

Vidharbha Industries Association v. MSEB Holding Company Ltd. and others (Case No 12 of 2014)

Decision date: 21.04.2017

Keywords: *Abuse of dominant position; power supply; electricity distribution; electricity generation; electricity tariff*

Issue: Whether the Opposite parties abused their dominant position and denied market access to other efficient power generating companies in Maharashtra?

Rule: Sec. 4 of the Competition Act, 2002

The informants, Vidharbha Industries Association, alleged that MSEB Holding Company Limited ('OP 1'), Maharashtra State Power Generation Company ('OP 2'), Maharashtra State Transmission Company Limited ('OP 3') and Maharashtra State Electricity Distribution Company Limited ('OP 4') have abused their dominant position by deliberately generating and distributing electricity in an extremely inefficient manner and denying market access to other efficient power generating companies for generating and distributing electricity in the State of Maharashtra. It was averred that irrespective of the price charged by OP 2, OP 4 purchases all the electricity/ power generated by OP 2. It was stated that OP 4 has arbitrarily entered into long-term Power Purchase Agreement (PPA) with OP 2 and the tariff of power purchased by OP 4 is decided by Maharashtra Electricity Regulatory Commission (MERC) as per PPA entered into between OP 2 and OP 4. As per the Informant, since the electricity tariff was decided by MERC as per the cost structure and revenue forecast submitted by OP 4, MERC is determining higher electricity tariff as compared to all other states in India because of the fact that OP 4 is procuring electricity from OP 2 at a higher rate. It was alleged that due to inefficiency and high price charged by OP 2, the cost structure of OP 4 remains very high. Resultantly, MERC is determining higher electricity tariff which is against the interest of the consumers.

The Commission defined the relevant market in the present matter to be the market for the '*provision of services for distribution of electricity in the State of Maharashtra except Mumbai*'. The Commission then observed that OP 4 has a market share of 100% in the relevant market. Therefore, it concluded that OP 4 enjoyed a position of strength unchallenged by any

competitor in the relevant market which enables it to operate independently of competitive forces and affect its consumers and relevant market in its favour. Therefore, OP 4 had a dominant position.

However, the Commission concluded that OP 4 did not abuse its dominant position in the market since it did not deny market access to other power generating companies, it did not purchase power from OP 2 at a higher cost that resulted in unfair price on the consumers, and it did not deny open access to the consumers.

Based on the above analysis, the Commission concluded that OP 4 did not abuse its dominant market position in contravention of Section 4 of the Act.

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