



COMPETITION COMMISSION OF INDIA
Case No. 18 of 2019

In Re:

**National Consumers Co-operative
Federation of India Limited
Mirza Ghalib Street,
Kolkata-700016**

Informant

And

**New Town Electric Supply Company
Limited,
09-024, M.A.R. New Town,
Rajarhat,
Kolkata-700156.**

NTESCL

**West Bengal State Electricity
Distribution Company Limited,
B-11, LA-Block, Sector-III, Bidhan
Nagar,
Kolkata-700098**

WBSEDCL

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

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

**Ms. Sangeeta Verma
Member**



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

1. The present information has been filed by National Consumers Co-operative Federation of India Limited (“**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (“**Act**”) against New Town Electric Supply Company Limited (“**NTESCL**”) and West Bengal State Electricity Distribution Company Limited (“**WBSEDCL**”), collectively referred to as ‘**Discoms**’, alleging contravention of the provisions of Section 4 of the Act.
2. The Informant is a Co-operative Society registered under the Multi-State Co-operative Society Act, 2002. WBSEDCL is an electricity distribution licensee of the West Bengal State Electricity Regulatory Commission. NTESCL is a joint venture of the WBSEDCL and West Bengal Housing Infrastructure Development Company Limited (“**WBHIDCO**”) and during the period of alleged conduct was a franchisee of WBSEDCL for supply of electricity in New Town, Rajarhat.
3. The Informant has undertaken a joint venture residential housing project by the name ‘*Sunny Fort*’ (“**the Project**”) at Plot No. AA-IIB, Block-7 premises No. 07-0622, New Town, Rajarhat, consisting of Low Income Group (LIG), Middle Income Group (MIG) and High Income Group (HIG) units. In pursuance of construction for the Project, the Informant has made several representations before the Discoms for supply of electricity between 2007 to 2017. The Informant has submitted copies of the correspondences/communications with the Discoms which took place during the period, with the Information.
4. The Informant has alleged that on account of delayed and vacillating approach of the Discoms, the Project got delayed and could not be completed for want of adequate power supply thereto. It has been stated that the Informant, on its part, made serious efforts to overcome such delays by arranging power generator supply at its own cost. Further, despite such efforts on its part, 64 cases were filed against the Informant before the State Consumer Disputes Redressal Commission, West Bengal, by the prospective purchasers of flats for delay in handing over their respective flats which led to passing of orders against the Informant for granting payment of compensation as a penalty. The Informant has also



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submitted that several criminal complaints have also been lodged by the flat owners of the Project against the Informant in New Town Police Station, allegedly due to inordinate delay on the part of Discoms to supply electricity.

5. Based on the above averments and allegations, the Informant has prayed that the Commission should direct the Discoms to discontinue such practices of abuse of dominant position and pass an award directing the Discoms to pay compensation for the loss suffered by the Informant for such arbitrary conduct. The Informant has also filed an application for interim relief under Section 33 of the Act.
6. The Commission has carefully analysed the information filed by the Informant, the documents annexed therewith and the information available in public domain in this regard.
7. The Commission notes that the Informant is aggrieved by the alleged delay in services to supply electricity by the Discoms, which, delayed completion of the Project. The Informant has alleged that this delay amounts to an abuse of dominant position by the Discoms in contravention of the provisions of Section 4 of the Act.
8. To analyse the case under the provisions of Section 4 of the Act, the first requirement is to delineate the relevant market as per Section 2 (r) of the Act. The next step is to assess the dominance of the Discoms in the defined relevant market. Once the dominance of the Discoms is established, the final step is to analyse the allegations pertaining to abuse of dominance.
9. The relevant product market as defined under Section 2(t) of the Act means “*a market comprising of 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.*” The determining factor for defining relevant product market is demand side interchangeability/substitutability of the product, from the point of view of factors such as basic characteristics, intended end-use, price *etc.* As per the facts of the case, the Informant has undertaken a joint venture residential housing project in New



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Town, West Bengal and is a consumer of electricity supplied by WBSEDCL, through its franchisee NTESCL. The Commission notes that for the purpose of use, no other product could be considered as a substitute to electricity. Accordingly, the relevant product market in the instant case appears to be “*market for distribution of electricity*”.

10. The relevant geographic market as defined under Section 2(s) of the Act means the “*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.*” In order to delineate the relevant geographic market, it is pertinent to look into the necessary provisions of the sector specific legislation, viz. The Electricity Act, 2003. This Act was passed to consolidate laws relating to generation, transmission, distribution, trading and use of electricity. It mandates the constitution of Electricity Regulatory Commissions at the central and state levels which would, *inter-alia*, lay down the licensing conditions of electricity transmission, distribution and trading licensees in concerned states and take measures to promote competition in matters concerned with electricity sector.
11. Under the scheme of Electricity Act, power has been conferred upon the appropriate commission to deal with provisions related to licenses in transmission, distribution and trading of electricity. As such each state is governed by a separate set of regulations issued by the appropriate electricity commission set up in the state. In the present case, the appropriate commission is the West Bengal Electricity Regulatory Commission which is vested with the powers to deal with provisions relating to licensees relating transmission, distribution and trading of electricity. As such the conditions for distribution of electricity would be consistent/ homogenous within the state of West Bengal and would be distinct from those prevailing in the neighbouring states. Accordingly, the relevant geographic market is “*the licensed area of WBSEDCL served through its franchisee, NTESCL, in the State of West Bengal*”. Thus, the relevant market in the instant case is the “*market for distribution of electricity in the licensed area of WBSEDCL served through its franchisee, NTESCL, in the state of West Bengal*”.



12. Before dealing with the aspect of dominance it is pertinent to note that NTESCL has since been amalgamated with WBSEDCL and the same has been notified *vide* Ministry of Corporate Affairs’ memo RD/T/27790/S-233/18/10499, dated 29/11/2018. In view of the same, the Commission observes that WBSEDCL is the appropriate entity for the analysis of dominance in the present matter. *Apropos*, the next issue is to determine whether WBSEDCL holds a position of dominance, in the said relevant market. The Act defines ‘dominant position’ under explanation (a) to Section 4 as, “*a position of strength enjoyed by an enterprise, in the relevant market, in India, which enables it to (a) operate independently of competitive forces prevailing in the relevant market; or (b) affect its competitors or consumers or the relevant market in its favour*”. An enterprise is regarded as dominant if it enjoys/possesses a position of strength in the relevant market, which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour.
13. There are various distributor licensees operating in the State of West Bengal. A report of the Ministry of Power states that distribution of electricity in the state is managed by the 05 distribution licensees’ *viz.* WBSEDCL, Dishergarh Power Supply Company Limited (“**DPSC**”), CESC Limited. (“**CESC**”), Damodar Valley Corporation (“**DVC**”) and Durgapur Projects Limited (“**DPL**”) (Source: https://powermin.nic.in/sites/default/files/uploads/joint_initiative_of_govt_of_india_and_West_Bengol.pdf). The following provides a snapshot on the areas served by them:

Table 1

Utility	Areas Served
WBSEDCL	All the districts of State except Kolkata
CESC	Kolkata and Howrah (567 Sq. km)
DPL	Durgapur Projects Township
DPSC	Asansol-Raniganj Industrial area
DVC	DVC Command area in West Bengal



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14. The Commission notes that the Project of the Informant is situated in New Town, located at North 24 Parganas district of the State of West Bengal an area where WBSEDCL is the sole distribution licensee. Thus, the commission holds WBSEDCL in a dominant position in the relevant market, as defined above.
15. With regard to the alleged abuse of dominance by WBSEDCL, the Commission notes that the key grievance of the Informant pertains to non-supply of electricity on the part of the Discoms, on account of which the Project got delayed resulting in numerous consumer complaints against the Informant by the prospective residents of the Project. This, as per the Informant, caused irreparable monetary loss and loss of goodwill to it. However, the Commission observes that delay/ insufficiency of services on behalf of Discoms in the instant case does not appear to be a competition issue. The Commission in *Mr. Hitesh Bhatt vs. Vadodara Municipal Corporation and Gujarat Electricity Board* (Case 01 of 2011) has held that:

*“10. The main allegation of the IP is that, inspite of his making regular payment of property taxes, water taxes, etc. over last 11-12 years, the opposite parties are not providing water connection, electricity connection and other civic amenities to his residence. On thorough perusal of the entire material submitted by the IP, the Commission finds no substance in the submissions made in the information, as there is no competition issue involved in the matter. **Elements of anti-competitive agreement and abuse of dominant position definitely stand on a higher platform than deficiency in services.** Therefore, it is abundantly clear that the present case is an individual consumer dispute with the civic bodies having no bearing on competition in India.”*

(Emphasis supplied)

16. The Commission observes that the impugned conduct of the said Discoms, needs to be carefully viewed from the lens of the Competition Act. The Informant, in the matter, has not brought on record any material which inculpates these Discoms for an infraction of the provisions of the Act. In order to substantiate the alleged abuse, the Informant has



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appended, with the Information, official communications which took place between itself and the Discoms. Such correspondences, *ipso facto*, do not bespeak an abuse of dominance on the part of the said Discoms in the matter. Therefore, the alleged conduct of the Discoms does not fall foul of the provisions of the Act.

17. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case and the information filed is closed forthwith under Section 26(2) of the Act. Consequently, no case arises for consideration of interim relief claimed by the Informant under Section 33 of the Act.
18. Secretary is directed to communicate the order to the Informant accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(U.C. Nahta)
Member

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 05/08/2019