COMPETITION COMMISSION OF INDIA
Case No. 13 of 2025

***In Re*:**

Damodar Valley Corporation — **Informant**
DVC Tower, Commercial Department, 1st Floor,
Opposite TATA Communications, VIP Road
Kolkata – 700054

And

West Bengal State Electricity Distribution Company Limited — **Opposite Party**
Vidyut Bhawan (5th Floor, 'B' Block)
Salt Lake City, Block- DJ, Sector-II,
Kolkata – 700091

CORAM

Ms. Ravneet Kaur
Chairperson

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member

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

Facts and Allegations in brief, as per the Information

1. The present Information has been filed under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') by Damodar Valley Corporation ('**DVC**'/'**Informant**'), alleging contravention of the provisions of Sections 3 and 4 of the Act by West Bengal State Electricity Distribution Company Ltd. ('**WBSEDCL**'/'**OP**').

2. The Informant is a statutory body established under the Damodar Valley Corporation Act, 1948 and engaged in the generation, transmission and distribution of electricity in the DVC Command Area in the State of West Bengal. The Informant operates and undertakes the business of distribution of power specifically to the industrial consumers ranging from 11 kilovolts ('**kV**') industries, 33 kV industries, 132 kV industries, 132 kV traction and 220 kV industries in the DVC Command Area. The total Command Area of DVC encompasses approximately 24,235 square kilometres across the States of West Bengal and Jharkhand, of which an area of approximately 6,266.70 square kilometres falls within the territorial jurisdiction of the State of West Bengal.

3. As per the Information, the OP is a licensed electricity distribution utility operating in West Bengal. It serves as a nodal agency for the Government of West Bengal (‘**GoWB**’) in implementing rural electrification initiative, aimed at providing access to electricity for all rural households across the State.

4. The Informant has stated that the operational area of the OP extends across the entire State of West Bengal, excluding those areas that fall within the exclusive operational jurisdiction of other licensed electricity distribution entities such as Calcutta Electric Supply Corporation (‘**CESC**’).

5. It has been stated that following a restructuring by the GoWB, the OP took over the electricity distribution business of Durgapur Projects Limited (‘**DPL**’), as per the order dated 31.12.2018 of the West Bengal Electricity Regulatory Commission (‘**WBERC**’), with effect from 01.01.2019.

6. Thereafter, the OP, *vide* order dated 08.11.2019, sought approval from the WBERC to apply competitive tariffs for industrial and traction consumers within the erstwhile DPL area. The WBERC directed the OP to charge any tariff to any class of consumers in the area of erstwhile DPL within the maximum ceiling tariff as mentioned in the WBERC order dated 31.12.2018. The relevant extract of the WBERC order is reproduced below:

   "ORDER
   In view of the above observations, the Commission directs that-
   a) WBSEDCL may, at its option, charge any tariff to any class of consumers in the area of erstwhile DPL within the maximum ceiling tariff as mentioned in the order dated 31. 12.2018 of the Commission; and
   b) Any loss suffered by WBSEDCL by charging any lesser tariff shall not be passed on to other consumers of WBSEDCL."

7. It is stated that DPL supplied power of approximately 1,410 million units (‘**MU**’) up to 31.12.2018, to its consumer base comprising 98 consumers at voltage levels of 11 kV, 33 kV, and 132 kV. It is to be noted that DPL did not supply electricity to consumers belonging to 220 kV.

8. It has been alleged that following the re-organisation, the OP, extrapolated the operation of the WBERC order beyond its intended scope by issuing two notifications dated 16.11.2019 and 28.02.2023. It has been stated that *vide* the said notifications, the OP not only effected charging competitive tariff rates within the DPL area, overlapping with a part of the DVC Command Area but also to:
   a. Industrial consumers of 220 kV categories to which DPL had no prior service history;
   b. Industrial and Cold Storage consumers at 11 kV and Industrial consumers at 220 kV and above in the DVC Command Area (except erstwhile DPL area); and
   c. Industrial consumers at 132 kV and 33 kV and traction consumers at 132 kV and 33 kV and traction consumers in the DVC Command Area where multiple licensees were functioning at rates even below its average cost of supply (‘**ACoS**’).

9. The Informant also stated that the ACoS for the OP, as approved by the WBERC ranges from 698.22 paise/kWh to 712.10 paise/kWh, yet the OP has been charging tariffs below its cost in the DVC Command Area. It has been alleged that the OP engaged in predatory pricing by offering electricity at rates below its cost of supply in the DVC Command Area, with the deliberate intention of attracting the Informant's consumers and eliminating competition, resulting in significant migration of consumers from Informant to the OP.

10. As per the Information, in terms of the definition contained in Regulation 1.2.1 (xxx) of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 (hereinafter referred to as the '**Tariff Regulations**'**)**, each control period after the third control period is normally for a period of five ensuing years or such other period of number of ensuing years as may be decided by the WBERC from time to time. Accordingly, each distribution licensee submits a petition for the determination of tariff for the supply/distribution of electricity to the WBERC and the WBERC issues one tariff order for each distribution licensee on a regular basis which is then implemented by respective distribution licensees.

11. For such determination of tariff, the Regulations provide a Multi-Year Tariff ('**MYT**') Framework whereby the WBERC undertakes determination of Aggregate Revenue Requirement ('**ARR**') and Expected Revenue from Charges ('**ERC**'). The ARR, as defined in Regulation 1.1.1 (vii) of the Tariff Regulations, means "*the requirement of funds for activities related to the business of electricity of a licensee or a generating company, as the case may be, for recovery of allowable expenses, allocations, return on equity and other permitted allowances, for any specific period as a part of revenue recoverable through tariff in accordance with these regulations.*"

12. The MYT Framework provides for the determination of tariffs on the basis of calculation of the ARR and ERC of each ensuing year of the control period and determination of tariff for the first ensuing year and amendment of the tariff in the second and onward ensuing year after due permitted adjustment with the ARR of the ensuing year as determined in the first ensuing year.

13. Every distribution licensee in the State of West Bengal, during the control period for any ensuing year or base year, may make an application to the WBERC for an Annual Performance Review ('**APR**') of annual fixed charges, fixed cost, incentives and effects of gain sharing on several parameters for adjustments to ensuing year's ARR. APR orders thus provide a comparative analysis of the actuals versus the assumptions (though taken on the basis of past data and expected increase in costs) applied in the tariff orders on various heads. In the APR, the WBERC undertakes a review of different elements of fixed charges to ascertain the amount to be approved/disapproved to a particular licensee against each head of elements *vis-à-vis* the amount allowed under the respective tariff order.

14. WBERC also redetermines the ARR by carrying out detailed examination and adjustments of the fixed and variable costs incurred by the OP and specifies the treatment of variation between the projected and actual expenditure of such fixed charge elements. As per the Informant, the analysis of the APR orders of 2019-20, 2020-21, 2021-22 and 2022-23 reveals a consistent pattern where the OP's actual costs are

significantly higher than the actual revenue realised by the OP in the relevant years. It is submitted that despite recurring financial challenges, the OP has continued to distribute electricity at prices not only lower than the determined tariff but also lower than its cost of supply in the DVC Command Area excluding the erstwhile DPL Area.

15. The Informant has taken ARR determined in WBERC's APR order of 2022-23 *i.e.,* INR 27,26,980.27 and Return on Equity ('**RoE**') *i.e.,* INR 40,876.52 to determine the cost of supply [COS = ARR-RoE] *i.e.,* INR 26,86,103.75. The Informant then arrived at the ACoS by dividing the cost of supply by the total amount of energy sold by the OP, as follows:

ACoS = CoS/Energy Sold

Thus, ACoS in Rs./kWh =
Rs. [26,86, 104 Lakhs x 105] / kWh [37,340. 73 MU x 106]=
7.19 Rs./kWh

16. The Informant stated that the above-mentioned ACoS (excluding the profit margin) is the minimum threshold at which electricity must be supplied to avoid operating at a loss. It is stated that OP has deliberately implemented a pricing strategy, where it is charging a tariff to the selective industrial consumers in the DVC Command Area below ACoS, with the sole intention of targeting and capturing the Informant's consumer base. A detailed representation of the average tariff charged by the OP in the DVC Command Area is provided below:

Table 1
Average Tariff Charged by the OP in the DVC Command Area

S.No	Particulars	Unit	Amount
1.	Revenue recovered by OP selling in DVC Command Area at a tariff lower than the ceiling	Rs. Lakhs	1,30,005
2.	Energy sold by OP in DVC Command Area at tariff lower than ceiling tariff	MU	2,688.56
3.	Average tariff charged by OP in DVC Command Area [(1)/(2)]	Rs. /kWh	4.835

17. The Informant has also stated that OP leveraged its dominant position in the market for distribution of electricity in the State of West Bengal to enter and establish its presence in the DVC Command Area, in violation of Section 4(2)(e) of the Act, enabling the OP to unfairly capture market share and disrupt the competitive landscape in the DVC Command Area.

18. As per the Informant, OP has wrongfully extended the competitive tariffs to the entire DVC Command Area, far exceeding the scope of the regulatory approval given by the WBERC order, which authorised the OP to charge competitive tariffs only within the erstwhile DPL's area that overlapped with the DVC's Command Area. The OP has wrongly placed reliance on the WBERC order to charge tariffs lower than its cost throughout the DVC Command Area.

19. It is also stated that OP has contravened Regulation 2.2.2. of the Tariff Regulations by passing on losses incurred by it in the DVC Command Area and shifting the burden of fixed costs to other consumers in its license area.

20. The Informant has stated that there are four distribution utilities operating in the State of West Bengal. The said utilities and the areas served by them are tabulated below:

Table 2
Operating areas of the distribution utilities in the State of West Bengal

S.No.	Utility	Areas served (in Square Kilometers or sq. kms.)
1.	OP	86,875 sq. kms
2.	DPL	125 sq. kms (Total area served by OP 87,000 sq. kms)
3.	DVC	6,267 sq. kms
4.	CESC	567 sq. kms
5.	India Power Corporation Limited (‘**IPCL**’)	798 sq. kms

21. The total market share for electricity distribution enjoyed by each of the above entities during 2018-19 and 2019-20 in the State of West Bengal is tabulated below:

Table 3
Sales and Market Share of Distribution Utilities in the State of West Bengal

S. No.	Name of Licensed Distribution Utility	Total Sale of Energy (in MU)		Share in Total Electricity Distribution in West Bengal (in percentage*)	
		2018-19	**2019-20**	**2018- 19**	**2019-20**
1.	OP	27,716.5	31,129.7	59.60	61.54
2.	DVC	8,281.2	8,613.2	17.81	17.03
3.	IPCL	787.5	845.1	1.69	1.67
4.	CESC	9,718.55	9,999.18	20.90	19.77
Total		46,503.75	50,587.18	100	100

*Percentage figures have been rounded off to two digits after decimal.

22. The Informant has alleged that OP abused its dominant position in the market for distribution of electricity in the State of West Bengal by leveraging its market power to operate independently of competitive forces and affect consumers and competitors in its favour. With over 60% market share in electricity distribution in West Bengal, OP has used this position to disrupt competition and harm the Informant's business operations.

23. Further, the Informant has also alleged that the gross Contract Demand of the Informant experienced a significant decline. This reduction was a result of a loss of 285.05 Mega Volt Ampere ('**MVA**') due to shifting of 33 consumers to the OP during Financial Years ('**FYs**') 2022-25.

24. Alleging discriminatory pricing by the OP, the Informant has submitted that the OP has strategically segmented its total license area into two distinct parts: the DVC Command Area and the rest of West Bengal. OP has implemented competitive tariffs specifically for select consumer categories within the DVC Command Area of West Bengal, including 11 kV (Industrial), 11 kV (Cold Storage), 33kV (Industrial), 132kV (Industrial), 132kV (Traction), and 220kV & above (Industrial consumers). This differential pricing strategy demonstrates OP's targeted approach to undermine competition in the DVC Command Area while recovering losses through passing burden on its other consumers, in violation of provisions of Section 4(2)(a)(ii) of the Act.

25. The conduct of the OP by extending competitive tariff rates to entire DVC Command Area has significantly distorted market competition and caused substantial loss to the Informant's market position resulting in discriminatory pricing.

26. Further, it is alleged by the Informant that the OP's differential tariff regime, is intended to offset potential losses and selectively compete with the Informant, thereby substantially reducing the Informants' consumer base and causing considerable damage to its market share. It is further alleged that offering tariffs lower than the ACoS has led to shifting of customers from the Informant to the OP. This has allegedly caused a loss of Rs. 121 Crore to the Informant.

27. The Informant has delineated the relevant market as '*market for distribution of electricity in the DVC's Command Area*'.

28. In the present case, the Informant has also levelled allegations against the OP regarding violation of Section 3(1) of the Act.

29. The Informant has prayed for the following reliefs:
    (i) Direct the Director General ('**DG**') under Section 26(1) of the Act to cause an investigation to be made into the matter regarding the abuse of dominant position and predatory pricing practices by the OP;
    (ii) Declare that the conduct of OP amounts to abuse of dominance under Section 4(2)(e) of the Act by leveraging its dominant position in the market for electricity distribution in the State of West Bengal to enter and establish its presence in the DVC Command Area;

(iii) Declare that the OP's practice of charging tariffs substantially below its ACoS in the DVC Command Area constitutes predatory pricing under Section 4(2)(a)(ii) of the Act;

(iv) Declare that the OP's unauthorised extension of competitive tariff in DVC Command Area, beyond the scope of the regulatory approval given by the WBERC order which authorised competitive tariffs only within the erstwhile DPL's licensed area, constitutes an abuse of dominant position;

(v) Direct the OP to cease and desist from the aforesaid anti-competitive activities, particularly the practice of charging tariffs below cost of supply in the DVC Command Area;

(vi) Direct the OP to discontinue from abusing its position of dominance;

(vii) After inquiry, impose such penalty as may be deemed appropriate under the Act; and

(viii) Pass any such order as the Commission deems fit and proper in the facts of the present case.

30. Upon consideration of the Information in its ordinary meeting held on 09.07.2025, the Commission sought additional information and documents from the parties, *inter alia*, details of geographical area of operation and the rates at which electricity was supplied. The Informant was further asked to provide details and supporting documents regarding the computation of the ACoS of approximately Rs. 7.19/kWh and the average tariff of approximately Rs. 4.835/kWh, allegedly charged by the OP in the DVC Command Area. The OP was also asked to provide reasons for the differential pricing, if any, between the DVC Command Area and other areas.

31. The Informant filed its response dated 20.08.2025 and the OP filed its response dated 16.01.2026 after seeking extension of time. The Informant submitted that the OP was permitted to charge a tariff below the ceiling prescribed by WBERC, but was not authorised to charge a price below its cost and that the conduct was required to be examined independently under Section 4 of the Act. The OP primarily contended that issues raised in the Information pertain to tariff determination and other regulatory aspects governed under the Electricity Act, 2003 and fall within the jurisdiction of the WBERC. Competitive tariff regime operates in multiple licensee areas under the applicable provisions of the Electricity Act, 2003 and the Tariff Regulations framed by WBERC. The OP denied the allegations of contravention of Section 4 of the Act and submitted that the impugned conduct is supported by business and statutory justifications under the Electricity Act, 2003.

32. Upon consideration of the matter, the Commission, *vide* its order dated 18.03.2026, forwarded the non-confidential version of the OP’s response dated 16.01.2026 to the Informant with the direction to file para-wise response on the same. The Commission also sought further information from parties, *inter alia*, regarding:

(i) the distinction between the tariff regime applicable in sole-licensee areas and multiple-licensee areas;

(ii) the territorial demarcation of the areas of operation of the distribution licensees;

(iii) market share and electricity distributed by the concerned distribution licensees in the DVC Command Area;

(iv) whether different rates were charged to consumers falling within the same category;

33. In its responses dated 16.01.2026 and 02.07.2026, the OP submitted that the Commission does not have jurisdiction in the instant case as charging of competitive tariff is a right statutorily available to all distribution licensees including OP under Section 62 of the Electricity Act, 2003 read with Regulation 2.2.1 and the third proviso to Regulation 2.2.2.(xvi) of the Tariff Regulations. Further, the OP submitted that under the Electricity Act, 2003, a distribution license may be granted in respect of an area of supply and that the statutory framework permits the presence of two or more distribution licensees in the same area.

34. Further, it has been stated by the OP that competitive tariffs are also notified to the GoWB and are published by way of notification in newspapers. In this regard the decision of GoWB and WBERC are final on policy and regulatory matters, and may be appealed to the Appellate Tribunal for Electricity ('**APTEL**') and, on further appeal, to the Hon'ble Supreme Court.

35. The OP submitted that the Commission, as a market regulator, cannot sit in appeal / review of decisions of other sectoral regulators. Without prejudice to the above, if the Commission decides to proceed with Information, the jurisdiction of the relevant sectoral regulator, *i.e.*, the WBERC shall have primacy over the jurisdiction of the Commission as sectoral issues ought to be determined and adjudicated by the relevant sectoral regulator before the Commission can exercise its jurisdiction. This is also in consonance with the ruling of the Hon'ble Supreme Court of India in the *Competition Commission of India v. Bharti Airtel limited & Anr. (2019) 2 SCC 521*. Further, the OP has submitted that the Commission, in prior cases pertaining to the electricity sector, has held that it cannot adjudicate upon the issue of tariff and pricing (including competitive tariffs in the instant case) and these issues squarely fall under the exclusive domain of WBERC.

36. The OP submitted that in sole-licensee areas it charges the 'standard tariff' approved by WBERC through its tariff orders. With respect to multiple-licensee areas, the OP submitted that WBERC determines the applicable maximum ceiling tariff and that the OP may charge a tariff below such ceiling in accordance with the applicable statutory and regulatory framework. The OP also submitted extracts of tariff orders [issued by WBERC] pertaining to different FYs, including for the years 2017-18, 2022-23, 2023-24 and 2024-25, as well as template invoices of industrial consumers.

37. The OP further submitted that it commenced distribution of electricity through 'competitive tariffs' in multiple-licensee areas, including the DVC Command Area, pursuant to the consent of the GoWB and directions/approvals of WBERC. The OP stated that the competitive tariffs were introduced with the objective of operating in areas where multiple distribution licensees were present and that it had fulfilled the conditions pertaining to the relevant governmental and regulatory approvals.

38. Regarding territorial demarcation, the OP submitted that prior to 01.01.2019, five distribution licensees were operating in West Bengal, namely CESC, DVC, OP, DPL and IPCL. The takeover of DPL by OP with effect from 01.01.2019 resulted in four distribution licensees, namely CESC, DVC, OP and IPCL.

39. According to the OP, CESC operates exclusively in its licensed area, while the licensed area of OP covers almost the entire State of West Bengal except the exclusive CESC area. The OP submitted that the DVC Command Area constitutes a multiple-licensee area in which OP and DVC operate, with certain areas also involving IPCL. Further, the OP enclosed maps depicting the licensed areas and areas of overlap.

40. The OP further submitted that the relevant product market should be the '*market for distribution of electricity*' and should not be further segmented on the basis of consumer categories or voltage levels. In support of its submission, the OP referred to the Commission's decisional practice in matters concerning electricity distribution, including *National Consumers Co-operative Federation of India Limited v. New Town Electric Supply Company (Case No. 18 of 2019)* and *Vidharbha Industries Association v. MSEB Holding Company Ltd. & Ors. (Case No. 12 of 2014)*.

41. With respect to market share, the OP submitted that DVC, OP and IPCL operate within the DVC Command Area and that DVC supplies electricity principally to high-voltage and extra high-voltage consumers. The OP further submitted that distribution licensees are capable of supplying electricity to different categories of consumers and that no separate technical infrastructure or significant additional expenditure is necessarily required for serving different consumer categories. The OP also referred to its acquisition of DPL and its subsequent operations in the erstwhile DPL area in support of its submission regarding the ability of a distribution licensee to serve different consumer categories.

42. With respect to the allegations of predatory pricing, the OP submitted that it had recovered its average variable cost ('**AVC**') and that the competitive tariff was not below the relevant cost benchmark. The OP further submitted that the competitive tariff was charged within the maximum ceiling tariff determined by WBERC and was publicly notified. The OP also submitted that consumers were free to choose between the standard tariff and competitive tariff in multiple-licensee areas. Such consumers are not treated differently *inter se*, *i.e.,* all the consumers opting for competitive tariff are offered the same tariff rates and are treated in a uniform manner.

43. Further, OP submitted that any tariff below the maximum ceiling tariff may include tariff below the ACoS which may lead to losses which are not passed on to the consumers. Given that the principal legislation governing OP is the Electricity Act, 2003, OP is well within its legal ambit to charge competitive tariff to consumers in the State of West Bengal.

44. The OP submitted that an assessment of recovery of AVC needs to be undertaken across all voltage categories in a given year, rather than for a particular voltage category across years. Further OP submitted that WBERC during APR, decides standard and competitive tariffs for all the consumer categories in a year and not separately on the basis of voltage categories.

45. The OP furnished data of average total cost, AVC, electricity sold and price charged in the DVC Command Area for FY 2019–20 to FY 2024–25. The said data comprises *inter alia,* the weighted averages of AVC and price respectively, demonstrating that the price charged by OP remained higher than the corresponding AVC in each of the said FYs,

and accordingly, the competitive tariffs offered by the OP in the DVC Command Area resulted in recovery of AVC throughout the said period.

46. Additionally, OP submitted that charging competitive tariff which is a right statutorily available to distribution licensees and fulfilment of the statutory obligation of Universal Service Obligation ('**USO**') [despite the Informant being in contravention of the same by engaging in distribution of power selectively to high-voltage ('**HV**') and extra high-voltage ('**EHV**') consumers], OP has been able to consistently recover the entire AVC incurred in the process of distribution of electricity by way of standard and competitive tariff.

47. The OP stated that it had been present in the DVC Command Area since inception *i.e.*, since 1955 and had been charging competitive tariffs in multiple licensee areas (including the DVC Command Area), based on the consent of GoWB dated 23.09.2015 on the directions of the WBERC. Despite charging of competitive tariff by OP in the DVC Command Area, it has fulfilled the underlying conditions of obtaining the consent of GoWB (*i.e.*, to recover the AVC incurred in the process of procuring and distribution of electricity).

48. The OP submitted that the competitive tariff regime resulted in lower tariffs for consumers, retention and addition of consumers and protection of consumer interests.

49. The OP also brought out that the Informant had previously approached the electricity regulatory authorities concerning substantially similar issues and alleged that the present proceedings amounted to forum shopping.

50. The OP further raised issues relating to the USO of the Informant and submitted that the Informant had not fulfilled its obligations under Section 43 of the Electricity Act, 2003 in relation to supply to consumers.

51. Further, the OP submitted the data of total aggregated market size in terms of volume-wise data of OP, IPCL, and DVC (wherever available subject to constraints) in the DVC Command Area in the State of West Bengal, and, market share through its response dated 03.07.2026 (in terms of volume and value) of: (i) OP; and (ii) IPCL and (iii) DVC (on a best-efforts basis), in the DVC Command Area from 2019-20 to 2024-25 which depicts that the Informant has been the biggest player in the DVC Command Area during the said period.

Table 4
Market shares of electricity distribution licensees in the DVC Command Area

S. No.	Year	Market Share of OP (in %)	Market Share of DVC (in %)	Market Share of IPCL (in %)
1.	2019 – 20	12.42	79.19	8.38
2.	2020 – 21	12.30	79.09	8.61
3.	2021 – 22	13.08	78.83	8.09
4.	2022 – 23	16.11	76.99	6.88
5.	2023– 24	25.57	67.79	6.63
6.	2024 – 25	26.60	69.06	4.34

52. In its response dated 06.07.2026, the Informant stated that it did not dispute the presence of OP in the DVC Command Area or the fact that the OP had been permitted to charge competitive tariffs in the relevant circumstances. The Informant further submitted that its challenge was not against the charging of competitive tariffs as such, but against the alleged charging of prices below cost by the OP from 2019 onwards. The Informant maintained that the present case is not a challenge to any tariff order, Tariff Regulation, governmental policy, or regulatory determination. Rather, the grievance pertains to the conduct of the OP in deploying its market power, economic resources, and regulatory advantages in a manner that has the object and effect of foreclosing competition and impairing the ability of the Informant to compete effectively in the market.

53. The Informant submitted that the Commission and WBERC exercise concurrent jurisdiction over matters, which may simultaneously involve sectoral regulation and competition law. A regulator approving a tariff ceiling does not *ipso facto* approve predatory pricing below cost. Further, the Informant submitted that though the Electricity Act, 2003 permits OP to charge any tariff up to the maximum ceiling fixed by the WBERC in a multiple licensee area, however, it does not sanction, authorise, or immunise predatory pricing. The Informant submitted that the pendency of proceedings before the APTEL against the relevant WBERC order did not prevent the Commission from examining the pricing conduct under the Act.

54. The Informant further submitted that the WBERC orders dated 31.12.2018 and 08.11.2019 were limited to the applicable regulatory framework and that the permission relating to the erstwhile DPL area could not be treated as an authorisation to extend the competitive tariff regime throughout the DVC Command Area. According to the Informant, the OP subsequently extended the competitive tariff regime to additional areas and consumer categories, including consumers at 11 kV and 220 kV and above.

55. The Informant further submitted that the OP had charged rates substantially below the ACoS and asserted that the relevant cost benchmark should not be confined to AVC. The Informant relied upon the WBERC order dated 09.12.2024 and submitted that an amount of Rs. 37,150.24 lakhs as losses were recorded by WBERC in relation to competitive tariffs and submitted that the underlying cost data had been derived from the OP's own submissions and statutory records. The Informant further alleged that the OP had adopted different assumptions regarding transmission and distribution losses while computing costs for different purposes.

56. The Informant also submitted that electricity distribution was a heavily regulated sector and that the ordinary application of an AVC-based test without taking into account fixed and unavoidable costs would not adequately capture the economics of electricity distribution. The Informant referred to the Competition Commission of India (Determination of Cost of Production) Regulations, 2025 and submitted that the use of AVC as a proxy for marginal cost was not an absolute requirement in every case.

57. The Informant further submitted that, even if AVC was adopted as the relevant benchmark, the average realisation in the DVC Command Area was approximately Rs. 4.83/kWh as against an alleged state-wide AVC of Rs. 5.71/kWh. The Informant also

referred to fixed costs allowed by WBERC and submitted that such costs were not recovered through the competitive tariffs.

58. The Informant submitted that the OP's pricing strategy had resulted in consumer migration from DVC to OP as mass migration was triggered following OP's notification dated 28.02.2023, which drastically lowered rates and expanded coverage to 11 kV and 220 kV consumers.

59. The Informant further submitted that during the period from 2015 to 2019, when the competitive rates offered by OP were higher than DVC's approved rates, DVC did not experience the same consumer migration. According to the Informant, the subsequent consumer migration occurred after the reduction and expansion of the competitive tariff regime.

60. With respect to the relevant market, the Informant maintained that the broader market for '*distribution of electricity in the State of West Bengal*' was relevant for assessing the dominant position of the OP, while the alleged abuse manifested itself in the DVC Command Area.

61. The Informant submitted that OP possessed substantial market strength in the State of West Bengal and referred to its market share of approximately 60% of consumers. The Informant stated that DVC was statutorily restricted to its Command Area and that OP possessed a broader geographic footprint and a larger consumer base. The Informant submitted that the OP's broader market position enabled it to offer lower tariffs in the DVC Command Area and thereby affect the competitive position of DVC.

62. The Informant further submitted that the DVC Command Area constituted the area in which the Informant and the OP directly competed for the concerned consumers. The Informant submitted that the competitive tariff regime had adversely affected its competitive position and that continued below-cost pricing could ultimately result in the elimination of DVC as a competing distribution licensee.

63. In response to the Commission's query regarding market share and year-wise electricity distributed in the DVC Command Area, the Informant relied upon regulatory data and submitted figures relating to electricity distributed by DVC and OP in State of West Bengal.

64. In particular, the Informant stated that, for FY 2022-23, OP distributed 2,688.56 MU in the relevant segment, while DVC's distributed electricity was stated to be 8,620 MU. For FY 2023-24, the Informant stated that OP's volume increased to 4,076.54 MU, while DVC's volume was stated to be 7,786 MU. The Informant submitted that the increase in OP's volume and corresponding reduction in DVC's volume demonstrated the impact of the competitive tariff regime on the respective consumer bases. The Informant further submitted that granular consumer-category and voltage-wise information for other years was not available with it and was stated to be in the possession of the OP.

65. The Commission considered the responses/replies filed by the parties in its ordinary meeting held on 05.08.2026 and decided to pass an appropriate order in due course.

Analysis

66. The Commission has considered the material available on record including the Information, additional information and responses/replies filed by the parties, along with the material and documents submitted pursuant to the directions of the Commission.

67. At the outset, the Commission notes that the OP has raised a preliminary objection regarding the jurisdiction of the Commission by submitting that issues raised by the Informant essentially concern determination of tariff and its terms and conditions, charging of competitive tariff, governing of distribution licences and matters falling within the regulatory framework of the Electricity Act, 2003. The OP has submitted that WBERC is the sectoral regulator entrusted with determination and regulation of tariffs and the competitive tariffs in question have been introduced pursuant to the applicable provisions of the Electricity Act, 2003, the Tariff Regulations and the approvals/ directions of WBERC and the GoWB.

68. Furthering the argument on jurisdiction, the OP has submitted that the Electricity Act, 2003 provides a complete regulatory framework for electricity distribution, tariff-related matters and seeking appropriate remedies before the sectoral regulatory and appellate forums. The OP has also submitted that the Informant has already invoked the jurisdiction of the electricity regulatory framework/authority in relation to the matters concerning tariffs and, therefore, the present proceedings before the Commission are not maintainable.

69. On the aspect of jurisdiction, the Commission is conscious of the duties cast under the preamble and Section 18 of the Act. The Commission is cognisant of Sections 60, 62, 21 and 21A of the Act and notes that the role of sectoral regulators and the Commission are complementary and they supplement each other. Further, the Commission observes that the present matter is neither related to the determination of tariffs nor adjudication on the order passed by WBERC, as portrayed by the OP. The issue before the Commission is whether the impugned conduct of the OP discloses a *prima facie* case of abuse of dominant position under Section 4 of the Act. However, the Commission also notes that the regulatory framework governing the impugned tariffs, the orders passed by WBERC and the circumstances in which competitive tariffs are permitted are relevant factual circumstances while assessing the allegations under the Act.

70. Based on the information and submissions made by the parties, the Informant had also alleged contravention of Section 3(1) of the Act without substantiating it further in terms of any agreement, arrangement, understanding or concerted practice between the OP and any other enterprise in relation to the impugned conduct. Accordingly, the Commission is of the view that the allegations under Section 3 of Act do not warrant further examination in the present matter.

71. The Informant has centred its allegations against OP, primarily around three issues: (i) predatory pricing in the DVC Command Area, (ii) discriminatory pricing between the DVC Command Area and other areas of operation of OP, and (iii) leveraging of dominant position in the broader market for distribution of electricity in the State of West Bengal by the OP to enter and establish its presence in the DVC Command Area.

The allegation of denial of market access by the OP in the DVC Command Area essentially flows from the above-mentioned conduct. In sum and substance, the Informant has primarily alleged contravention of the various provisions of Section 4 of the Act. Now, the Commission proceeds to examine the allegations based on the material available on record in light of the provisions of the Act.

72. Above allegations require analysis under the framework of Section 4 of the Act, for which, delineation of the relevant market is a *sine qua non*. Relevant market has been defined under the provisions of Section 2(r) of the Act which provides that the "relevant market" may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.

73. Section 2(t) of the Act defines the relevant product market, as a market comprising of all those products or services- (i) which are regarded as interchangeable or substitutable by the consumer, by the reason of characteristics of the products or services, their prices and intended use; or (ii) the production or supply of, which are regarded as interchangeable or substitutable by the suppliers, by reason of the ease of switching production between such products and services and marketing them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices.

74. Section 2(s) of the Act, defines the relevant geographic market as market comprising the area in which the conditions of competition for supply of goods or provision of services, or demand of goods or services, are distinctly homogeneous and can be distinguished from the conditions prevailing in neighbouring areas.

75. The Informant has averred that the relevant market is '*market for distribution of electricity in the DVC's Command Area*'. Subsequently, the Informant has sought to distinguish between the market in which the OP is alleged to possess market power and the area in which the alleged abuse takes place. According to the Informant, the OP derives its market strength from its position in the broader State-wide distribution market and has allegedly exercised such market power in the DVC Command Area, particularly in relation to industrial consumers.

76. The OP, on the other hand, has submitted that the relevant market should be the entire State of West Bengal and that the same ought not to be further segmented on the basis of consumer categories or voltage levels.

77. The Commission notes that both the Informant and OP are engaged in electricity distribution across several identical voltage categories. Accordingly, having regard to the characteristics, intended use and substitutability of the service under consideration, the Commission is of the view that the relevant product market in the present matter is the '*market for distribution of electricity*'.

78. The Commission notes that for the purposes of the present matter, the allegations relate to that portion of the DVC Command Area which falls within the State of West Bengal. The material on record indicates that the DVC Command Area in the State of West Bengal constitutes a multiple-licensee area, in which OP and DVC operate, with IPCL also having presence in certain parts. This is materially different from sole-licensee

areas in the State of West Bengal where only one distribution licensee operates. The Commission further notes that the allegations in the present matter arise specifically from the competitive tariffs offered by OP in the DVC Command Area and the alleged impact of such tariffs on the Informant.

79. The Commission observes that the comparison placed on record is principally between standard tariffs applicable in sole-licensee areas and competitive tariffs applicable only in multiple-licensee areas. The material available on record indicates that the two categories of areas operate under materially different competitive conditions.

80. Accordingly, having regard to the statutory licensing framework, the geographical area in which the alleged conduct takes place, the presence of competing distribution licensees, and the competitive conditions relevant to the allegations raised by the Informant, the Commission delineates the relevant geographic market as the '*DVC Command Area in the State of West Bengal*'.

81. In view of the above, in the present matter, the relevant market is delineated as the '*market for distribution of electricity in the DVC Command Area in the State of West Bengal'*.

82. For the purpose of assessment of dominance, the Commission notes that the OP having approximately 60% share in the electricity distribution market in the State of West Bengal does not, by itself, establish dominance in the relevant market delineated in the present matter.

83. The Commission observes that the relevant market for the present assessment is confined to the DVC Command Area, which has *inter alia* distinct competitive conditions owing to the presence of multiple distribution licensees and competitive tariffs. The material available on record indicates that the Informant and OP operate as distribution licensees in the DVC Command Area, with IPCL also having presence in certain areas. Thus, consumers in the relevant market are not dependent upon a sole distribution licensee and OP faces competition from other authorised distribution licensees including the Informant.

84. In this regard, the Commission has perused the data concerning electricity distributed by the parties in the DVC Command Area as furnished by the Informant and OP and notes that electricity distributed by the Informant in the DVC Command Area was substantially higher than that of OP. Accordingly, the material available on record does not demonstrate the dominance of the OP in the relevant market.

85. In the absence of dominance of the OP in the relevant market, the allegations relating to abuse of dominant position under Section 4 of the Act, including the allegations concerning predatory pricing, discriminatory pricing and denial of market access, do not warrant any further examination.

86. Notwithstanding the above, for the sake of holistic assessment of the matter, the Commission proceeds to assess the allegations raised by the Informant.

87. With regard to the allegation of predatory pricing, the Commission notes that the OP has submitted that its competitive tariffs recover its AVC and that the competitive tariffs have been offered pursuant to the applicable regulatory framework. The Commission further notes that the competitive tariff arrangement was subject to the conditions stipulated by the GoWB *vide* letter dated 23.09.2015, pursuant to the directions of WBERC, including the requirement that the competitive tariff should ensure full recovery of the variable cost component, along with at least part of the fixed cost component, as per the applicable WBERC tariff order. The information furnished by the OP indicates that the tariffs offered by it in the DVC Command Area were structured with reference to such cost-recovery requirement and that the OP has recovered its AVC during the relevant period. In this regard, the Commission has also perused the submission made by the OP that it has been recovering AVC in the relevant market delineated by the Commission. The material available on record, therefore, does not indicate that OP indulged in predatory pricing in the relevant market under the scheme of the Act.

88. Regarding allegation of discriminatory pricing, the Commission notes that the DVC Command Area is a multiple licensee area. The OP has submitted that consumers in such areas may avail themselves of the competitive tariff or the standard tariff and consumers are not treated differently *inter se*, *i.e.*, all the consumers opting for competitive tariff are offered the same tariff rates and are treated in a uniform manner.

89. The material placed on record does not demonstrate that the competitive tariff was selectively offered to particular consumers of the Informant or that similarly situated consumers were subjected to different prices by OP within the same competitive area. On the contrary, the Commission is of the view that the competitive tariff regime is meant for promoting competition among distribution licensees and results in lower tariffs for consumers. Therefore, the Commission is of the view that the material available on record does not demonstrate discriminatory pricing by OP in the relevant market delineated by the Commission within the meaning of Section 4 of the Act.

90. Regarding Informant's allegation of leveraging of dominant position in the broader market for distribution of electricity in the State of West Bengal by the OP to enter and establish its presence in the DVC Command Area and denial of market access by the OP in the DVC Command Area, regardless of alleged dominance of OP in the said broader market for distribution of electricity in the State of West Bengal, the Commission notes from the material available on record that the OP has been present in the market for distribution of electricity in DVC Command Area since its inception *i.e.*, 1955. Further, the Informant continues to be the biggest distribution licensee in the DVC Command Area. In this regard, the Commission also notes that no material has been placed on record showing that OP prevented consumers from dealing with the Informant, imposed exclusivity, restricted the Informant's access to consumers or otherwise foreclosed the Informant from competing in the relevant market. Moreover, consumers remain free to choose between distribution licensees and migration of consumers by itself does not amount to denial of market access where switching occurs due to consumers choice. Mere competitive constraint by a competitive tariff regime posed on the distribution licensees cannot by itself become a ground for denial of market access or leveraging of dominant position from one market to gain position in

the other market. Accordingly, the said allegations of denial of market access and leveraging of dominant position are unfounded.

91. Accordingly, the Commission is of the opinion that there exists no *prima facie* case of contravention of the provisions of the Act against the OP warranting an investigation by the DG. The Information is, therefore, directed to be closed forthwith under the provisions of Section 26(2) of the Act.

92. Before parting with the order, the Commission deems it appropriate to deal with the request of the parties seeking confidentiality over certain documents/information filed by it under Regulation 36 of the Competition Commission of India (General Regulations), 2024 ('**General Regulations**'). Considering the grounds given by the parties for the grant of confidential treatment, the Commission grants confidentiality to such documents/data/information in terms of Regulation 36 of the General Regulations, subject to Section 57 of the Act, for a period of three years from the date of passing of this order. It is however made clear that nothing disclosed in this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same have been used and disclosed for purposes of the Act in terms of the provisions contained in Section 57 thereof.

93. Any pending application(s) filed by the parties shall be deemed to be disposed of in light of the above order.

94. The Secretary is directed to forward certified copy of the order to the parties.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

New Delhi
Date: 09.09.2026