

Competition Commission of India

Case No. RTPE 19 of 2008 (MRTP)

Dated: 31.05.2011

In re: in the matter of *suo moto* cognizance taken by MRTP Commission against NDPL, BRPL and BYPL on the basis of newspaper report dated 08.04.2008.

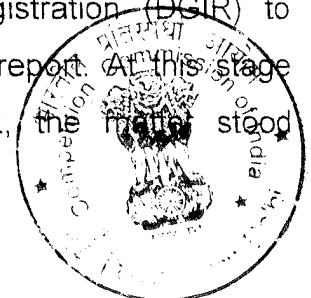
ORDER

Per P N Parashar (concurring)

The present case has been received by the Commission consequent upon the repeal of the Monopolies and Restrictive Trade Practices Act, 1969 ('the MRTP Act') under section 66(6) of the Competition Act, 2002 ('the Act').

2. Briefly stated, the MRTP Commission took *suo moto* cognizance of news report/article published in the national daily, the Hindustan Times, dated 08.04.2008. As per the said news item, it was reported that "*the Delhi Government has finally endorsed what many delhiites have long argued. A sarkari penal has concluded that electronic power meters in the city indeed run faster than they should.*" It was also reported in the said news item that at its first meeting held at the end of March, the six member Electricity Consumers Advocate Committee (ECAC) noted that most meters tested by Bangalore Central Power Research Institute (CPRI) under the aegis of the Public Grievance Cell (PGC) were found to be fast. The margin of error was reported to be 2.5%, much more than the acceptable 0.5%.

3. The MRTP Commission after taking *suo moto* cognizance of the aforesaid news report directed the Director General of Investigation and Registration (DGIR) to investigate the matter and to submit a preliminary investigation report. At this stage when the matter was pending investigation before the DGIR, the matter stood



transferred to the Commission in terms of provision contained in section 66 (6) of the Act as noted above.

4. The Commission, on consideration of the facts and circumstances of the case, found that there exists a *prima facie* case for making a reference to the Director General (DG) to conduct an investigation into the matter and accordingly, the Commission passed an order under section 26 (1) of the Act on 23.11.2010 directing the DG to conduct investigation into the matter and submit his report.

5. Pursuant to the order passed by the Commission, the DG conducted the investigation and after completing the investigation submitted his report on 24.01.2011 to the Commission.

6. The DG noted in his report that the only issue for investigation in the present case relates to the fastness and accuracy of consumer meters. The DG further noted that a similar issue was dealt with in detail in the investigation report submitted in Case No. 06 of 2009 against the same parties and therefore, further investigation may not be required.

7. The Commission considered the entire material available on record. It has been noted in the order prepared by my learned brethren that since the issue involved in the present case is the same which has already been dealt with by the Commission *vide* its detailed order in Case No.06 of 2009 and hence the *ratio* of that case is equally applicable to the facts and allegations of the present matter as well. It has been further held in that order that on the basis of the *ratio* of Case No. 06 of 2009, the Commission does not find any violation of the provisions of section 3 and 4 of the Act. The matter was accordingly disposed of.

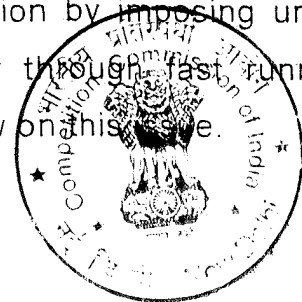
8. In Case No. 06 of 2009, an information was filed by Shri Neeraj Malhotra under section 19 of the Act against North Delhi Power Limited (NDPL), BSES Rajdhani Power Limited (BRPL) and BSES Yamuna Power Limited (BYPL) alleging, *inter alia*, violations of the provisions of sections 3 and 4 of the Act. As per the information, it was alleged that the above named companies were



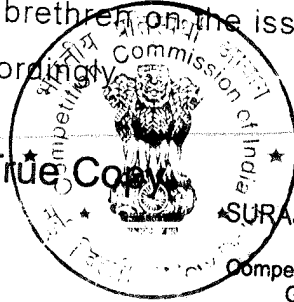
engaged in supply and distribution of electricity to the consumers within the territory of Delhi. It was further alleged that these companies have made it compulsory for their consumers to install the meters provided by them and these meters record higher readings than the actual consumption by the consumers.

9.* *Vide* my separate dissenting order dated 11.05.2011 in the above case, I found that all the three distribution companies, viz., NDPL, BRPL and BYPL have abused their dominant position in the relevant market of distribution/supply of electricity and the relevant market of distribution/supply of consumer meters by imposing unfair conditions on purchase/sale of electricity and consumer meters in contravention of section 4 (2) (a) (i) of the Act. I have also held that these companies by their acts in the relevant market of supply/distribution of consumer meters have denied access of this market to the other distributors/vendors of the Consumer Meters and hence abused their dominant position in above said market in contravention of section 4(2) (c) of the Act.

10. However, on the issue of fast running of meters, I found *vide* my aforesaid order that the findings of the DG in relation to fastness of the meters are primarily based on tests of 2014 meters conducted by the PGC through the CPRI. It was observed therein that this sample seemed too small and consisted of meters in relation to which complaints were made. Hence, the sample taken in the above test was not considered to be a representative sample of all the consumer meters. It was also found that the results of the PGC tests and the other material on record in this regard were not sufficient to conclude that the electricity distribution companies have supplied faulty meters to the consumers. In the absence of sufficient and cogent evidence, I noted that it cannot be said that the distribution companies have abused their dominant position by imposing unfair and discriminatory conditions in purchase of electricity through fast running meters. I had accordingly, concurred with the majority view on this issue.



11. With the aforesaid observations, I concur with the view expressed in the order prepared by my learned brethren on the issue of fast running of meters and dispose of the information accordingly.



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