



COMPETITION COMMISSION OF INDIA

Case No. 33 of 2014

XYZ ...

Informant

And

REC Power Distribution Company Limited

Core – 4, SCOPE Complex,

7, Lodhi Road, New Delhi

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

Present: Mr. Ramji Srinivasan (Sr. Advocate), Mr. Kartik Nagarkatti
(Advocate) for the Opposite Party.



Order under section 26(1) of the Competition Act, 2002

1. The present information has been filed under section 19(1) (a) of the Competition Act, 2002 (hereinafter referred to as the ‘Act’) against REC Power Distribution Company Ltd. (hereinafter to be referred as the ‘**Opposite Party**’) for its alleged abuse of dominant position in contravention of the provisions of section 4 of the Act.
2. As per the information, the Opposite Party is a wholly owned subsidiary of Rural Electrification Corporation Ltd. (**‘REC’**), a ‘Navratna’ Central Public Sector Enterprise (CPSE) under Ministry of Power. As per the information available in public domain, REC, through a network of thirteen Project Offices and five Zonal Offices, has been engaged in financing and promoting rural electrification projects across India. It provides financial assistance to Central/State Sector Power Utilities, State Electricity Boards, Rural Electric Cooperatives, NGOs as well as Private Power Developers and is the nodal agency for implementation of Rajeev Gandhi Grameen Vidyutikaran Yojna (**‘RGGVY’**) scheme.
3. The Opposite Party was incorporated as a subsidiary of REC with specific focus on developing and investing in electricity distribution and its related activities. The main objectives of the Opposite Party are: (i) to promote, develop, construct, own, operate, distribute and maintain 66 KV and below voltage class Electrification/Distribution Electric supply lines/distribution system; (ii) to promote, develop, construct, own and manage Decentralized Distributed Generation (DDG) and associated distribution system; and (iii) consultancy/execution of works in the above areas for other agencies/Govt. bodies in India and abroad.
4. The Informant is aggrieved by the conflict of interest existing between the Opposite Party and REC in implementation of RGGVY scheme. The Informant has alleged that the Opposite Party has leveraged its association



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with REC for securing orders with the carrot of ensuring trouble-free approvals from REC. As per the Informant, because of the arrangement between the Opposite Party and REC, the Opposite Party secure business orders from various state distribution utilities on the verbal promise that it will be able to get the approval from REC as the head of RGGVY scheme of REC is its Chief Executive Officer (CEO).

5. The Informant alleged that REC's regional offices are forced to act as marketing agents of the Opposite Party. In many cases, the regional offices of REC prepare the Detailed Project Reports ('DPRs') of the power utilities on behalf of the Opposite Party and it gives final approval of the DPRs for funding. As per the Informant, the agency approving DPRs and funding the project should not be the same which is preparing DPRs. Further, it is alleged that REC's regional officers are being utilized to do business development of the Opposite Party. The Informant also stated that the officers of REC help the Opposite Party in execution of DPRs preparation orders and in many instances the DPRs preparing person and DPRs approving person is same.
6. The Informant submitted that despite of several CPSE such as Electrical Research and Development Association (ERDA), MECON Limited, WAPCOS Limited, Power Grid Corporation India Limited (PGCIL), National Thermal Power Corporation Limited (NTPC), *etc.* and private companies operating in the market to prepare DPRs, choosing the Opposite Party for the work by the states without following any tendering process is nothing but elimination of fair competition in market.
7. It has been stated that the Opposite Party has not been able to get similar work in states where power utilities have floated tender as its rates were very high. It has secured work on same rates in states which have awarded work on nomination basis in violation of CVC guidelines.
8. Based on the above submissions, the Informant prayed to the Commission to stop the Opposite Party from bidding the consultancy work of project funded



by REC and to stop the alleged anti-competitive activity being promoted by REC and the Opposite Party.

9. The Commission has perused the information and the written submissions filed on behalf of the parties and heard their advocates at length.
10. The Opposite Party in its reply dated 12.09.2014 denied all the allegations levelled against it and stated that no conflict of interest exist with regard to the preparation of DPRs for the projects under RGGVY scheme of REC. It is submitted that the decision to award work for preparation of DPRs under RGGVY is taken autonomously by the concerned Project Implementation Agency (PIA) and neither REC nor the Opposite Party has any role to play. It is also submitted that DPRs under RGGVY are approved by Inter-Ministerial Monitoring Committee and the approval of DPRs under RGGVY is strictly done as per the prevailing guidelines for the scheme. It is also submitted that the DPRs prepared by the Opposite Party are duly scrutinised by REC as per the standard norms of scrutiny which are applicable for all consulting agencies. The Opposite Party has submitted that the works were awarded to it through open tender process based on the terms and conditions of the notices for inviting tender and the rate at which it is getting works is comparable or lower than the rates at which similar work is awarded to other agencies.
11. The Informant submitted a rejoinder in response to the submissions of the Opposite Party wherein it is stated that forward integration by REC into the market of consultancy through the Opposite Party having the same management strengthens its position and by leveraging their position both REC and the Opposite Party are generating works for the Opposite Party in the consultancy segment. The Informant stated that the Monitoring Committee has delegated wide powers to REC for approval of final executed cost and it is virtually undertaking majority and crucial business of the Monitoring Committee to carry out the work related to sanctioning, disbursal, etc. under the RGGVY scheme. It is further stated that the RGGVY scheme is under the



control of REC and placing its management personnel in all the spheres and stages of the RGGVY scheme is definitely causing 'conflict of interest'.

12. From the facts and circumstances of the case, it is apparent that Informant is aggrieved by the fact that the Opposite Party is securing business orders from various state distribution utilities on the verbal promise that it will be able to get the approvals by its parent company REC as CEO of the Opposite Party is the same as the head of RGGVY programme. Further, REC is preparing DPRs of various state distribution utilities on behalf of the Opposite Party and also approving the same, hence there exists conflict of interest. The Informant is also aggrieved by the fact that the States are awarding DPR preparation work to the Opposite Party on nomination basis without following the tendering process which is against the CVC guidelines and the competition law principles.
13. Since the Opposite party is a wholly owned subsidiary of REC, they may be considered as a group for the purpose of the Act. Since the allegations raised in the Information pertain to the alleged abuse of dominant position by the Opposite Party in terms of section 4 of the Act, determination of relevant market is required as the starting step.
14. *Prima facie*, there seems to be two relevant product markets in this case. The first relevant product market appears to be the 'market for financing of rural electrification schemes'. It may be noted that electricity sector in India is financed through various institutions like banks, infrastructure companies and specialized institutions like PFC (Power Finance Corporation Ltd.), REC etc. In the present context, a distinction is made between financing rural electrification schemes and financing non-rural electrification schemes. Given the nature of rural electrification schemes, finance for rural electrification scheme appears to be different from finance for non-rural electrification schemes to the extent that assets created under both categories are distinctly different. Also, rural electrification projects can happen through stand alone



and decentralized generation without transmission. Thus, the product characteristics of the two schemes seem to be different. On the issue of pricing, whereas the Government provides subsidy for rural electrification schemes, no such subsidy is provided for non-rural electrification schemes. Further, it is noticed that REC was specially created to cater to the needs for financing of rural electrification projects which indicates that this market is somewhat different from finance for non-rural projects. Therefore, the Commission is of the opinion that the first relevant market in this case would be 'market for financing of rural electrification schemes'. In this market REC is operating as an infrastructure finance company providing finance to power generation, transmission and distribution projects. The second relevant product market appears to be 'market for providing consultancy services in power projects'. Since there appears to be no distinction between entities that prepare DPR for rural electrification schemes and those who make DPR for non-rural electrification schemes, there is no need to segregate the second relevant market on this basis. Therefore, the second relevant product market would be the 'market for consultancy services in power projects' and in this market the Opposite Party provides consultancy services such as preparation of DPRs.

15. The relevant Geographic market in this case appears to be the whole of India for both the relevant product markets determined above. Accordingly, the relevant markets in this case would be the 'market for financing of rural electrification schemes in India' and the 'market for providing consultancy services in power projects in India'.
16. With regard to assessment of dominance of REC, it may be noted that REC is operating as an infrastructure finance company providing finance to power generation, transmission and distribution projects. As per the information available in public domain, it is the leading public Infrastructure Finance Company providing financial assistance to rural electrification schemes in India. It finances and promotes rural electrification projects across India, operating through a network of Project Offices and Zonal Offices besides



providing loans to Central/ State Power Utilities, State Electricity Boards, Rural Electric Cooperatives, NGOs and Private Power Developers. The publically available information suggests that besides fringe players like India Infrastructure Finance Co Ltd. (IIFCL) and Industrial Finance Corporation of India (IFCI), there are two major players in the market for providing finances in power sector projects such as REC and PFC. Since, the relevant market for providing finances in power sector projects has been segregated into rural and non-rural electrification projects for this matter, the strength of REC has to be seen in that context.

17. Although the Informant did not provide data regarding finance to rural electrification, the Commission has reasons to form *prima facie* opinion that REC is dominant in the first relevant market *i.e.*, ‘market for financing of rural electrification schemes’. It is so because REC is a specialized institution for finance to rural electrification scheme and there is a floor-level below which PFC does not provide finance to power projects since rural projects are normally of low investment. Further, it is the sole nodal agency for RGGVY scheme, the flagship scheme for rural electrification with an outlay of about Rs. 33,500 crores in XII Plan.
18. On the issue of abuse, the Informant has alleged that REC is abusing its dominant position in the ‘market for financing of rural electrification schemes’ by influencing the state utilities to get the DPRs done by the Opposite Party in return of the promise that the finance would be arranged by REC. Thus, it is foreclosing the second relevant market *i.e.*, ‘market for consultancy services in power projects in India’ to other eligible DPR making firms. The Informant has cited some instances where the state utilities have given the work of DPRs on nomination basis.
19. It appears that the Opposite Party group has tried to use its position in the ‘market for financing of rural electrification schemes’ to distort/manipulate competition in the ‘market for providing consultancy services in power projects’. It seems to have been done to benefit the Opposite Party. The act of



excluding other power utilities (*e.g.*, Electrical Research and Development Association (ERDA), MECON Limited, WAPCOS Limited, Power Grid Corporation India Limited (PGCIL), National Thermal Power Corporation Limited (NTPC), *etc.* from the market for providing consultancy services in power projects appears to be violative of section 4(2) (e) of the Act, as the same *prima facie* amounts to leveraging the dominant position in one relevant market to protect another market. The effect of such exclusionary conduct can be inferred from the facts and figures submitted by the Informant pertaining to the comparison of number of projects awarded under RGGVY where DPRs are prepared by the Opposite Party and those in which case DPRs are prepared by other consultants. For 2013-14, the Opposite Party prepared DPRs for 79 projects out of 209 sanctioned projects. Accordingly, the Opposite Party had prepared the DPRs in 37.80% of the projects which were sanctioned by REC under the RGGVY scheme in 2013-14.

20. Further, the said conduct of REC and the Opposite Party amounted to denial of market access to other utilities who were capable enough to prepare DPRs and were in competition with the Opposite Party in contravention of the provisions of section 4(2) (c) of the Act .
21. On the basis of foregoing, the Commission is of the opinion that *prima facie* the conduct of REC and the Opposite Party appears to be anti-competitive in terms of the provisions of section 4(2) (c) and section 4(2) (e) of the Act and the matter deserves to be investigated by the Director General ('DG') under section 26(1) of the Act.
22. Accordingly, the Commission directs the DG to cause an investigation into the matter and to complete the investigation within a period of 60 days from receipt of this order.
23. It is, however, made clear that nothing stated herein shall tantamount to an expression of final opinion on the merits of the case and the DG shall conduct the investigation without being influenced by any observations made herein.



24. The Secretary is directed to send a copy of this order alongwith the information and the documents filed therewith to the Office of the DG forthwith.

25. It is ordered 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
Dated: 13.01.2015