

Letter to Mr. Pramod Deo, Chairman, CERC
Draft CERC (Prevention of Adverse Effect on Competition) Regulations, 2012
05 October, 2012

Dear Dr Deo,

Greetings!

2. We perused the subject draft regulations (No. L-1/114/2012-CERC dated 22nd August, 2012) put up for comments on the Central Electricity Regulatory Commission's website. Though the last date has passed, I urge you to kindly look into my following submission.

3. Alas, we did not know about the draft regulations as there was no public notice as such, and neither any reference was made to Members of the Advisory Committee to the CERC. I think I am or was one of the Members, but have not received any notice as such. Furthermore, as an accredited consumer group we have been receiving many notices for consultations and hearings from CERC in the past, but have not been informed about this draft regulation.

4. If you may kindly recall that one of the meetings of the Advisory Committee in February/March 2009 on Open Access (a vital competition promotion provision), I had mentioned that the government and the CERC should push our States to adopt open access regulations, so that it can lead to a healthy and competitive market place. Many states are still dragging their feet and/or are confused. I had added that Competition Commission of India should be the body to regulate anticompetitive practices in the country.

5. That said, we find the subject draft regulations incongruous in the contemporary context, even though it is legitimate for CERC to draft them as per the Electricity Act, 2003 which does empower ERCs to not only promote but also regulate competition in the electricity sector. In theory the regulations should have been formulated long ago because the Electricity Act came into being in 2003/2004., but was not done for reasons that I had advocated with you personally. However, the Competition Commission of India (CCI) is already in place to regulate anticompetitive practices in the country, as per the Competition Act, 2002. Due to litigation at the Supreme Court and adoption of gross amendments in the Competition Act until 2007-08, the CCI could not come into full splendour until 2009.

6. At one of our seminars on Competition Policy on 21st August, 2012 in Delhi, when queried about the overlap issues (i.e. dual jurisdiction of CERC and CCI on anticompetitive practices), Mr Ashok Lavasa, Additional Secretary, Ministry of Power also said that he will have no quarrel if the competition regulating powers are only with CCI. Mr Dhanendra Kumar, former Chairman of CCI was chairing the session. I have copied both of them in this mail.

7. Yesterday the Cabinet has approved the Competition Amendment Bill which will soon go to the Parliament, which seeks to empower the CCI as the sole regulator for competition in all sectors, even though they may be regulated by a sector regulator such as CERC. The amendment bill also provides for mandatory consultation between the CCI and the sector regulator whenever there is a need. This is a healthy practice followed in many advanced countries.

8. The intention of this is to promote the integrity of the economic governance system in the country, and that it can provide a predictable legal environment for both producers and consumers, and that there is no forum shopping (lawyers' paradise). Honourable Finance Minister, Mr. P. Chidambaram has advocated the same strongly and in a very forward looking way, which includes the merger regulation of banks to be done by CCI and not RBI, as was proposed in the Banking Regulation Amendment Bill which is pending before the Parliament.

9. Fortunately, Dr Veerappa Moily is the honourable Union Minister for both Power and Corporate Affairs and surely as he has championed the Competition Amendment Bill, he will be able sort out this ambiguity and anomaly arising out of the Electricity Act's provisions on anticompetitive practices. He has also been copied in.

10. In the meanwhile, may I request you to please put the draft regulations on hold until such time the Competition Amendment Bill is passed by the parliament which would also need consequent amendments in various sector regulatory laws to bring in coherence. This, as you may appreciate, is an imperative for raising the huge moneys required for our infrastructural needs.

Looking forward to your valued response, I remain,

With warm regards,

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