
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

COMPETITION LAW IN THE ELECTRICAL SECTOR

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I. ABSTRACT

A larger percentage of the population now has access to power and electricity because of administrative change.

The Electricity Act of 2003 was passed with the goals of fostering competition, defending consumer interests, and supplying electricity to all. The Act calls for a national electricity policy, rural electrification, license-free generation and distribution, open access in transmission and distribution that is phased in, mandatory State Electricity Regulation Commissions (SERCs), power trading, mandatory metering, and severe penalties for electricity theft².

However, there hasn't been much competition in the energy or power sectors, and the reasons for this may generally be traced to structural problems, entrance barriers, misuse of dominant positions, etc. However, the industry is undergoing a big change in how it conducts business, and more partners and authorities are in great demand in this area that previously had limited access. Young professionals who possess in-depth knowledge of energy laws and regulations can lead the revolution and serve as change agents in this developing sector.

In this paper, one will be able to analyze the importance of privatization in the energy sector and the significance of competition law in it.

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² Routledge handbook of energy law – 1st Edition

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II. INTRODUCTION

India faces inherent power and peak shortages. The energy sector is captivated by various inefficiencies, huge commercial and technical losses, and rising economic loosing due to increased state allowance burdens. These bottlenecks have had a very negative impact on the country's overall economic growth. In order to revitalize the region and better techno-economic achievement, the Indian government initiated a reform process in 1991. She ultimately analyzed the likely impact of major policy and administrative initiatives implemented since 1991, including the board of new legislation that came into force in the form of the Electricity Act 2003.

III. HOW TO ACHIEVE FAIR COMPETITION PRACTICES IN THE ELECTRICITY SECTOR:

Increased competition benefits buyers and consumers by giving them more options, the ability to choose, and lower prices as well as better quality and wider access to goods. As businesses develop in accordance with supply and demand, producers also benefit because consumers ultimately benefit. There are incentives to reduce costs and improve development through innovation as a result of new businesses and increasing competition.

Let's examine several ideas that could significantly alter the current situation and ease access to this restricted sector:

• REDUCING GOVERNMENT MONOPOLY AND CONTROL OVER COAL ALLOTMENTS:-

It is possible and necessary to think about auctioning as a method for allocating coal blocks. The government should think about auctioning in the future since selling the coal blocks will increase competitiveness in the industry. In order to increase competition, the government has contemplated competitive bidding.

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According to this analysis by CCI³ and TERI⁴, the government had complete control over transmission in the power industry up until 2006, while the central and state governments controlled generating to the tune of roughly 57%⁵ and 32%, respectively. Even while the situation has changed and now allows for greater private pleasure, there is still a long way to go before electricity becomes a need rather than a luxury available to only a select few.

• **ENCOURAGING PRIVATE MINING:-**

As more businesses enter the market and coal becomes a more accessible resource for power production, it is crucial to take decisive action to empower mining privatization.

• **IMPLEMENTING OPEN ACCESS:-**

Currently, governmental authorities control and claim ownership of the network of electrical cables that transmit power to consumers in the distribution sector. This hinders the implementation of open access in addition to making it difficult to determine duty rates (how much should be charged for the use of electrical wires and how much for the delivery of power). Open access from all sources is permissible, although it may reduce competition in this market.

• **RATIONALISING TARIFFS:-**

To ensure private investment in the sector, tariff optimization is crucial. Determining the state government's authority to impose and regulate tariffs is becoming more and more important.

Despite the fact that a method for fixing tariffs based on equations exists, at the moment the state government directs the SERC⁶s to set levies. The equation-based tariff-setting system, which is based on the market's dynamics, must be maintained.

³ Competition Commission of India

⁴ Teri.ac.in

⁵ www.cci.gov.in

⁶ Structural engineering research centre

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• MISUSE OF THE AUTHORITY GIVEN TO THE STATE GOVERNMENT UNDER THE ELECTRICITY ACT, 2003:-

In accordance with the Electricity Act, the respective state governments may specify that, in exceptional situations, a particular generating business may run and maintain any generating station in accordance with the government's directives.

This clause is no longer an exception; rather, it has become the norm rather than the rule. The government should change its procedures to ensure that the law is only applied as intended.

In the power sector, there is undoubtedly room for development and change, and these changes are already visible. Government regulations are swiftly shifting to meet changing demands to promote increased competition with easy admission and participation.

Energy and competition regulations need to be updated regularly for PSUs⁷ and other institutions. Additionally, assistance is required for authorities to adjust to these new adjustments. This is also a key time to establish yourself in an industry that will soon welcome an increasing number of participants, with FDI⁸ in the sector at an all-time high. It's more crucial than ever to keep an eye on and be informed about events in this industry.

IV. UNDERSTANDING ELECTRICITY PROCESSES AT LARGE:-**• GENERATION (OR PRODUCTION):**

Utilizing hydro, thermal, wind, atomic, and other renewable energy sources, electricity is produced or manufactured;

• TRANSMISSION:

High-power copper or aluminium transmission lines spanning many geographic areas are used to transmit electricity after it has been produced. High-voltage substations receive a huge amount of

⁷ Public sector undertaking

⁸ Foreign direct investment in the energy sector.

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electricity that is then traded and sent to them, where it is then sent in smaller amounts to distribution substations.

• **DISTRIBUTION:**

Power or service administration lines transport electric power from substations to customers, including businesses, organizations, horticultural settings, and residential regions. There is also the trading of power, which is an important component because it helps the country address its lack of electricity.

TRADING:

In essence, it involves buying electricity to resell. A method called "electricity swapping"⁹ involves a licensed or authorized trader purchasing and reselling electricity to address short-term fluctuations in demand and ensure resource optimization overall.

V. ISSUES PERTAINING TO COMPETITION IN THE INDUSTRY:-

The small number of private companies operating in the markets for generation, transmission, and distribution demonstrates the lack of fierce competition in this industry. The difficulty of entering the market is one of the causes of this. The difficulties and hurdles to entry posed by economies of scale required for generation, transmission, distribution, etc., as well as because of regulations in the electricity tariff rates, are regarded to harm the entry of new enterprises in the electrical industry. The technical developments that are widely used have high initial costs and extended resource lifetimes because of the availability of electricity.

The transmission and distribution industries, which have substantial costs, such as the cost of constructing infrastructure like electrical wires, etc., are where this is most true.

The constrictive infrastructure monopoly environment in the transmission sector can be attributed to these costs. The costs in this market are substantial, which significantly raises the

⁹ Energy. economic times. Indiatimes. in

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entry barriers. As far as the sector's generation, transmission, and distribution ends are concerned, there are such competition difficulties.

Instead of being managed by separate autonomous enterprises, upstream and downstream actors are typically coordinated and controlled by a single company. This limited and controlled character hinders the entry of enterprises and contributes to the instability of the competition. Governments must realize that allowing private companies to operate would entail abandoning the natural monopolistic paradigm, facilitating entry for new players, and ultimately enhancing consumer welfare. Consequently, allowing for the effective competition can control prices.

VI. WHAT ADVANTAGES DO COMPETITIVE ENERGY MARKETS PROVIDE?

Competitive energy markets are the greatest method to maintain costs as low as possible while also creating an environment that promotes industrial prosperity, employment generation, and creativity. The technical advancements that contributed to the implementation of local shale gas in the previous decade, cutting gas costs across wholesale and retail sectors, are an excellent example of the advantages of restructured markets.

Essentially, competitive energy markets provide clients with options: they may pick a fairly low-cost energy supplier, regulate their energy consumption, are becoming more effective, or choose renewable technology. Consumers had to buy crude oil and natural gas from the same utility provider before the reorganization. As part of a monopolistic energy market, utilities may potentially determine their electricity generation pricing.

Electricity demand and supply are best decided by fair and competitive marketplaces. Competitive markets that very well outperform either classic monopoly markets or partially reformed markets: Increased efficiency, More creativity, More varied investments, goods, and providers, Enhanced client service Improved environment for renewable energy investment.

The power company business embraced competition, not for scholarly reasons, but rather because the legislation was resulting in unsatisfactory results, such as big price differentials

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between adjacent companies, large plant budget overruns, higher times and sequences, and consumer dissatisfaction. Unhappiness with their inability to regulate their electrical prices some novel price models were investigated, but they were seldom put into practice on a broad scale, and the options were restricted to a few typical tariffs. New generation produced under licensing was seen as excessively hazardous by both consumers and investors, and power facilities, particularly nuclear generators, displayed poor operating efficiency.

Competitive biogas marketplaces emerged in the 1980s, while competitive electricity markets emerged in the late 1990s, after the Energy Policy Act of 1992, which prepared the path for competing for both wholesale and retail electric markets.

Because more customers seek environmental or green sources of energy, retail energy businesses that wish to compete are expanding their green offers to consumers. This provides customers with more alternatives for achieving their efficiency and environmental objectives.

Licensed companies maintain to handle energy delivery and distribution in a competitive power market. The commodity of electricity, as well as other goods and services, are the focus of competition. The introduction of competition has had no effect on distribution system dependability, which remains the obligation of the local controlled utility. Electricity rates are determined by government authorities in jurisdictions where there is no retail competition. In such marketplaces, consumers and companies frequently have less access to renewable energy sources as well as new and creative services and products.

Multiple economic theories that are significantly distinct in terms of how they function and the advantages they give can be utilized to drive significant investments. The first is the rivalry.

Investors analyze options and make financial decisions in competitive marketplaces, and expose their money to market factors. Poor financial decisions result in investor losses, irrespective of whether the decisions were logical at the time.

Energy policy is well-defined at the national level. Government legislation mandates competition in commercial generating markets as well as unrestricted access to transmission and distribution

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lines. While this regulation allows for wholesale competition, it does not require or encourage retail competition. States can rely on highly integrated utility companies to arrange, construct, and own power generation; necessitate utilities to use their monopoly status to underwrite contract extensions that provide reimbursement regardless of how costs compare to the market in the future, or distributed access for financial decisions and equity investment.

VII. DOES PRIVATE INDUSTRY ENGAGEMENT AND COMPETITION IN ELECTRICITY MARKETS CONTRIBUTE TO BETTER RESULTS IN THE ELECTRICAL INDUSTRY?

Retail energy markets enable consumers to pick among competing companies and choose which energy source better serves their household or company. Energy customers have various alternatives in regard to energy administration, economy, sustainable "green" power, and pricing thanks to competitive marketplaces. Customers in many states may now pick a natural gas and electricity supplier for their house or company, just as they can choose from a choice of Web or telephone line companies. This alternative is a considerable departure from the typical public utility, in which an energy customer has little choice except to buy from a monopolistic utility service provider with limited or no options for power management techniques, sustainable sources and economy, and price.

The issue of private firms operating utility systems seems to have a rich history. Several studies have investigated the arguments advanced, often enthusiastically, by supporters of both public administration and private involvement, but unambiguous solutions have remained difficult for a variety of reasons. Public utilities are distinct from other products and services offered in competitive markets in that they exhibit natural monopoly features and play a key role in the government's political and social discourse. The topic of whether privately or state-funded utilities operate better is particularly hard to interpret in underdeveloped nations, where weak legislative and judicial settings must be considered and data is scant.

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Electricity infrastructure is critical for financial development and progress. Access to dependable electrical services is linked to economic development and growth via a variety of routes, including electricity's function in powering manufacturing activities and as a crucial component in the creation of products and services in the majority of profitable ventures. Electrification is also favourably connected with employment, company performance, income, spending, and education, according to research. The significance of energy is further emphasized in Sustainable Development Goal. Providing everyone with affordable, dependable, sustainable, and contemporary energy. Many nations launched energy industry changes with a shift towards a more economic strategy in the 1990s to enhance power sector performance and results.

Electricity markets expertise is related to better-specialized sector performance. The study reveals that shifting from VIU¹⁰ systems to more competitive power markets are linked to increased electricity availability, enhanced customer affordability, more sustainable energy adoption, and lower SAIDI¹¹ after controlling for the nation's economic, part of the economy, and political variables. Private administration and capital enter the electricity industry as a result of the advent of private sector involvement and competition. It is linked to increased organizational effectiveness and employment levels, which leads to improved sector results.

VIII. CONCLUSION:-

One of the most essential elements for any nation's economic and infrastructure development is power. India's power sector is incredibly diverse and depends on a variety of energy sources, including coal, oil, hydropower, nuclear power, wind power, solar power, and more. Naturally, the nation's demand for power is rising quickly and will undoubtedly continue to do so in the years to come.

India is a growingly popular investment location for foreign investors and currently holds the third spot in the Renewable Energy Country Attractiveness Index.

¹⁰ the present value of the future cash flows is expected to be derived from an asset or CGU in its current condition.

¹¹System Average Interruption Duration Index

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Under the Saubhagya Scheme plan, the Indian government also intends to connect more than 40 million families in urban and rural areas to electricity by the end of 2018. If we examine the industry's procedures and operations, we discover that only a very small portion of it is still privately owned and controlled. The lack of competition in this significant industry is detrimental to overall consumer welfare.

The Electricity Act of 2003 was the first piece of legislation to introduce competition in this industry. Prior to the 2003 Act's creation, the power industry had essentially been monopolized since 1991 and had been mostly claimed by the government.

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