

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Competition App. (AT) No. 05 of 2021

(Arising out of the Order dated 09.04.2021 passed by the Competition Commission of India in Case No. 73 of 2015).

Tamil Nadu Power Producers Association

No. 6, Sardar Patel Road, Guindy,
Chennai 600032

...Appellant

Versus

1. Competition Commission of India

(through the Secretary, Competition Commission
of India)

9th Floor, Officer Block-1,

Kidwai Nagar (East)

New Delhi : 110023.

...Respondent No. 1

2. Ennore Coal Terminal Private Limited

Site Office Building, Bearth No. 5A 6A,

Mormugao Harbour,

Goa, South Goa-403803.

...Respondent No. 2

3. Kamarajar Port Limited

2nd Floor, (North Wing) & 3rd Floor

Jawahar Building, 17m Rajaji Salai,

Chennai - 600001

...Respondent No. 3

Present

For Appellants:

Mr. Subodh Prasad DEO & Mr. Dr. V.K Aggarwal
& Mr. Vaibhav Prasad DEO, Advocates

For Respondent:

Mr. Avishkar Singhvi, Mr. Vivek Kr. Singh & Ms.
Divya Prabha Singh, Advocates for R-1
Mr. Sanjay Kapur, Mr. Surya Prakash, Mr.
Abhishek Tiwari & Mr. Anuraj Mishra, Advocates
for R-3

Mr. A.N. Haksar, Mr. Udayan Jain, Mr. Harsh Jaiswal, Ms. Geetika Vyas & Mr. Ranjan Mishra, Advocates for R-2

Mr. Aditya Kumar & Mr. Ila Nath, Advocates for R-6

J U D G E M E N T

(21.01.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed under Section 53 (b) of the Competition Act, 2002 (the “**Competition Act/Act**”) by Tamil Nadu Power Producers Association (“**TNPPA**”) who is the Appellant herein, challenging the Impugned Order dated 09.04.2021 in Case No. 73 of 2015 passed by the Competition Commission of India under Section 27 of the Competition Act.
2. Competition Commission of India is the Respondent No. 1 in the present appeal.
3. Chettinad International Coal Terminal Pvt. Ltd. (“**CICTPL**”), who is the operator of the common user coal terminal at Kamarajar Port, is the Respondent No. 2 herein.
4. Kamarajar Port Limited (“**KPL**”), who is the landlord Kamarajar Port, is the Respondent No. 3 herein.
5. The Appellant submitted that the TNPPA, is duly constituted to act as an association representing consortium of independent power producers whose thermal power generation facilities are strategically located in and around the

Chennai region, with a primary dependence on coal as the essential raw material for their operations. These members procure coal from diverse array of sources, encompassing both domestic suppliers within India and imports from various global markets, to ensure a steady and cost-effective fuel supply for their electricity production activities.

6. The Appellant contended that the transporting coal by sea has always been much cheaper and more efficient than transporting it by land, mainly because sea transport has much lower freight costs per unit. Keeping this in mind, the Appellant's members intentionally set up their thermal power plants close to Chennai Port ("CHPT") to improve logistics and reduce the high cost of inland transportation. In particular, these power plants are located in the Gumidipoondi industrial area, which is only about 40 km away from the Chennai Port facilities.

7. The Appellant stated that, in the past, its members used a smooth and efficient system in which both domestic and imported coal was brought directly through CHPT and then transported to their power plants mainly by road. This arrangement helped lower overall logistics costs and ensured that coal was delivered on time, allowing continuous power generation in line with regulatory requirements for a reliable electricity supply in the Tamil Nadu grid.

8. The Appellant contended that large-scale coal handling and storage at CHPT caused serious environmental problems such as air pollution, dust, and damage to nearby coastal areas. Due to these issues, Hon'ble Madras High Court

intervened and, by its order dated 01.05.2011, directed that all coal dumping and handling activities at CHPT be stopped. This ban came into effect from 01.06.2011. As a result, the existing coal supply system of the Appellant's members was disrupted, forcing them to look for other ports to import coal.

9. The Appellant submitted that after the sudden shutdown of coal handling at CHPT, its members had no immediate alternative except to route all coal imports through the common user coal terminal operated by Respondent No. 2, Chettinad International Coal Terminal Pvt. Ltd. ("**CICTPL**"). The CICTPL had started commercial operations from 11.03.2011 and is located inside Kamarajar Port ("**KPL**"), Respondent No. 3, which is only about 20 km north of CHPT. This made it the nearest and most practical alternative for the power producers.

10. The Appellant contended that other ports capable of handling coal, such as Krishnapatnam Port (about 176 kms to the north of Kamarajar Port) and Karaikal Port (about 347 kms to the south of Kamarajar Port), were not commercially viable for its members. Transporting coal from these distant ports would have greatly increased land transport costs, making the total cost of coal delivery to the Gumidipoondi power plants very high. Any possible savings in port charges would have been far outweighed by these extra transport expenses, making such options economically unworkable.

11. The Appellant submitted that the CICTPL is the only common user coal terminal available within Kamarajar Port. This special position is based on a

license agreement dated 14.09.2006 between the CICTPL and the KPL, under which the CICTPL was allowed to develop, operate, and later transfer the coal terminal on a Build, Operate and Transfer (BOT) basis for a period of 30 years starting from the date of commercial operations.

12. The Appellant contended that under this license agreement, the KPL, as the port authority, allowed the CICTPL to freely decide and revise its coal handling charges without any external tariff regulation. In return, the KPL was assured either a minimum guaranteed yearly revenue or a revenue share of 52.33% of the CICTPL's gross income, whichever was higher. Although the KPL is a major port under the Central Government, its corporate structure keeps it outside the control of the Tariff Authority for Major Ports (TAMP), which gave the CICTPL wide freedom to fix prices.

13. The Appellant submitted that during the period from March 2011 to September 2011, when both the CHPT and the CICTPL were operational, coal importers, including the Appellant's members, had a choice between the two nearby ports. This competition helped keep coal handling charges reasonable and fair. At that time, the CICTPL charged a competitive rate of Rs. 180 per metric tonne (MT).

14. The Appellant contended that once the High Court's ban on coal handling at CHPT was fully enforced from October 2011 onwards, this competitive balance ended. The CICTPL became the only available option in the region and gained a

dominant position. Taking advantage of this situation, the CICTPL sharply increased its coal handling charges by about 66.67%, raising them from Rs. 180 per MT to Rs. 300 per MT in October 2011. This increase was imposed even though the CICTPL's coal handling capacity of 8 MT per year was being used far below its full capacity.

15. The Appellant stated that even after the CICTPL sharply increased its charges, the Appellant's members had no real choice but to continue using the CICTPL. Shifting coal imports to far away ports like Krishnapatnam or Karaikal would have resulted in very high land transportation costs, making operations financially unviable. This dependence was made worse by the CICTPL forcing users to indirectly pay additional, unclear charges to certain third-party entities, which appeared to be linked to the CICTPL. These payments were described as "Coordination and Liasoning Charges" and were made mandatory for using the coal terminal.

16. The Appellant contended that these third-party charges were not shown in the CICTPL's official tariff list and were designed to avoid sharing revenue with the KPL, which was entitled to a 52.33% revenue share. These charges were unfair and discriminatory. Despite repeated written and oral complaints made by the Appellant's members to both the CICTPL and the KPL, the KPL failed to take any action or conduct any investigation to stop these unlawful charges. The Appellant reiterated that the KPL's complete inaction, despite being informed of

these improper third-party payments, amounted to wilful neglect of its duties as the port authority.

17. The Appellant stated that due to the continuous abusive conduct of the CICTPL since October 2011, especially the steep tariff hikes and compulsory third-party payments, it filed a complaint (Information) before the CCI under Section 19(1)(a) of the Act.

18. The Appellant submitted that after detailed hearings, the CCI passed a prima facie order dated 04.01.2016 under Section 26(1), where it correctly defined the relevant product market as “the provision of coal terminal services,” based on the nature, price, and use of these services by consumers.

19. The Appellant contended that the key issue concerns the definition of the relevant geographic market. The CCI noted that because the Appellant’s members’ power plants were located near Chennai and depended on low-cost sea transport, they were sourcing coal through the CICTPL at Kamarajar Port. The Appellant submitted that although the CICTPL claimed ports like Krishnapatnam and Karaikal were alternatives, the CCI rightly rejected this argument. The long distances of 176 km and 347 km respectively, made these ports impractical due to high inland transport costs. This was in line with Section 19(6) of the Act, which requires considering transport costs, location, and supply reliability. The Appellant stated that the CCI clearly explained that defining a geographic market means excluding service providers who are too far away to realistically compete.

Therefore, the relevant geographic market was rightly limited to “an area in and around Kamarajar Port.”

20. The Appellant stated that based on this, the CCI correctly defined the overall relevant market as “the provision of coal terminal services in and around Kamarajar Port. The Appellant contended that the CCI found the CICTPL to have 100% market share in this market and therefore held it to be dominant. The CCI noted that distant ports could not control or restrain the CICTPL’s pricing power. The Appellant added that Karaikal Port’s smaller size further reduced its ability to compete, making the CICTPL the only effective common user coal terminal in the relevant market.

21. The Appellant submitted that the CCI found prima facie evidence that the CICTPL was collecting excessive and unregulated charges through third-party companies, which amounted to unfair conditions and abuse of dominance under Sections 4(2)(a)(i) and 4(2)(d) of the Act. The Appellant pointed out that third-party charges rose sharply from Rs. 20 per MT in August 2011 to Rs. 140 per MT in October 2011, immediately after the CHPT ban. Based on this, the CCI ordered a detailed investigation by the Director General (DG).

22. The Appellant submitted that the DG’s main investigation report dated 24.03.2018 wrongly expanded the market definition by including Krishnapatnam Port, which diluted the CICTPL’s dominance and contradicted the CCI’s earlier findings. The Appellant contended that the DG ignored Section 19(7) by failing

to consider how thermal power producers require nearby ports due to fixed plant locations and large coal volumes. The Appellant stated that including Krishnapatnam in the geographic market was incorrect because factors like transport costs, reliability, and supply urgency were ignored.

23. The Appellant argued that the DG wrongly relied on trader data, even though traders and power producers have very different needs. Power producers are tied to nearby ports, while traders are not. The Appellant submitted that the DG's claim of "common users" was misleading, as their volumes were very small and usage was mostly due to emergencies or congestion.

24. The Appellant stated that only a few user statements were recorded, most of which supported the CICTPL's dominance. Most nearby users sourced coal only from the CICTPL. The Appellant contended that there was no evidence of real competition, such as price matching or customer switching, between the ports. The Appellant further submitted that even after sharp price increases, users did not shift away from the CICTPL, clearly proving their dependence and the CICTPL's dominance.

25. The Appellant argued that the DG wrongly treated third-party charges as voluntary, even though the CICTPL's license already covered all such services. The Appellant pointed out that the charges paid to third parties were sometimes higher than those paid to the CICTPL itself, proving that these charges were artificial and unjustified. The Appellant submitted that several affidavits showing

forced payments were ignored, while untested statements of the Opposite Parties were accepted and also highlighted contradictions in third-party statements and overlapping services, clearly showing coordination with the CICTPL. The Appellant submitted that nearly all users were forced to pay third-party charges, proving they were mandatory and not optional.

26. The Appellant submitted that after considering the objections filed by all parties and hearing them at length on 13.11.2018, the CCI passed an order under Section 26(7) of the Act dated 21.12.2018, rejecting the challenge raised by the Respondents regarding the definition of the relevant product market. However, the CCI accepted the Appellant's objections to the definition of the relevant geographic market. The Commission specifically observed that the DG had incorrectly mixed data relating to coal traders with that of thermal power producers, even though both categories operate under completely different commercial and logistical constraints. The CCI also noted that the volume of coal handled by so-called "common users" between the CICTPL and the Krishnapatnam Port was extremely small and insignificant. In view of these shortcomings, the CCI directed the DG to conduct a fresh and focused analysis to prevent a miscarriage of justice.

27. The Appellant submitted that in compliance with the CCI's directions, the DG filed a supplementary investigation report dated 18.10.2019. This report fully supported the Appellant's case. The DG clearly defined the relevant market as

“the provision of common user coal terminal services in and around Kamarajar Port,” in line with Section 2(r) of the Act. The DG further concluded that the CICTPL held a dominant position within this market under Section 19(4) of the Act. The DG found that the so-called third-party “coordination and liaison services” were neither optional nor genuine. The investigation revealed that these services were orchestrated by entities connected to the Chettinad group, with the CICTPL employees and directors actively involved. Documentary evidence, including internal emails, established that these arrangements were designed to divert revenue and avoid sharing it with the KPL.

28. The Appellant contended that despite these clear findings in the supplementary the DG report, the CCI, in its final impugned order dated 09.04.2021, wrongly absolved Respondent No. 3, Kamarajar Port Limited (KPL), of all responsibility. The CCI also failed to examine the KPL’s role as the port authority and landlord, even though the KPL had received multiple complaints about abusive conduct and unauthorized charges. The Appellant submitted that the KPL’s continued inaction, blind reliance on the CICTPL’s explanations, and failure to enforce its contractual and statutory obligations under the BOT agreement, amounted to serious dereliction of duty, which the CCI overlooked without providing any proper reasoning.

29. The Appellant further contended that the CCI committed a serious error in redefining the relevant product market in its final order as “the provision of

common user coal terminal services at sea-ports.” This broad definition ignored the Appellant’s detailed objections raised during the investigation stage and failed to apply the mandatory factors under Section 19(7) of the Act, such as end-use, consumer preferences, and price sensitivity. The Appellant pointed out that earlier the CCI decisions in Case Nos. 03/2011 and 59/2012 had recognized coal supplies for thermal power plants as a distinct segment. International jurisprudence from the UK and EU also supports market definitions based on specific customer groups. By clubbing traders and thermal power producers together, the CCI distorted the competitive assessment.

30. The Appellant submitted that the CCI also erred in redefining the relevant geographic market as “the provision of common user coal terminal services at sea-ports in and around Kamarajar Port, including Krishnapatnam Port.” This conclusion was reached without any supporting evidence and directly contradicted the findings of both the prima facie order and the supplementary DG report. Although the CCI acknowledged inconsistencies and weaknesses in the investigation data, it nevertheless proceeded to expand the market definition in a summary and unreasoned manner. This approach resulted in a grave miscarriage of justice, as it artificially diluted the CICTPL’s dominance.

31. The Appellant contended that the CCI ignored crucial findings from the supplementary DG report regarding proximity, transportation economics, and user behaviour. The DG had clearly found that users rarely switched ports, that

distance played a decisive role in port selection, and that power producers overwhelmingly relied on the nearest port. By discarding these findings without any cogent explanation, the CCI violated principles of natural justice and failed to follow its own investigative process.

32. The Appellant further submitted that the CCI's reliance on tariff comparisons between the CICTPL and other ports was wholly misplaced. The real issue was not whether tariffs were similar, but whether users had any meaningful choice. The fact that the CICTPL nearly doubled its charges in October 2011 and yet experienced no large-scale loss of customers clearly demonstrated that other ports did not exert any competitive constraint. This crucial economic indicator was overlooked by the Commission.

33. The Appellant contended that the CCI wrongly downplayed the significance of distance by suggesting that ports located along the same coastline could still be competitive. Such reasoning ignored statutory factors under Section 19(6) of the Act, empirical transport cost data, and the commercial realities of coal logistics. The Appellant submitted that substitutability cannot be assumed merely because ports are coastal; it must be established through evidence, which was absent in the impugned order.

34. The Appellant submitted that the CCI's rejection of dominance based on alleged overlap in port usage and differences in installed capacity was fundamentally flawed. The fact that some users were forced to source coal from

both ports simultaneously reflected compulsion and risk management, not competition. Moreover, differences in installed capacity are irrelevant when the market itself is incorrectly defined.

35. The Appellant contended that even the CCI's limited analysis of abuse, despite denying dominance, effectively confirmed it. The abusive conduct began immediately after the closure of Chennai Port, when users had no alternatives. The third-party charges were imposed uniformly, continued for years, and were supported by corporate structures and personnel linked to the CICTPL. Describing this conduct as "opportunistic" ignored the reality that such conduct persisted because users were captive and could not switch ports.

36. In view of the above, the Appellant prayed that this Appellate Tribunal set aside the impugned order dated 09.04.2021 in its entirety. The Appellant further requested that this Appellate Tribunal restore the findings of the prima facie order dated 04.01.2016 and the supplementary DG report dated 18.10.2019, hold that the CICTPL is dominant in the relevant market and has abused its dominant position in violation of Sections 4 and 19 of the Competition Act, and grant appropriate reliefs, including directions to cease the abusive conduct, impose penalties, order restitution, and pass any further orders necessary to protect competition and the survival of the Appellant's members.

37. Concluding his pleadings, the Appellant requested this Appellate Tribunal to set aside the Impugned Order.

38. Per contra, the CCI/Respondent No. 1 refuted all the averments of the Appellant treating these as baseless and misleading.

39. The CCI submitted that the reliefs sought by the Appellant are wholly misconceived and lack merit. It was contended that the Impugned Order reflects a comprehensive and reasoned examination of all material on record, including both the main and supplementary investigation reports submitted by the DG. The CCI emphasized that its findings on the relevant market, assessment of dominance, and evaluation of the alleged conduct are firmly grounded in the statutory provisions of Sections 2, 19, and 26 of the Act.

40. The CCI submitted that based on the Appellant's allegations, the Appellant invoked Sections 4(2)(a)(i), 4(2)(a)(ii), 4(2)(b)(i), and 4(2)(d) of the Act, accusing the CICTPL and the KPL of unfair pricing, discriminatory conditions, limitation of services, and tying arrangements through unauthorized charges. After examining the Information, the CCI found prima facie grounds to investigate the matter and, accordingly, directed the DG under Section 26(1) of the Act to conduct a detailed investigation.

41. The CCI contended that the DG submitted the main investigation report on 24.03.2018 after conducting an extensive inquiry. The DG collected data from a wide range of sources, including the CICTPL, the KPL, members of the Appellant association, third-party logistics providers, officials of Krishnapatnam Port, and even the Income Tax Department. Based on this material, the DG defined the

relevant product market as “the provision of common user coal terminal services at sea-ports.” At that stage, this definition was not seriously disputed and was consistent with the factors set out in Section 19(7) of the Act, such as service characteristics, pricing, and end-use.

42. The CCI submitted that while assessing dominance under Section 19(4) of the Act, the DG compared the CICTPL’s operations with those of other ports, particularly Krishnapatnam Port. The DG considered total coal import volumes and sought inputs from port authorities. The DG found that 20 out of 46 users within the he CICTPL’s hinterland had used both the CICTPL and the Krishnapatnam Port interchangeably. This overlap was treated as evidence of substitutability and similar competitive conditions under Sections 2(s) and 19(6) of the Act.

43. The CCI further contended that the DG highlighted the substantial difference in scale between the two ports. The CICTPL had only one common user coal berth with a capacity of 8 million metric tonnes per annum, whereas Krishnapatnam Port had nine coal berths with a combined capacity of 40.5 million metric tonnes per annum. Additionally, Krishnapatnam Port enjoyed a 30-year exclusivity zone extending 30 km on either side, while the CICTPL’s exclusivity at the KPL was limited to five years and ended in March 2016. These factors, according to the DG, weighed against a finding of dominance by the CICTPL.

44. The CCI submitted that the DG also examined financial data from 2011 to 2016. The analysis showed that Krishnapatnam Port's asset base grew at an average annual rate of 10.59%, while the CICTPL's assets grew by only 0.45%. Krishnapatnam also earned significantly higher and fluctuating profits, whereas the CICTPL incurred losses initially and earned relatively modest profits thereafter. On this basis, the DG concluded that the CICTPL did not possess market power or exploitative pricing ability. It was also noted that the KPL had responded to complaints by forwarding them to the Ministry of Shipping.

45. The CCI submitted that after considering the objections on the DG's Main Report, it found prima facie merit in some of the Appellant's concerns, especially regarding the lack of analysis of end-buyer locations. Accordingly, by order dated 21.12.2018 under Section 26(7) of the Act, the CCI remanded the matter for a supplementary investigation. The DG was specifically directed to reassess the geographic market by excluding trader influence, examine non-trader common usage volumes, investigate whether coordination and liasoning charges were mandatory, and explore possible links with the Chettinad Group.

46. The CCI stated that the DG complied with these directions and submitted a supplementary report dated 18.10.2019. The supplementary report reaffirmed the product market as "the provision of common user coal terminal services at ports." It acknowledged CICTPL's proximity advantage for plants within a close radius of Kamarajar Port and its operational efficiencies. At the same time, it

observed that the KPL, Krishnapatnam, and Karaikal ports had largely separate hinterlands, leading to a preliminary narrowing of the geographic market to in and around KPL.

47. The CCI contended that after considering both reports of the DG and submissions from all parties, the Impugned Order confirmed the product market definition as “the provision of common user coal terminal services at sea-ports.”

48. The CCI submitted that after reconciling the differing geographic market views in the two DG reports, the Impugned Order defined the relevant market as “the provision of common user coal terminal services at sea-ports in and around Kamarajar Port, including CICTPL and common user coal terminals at Krishnapatnam Port.” This conclusion was based on overall evidence, including common-user data, transport cost considerations, and supply substitutability, in accordance with Section 19(6) of the Act.

49. The CCI contended that within this defined market, the CICTPL could not be considered dominant because Krishnapatnam Port exerted competitive constraints through its much larger capacity, faster asset growth, and overlapping customer base, including some members of the Appellant. The Impugned Order specifically noted that simultaneous use of both ports by users contradicted the claim that the CICTPL could act independently of market forces.

50. The CCI submitted that with regard to the coordination and liasoning charges, the Impugned Order acknowledged that these charges began around mid-

2011, were not included in published tariffs, and were widely adopted. The CCI accepted that the Chettinad entities exercised effective control through employees and directors, making these services practically mandatory for users. The CCI contended that despite these observations, such conduct could not amount to abuse under Section 4 of the Act in the absence of dominance. The CCI argued that the Act penalizes abuse of dominance, not mere opportunistic conduct by non-dominant entities, accordingly, closure of the case under Section 26(2) of the Act was consistent with the statutory scheme.

51. The CCI contended that concerns regarding incomplete supplementary investigation were addressed in paragraphs 92 and 93 of the Impugned Order. The CCI concluded that further remand was unnecessary, as two detailed investigation reports already existed. Paragraphs 94 to 104 of the Impugned Order provide detailed reasons for including Krishnapatnam Port in the geographic market and for concluding that the CICTPL was not dominant.

52. The CCI while concluding its pleadings requested this Appellate Tribunal to dismiss the appeal and uphold the Impugned Order.

53. The CICTPL/Respondent No.2 also denied all averments made by the Appellant as frivolous.

54. The CICTPL submitted that the present appeal filed by the Appellant against the Impugned Order dated 09.04.2021 passed by the CCI is without any merit and has been filed with a deliberate and misleading intent and the appeal

amounts to a misuse of the appellate process under Section 53B of the Act. It was argued that the impugned order is a well-reasoned and detailed decision, which carefully examined all evidence on record and correctly concluded that the CICTPL does not hold a dominant position in the relevant market. Since dominance was not established, no penalty under Section 27 of the Act could have been imposed.

55. The CICTPL pleaded that the DG's Main Investigation Report dated 24.03.2018 was based on an extensive factual and legal examination, however the CCI ordered a supplementary investigation on 21.12.2018 based on objections filed by the Appellant. The CICTPL submitted that the DG submitted Supplementary Investigation Report on 18.10.2019 and after considering both DG's reports along with the submissions of all parties, the CCI correctly concluded that the CICTPL was not dominant and closed the matter under Section 26(2) of the Act.

56. The CICTPL contended that once dominance is ruled out, any discussion on abuse goes beyond the jurisdiction under Section 4 of the Act. Such observations are unnecessary and amount to obiter dicta. The CICTPL submitted that even the Appellant has admitted that, in the absence of dominance, examination of abuse is irrelevant. Therefore, the impugned observations against the CICTPL by the CCI deserve to be deleted. It was argued that such unsupported remarks by the CCI, not backed by the factors listed under Section 19(4) of the

Act, can unfairly harm the commercial reputation of the CICTPL and expose it to unnecessary future litigation.

57. The CICTPL further submitted that the Appellant's renewed challenge to the definition of the Relevant Product Market, which had already attained finality after the order dated 21.12.2018, is legally impermissible.

58. The CICTPL contended that even the Main Investigation Report was comprehensive and self-sufficient, rendering the remand by the CCI to the DG, unnecessary. This was consistently pointed out by the CICTPL. The Appellant's claim of prejudice is therefore unfounded, as the CCI ultimately considered both reports and all submissions before arriving at a reasoned conclusion of non-dominance.

59. The CICTPL submitted that the CCI's discussion on abuse of dominance after holding that dominance was absent violates the settled sequence of inquiry under Section 4 of the Act. Reliance was placed on *MCX Stock Exchange v. NSE (2011)*, which clarifies that abuse can be examined only after dominance is established. Accordingly, the CICTPL prayed this Appellate Tribunal for deletion of such ultra vires observations by the CCI as well as the DG.

60. The CICTPL contended that the operational needs of fixed thermal plants do not eliminate interchangeability between ports. The movement of traders and uniform pricing demonstrate a broader market, supported by elasticity analysis and international guidelines. The CICTPL submitted that geographic market's

Ennore-Krishnapatnam expanse, evidenced by 23 common users' 48.48% (4,622,186 MT) the CICTPL procurement versus 51.41% KPCL, underscores substitutability, diluting share below 50% dominance threshold. The CICTPL further submitted that even the Appellant's own members used alternative ports, disproving claims of exclusivity or captivity.

61. The CICTPL submitted that the assessment of dominance under Section 19(4) of the Act clearly demonstrates the presence of effective competitive constraints in the market. It was emphasized that Krishnapatnam Port consistently offered coal terminal services at prices lower than or comparable to those of the CICTPL, with documented premiums of around Rs. 250 per MT in certain periods. Additionally, the announced entry of the KPL/Respondent No. 3's coal terminal prior to 2016 further weakened any possibility of the CICTPL exercising market power independently. The CICTPL submitted that its market share, as determined in the investigation, stood at approximately 42.23%, which falls well below the indicative threshold of dominance of 50%.

62. The CICTPL contended that the Coordination and Liaison charges, which ranged between Rs. 15 to Rs. 20 per MT, were levied by third-party service providers and were entirely voluntary in nature. These charges were intended to facilitate ancillary services such as customs clearance, documentation, and logistical coordination. In the absence of dominance, such facilitative arrangements cannot constitute abuse under Section 4 of the Act.

63. The CICTPL submitted that the Main Investigation Report, particularly paragraph 11.72, clearly recorded that the Coordination and Liaison charges were uniformly applied and not selectively imposed on any particular class of users. Comparable practices were prevalent at other ports such as Krishnapatnam and Karaikal. Moreover, these services resulted in operational efficiencies, including a reduction in vessel turnaround time by two to three days. The CICTPL further contended that the Appellant's claim of "no alternatives" is contradicted by empirical evidence showing that nearly 50% of users, accounting for over 2.3 million MT of coal, actively switched between ports. The CICTPL contended that the uniform pricing of approximately Rs. 220 per MT across users reinforces the conclusion that coal terminal services were interchangeable across ports. This uniformity mirrors the situation at Karaikal Port, where approximately 64% of coal handled was trader-driven.

64. The CICTPL contended that the Appellant's attempt to exclude Krishnapatnam Port from the geographic market analysis is untenable, particularly when Table 1 of the investigation reports demonstrates near parity in usage, with 51.41% volumes handled by Krishnapatnam Port. The CICTPL further submitted that claims of investigative incompleteness ignore the explicit scope of the remand, which never required tracing individual end-buyers beyond feasibility limits, as noted in paragraph 9.44.3 of the Main Investigation Report.

65. Concluding pleadings, the CICTPL requested this Appellate Tribunal to dismiss the appeal with cost.

66. The KPL/Respondent No. 3 also denied all averments made by the Appellant as frivolous.

67. The KPL submitted that although the Appellant had named the KPL as a party in the proceedings, the Appellant never made any specific allegation against the KPL at any stage.

68. The KPL further contended that even the Supplementary Investigation Report dated 18.10.2019 does not record any violation, wrongdoing, or even a suggestion of improper conduct on the part of the KPL. Both the Main Investigation Report dated 24.03.2018 and the Supplementary Investigation Report are completely silent regarding any contravention by the KPL, which clearly demonstrates that no case was ever made out against it.

69. The KPL submitted that in view of the absence of any allegation and the complete lack of adverse findings against it, the CCI rightly exonerated the KPL. This exoneration was fully justified, as the Appellant never disputed or objected to the KPL's discharge at any stage.

70. The KPL contended that it had clearly highlighted the absence of allegation in its Suggestions and Objections dated 22.01.2020. Despite this, the Appellant did not dispute, rebut, or challenge the KPL's position in any manner. Consequently, the present appeal, insofar as it seeks to continue proceedings

against the KPL, is clearly not maintainable in law and deserves to be dismissed at the very outset.

71. The KPL submitted that pursuant to the CCI's order dated 22.12.2018, the DG conducted a supplementary investigation and submitted a Supplementary Report dated 18.10.2019. This Supplementary Report examined issues relating to market definition and conduct attributed exclusively to the CICTPL. Importantly, the Supplementary Report does not record any adverse finding, observation, or conclusion against the KPL. None of the findings concerning coordination and liaising services, third-party entities, or alleged financial linkages attribute any role or misconduct to the KPL.

72. The KPL further submitted that it has at all times discharged its statutory duties and contractual obligations diligently and in good faith. The KPL never required or directed any user to engage third-party entities for coordination and liaising services. The KPL has consistently maintained that users should pay only the published tariff and nothing more. To reinforce this position, the KPL issued a public Trade Notice advising users not to pay any amount over and above the notified tariff, thereby demonstrating its proactive and transparent approach. During the investigation, the KPL also clarified that third-party service providers could operate within the port premises only after obtaining prior approval from the KPL, and no such approval was granted to BEPL or OILPL. The KPL further

confirmed that it did not receive any share or benefit from any alleged coordination and liaison charges.

73. The KPL contended that under the licence agreement, any subcontracting of services requires prior written approval from the KPL and it conducted inquiries with the CICTPL and received confirmation that no unauthorised subcontracting had taken place. In light of this, the KPL cannot be held responsible or vicariously liable for any alleged conduct attributed to the CICTPL.

74. The KPL submitted that the Appellant's pleadings neither disclose any specific allegation, any evidence, nor any challenge to the DG's findings on the KPL. Therefore, the appeal discloses no cause of action against the KPL, and its continuation against the KPL is wholly unwarranted.

75. Concluding pleadings, the KPL requested this Appellate Tribunal to dismiss the appeal, uphold the exoneration of the KPL recorded by the CCI.

Findings

76. We have noted the submissions of all the parties in detail while noting their pleadings in the preceding discussions.

77. The Appellant is aggrieved on several grounds as enumerated in the appeal including delineation of the relevant product market by the CCI without considering end use of the goods, price of the goods or services and consumers preferences as stipulated under Section 19(7) of the Act. Similarly, the Appellant

is also aggrieved regarding defining of relevant geographical market especially due to inclusion of Krishnapatnam Port (about 176 kms to the north of Kamarajar Port).

78. It is the case of the Appellant that the CCI has ordered the DG for supplementary investigation under Section 26(7) of the Act containing specific directions which were required to be investigated by the DG, however, the CCI finally passed an Impugned Order deviating the supplementary investigation report submitted by the DG.

79. One of the main grievances of the Appellant is regarding levy of unauthorised and extortionate charges levied by third parties i.e. Breeze Enterprises Pvt. Ltd. (**'BEPL'**), Original Innovative Logistics (India) Pvt. Ltd. (**'OILPL'**) and Futuristic Handling Services Pvt. Ltd. (**'FHSPL'**), supported by the CICTPL on the pretence of Co-ordination and Liaising Charges by 100% of the user of the CICTPL during the period under investigation.

80. The Appellant has also brought to our notice that its members being thermal power producers, situated at Gumidipoondi area near Chennai, were not in position to interchange the CICTPL with Krishnapatnam Port and Karaikal Port which were situated at the distance of around 176 kms away and 347 kms away from Kamarajar Port.

81. The Appellant further argued that it was incorrect on the part of the CCI to get investigation done by the DG to include the data relating to traders who were importing the coal for their clients situated at different locations and as such the traders were in position to inter change and substitute the ports of Krishnapatnam Port and Karaikal Port in place of the CICTPL.

82. It is further allegation of the Appellant that in terms of concession agreement between the CICTPL and the KPL, the CICTPL was required to pay the Minimum Annual Guarantee or pay 52.33% of gross revenue to the KPL, whichever is higher, and to avoid such due of 52.33%, the CICTPL found an innovative modus operandi by way of “Co-ordination and Liaising Charges” to avoid payment of full dues to the KPL. The Appellant submitted that it was only after it filed complaint with the CCI, the Co-ordination and Liaising Charges were stopped.

83. Since all the issues are inter-connected, inter-dependent and inter-related, we shall deal all issues submitted by the Appellant in a holistic manner in subsequent discussions.

84. The Appellant empathetically argues, that the CICTPL was a dominant player in the relevant product and relevant geographic market and was involved in abuse of dominance, having Appreciable Adverse Effect on Competition (AAEC).

85. It has been reiterated by the Appellant that the CCI asked the DG to investigate the matter under Section 19 of the Act and the DG submitted its report on 24.03.2018 and the CCI sought objections from the Stakeholders. It is noted that the Appellant objected to the main investigation report of the DG dated 24.03.2018 which was considered by the CCI and further ordered the DG of supplementary investigation in terms of Section 26(7) of the Act.

86. Now, we take into consideration the salient features of the DG's main report dated 24.03.2018. The DG defined the relevant product market as the provision of common user coal terminal services at sea ports, and the relevant geographic market as in and around Kamarajar Port, comprising Kamarajar Port and Krishnapatnam Port. Accordingly, the relevant market was identified as the provision of such services in the said geographic area. The relevant period for investigation was taken as 2011-12 to 2015-16.

87. Based on an analysis of coal handling volumes, the DG found that during the relevant period, the CICTPL handled only 23–30% of the total coal imports in the relevant market, whereas Krishnapatnam Port handled a significantly larger share of 70–77%. Further, while Appellant's members accounted for about 40% of coal handled at the CICTPL, they also imported 24% of their coal through Krishnapatnam Port, indicating the existence of substitutability and competitive constraint between the two ports.

88. The DG also noted that Krishnapatnam Port enjoyed substantially greater financial strength, infrastructure, and capacity compared to the CICTPL. While the CICTPL operated only one common user coal berth with a capacity of 8 MMTPA, Krishnapatnam Port had multiple berths with a combined capacity exceeding 40 MMTPA. In view of these factors, the DG concluded that the CICTPL did not possess market power enabling it to operate independently of competitive forces.

89. On the core allegation of abuse, the DG found that coordination and liasoning services availed by coal importers were engaged voluntarily through separate agreements with third-party service providers on mutually agreed terms. The allegation of excessive or unregulated pricing through proxy billing was not established, as payments for such services were made directly by importers to the service providers and were not reflected in the CICTPL's accounts.

90. The DG further held that the KPL had taken cognisance of complaints, conducted audits, issued trade notices clarifying that only published tariffs were payable, and therefore could not be faulted for inaction.

91. In conclusion, the DG held in the main Investigation Report that the CICTPL was not dominant in the relevant market and that no violation of Section 4(2)(a) or Section 4(2)(d) of the Act was established.

92. We also take into consideration the objections filed by the Appellant before the CCI on the finding of the DG main report dated 24.03.2018. The Appellant challenged the Investigation Report submitted by the DG pursuant to the CCI prima facie order dated 22.05.2018, contending that the DG has wrongly appreciated facts, law, and evidence, leading to an erroneous exoneration of the Opposite Parties.

93. The Appellant stated that the CCI had correctly identified the relevant market as the provision of coal terminal services in and around Kamarajar Port and had prima facie found the CICTPL to be dominant after the closure of Chennai Port. However, the DG improperly expanded the relevant geographic market to include distant ports such as Krishnapatnam, ignoring transport costs, plant proximity, consumer dependence, and end-use constraints. This flawed market definition vitiates the dominance assessment.

94. The Appellant further alleged that the CICTPL abused its dominant position by imposing unfair and discriminatory conditions on coal importers by compelling them to mandatorily engage certain third-party coordination and liasoning service providers and pay charges over and above the published tariff. These services were neither required nor optional and were imposed as a precondition for availing terminal services. The Appellant alleged that even the KPL also failed to prevent such conduct of the CICTPL despite having oversight obligations.

95. The Appellant contends that, contrary to overwhelming evidence, the DG wrongly concluded that these services were optional and based on mutual agreements. Multiple importers consistently stated that they were forced to avail such services, had no commercial need for them, faced denial or delay of services upon refusal, and had no viable alternative ports. Despite this, the DG selectively relied on isolated statements, ignored contradictions, denied cross-examination to the Appellant, and dismissed evidence showing that all coal handled at CICTPL for several years attracted third-party charges.

96. In conclusion, the Appellant submits that the DG's main investigation was procedurally flawed, biased, and contrary to the CCI's prima facie findings and the material on record.

97. We note that the CCI agreeing to the objections made by the Appellant asked the DG for supplementary investigation in terms of Section 26 of the Act. We further note that the DG gave a supplementary report dated 24.03.2018 which modified delineation of relevant market as *“the provision of common user coal terminal services in and around Kamarajar Port”* and also found the CICTPL as dominant player in the relevant market. The DG also held that Co-ordination and liasoning charges were mandatory in nature and also established that these charges were levied by 3 entities BEPL, OILPL and FHSPL were directly or indirectly controlled by Chettinad Group who were owners/control holders over the CICTPL. The DG brought out that Directors of these 3 entities were dummy

Directors. We take into consideration the salient features of the DG supplementary report dated 24.03.2018. We note that pursuant to the CCI's directions, the DG examined the following issues:

- (i) Delineation of the relevant product and geographic market and assessment of dominance of CICTPL.
- (ii) Nature and scope of coordination and liaisons services and whether such services were mandatory in practice.
- (iii) Examination of possible financial or economic linkages between OP-1 and the third-party service providers.

98. With respect to the relevant product market, the DG found consensus between the parties that it is the provision of common user coal terminal services at sea ports. Dedicated or captive coal terminals were excluded, as such captive terminals were not accessible to all coal importers and operate exclusively for specific user i.e., Tamil Nadu Electricity Board.

In determining the relevant geographic market, the DG placed emphasis on consumer preference, transportation cost, plant proximity, and hinterland considerations. The DG found that Coal being a low-value, high-volume commodity, post-landing transportation costs were considered to be main decisive factor in port selection. The DG observed that evidence showed that power

producers and fixed-plant consumers overwhelmingly preferred the nearest port to minimize logistics costs.

The DG noted that most aggrieved importers were located in and around Gummidipoondi, approximately 40–55 km from Kamarajar Port. Alternative ports such as Krishnapatnam (around 176 km away) and Karaikal (around 347 km away) were found to be economically non-substitutable for most importers. Each port was observed to have a distinct captive hinterland with limited overlap. Accordingly, the DG delineated the relevant geographic market as the area in and around Kamarajar Port, being its captive hinterland. The relevant market was therefore defined as the provision of common user coal terminal services in and around Kamarajar Port.

99. As regard the Assessment of Dominance, the DG concluded that the CICTPL enjoyed a dominant position in the relevant market during the relevant period. This conclusion was based on several factors, including the fact that the CICTPL was the only provider of common user coal terminal services at Kamarajar Port, while other coal berths at the port were captive facilities of Tamil Nadu Electricity Board and unavailable to third parties.

100. The DG further noted that large volume of total coal imports during the relevant period were handled through the CICTPL, with a significant portion attributable to the aggrieved importers. High entry barriers in the form of

substantial capital requirements, regulatory approvals, and long gestation periods were also identified. The DG noted that despite a substantial increase in port charges, by the CICTPL its traffic volumes continued to rise, indicating absence of effective competitive constraints. Importers were found to be economically dependent on the CICTPL (Kamarajar Port) due to distance and transportation cost constraints.

101. Finally, as regard, the Coordination and Liaisoning Services, the DG in its supplementary investigation closely examined whether coordination and liaisoning services were optional or mandatory in practice. The DG found that evidence showed that during 2011-12 to 2013-14, nearly 100% of coal imported by the Appellant (Informant members) through CICTPL involved availing such services, despite the availability of cheaper alternatives. Several importer accepted before the DG that they had no practical option but to avail these services in order to use the CICTPL terminal. The DG observed that importers consistently opted for higher-priced service providers without any clear commercial justification. The nature and scope of the services were found to be unclear and not transparently defined. The DG found the conduct of the CICTPL raising serious concerns regarding the imposition of supplementary obligations unrelated to the core terminal service.

102. In conclusion, the DG in its supplementary investigation report, reaffirmed that the relevant market was confined to common user coal terminal

services in and around Kamarajar Port and that the CICTPL enjoyed a dominant position during the relevant period. Structural features of the market, high entry barriers, consumer dependence, and lack of effective substitutes enabled the CICTPL to operate independently of competitive forces. The investigation also highlighted serious concerns regarding the mandatory nature and lack of transparency of coordination and liaisons services, attracting abuse of dominance under Section 4 of the Act.

103. After considering the rival contentions and pleadings of the parties, we have examined the Information/ Complaint filed by the Appellant before the CCI “the CCI’s prima-facie opinion directing the DG to conduct an investigation vide order dated 04.01.2016, the DG’s Main Investigation Report dated 24.03.2018, the objections filed by Stakeholders to the DG’s report, the CCI’s order dated 21.01.2018 directing submission of a supplementary report, the DG’s Supplementary Investigation Report dated 18.10.2019 and finally Impugned Order dated 09.04.2021 passed by the CCI.

104. The main issue is whether the CICTPL was dominant in the relevant market in terms of Section 2(r) of the Act and if so whether the CICTPL has abused its position of dominance violating section 4 of the Act. Section 4 of the Act stipulates determination of relevant market which in turn will help to determine whether the CICTPL was dominant in such relevant market and whether the CICTPL abused its dominant position in such relevant market.

105. We will take into consideration Section 4 of the Act, which reads as under:

Section 4- Abuse of dominant position.

(1) No enterprise or group shall abuse its dominant position.

(2) There shall be an abuse of dominant position under sub-section (1), if an enterprise or a group, -

• (a) directly or indirectly, imposes unfair or discriminatory-

1. condition in purchase or sale of goods or service; or

2. price in purchase or sale (including predatory price) of goods or service.

Explanation:

For the purposes of this section, the expression -

1. "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to -

1. operate independently of competitive forces prevailing in the relevant market; or

2. affect its competitors or consumers or the relevant market in its favour;

2. "predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors;

3. "group" shall have the same meaning as assigned to it in clause (b) of the Explanation to section 5."

(Emphasis Supplied)

106. The relevant Sections of the Act in this regard are as defined under Section 2(r), Section 2(t) r/w 19 (7) and 2(s) r/w 19 (6) of the Act. We will also take into consideration above which reads as under:-

“Section -2. Definitions. —In this Act, unless the context otherwise requires, —

(r) “relevant market” means the market which 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;

(s) “relevant geographic market” means a 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 homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;

(t) “relevant product market” means a market comprising of all those products or services— (i) which are regarded as inter-changeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;

or (ii) the production or supply of, which are regarded as inter-changeable or substitutable by the supplier, 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;]

“SECTION 19 - Inquiry into certain agreements and dominant position of enterprise.

(1) The Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on -

- *(a) receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or*

(3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:

- *(a) creation of barriers to new entrants in the market;*
- *(b) driving existing competitors out of the market;*
- *(c) foreclosure of competition;*
- *(d) benefits or harm to consumers;*
- *(e) improvements in production or distribution of goods or provision of services;*
- *(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.*

(4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:

- *(a) market share of the enterprise;*
- *(b) size and resources of the enterprise;*
- *(c) size and importance of the competitors;*
- *(d) economic power of the enterprise including commercial advantages over competitors;*
- *(e) vertical integration of the enterprises or sale or service network of such enterprises;*
- *(f) dependence of consumers on the enterprise;*

- (g) *monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;*
- (h) *entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;*
- (i) *countervailing buying power;*
- (j) *market structure and size of market;*
- (k) *social obligations and social costs;*
- (l) *relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;*
- (m) *any other factor which the Commission may consider relevant for the inquiry.*

(5) *For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographic market" and "relevant product market".*

(6) *The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:*

- (a) *regulatory trade barriers;*
- (b) *local specification requirements;*
- (c) *national procurement policies;*
- (d) *adequate distribution facilities;*
- (e) *transport costs;*
- (f) *language;*
- (g) *consumer preferences;*

- (h) need for secure or regular supplies or rapid after-sales services.
- (i) characteristics of goods or nature of services;
- (j) costs associated with switching supply or demand to other areas.

(7) *The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:*

- (a) physical characteristics or end-use of goods or the nature of services;
- (b) price of goods or service;
- (c) consumer preferences;
- (d) exclusion of in-house production;
- (e) existence of specialised producers;
- (f) classification of industrial products.
- (g) costs associated with switching demand or supply to other goods or services;
- (h) categories of customers.

(Emphasis Supplied)

107. We note that the Appellant filed information petition on 13.08.2025 where in para 5.4, the Appellant define the relevant market which reads as under :-

"5.4 The relevant market may thus be defined as the market for "provision of common user coal terminal services in and around Kamarajar port, extending up to a point beyond which the total cost of transportation to an alternate port is higher".

(Emphasis Supplied)

108. In this connection, we also note that prima-facie order dated 04.01.2016 was passed by the CCI, after considering detailed replies of the CICTL and the KPL, and defined the relevant market in para 26 which reads as under: -

'26. Accordingly, the relevant market prima facie appears to be the provision of coal terminal services in and around Kamarajar Port.'

(Emphasis Supplied)

109. The DG submitted its main investigation report on 24.03.2018 where it defined relevant market under Section 2(r) in para 9.47 of its report which reads as under: -

"9.47 The relevant market u/s 2(r) of the Act is, therefore, "the provision of common user coal terminal services at sea ports in and around Kamarajar Port i.e. Kamarajar Port and Krishnapatnam Port".

(Emphasis Supplied)

110. The Appellant not satisfied with the DG's delineation of the market, filed its objection, based on which, the CCI passed the order under Section 26(7) of the Act on 21.11.2018 directing the DG for further investigation. The DG in turn gave its supplementary investigation report on 18.10.2019 where it broadly concurred with the Appellant on delineation of market and indicated the same in para 328 of supplementary report which reads as under :-

"Issue 1: Delineation of Market

The relevant market u/s 2(r) of the Act is delineated as "the provision of common user coal terminal services in and around Kamarajar Port." In terms of Section 19(4) of the Act, CICTPL at Kamarajar Port enjoys a position of dominance in the relevant market."

(Emphasis Supplied)

111. However, the Impugned Order dated 09.04.2021 by the CCI, at this stage, deviated from the proposed delineation of relevant market as given by the Appellant in information petition as well as the CCI's own prima-facie order dated 06.01.2016. We note that the CCI, in its initial order dated 04.01.2016 and the DG in its supplementary investigation report dated 18.10.2019 defined relevant market as "provision of common user coal terminal services in and around Kamarajar Port".

We note that the Appellant has vehemently argued before us that independent power producer plants are located in Chennai Region and Krishnapatnam Port being far away is not substitutable. The Appellant further argued that even if the charges being levied by the CICTPL and Krishnapatnam Port are in similar range, however, the road transportation cost from their power plants to Krishnapatnam Port would make it expensive and uneconomic and thus, the Krishnapatnam Port was incorrectly added by the CCI in the Impugned order 09.04.2021, despite the DG in its supplementary report did not include Krishnapatnam Port.

112. We note that the CCI itself did not include Krishnapatnam Port in its original order dated 04.01.2016. The DG although in main investigation report included Krishnapatnam Port, however, in the supplementary investigation report dated 18.10.2019, changed delineation of relevant market definition from the original investigation report and restricted to services in and around to Kamarajar Port.

113. Thus, inclusion and exclusion of Krishnapatnam Port for determination of relevant market becomes crucial. It is noted that majority of the Members of the Appellant have been using Chennai Port initially before the ban by Madras High Court and later shifted to the CICTPL. We take into consideration the fact that few members occasionally have also used Krishnapatnam Port, in certain exigencies however the fact remain that on economic consideration, the CICTPL was the logically economic choice and not Krishnapatnam Port.

114. We take into consideration the logic of the CCI that the CCI has defined the relevant market taking into consideration, the substitutability of the ports in the same coastline for similarly placed users and found that the coal being handled at Krishnapatnam Port were for larger in volume and therefore, the CCI justified its stand to include Krishnapatnam Port in addition to Kamarajar Port for determination of relevant market in the Impugned Order. We note that this view has also been supported by the CICTPL. In this connection, we have taken into consideration the relevant data furnished by the CCI in the Impugned Order.

115. In economic and legal terms, market refers to a system where commodities or services are exchanged based on demand, supply, utility to buyers, and price expectations of sellers. A market presupposes freedom of bargain between buyers and sellers. Even where prices are regulated, the area within such regulation can still constitute a market if commercial interaction exists. The existence of distinct customers and distinct prices helps in identifying a distinct market. The relevant market is thus the “area of effective competition”, where supply and demand interact and where competitive relationships can be created, maintained, or destroyed.

116. The objective of defining the relevant market is to prevent enterprises from using market power to drive competitors out of the market, restrict output, or dictate prices above competitive levels. Market power arises when an enterprise, individually or collectively, can act independently of competitive pressure by raising prices or restricting output. To assess such power, the market must be clearly defined in terms of product and geography. A relevant market essentially means it is a market where control can meaningfully affect competition and consumer choice. The cornerstone of relevant market definition is interchangeability or substitutability—whether consumers can reasonably switch to other products or sources in response to a price increase.

117. The relevant market has two inseparable aspects:

- a** Product aspect: products or services that are interchangeable or substitutable for each other; and
- b** Geographic aspect: areas where conditions of competition are sufficiently homogeneous.

The relevant market, therefore, may be treated as the area of effective competition within which the enterprise operates and where its ability to control prices or restrict competition can be assessed. Identifying the relevant market involves determining the specific product or service concerned, the alternative sources of supply available to consumers, and the geographic area where competitive conditions are similar.

118. Section 2(t) defines the relevant product market as a market comprising all products or services that are regarded as interchangeable or substitutable by consumers, having regard to their characteristics, price, and intended use considering their end use, their physical or technical characteristics and their relative prices. The key tests applied are reasonable interchangeability of use and cross-elasticity of demand, both of which are complementary. The special features of a product, such as availability, consumer preference, and ability to meet constant needs, may justify treating it as a separate market.

119. Section 2(s) defines the relevant geographic market as the area in which the conditions of competition for supply of goods or provision of services, or for

demand of goods or services, are sufficiently homogeneous and are distinct from neighbouring areas. The purpose of defining the geographic market is to identify the area of effective competition within which an enterprise operates and within which its market power can be meaningfully assessed. Market definition involves identifying the effective alternative sources of supply available to customers, considering not only the product but also the geographical location of suppliers.

120. Defining the geographic market is essential to understand price patterns, market shares, and competitive constraints, and to assess whether an enterprise can act independently of competitive forces. Factors relevant to defining the geographic market include availability of alternative sources of supply, transport costs and related price disadvantages, tariffs or regulatory barriers, degree of inconvenience in procuring goods or services from other areas. Where transport costs are high, the geographic market may be narrow and local or regional, as seen in products like cement, steel, coal etc. where supply is typically limited to areas near manufacturing units. Ultimately, the relevant geographic market is the area where consumers can realistically turn for supply and where enterprises face effective and comparable competitive constraints.

121. In above background and pre-discussed facts, we need to closely examine the structure and size of the market, the number and strength of competitors, the distribution of market shares, and the presence of countervailing buyer power. Market power does not exist in the abstract; it arises only in relation to a defined

market. Therefore, before assessing dominance or competitive harm, it is necessary to identify the relevant market and then evaluate the CICTPL's position within it. We have taken into account the factor provided for such determination as stipulated under Section 19 of the Act and further have taken into account the detailed analysis of consumer preferences, transportation cost, relevant ports in relevant geographic market, inter-port, competition, catchment area analysis, substitutability between different ports etc. We have also considered various datum including total coal imports at these ports i.e., CICTPL (Kamarajar Ports) and Krishnapatnam Port and Karaikal Port. Similarly, percentage of details of quantity imported by various parties including power producers and traders has also been taken into account. We have also considered details of consumer wise quantity of coal imported at CICTPL and Krishnapatnam Port. We have also noted that interaction by the DG with the concerned stakeholders and recorded relevant statements of such stakeholders and their officers in its detailed investigation.

122. We have also examined inputs given by the Appellant and the CICTPL and the KPL, keeping in view provisions under Section 2(r), 2(s) and 2(t) of the Act and datum of goods/ services, consumer preferences, transportation cost, exclusivity, physical cross-examination of stakeholders by the DG, Port distance and proximately to the plant, hinterland analysis of the DG (bifurcated captive and contestable). We have also taken into account the data of party-wise coal imports based in 30 samples, including independent power producer and traders

used by the DG based on which the DG finally defined relevant market under Section 2(r) of the Act as “the provision of common user coal terminal services in and around Kamarajar Port.” We notice that the CCI did not agree with the supplementary investigation report where the DG had changed its stand from main report. Interestingly, the CCI itself also changed its own stand regarding as contained relevant market in its original prima-facie order and concluded that the relevant market should be “provision of common user coal terminal services at sea-ports in and around Kamarajar Port which includes the CICTPL and common user coal terminals at Krishnapatnam Port”.

123. Hence, we note that initially the Appellant and the CCI largely agreed but the DG included Krishnapatnam Port in its main report and subsequently based on objections of the Appellant, the DG generally concurred with the Appellant and excluded the Krishnapatnam Port from the definition of relevant market. However, in the Impugned Order, the CCI included Krishnapatnam Port. This become the main bone of contention. Therefore, we need to look into reasons as to why the CCI included Krishnapatnam Port in the definition of relevant market under Section 2(r) of the Act in the Impugned Order.

124. The CCI has stated that the DG in its supplementary report has made distinction between captive and contestable hinterland and finalised delineation of the relevant geographic market accordingly. The CCI in its Impugned Order found such analysis of the DG is not appropriate. The CCI justified its stand in

the Impugned Order stating that import by fixed plant user's, within captive hinterland of the CICTPL constituted less than 50% of total import at the CICTPL meaning that remaining 50% of the market were not under any constraint to import only from the CICTPL.

125. The CCI further concluded that 15 out of 30 sample size used by the DG were using both the ports i.e., the CICTPL (KPL) and the Krishnapatnam Port which negate the assumptions of the DG regarding captive hinterland.

126. The CCI further analysed the distances of Kamarajar Port and Krishnapatnam Port which are approximately 176 Kilometers apart. The CCI found that there were a overlap in the hinterland of both Kamarajar Port and Krishnapatnam Port and as such, both Kamarajar Port and Krishnapatnam Port were competitive to each other.

127. Based on this analysis, the CCI differed from the DG and the Appellant and defined the relevant market under Section 2(r) of the Act as “provision of common user coal terminal services at sea-ports in and around Kamarajar Port which includes CICTPL and common user coal terminals at Krishnapatnam Port”.

128. We shall now look into the relevant data as used by the DG as well as the CCI used in determination of relevant market to understand whether the Impugned Order has correctly defined the relevant market under Section 2(r) of the Act or otherwise.

129. The CCI in its Impugned Order have been used table 4 and table 5 of the DG's main investigation report which reads as under: -

Table 4

Quantity of coal imported at CICTPL and Krishnapatnam Port by 20 consumers considering the services at these ports as substitutable				
Years	Total Coal Handled by CICTPL		Total Coal Handled by Krishnapatnam Port	
	Quantity (MT)	% SHARE	Quantity (MT)	% SHARE
2011-12	1764984	41.7	2467994	58.3
2012-13	1415979	34.47	2692375	65.53
2013-14	2072214	59.22	1426757	40.78
2014-15	2181893	40.87	3156151	59.13
2015-16	1766060	34.89	3295981	65.11

Table 5

Total Coal (in MT) handled in respect of IP members at CICTPL and KPCL

Financial Year	Total Coal Handled by CICTPL		Total Coal Handled by KPCL		Total Coal Handled by both CICTPL+KPCL	
	Quantity (MT)	% Share	Quantity (MT)	% Share	Quantity (MT)	% Share
2011-12	747,934	55.08%	610,025	44.92%	1,357,959	100
2012-13	2,152,411	78.97%	573,093	21.03%	2,725,504	100

2013-14	4,218,101	86.94%	633,725	13.06%	4,851,826	100
2014-15	3,551,489	71.83%	1,392,648	28.17%	4,944,137	100
2015-16	3,162,912	75.03%	1,052,499	24.97%	4,215,411	100
Total	13,832,847	76.45%	4,261,990	23.55%	18,094,837	100

Based on above table, the CCI concluded that quantity of coal imported at the CICTPL was less than 50% during 2014-15 and 2015-16 vis-à-vis Krishnapatnam Port. In this connection, we note that table No. 4 during 2013-14, the CICTPL handled 59.22% whereas Krishnapatnam Port handled 40.78%.

130. The CCI further concluded from table 5 that total coal handled by Krishnapatnam Port was quite substantial with reference to IP Members at the CICTPL and Krishnapatnam Port. When we look into this table, we find that IP Members imported total coal 13,832,847 MT i.e. 76.45% from the CICTPL during period from 2011-12 to 2015-16, whereas for the same period Krishnapatnam handled 4,261,990 MT i.e. 23.55% for IP Members. We note that CICTPL handled 76.45% of total coal of IP Members and only 23.55% was handled by Krishnapatnam Port. Thus, clearly the CICTPL was dominant vis-à-vis Krishnapatnam Port.

131. We are constrained to observe that the CCI has not taken into consideration various other factors factored into by the DG in its supplementary investigation report including the detailed hinterland analysis divided into captive and contestable hinterland and the aspect of transportation cost. The CCI mentioned that both the CICTPL (KPL) and the Krishnapatnam Port falls in the same coastline with distance of 176 Km, hence there is an overlap of hinterland among both the ports i.e., Krishnapatnam Port and Kamarajar Port.

132. We take into consideration the fact that hinterland of the port is found out considering its geographical locations, road and rail network in the area, connection of the ports to these network, geographical conditions etc. Normally, users of port consumer like Appellant in this case would prefer the nearer port which is cost effective, providing same or similar standard of service. We further take into account that the DG in supplementary report has correctly detailed similarity and dissimilarity on the aspect of captive hinterland and contestable hinterland w.r.t to Krishnapatnam Port and Kamarajar Port and further came to correct conclusion that hinterland of Krishnapatnam Port is distinct and separate which is not shared with other ports.

133. We tend to agree with the analysis of the DG that location of traders become inconsequential during such analysis as traders are not actual users or consumers but they import coal for trading purpose. We understand that the traders will prefer the port which is cost effective, based on the location and the actual users, hence

for traders there may be flexibility for using other port like Krishnapatnam Port depending upon the context of each transaction with ports.

134. We have taken into consideration the response of 30 sample size collected by the DG and note that most of the importers situated in the vicinity of the CICTPL(KPL) preferred the CICTPL over the Krishnapatnam Port and find that datum clearly establish supremacy of the CICTPL.

135. Based on above detailed analysis, we find that the CCI erred in its finding in defining the relevant market under Section 2(r) of the Act and we tend to agree that the finding of the DG in its supplementary investigation report.

136. Once, we have given our finding on delineation of the relevant market, now we shall take into account the issue regarding dominance of the CICTPL.

The DG in its supplementary report have analysed that the CICTPL is the only provider of common user coal facility at Kamarajar Port as other two coal berths at Kamarajar Port are for exclusive captive facility for TNEB (Tamil Nadu Electricity Board) and therefore, not available to others.

137. The DG also did analysis of the data obtained during investigation and found that during 2011-12 and 2015-16 the total quantity of coal imported by all the Respondents was 3,76,20,148 MT out of which 1,72,91,765 MT was imported from the Kamarajar port using the CICTPL, which is 46% of the total coal imported. The total coal imported from the Karaikal port is 96,56,842 MT, which was 26% of the total imports. Krishnapatanam Port, Tuticorin Port and Chennai

Port accounted for 18%, 4% and 1% of import of remaining coal, respectively. The rest 5% of coal is imported from other ports like New Mangalore Port, Gangavaram Port, Visakhapatnam Port, Goa Port, etc.

138. From above, we note that Kamarajar Port had market share 46% where Krishnpatanam Port has share of only 18% on import of coal during the relevant period. We further take into consideration that out of total coal import from Kamarajar Port, around 65% was imported by aggrieved members of the Appellant and rest 35% was imported by non-other Respondents, which included both traders and fixed power plant manufacturers.

139. Now, we would like to take into consideration table no. 9 and table no. 10 used by the DG in its supplementary report which read as under :-

Table 9: Category wise quantitative share in total import of coal at CICTPL

Category of Importers	As 1st Preference	As 2nd Preference	As 3rd Preference	Total Import (MT)	Total (%)
Aggrieved IPs	10962562	481756	0	11444318	66.18
Other IPs	1000*	0	0	1000	0.01
Coal Importers Other Than IPs (Fixed Plants)	25000	1428464	11000	1464464	8.47
Coal Importers Other Than IPs (Traders)	4359983	22000	0	4381983	25.34
Total	15348545	1932220	11000	17291765	100

Table 10: Details of Total Coal (in MT) handled at CICTPL

Qty. of Coal handled at CICTPL	2011-12	2012-13	2013-14	2014-15	2015-16	Total
	3488250	5036504	8372902	9241094	8528853	34667603

140. From above, it is seen that the total quantity of coal handled at the CICTPL during the relevant period was 3,46,67,603 MT. In contrast, the total coal imported by the IP and Non-IP members from the CICTPL terminal, was 1,72,91,765 MT, which is nearly 50% of total coal handled by the CICTPL during the same period.

141. We also take into account the analysis of the DG that the CICTPL increased its existing port charges of Rs. 180/- PMT to Rs. 300/- PMT in October, 2011, which progressively increased to Rs. 375/- PMT by July, 2014. However, contrary to the law of demand, the volume of traffic handled at the CICTPL also increased from 0.5 MMT during the year 2011 to 3.49 in 2012, and from 5.05 MMT in 2013 to 8 MMT in 2014. This increase in demand indicated that coal importers could not switch to other ports. It means that the CICTPL enjoyed the advantage of its location and high transportation cost involved to switch to other ports. The infrastructure and investment requirements, locational advantages, connectivity, etc. required for a new port/ terminal also could not have been have been altered in the short term. Therefore, the inter-port competition in true sense, did not

constrain the CICTPL from any meaningful competition during the relevant period.

142. The DG further analysed several factors including investment by the CICTPL of approx. Rs. 400 Crore for developing common user coal facilities on BOT basis and commercial advantage vis-à-vis its competitor ports including the size and users of the enterprise, size and importance of competition, commercial advantage vis-à-vis competition, vertical integration, dependence of consumer barrier to enter and finally concluded that in accordance with parameters stipulated under Section 19(4) of the Act, the CICTPL enjoyed the position of dominance in the relevant market during the relevant period being the only common user coal terminal at Kamarajar Port. We observe that, on the other hand, the CCI in the para 105 of the Impugned Order mentioned that presence of Krishnapatnam Port provide significant competition to the CICTPL as such the CICTPL cannot be held as dominant based on its discussion in the Impugned Order while delineating relevant market under Section 2(r) of the Act. The CCI further used table no. 6 provided by the DG in main report, indicating that the total coal handled at common user terminals at the CICTPL and Krishnapatnam Port and its market share which reveals that Krishnapatnam Port was almost thrice then the CICTPL. The table 6 reads as under :

Table 6

Comparison of Coal handled at common user coal terminals at CICTPL and Krishnapatnam port and their market shares

Financial Year	Quantity of Coal in MT (Market Share in %)	
	CICTPL	KPCL
2011-12	3488250 (24.00)	11046345 (76.00)
2012-13	5036505 (23.74)	16174865 (76.26)
2013-14	8372902 (29.77)	19751044 (70.23)
2014-15	9241094 (26.79)	25249470 (73.21)
2015-16	8528853 (23.86)	27214510 (76.14)

143. On this issue, the CICTPL concurred with the finding of the CCI and objected to the DG's supplementary report as well as allegations of the Appellant in the appeal.

144. The KPL submitted that pursuant to the CCI's order dated 22.12.2018, the DG conducted a supplementary investigation and submitted a Supplementary Report dated 18.10.2019. This Supplementary Report examined issues relating to market definition and conduct attributed exclusively to the CICTPL.

Importantly, the Supplementary Report does not record any adverse finding, observation, or conclusion against the KPL. None of the findings concerning coordination and liaising services, third-party entities, or alleged financial linkages attribute any role or misconduct to the KPL.

145. The KPL further submitted that it has at all times discharged its statutory duties and contractual obligations diligently and in good faith. The KPL never

required or directed any user to engage third-party entities for coordination and liaising services. The KPL has consistently maintained that users should pay only the published tariff and nothing more. To reinforce this position, the KPL issued a public Trade Notice advising users not to pay any amount over and above the notified tariff, thereby demonstrating its proactive and transparent approach. During the investigation, the KPL also clarified that third-party service providers could operate within the port premises only after obtaining prior approval from the KPL, and no such approval was granted to BEPL or OILPL. The KPL further confirmed that it did not receive any share or benefit from any alleged coordination and liaison charges.

146. The KPL contended that under the licence agreement, any subcontracting of services requires prior written approval from the KPL and it conducted inquiries with the CICTPL and received confirmation that no unauthorised subcontracting had taken place. In light of this, the KPL cannot be held responsible or vicariously liable for any alleged conduct attributed to the CICTPL.

147. We would like to reiterate that we have already found the finding of the CCI regarding delineation of relevant market under Section 2(r) as erroneous which included Krishnapatnam Port in the relevant market definition. Once the Krishnapatnam Port is excluded from the relevant market definition. We now need to find facts only relating to Kamarajar Port to see whether the CICTPL was dominant or not in the relevant market.

148. We note that the KPL as landlord port has three berths out of which two are captive and dedicated berths to TNEB whereas, only one is common user coal terminal to be used by all importers of coal, irrespective whether they are power producers or traders or importer for some other plants for other regions.

149. Since, the CICTPL is an only player, it automatically become dominant as stipulated under Section 2(r) of the Act. We have already analysed in great detail the reason for the same by treating relevant market only to CICTPL at Kamarajar Port and excluding Krishnapatnam Port. Therefore, we do not agree with the findings of the CCI on this aspect and concur with the finding of the DG in supplementary report holding the CICTPL to be dominant player.

150. Once we have given our finding on the aspect of relevant market as well as the CICTPL, being the dominant player in the relevant market, we are left to decide only the final point i.e., whether the CICTPL was involved in abuse of its dominant position violating Section 4 of the Act, having AAEC on the Appellant.

151. It is the case of the Appellant that coordination and liasoning charges were imposed by three entities, namely, (a) Breeze Enterprises Pvt. Ltd. (BEPL), (b) Original Innovative Logistics (India Pvt. Ltd.) (OIPL) and (c) Futuristic Handling Services Pvt. Ltd. (FSHPL) which were shadow entities of the CICTPL. We also note that it is the case of the Appellant that the CICTPL was required to give 52.33% of its gross revenue to the KPL/ Respondent No. 3 and to avoid such payments, the CICTPL created these entities.

152. On the other hand, the CICTPL vehemently opposed allegations and stated that the CICTPL has nothing to do with these three entities. The CICTPL has further argued that these three entities are separate legal entities and not under control of the CICTPL. On the issue of some indirect association of their employees/ ex-employees, the CICTPL stated that they did not have any role in the activities of these three entities.

153. The CICTPL has further argued that no financial benefits have flown back to the CICTPL from any of these three entities which is undisputed facts. The CICTPL stated that there was no force or compulsion for the Appellant to use these services of three entities and these services were voluntary in nature. The CICTPL as further pleaded that no evidence has been shown by Appellant in this connection making the CICTPL responsible for making mandatory so-called mandatory co-ordination & Liasoning Charges.

154. In this connection, the KPL/ Respondent No. 3 stated that they did not stipulate any such conditions for using any third-party services for coordination and liasoning charges by any user. The KPL further pointed out in fact they had given instructions that only published charges are to be payable by the users. The KPL stated that in any case, they have issued any direction for these services.

155. On this issue, we take into consideration that both the DG and the CCI have agreed that these charges were mandatory in nature. The CCI although did not agree to the Appellant contention that this was abusive practice violating Section

4 of the Act, but the CCI treated these Act as “Opportunistic” not falling in the definition of abuse of dominance position. The CICTPL was not found as dominant by the CCI in the Impugned Order in relevant market.

156. We take into consideration the finding of the DG in its supplementary report on this issue. The DG has taken into consideration the submissions made by the members of the Appellant and submission made by the CICTPL along with other stakeholders. The DG called them for interaction during its investigation. The DG noted that out of 9 power producers, 5 stated that coordination and liasoning charges were mandatory and they were made to pay the charge during relevant period. Similarly, out of non-IP producer entities like Zuari Cement also submitted to the DG that they were also made to such payments and they also treated such charges exclusive as mandatory. Similarly, five out of nine importers of non-IP trader’s category agreed to have mandatorily paid coordination and liasoning charges. These important included Adani Enterprises Limited and Sakthi Energy etc.

157. The CCI in its prima-facie order also observed on this aspect i.e., “The payment of such a charge to a third party that too for availing the services of OP1 located at OP2 raises a strong suspicion with regard to OPs having an involvement with the imposition of such a charge.”

158. We note that during questioning Mr. V Palaniappan, Director of the CICTPL stated the DG that “We CICTPL perform all the requisite handling

operations required to fulfil the GTAC and CTAC as per the licencing agreement for clearance of imported coal at our terminal. CICTPL is under obligation to provide all handling services at the terminal and does not require supervision by the importer or any third party on his behalf” and Based on the request of the importers concerned, we (CICTPL) authorized the entry of the said third parties by issuing passes for terminal/ port premises.”

159. At this stage, we take into consideration table 14 where the response of all importers at the CICTPL, has been captured by the DG in its supplementary report which reads as under :-

Table 14: Co-ordination and Liasoning Services, whether mandatory or Optional

Category of Importers	Total Respondents	Importing From Kamarajar Port	Responded as Mandatory	Responded as Optional	Not Answered/ Not Applicable
Aggrieved IPs	9	8	5		3
Other IPs	5	1			1
Non IPs (Fixed Plants)	7	7	2	1	4
Non IPs (Traders)	9	8	5	1	2
Total	30	24	12	3	9

160. From above, it is noted that out of 24, 12 treated these charges as mandatory, three treated as optional and nine did not respond at all. Thus, the majority confirmed that these were mandatory in nature.

161. The DG further analysed the nature and scope of coordination and liasoning charges and after taking into consideration the various submission made by the parties including the Director of the CICTPL and P. Muthu, Director of Breeze

Enterprises Pvt. Ltd. and Mr. N. Rajesh Kumar Director of originally innovative logistic etc., the DG concluded that no prudent importer would engage any third party service provider, unless the same is forced on the importer as a condition precedent for import clearance. Hence, it is very likely that such services would have been forced on the importers during the material time by the CICTPL as the CICTPL would not only receive additional service charges through third party service providers, but the said charges would also not form part of the sharable tariff structure to the KPL.

162. The DG further analysed that relationship of third-party service provider with the Chettinad Group and also analysed the income of these three entities. The DG also referred to MCA 21 database in analysing the corporate structure and taken into consideration various emails exchanged between the employees of Chettinad Group and employees of these three entities and established that even the MoA and AoA of these companies were shared with the management of Chettinad Group while forming these companies. This leaves little scope to rule out any possibilities of no connection between three entities which provide Co-ordination and Liasoning Charges and the Chettinad Group, owner of the CICTPL.

163. The DG enclosed in their main and supplementary report various such e-mails and correspondence between employees of three entities with the Chettinad Group entities. We note that these e-mails but do not reproduce in our order for

the same of brevity. The DG clearly established that there was a clear nexus between these parties with the Chettinad Group. The discussion on issues has been great details almost 113 pages discussion on abuse with data and statement from pg. 214 of the DG supplementary report and concludes on pg 327, which indicate the detailed analysis conducted by the DG while establishing that these charges were mandatory and three alleged entities were managed and controlled by Chettinad Group through its employees.

164. The DG appreciated the fact that no evidence of flow back of findings from these three entities to the CICTPL. However, the DG held that it was not required to do so. Finally, the DG concluded that these three entities have no services to provide or nothing substantial to offer such services which were considered by the DG as frivolous and seem to have not added value to port link services and such services seem to be mandatory in nature.

165. On this aspect, the CCI prima-facie agreed to findings of the DG. The CCI in its analysis in para 110 of its report indicated that once the CICTPL has been found to be non-dominance in the relevant market, the examination of abusive conduct on part of the CICTPL was not required under the provision of the Act. However, the CCI indicated that for sake of completeness, the CCI has gone ahead to examine this aspect also. The CCI indicated that coordination and liaising charges do not exist as of today. The CCI have noted the various findings on this

issue given by the DG in main and supplementary investigation report (which we have already noted in our earlier preceding discussion).

166. The CCI taken into consideration every deponent before the DG who confirmed during main as well as supplementary investigation by the DG that the coordination liasoning charges were mandatory during 2011-12 to 2014-15. The CCI found that coordination & liasoning charges were paid by Appellant members as well as by non-informant members through three entities and were mandatory in nature.

167. We shall take into consideration table no. 7 & 8 mention by the CCI in its Impugned Order in para 122 which read as under:-

Table 7

Total Coal handled for the Informant's members by three C&L services providers *i.e.* BEPL, OILPL & FHSPL cumulatively, at CICTPL

(Qty in MT)						
Sl. No.	Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
A.	Total coal imported by Informant's members at CICTPL Terminal	747,934	2,152,411	4,218,101	3,551,489	3,162,912
B.	Coal handled by three service providers <i>i.e.</i> BEPL, OILPL & FHSPL at CICTPL for Informant's members	747,934	2,152,411	3,949,851	2,733,107	770,443
C.	Percentage of their coal imports for which Informant's members availed C&L services of said three service providers at CICTPL	100.00%	100.00%	93.64%	76.96%	24.36%

Table 8

Total Coal handled for only Non-Informant Members by three C&L services providers, *i.e.* BEPL, OILPL & FHSPL cumulatively at CICTPL

(Qty in MT)

Sl. No.	Particulars	2011-12	2012-13	2013-14	2014-15	2015-16
A.	Total coal imported by others (Non-Informant members) at CICTPL Terminal	2,740,316	2,884,094	4,154,801	5,686,605	5,365,940
B.	Coal handled by all third parties at CICTPL for non – Informant members	2,740,316	2,610,213	1,525,772	1,478,926	746,752
C.	Percentage of their coal imports for which such Non-Informant members availed C&L services of said three service providers at CICTPL	100.00%	90.50%	36.72%	25.99%	13.92%

168. The CCI stated that there seem to be no reason why user would pay additional charges to third party for availing services which ought to have been provided by the CICTPL. The CCI also noted that there was no economic sense for any importer to pay separate charge for coordination and liasoning charges to third party service provider and these charges were rather imposed upon users. The CCI also taken into consideration the DG’s finding regarding the relationship between these three entities with the Chettinad Group and held that the DG has successfully established the linkage even the no flow of funds from these companies to the CICTPL was found. The CCI also agreed that observation of the DG that these companies are not officially as part of Chettinad Group and however, the affairs and conduct of these three entities were manged and controlled by employees of the Chettinad Group. However, the CCI in para 128

of the Impugned Order treated conduct of the CICTPL as being “opportunistic” and not abusive since, the CICTPL was not held to be dominant in the Impugned Order by the CCI. It tantamount that had the CCI treated the CICTPL as the dominant player in the relevant market, then the said conduct of the CICTPL charging coordination and liasoning charges through three entities would have been treated as abusive.

169. We have already disagreed with the CCI on the CCI’s finding on delineation of relevant market, where the CCI has deviated from the DG supplementary report and included Krishnapatnam Port in the definition of the relevant market. We have found that Krishnapatnam Port is required to be excluded and therefore, the CICTPL becomes the dominant player in the relevant market in accordance with Section 2(r) of the Act.

170. We tend to agree with the findings of the DG which has been concurred by the CCI that the coordination and liasoning charges was collected during relevant period through 2011-12 to 2014-15, relevant period by these three entities were mandatory in nature. We also concur with the finding of the DG and the CCI that the Chettinad Group and group were found to be in control in conduct of affairs of these three entities collecting Coordination & Liasoning charges. This tantamount to abuse of its dominant position by the CICTPL.

171. Keeping all the facts into view and circumstances of this case and for the reason mentioned herein before, the Impugned Order passed by the CCI does not

stand the test of law and is required to be set aside. We set-aside the Impugned Order accordingly. The appeal is hereby allowed and the matter is remanded back to the CCI for deciding it afresh in accordance with law after providing an opportunity of being heard to the parties including all fresh evidence.

172. The CCI, if so think in the interest of justice, may also order for further investigation to be done by the DG. The concerned parties are directed to appear before the CCI on **09.02.2026**.

173. In view of our comprehensive finding as above, the Impugned Order is set aside. I.A, if any, stand closed. No Cost.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

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