

**BEFORE THE  
COMPETITION COMMISSION OF INDIA**

**CASE NO. 06/2009**

**DATE OF DECISION – 11.05.2011**

**IN THE MATTER OF**

Shri Neeraj Malhotra, Advocate

E-25, LGF, Jangpura Extension

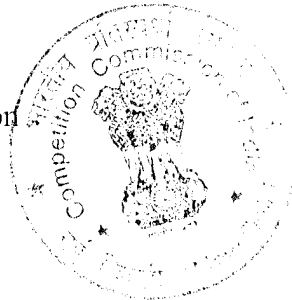
**...Informant**

- (1) North Delhi Power Limited  
33 KVA Grid, Sub Station Building,  
Hudson Lane,  
Guru Teg Bahadur Nagar,  
New Delhi-110 009
- (2) BSES Rajdhani Power Limited  
BSES Bhawan,  
Nehru Place,  
New Delhi-110 019
- (3) BSES Yamuna Power Limited  
BSES Bhawan,  
Nehru Place,  
New Delhi-110 019

**....Opp. Parties**

**Coram :-**

1. Shri Dhanendra Kumar, Chairperson
2. Shri H.C. Gupta, Member
3. Shri R. Prasad, Member
4. Shri P.N. Parashar, Member



5. Dr. Geeta Gouri, Member
6. Shri Anurag Goel, Member
7. Shri M.L.Tayal, Member

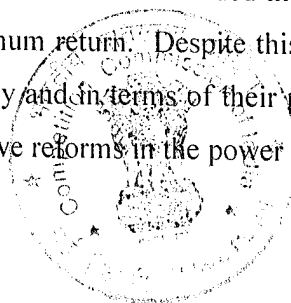
### **FINAL ORDER**

The informant Shri Neeraj Malhotra, Advocate, New Delhi has filed the instant information against the opposite parties on 27.08.2009 under section 19(1) alleging violation of section 3(1), 3(3) (a) and (b) and section 4(1), 4(2)(a)(i) of the Competition Act 2002.

#### **1. BACKGROUND**

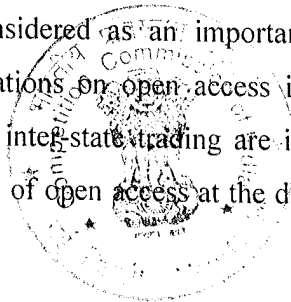
**1.1** Since this case relates to various issues relating to supply of electricity to the public/consumers, it is pertinent to briefly outline the scenario existing in electricity sector at the outset.

**1.2** The history and evolution of the power sector in India dates back to the 1880s, when a small power generating station with local distribution was established in the hills of Darjeeling in the eastern part of India. The legislations of 1887 and 1903 that provided for private power and minimal regulation, evolved into a more comprehensive Indian Electricity Act 1910, which was the first basic framework for electricity industry. It provided for private electricity licences in specified areas for supply of electricity. In the post independence period, with the objectives of extending electrification and achieving regional economic development, the electricity sector was nationalized in 1948. Under the Electricity (Supply) Act, 1948, State Electricity Boards (SEBs) were established. The SEBs were mainly funded by the states and they carried out the objectives of the state policies. The commercial viability of the SEBs started getting affected in 1970s due to a host of reasons and the Government amended the Electricity Act, 1948 in 1985 to provide for 3% as minimum return. Despite this safeguard, SEBs over a period of time suffered financially and in terms of their performance. In the year 1991, steps towards comprehensive reforms in the power sector were undertaken.



1.3 In 1990s, India ranked eighth in the world in terms of annual electricity generation. About 75 percent of the country's electricity generation comprised of thermal power plants, followed by hydro (15percent), and gas (5.5 percent). The level of thermal electricity generation was expected to further in coming years. However, India's per capita electricity generation is one of the lowest in the world. A need for comprehensive reforms was felt and as a result, a new act to govern the power sector in India was enacted in 2003 by the name of Electricity Act, 2003.

1.4 The Electricity Act, 2003 inter-alia mandated that State Electricity Boards (SEBs) will no longer exist in the existing form and will be restructured into separate generation, transmission and distribution entities. The Act of 2003 also stipulates licensee-free thermal generation, non-discriminatory open access of the transmission system, gradual implementation of open access in the distribution system to pave way for creation of power market in India and encouragement of private sector participation in generation, transmission and distribution with the role of the governments being relegated to advisory in nature. The Act has introduced new concepts like power trading and aims to establish market-based regime in the electricity sector. Establishment of Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory Commissions (SERCs) have been formalised. The Ministry of Power has signed MoUs with the states to undertake time bound distribution reforms as a part of reform process. So far 28 states have constituted independent regulatory commissions and 23 SERCs have issued tariff orders for rationalizing tariffs and open access regulations. In all, 16 Electricity Boards /Electricity Departments have been unbundled and corporatized, and Consumer Grievances Redressal Forums and Ombudsmen have been constituted/appointed in 22 states. The CERC and SERCs have been given powers to grant inter-state and intra-state trading licences respectively. So far CERC has granted 43 inter-state trading licences. CERC has issued guidelines for setting up power exchange. It has given approval to two power exchanges, viz; the Indian Energy Exchange Ltd.(IEX), New Delhi and Power Exchange India Limited (PXIL), Mumbai. A National Power Exchange is also planned to be made operational. Open access is considered as an important framework seeking to promote competition. The regulations on open access in inter-state transmission together with the regulations on inter-state trading are issued by the CERC. The responsibility for the introduction of open access at the distribution level rests with

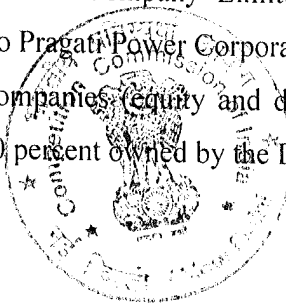


the State Electricity Regulatory Commissions. Open access transactions at inter-state transmission have increased from 778 in 2004-05 to 5933 in 2006-07. The number has reached 9560 in 2007-08 and 9347 in 2008-09.

### **Background of Power Reforms in Delhi**

**1.5** In 1905, M/s John Fleming Company was granted the licence to supply power to the inhabitants of Delhi. In the year 1951, Delhi State Electricity Board (DSEB), was established replacing a private utility, in pursuance of the policy for the power industry mandated by the Electricity (Supply) Act, 1948, entrusting the sector primarily to the new institution of State Electricity Boards. DSEB was replaced in 1958 by the Delhi Electric Supply Undertaking (DESU) which was created as a wing of the newly established Delhi Municipal Corporation. Till 1997, Delhi Electric Supply Undertaking (DESU) used to control generation, transmission and distribution of electricity in Delhi. DESU was an integrated utility with generation, transmission and distribution functions serving all of Delhi except the NDMC and MES (Cantonment) areas, to which it supplied power in bulk. Delhi Vidyut Board (DVB), the State Electricity Board of Delhi, was founded in 1997 under the Electricity (Supply) Act, 1948 and was the successor of the Delhi Electric Supply Undertaking (DESU). While DESU was a part of the Municipal Corporation in Delhi, DVB was placed under the Delhi Government.

**1.6** Delhi Government issued a strategy paper in February 1999 outlining its intention to unbundle DVB, create an independent regulatory entity, and privatize distribution. The assets and liabilities of DVB were first transferred to the Delhi government and then to six successor companies—one generating company (Indraprastha Power Generation Company Limited), one transmission and bulk supply company (Delhi Power Supply Company Limited), three distribution companies and one Holding Company (Delhi Power Company Limited). The three distribution companies were known as Central-East Delhi Electricity Distribution Company Limited, South-West Delhi Electricity Distribution Company Limited and North North-West Delhi Distribution Company Limited. The assets of Pragati Power Projects were transferred to Pragati Power Corporation Limited (PPCL). The entire capital of the successor companies (equity and debt) was held by the new Holding Company which was 100 percent owned by the Delhi Government.



**1.7** On July 1, 2002, the Government of the National Capital Territory of Delhi [Delhi Government] privatized the distribution portion of Delhi Vidyut Board (DVB), a vertically integrated state owned power enterprise, through the sale of 51% of the equity in three distribution companies. In the process of privatisation of distribution portion of DVB, six entities - AES, BSES, Cescon, China Light & Power, Reliance Power and Tata Power-were pre-qualified but only two entities-BSES and Tata- submitted proposals in response to the RFP. **The three distribution companies created at the time of privatization were ultimately sold to two privately owned Indian Power Companies, BSES and Tata Power.** BSES bought two companies covering the central and east zones and the south and west zones and Tata Power purchased one company covering the north and northwest zones. The three distribution companies were privatized but the three other companies continued to be owned by the Delhi Government. At the time of privatization, as per reports, DVB had about 2.5 million customers with a connected load of about 5600 MW, energy sales of about 8000 Gwh and an annual revenue of about Rs 3000 crore (US \$630 million).

**1.8** At present, in the area of generation, Pragati Power Corporation Limited (PPCL) and Indraprastha Power Generation Company Ltd (IPGCL) are Government Companies within the meaning of Companies Act, 1956 and are wholly owned by the Government of National Capital Territory of Delhi. Further, they are also the generating Companies as defined under Section 2(28) of The Electricity Act, 2003. IPGCL is generating electricity from its three power stations viz (i) Indraprastha (ii) Rajghat and (iii) Gas Turbine Power Station. Pragati Power Corporation Limited (PPCL) is supplying power from its power station at Pragati, Ring Road, I.P.Estate, New Delhi. The power generated from these power stations is being supplied to the transmission Company i.e. Delhi Transco Limited, which is also a Govt. of NCT of Delhi Undertaking. The transmission related functions are being carried out by Delhi Transco Limited (formerly Delhi Power Supply Company Limited), which is supplying electricity for distribution to three Discoms - NDPL, BSES Rajdhani, BSES Yamuna together with NDMC and AES.



**1.9** In Delhi, now the SEB has been unbundled; there is one holding Company and one licensee Transmission Company by the name of Delhi Transco Limited, which remains under the control of Govt. of Delhi. The distribution arm of erstwhile Delhi Vidut Board has been privatised and licences have been granted to three distribution companies –NDPL, BSES Rajdhani Power Limited and BSES Yamuna Power Limited except for the areas under NDMC and Military Engineering Services. **These distribution companies are also supplying electricity to the consumers.**

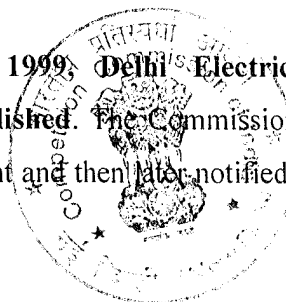
1.10 A profile of the three existing distribution companies(opposite parties in this case) is given below:

**1.10.1 NDPL -** North Delhi Power Limited (NDPL) is a joint venture between Tata Power Company and the Government of NCT of Delhi with the majority stake being held by Tata Power. It distributes electricity in North & North West parts of Delhi and NDPL caters to a population spread over 510 square kms with a consumer base of about 11 lac consumers.

**1.10.2 BSES Yamuna Power Limited (BYPL)-** BYPL distributes power to an area spread over 200 sq kms with a population density of 4230 per sq km. It has about 15 lakh customers spread over districts across Central and East areas including Chandni Chowk, Daryaganj, Paharganj, Shankar Road, Patel Nagar, G T Road, Kardardooma, Krishna Nagar, Laxmi Nagar, Mayur Vihar, Yamuna Vihar, Nand Nagri and Karawal Nagar.

**1.10.3 BSES Rajdhani Power Limited (BRPL)-** BRPL distributes power to an area spread over 750 sq. km with a population density of 1360 per sq km. It has over 16 lakh customers spread in districts across South and West areas including Alaknanda, Khanpur, Vasant Kunj, Saket, Nehru Place, Nizamuddin, Sarita Vihar, Hauz Khas, R K Puram, Janakpuri, Najafgargh, Nangloi, Mundka, Punjabi Bagh, Tagore Garden, Vikas Puri, Palam and Dwarka.

**1.11 In March 1999, Delhi Electricity Regulatory Commission (DERC) was established.** The Commission was initially created under an Act of the Parliament and then later notified under the State Reform Act. As

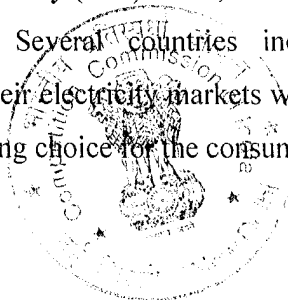


per Section 76 and Section 82 of the Electricity Act, 2003, Central Electricity Regulatory Commission, established under Section 3 of the Electricity Regulatory Commissions Act, 1998 shall be deemed to be the Central Commission and State Electricity Regulatory Commissions, established under Section 17 of the Electricity Regulatory Commissions Act, 1998 shall be deemed to be the State Regulatory Commissions.

**1.12** The mandate of DERC, inter alia, is to determine the tariff for electricity, wholesale/bulk, grid or retail, as the case maybe; to determine the tariff payable for the use of the transmission facilities; to regulate power purchase and procurement process of the licensees and transmission utilities including the price at which the power shall be procured from the generating companies, generating stations or from other sources for transmission, sale, distribution and supply in the National Capital Territory of Delhi; to aid and advise the Government in matters concerning electricity generation, transmission, distribution and supply in the National Capital Territory of Delhi; to regulate the operation of the power system within the National Capital Territory of Delhi; to set standards for the electricity industry in the National Capital Territory of Delhi including standards related to quality, continuity and reliability of service; to aid and advise the Government in the formulation of its power policy; to issue licences for transmission, bulk supply, distribution or supply of electricity and determine the conditions to be included in the licences; to aid and advise the Government on any other matter referred to the Commission by the Government etc.

### **Competition at Retail Supply Level**

**1.13** Consumers in India pay one of the highest prices for energy in Purchasing Power Parity (PPP) terms, in comparison with countries like US, Japan or China. Several countries including India, are introducing competition into their electricity markets with a view to lowering the cost of power and enhancing choice for the consumers.



**1.14** Looking into the evolution of electricity sector reform throughout the world, each reform process is characterized by at least one or a combination of the following characteristics: independent power production, competition in generation and/or distribution, decentralization, privatization, and unbundling of generation, transmission and distribution.

**1.15** Reform experience in diverse jurisdictions highlights a converging trend towards introducing consumer choice of electricity supplier as fundamental pillar of effective reform. This means stimulating competition not only in generation, but also in electricity supply. Introducing competition in end user supply requires unbundling it from distribution, creating a critical mass of suppliers to enable genuine choice, and development of an appropriate technical framework related to metering and billing.

**1.16** There exists at least three various competition models that represent an evolution over the vertically integrated monopolistic structure ; i) **whole sale competition model** – in which while the generation activity is competitive, transmission and distribution functions are regulated with generating companies competing to sell to distribution companies; ii) **retail competition model, in which all customers have access to competing generators either directly or through their choice of retailer** and iii) **portfolio manager model or Generation Procurement Competition Model**, in which the building and operation of generation facilities is competitive , often through an auction. For all other activities, there is regulation and the monopoly utilities continue to supply electricity to end-users within their franchise area. The basic emerging alternative to the vertically integrated monopoly is the retail competition model. The retail competition model has been as containing the following characteristics:

**1.17.1** Transactions between generators, end users and a number of possible intermediaries, including retailers, power exchanges and brokers, take place freely (within the constraints imposed by the network). Thus, on the demand side, end users are free to choose



their supplier; on the supply side, generators can sell their electricity to any other market players.

**1.17.2** Network activities and prices are regulated and, in particular, there are provisions to ensure non-discriminatory third party access to the network, often including some form of separation of network activities from generation and end-user supply.

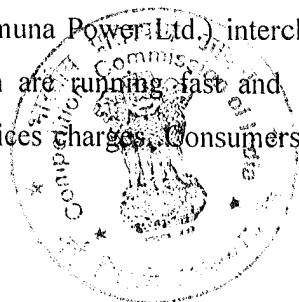
**1.17.3** There is an independent system operator, which means that the system operator is not owned or, at least, not controlled by the owners of generation assets.

**1.18** A major challenge in the process of reforms is removal of barriers to entry: competition requires a sufficient number of competitors. If supply is only with a few firms, competition generally fails to develop and prices may remain persistently above their competitive levels. An adequate market structure in all parts of the supply chain has been considered as essential to develop workable competition.

**In this backdrop the present matter involving three Discoms operating in Delhi is being disposed of by this order.**

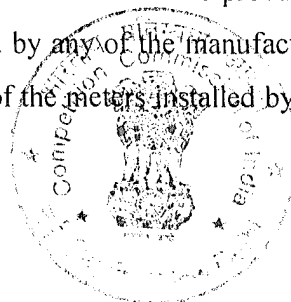
**2. Factual matrix of the matter as disclosed in the information is as under:-**

**2.1** The informant has filed an information with the Commission on the matter of electricity supply meters fixed mandatorily by the Distribution Companies in Delhi (North Delhi Power Co. (NDPL); ii) BSES Rajdhani power Ltd; iii) BSES Yamuna Power Ltd.) interchangeably referred to as Licensees, Discoms which are running fast and inflating the consumers electricity supply and services charges. Consumers are not allowed to buy their own meters.



2.2 It has been submitted by the informant that as per report published by 'The Hindu' on 14.04.2005, in terms of a meter testing drive undertaken by the enterprises engaged in supply and distribution of electricity to the their consumers within the territory of Delhi in July-August 2004, only around 93% of the meters checked were found to be working within the specified limit according to statistics given by the Delhi Electricity Regulatory Commission (DERC). Another news item appearing in 'Hindustan Times' dated 08.04.2008 a committee named as Electricity Consumer Advocates Committee had noted that most meters tested by Central Power Research Institute of Bangalore under the aegis of Public Grievance Cell, were found to be running fast. Similarly news report appearing in 'The Hindu' on 09.04.2008 had brought forth the fact that the Power Consumer Advocates Committee constituted by the Delhi Government in December, 2007 had also found that the meters sent for testing to the Central Power Research Institute of Bangalore were not conforming to the prescribed standards. The said report further mentioned that the meters installed by the enterprises engaged in supply and distribution of electricity to their consumers within the territory of Delhi were giving readings up to 2.5% faster as against the 0.50% margin allowed, in terms of the queries put up by committee headed by retired Delhi High Court Judge Hon'ble Shri R.C. Chopra. That in another report/survey carried out by 'Times of India' on 23.03.2009, it was reported that a Delhi Government Inspection Report had admitted and concluded that almost 90% of the electricity meters which were checked in the National Capital Territory of Delhi were running 2.5% higher than the error margin limit and were thus leading to overcharging of the consumers. The Hindustan Times vide its report published on 09.06.2008 had reported the fact that the High Court in its Judgment had reported that digital electricity meters with a error margin of more than 1% should be considered as faulty.

2.3 As per averments, the Discoms purchase and install the meters on their own and the consumers are not allowed to procure and buy the meters of BIS Standard manufactured by any of the manufacturer for installing the same. Allegedly almost 82% of the meters installed by the above enterprises



are found to be running on the plus side of 2.5% of the prescribed limit and hardly any meter is running on the slower side i.e. the minus side of 2.5%.

2.4 The informant has alleged that Discoms are abusing their dominant position by imposing unfair and discriminatory conditions in purchase of goods (i.e. electricity meters) and also services, thereby leading to foreclosure of competition by hindering entry into the market.

2.5 It has been also alleged that the practice carried on and the decision taken by all these companies engaged in supply and distribution of electricity jointly and severally, has the effect of determining the prices of the services being supplied by them and being purchased by its consumers in as much as they are overcharging the prices more than what is actually due to them and thus their practice and decision has the effect of indirectly determining the sale prices of the services rendered by them. In addition to above, the arrangement, understanding and concerted action on part of the enterprises to supply and install the electricity meters themselves thereby prohibiting their consumer from purchasing and installing meters, also limits and controls the production and supply of goods (electronic meters) and provision of services in the market thereby having an appreciable adverse effect on competition within India. The same has the effect of driving existing competitors who are manufacturing and selling electronic meters out of the market and foreclosing the competition by hindering their entry into the market. The same also has the effect of creation of barriers to new entrants, manufacturing electronic meters in the market.

2.6 In short the informant has alleged that Discoms are abusing their 'dominant position' in the supply of electricity in their area of supply resulting in:

- i. Foreclosure of competition in the market for meters by way of:
  - a) Limiting the number of meter manufacturers in their area of supply;
  - b) Existing meter manufacturers exiting from the market

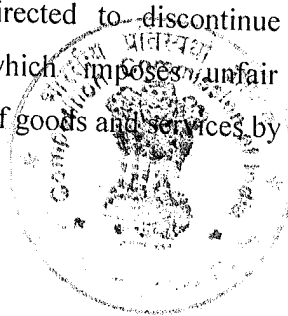


- c) Creation of entry barrier to new entrants
- ii. Indulge in cartel like behaviour
- iii. Impose discriminatory and unfair pricing mechanism:
  - a) Use a software which results in inflated bills – now under the review of DERC
  - b) Earn additional revenue from sale of unused power as a consequence of (b)
  - c) Billing cycle of 56 days instead of 60 days leading to further additional unaccounted revenue
  - d) Prohibit consumer choice in the purchase of meters from outside

2.7 The informant has alleged violation of Section 4(1) and Section 4(2) (a) (i) namely 'Abuse of Dominance' whereby the Discoms are directly or indirectly imposing unfair or discriminatory conditions in purchase or sale of goods or services. The Discoms have also been allegedly violating section 3(1), 3(2), 3(3) (a) and (b) by entering into anti-competitive agreement or carrying on practices which are likely to cause appreciable adverse effect on competition.

**3. The informant has prayed for the following reliefs:-**

- 3.1 (a) The enquiry be made by Commission, into above mentioned contravention of the provisions contained in section 3(1), (2), & (3) (a) & (b) read with section 4(1), 4(2) (a) (i) of the Competition Act, 2002;
- (b) The Discoms be directed to discontinue and not to re-enter the above agreements and to discontinue the practice and the decisions taken by them leading to indirect determination of the sale prices of the services rendered by them
- (c) The Discoms be directed to discontinue the abuse of their dominant positions, which imposes unfair and discriminatory conditions in purchase of goods and services by their consumers.

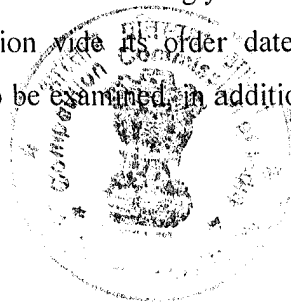


(d)The Discoms be further penalised for the above violations to the extent of 10% of their average turnover for the last three preceding financial year;

(e)The Commission should pass further orders which it deems fit and proper in the facts and circumstances of the present case.

**3.2** The Informant has also prayed to the commission to grant an ex-parte ad-interim order u/s 33 of the Act for restraining the above enterprises /persons from insisting and compelling its new/proposed consumers to install the electricity meters being sold and supplied by the above enterprises /persons, thereby allowing its new /proposed consumers to buy and install the electricity meters of BIS mark of their choice from any of the manufacturers of electricity meters.

4. The informant has filed following documents in support of contentions raised by it in the information:-
  - (i) News item published in website of The Hindu on 09-04-2008.
  - (ii) News item published in website of The Times of India on 23.03.2009
  
5. The Commission after considering the nature of issues involved in this matter, decided to seek the views of the Delhi Electricity Regulatory Commission (DERC) being a sectoral regulator. The DERC in its response has stated that Competition Commission of India was the appropriate authority to examine the matters pertaining to 'Abuse of Dominance', whereas matters of tariffs and tariffs related issues would be looked into by the DERC.
  
6. After considering the information and all the relevant material available on record, the Commission formed an opinion under section 26(1) of the Act that there exists a prima facie case and accordingly referred the matter to the Director General for investigation vide its order dated 26.11.2009, also indicating certain other points to be examined, in addition to the allegations contained in the information.



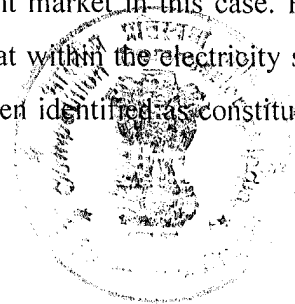
## 7. Findings of DG

7.1 The Director General after receiving the direction from the Commission got the matter investigated and submitted his report to the Commission on 19.02.2010.

7.2 The DG in order to examine the issues relating to this case, has gathered the facts from both primary and secondary sources. Evidence was also collected by sending questionnaire to concerned parties. A survey was also got conducted through an independent agency in order to elucidate the correct position faced by the consumers of these Discoms. Responses from committees/bodies like Electric consumers advocate committee, public grievance cell, Govt. Of Delhi, Bureau of Indian Standard (BIS) and Central Power Research Institute (CPRI) were also obtained. During the course of investigation statements of manufacturers of Electric Meter were also recorded. All these information gathered were confronted with the Discoms to explain their position.

7.3 DG after examining the alleged infringement of provisions of section 3 of the Act has concluded that the informant has alleged contravention of the provisions of Section 3 (1), 3(2) and 3(3) (a), (b) of the Act, but no evidence of any agreement or action in concert has been furnished, to establish that the Discoms, based upon their understanding or through an agreement and independent of any regulatory mechanism, have indulged in the acts prescribed in these sections. From the investigation conducted also, no evidence could be found to establish contravention of the provisions of Section 3 (1) and 3(3) of the Act. Based upon available evidence on record, contraventions of Section 3(1) read with Section 3(3) remain unsubstantiated.

7.4 In order to examine the allegation of abuse of dominance the DG has defined elaborately the relevant market in this case. He has discussed this issue in detail and analysed that within the electricity sector, following four segments have traditionally been identified as constituting different product markets:



- i) generation and wholesale, the production of electricity in power stations;
- ii) transmission, the transport of electricity over high tension networks;
- iii) distribution, the transport of electricity over the low tension network and
- iv) supply, the sale of electricity to the final consumers.

7.5 The DG has observed in his report that at the present state of affairs, in Delhi, the last of the two markets are not really distinct as the same entity is engaged in both the jobs. Therefore, the **relevant market in the instant case would mean relevant product market comprising of distribution and supply of electricity and allied facilities like metering and reading of meters, billing etc. and relevant geographic market comprising of the areas of operations of the three companies-BRPL, BYPL and NDPL** determined subsequent to privatization of DVB. Electricity remains a specialised product of its own class, having its own unique physical characteristics. There is no alternative available to the consumers, other than to get electricity from the three Discoms of Delhi under the prevalent conditions.

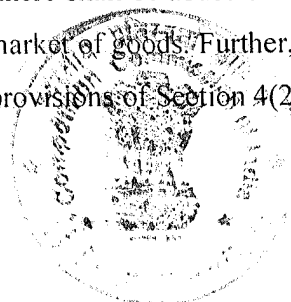
7.6 The DG has further analysed that within the areas of operations of the three Discoms, co-terminus with the market of distribution and supply of electricity, a separate market also exists for meters which measure consumption of electricity.

7.7 The DG has concluded that in view of above it is clear that the unique physical characteristics and end-use of goods, existence of specialised products and specification requirements in terms of regulations and standards fixed by CEA, DERC and BIS, conditions for supply of goods or provision of services in the areas of operations under the three Discoms which are distinctly homogeneous and are distinguishable from the conditions prevailing in the neighbouring areas **clearly determine the Relevant Market in terms of market of distribution and supply of electricity, metering and billing facilities in the areas of operations of the three Discoms, as has been discussed above, in terms of conditions set out in 19(6) and 19(7).**

7.8 The DG has stated that it is clearly established that these Discoms are enjoying dominant position in the relevant market. It has been concluded that each one of the three companies has the ability to behave /act independently of the competitive forces prevailing in the relevant market since they have been given specific and exclusive areas for distribution and supply of electricity. As on date, BSES Rajdhani, BSES Yamuna and NDPL enjoy position of monopoly in their respective areas of operation. The distribution and supply functions are not segregated because of the prevalent state of licensing conditions. In the market of meters also, these Discoms are engaged in installation of meters on their own or in a miniscule portion through their approved manufacturers/vendors. No other vendor can enter this market. In providing services of billing as well, the Discoms are having monopoly status since no other market player can provide these services to the consumers. Thus, it may be said that as per the provisions of explanation (a) to Section 4(2), the three Discoms are enjoying dominant position in their respective areas of operations.

7.9 In the report all the factors mentioned in section19(4) have been analysed in detail before determining the dominant position of Discoms. After examining all the factors mentioned above DG has conclusively established the dominance of the three enterprises in the relevant market of distribution and supply of electricity, meters and providing services of billing in their respective areas of operations .

7.10 The DG has further investigated into the acts listed in Section 4(2) to find out whether these dominant players are engaged in such practices which can be termed as abusive in accordance with the provisions of the Act. DG has concluded that three Discoms - NDPL, BSES Rajdhani Power Limited and BSES Yamuna Power Limited , have violated the provisions of Section 4(2)(c) which stipulate that there shall be an abuse of dominant position, if an enterprise indulges in practice or practices which result in denial of market access in any manner and also the provisions of Section 4(2)(b)(i) of the Act, which stipulate that there shall be abuse of dominant position if any enterprise limits or restricts market of goods. Further, the actions of Discoms also are in contravention of provisions of Section 4(2) (a)(i), which state that





there shall be abuse of dominant position if directly or indirectly, unfair or discriminatory conditions in purchase or sale of goods or service are imposed, because the consumers under prevalent conditions can get electricity for their consumption, only if they install the meters supplied by the Discoms or by their limited number of approved manufacturers/vendors. There is no choice to get consumption of electricity recorded through meters supplied by any other manufacturer/supplier.

**7.11** When BIS has awarded licences to as many as 82 manufacturers all over India including some foreign firms and 10 manufacturers in Delhi ( 81 and 16 respectively as per list posted on the website of BIS till a month ago ) to manufacture electronic meters under IS 13779:1999 and these licensees have their own network of dealers, then there was no point in restricting the supply of meters either to the stores of the Discoms or to their approved manufacturers/vendors (although in the latter case the procurement has been negligible and almost entire meters are being supplied by Discoms themselves). The Discoms could have specified and accordingly informed the consumers that they were free to procure meters as per specifications approved by BIS and DERC read with regulations of CEA and in case some additional features like those of anti-tampering were required, those also could have been mentioned. This would have allowed all those suppliers/manufacturers, who have got BIS licence to manufacture consumer meters under IS 13779:1999, to enter the meter market of Delhi. At present, due to the acts of Discoms, the entry in market of meters is severely restricted.

**7.12** As per the DG Report it is also shown that Discoms have not made much effort to educate the consumers properly. They do not give freedom to the consumers to choose meters of their own choice from any other supplier.

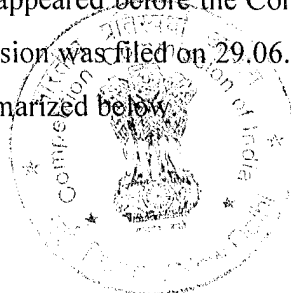
**7.13** The DG has also reported that from the information gathered during investigation it was revealed that not just 82% but more than 92% of the meters are running on the positive side. Some are running on positive side beyond 2.5% also. The DG has also commented that these Discoms are

earning additional revenue running into millions of rupees from such methods and by adopting wrong billing cycles.

7.14 The DG has concluded that the investigation clearly showed that the competition in the relevant market of meters has been restricted in the areas of operations of Discoms of Delhi. The Discoms have denied entry in the market of meters, have used unfair means in the supply of electricity to consumers and in turn the consumers have been charged excessively. The choice of meters should not have been restricted to the meters supplied by Discoms or by their approved manufacturers/vendors. Instead, the Discoms could have put on their website the specifications of meters which are required to be procured by consumers along with names and addresses of all BIS Licensees so that consumers may make an informed choice. Further the fact that the Discoms are supplying electricity to the consumers through meters, which are not correct, tantamount to imposing unfair conditions in sale of electricity and consequently abuse of their position of dominance in terms of provisions of Section 4(2)(a)(i) of the Competition Act, 2002.

8. The Commission after examining the report of DG and the entire material available on record in its meeting held on 04.03.2010 decided that the copies of DG report be sent to the concerned Discoms for offering their comments/objections. The Commission also decided to grant permission for inspection of records to the concerned parties and afforded opportunity of hearing as per the relevant regulations framed under the Act.
9. In response to the notice, preliminary reply/objection was filed by the Discoms on 23.04.2010. M/s J. Sagar Associates appeared on behalf of the Discoms from time to time. Shri Vivek Singhla of NDPL, Shri Raj Arora of BRPL and Shri Pankaj Dingra of BYPL alongwith their officers and Shri Amit Kapur and Mr. Mansoor Ali Shokat, Advocates appeared before the Commission to make oral submissions. Another detailed submission was filed on 29.06.2010. The main points of the replies of the Discoms are summarized below

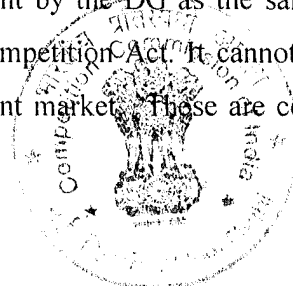
10. **Reply of Opposite Parties**



Though separate submissions have been made by all the three Discoms, the contentions are common and identical in their replies. Therefore to avoid repetition brief of submissions made by them is narrated hereunder:

**10.1 Preliminary replies submitted on 23-04-2010**

- i) The Discoms have challenged jurisdiction of the Commission to deal with the issues involved in this case. It has been submitted that DERC is empowered and has jurisdiction to deal with the issues relating to anti-competitive behaviour of the distribution companies under the Electricity Act, a special Act.
- ii) It has been further submitted that the order dated 26.11.2009 issued by the Commission directing the DG to conduct the investigation was passed without any basis. The conclusion regarding existence of a prima facie case is unsustainable and bad in law and on facts.
- iii) The Commission does not have jurisdiction to delve into matter pertaining to electrical meters and specifications thereof in view of the elaborate and exhaustive provisions carved out under the Electricity Act 2003 and rules and regulations made thereunder.
- iv) The report submitted by DG deserves to be rejected as the DG has wrongly defined the “relevant product market’ as distribution and supply of electricity and allied facilities like metering and reading of meters, billing etc. **The relevant product market in case of distribution companies is “supply of electricity” and not the meters** and as such the report and the conclusion that distribution companies are abusing their dominant position has to be rejected.
- v) It has been submitted that the distribution companies cannot be dominant of market in the meters. The meters are manufactured by meter manufacturers and not by the distribution companies. There is no concept of indirect dominance in law.
- vi) Extraneous factors like billing, fastness of meters, billing cycle cannot be taken into account by the DG as the same do not figure under the provisions of Competition Act. It cannot be imported for determination of the relevant market. These are consumer disputes

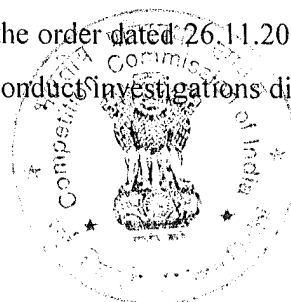


and there are provisions as well as appropriate authorities under the Electricity Act to deal with such issues.

- vii) The distribution companies select the supplier of the meters through international competitive bidding. Only those bidders who meet the technical and financial parameters are selected hence this cannot be said that there is any foreclosure of competition.
- viii) If any consumer elects to purchase a meter it has to be procured only from approved manufacturer because of technical specifications and compatibility to the distribution network of the company. The list displays by the companies is only indicative and consumer is free to buy meters from other manufacturers provided they meet the aforesaid criteria.
- ix) As an awareness programme distribution companies have distributed lakhs of pamphlets and have advertised in the newspapers that consumers can choose their own meters. However, distribution companies do test and calibrate meters procured by consumers in accordance with the CEA and DERC regulations in order to ensure that it is fully compatible with its network. However the seal of manufacturers remains intact even after the testing. The DG has not appreciated that BIS standard is a benchmark and the maximum permissible error margin in the case of class 2.0 meters is (+)/(-)3% and in case of class 1.0 meters it is (+)/(-) 2.5%.
- x) Additionally in the reply of BSES Rajdhani it was also emphasized that CPRI, which is Central Government accredited laboratory whose alleged test report has been relied upon by the DG during investigation, has in fact tested more than 6 lakhs meters of BSES and found them fit for installation.

## **10.2 Replies dated 29.06.2010**

- i) In their subsequent replies the opposite parties reiterated their submissions and have stated that the order dated 26.11.2009 issued by the Commission directing the DG to conduct investigations did not satisfy the



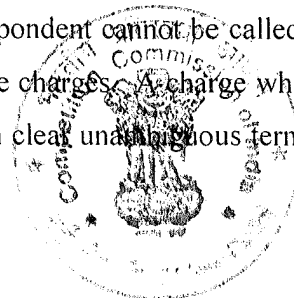
mandatory conditions as it is not a speaking order reflecting any satisfaction of the Commission that there exists a prima facie case.

ii) The Competition Appellate Tribunal is already seized of the issue of fast meters and notice of enquiries have been issued to Discoms in the matter (CW No.33 of 2009 under MRTP Act 1969). It is submitted that since the superior authority is looking this issue as an unfair trade practice such conduct cannot be treated as an abuse of dominant position by the subordinate authority (this Commission).

iii) The DG has misdirected the investigation which appears to proceed to examine issues like alleged fastness of the meters, billing process adopted by the DISCOMS which are not relevant for the purpose of competition issues and are no longer *res integra* in view of the judgment of High Court of Delhi in Suresh Jindal Vs. BSES, RPL and in the case of BRPL Vs. V.K. Jain.

iv) There was no evidence before the Commission that was provided to it on or subsequent to the date of filing the information which could conceivably constitute material to come to the conclusion of prima facie case. The only basis for order dated 26.11.2006 appears to be 2 newspaper reports filed originally by informant.

v) The opposite parties while challenging the legality, validity and propriety of the consequent actions including the investigations and the present proceedings submitted that the Commission decision is predicated upon a misconstrued or wrong application of findings. The DG has concluded that the relevant market is the supply of electricity through electronic meters whereas the Secretary of Commission in its notice dated 08.03.2010 has observed that “on the basis of the report the DG has concluded that all the above mentioned 3 Discoms which are enjoying position of dominance in the relevant market of meters have because of their conduct and practices restricted the competition in the relevant market”. It is submitted that given such inherent contradiction at the stage of proceedings the answering respondent cannot be called upon to answer in absence of specific and definite charges. A charge which may result in punitive action must be set out in clear unambiguous terms and be related



to specific provisions of the law, particularly where there is an exhaustive list of abuses of dominance under the Act.

vi) Even if it were to be presumed that relevant market is the market of meters there cannot be a charge of abuse of dominant position since the Discoms do not manufacture the meters. Further there are 82 meter manufacturers in the country and there are large number of distribution companies who purchase meters from these manufacturers. Thus there cannot be any violation of section 4 of the Act.

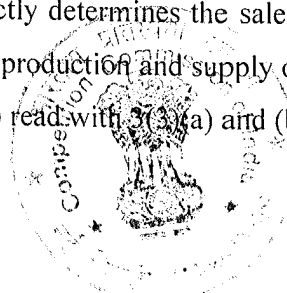
vii) The DG has given the finding that the Discoms have abused their dominance position because more than 90% Meters were running on the positive side. This finding is based on a survey conducted by CPRI but that report has not been supplied to the Discoms so no reliance can be placed on that report. Even the report of CPRI relied upon by the DG is defective and is not based on any survey and sample size is too small to be said to be representative of all the consumers in Delhi. Further, even the Ministry of Power in its report had accepted that the sample size was too small as well as biased. It has also been stated that as per IS: 15707 of 2006 a meter showing +/- 2.5 % error is correct meter.

viii) Discoms prayed to close the proceedings and drop the allegation against the respondents or in the alternative pass a reasoned order returning a finding dealing with all the submissions and issue a clear description of the relevant market in terms of sec. 19 of the Act and violation of section 4 after allowing sufficient opportunity.

## 11. ISSUES

On the basis of the contentions, raised by the rival parties the following issues, relevant for deciding the matter, emerge for determination:

- (i) Whether the Commission has jurisdiction to look into the matter or there is any overlap of jurisdiction with the sectoral regulator (DERC)?
- (ii) Whether the Discoms have entered into any agreement or carrying on any practice which indirectly determines the sale price of electricity and limits or controls the production and supply of electronic meters in violation of section 3(1) read with 3(3)(a) and (b) of the Act ?



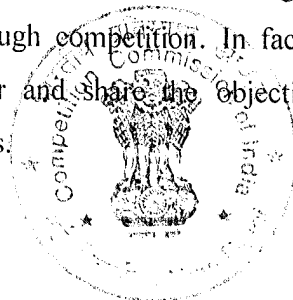
- (ii) What is the relevant market in this case?
- (iii) Whether the opposite parties are in dominant position in the relevant market?
- (iv) Whether the opposite parties are abusing their dominant position in terms of the provisions of Section 4 of the Competition Act, 2002 ?

**12 Determination of issue No.1**

**12.1** As already narrated supra in para 5 of this order that on receipt of the information the matter was referred to the Delhi Electricity Regulatory Commission (DERC) for its comments on the allegations levelled in the information. The DERC vide its letter dated 30-09-2009 has categorically opined that *“matters relating to electricity tariff have to be decided as per the provisions of Electricity Act, 2003 and DERC Regulations. Accordingly CCI may not be appropriate forum to deal with such issue. However specific issues alluded to by the petitioner accusing the Discoms of abuse of their dominant position may be looked into by the CCI in terms of Competition Act 2002”*.

**12.2** Thus it is amply clear that there is no overlap between DERC and CCI in terms of the jurisdiction in this case. The CCI has accordingly proceeded in this case to deal with the issues relating to competition.

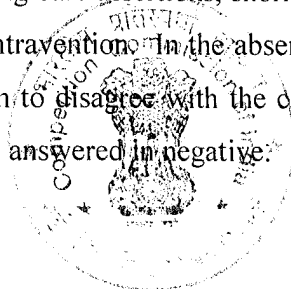
**12.3** The mandate of Commission is to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India. Sectoral regulators have necessary technical expertise to determine access, maintain standard, ensure safety and determine tariff. They set rule of game i.e. entry conditions, technical details, tariff, safety standards and have direct control on prices, quantity and quality. Thus sectoral regulators focus on the dynamics of specific sectors, whereas the CCI has a holistic approach and focuses on functioning of the markets through increasing efficiency through competition. In fact their roles are complementary and to each other and share the objective of obtaining maximum benefit for the consumers.



12.4 In view of the above it is clear that the CCI has all the powers to examine the issues relating to abuse of dominance by the Discoms. The preliminary objection raised by opposite parties relating to the jurisdiction of the CCI to deal in this matter is accordingly disposed of.

13. **Determination of Issue No.2**

- 13.1 The informant has alleged that as the meters installed by the Discoms are running fast, the consumers are being over charged in pursuance of the concerted action, practice carried on and decision taken by Discoms which has the effect of indirectly determining the sale price of electricity. Additionally the arrangement, understanding and concerted action on part of Discoms to supply and install the electricity meters themselves and thereby prohibiting the consumers from purchasing and installing their own meters, also limits and controls the production and supply of electronic meters. It has been alleged that Discoms are violating the provisions of section 3(1) read with section 3(3) (a) and (b) of the Act.
- 13.2 After examining the allegations of informant in context of contentions made by Discoms before DG with regard to infringement of section 3 of the Act, DG has come to the conclusion that neither any evidence of any agreement or action in concert was furnished by the informant nor any evidence could be found during the course of investigation to establish the contravention of section 3 of the Act. DG has observed that based upon available evidence on record, contravention of section 3(1) read with section 3(3) remained unsubstantiated.
- 13.3 On perusal of the record it is apparent that informant has not furnished any material to substantiate the allegation that the alleged conduct of Discoms is emanating from any agreement or concerted practice. DG has also not found any evidence which could lend support to the allegations made by the informant. There is not an iota of evidence on record to show any concerted action on part of Discoms. Making bare assertions, shorn of any evidence, is not sufficient to establish the contravention. In the absence of any evidence to the contrary there is no reason to disagree with the conclusion drawn by the DG. Therefore, issue no.2 is answered in negative.





## 14 Determination of Issue No.3

14.1 Since in the instant case, the issue under examination is abuse of dominant position by Discoms, it is necessary to first determine the *relevant market* for the purposes of the analysis.

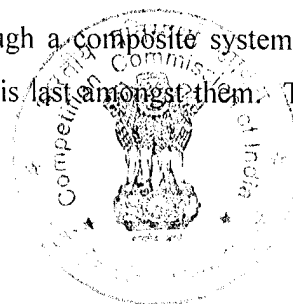
14.2 The DG in his report has defined the 'relevant market' as **distribution & supply of electricity and allied facilities like metering and reading of meters, billing etc. in respective areas of operations of three Discoms of Delhi.** Thus, three markets had been identified in the DG's report and it has been stated that it is in line with the EU demarcation of the electricity market. First, there is market for distribution and supply of electricity. Co-terminus with the market of distribution and supply of electricity, a separate market exists for meters and for billing of electricity. Both these markets relate to electricity where the meter market is with regard to meters that measure consumption of electricity and billing market is with regard to the process adopted for reading the meters and billing the consumers.

14.3 On the other hand the Discoms have contended that the relevant market should be taken as **supply of electricity to consumers in the licensed area of supply in Delhi.** The following reasons have been given to support their contentions:-

14.3.1 The Discoms have been granted license by DERC for distribution and retail supply of electricity in their respective area of supply. Therefore, in terms of license the relevant product market is well defined being supply of electricity to consumers.

14.3.2 The supply of electricity and electricity meters are not interchangeable and hence cannot be taken to be same relevant product.

14.3.3 Electricity is supplied through a composite system of apparatus of which the electricity meter is ~~last amongst them~~. There are host of



other accessories like cables, circuit breakers, fuse, switch and usually a box to hold all these articles and for each of these technical specifications are prescribed. The Discoms are neither manufacturing meters nor any of accessories items and in fact they are only ensuring that the quality products at best available prices are made available to the consumers.

### COMMISSION'S VIEW

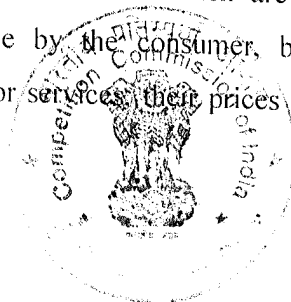
**14.4 Relevant market** – As the DG and the Discoms have defined the relevant market in this case differently, therefore before examining the issue relating to the definition of relevant market it is pertinent to reproduce the relevant provisions of Competition Act 2002.

**14.4.1 Section 19(5)** “For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographic market" and "relevant product market".

**14.4.2 Section 2 (r) defines "relevant market"** as the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;

**14.4.3 In Section 2 (s) "relevant geographic market"** has been defined as a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;

**14.4.4 Section 2 (t) defines "relevant product market"** as a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;



14.4.5 While determining the Relevant Geographic Market and Relevant Product Market, factors mentioned in Section 19 (6) and 19(7) are to be looked into respectively. This will form the basis of determination of the Relevant Market in terms of Section 19(5) of the Act. The determination of relevant market is the first step in assessing dominance in a market or industry.

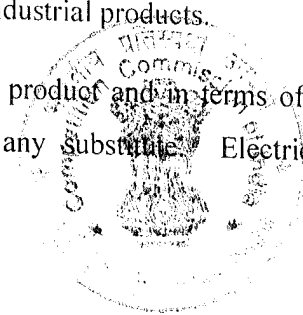
14.4.6 Section 19 (6) stipulates that the Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:—

- (a) regulatory trade barriers;
- (b) local specification requirements;
- (c) national procurement policies;
- (d) adequate distribution facilities;
- (e) transport costs;
- (f) language;
- (g) consumer preferences;
- (h) need for secure or regular supplies or rapid after-sales services.

14.4.7 Further as per provisions of Section 19 (7) the Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:—

- (a) physical characteristics or end-use of goods;
- (b) price of goods or service;
- (c) consumer preferences;
- (d) exclusion of in-house production;
- (e) existence of specialised producers;
- (f) classification of industrial products.

14.5 Electricity is a non-storable product and in terms of characteristics and intended use does not have any substitute. Electricity remains a



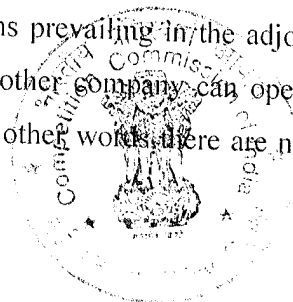
specialised product of its own class, having its own unique physical characteristics. There is no alternative available to the consumers, other than to get electricity from the three Discoms of Delhi under the prevalent conditions. In India the electricity sector, in general, comprises of following different product markets:

- i) generation of electricity in power stations;
- ii) transmission, of electricity over high tension networks;
- iii) distribution and supply of electricity to the final consumers.

**14.6** Under the Electricity Act, 2003 the Government of Delhi issued licenses for the distribution and supply of electricity to three private companies and to two deemed licensees. The three licensees are BSES Rajdhani Power Limited (BRPL), BSES Yamuna Power Limited (BYPL) and North Delhi Power Limited (NDPL). These companies are engaged in the distribution and supply of electricity to the end consumers in the territory of Delhi.

**14.7** These Licenses provide for supply of electricity by the Discoms to the consumers in their licensed areas. DERC has not issued any parallel licenses in any of the three areas. Further, DERC has permitted open access in keeping with the provisions of the Electricity Act only for consumers of 1 MW and above only. Presently, the open access for consumers of less than 1 MW has not been introduced and therefore, consumers' choice in the case of electricity supply source has not been initiated.

**14.8** In the areas of operations of the three Discoms, conditions for supply of goods or provision of services are distinctly homogeneous and can be distinguished from the conditions prevailing in the adjoining areas. In the absence of parallel licenses no other company can operate in the areas of operation of these Discoms. In other words, there are no other suppliers in



the areas of operations of these Discoms and there is no viable alternative product which can serve as substitute to electricity.

**14.9** Therefore, the appropriate **relevant market in the instant case would be relevant product market comprising of distribution and supply of electricity and relevant geographic market comprising of the areas of operations of the three licensee companies-BRPL, BYPL and NDPL as assigned in their respective licenses.**

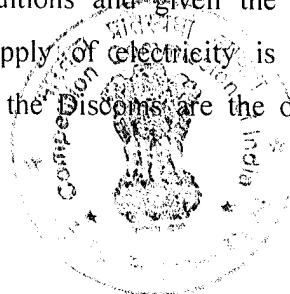
**14.10** In the present sets of facts and circumstances the Commission does not consider that meters conforming to BIS standards or billing services constitute separate markets.

**14.11** In the light of foregoing discussions the relevant market in the present case is defined as **distribution & supply of electricity in the licensed areas of respective Discoms in Delhi.** Issue No.3 is disposed off accordingly.

## **15 Determination of Issue No.4**

**15.1** Once the relevant market has been defined as above the next step is to assess the dominance of the Discoms in the relevant market. As per the provisions of explanation (a) to section 4(2) of the Act, dominant position means *“a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour.”*

**15.2** The three Discoms, NDPL, BRPL, BYPL have been assigned specific areas of NCT (Delhi) for distribution and supply of electricity. As per the prevailing licensing conditions and given the present stage of regulatory reforms, the retail supply of electricity is restricted to the Discoms and in the present case the Discoms are the only licensees for



distribution of electricity in their respective areas with open access option available only to consumer of 1 MW and above. Therefore, Discoms are the only source of electricity available to the consumers in any particular licensed area for supply of electricity. In such a scenario, there are no perceivable competitive constraints faced by the Discoms within the relevant geographic markets of their respective licensed distribution areas. The opposite parties have also not disputed their dominant position in the relevant market of “distribution and retail supply of electricity”. The necessary corollary to this is that each one of the three Discoms has the ability to behave independently of the competitive forces prevailing in the relevant market since they have been given exclusive areas for distribution and supply of electricity. This leads to the irresistible conclusion that the three Discoms enjoy position of dominance in their respective areas of operation to the relevant market of supply of electricity to the consumers.

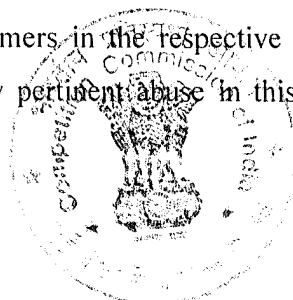
15.3 The Issue No.4 is answered in affirmative.

**16. Determination of Issue No.5**

16.1 Holding of a dominant position in relevant market in itself does not fall foul of the Competition Act. It is not the dominance, but its abuse, which is prohibited in law.

16.2 Once the dominance of the Discoms in the relevant market of electricity supply has been found to be established, it is now to be examined whether by their conduct they have abused their dominant position or not. The Commission has considered all relevant facts and materials brought out by the DG’s investigation as well as the submissions made by Discoms in the present matter.

16.3 Since the Commission has identified the relevant market as supply of electricity to the consumers in the respective licensed areas of Discoms in Delhi the only pertinent abuse in this relevant market,



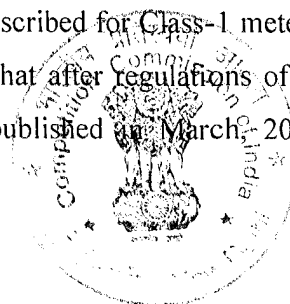
which has been alleged by the informant and found established by the DG, is overcharging the consumers due to fast running of meters.

16.4 In order to examine the above abuse the provisions of section 4(2)(a)(i) and (ii) of the Act are to be kept in mind, which state that *“there shall be an abuse of dominant position if a dominant enterprise or group directly or indirectly imposes unfair or discriminatory (i) condition in purchase or sale of goods or service; or (ii) price in purchase or sale (including predatory price) of goods and services.”*

16.5 The unfair condition in the instant matter relates to overcharging the consumers due to fast running of meters.

16.6 While finding the Discoms indulging into this kind of abuse the DG has based his conclusion on the data of test results of meters conducted by Central Power Research Institute (CPRI), Bangalore, under the aegis of Public Grievance Cell constituted by Government of NCT of Delhi. This data was provided to the DG by Public Grievance Cell on 18.12.2009 alongwith their submissions. Though the data obtained from Public Grievance Cell has been reproduced in the DG report, the document containing the submissions and test results has not been made part of DG report.

16.7 As per DG report, out of total 2014 meters tested by CPRI in the period July, 2007 till 30.11.2009, 1847 meters had positive errors and only 167 meters had negative errors. The DG has noted that 91.7 % of the meters tested showed positive errors, while only 8.3 % meters have shown negative errors. DG has also further noted that out of 2014 meters tested till 30.11.2009 a total of 96 meters (4.76 %) have shown positive error of more than 2.5%, exceeding the maximum permissible error limit prescribed for Class-1 meters. It is also borne out from the DG report that after regulations of Central Electricity Authority (CEA) were published in March, 2006, the Bureau of



Indian Standards (BIS) published IS 15707 : 2006. According to new Indian Standards, the maximum permissible error for the meters having accuracy of Class 1.0 (which are meters generally used by the domestic consumers) shall be  $\pm 2.5\%$  under on site conditions.

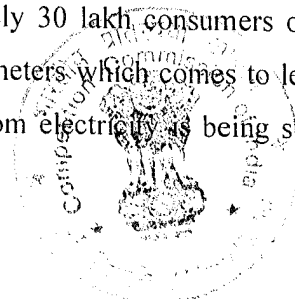
**16.8** The DG has concluded that since overwhelming percentage of meters tested have shown positive errors this is against the principle of normal distribution curve. In view of these facts the DG report concludes that there is substance in the allegation that the meters installed by the Discoms have an upward bias in measurement of electricity.

**16.9** Based upon the analysis of the data supplied by Public Grievance Cell the DG has come to the conclusion that fast running of meters results in inflated bills for the consumers. In the end the DG has come to the following conclusion :-

*“The fact that the Discoms are supplying electricity to the consumers through meters, which are not correct, tantamount to imposing unfair conditions in sale of electricity and consequently abuse of their position of dominance in terms of provisions of section 4(2)(a)(i) of the Competition Act, 2002.”*

**16.10** On the other hand, the Discoms have contended that DG has relied on test results supplied by Public Grievance Cell but that report has not been shared with the Discoms and hence, findings of the DG are against the principle of natural justice.

**16.11** It has been further contended that the report of CPRI supplied by Public Grievance Cell and relied upon by the DG is defective and is not based on any survey and sample size is too small to be held to be representative in character for all the consumers in Delhi. The three Discoms have approximately 30 lakh consumers out of which DG has referred to only 2014 meters which comes to less than 0.1 % of the total consumers to whom electricity is being supplied in Delhi.





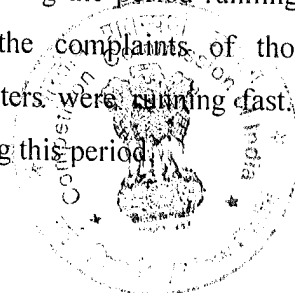
Further, even the Ministry of Power in its report had accepted that the sample size was defective and too small.

16.12 Discoms have also contended that the DG has failed to appreciate the fact that the relevant BIS standards applicable in the present case i.e. IS 15707 : 2006, provides that the maximum permissible error in case of Class-1 meters is  $\pm 2.5\%$ . Therefore, a meter showing error within this limit is deemed to be a correct meter.

16.13 The issue of fast running of meters is related to consumer disputes and has no bearing on the competition issues. Such issues can be looked into by the appropriate authority like Consumer Grievance Redressal Forum & Ombudsmen established under the Electricity Act.

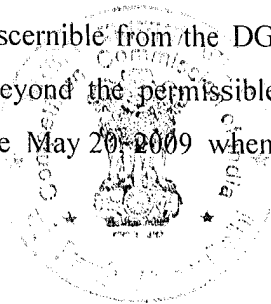
16.14 There is no denying the fact that fast running of meters results in inflated bills for consumers. Discoms would earn more revenue for less amount of electricity supplied and on the other hand the consumers may end up paying more than what they are consuming. Undoubtedly, this will amount to unfair practice affecting consumers adversely. However, it needs to be examined whether in the present case there is sufficient evidence to establish such unfair practice which tantamount to an abuse of dominant position by Discoms.

16.15 It is evident that DG has based his finding solely on the data of test results of meters of aggrieved consumers provided by the Public Grievance Cell constituted by the Government of NCT (Delhi). These tests were conducted by CPRI, Bangalore, under the aegis of Public Grievance Cell. It is also noted that this data is compilation of test results conducted during the period running from July, 2007 to November, 2009, on the complaints of those consumers who suspected that their meters were running fast. A total of 2014 meters were tested during this period.



16.16 It is seen from DG's report that NDPL has a consumer base of approximately 11 lakhs consumers whereas, BYPL and BRPL together supply electricity to 31 lakhs consumers in Delhi. Furthermore, out of total consumer base of approximately 42 lakhs, only 2014 meters have been tested in a span of around 2 ½ years. This constitutes a miniscule of total consumers and is less than 0.1%. The size of the test results is too small, and in view of this it is difficult to take it as a representative sample of the large consumer base in Delhi. Moreover, it is also clear that the compilation of test results is not on account of any random sampling which had been undertaken by CPRI. In this test drive commencing from July, 2007, the meters of only those consumers were tested who were suspecting their meters to be running fast. Therefore, the test results compiled by CPRI cannot be taken to be representative sample so as to draw a conclusion that more than 90% of the meters in Delhi are running on positive side. Similar view was expressed by the Committee constituted by the Ministry of Power in its report submitted in September, 2008. This report finds place as Annexure F in the DG report.

16.17 It is also borne out from the examination of said test results reproduced in DG report that out of 2014 meters tested till November, 2014, only 96 meters (0.76%) have been found to be erring on positive side beyond permissible limit of  $\pm 2.5\%$  specified by BIS for Class 1 meters. This number is insignificant considering the fact that total consumers in Delhi are more than 40 lakhs. Furthermore, it is not discernible from the DG report that out of 96 meters showing error beyond the permissible limit how many of them were tested before May 20, 2009 when section 4 of the Act



came into force. The report is also silent about the fact that how many meters out of 96 defective meters were replaced by the Discoms before the date of enforcement of the Act. As regards those meters which were found running on the positive side, but within permissible limit, it is manifestly clear that no fault can be found on this account because they were running within the accuracy limit stipulated by BIS, and they are deemed to be correct meters in terms of regulations framed by CEA.

16.18 On the basis of the facts and circumstances of the case and the above analysis, it cannot be said in this context that the Discoms have abused their dominant position in terms of the provisions of section 4 of the Act. Therefore, Issue no.5 is answered in the negative.

17. In the light of foregoing discussion, the Commission comes to the conclusion that no case of violation of section 4 of the Act is established against the Discoms and conclusions drawn by the DG in this respect cannot be accepted. In view of the above findings, the matter relating to this information is disposed off accordingly and the proceedings are closed forthwith.

18. Secretary is directed to inform the parties accordingly.

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