

TRAI or CCI – Supreme Court settles the Jurisdictional Tussle

written by Mohana Roy | December 13, 2018

INTRODUCTION

The Supreme Court of India has recently settled the jurisdictional tussle between the Competition Commission of India (“CCI”) and Telecom Regulatory Authority of India (“TRAI”) in the case of cartelization by three major telecom operators namely Bharti Airtel, Vodafone and Idea Cellular (hereinafter referred as “Incumbent Dominant Operators” or “IDO”).^[1] The apex court upheld the Bombay High Court’s judgment of setting aside the CCI Order and opined that the matter pertains to interconnection agreement which is governed under the TRAI Regulations therefore, TRAI being the sector regulator has a better jurisdiction in the alleged matter than CCI. The allegation of cartelization was brought by Reliance Jio who informed CCI that the IDO has entered into an anti-competitive agreement for denying Point of Interconnection (“POI”) services to Reliance Jio.

FACTUAL

MATRIX

In November 2016, Reliance Jio filed an information under Section 19(1) of the Competition Act, 2002 (“Competition Act”) alleging that the IDO has formed anti- competitive agreement and cartel so that they can deny POI Services to Reliance Jio and without having sufficient POI it gets difficult for users of one service provider to make calls to users of another service provider, it was also alleged that IDO were denying mobile number portability to the customers who wanted to switch to Reliance Jio. Under section 26 of the Competition Act 2002, CCI on receipt of information has to first find out whether there exists a prima facie case. CCI on ascertaining the same passed an order that there existed a prima facie case and hence an investigation shall be conducted by CCI. Against the order of CCI, the IDO filed writ petition in the Bombay High Court praying to quash the CCI Order. The High Court after hearing the matter vide its judgment quashed the CCI’s order for investigation due to lack of jurisdiction. Aggrieved by the High Court’s judgment, CCI filed a special leave petition with the Apex Court for its determination.

CONTENTIONS

AND FINDINGS

The IDOs contended that CCI’s order to conduct investigation was premature, TRAI has exclusive jurisdiction on the matter as it regulates the telecom sector which shall also include competition related issues. It was also contended that even if CCI

has jurisdiction but in this case TRAI's jurisdiction must prevail and it is TRAI who has to determine the facts related to jurisdiction and CCI should not have proceeded with the matter and order for investigation. It was further emphasised by the IDOs that Telecom Regulatory Authority of India Act, 1997 ("TRAI Act") is a complete code and the objective set out in the preamble of the TRAI Act makes it clear that it is TRAI who shall make arrangements for protection and promotion of consumer interest and ensuring fair competition in telecommunication industry.

Reliance was also placed in Section 11 of the TRAI Act which gives power to TRAI and mandates it to take measures aimed at facilitating competition and promote efficiency in the operation of telecommunication services. Thus, even though the objective of the Competition Act and the TRAI Act are overlapping, being the special law TRAI Act shall prevail.

CCI on the other hand argued that both TRAI Act and the Competition Act are special Act therefore the IDOs contention regarding the same is inapplicable. Further it was also argued that both TRAI Act and Competition Act operates in their respective fields, CCI has complete jurisdiction to look in to the matters of anti-competitive practices whereas TRAI has jurisdiction to take care of matters pertaining to violation of condition of licenses and regulations by the telecom companies.

The Bombay High Court while passing its judgment opined that the questions regarding interconnection agreements and clauses under the same, quality of services, obligations of the service providers are governed under the TRAI Act and the rules and regulations made thereunder. The Competition Act is insufficient to decide and deal with the issues arising out of the provisions of the TRAI Act. Therefore, CCI has no jurisdiction on the present matter.

The Apex Court reiterated Bombay High Courts' decision but it denied the contention that TRAI has the sole jurisdiction to deal with the issue excluding CCI. The Apex Court further in its judgment said that the matter pertains to violation of interconnection agreement and the obligation to provide interconnectivity is the condition of licenses provided to the telecommunication companies which is governed under the TRAI Act. Therefore, not letting TRAI who is the domain expert here in this case to deal with it shall be unjust. Further, the Apex Court emphasised that once TRAI determines the jurisdictional facts

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the matter then question may arise whether denying POI by the IDOs was an action in concert and it would be in this stage that CCI may intervene for determining whether violation of TRAI Act and regulations thereunder has also led to abuse of dominance and cartelization under Competition Act.

CONCLUSION

Indian telecom sector is among the fastest emerging sector. On one hand the players in the sector have to amass the market share and on the other hand they have to maintain a fair competition in the market. In the process there may arise legal issues such as cartelization and predatory pricing along with issues of interconnection similar to the present case and which calls for overlapping jurisdiction of the TRAI and the CCI. In such a case the Apex Courts' judgment has provided clarity to the ambiguity with regards to jurisdictional tussles between the two authorities. In order to avoid double jeopardy, Supreme Court has also clarified that both the authorities have to act very carefully and in such matters it is necessary that

CCI act after TRAI, who is the specialised sectoral regulator.

[1] *Competition Commission of India vs. Bharti Airtel Limited*, Civil Appeal No(s). 11847-11851 of 2018

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