



COMPETITION COMMISSION OF INDIA

Case No. 76 of 2014

In Re

**Brihan Mumbai Electric Supply and
Transport Undertaking of
Municipal Corporation of Greater Mumbai (BEST)
Post Box No. 192, Mumbai**

Informant

And

**Tata Power Company Limited
Bombay House, 24 Homi Mody Street, Mumbai**

Opposite Party

CORAM:

**Mr. Ashok Chawla
Chairperson**

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

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

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



Appearances (on behalf of the Informant): Shri Abhinav Vashisht, Senior Advocate ; Shri Tavinder Sidhu, Advocate; Shri Ayushi Kiran, Advocate; Shri Raendra Patsute [Chief Engineer (Regulatory) of the Informant] and Shri Rajendra Dubal [AGM (Legal) of the Informant].

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

1. The information in the present matter has been filed by Brihan Mumbai Electric Supply and Transport Undertaking of Municipal Corporation of Greater Mumbai (hereinafter, the '**Informant**'/ '**BEST**') under section 19(1) (a) of the Competition Act, 2002 (hereinafter, the '**Act**') against M/s Tata Power Company Limited (hereinafter, the '**Opposite Party**' or '**TPC**') alleging contravention of the provisions of section 4 of the Act.
2. The facts of the case as stated in the information may be briefly noted:
 - 2.1. The Informant, a division of Municipal Corporation of Greater Mumbai, has been engaged in distribution of electricity in the Island city of Mumbai (the area from Colaba upto Mahim and Sion) and also providing mass public transportation in the City of Mumbai as well as its extended suburbs for the last several decades. It is stated to be a licensee for distribution of electricity within the meaning of section 2 (17) read with section 14 of the Electricity Act, 2003 and the Maharashtra Electricity Regulatory Commission ('**MERC**') Regulation, 2007.
 - 2.2. The Opposite Party is a company which has been engaged in generation, transmission and distribution of electricity in Mumbai region through its three integrated divisions such as TPC-Generation (hereinafter, '**TPC-G**'), TPC-Transmission (hereinafter, '**TPC-T**') and TPC-Distribution (hereinafter, '**TPC-D**') by virtue of various licenses issued to it under



Electricity Act, 2003. The Opposite Party has a wholly owned subsidiary known as Tata Power Trading Company Limited, which is an electricity trader.

- 2.3. It is stated in the information that the Informant procures power from TPC-G at the receiving voltages of 110 KV, 33 KV and 22 KV under a Power Purchase Agreement ('PPA') for 932 MW. It is submitted that the power procured under PPA was regulated by Electricity Act, 2003 and guided by MERC orders. It is submitted that as per MERC's Order in Case no. 26 of 2013, the Informant was exempted from purchasing costly power from TPC-G if cheaper options are available to it. In the said order, MERC held that since 'power is available in the market at rates that are lower than the cost of generation from TPC's Unit 4 (on oil), Unit 5 (RLNG), Unit 6 (on oil and RLNG) and Unit 7 (RLNG), it will not be appropriate to burden the consumers with high cost of power purchase when cheaper power is available'.
- 2.4. It is highlighted that the Informant was paying Rs. 338 crores per annum to Maharashtra State Electricity Transmission Co. Ltd ("MSETCL") towards transmission charges for availing power transmission services using the state transmission grid which includes the transmission network maintained by TPC under its transmission license. Furthermore, to ensure uninterrupted supply of power, the Informant was having a standby arrangement with Maharashtra State Electricity Distribution Co. Ltd ("MSEDCL") for which Rs 109 crores per annum was paid to MSEDCL to provide power in the event of failure or outages of TPC-G generating units against the standby charges paid. Accordingly, the Informant guarded itself enough to meet the load of its consumers in regular and contingency circumstances.
- 2.5. As per the information, TPC-T is the transmission company for the areas in Mumbai where the Informant is serving and the Informant is absolutely dependent upon it for transmission of electricity from TPC-G as well as



MSEDCL. It is alleged that on 02.09.2014 at about 09.45 a.m., the Opposite Party unilaterally switched off the Informant's 22kV/33kV feeders from the interconnection point on T\leftrightarrowD interface in the TPC Receiving Stations and put breakers on the supply of electricity to the Informant. This caused black out in a major part of island city of Mumbai for more than 5 hours. It was alleged that the said load shedding resorted to by the Opposite Party disrupted public life and caused disturbance to the smooth functioning of the Mumbai city. Subsequently, the Informant's emergency protocol for load shedding was initiated and load shedding was passed on to many areas in rotation. Allegedly, the last normal supply was restored at 21:30 hours in the evening of the same day.

- 2.6. It is averred that Maharashtra State Load Dispatch Centre (**MSLDC**) had issued directive to TPC-G to synchronize Unit No. 6 by 8:00 hours on 30.08.2014 as the demand for electricity consumption was expected to be around 3100 MW due to Ganesh festival and unpredicted monsoon. However, the Opposite Party did not comply with the said directions citing frivolous reason that the consent of the procurer was necessary for starting the generation of Unit 6.
- 2.7. The Informant submitted that in accordance with the MERC order in Case no. 26 of 2013, it made its stand on the commercial aspect of Unit 6 power very clear by consenting to share costly power of Unit 6 in interest of system stability during the summer of the year 2014, in spite of having sufficient power procurement arrangement in place. However, TPC-G failed to comply with the specific directions of MSLDC and did not start the generation Unit 6 by 8:00 hrs on 30.08.2014.
- 2.8. The Informant further alleged that it has a specific load shedding protocol to be carried out in the event of power shortage or other exigencies. This protocol, which is made available in the disaster management plan, is specially devised to ensure that essential services and vital installations are



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not affected. However, the Opposite Party unilaterally switched off the Informant's feeders without taking its consent before resorting to load shedding on 02.09.2014 on unit 5 failure. The Informant alleged that on the said day when the Opposite Party resorted to load shedding, the capacity of Informant's share was still available.

- 2.9. It is further submitted that as per the agreement between the Informant and TPC-G, it was the responsibility of TPC-G to keep all its power generation units in up and running condition so that any emergency could be dealt with. However, despite such commitment, full capacity of the Opposite Party was not available on 02.09.2014. It is alleged that by keeping the transmission capacity stagnant, the Opposite Party was clearly denying market access to the Informant by preventing it to bring power from outside Mumbai. Further, even though power was available at about Rs. 3.3 per unit outside Mumbai, the Informant was forced to purchase costly embedded generation of the Opposite Party's power generation units.
- 2.10. It is further alleged that the Opposite Party failed to discharge its responsibility because of its lackadaisical approach on removal of transmission constraints to Mumbai in order to further the interests of its generation business. To elaborate the same it referred to the incomplete work under the scheme for Kalwa-Salsette third circuit which was approved in 2012. It is stated that in spite of holding transmission license since long, it failed to meet the conditions of its license clause 5.1 and section 40 of the Electricity Act 2003 which requires the licensee to build, maintain and operate an efficient, coordinated and economical transmission system.
- 2.11. It is alleged that the Opposite Party abused its dominant position as "transmission licensee and generator" under the one and the same corporate entity to cause serious hardship to the Informant's consumers and effectively to the general public.



2.12. The Informant stated that the Opposite Party also held a license for distribution of electricity within the island city of Mumbai, though it is under challenge. Therefore, the Informant is also a competitor to the Opposite Party, apart from being its consumer as it buys electricity from the Opposite Party and also avails other services of electricity from it. The Informant further contended that the Opposite Party being one of the competitors for distribution of electricity, intentionally and knowingly abused its dominant position by unilaterally putting a break on the electricity supply to BEST on 02.09.2014 which caused serious load shedding within the island city of Mumbai.

2.13. Aggrieved by the alleged anti-competitive conduct of the Opposite Party, the Informant, *inter alia*, prayed before the Commission to direct Opposite Party to discontinue the abuse of its dominant position.

3. The Commission perused the material available on record including the information, submissions and also heard the Informant.

4. As per the Information available in public domain, in the electricity generation segment in Mumbai, there are 3 major players such as TPC-G, Reliance Infra (Generation) and state-owned MAHAGENCO (Maharashtra State Power Generation Company Limited). At the electricity transmission end, there are 3 players such as TPC-T, Reliance Infra (Transmission) and state owned MSETCL and at the distribution end, there are 4 discoms such as TPC-D, BEST (i.e., the Informant), Reliance Infra Distribution and state owned MSEDCL. The Informant is only a distribution company in Mumbai which buys power mainly from TPC-G (with a standby arrangement with MSEDCL) and distributes it to final consumers using transmission network of TPC-T which has been allotted a license as a transmission company in Mumbai area by MSETCL.



5. Since the allegation pertains to abuse of dominant position by the Opposite Party, it is imperative to define the relevant market *i.e.*, relevant product market and relevant geographic market first before proceeding to analyse the alleged abusive conduct of the Opposite Party. It appears from the facts of the case that the Informant is aggrieved by the alleged anti-competitive conduct of the Opposite Party in the transmission of electricity to it and unilaterally shutting down the transmission points which transmits electricity to the Informant. Thus, the issue pertains to transmission of electricity only. Accordingly, the Commission is of the opinion that the relevant product market in the instant case would be the services of transmission of electricity. Further, the Informant has the licence to distribute electricity only in the Island city of Mumbai (*i.e.*, the area from Colaba upto Mahim and Sion) and has no operation elsewhere. Therefore, the relevant geographic market in the instant case would be the city of Mumbai. Considering the ‘relevant product market’ and the ‘relevant geographic market’ as defined above, the relevant market in the instant case would be the market for the “services of transmission of electricity in the city of Mumbai”.
6. The Commission notes that the Informant has alleged that TPC-T has abused its dominant position in the relevant market. It is a fact that TPC-T has been given a transmission license in Mumbai area. As per the information available on TPC’s website, TPC-T has grid availability above 99.5 % and is one of the most reliable systems in the country which carries 60 to 70 per cent of the bulk power consumed in Mumbai city. It is the key interlink between the generation and distribution of power and links the city transmission system with Maharashtra State grid. However, the power purchase agreement between TPC-G and the Informant is guided strictly by MERC and the Informant pays the transmission charges to MSETCL which means MSETCL (along with MERC) has a regulatory oversight on TPC-T. TPC-T, undoubtedly, is a major licensee in Mumbai area but the transmission network is maintained and regulated by MSETCL.



7. Evidently, TPC-T holds an extremely high market share in terms of transmission within the city of Mumbai. Therefore, *prima facie*, it is a dominant enterprise in the relevant market. However, its activities are governed by the terms of the license and regulatory oversight of MERC.
8. The Commission further notes that the main grievance of the Informant pertains to unilateral shutting down of the transmission points by TPC-T which transmit electricity to the Informant because of which the Informant could not manage the load shedding. This, as per the Informant, has disrupted public life and caused disturbance to the smooth functioning of the Mumbai city. However, considering the facts available on record, the Commission observes that the Informant has itself stated that within four hours it was able to initiate its emergency protocol for load shedding which helped in load shedding in rotation to many areas. In this context it may be noted that as per the newspaper reports, the blackout in Mumbai city on 02.09.2014 was due to some technical problems. The news report highlighted that ‘while Unit 6 of 500 MW was on cold standby and system was operating normally, Unit 5 of 500 MW which operates on special coal tripped at 9:45 AM due to some technical problem. When the load went out, Tata Power quickly picked up the load from Hydro stations based on the buffer available. The company also asked some of its high tension customers to run their standby sets which they had installed in their own premises. Thus the gap of about 200 MW was bridged and thereafter an impending shortage of 300 MW was experienced. This does not appear to be exercise of dominant power in an abusive manner.
9. Secondly, the allegation of the Informant that the Opposite Party was under an obligation to comply and has failed to comply with the directives issued by MSLDC does not seem to be well placed, at least with regard to the mandate of the Act. The Informant stated that MSLDC issued a directive to TPC-D under Section 33(1) & (2) of Electricity Act, 2003 to synchronize Unit No. 6 by 8:00 hrs. on 30.08.2014 mentioning the reason that Mumbai demand is expected to be around 3100 MW due to Ganesh Chaturthi festival and



unpredicted monsoon. The Informant had further stated that as a transmission licensee and generation utility under regulatory regime, the Opposite Party should have maintained system stability. Its failure to comply with the directive of MSLDC has resulted in a serious default leading to the events of 02.09.2014 causing grave public inconvenience. The Commission is of the opinion that such issue does not raise any competition concerns in the market and may be agitated before the appropriate forum.

10. Lastly, it may be noted that the Informant has stated that the Opposite Party is having presence in all segments of electricity value chain i.e., generation, transmission and distribution and it is a competitor of the Informant in the distribution segment. The Informant has further alleged that since it is competitor of the Opposite Party and also a consumer as the Informant buys electricity from TPC-G, the Opposite Party has intentionally abused its dominant position by unilaterally putting a brake on the electricity supply to the Informant on 2.9.2014 which caused serious load shedding within the island city of Mumbai and has been responsible for developing the said constraints in transmission network to create a monopolistic market for its generation business. Having perused the material on record, the Commission is of the view that the same are not sufficient to prove this allegation.
11. Having regard to the forgoing, the Commission is of the *prima facie* opinion that no case is made out against the Opposite Party under section 4 of the Act. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.
12. The Secretary is directed to inform all concerned accordingly.

Sd/-

(Ashok Chawla)

Chairperson



Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi

Date: 29.01.2015