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Fair Competition  
For Greater Good

**COMPETITION COMMISSION OF INDIA**

**Case No. 20 of 2017**

**In re:**

**Tata Power Delhi Distribution Limited  
NDPL House, Grid-station Building,  
Hudson Lines, Kingsway Camp,  
Delhi - 110009**

**Informant**

**And**

**NTPC Limited  
NTPC Bhawan, Scope Complex,  
7 Institutional Area, Lodhi Road,  
New Delhi - 110003**

**Opposite Party**

**CORAM**

**Mr. Devender Kumar Sikri  
Chairperson**

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

**Mr. Sudhir Mital  
Member**

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

**Justice G. P. Mittal  
Member**



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

1. The present information has been filed by Tata Power Delhi Distribution Limited (**'Informant'**) under Section 19(1)(a) of the Competition Act, 2002 (the '**Act'**') against NTPC Ltd. (**'OP'**) alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. The Informant is a joint venture company having 51 % equity owned by Tata Power Company Limited and 49% equity owned by Delhi Power Company Limited (**DPCL**) - a wholly owned company of the Government of National Capital Territory of Delhi (**NCTD**). It is engaged in the distribution of electricity in the North and North-West circles of NCTD and its business *i.e.* tariff, expenditure, revenue, *etc.* as well as performance is regulated by Delhi Electricity Regulatory Commission (**DERC**). Being a distribution company (**DISCOM**), the Informant has been procuring electricity from the OP - a generating company (**GENCO**) - *vide* a composite Power Purchase Agreement (**PPA**) entered into between the Informant and the OP on 08.05.2008 for the purpose of distribution in NCTD. It is stated that the OP is a Central Public Sector Undertaking (**CPSU**) established in 1975 to accelerate power development in India and it is an energy conglomerate present in the entire value chain of the power generation business. As per the Informant, the OP is the foremost power generator in India contributing 24 percent of the total power generation in India and it is the largest power supplier in Delhi.
3. The Informant has alleged that the OP has been abusing its dominant position by imposing unfair conditions through PPAs and not providing exit clause *qua* the Informant in the PPAs. It is averred that the OP has been inordinately delaying the commercial operation of its plants for which PPAs have already been signed and forcing the Informant to procure power from its old plants resulting in increase in power purchase cost. It is using low grade of coal (with low gross calorific value) for generating electricity and calculating tariff based on higher



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grade of coal (with higher gross calorific value) resulting in increase in retail tariff for the end consumer. It is also imposing onerous payment security mechanism in the PPAs which requires the Informant to open a composite Letter of Credit (LoC) in favour of the OP for all its power stations. Further, the OP has been restricting the supply of electricity from other GENCOs to DISCOMs by virtue of the contractual obligations under the long term PPAs that can be terminated only at behest of the OP as well as denying market access and creating barriers to entry for the competitors of the OP in the market for procurement of electricity by DISCOMs in the NCTD. The Informant has also alleged that the OP is foreclosing market for the DISCOMs in the NCTD as they cannot enter into fresh PPAs with competitors of the OP.

4. It is stated that the PPAs that form the basis of the above allegations were signed by the OP with the Delhi Transco Limited (**DTL**) and these were re-assigned to the Informant *vide* order of the DERC dated 31.03.2007 with the pre-existing onerous, non-negotiable and one-sided terms and conditions. Subsequently, pursuant to the order of the DERC, the Informant entered into a composite PPA with the OP in 2008, with respect to all plants of the OP that supplied power to the Informant, subject to the capacities allocated to the Informant by the DERC. It is stated that the validity of the composite PPA for various existing and future power stations of the OP varied from 15 years to 30 years from the date of commercial operation. Further, the composite PPA also pertained to plants that were yet to be commissioned.
5. As per the information, on 22.03.2012, a supplementary PPA was executed between the OP and the Informant as the term of certain PPAs forming part of the composite PPA relating to certain generation plants were nearing their expiry date. However, in 2015, the said supplementary PPA was disallowed by the DERC retrospectively. When the Informant inquired regarding the status of the future plants and plants that were supposed to have been commissioned by the OP, the OP, in its response, informed that commissioning of three plants would



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take three to four years and for five plants, it was unable to anticipate the date of commercial operation. It is averred that owing to such inordinate delay in the commissioning of plants and the prevailing uncertainty, the Informant had no option but to make alternate arrangements for procuring power to meet the consumer demand in its area of supply, which it is obligated to meet under the Electricity Act, 2003. Further, in terms of the directions of the DERC dated 21.10.2009 read with the Delhi Electricity Supply Code and Performance Standard Regulations, 2007, the Informant is bound to arrange and supply 99 percent of power to the consumers and is obligated to ensure load shedding ceiling of not more than 1 percent of its monthly power supply.

6. Resultantly, in 2016, the Informant, *vide* its letter dated 25.10.2016 to the OP, sought termination of the PPAs for NTPC plants which did not meet their date of commercial operation or whose date of commercial operation got delayed inordinately. However, the OP in its reply stated that the Informant is bound by the terms and conditions of the PPAs including the obligation to pay the fixed charges and the variable charges as provided in the PPAs for the existing plants in operation. Further, the Informant has stated that it had conducted a competitive bidding tender to meet its obligation of power supply and found that electricity could be procured at a much cheaper rate than the rate at which the OP was supplying. However, when the Informant intimated the same to the OP, it responded that the Informant was bound by the PPAs and any discovery of low tariff was not binding on the OP. The Informant has contended that if power had been procured from other GENCOs offering lower prices, it would have resulted in saving of Rs. 298 crores. However, this could not be achieved as the OP declined to terminate the existing PPAs.
7. Furthermore, the Informant has stated that the composite PPA sets out a payment mechanism that requires it to open a composite letter of credit ('LC') in favour of the OP for all plants covered under the said PPA. It is submitted that when, in 2015, the OP asked for extension of the composite LC for plants that had outlived



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their lives, including plants at Anta, Auriaya and Dadri Gas which had been disallowed by DERC, the Informant replied that it would provide the LC on a plant-wise basis rather than a composite LC, the reason being that since the Informant could not procure power from the plants which were derecognised by the DERC, there was no plausible rationale to furnish LC for such plants. In response, the OP refused to grant rebate on bill payment made by the Informant. The Informant has contended that this demonstrates that extremely long term PPA grants immense *de facto* market power to the OP.

8. It is also submitted that while low grade of coal with low gross calorific value is being used by the OP for generating electricity, for calculating tariff the gross calorific value for higher grade of coal is being claimed by the OP resulting in increase of retail tariff to the end consumer. It is alleged that the very fact that the OP is able to extract higher prices for electricity supplied to the Informant demonstrates abuse of its dominant position.
9. In addition to the above allegations of abuse of dominant position, the Informant has contended that the PPAs executed between the Informant and the OP contravene the provisions of Section 3(4) read with 3(1) of the Act as they are creating barriers to new entrants and foreclosing the market. With respect to barriers to entry, it is averred that the capital expenditure of entering the electricity generation market is extremely high and the OP by entering into such PPAs has tied up significant portion of the NCTD market for a long term making it very difficult for new players to enter the NCTD market. Further, due to the PPAs, the Informant is being deprived of market opportunities to procure power from cheaper sources. In addition, the Informant has alleged that the OP's conduct is resulting in foreclosure of market for procurement of electricity by DISCOMs in NCTD. The PPAs which were reassigned to DISCOMs prevented the Informant from entering into fresh PPAs with competitors of the OP, even short term PPAs with it are unviable and inefficient as the DISCOMs would have to pay dual



procurement charges as and when the OP's plants achieve their date of commercial operation (COD).

10. Based on the above, the Informant has, *inter alia*, prayed the Commission to initiate an inquiry against the OP, direct the OP to cease and desist from the aforesaid anti-competitive practices and to amend the restrictive and abusive clauses in the PPA, 2008 and impose maximum penalty on the OP.
11. The Commission has perused the information and material available on record and heard the parties on 20.07.2017. It is noted that the Informant has alleged contravention of the provisions of Sections 3(4) and 4 of the Act by the OP.
12. For the purposes of establishing dominance of the OP, the Informant has delineated the relevant product market as '*supply of electricity by GENCOs*' and relevant geographical market as '*NCTD*'. With respect to dominance, the Informant has submitted that the market share of the OP in the aforesaid relevant market has been significantly high since the last 10 years. It has stated the market share of the OP in the above relevant market during the period 2009-2017 to be 50-63%. The Informant has submitted the following data pertaining to power allocation in NCTD during the year 2016-2017:

<b>GENCO</b>	<b>Quantity (MW)</b>	<b>Share (%)</b>
Power allocated from NTPC	3929.69	50%
Power allocated from Delhi GENCOs	1696.96	22%
Power allocated from NHPC	478.58	6%
Power allocated from DVC	400	5%
Power allocated from THDC	102.44	1%
Power allocated from SJVNL	142.05	2%
Power allocated from NPCIL	102.83	1%



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Power allocated from Renewable Sources	100	1%
Power allocated from other sources <i>i.e.</i> CLP, Maithin, Sasan, Tala	907.49	12%
<b>Total power allocated to Delhi</b>	<b>7860.04</b>	<b>100%</b>

13. Further, in order to show the dominance of the OP, the Informant has elaborated on various other factors including the dependence of the consumers on the OP, vertical integration of the OP, size and resources of the OP along with the economic power of the OP including commercial advantages that it has over its competitors, and high entry barriers in the market.
14. As per the Informant, by imposing unfair conditions and onerous clauses in the PPAs, including absence of exit clause for the Informant and 15-25 years long duration of the contract, the OP has contravened the provisions of Section 4(2)(a)(i) of the Act. Further, delay in commercial operation of plants and charging of higher rates by the OP for supply of electricity in NCTD is also alleged to be violative of Section 4 of the Act. It is also alleged that because of the delay in commissioning of plants by the OP, the Informant had to procure electricity from other sources at higher rates.
15. On the other hand, the OP has contended that the PPAs were entered into by the OP with the procurers in Delhi including the Informant, at the instance of the Government of NCTD with the knowledge and consent of the Informant. There was no compulsion on any procurer including the Informant to sign the PPAs with the OP. All the PPAs signed prior to 2008 between the OP and the State Government Utility in Delhi were assigned to the Informant and other distribution licensees in Delhi after a detailed deliberation with them, the Government of NCTD, DERC as well as the GENCOs. Further, all the PPAs from 2008 onwards had been signed by the Informant voluntarily with the OP directly, without any compulsion. If the Informant had not desired the PPAs, there was no way the OP



or any other person could have compelled it to enter into the same. Thus, in the circumstances mentioned above, there has been no abuse of any position by the OP in the signing of the PPAs earlier with the Delhi State Utilities or later with the Informant. All such PPAs signed by the Informant and other procurers were based on the requirement to arrange availability of electricity in bulk in advance, as the establishment of generating units has a gestation period, and for long term availability of electricity to maintain the distribution and retail supply to the consumers in the licensed area.

16. Further, the OP has averred that non-availability of exit clause for the Informant in the long term PPA is not an abuse of dominant position. Investment in a generating station is substantial. The OP gets to service such investment over a period of time after the declaration of commercial operation of the generating station. It is not that the entire capital cost invested in a generating unit is to be paid to the OP on the date of commercial operation. The generator invests through equity and debt, based on the long term commitments made by the procurers. Financial closure of a project is achieved and debt is procured, based on the long term PPAs signed by the procurers with the OP. The tariff payable by the procurers for electricity supplied from the date of commercial operation of the generating units is the only avenue to service the capital cost. A provision for exit clause in the PPA whereby the procurers could terminate the PPA, would leave the generator in lurch. Also, an exit clause in the manner suggested by the Informant so as to enable the Informant to avoid payment of tariff, would make it impossible for the generator to achieve financial closure and no generator would be able to set up a power project for such high capacity involving huge investment of about Rs 5 to 6 crores/ megawatt. Accordingly, the plea raised by the Informant is misconceived.
17. With respect to the allegation that the Informant was forced by the OP to sign the PPAs in the years 2008 and 2009 without a termination or an exit clause, the OP has submitted that the allegation was an afterthought and raised after a period of



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more than 8 years of entering into the PPAs. The Informant has signed the PPAs consciously and knowing fully well that in such PPAs, there cannot be any unilateral exit clause. Further, the OP has emphasised that it is a settled principle of law that in cases of agreements freely and voluntarily entered into, there can be no question of parties being not bound by the terms and conditions of the agreement. The OP has referred to the judgment passed by the Hon'ble Supreme Court in the case of *Excise Commissioner v. Issac Peter*, (1994) 4 SCC 104, which was considered by the Appellate Tribunal for Electricity in the case of *Indian Oil Corporation Limited v Gujarat State Petroleum Corporation Limited 2014 ELR (APTEL) 579*, to hold that Gas Supply Agreements entered into between the parties of their own volition for commercial purposes cannot be said to be an abuse of dominant position.

18. With respect to the allegation of delay in commissioning of plants, the OP has explained its position regarding various PPAs that the Informant has alleged should be allowed to be terminated on ground of delay. As regards the projects where investment has not been made so far, the OP has referred to the Minutes of Meeting held on 21.04.2016, chaired by the Secretary (Power), Government of NCTD to discuss the issues between Delhi DISCOMs and the OP, wherein it was recorded that:

**“5. List of upcoming projects of NTPC**

*NTPC provided a list of upcoming projects where they have made significant investments for its commissioning. Secretary (Power) requested NTPC to provide a list of those non COD plants where no investment has been made till date. ED, NTPC also assured that they would take prior consent of Delhi DISCOMs before making investments in the non COD stations where till date no investment has been made by them.... ”*



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19. The OP has stated that the above was within the knowledge of the Informant and yet the Informant chose to make allegations against the OP. Further, as regards the North Karanpura project referred to by the Informant, the OP has pointed out that the Informant has no allocation and as such, cannot have any grievance. With respect to other projects under construction, the OP has stated that it has already made significant investments based on the PPAs entered into and even financial closure has been achieved. Further, it has altered its position on the basis of the assured off-take of power by the various procurers including the Informant. Moreover, there are a number of other beneficiaries of the projects who have contracted to procure power. Accordingly, with respect to all such cases where investment has already been made, the OP has contended that there could not be an exit clause.
20. However, the OP has pointed out that, despite there being no legal obligation, there have been instances where the procurer has approached the Central Government with a proposal for surrender of the capacity allocated and in case the Central Government finds an alternative purchaser for the capacity, the procurer can be released of its obligation under the PPA. For instance, in the case of Tanda Stage-II Generating Station of the OP, the Informant had approached the Central Government for surrender of its share of power. When the alternate buyer *viz.* Uttar Pradesh Utility agreed to purchase the share of power of the Informant, the Informant was allowed by the Government of India to surrender its share of power from the Tanda Stage-II Generating Station and accordingly such power was allocated to the State of Uttar Pradesh.
21. The OP has submitted that the Informant has already raised the issue of surrender of power before the CERC by filing Petition No. 182/MP/2015 titled *Tata Power Delhi Distribution Ltd. v NTPC Ltd. and Ors.* and Petition No. 223/MP/2015 titled *Tata Power Delhi Distribution Ltd. v NTPC Ltd. and Ors.*, whereby CERC, *vide* its orders dated 31.03.2017 and 18.04.2017 respectively, has granted liberty to the Informant to approach the Ministry of Power, Government of India for



exploring the possibility of the capacity being given to any other procurer. The CERC however, did not agree to release the Informant from its obligations assumed under the PPAs.

22. Further, with respect to the issue of higher tariffs due to delay in commissioning of the projects, the OP has stated that the same will be considered by the CERC at the time of determination/ approval of tariff for the specific project. The OP will be filing a tariff petition before the CERC near to the date of commercial operation in the prescribed format as provided in the Tariff Regulations and other applicable Regulations notified by the CERC. The information to be given by the OP in that petition would include the details of time overrun and the consequential cost overrun. The cost overrun will be considered by the CERC in a transparent process with the participation of all the stakeholders including the Informant. The procurers, including the Informant will then have the opportunity to make their submissions before the CERC. The cost overrun will be allowed by the CERC only if it considers that time overrun is not attributable to the OP or its contractor or sub-contractor *etc.* If it is found that the delay was for reasons attributable to the OP, it will not be a pass through in tariff. However, in case where the time overrun is not attributable to the OP, then it will be unfair, unjust and inequitable to deny it the related cost overrun. Thus, the OP has submitted that there is an appropriate remedy available to the Informant as a stakeholder before the CERC to contest the time overrun and cost overrun claims of the OP for the power projects which are delayed. The OP has stated that in the orders dated 31.03.2017 and 18.04.2017 passed by the CERC in the petitions made by the Informant, this aspect has been specifically covered.

23. Further, the OP has contended that the issues raised by the Informant in the present information all relate to determination of tariff and are matters under the regulatory control of the CERC. With respect to the issue that the Informant is being asked to procure electricity at a higher tariff, the OP has submitted that tariff related issues including determination of tariff as raised by the Informant in the



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present case are entirely within the domain of the sectoral regulator, *namely*, the CERC. In this regard, the OP has referred to the judgment dated 16.02.2017 passed by the erstwhile Hon'ble Competition Appellate Tribunal (COMPAT) in Appeal No. 33 of 2016 in the case of *Anand Prakash Agarwal v Dakshin Haryana Bijli Vitran Nigam Limited*, wherein it was *inter alia* observed that the Electricity Act, 2003 is a self-contained, comprehensive legislation that vests the appropriate commission under that Act power to fix tariff, which includes Fuel Supply Agreements and that there is an implied immunity from the competition law in matters of electricity tariff approved by the appropriate commission in terms of the Electricity Act, 2003.

24. As regards the issues relating to Letter of Credit, rebate *etc.*, the OP has submitted that these relate to payment security mechanism and have nothing to do with abuse of any position. It is submitted that Letter of Credit, rebate *etc.*, are as per the terms agreed to which have been implemented for about the last 9 years by the Informant without any reservation. These cannot now be alleged to be an abuse of dominant position by the OP. In any event, the Informant has raised the same issue before the CERC also, which is pending adjudication.
25. Having considered the submissions of the Informant as well as the OP with respect to the allegation of contravention of Section 4(2)(a)(i) of the Act, the Commission is of the view that as the composite PPA was entered into between the Informant and the OPs pursuant to the directions of the DERC in 2008, it cannot be said that the same was imposed by the OP. The Informant had bound itself contractually in the long term PPAs which were reassigned to it pursuant to the order of the DERC. Moreover, not all PPAs in respect of which Informant sought termination from the OP in 2016 were reassigned to the Informant. As per the information, the PPAs in respect of which termination was sought by the Informant are as follows:



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<b>Sl. No.</b>	<b>Name of Plant</b>	<b>Date of Signing of PPA (DVB/DTL/TPDDL)</b>	<b>Remarks/ Status</b>	<b>Part of 2008 PPA</b>
1.	Anta Gas Power Station II	12.02.1999 (Signed by DVB)	COD not achieved	Yes
2.	Auriya Gas Power Station II	12.02.1999 (Signed by DVB)	COD not achieved	Yes
3.	Koldam Power Station	24.02.2002 (Signed by DVB)	Currently allocated to Himachal Pradesh	Yes
4.	North Karanpura Power Station	19.04.2006 (Signed by DTL)	COD not achieved	Yes
5.	Lata Tapovan HEP	09.09.2009 Signed by TPDDL)	COD not achieved	No
6.	Gibberbaha TPS	28.12.2010 (Signed by TPDDL)	COD not achieved	No
7.	Meja Urja Vidyut Power Station	05.11.2010 (Signed by TPDDL)	COD not achieved	No
8.	Bilhaur TPS	28.12.2010 (Signed by TPDDL)	COD not achieved	No
9.	Tanda II TPS	05.11.2010 Signed by TPDDL)	COD not achieved	No
10.	Tapovan Vishnugad HEP	05.11.2010	COD not achieved	No
11.	Unchahar IV TPS	03.03.2011 (Signed by TPDDL)	COD not achieved	No



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26. It is noted that out of the 11 PPAs in respect of which termination was sought by the Informant, only four PPAs *i.e.* PPAs with respect to Anta Gas Power Station II, Auriya Gas Power Station II, Koldam Power Station and North Karanpura Power Station, were part of the composite PPA reassigned to the Informant in 2008, the remaining PPAs were entered into by the Informant with the OP after 2009. Thus, if the Informant was aggrieved with the terms and conditions of the PPAs, it had an option to negotiate the terms or refrain from entering into the new PPAs and purchase power from other sources to meet its obligations under the Electricity Act, 2003.
27. In this regard, the Informant has argued that the OP was in a dominant position at the time and it had limited ability to negotiate or arrange alternate sources of supply. Accordingly, it had entered into the other PPAs but had not factored in the inordinate delay in commission of its plants by the OP.
28. In this regard, it is noted from the submissions of the Informant and the OP that, the Informant had approached the CERC *vide* Petition no. 182/MP/2015 (*supra*), wherein the Informant *inter alia* prayed that the PPAs executed by the Informant with the OP for latter's upcoming generating stations be declared as discharged by operation of law as they had been frustrated on the ground of inordinate delay in their commissioning, and thereby sought repudiation of its obligations under the PPAs. With respect to this issue, the CERC in its order dated 31.03.2017 *inter alia* observed that:

*“24....The Commission is of the view that even though the tariff of NTPC is regulated by this Commission in exercise of power under Section 79(1)(a) of the Act, the disputes raised in the part petition relate to termination of PPA on account of inordinate delay for execution of the project which fall outside the scope of Section 79(1)(a) of the Act.*



*Therefore, the petition is not maintainable and the prayer of the petitioner for declaration regarding discharge of PPA cannot be granted.”*

29. The dispute regarding termination of PPAs having been thus decided by the CERC, the Informant has approached the Commission alleging abuse of dominant position by the OP by virtue of having included such onerous terms and conditions in the PPAs that the Informant does not have an option to exit the long term PPAs. In this regard, the Commission takes note of the submissions of the OP whereby it has been stated that although the Informant and other procurers are bound by the terms and conditions of the PPAs, they can approach the Ministry of Power, Government of India, for reallocation of power to any procurer in case they do not wish to take power at any time during the operation of the long term PPAs. The release of procurer from the PPAs is, however, subject to the Ministry of Power, Government of India being able to reallocate the power to any other procurer and limited to the period for which such reallocation fructifies.
30. In addition, the Commission takes note of the decision of the CERC in another petition filed by the Informant *i.e.* Petition No. 223/MP/2015 (*supra*), wherein it had *inter alia* requested the CERC to issue directions to the Central Government to reallocate power allocated to it to other states and the CERC *vide* its order dated 18.04.2017 had held that:

*“24....It is entirely within the purview of the Central government to allocate or reallocate power from the Central Generating stations to the beneficiaries and the same being not covered under regulation of tariff under Section 79(1)(a) of the Act cannot be subject to adjudication under Section 79(1)(f) of the Act by this Commission. Therefore, the prayer of the Petitioner for issue of directions to the Central Government to allocate the Petitioner’s entire share of power from the generating stations of NTPC, NHPC and THDC to*



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*power deficit States/ Utilities cannot be entertained as the same is beyond the scope of the power vested in the Commission under Section 79(1)(a) and (f) of the Act. However, the Petitioner may approach the Central Government with its grievance for redressal.”*

31. Thus, from the submissions of the OP and the decision of the CERC, it appears that the Informant has an option to exit its obligation under the PPAs, however, this would require the Informant to approach the Central Government.
32. In view of the foregoing, the Commission is of the opinion that even if it is assumed that the OP was in a dominant position in the relevant market as identified by the Informant, a *prima facie* case of abuse of dominance in terms of the provisions of Section 4(2)(a)(i) of the Act is not made out in the instant matter because, firstly, the Informant has entered into the PPAs with the OP being fully aware of the terms of the PPAs including the long term obligation stipulated thereunder; secondly, there is a rational basis for binding the Informant and other procurers in the long term PPAs as the generating companies invest in establishing the generating stations based on allocation and the PPAs entered into with the parties (which are to be served through period agreed upon); and lastly, the Informant and other procurers have the option to approach the Central Government for reallocation of power allocated to them.
33. Further, in terms of competition law, in cases of abuse of dominant position, the seminal issue is what harm is caused to the end consumer due to the behaviour of the dominant player. In the facts and circumstances of the case, the primary harm that can be envisaged is increased tariffs of electricity for the consumer. Notably, in the electricity sector, the mandate of determination and regulation of tariff is within the domain of the sectoral regulator *i.e.* Central/ State Electricity Regulatory Commission; a function that the sectoral regulator performs in accordance with the statutory power vested in it by the Electricity Act, 2003 and



applicable rules and regulations. Accordingly, there is nothing left in the matter that needs to be looked into by the Commission.

34. In addition to the allegations under Section 4(2)(a)(i) of the Act, the Informant has also levelled allegations of contravention of Section 4(2)(b) and 4(2)(c) of the Act by the OP. With respect to Section 4(2)(b), it has stated that by imposing the terms of PPA, the OP is restricting the supply of electricity from other GENCOs to DISCOMs in the relevant market. Regarding Section 4(2)(c), it is submitted that in a capital intensive market, it is very difficult for the new private players to get regulatory approvals to generate and supply electricity and that the long term PPAs between CPSUs and DISCOMs make it more difficult for the other players to compete. As a result, the competitors of the OP are being denied market access in the relevant market. In this regard, the Commission observes that these allegations also emanate from the allegedly abusive PPAs executed with the OP, an aspect which has already been dealt with above.
35. Apart from alleging contravention of Section 4 of the Act, the Informant has also alleged violation of the provisions of Section 3(4) read with 3(1) of the Act. The Informant has stated that the PPAs of the OP have an appreciable adverse effect on competition as the OP is creating barriers for the new players to enter into the power generation market. Further, the OP is foreclosing the Informant from procuring electricity from other GENCOs. It is noted that these allegations have been made by the Informant without substantiating the same with adequate information or data. Further, these allegations also stem from the terms of the PPAs which have already been dealt with. Accordingly, no case of contravention of the provisions of Section 3(4) read with 3(1) of the Act is also found.
36. In view of the above, the Commission is of the opinion that no *prima facie* case of contravention of either Section 3(4) or Section 4 of the Act arises in the facts



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and circumstances of the present case and the matter is closed forthwith in terms of the provisions of Section 26 (2) of the Act.

37. The Secretary is directed to communicate to the parties accordingly.

**Sd/-**

**(Devender Kumar Sikri)  
(Chairperson)**

**Sd/-**

**(S. L. Bunker)  
Member**

**Sd/-**

**(Sudhir Mital)  
Member**

**Sd/-**

**(U. C. Nahta)  
Member**

**Sd/-**

**(Justice G. P. Mittal)  
Member**

**New Delhi**

**Dated: 12.10.2017**