



COMPETITION COMMISSION OF INDIA

Case No. 10 of 2017

In Re:

**Karnataka Power Corporation Limited
Shakti Bhavan
82, Race Course Road
Bangalore
Karnataka-560001**

Informant

And

**The Singareni Collieries Company Limited
Kothagudem Collieries
Bhadradi Kothagudem Dist.
Telangana-507101**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. Sudhir Mital
Member**

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

**Justice G. P. Mittal
Member**

Order under section 26(2) of the Competition Act, 2002

1. The present information has been filed by Karnataka Power Corporation Limited ('the Informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against The Singareni Collieries Company Limited (the 'Opposite Party'/'OP'/'SCCL') alleging contravention of the provisions of Section 4 of the Act.



2. The Informant - Karnataka Power Corporation Limited - is a Government Company incorporated under the erstwhile Companies Act, 1956 and is entirely owned and controlled by the Government of Karnataka. The Informant is engaged in the business of generating electrical power in the State of Karnataka and controls and manages 34 dams and 24 power stations at Raichur and Bellary with a total power generation capacity of 3420 MW. It is stated that the Informant requires about 51,000 Metric Tonnes of coal every day for power generation.
3. The OP is a coal producing company engaged in mining and distribution of coal. It is jointly controlled and managed by the Government of Telangana and the Government of India.
4. Briefly stated, the facts are that the Informant purchased coal from the OP under the distribution system of “linkage” till introduction of the National Coal Distribution Policy (“NCDP”) in 2007 whereupon the Informant entered into Fuel Supply Agreements (FSAs) with the OP on 06.03.2009 and 25.05.2015.
5. The Informant is primarily aggrieved of the fact that there was a vast difference in the Gross Calorific Value (GCV) of coal received as compared to the billing grade supplied by the OP. Further, the Informant states that it has received a lot of boulders, shale and other foreign materials in the rakes delivered by the OP, causing damage to the Informant’s machinery.
6. In sum, the Informant has filed the instant information against the OP challenging the various clauses of FSAs entered into between them pertaining to grade slippage, sampling procedure, deemed delivery, fixed non-negotiable price of coal *etc.* as being abusive of the OP’s dominant position.



7. The Commission has perused the information and the documents filed therewith.
8. The Commission notes that the Informant, a State power generating company, requires non-coking coal for its thermal power plants to generate electricity. In the similar setting of factual matrix, the Commission, in previous *coal* cases (*i.e.* Case Nos.03, 11 & 59 of 2012) decided on 24.03.2017, after noting the physical characteristics of non-coking coal and its use in power plants, opined that there is no substitute available for non-coking coal used by the thermal power plants in India. Thus, the relevant product market was delineated as non-coking coal, which is used primarily as a raw material for generation of electricity by the thermal power plants. Further, while delineating the relevant geographic market, the Commission observed in the previous *coal* cases (*supra*) that as the condition for supply of coal in the entire country is uniform and homogenous, hence the relevant geographic market is entire India and imported coal cannot be considered a substitute for domestic coal on account of several factors including the peculiar design and specifications of the boilers used in majority of Indian thermal power plants and further considering that imported coal is subject to customs duty and other levies, rendering it more expensive than domestic coal supplied by the Opposite Parties.
9. Thus, the relevant market in the present case may also be taken as “*production and sale of non-coking coal to thermal power generators in India*”.
10. In the aforesaid relevant market, the Commission in previous *coal* cases (*supra*) opined that Coal India Limited (CIL) through its subsidiaries operates independently of market forces and enjoys dominance. While holding CIL and its subsidiaries to be in a dominant position, the Commission *inter alia* noted as follows:



...The mere fact that SCCL - a joint venture between the Government of Andhra Pradesh and the Government of India - also produces coal for commercial sale in itself does not detract the fact that CIL and its subsidiaries enjoy dominant position in the relevant market in as much as SCCL has a negligible presence in the relevant market...

11. In this regard, it would also be apposite to note the following figures from Provisional Coal Statistics 2015-16:

Non-coking coal production, Import and Availability

(in MT)

Year	CIL's production of non-coking coal (in MT)	SCCL's production of non-coking coal (in MT)	India's total production of non-coking coal
2014-15	443.668	52.536	551.733
2015-16	482.774	60.38	578.347

Source: Provisional Coal Statistics 2015-16, Coal Controller, Ministry of Coal, Government of India (<http://www.coalcontroller.gov.in/writereaddata/files/Provisional%20Coal%20Statistics%202015-16.pdf>)

12. From the aforesaid, it is seen that SCCL produces a meagre amount of non-coking coal in the relevant market defined *supra*. For instance, in the year 2014-15 its share of non-coking coal production was an insignificant amount *i.e.* 9.52% and again its share of non-coking coal production also was insignificant in the next year 2015-16 at 10.44%. Further, from the ownership structure of SCCL, it is observed that it is a government coal mining company jointly owned by the Government of Telangana and the Government of India on a 51:49 equity basis indicating that it has no relationship with CIL. Also, it is observed that SCCL is not related to CIL or its subsidiaries. As such, it is seen that SCCL is engaged only in the business of mining and extraction of non-coking coal and therefore it is a competitor to CIL and its subsidiaries in the aforementioned relevant market.



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13. In view of the above, the Commission is of the opinion that SCCL is not dominant in the relevant market. Hence, no case of contravention of the provisions of Section 4 of the Act is made out against SCCL and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.
14. As the alleged dispute between the parties appears to be a commercial dispute involving no competition concern, the remedies of the Informant would lie elsewhere. The Informant is at liberty to pursue its remedies before the appropriate forum, if so advised. It is made clear that nothing stated herein shall prejudice the claim of the Informant filed before such other forum, if the Informant chooses to exercise such option.
15. The Secretary is directed to communicate to the Informant accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Sudhir Mital)
Member

Sd/-
(U. C. Nahta)
Member

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

New Delhi
Date: 12/06/2017