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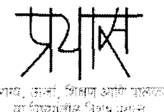

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13th December, 2012

To,
Shri. S.L. Bunker
Secretary
Competition Commission of India
The Hindustan Times House
18-20, Kasturba Gandhi Marg,
New Delhi – 110 001

Subject: Additional submission relating to the petition filed by Maharashtra State Generation Company Ltd (MSPGCL) against Coal India Limited (CIL) and its subsidiaries.

Ref: F.No.DG/CCI/IW/1/39/2011/1909 (Case no 3 & 11 of 2012)

Dear Sir,

Prayas (Energy Group) has filed an intervention application dated 13 July 2012, under section 25 of the Competition Commission of India (General) Regulations, 2009 (No. 2 of 2009), which permits a person or an organization to take part in the proceedings before the commission. Subsequently, on 14th September 2012 we wrote another letter to the commission requesting to acknowledge receipt of our intervention application, share the petition and other relevant documents and to allow us to make further submissions, if any. Following this, we have received a formal acknowledgement receipt from the commission and a notice from the Director General's office vide letter no F.No.DG/CCI/IW/1/39/2011/1909 dated 12th September 2012, to make further submissions, if any. However, the petition and/or material placed on record by other parties, has still not been made available to us. Therefore, we are making this additional submission based on publicly available information regarding the said dispute through regulatory proceedings before the Maharashtra Electricity Regulatory Commission and media reports. We kindly request the commission to place this additional submission on record, include it in its investigation report for this matter and to direct all the concerned parties to share their respective submissions.

1. Coal is India's most important source of energy and is particularly significant for the power sector, given that about 72% of the coal consumed in the country is used for power generation and that 67% of the total power generated comes from coal[1]. Coal India Ltd (CIL) is the largest supplier of coal in the country and the world[2] and supplies 80% of India's domestic coal. It is also a holding company for seven wholly owned coal producing subsidiaries in India and one mine planning and consultancy company i.e. CMPDI. Apart from CIL, Singareni Collieries Company Limited (SCCL) is also engaged in coal production and sale. In addition these public sector undertakings, few private companies are also engaged in mining coal. However, as per the present statutory provisions, the private companies can mine and

[1] Coal directory of India 2010-11 published by the Coal Controller Organization and Monthly generation report of March 2012 from Central Electricity Authority.
[2] http://www.coalindia.in/Company.aspx?tab=0

produce coal for their own consumption alone and not for sale to any third party. Thus, there are very high entry barriers in the sector and apart from CIL and SCCL no other company can produce coal for commercial purposes in India. Hence on account of legal provisions, CIL enjoys monopoly in domestic (Indian) coal market.

2. Cost of fuel i.e. coal, accounts for more than 70% of the generation cost for electricity produced by a coal-based Thermal Power Plant (TPP). Most of the base load electricity generation in India comes from coal based TPPs which in turn account for two-third of the total electricity generation in FY 2011-12[3]. Thus, domestic coal plays a very important role in overall electricity pricing. Hence, CIL's dominant position in Indian coal market needs to be seen in the context of lack of substitutes for domestic coal. It becomes pertinent to note that it is not easily possible for the power generator to substitute domestic coal with imported coal on account of financial as well as technology related issues.
    i. There is huge difference in price of domestic and imported coal and depending upon country of import the transportation costs can increase significantly.
    ii. Indian coal usually has low sulphur, low calorific value and high ash content whereas imported coal has lower ash, higher calorific value and comparatively higher level of sulphur. Most boilers used by Indian power plants are designed by BHEL taking into account Indian coal properties and hence blending it with imported coal creates operational issues.

3. MSPGCL is a Maharashtra State Government owned generating company having installed capacity of around 10,148 MW out of which more than 7,000 MW is fuelled by coal. MSPGCL's generation tariff is regulated on cost-plus basis (like most other State and Central Government owned generating plants) by the Maharashtra State Electricity Regulatory commission (MERC). In its tariff petitions before the MERC, MSPGCL has claimed that variation in its actual performance vis-a-vis stipulated norms is largely on account of its inability to enforce its commercial contracts with coal suppliers to ensure supply of coal as per agreed quantity and quality[4]. Here are some relevant extracts from MERC order dated 21st June 2012 in case no 6 of 2012[5] related to MSPGCL tariff determination:

   "3.2.5. Thus, poor coal quality has been the single most important reason cited by MSPGCL for lower availability and PLF during FY 2010-11."

   "4.1.1. B. MSPGCL submitted that it is facing several issues on account of inferior quality of coal. The Calorific Value of coal supplied by the collieries is deteriorating over the years and is much lower than the design Calorific Value of the boilers. <u>MSPGCL submitted that besides the quality of coal, it is not receiving the required quantity of coal</u>, which is forcing MSPGCL to depend upon the usage of imported fuel... However, the management is limiting the use of imported coal in line with the quantum specified by CEA in its communication to MSPGCL."

   "7.2.2. MSPGCL submitted that the new Units were not able to achieve the normative performance parameters from April to December 2011 due to issues pertaining to supply of wet, sticky, muddy coal quality and stoppage of washed coal supply at some Units."

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[3] http://www.cea.nic.in/reports/yearly/energy_generation_11_12.pdf

[4] Petition of MSPGCL for final True up for FY 2010-11, approval of Aggregate Revenue Requirement and Tariff for FY 2011-12 and FY 2012-13. (MERC Case No 6 of 2012)

[5] http://mercindia.org.in/pdf/Order%2058%2042/Case%206%20of%202012-%2018-6-2012.pdf

4. Poor quality and/or inadequate supply of domestic coal adversely affects power generating station's performance parameters and leads to increase in fuel cost. Further, this may force the generator to blend washed or imported coal which is significantly costlier than domestic raw coal, thereby increasing cost of generation. Thus, from the electricity consumers' point of view, poor quality and inadequate availability of domestic coal leads to following problems and additional costs:
   i. Shortfall in generation due to lower availability and Plant Load Factor.
   ii. Higher station heat rates on account of deterioration in performance, leading to increase in fuel cost.
   iii. (Avoidable) expenditure on high cost of imported coal which further increases the generation cost
   iv. (Avoidable) expenditure on high cost short term power to make up for the shortfall in planned versus actual generation.
   v. In addition to these (avoidable) additional costs, loss of low cost generation also forces consumers to bear with power cuts i.e. load shedding.

5. As per the CEA Performance Review of Thermal Power Stations 2011-12[6], the loss in electricity generation in FY 2011-12 on account of shortage of coal was 11.6 Billion Units and on account of poor quality of coal was 17.9 Billion Units. Thus, the total loss in generation as reported by state and centre sector generation companies on account of coal related issues was 29.5 Billion Units, which is almost 5% of total electricity generated by coal based TPPs. Considering a modest difference of Rs. 1.50 per unit in cost of domestic coal based regulated tariff and short term power purchase, the shortfall of 29.5 Billion units would translate into an additional expenditure of Rs. 4,425 Cr to meet this shortfall.

6. Fuel Supply Agreement (FSA) is the key legal document which defines all the relevant terms and conditions for the contract between coal supplier and buyer. Recourse to the buyer, if any, against poor quality and/or inadequate supply of coal would be as per the terms and conditions of FSA, which is essentially a contract of take or pay nature[7]. All coal supplying companies follow policy directives issued by CIL in contractual matters, and hence the design and format of FSA is same across all coal suppliers (i.e. CIL subsidiaries and SCCL). Thus, issues raised by MSPGCL can be considered representative of the challenges faced by all power generating companies who depend on domestic coal supply agreements with CIL and its subsidiaries. Hence, this matter should not be seen as a mere dispute between MSPGCL and MCL, but as an instance of a larger problem of ensuring contractual accountability of a monopoly supplier with regard to both quantity and quality of domestic coal for which there are no readily available substitutes. Hence, the Commission should investigate this matter while keeping in view this larger context and the monopoly nature of the coal supply companies.

7. Given this background, it becomes relevant to analyze whether any act on part of CIL or its subsidiaries falls under the behavior described in sections 3 and 4 of the Competition Act 2002, dealing with anti-competitive agreements and abuse of dominant position. In the said Act, dominant position is defined as:
   (a) "dominant position" means a position of strength, enjoyed by an enterprise, ***in the relevant market, in India****, which enables it to—*
   (i) operate independently of competitive forces prevailing in the relevant market; or

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[6] http://www.cea.nic.in/reports/yearly/thermal_perfm_review_rep/1112/highlights.pdf
[7] http://coal.nic.in/policy/newcoaldistribution.pdf (is this the right reference or did you want to put the model FSA here?)

(ii) affect its competitors or consumers or the relevant market in its favour. ***(emphasis added)***

8. The section 4 of the Act which deals with abuse of dominant position states the following:
   "(1)No enterprise or group shall abuse its dominant position.
   (2) There shall be an abuse of dominant position, if an enterprise or a group:
   (a) directlyor indirectly, imposes unfair or discriminatory—
   (i) condition in purchase or sale of goods or service; or
   (ii) price in purchase or sale (including predatory price) of goods or service.
   (b) limits or restricts—
   (i) production of goods or provision of services or market therefor; or
   (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
   (c) indulges in practice or practices resulting in denial of market access in any manner; or
   (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
   (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market."

9. Coal has been nationalized under the Coal Mines (Nationalisation) Act, 1973. By virtue of the statutory provisions in the Nationalisation Act, no companies except for CIL, its subsidiaries and SCCL can produce coal for commercial purposes, i.e. for direct sale to third party. Thus, CIL along with its subsidiaries is a monopoly and enjoys dominant position as defined in the Competition Act, in the Indian coal market. Therefore, by statute CIL is capable of operating independent of the market forces as far as the domestic coal market is concerned and consumers have no choice but to exclusively rely on it for domestic coal supply. In the absence of any independent regulatory authority, it becomes all the more critical to evaluate and ensure that CIL performs its due obligations in efficient, economic and fair manner.

10. According to sub-section 4 of Section 19 of the Competition Act 2002, while inquiring into claims concerning abuse of dominant position under Section 4, due regard must be given to following factors, which are applicable to CIL as well:
    (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.**(emphasis added)***

In this context, it is our contention that on account of reasons mentioned below, certain behavior on part of CIL can be either termed as abuse of dominant position or creates structural possibilities for abuse and hence there is need to take corrective steps to prevent such possibilities.

A. <u>FSA related issues:</u> As per the New Coal Distribution Policy (NCDP) notified by Ministry of Coal on 18th October 2007[8], 100% of quantity as per normative requirement of power sector consumers would be considered for supply of coal through FSA. Under the NCDP, supply of coal to power is to happen only through FSAs and even existing linkage holders are required to enter into new FSAs. Accordingly, CIL had published a draft FSA in 2008 and thereafter revised it recently. However, as demonstrated below, there are major issues in the nature and structure of FSA, which is highly in favor of coal supplier i.e. CIL, and does not provide enough recourse to redress buyer's grievances.

i. <u>Lack of accountability for ensuring adequate supply:</u> The section 4 of the draft FSA, defines the terms for Annual Contracted Quantity (ACQ), which is the quantity of coal agreed to be supplied. Section 4.6 of this agreement defines compensation for shortfall in coal supply. The FSA has a provision for providing a 'performance incentive' (Clause 4.12) which requires the consumer to pay CIL a percentage of the weighted average base price of grades of coal supplied, if CIL meets up to 90% of the contracted quantity of coal. The FSA also provides for penalties for not meeting contracted quantities but only when less than 65% of the ACQ is supplied. Therefore if up to 35% of the contracted quantity is not supplied, the buyer cannot claim any compensation or hold CIL accountable for its obligations. This arrangement is heavily in favour of CIL and it is clear from Table 1 that the buyers have to pay for CILs inefficiency. This is one of the main reasons why power plants have to rely on coal imports in spite of having an FSA for ACQ corresponding to 100% of their normative requirement.

Table No.1 Incentive and penalty mechanism as per proposed FSA

Incentive		**Penalties**	
% of ACQ supplied	% of price*	% of ACQ supplied	% of price*
90 to 95	0-10	90 to 65	**No Penalties**
95 to 100	10 to 20	60 to 65	0 to 5
>100	40	55 to 60	5 to 10
*weighted average base price of contracted grades of coal		50 to 55	10 to 20
		>50	20 to 40

Source: Draft FSA from CIL website[9].

[8] http://coal.nic.in/policy/newcoaldistribution.pdf

[9] http://www.coalindia.in/Documents/NCDP/Model - A 02112012.pdf

ii. **Possibility for discrimination amongst FSA consumers:** The incentive and penalty structure of the draft FSA creates possibilities for CIL to supply more than 90% of coal to one FSA holder at the cost of not even meeting normative requirement of other, as there are no penalties for shortfall up to 65%. Illustrative example considered in Table 2 below shows that by supplying one FSA consumer 70% of the contracted annual quantity and other 110%, CIL can hypothetically make additional revenue of Rs. 55 Cr without having any liability to compensate the FSA consumer who has received less than normative share. Absence of mine wise data on production and off take makes it difficult to analyze whether such instances have actually occurred and to what extent. Further, the consumer who has received less than normative requirement will also have to buy high cost coal from e-auction or import it. Just to given an example of the burden this would impose on FSA consumer 1, consider that he imports, then to make-up for shortfall of 2 MT of Indian coal, the consumer will have to import 1.33 MT foreign coal[10]. Considering a modest price of $50/ton[11] for imported coal, the consumer will have to spend about 66 million USD or Rs. 340 Cr[12]. for import as against the Rs. 200 Cr that he would have otherwise paid to CIL for getting the same amount of coal through FSA. Thus, the consumer 1 has to bear an additional burden of Rs.140 Cr while CIL does not have to pay any compensation and in fact can make additional revenue of Rs. 55 Cr. Further, instead of supplying this 2 MT to FSA consumer 2, if CIL diverts the same to e-auction market, its revenue gain will be much higher, around Rs. 140 Cr.

Table No 2: Illustrative example regarding FSA incentive and penalty mechanism

Particulars	FSA consumer 1	FSA consumer 2
ACQ in Million Tons per year as per FSA	10	10
Normative ACQ requirement in Million Tons per year as per FSA	9	9
Base price for the contracted grade of coal in Rs/ton	1000	1000
Case I: CIL supplies both consumers 90% of the agreed ACQ		
Actual supply by CIL in a given year in Million tons	9	9
Payment to CIL in Rs Cr	900	900
Penalty to be paid by CIL for any shortfall in supply in Rs Cr	Not applicable	Not applicable
Incentive to be paid to CIL for supply more than normative ACQ in Rs Cr	Not applicable	Not applicable
Total Payment received by CIL in Rs Cr	**1,800**	
Case II: CIL supplies consumer 1 70% of ACQ and other consumer 110% of ACQ		
Actual supply by CIL in a given year in Million tons	7	11
Payment to CIL in Rs Cr	700	1100

[10] http://www.coalindia.in/Documents/NCDP/Side - Agreement 26092012.pdf (clause 6.2)

[11] Benchmark price of Indonesian coal with GCV more than 6000 kcal/kg is ~74 USD/ton. However coal with slightly lower GCV value ~4800-5000 kcal/kg is available at prices in the range of USD 50-60/ton.

[12] Considering conversion rate of 1 USD = Rs. 50 INR

Penalty to be paid by CIL for any shortfall in supply in Rs Cr	0	Not applicable
Incentive to be paid to CIL for supply more than normative ACQ in Rs Cr	Not applicable	55
Total Payment received by CIL in Rs Cr	**1,855**	

It is also important to note that CIL has published two separate draft FSAs for publicly owned power companies and privately owned generating stations[13]. There are serious differences in some of the important clauses of FSA for these two types of buyers. For example, as per the draft FSA for Public Sector companies, under clause 2.5 of the FSA Government of India (without mentioning concerned ministry) is supposed to adjudicate in case if the coal supplier and buyer fail to agree on terms of revision of the agreement, whereas under the same clause in case of draft FSA for Private generators, the aggrieved party will have the right to terminate the contract. Other important clauses such clause 3 pertaining to security deposit, clause 14 related to suspension of coal supplies in the event of delayed payment, clause 15 pertaining to settlement of disputes, clause 16 dealing with termination of the contract, clause 17 related to force majeure are worded differently in the two FSAs. The CCI should analyze these clauses and its implications to ascertain whether such differences in contract document by a monopoly supplier are tenable under the Competition Act.

iii. **Lack of accountability for imports:** As mentioned above, the FSA does not contain provisions that will ensure supply adequacy. Instead, it allows CIL to meet any shortfall through imports. However, there are no clauses in the FSA which make even an in-principle demand on CIL to source imported coal for meeting such shortfall at least cost. FSA being a take or pay contract, consumers are forced to buy coal supplied by CIL irrespective of appropriateness of this price. Further, according to the clause 11.1 of the Side Agreement, the compensation for any shortfall in providing imported coal is calculated as per price of domestic coal[14] (which is significantly lower and not comparable on account of coal quality differences).

iv. **Poor quality of coal:** Power companies have always complained about poor quality of coal, not only in the monsoon season but also otherwise. Extracts from MERC order mentioned above highlight this issue well. The fact that CEA compiles and publishes loss of generation on account of this reason, makes it clear that this is not a small issue. The present FSA allows the buyer to appoint a person to measure and record quantity and quality of coal. However, it is clear that this mechanism is not working well as indicated by the nearly 18 billion unit shortfall in electricity generation due to poor quality coal.

v. **E-auctions and the possibility of diversion:** CIL sells part of its coal production through a spot market called e-auctions, where realizations are typically higher. In the period from April-December 2010, e-auctions fetched an average price of Rs. 1736/ton while coal sale through FSA fetched only Rs. 1036/ton on average in FY 10-11. The low or non-existent penalty for under-supply in FSA provides CIL another structural incentive to divert coal from FSA consumers to e-auctions, as demonstrated

[13] http://www.coalindia.in/Business.aspx?tab=1
[14] http://www.coalindia.in/Documents/NCDP/Side_-_Agreement_26092012.pdf

in section A (ii) of this submission. According to the CAG report, between 2008-09 and 2010-11, CIL did not supply about 54 million tons of coal that had been contracted through FSAs. Interestingly, in spite of significant shortage of coal during 2011-12, over 35 MT of coal was sold in the e-auction market between April and December 2011 by CIL and SCCL as per Ministry of Coal data[15]. According to the draft 12th five year plan document the expected gap between domestic coal production and demand is likely to increase to 180 million tons / year in 2016-17[16]. Considering, gestation period and other production and transport bottlenecks, shortages are here to stay. Increasing shortage will lead to increase in spot prices for e-auction which may further increase the incentive for diversion of coal to hike spot market prices in the absence of any regulatory or oversight mechanism.

vi. **Pricing small consumers out of the coal market:** As per NCDP, the e-auction system was introduced to supply coal to small consumers who are not able to avail it through the present institutional mechanisms, mainly FSA and captive mining. However, the inability of CIL to meet its FSA commitments forces large consumers like MSPGCL, who have FSAs with coal companies to buy coal through e-auctions. As large coal consumers can afford to pay higher prices for coal, it gets priced beyond the reach of small consumers for whom e-auctions were originally devised. In the absence of penalties for shortfall in supply as per FSA and significantly higher price of e-auctioned coal, CIL has incentive for such diversion. Presently there is no mechanism to verify or prevent diversion of coal from committed FSA supply quantity to e-auction market. This is a serious issue which the commission should further investigate.

B. **Operational inefficiencies:** Persistent inefficiency can be considered as a manifestation of abuse of dominant position. Ownership by the Government often imposes political restrictions that do not allow public utilities to operate in a manner similar to the way private monopolies can potentially abuse their dominant position. However, in the case of public monopolies there is a strong possibility that the abuse of dominant position may manifest itself in the form of inefficiencies, in the absence of competitive pressures to reduce costs or improve service. Lack of sufficiently strong regulatory mechanisms and the absence of legal recourse to buyers against such behavior, may cause such inefficiencies to foster and persist. This is a very important aspect of abuse of monopoly power by a public utility which the commission should not overlook. The Section 4(2)(b)(ii) of the Competition Act states: *"There shall be abuse of dominant position if an enterprise or group limits or restricts technical or scientific development relating to goods and services to the prejudice of consumers"*. Thus, any action which limits or restricts technical or scientific development relating to the coal sector need not be linked to intentions of sales and/or profit maximization alone. Restriction of technical and scientific developments could be due to inaction and/or inadequate action with respect to mitigation of inefficiency. The inefficiency, as it is passed on to the power sector restricts development in this sector as well. In this context certain issues concerning operational inefficiency and having direct impact on consumers are enumerated below and need to further investigated by the commission:

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[15] Ministry of Coal Annual Report 2011-12

[16] http://planningcommission.gov.in/plans/planrel/12thplan/pdf/vol_2.pdf (page number 149, table 14.19)

i. **Persistent shortage and widening demand- supply gap:** Coal production has always fallen short of targets but the shortfall has been particularly stark in recent times. As a result of introducing competitive bidding in power sector, generation capacity addition has happened at a very fast rate. In FY 2011-12, coal-based generation capacity increased by 19.3% while domestic production of coal went up by only 1.4%. As per CAG report, in 32 new projects of CIL delays in execution range from 1 to 12 years.As coal production is not able to keep pace with this growth and on account of FSA related issues mentioned above, many of these new plants are either being stranded for want of coal or generating partially at a higher price using e-auction and imported coal. Hindering production on account of huge backlogs in removing over-burden (more than 5 to 12.5%), not setting up enough number of washeries in spite of the incentives it would provide to both buyer and seller, are other examples of inefficiencies reported by CAG report, which also contribute to the supply shortage.

ii. **Low productivity:** It is generally accepted that CIL has lower human productivity when compared with other countries. However, CIL's productivity concerns are not limited to human resources alone but also include technology related issues. Most of CIL's coal production comes from open cast mining. This involves mining using Heavy Earth Moving Machinery (HEMM),for which technologically fairly advanced equipment is available globally.However, it appears that CIL uses norms for availability and utilization of HEMM– defined as far back as 1986. A review of these norms had been initiated about a decade ago, though it is not clear what has come out of it. What is worse is that availability and utilization of the HEMM by CIL falls short of even the 1986-defined norms for shovels, dumpers, dozers and drills. Lower technology absorption leads to inefficient operation and longer idle hours per shift, adding to supply deficit.

C. **Pricing related issues:** As per the information available on the Ministry of coal website, prior to January 2000 the Central Government was empowered under section 4 of the Colliery Control Order, 1945, as continued in force by the Essential Commodities Act, 1955, to fix the grade-wise and colliery-wise prices of coal. The pricing of coal was fully deregulated after the Colliery Control Order, 2000 was notified with effect from 1st January 2000 in suppression of the Colliery Control Order, 1945. Under the Colliery Control Order, 2000 the Central Government has no power to fix the prices of coal.

i. **Rationale for de-regulation of price not obvious:** Given the monopoly nature of coal sector on account of statutory provisions and absence of any independent regulatory authority to oversee its operations, the rationale for de-regulating price of coal is not obvious. Lack of publicly available information regarding tariff philosophy and methodology adopted for arriving at mine-wise and grade wise price of coal, creates further challenges. This decision to deregulate coal pricing was in fact strongly objected by the Ministry of Power citing lack of regulatory mechanism that will ensure that price setting is done in transparent, rational and prudent manner. At that time, the Government had promised to institute a coal regulator very soon, however till date not much progress has been seen on this front. The recent flip-flop on pricing by CIL while moving to GCV based pricing strengthens concerns regarding the rationale for de-regulation.

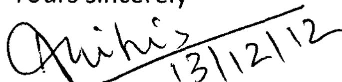
ii. **Gross Calorific Value (GCV) based pricing:** In January 2012, the Government of India announced its decision[17] to move to Gross Calorific Value (GCV) based pricing, which is the international norm. This mechanism can be useful for both the supplier and buyers, if implemented properly. Under this mechanism, the supplier can get higher prices for washed coal, as bands are much narrower than the prevalent useful heat content/value based system. For the buyer, it can help to ascertain both coal quality and quantity at the receiving end, thereby significantly improving accountability of the supplier. CIL published its GCV bands along with prices effective January 1 2012. The revised prices were substantially higher for grades C, D and E which together contributed about 44% of CIL's production in 2010-11. After protests from consumers of coal, these prices were later revised downward in February 2012. In short, the changed prices published by CIL following a change of pricing methodology were not revenue-neutral but attempted to increase revenues without any increase in quantity or quality of coal. Such behavior in the light of monopoly nature of the enterprise, persistent shortage and de-regulation of price creates very lopsided terms for the buyer.

iii. **Lack of bargaining power amongst the buyers:** In the absence of an independent regulatory authority, de-regulation of coal price gives CIL complete freedom to set prices which may or may not be reflective of real costs and/or allowed/acceptable profits. In the absence of transparent pricing mechanism buyers have no information regarding the assumptions made by CIL in determining price for various grades of coal. This is a serious issue which the CCI should consider in light of the monopoly nature of CIL, the lopsided structure of FSA and the lack of substitutes for domestic coal. Under such circumstances, the buyers have no option but to buy domestic coal as per CIL notified prices. Further, many of the coal buyers are power sector companies who can pass-through the entire fuel cost to their consumers and hence they may not complain about arbitrary pricing policies. Such conditions may further encourage CIL to increase its prices without any substantial reason to do so. The Present system does not provide any strong disincentives that would discourage inefficiency in production and sale of a crucial natural resource which is controlled and regulated by monopoly. In this context, CCI should investigate whether the pricing methodology and underlying assumptions adopted by CIL are fair and prudent.

The points mentioned above are some examples of the manner and nature of abuse of dominant position possible under the present policies and legal framework. We hope the commission will consider all these aspects in its investigation so that analysis and critique thereof, can lead to better policies and contract terms going forward. Therefore, we once again request the commission to place this submission on record and undertake investigation in this matter considering the issues highlighted above and also allow us to make further submissions, if any.

Thanking you,

Yours sincerely



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[17] http://coal.nic.in/.%5Cpolicy%5Cpricing.pdf

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