have taken some important policy decisions with regard to merger and acquisition of public sector oil and gas companies. To develop business synergy among oil and gas companies, Government allowed them to buy each other's shares. However, as per guidelines issued by the Government in July, 1997, Navratna PSUs can invest in the quity of another company subject to the condition that the investment should not either exceed Rs. 200 crore in one project or 5% of its network in a single project or 15% of the network in all such projects put together. The Committee feel that these restrictions have become cumbersome and should be revised to enable the Navratna PSUs to have greater powers in acquiring shares in other companies. The Committee recommend that Government should revise the guidelines in this regard.

Reply of the Government

The limit on equity investment in joint ventures/subsidiaries by the Navratna Oil PSUs prescribed by the Government is intended to balance risks and returns associated with project investment. The existing limits may be examined in the context of the liberalization of the oil sector and the need for strategic alliance of the Oil PSUs to minimize business risks and achieve the desired growth under volatile market conditions. Accordingly, modifications in the existing guidelines to facilitate greater flexibility in the decision making authority of the Board of Directors of Navratna Oil PSUs are required to be finalized in consultation with the Department of Public Enterprises, Ministry of Heavy Industry.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003—Mkt./Fin.II dated 17.10.2003]

Comments of the Committee

(Please *see* Para No. 25 of Chapter-I of the Report)

Recommendation (Part II, Para No. 18)

The Committee note that ONGC has acquired Aditya Birla Groups stake in MRPL which would enable it to become a vertically integrated company having access, apart from production of oil and gas to oil refining and retail marketing of products. Government have authorised ONGC to set up a total number of oil 600 retail outlets, in Andhra Pradesh and Maharashtra as against 7849 retail outlets being set up by private companies. The Committee feel that ONGC's authorisation is only a fraction of what it is capable of. They note that very soon ONGC's refining capacity will be almost equal to BPCL's present refining capacity which has marketing network across the country. The Committee wish ONGC to capture at least 25% of market during 10th Plan and recommend to the Government to extend all assistance to achieve this objective. The Committee also recommend that ONGC be enabled to monetise gas reserves in the marginal, locked up and unexploited fields.

Reply of the Government

(a) Retail Marketing

As per the proposal received from ONGC, Government have given its approval to ONGC in May, 2002 for setting up of 600 Retail Outlets

(ROs) in Andhra Pradesh and 500 in Maharashtra and Gujarat in the first phase. Again on receipt of fresh proposal from ONGC in May, 2003, Govt. have conveyed its approval for additional 500 ROs (over and above the outlets earlier proposed) in the first phase in the States of Karnataka, Kerala, Goa and Pondicherry also. It is submitted that decision about number of Retail Outlets to be set up by oil companies (either PSU or private) is being taken by them on commercial considerations and Govt. have not made any restrictions on the number of retail outlets to be set up by oil companies.

(b) Monetization of gas reserves in marginal, locked up and unexplored fields

A long term gas profile by ONGC includes both the gas reserves available from producing properties and the component that is likely to be upgraded/accrued/commercialized. The likely source of such additional gas reserves could be from producing fields including the field growth/extension areas and new finds.

Many of the small and medium size gas fields, based on administered gas pricing were earlier worked out to be unattractive propositions for development/exploitation and were considered to be of marginal nature with Rate of Return as one of the main controlling factor. In post APM regime with the gas pricing revision, i.e. fuel parity prices for gas, the earlier considered marginal fields are reanalyzed for their potential based on revised boundary conditions. These finds include isolated gas finds that remain untapped, due to non-availability of infrastructure in the close vicinity and, therefore, have been termed as future assets. The identified fields are planned to be taken up for either through in-house efforts or through service contract. This evaluation is a dynamic process.

For establishment of new hydrocarbon reserves, exploration for oil and gas is vigorously pursued and a part of the expected new reserves could be of marginal nature, which will need market driven prices to enable ONGC to monetize these. Thus new price, coupled with leveraging of advanced technology with attendant innovative approach would enable ONGC to monetize the marginal gas potential in its acreages.

Currently, 9 onshore marginal gas fields in various basins have been identified for outsourcing for development. Draft BEC and terms and conditions have been finalized. It is planned to invite tenders from short listed parties.

Fourteen offshore marginal gas fields are identified for development (In-house/alliance/outsourcing) in Western Offshore Basin. Studies for seven gas fields have been completed with cluster development concept and feasibility of implementation of these development concepts are being examined. During the year 2003-04, studies for 2 more offshore marginal gas fields are in progress. Studies for remaining fields will be taken up in future.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003—Mkt./Fin.II dated 17.10.2003]

Recommendation (Part II, Para No. 20)

The Committee find that Government have not taken final decision on the execution of Bhatinda and Bina refineries and are awaiting the outcome of disinvestment in HPCL and BPCL. Government have assured that these refineries projects will be implemented by these companies or through any other agency. As per press reports, ONGC is one of the agencies being considered for implementation of Bhatinda Refinery project. The Chairman, ONGC was forth right in apprising the Committee that for his company, this refinery would not be an attractive proposition. He has given various analytical reasons for this approach and Committee appreciate the same. The Committee note that already huge amount has been spent on Bhatinda and Bina Refineries. The Committee would like to be assured that both these refineries would not be de-coupled from their parental companies. Under any circumstances these should not be thrust upon any existing oil or gas company.

Reply of the Government

Government at the time of taking decision to divest in BPCL and HPCL have decided that the decision on implementation of Bina and Bhatinda refineries be left to the new management of HPCL and BPCL post-disinvestment or Ministry of Petroleum & Natural Gas may take up

their implementation through ONGC or any other agency. Writ Petitions were filed in the Supreme Court challenging the decision of the Government to disinvest in HPCL and BPCL. The Supreme Court in its judgment pronounced on 16.9.2003, has restrained the Government from proceeding with disinvestment in HPCL and BPCL without appropriate amendment in the acquisition acts. In view of the Court's judgment, the Government has called off further action in the process of disinvestment in HPCL and BPCL.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003—Mkt./Fin.II dated 17.10.2003]

CHAPTER III

RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLIES

Recommendation (Part II, Para No.14)

The Committee feel that guidelines issued to PSUs Navratna Companies limiting equity participation in financial joint ventures and wholly owned subsidiaries in India or abroad is not commensurate with Section 372A of the Companies Act which provides that the Board of Directors can consider and decide proposals of acquisition of securities of any other company provided that all such investments do not exceed the limit of 60% of the paid-up capital and free reserves put together or 100% of free reserves whichever is higher. The Committee consider guidelines dated 22nd July, 1997 as a hindrance and is violative of Section 372 A of Companies Act. The Committee recommend that PSU companies should have a separate statute with regard to acquisition of one PSU by another. The Government should set up a study group to examine this aspect.

Reply of the Government

While Section 372A of the Companies Act prescribes over all limit of investment to be made in other body corporate by a Board of limited company (in public & private sector both) by way of loans, guarantees and securities including equity, the guidelines dated 22.7.1997 issued by the Government prescribes the ceiling only on the equity investment in joint ventures and subsidiaries by the Board of CPSU only. Government of India may decide the delegation of powers to the Board of Directors of a CPSU within over all provisions of Companies Act, 1956. Thus, the guidelines dated 22.7.1997 issued by the Government are not violative of Section 372A of the Companies Act.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003- Mkt./Fin.II dated 17.10.2003]

Recommendation (Part II, Para No.15)

The Government have contended that they have powers to issue such directives or instructions as may be considered necessary in regard to the financies, conduct of business and affairs of a company. These powers flow from Articles of Association and Memorandum of Association of these companies. The Committee are in agrrement with the Government that they should have sufficient powers to ensure good conduct of the companies. But in the present day context of fierce economic competition at international level, when acquisition and merger of companies has become the basic ingredient of business success, Government should empower the professional management of the companies to take such decisions notwithstanding the outdated regulations and instructions. The Committee, therefore, recommend that Government should use their powers to issue instructions under Articles of Association and Memorandum of Association cautiously. The objective is to empower the professional management to take independent and quick decisions. For this purpose, the Government should set up a study-group to suggest measures to achieve this objective.

Reply of the Government

Necessary financial powers are delegated to CPSUs by the Government from time to time. The present delegation of financial powers do not include power for acquisition and merger of companies, as has been clarified as per DPE guideline dated 11.2.2003.

The instructions by the Government in regard to financies, conduct of the business and affairs of the company are issued after following the due procedure to implement the policy of the Government on particular subject only when specific situation so demands. However, recommendation of the committee on this issue has been noted and being circulated to all administrative Ministries for follow up action.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003- Mkt./Fin.II dated 17.10.2003]

CHAPTER IV

RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE

Recommendation (Part II, Para No.1)

The Committee is happy to note that some of the PSUs under the administrative control of Ministry of Petroleum and Natural Gas are showing very good performance. In fact these PSUs are ahead of the private sector not only in terms of sales growth but also operating profit. As per an estimate, while the private sector operating profits grew by 9.8 per cent during 1996-2001, the public sector showed a higher growth of 15.00 per cent. However, PSUs are lacking in utilisation of assets and the reasons can be ascribed to bureaucratic hurdles. There is a vast scope for PSUs to unlock the value in assets turnover. If freedom is given to PSUs to perform, they have the potential to compete with private sector at international level. This Committee are of the opinion that PSUs be categorized in two groups, profit making and loss incurring. Profit making PSUs should be given freedom to perform and should not be disinvested. Government may have a different policy for loss making units but in their case also efforts should be made to revive them.

Reply of the Government

The present disinvestment policy of Government that all PSUs would be classified as strategic and non-strategic and only those PSUs, which are not strategic would be disinvested has been evolved over a period of time after taking into account the recommendations of the expert committees like "Rangarajan Committee" and "Disinvestment Commission headed by Shri G.V. Ramakrishna". If the Government were to disinvest only the loss making units, it would not be possible to realise some of the important objectives of disinvestment. In view of the above, the Government has classified all the PSUs as either 'strategic' or 'non-

strategic'. The present disinvestment policy does not envisage disinvestment of only profit making units. Government have successfully disinvested loss making units like Modern Foods, Paradeep Phosphates Ltd., units of India Tourism Development Corporation Ltd., Jessop & Co. Ltd., etc. However, realizing the importance of restructuring for the successful disinvestment of loss making PSUs, Government is in the process of formulating a comprehensive financial restructuring scheme for loss making PSUs as a preclude to their disinvestment. In view of the above, Government is not in a position to accept the recommendation of the Committee for not disinvesting profit making PSUs.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003- Mkt./Fin.II dated 17.10.2003]

Comments of the Committee

(Please *see* Para No. 7 of Chapter-I of the Report)

Recommendation (Part II, Para No.2)

All PSUs under the administrative control of Ministry of Petroleum and Natural Gas are profit making. This Committee had earlier examined the relevance of disinvestment in Petroleum Sector especially in HPCL and BPCL and in their Reports presented to Parliament had dealt with various isues involved in disinvestment. The Committee had observed that oil companies were engaged in raising infrastructure in the form of creating port facilities, terminals, depots, LPG bottling plants, product pipelines, construction of roads connecting ports and other installations, etc. and as such are fulfilling the objective of disinvestment. The Committee had also pointed out that these oil companies were already contributing huge amount to the national exchequer for better deployment and that the oil sector has already contributed the largest share to the national exchequer through disinvestment. The total receipts from disinvestment of PSUs between 1991-2000 were to the tune of Rs. 26148 crore. Out of this about 49% i.e. Rs. 12867 crore were realized from oil sector. During 1998-2000 as against the total of Rs. 9070 crore realized from disinvestment the oil sector alone contributed Rs. 7217 crore, which amounts to 80% of the total. The oil sector has contributed

substantially and has fulfilled the objectives of disinvestment so far as unlocking of the resources of oil companies is concerned. The Committee had also highlighted the fact that these oil companies have created huge assets without any investment from the Government. As per an estimate replacement cost on assets of these companies is between Rs. 20000 crores to Rs.25000 crores each. The Committee had observed that assets created by them are national assets and they should be enabled to retain these assets. The Committee reiterate their earlier recommendation that oil companies should not be disinvested.

Reply of the Government

The main objective of disinvestment is to put national resources and assets to optimal use and in particular unleash the productive potential inherent in public sector undertakings. Government has taken the decision to disinvest BPCL/HPCL, which are operating in a non-strategic sector. Though oil sector is one of the important sectors of the economy, it is not considered as a strategic sector. The oil sector can grow only with increasing competition, which is key for efficiency. The X Five Year Plan document calls for disinvestment of some of the Oil PSUs so that they can compete with private and multinational companies. The infrastructure created by HPCL/BPCL could be more productively utilized by these companies when they are freed from hurdles faced by them as a PSU. The disinvestment of Oil PSUs is also consistent with the Government's policy on infrastructure where it has been the policy of the government to encourage private initiative in creation and building up of infrastructure in various sectors of the economy such as Ports, Power, Highways, etc. Moreover, Exploration and Production, Pipelines and Refining are all open to private sector participation. Government has also envisaged private operators in retail in its Hydrovision 2025 policy. In fact, license for retail of petroleum products has been granted to two private sector players.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003- Mkt./Fin.II dated 17.10.2003]

Comments of the Committee

(Please *see* Para No. 12 of Chapter-I of the Report)

Recommendation (Part II, Para No.3)

The Committee in their earlier Reports have been emphasising that oil is a strategic sector and like other strategic sectors oil companies should not be disinvested. The Committee are glad that Minister of Petroleum and Natural Gas himself has admitted that oil is a strategic sector. The Committee, therefore, would reiterate their earlier recommendation that Government should formally declare oil sector as strategic sector and oil companies should be taken out of the list of PSUs slated for disinvestment.

Reply of the Government

As already mentioned, Government had classified the PSUs as strategic and non-strategic after careful consideration in March 1999 and as per the above classification Oil sector is considered as non-strategic. When the entire oil sector is being opened up for private sector participation/investment, there is little merit in treating the sector as strategic under the Disinvestment Policy.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003- Mkt./Fin.II dated 17.10.2003]

Comments of the Committee

(Please *see* Para No. 13 of Chapter-I of the Report)

Recommendation (Part II, Para No.4)

The Committee in their 36th Report had observed that HPCL and BPCL came into being after nationalization of some private companies through Acts of Parliament. These Acts vested the ownership of the assets of erstwhile private companies in the Central Government or Government companies. The Committee would like to draw the attention of the Government towards what the then Minister of State in the Ministry of Petroleum and Chemicals stated in Rajya Sabha on 11th March, 1974 while introducing "The ESSO (Acquisition of Undertakings in India) Act, 1974:

> "It is our declared policy that the oil industry must be brought under Government's effective control. The oil industry is far too important

for the economic development of the country and for national security to be left in the hands of foreign companies. We, therefore, feel that it will be politically wrong and economically incorrect to leave its control in the hands of foreign companies."

The Government expressed their similar views while introducing Burmah-Shell (Acquisition of Undertakings in India) Act, 1976 in Parliament on 16th January, 1976. The then Minister of Petroleum stated that the Government have declared their intention of acquiring effective control over the oil industry both in refining and marketing as well as in exploration and production of crude oil.

The Committee would like to remind the Government that private oil companies were acquired for a purpose, which was manifested in the form of Policy declaration, and the fundamental features of this policy were:

"-that the oil industry is far too important for the economic development of the country and for national security.

- that it will be politically wrong and economically incorrect to leave its control in the hands of the private companies."

In Committee's view, this declaration of policy was endorsed by Parliament when the Bill was passed. The Committee, therefore, feel that any action contrary to this declaration needs to be endorsed by the Parliament. The decision to disinvest HPCL and BPCL menas:

(i) Losing Government's effective control over these companies.

(ii) Leaving control in the hands of the private companies.

This decision signals a departure from the declared policy. The Committee, therefore, are of the firm opinion that a departure from the declared policy cannot be made through the Government's executive decision and it is required to be endorsed by Parliament.

Recommendation (Part II, Para No.6)

It is contended that when the Government have transferred the right, title and interests of the acquired companies to Government companies,

they have the powers under the Companies Act to divest their holdings. There are legal opinions favouring and opposing this contention. The Committee, however, is of the opinion that so far as HPCL and BPCL are concerned, the Companies Act cannot be interpreted in isolation of the policy declaration made in the Parliament. Acquisition Acts were enacted to achieve the objective namely, that the acquired companies shall remain under the control of the Government. If the very basis of the enactment has to be altered, the Committee feel that sanction of Parliament is mandatory.

Recommendation (Part II, Para No.7)

The Committee would also like to point out that another important factor for nationalization of oil companies was 'that the oil industry was far too important for the economic development of the country and for national security'. The Government have candidly admitted, as under:

> "During the emergency situation arising out of war in 1965 and 1971, the private oil companies (which were later acquired) were reluctant to comply with Government directives. To maintain adequate supply of petroleum products throughout the country, it felt necessary to acquire the assets of these companies."

The Committee would not like to dwell upon the security angle much but feel that national security scenario demands that *staus quo* with regard to HPCL and BPCL as Government companies be maintained.

Reply of the Government

Writ Petitions were filed in the Supreme Court challenging the decision of the Government to disinvest in HPCL and BPCL. The Supreme Court in its judgment pronounced on 16.9.2003, has restrained the Government from proceeding with disinvestment in HPCL and BPCL without appropriate amendment in the acquisition acts. In view of the Court's judgement, the Government has called off further action in the process of disinvestment in HPCL and BPCL.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003- Mkt./Fin.II dated 17.10.2003]

Comments of the Committee

(Please *see* Para No. 16 of Chapter-I of the Report)

Recommendation (Part II, Para No.8)

Another aspects which the Committee like to emphasize is that the world economic situation is changing fast and protectionism is giving way to liberalism. With the globalisation of economy, small economic entities are disappearing. Oil and Gas industry is witnessing changes. All the major energy companies in the world are vertically integrated and it is beneficial to have an integration in the various segments of the Hydrocarbon Vision. The Hydrocarbon value-chain is the basis for vertical integration, in the oil and gas industry. The major segments of the value-chain are (a) exploration (b) production of oil and gas (c) refining (d) transportation (e) petrochemicals (f) manufacture of lubricants etc. (g) power generation (h) marketing (i) trading and financial services. All global oil and gas majors are vertically integrated covering all the major segments of the value-chain. In recent years, there have been mergers of the vertically integrated global majors such as Exxon-mobil, BP-Amoco-Avco-Castrol, Chevron-Taxaco and Total-Fina Elf. These mergers create cost efficiencies. If these global companies happen to do business in India, IOCL shall be the only marketing company in pubic sector compete with them. To enale IOCL to compete with such global companies, the Committee recommend that it should be given more functional autonomy.

Reply of the Government

The Government have delegated decision-making authority to the Board of Directors of Navratna PSUs to undertake capital expenditure programmes for their own projects. This has helped IOC in taking timely and speedy decisions on investment in major projects. However, in so far as equity investment in joint ventures and subsidiaries is concerned, the Government guidelines stipulate certain limits, *i.e.*, equity investment should not exceed (i) Rs. 200 crore in one project, or (ii) 5% of net worth in any single project, or (iii) 15% of net worth in all projects put together, beyond which such project proposals will require Government approval. It has been clarified by Department of Public Enterprises recently as follows:

"The ceiling of 15% of the Net Worth of the PSE on investments in all joint ventures/subsidiaries is exclusive of the investments made through the directives of the Government."

Copy of circular issued by them is enclosed.

While delegated decision-making authority has helped IOC to a certain extent in taking speedy and timely investment decisions, as IOC is a Government company, it's proposals of mergers and acquisitions beyond the delegated powers are considered and approved by the Government. Government will review the impact of recent DPE circular after some time. In case it becomes a constraint in IOC's plan for growth and business diversification, appropriate modifications in the existing delegation of powers to Navratna PSUs will be worked out in consultation with Department of Public Enterprises.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003- Mkt./Fin.II dated 17.10.2003]

Comments of the Committee

(Please *see* Para No. 21 and 22 of Chapter-I of the Report)

MINISTRY OF HEAVY INDUSTRIES & PUBLIC ENTERPRISES
DEPARTMENT OF PUBLIC ENTERPRISES

Block No. 14, CGO Complex,
Lodi Road, New Delhi-110 003.
Dated the 24th September 2003.

OFFICE MEMORANDUM

Sub: Powers delegated to Navratna PSEs for establishing financial joint ventures and wholly owned subsidiaries.

The undersigned is directed to refer to Ministry of Petroleum & Natural Gas' U.O. No. G-31011/5/2002-Fin.II dated 1st April, 2003 on the subject cited above. The matter has been reconsidered in this Department and it is clarified that the ceiling of 15% of the Net Worth of the PSE on investments in all joint ventures/subsidiaries is exclusive of the investments made through the directives of the Government.

Sd/-
(V.K. Jindal)
Deput Director (Cost)

Ministry of Petroleum & Natural Gas
(Dr. B. Mohanty, Joint Adviser),
Shastri Bhawan,
New Delhi.

Recommendation (Part II, Para No.9)

In the globalised context of oil and gas business, the Indian situatin is becoming unsustainable after the dismantling of protection mechanism and Administered Pricing Mechanism. The tariff barriers are being

governed by WTO norms. Under these circumstances, vertical integration of oil and gas companies is the only way to compete in the world market. The main advantages of vertical integration are :

(i) Pricing cycles for crude, gas, refining, freight are not synchronized but related, therefore, a vertically integrated business is insured against price volatilities in the global market.

(ii) A vertically integration company is able to collect the profits in every segment of the value-chain and therefore produce significantly better performance in turnover, leverage and profitability.

(iii) For a vertically integrated business, inter-sector transaction costs are eliminated.

(iv) Inter-sector pricing can be adjusted with the vertically integrated business to secure cash flows.

(v) Economy of scale reached through vertical integration and especially mergers and acquisitions, provides a definite advantage in global competitiveness.

(vi) Unified management enables integration of business plans and optimization of resource allocation among different sectors of the business.

(vii) Vertical integration and mergers create post mergers cost-efficiencies especially in over heads.

In view of the various advantages of vertical integration, the Committee recommend that a Committee of Chairman of ONGC, IOCL and GAIL be constituted to study and suggest vertical integration of oil and gas companies. This Committee be constituted within one month of the presentation of this Report and the Committee be asked to submit the Report within three months of its constitution.

Reply of the Government

Formation of a mega company has not been accepted as a policy for the following reasons:—

(a) Manpower management in a company of such huge proportions would pose problems and difficulties. This may slow down investment and execution of projects by these companies.

(b) The individual company's work culture and environment may lead to difficulties in efficient operations.

(c) Merger may cause a decrease in the shareholder value of the individual companies.

(d) Similar results can be achieved by developing a consortium approach in issues requiring coordinated activity.

In view of above, Ministry does not support any change in the structure of PSUs as is being recommended.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003- Mkt./Fin.II dated 17.10.2003]

Comments of the Committee

(Please *see* Para No. 21 and 22 of Chapter-I of the Report)

Recommendation (Part II, Para No.16)

The Committee note that Government of India, Ministry of Disinvestment *vide* their OM No. 4 (32)/2002 dated 18th September, 2002 (Annexure-I) have imposed an embargo whereby Central Public Sector Undertakings and Central Government owned Cooperative Societies where Government's ownership is 51% or more are not permitted to participate as bidders in the disinvestment of other PSUs. In accordance with this OM, ONGC was forbidden to bid in the HPCL disinvestment. However, ONGC and the Ministry of Petroleum and Natural Gas had

made out a strong case for allowing the former to bid in the process of disinvestment in HPCL. In the Committee's view, Government's embargo is not only arbitrary in nature but in essence negates the very concept of competition. Government in such matters should perform the role of a referee instead of a player. Moreover, Government's policy is not uniform and consistent, as they have reportedly allowed IFFCO/ KRIBHCO to bid in disinvestment of National Fertiliser Limited. Thus this embargo also runs counter to the essence of right to equality. The Committee strongly disapprove of this approach of the Government and recommend that the above. OM be withdrawn immediately.

Recommendation (Part II, Para No.17)

The Committee 'in principle' oppose disinvestment in any oil company and instead recommend their acquisition and merger as stated earlier. However, in case the Government decides to go ahead with disinvestment in HPCL, the Committee feel that there is no valid ground in restraining ONGC to bid for HPCL and therefore, strongly recommend that ONGC be allowed to bid for this company.

Reply of the Government

The objective of disinvestment is to put national assets to optimal use and to unleash the productive potential inherent in public sector enterprises. Ownership of one PSU by another PSU defeats that very objective. It has, therefore, been decided by the Government that as a general policy, central public sector undertakings and Central Government owned cooperative societies (*i.e.*, where Government's ownership is 50% or more would not be permitted to participate in the disinvestment of other PSUs as bidders). If in some specific case any deviation from these restrictions is considered desirable in public interest, the Government considers the same. It has been contended by ONGC that its participation in the disinvestment process of HPCL will bring about vertical integration in the oil sector thereby ensuring cash flow and maintaining market share in a highly open and competitive sector. In case ONGC takes up HPCL, HPCL gets returned in the public sector and between IOC and ONGC (having taken over HPCL) it would be a public sector in the exploration, refinery and retail sector which runs totally

counter to competition, the principles stated in HV 2025 and the whole philosophy behind dismantling of APM. Therefore, it has been decided not to allow any PSU to bid for HPCL.

Government decided to permit IFFCO and KRIBHCO to participate in the disinvestment process of National Fertiliser Ltd. in pursuance of Government's decision that case-by-case exceptions could be considered. Permitting IFFCO and KRIBHCO to participate in disinvestment of NFL was therefore an exception as permitted by Government policy not a rule.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003- Mkt./Fin.II dated 17.10.2003]

Comments of the Committee

(Please *see* Para No. 29 of Chapter-I of the Report)

Recommendation (Part II, Para No. 21)

The Committe note that the growth rate in consumption of Petrol and Diesel is not commensurate with the growth rate in refining of these products. Already there is about 20% excess refining capacity than the demand. In addition to this, more refineries are coming up and refining capacity of the existing refineries is also being enhanced. As per an estimate during the 10th Plan, excess refining capacity may exceed 40% than demand. Although oil companies have exported petroleum products during the last few years but the overall scenario of export is not very bright. Added to this, a private company who has been given authorisation to set up retail outlets has sought Government's permission to import petroleum products. The Committee find this emerging situation of supply and demand coupled with permission to import as intriguing and not in the national interest. The Committee, therefore, recommend that Ministry of Petroleum and Natural Gas should take up with the Ministry of Commerce the necessity to impose restrictions on import of petroleum products especially on transportation fuel. The Commerce Ministry should frame the Exim Policy in a manner so as to discourage import of this fuel.

Recommendation (Part II, Para No. 22)

The Committee further recommend that only a PSU Oil Company should continue to remain as State Trading Enterprise for importing these products. The Government should not lift the restrictions presently imposed on import in the name of providing competitive regime.

Reply of the Government

Against the refining capacity of 116.97 MMTPA (Million Metric Tonnes Per Annum) as on 1.4.2003, the consumption of petroleum products during 2002-03 was around 103.7 MMTPA. The projected refining capacity by the end of the 10th Plan is also more than the projected domestic demand.

2. The ongoing process of economic liberalization calls for more and more liberal Exim policy. Uptil 31.03.2003, under the Exim policy, imports of transportation fuels were allowed only through IOC as State Trading Enterprise (STE). The issue of opening up of the imports of transportation fuels was examined by the Government. It was felt that full and complete removal of the STE condition from the imports of transportation fuels at this stage may go against the interest of domestic producers and, therefore, may not be advisable. However, the case of companies who have been granted marketing rights for transportation fuels in terms of MoP&NG's guidelines No. P-23015/1/2001-Mkt. Dated 8.3.2002 would need to be treated differently.

3. It may be stated that with a view to increase competition in the marketing of transportation fuels, the Government has decided to grant authorization to new players, including private companies, to market transportation fuels subject to the condition that such players meet the criteria laid down in MoP&NG's guidelines No. P-23015/1/2001-Mkt dated 8.3.2002. These guidelines *inter alia* lay criteria for making investment in the eligible assets as a condition for considering granting the authorization to market transportation fuels. The investment criteria laid down under these guidelines is quite stringent so as to ensure that only serious players are allowed in the marketing of transportation fuesl. It may be appreciated that in a deregulated scenario, it would be unfair

to put any restrictions on the mode of sourcing of products by the companies who have been allowed to market the transportation fuels after meeting the laid down criteria.

4. In view of the above, the Exim policy has been amended effective 01.04.2003 to allow the companies, who have been granted market authorization under the aforesaid guidelines of 8.3.2002 to import transportation fuels directly without going through the State Trading Enterprise (STE) route. All other imports of transportation fuels would be through IOC as STE. Thus, the existing Exim Policy is quite balanced *i.e.* while on one hand it allows direct imports of transportation fuels by companies having authorization from MoP&NG to market such products, on the other hand for other imports it prescribes STE route.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003- Mkt./Fin.II dated 17.10.2003]

Comments of the Committee

(Please *see* Para No. 35 of Chapter-I of the Report)

CHAPTER V

RECOMMENDATIONS IN RESPECT OF WHICH FINAL REPLIES OF THE GOVERNMENT ARE STILL AWAITED

Recommendation (Part II, Para No.19)

The Committee note that both the ONGC and GAIL have approached the Government to permit them to do retail business in the country. The Committee had also earlier recommended that their requests should be granted immediately. The Committee, however, were surprised to note that on the pleas of private LPG operators, requests of ONGC and GAIL were kept pending. On the one hand, the Government are allowing private players in retail business and the claim creating conditions for generating competition in retailing business in oil industry for the benefit of common consumer and on the other hand decisions on PSU companies are being delayed unnecessarily. The Committee do not find any valid reason for delaying decision in this regard and recommend that quick positive decision be taken.

Reply of the Government

Government have not taken any final view on this.

[Ministry of Petroleum & Natural Gas
O.M. No. P-19012/6/2003- Mkt./Fin.II dated 17.10.2003]

Comments of the Committee

(Please *see* Para No. 32 of Chapter-I of the Report)

NEW DELHI;
15 *December*, 2003
24 *Agrahayana*, 1925 *(Saka)*

PROF. RAM GOPAL YADAV,
Acting Chairman,
Standing Committee on
Petroleum & Chemicals.

APPENDIX-I

MINUTES

SUB-COMMITTEE ON PETROLEUM

A SUB-COMMITTEE OF THE STANDING COMMITTEE ON PETROLEUM & CHEMICALS (2003)

TWELFTH SITTING
(15.12.2003)

The Sub–Committee sat from 10.00 hrs. to 10.30 hrs.

PRESENT

Prof. Ram Gopal Yadav — *Acting Chairman*

MEMBERS

Lok Sabha

2. Shri Bijoy Handique
3. Shri Ram Sajivan
4. Shri Prabhunath Singh
5. Shri Shankersinh Vaghela

Rajya Sabha

6. Shri Dipankar Mukherjee

SECRETARIAT

1.	Shri P.D.T. Achary	—	*Additional Secretary*
2.	Shri P.K. Grover	—	*Director*
3.	Shri P.D. Malvalia	—	*Under Secretary*
4.	Dr. Ram Raj Rai	—	*Assistant Director*

At the outset Hon'ble Acting Chairman welcomed the Members to the sitting and explained the purpose of the day's meeting.

2. Thereafter, he invited the Members to give their suggestions, if any, on the 53rd Draft Report on action taken by Government on the recommendations contained in the 42nd Report of the Committee on 'Merger and Acquisition of Oil & Gas Companies' for consideration and adoption.

3. The Sub-Committee, thereafter, finalised the Report and submit the same for consideration by the Standing Committee on Petroleum & Chemicals.

The Sub-Committee then adjourned.

APPENDIX-II

MINUTES
STANDING COMMITTEE ON PETROLEUM AND CHEMICALS
(2003)

EIGHTH SITTING
(15.12.2003)

The Committee sat from 10.30 hrs. to 11.00 hrs.

PRESENT

Prof. Ram Gopal Yadav—*Acting Chairman*

MEMBERS

Lok Sabha

2. Shri Padam Sen Choudhry
3. Shri Khagen Das
4. Shri Bijoy Handique
5. Shri Shriprakash Jaiswal
6. Shri Punnulal Mohale
7. Shri P. Mohan
8. Dr. Debendra Pradhan
9. Shri Ram Sajivan
10. Dr. Bikram Sarkar
11. Dr. (Smt.) V. Saroja
12. Shri Prabhunath Singh
13. Dr. Ram Lakhan Singh
14. Dr. Ramesh Chand Tomar
15. Shri Shankersinh Vaghela
16. Dr. Girija Vyas

Rajya Sabha

17. Shri Balkavi Bairagi
18. Shri Dipankar Mukherjee
19. Shri Kripal Parmar
20. Ms. Mabel Rebello

SECRETARIAT

1.	Shri P.D.T. Achary	—	*Additional Secretary*
2.	Shri P.K. Grover	—	*Director*
3.	Shri P.D. Malvalia	—	*Under Secretary*
4.	Dr. Ram Raj Rai	—	*Assistant Director*

At the outset, Hon'ble Acting Chairman welcomed the Members to the sitting and explained the purpose of the day's meeting.

2. Thereafter, he invited the Members to give their suggestions, if any, on the following Draft Reports being considered for adoption :—

(i) ** ** ** **
** ** ** **

(ii) 53rd Report on action taken by Government on the recommendations contained in the 42nd Report of the Committee on 'Merger and Acquisition of Oil & Gas Companies'; and

(iii) ** ** ** **
** ** ** **

3. The Committee, thereafter, authorised the Chairman to finalise the Reports after factual verification from the concerned Ministries/ Departments and present them to the Parliament.

4. The Committee placed on record their appreciation of the work done by the Sub-Committees on Petroleum and Fertilisers of the Standing Committee on Petroleum & Chemicals.

5. The Committee also placed on record their appreciation for the valuable assistance rendered to them by the officials of the Lok Sabha Secretariat attached to the Committee.

The Committee then adjourned.

**Matters not related to this Report.

APPENDIX-III

[*Vide* Para 4 of the Introduction]

Analysis of the Action Taken by the Government on the recommendations contained in the Forty-Second Report (Thirteenth Lok Sabha) of the Standing Committee on Petroleum & Chemicals (2003) on 'Merger and Acquisition of Oil and Gas Companies'

(i)	Total number of Recommendations	21	
(ii)	Recommendations that have been accepted by the Government (*Vide* Recommendations at Sl. Nos. 9, 10, 11, 12, 17 & 19)	6	
	Percentage to total		28.58%
(iii)	Recommendations which the Committee do not desire to pursue in view of the Government's reply (*Vide* Recommendations at Sl. Nos. 13 & 14)	2	
	Percentage to total		9.52%
(iv)	Recommendations in respect of which replies of the Government have not been accepted by the Committee (*vide* Recommendations at Sl. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 15, 16, 20 & 21)	12	
	Percentage to total		57.14%
(v)	Recommendation in respect of which final reply of Government is still awaited (*Vide* Recommendation at Sl. No. 18)	1	
	Percentage to total		4.76%