

Competition Commission of India

Case No. UTPE 45 of 2005 (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 reports dated 06.06.2005 and 29.06.2005.

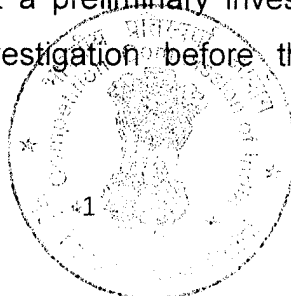
ORDER

Per P N Parashar (dissenting)

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 two news reports/articles published in the national daily, the Hindu, dated 06.06.2005 and 29.06.2005. As per the news item dated 06.06.2005, it was reported that the meters installed by electricity distribution companies in Delhi were having faulty wiring which resulted into the fast running of the meters by 8% to 15%. It was also reported that the distribution companies did not spread awareness among the consumers about the cause for increase in their power bills. Further, as per the news item dated 29.06.2005, it was reported that the distribution companies have failed to provide efficient services and improved quality of power to a vast majority of consumers in Delhi.

3. The MRTP Commission after taking *suo moto* cognizance of the aforesaid news reports 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.

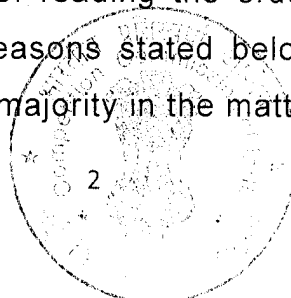
4. The Commission, on consideration of the facts and circumstances of the case, found that there exists a *prima facie* case for making a reference to the Director General (DG) to conduct an investigation into the matter and accordingly, the Commission passed an order under section 26 (1) of the Act on 19.08.2010 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 investigations and after completing the investigation submitted his report on 01.10.2010 to the Commission.

6. The DG in his report has noted that since the issues/allegations involved in the present case have already been investigated against the same parties in Case No. 06 of 2009 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 issues involved in the present case are the same which have already been disposed of 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 case as well. It has been further observed 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. It has also been held that the allegations regarding distribution companies not providing efficient services to the consumers and warning given by them to the consumers of electricity of severe penalties in case of overdrawl of the power by the consumers do not raise any competition issues. The matter has been accordingly disposed of.

8. I have had the advantage of reading the order prepared by my learned brethren. With respect, for the reasons stated below, I find myself unable to concur with the view taken by the majority in the matter.



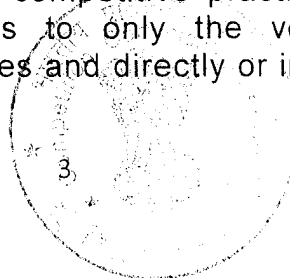
9. In Case No. 06 of 2009, an information was filed by Shri Neeraj Malhotra under section 19 of the Act against North Delhi Power Limited (NDPL), BSES Rajdhani Power Limited (BRPL) and BSES Yamuna Power Limited (BYPL) alleging, *inter alia*, violations of the provisions of sections 3 and 4 of the Act.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

10. *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.

11. As the issues involved and the parties enquired in the present matter are similar to those involved in Case No. 06 of 2009 and accordingly, following the same line of reasoning and analysis in this matter also, I pass the following order against the electricity distribution companies, *viz.*, NDPL, BRPL and BYPL by directing them to :

a) comply with the sectoral laws and cease and desist from publishing incorrect or incomplete information or misleading the consumers in any manner with respect to the choice of meters available to the consumers;

b) cease and desist from anti-competitive practices of limiting the consumers' choice of meters to only the vendors of meters approved by the opposite parties and directly or indirectly restricting

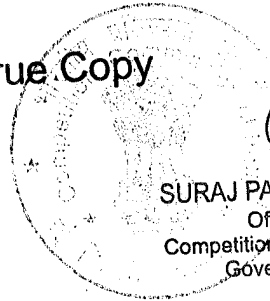


and/or denying market access to the relevant market of distribution/supply of consumer meters; and

c) publish complete and accurate information on their respective websites as required by the relevant laws and take necessary steps to make consumers aware of their right to procure a meter of their own choice.

12. The matter stands disposed of in the aforesaid terms.

Certified True Copy



SP Gahlaut
14/7/2011
SURAJ PARKASH GAHLAUT
Office Manager
Competition Commission of India
Government of India
New Delhi