2025:KER:36755

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE D. K. SINGH

WEDNESDAY, THE 28TH DAY OF MAY 2025 / 7TH JYAISHTA, 1947

WP(C) NO. 29766 OF 2022

PETITIONER:

ASIANET STAR COMMUNICATIONS PRIVATE LIMITED
STAR HOUSE, URMI ESTATE 95 GANPATRAO KADAM MARG LOWER PAREL (W), MUMBAI- 400013, REPRESENTED BY ITS AUTHORIZED SIGNATORY K.S. BIJU

BY ADVS.
V.V.NANDAGOPAL NAMBIAR
ADV.MR.MANINDER SINGH (SR.)
ADV.MR.JAIJU BABU(SR.)
ADV.MR.SANTHOSH MATHEW(SR)
SMITHA (EZHUPUNNA)
CHITRA JOHNSON
VICTOR GEORGE V.M.
ADV.MR.PRABHAS BAJAJ
K.GOPALAKRISHNA KURUP (SR.)(G-169)
RANJEET SINGH SIDHU(D/2599/2015)
SIDHARTH CHOPRA(D/673/2005)
SWIKRITI SINGHANIA(D/2229-C/2011)
KUBER MAHAJAN(D/2760/2020)
AKSHAY AGARWAL(D/2269/2017)
SNEHA JAIN(D/3024/2010)
SAIKRISHNA RAJAGOPAL(D/1147/1995)

RESPONDENTS:

1 COMPETITION COMMISSION OF INDIA
REPRESENTED BY ITS SECRETARY, 9TH FLOOR, OFFICE BLOCK - 1, KIDWAI NAGAR (EAST) , NEW DELHI - 110023, INDIA.

2 ASIANET DIGITAL NETWORK PRIVATE LIMITED 2A,
II FLOOR, CARNIVAL TECHNOPARK, LEELA INFOPARK, TECHNOPARK, KAZHAKKOOTTAM, KARYAVATTOM, TRIVANDRUM -695

581 REPRESENTED BY ITS AUTHORIZED SIGNATORY

3 STAR INDIA PRIVATE LIMITED
STAR HOUSE, URMI ESTATE, 95, GANPATRAO KADAM MARG, LOWER PAREL (WEST), MUMBAI -400013 REPRESENTED BY ITS AUTHORIZED SIGNATORY

4 DISNEY BROADCASTING (INDIA) PRIVATE LIMITED
STAR HOUSE, URMI ESTATE, 95, GANPATRAO KADAM MARG, LOWER PAREL (WEST), MUMBAI -400013, REPRESENTED BY ITS AUTHORIZED SIGNATORY

5 THE DIRECTOR GENERAL
COMPETITION COMMISSION OF INDIA 'B' WING, HUDCO VISHALA, 14, BHIKAJI CAMA PLACE, NEW DELHI - 110 066.

BY ADVS.
MARIAM MATHAI
Santhosh Mathew
ADV.SRI.N.VENKATARAMAN, ASGI asst.by
SRI.JAISHANKAR V.NAIR, CGC
ADV.MR.RITIN RAI(SR.)
ADV.MR.AVINASH AMARNATH
ADV.MR.TARUN DONADI
ADV.MR.UDAY BALI
ADV.MR.NAMAN GOLECHHA
ADV.DAYAAR SINGLA
SAJI VARGHESE T.G
ARUN THOMAS(K/844/2007)
ANIL SEBASTIAN PULICKEL(K/000278/2018)
MATHEW NEVIN THOMAS(K/000936/2019)
KURIAN ANTONY MATHEW(K/1812/2020)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19.02.2025 ALONG WITH WP(C).29767/2022, 29768/2022, THE COURT ON 28.05.2025 DELIVERED THE FOLLOWING:

2025:KER:36755

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE D. K. SINGH

WEDNESDAY, THE 28TH DAY OF MAY 2025 / 7TH JYAISHTA, 1947

WP(C) NO. 29767 OF 2022

PETITIONER:

STAR INDIA PRIVATE LIMITED,
STAR HOUSE, URMI ESTATE, 95, GANPATRAO KADAM MARG, LOWER PAREL, MUMBAI 400 013 REPRESENTED BY ITS AUTHORIZED SIGNATORY SHRI. BIJU K.S.

BY ADVS.
V.V.NANDAGOPAL NAMBIAR
ADV.MR.MANINDER SINGH (SR.)
ADV.MR.JAIJU BABU(SR.)
ADV.MR.SANTHOSH MATHEW(SR)
SMITHA (EZHUPUNNA)
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RESPONDENTS:

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REPRESENTED BY ITS SECRETARY, 9TH FLOOR, OFFICE BLOCK - 1 KIDWAI NAGAR (EAST) NEW DELHI - 110023, INDIA.

2 ASIANET DIGITAL NETWORK PRIVATE LIMITED,
2A, II FLOOR, CARNIVAL TECHNOPARK, LEELA INFOPARK, TECHNOPARK, KAZHAKKOOTTAM, KARYAVATTOM, TRIVANDRUM 695 581 REPRESENTED BY ITS AUTHORIZED SIGNATORY.

3 DISNEY BROADCASTING (INDIA) PRIVATE LIMITED,
STAR HOUSE, URMI ESTATE, 95, GANPATRAO KADAM MARG, LOWER PAREL (WEST), MUMBAI -400013 REPRESENTED BY ITS AUTHORIZED SIGNATORY.

4 ASIANET STAR COMMUNICATIONS PRIVATE LIMITED,
STAR HOUSE, URMI ESTATE, 95, GANPATRAO KADAM MARG, LOWER PAREL (WEST), MUMBAI -400013, REPRESENTED BY ITS AUTHORIZED SIGNATORY.

5 THE DIRECTOR GENERAL,
COMPETITION COMMISSION OF INDIA. 'B' WING, HUDCO VISHALA, 14, BHIKAJI CAMA PLACE, NEW DELHI - 110 066.

BY ADVS.
MARIAM MATHAI
Santhosh Mathew
ADV.SRI.N.VENKATARAMAN, ASGI asst.by
SRI.JAISHANKAR V.NAIR, CGC
ADV.MR.RITIN RAI(SR.)
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MATHEW NEVIN THOMAS(K/000936/2019)
KURIAN ANTONY MATHEW(K/1812/2020)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19.02.2025 ALONG WITH WP(C).29766/2022, 29768/2022, THE COURT ON 28.05.2025 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE D. K. SINGH

WEDNESDAY, THE 28TH DAY OF MAY 2025 / 7TH JYAISHTA, 1947

WP(C) NO. 29768 OF 2022

PETITIONER:

**DISNEY BROADCASTING (INDIA) PRIVATE LIMITED
STAR HOUSE, URMI ESTATE, 95, GANPATRAO KADAM MARG, LOWER PAREL (WEST), MUMBAI -400013 REPRESENTED BY ITS AUTHORIZED SIGNATORY**

**BY ADVS.
V.V.NANDAGOPAL NAMBIAR
ADV.MR.MANINDER SINGH (SR.)
ADV.MR.JAIJU BABU(SR.)
ADV.MR.SANTHOSH MATHEW(SR)
SMITHA (EZHUPUNNA)
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RANJEET SINGH SIDHU(D/2599/2015)
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KUBER MAHAJAN(D/2760/2020)
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SNEHA JAIN(D/3024/2010)
SAIKRISHNA RAJAGOPAL(D/1147/1995)**

RESPONDENTS:

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REPRESENTED BY ITS SECRETARY, 9TH FLOOR, OFFICE BLOCK - 1 KIDWAI NAGAR (EAST) NEW DELHI - 110023, INDIA.**

2 ASIANET DIGITAL NETWORK PRIVATE LIMITED
2A, II FLOOR, CARNIVAL TECHNOPARK, LEELA INFOPARK, TECHNOPARK, KAZHAKKOOTTAM, KARYAVATTOM, TRIVANDRUM 695 581 REPRESENTED BY ITS AUTHORIZED SIGNATORY

3 STAR INDIA PRIVATE LIMITED
STAR HOUSE, URMI ESTATE, 95, GANPATRAO KADAM MARG, LOWER PAREL, MUMBAI 400 013 REPRESENTED BY ITS AUTHORIZED SIGNATORY SHRI. BIJU K.S.

4 ASIANET STAR COMMUNICATIONS PRIVATE LIMITED
STAR HOUSE, URMI ESTATE, 95, GANPATRAO KADAM MARG, LOWER PAREL (WEST), MUMBAI -400013 REPRESENTED BY ITS AUTHORIZED SIGNATORY

5 THE DIRECTOR GENERAL
COMPETITION COMMISSION OF INDIA 'B' WING, HUDCO VISHALA, 14, BHIKAJI CAMA PLACE, NEW DELHI 110 066.

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MARIAM MATHAI
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KURIAN ANTONY MATHEW(K/1812/2020)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19.02.2025 ALONG WITH WP(C).29766/2022, 29767/2022, THE COURT ON 28.05.2025 DELIVERED THE FOLLOWING:

J U D G M E N T

[WP(C) Nos.29766/2022, 29767/2022, 29768/2022]

"TRAI sets the field, CCI calls the fouls"

2. Heard Mr Maninder Singh (Sr), Mr Jaiju Babu (Sr), Mr Santhosh Mathew (Sr), Ms Sneha Jain, Mr Ranjeet Singh Sidhu, Mr Prabhas Bajaj, learned Counsel for the petitioners; Mr N Venkataraman, learned Additional Solicitor General of India assisted by Mr Jaishankar V Nair, learned Central Government Counsel of Competition Commission of India and Mr Ritin Rai (Sr), Mr Avinash Amarnath, Mr Tarun Donadi, Mr Uday Bali, Mr Naman Golechha, Mr.Dayaar Singla, Mr Saji Varghese T G learned Counsel for the respondents.

Introduction:

3. The alleged conflict between the scope and jurisdiction of the authorities under the Telecom Regulatory Authority of

India (TRAI) Act 1997 and the Competition Commission of India (CCI), a statutory authority constituted under the Competition Act 2002, is involved in the present writ petitions. The issue is which authority, *i.e.*, TRAI (Telecom Regulatory Authority of India)/ TDSAT (Telecom Disputes Settlement and Appellate Tribunal) or the Competition Commission of India (CCI), would have the jurisdiction to entertain and decide the complaint filed by the respondent, *i.e.*, Asianet Digital Network Private Limited (ADNPL) (a wholly owned subsidiary of Asianet Satellite Communications Limited)/ Informant.

4. There are mainly three parties which are relevant to the present writ petitions:

(a) Star India Private Limited (SIPL) – Broadcaster of Satellite-Based TV Channels

(b) Asianet Digital Network Private Limited (ADNPL/Informant) – A Multi-System Operator (MSO) engaged in the business of providing TV services. It receives broadcasting signals from SIPL for monetary consideration and distributes the channels of SIPL to its customers in pursuance of the agreements entered into between the parties.

(c) Kerala Communicators Cable Limited (KCCL) – Another MSO and a competitor of ADNPL, having similar arrangements with the SIPL.

Facts:

5. ADNPL submitted Information to the CCI alleging SIPL's abuse of dominant position and denial of market access to the ADNPL in violation of Section 4(2)(a)(ii) and Section 4(2)(c) of the Competition Act 2002 by entering into sham marketing agreements with KCCL. TRAI formulated and introduced the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017 (for short, 'Interconnection Regulations 2017') and

Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order 2017 (Collectively, New Regulatory Framework), under which the Maximum Retail Price (MRP) for each pay channel was fixed. The TRAI had a total discount of 35% of the MRP payable to distributors (split as 15% towards discount and 20% towards distribution fee). Under the TRAI regulatory framework, broadcasters are to treat distributors non-discriminatorily and offer discounts on fair and transparent terms to ensure a level playing field.

5.1 The Information alleges that SIPL offered KCCL discounts up to 50% (instead of 15% as prescribed by the Interconnection Regulation 2017). SIPL achieved this by entering into marketing and advertising agreements with KCCL, offering benefits in the form of discounts. Marketing agreements were entered into between the SIPL and the KCCL purporting to advertise the petitioner's channel 'Asianet', which already enjoys huge popularity in Kerala, having four times more viewership than its nearest competing channel. The agreement is only a sham, as these advertisements are being featured by the KCCL on a 'Test' channel at the end of its channel list, which merely shows these advertisements on a 24*7 basis without any real viewership. The SIPL, therefore, has violated Section 4(2)(a)(ii) and Section 4(2)(c) of the Competition Act for offering discriminatory discounts, denying market access to ADNPL, and providing unfair advantage to KCCL.

5.2 ADNPL, which is an MSO, predominantly provides digital TV services in Kerala. It also operates in Karnataka, Andhra Pradesh, Telangana and Odisha. As per the complaint filed before the CCI, the ADNPL had a customer base of 10.02 lakh in Kerala and a minimum of 1.19 lakh customers in all other States combined (as of December 2021). The SIPL and its subsidiaries and group companies, including Disney and Asianet Star, are broadcasters of satellite-based TV channels in India, having multiple channels of different languages and various genres, including general entertainment, movies, kids' entertainment, sports and infotainment.

<u>Order of the Competition Commission of India</u>:

6. The ADNPL has made the following prayers before the Competition Commission of India:

> "(i) Pass an order under Section 26 (1) of the Act to cause an investigation into the discriminatory conduct of SIPL;
> (ii) Pass an order under Section 27 of the Act finding that SIPL has abused its dominant position in contravention of Section 4 of the Act by indulging in discriminatory pricing and conduct resulting in the denial of market access;
> (iii) Impose the highest penalty on SIPL given its habitual and repeated contraventions of the Act;
> (iv) Pass an order directing SIPL to cease and desist from indulging in discrimination between DPOs;
> (v) Pass an order to refund the excess amount along with interest @ 12% p.a to ADNPL, w.e.f. 01.02.2019 in accordance with parity with KCCL in Kerala and parity with other MSOs. receiving the highest benefits above 35% of MRP and also pay compensation of Rs 200

crores demanded by ADNPL on SIPL; and

(vi) Pass any other order as it may deem fit."

6.1 The CCI, after considering the Information and materials available on record, noted the thrust of the allegations that SIPL offered additional discounts to select MSOs and KCCL, ADNPL's main competitor in Kerala. SIPL had placed MSOs like ADNPL at a huge disadvantage, which is detrimental to the competition and competitors in the market. Such conduct of the SIPL, which is the dominant player, would be violative of the provisions of Section 4 of the Competition Act, which also amounts to imposition of unfair and discriminatory prices and denial of market access to the Informant, besides distorting the level playing field in the marketplace and hindering the ability of the players to compete in an effective manner.

6.2 The CCI also observed that apparently KCCL was getting the channels at about 30% of the MRP, with about 70% discount (special discounts of up to 50% added with a distribution fee of 20%), whereas the maximum permissible discount under the New Regulatory Framework was capped at 35%. This indirect way of providing discounts to circumvent the New Regulatory Framework is by way of promotion and advertising payments to KCCL through high-value advertising deals.

6.3 The result of SIPL providing channels to KCCL at a discounted price was that Informant was constrained to price its channels higher than those of KCCL, ultimately losing its consumers, with a corresponding gain to KCCL. The Informant had to offer services at a loss-making price to retain the subscriber base, but in vain. ADNPL's subscriber base fell from 14.5 lakhs in April 2019 to 11.76 lakhs in September 2021, while the subscriber base of KCCL went up from 21.3 lakhs in April 2019 to 29.35 lakhs in September 2021.

6.4 The CCI, therefore, directed the Director General (DG) to cause an investigation to be made into the matter and submit a report within a period of 60 days from the date of receipt of the Order.

Writ Petitions before the Bombay High Court:

7. Asianet Star Communications Private Limited, Disney Broadcasting (I) Private Limited, and Star India Private Limited filed W.P.(C) Nos. 3755, 3845 and 3860 of 2022, respectively, before the Bombay High Court, challenging the Order dated 28.02.2022 passed by the Competition Commission of India.

7.1 The Bombay High Court *vide* Interim Order dated 06.04.2022 directed all three petitioners to furnish to the Director General such documentary material and information as he had called for or in response to his queries on a without-prejudice and no-equities basis. However, an interim direction was issued to the CCI not to pass any further orders or to adjudicate further on the complaint filed by the ADNPL until further orders of the Court.

The CCI was also directed not to permit or direct any coercive actions against the petitioners until the next date. The information collected by the Director General was to be kept confidential as specifically required by law. The information and documents supplied to the Director General by the petitioners were not to be shared or used by the ADNPL in any manner.

7.2 These writ petitions were finally disposed of by the Bombay High Court *vide* judgment dated 16.09.2022, having found that no part of the cause of action has arisen within the territorial jurisdiction of the Bombay High Court. The petitioners therein were granted liberty to file appropriate proceedings against the impugned order passed by the CCI before the appropriate Forum having territorial jurisdiction.

Present writ petitions:

8. Thus, after the Bombay High Court disposed of the writ petitions, the present writ petitions came to be filed before this

Court. This Court *vide* Interim Order dated 06.10.2022 passed an identical order as that of the Bombay High Court dated 06.04.2022.

Submissions:

On behalf of the Petitioners:

9. Mr Maninder Singh (Sr) and Mr Santhosh Mathew (Sr), learned Senior Counsel, assisted by Ms Sneha Jain, learned Counsel, have broadly made the following submissions. The sum and substance of the allegations in the Information filed by the ADNPL before the CCI is violation/non-compliance of the TRAI Regulations by the SIPL, which is evident from paragraphs 8.11(b), 9.4, and 10.1 of the Information.

9.1 The Parliament has provided a specific Sectoral Regulator, *i.e.*, TRAI, under the TRAI Act, regulating broadcasting activities/services. This Sectoral/Special Regulator has been assigned the duties and responsibilities to regulate ‘broadcasting services’ and ‘cable services’ as ‘telecommunication services’ since

2004 in terms of the provisions of the TRAI Act with the Notification No.39 (S.O. No.44(E)) dated 09.01.2004. As the allegations of the ADNPL pertain to the violation of the regulatory framework conceived by the TRAI, any breach of this regulatory framework can be examined only by the TRAI, as the TRAI is the sectoral regulator and would have the exclusive jurisdiction over the subject matter.

9.2 The TRAI Act is a complete Code in itself. The TRAI Act and Regulations framed thereunder regulate broadcasting activities/services in all respects, including competition. The scheme of the TRAI Act includes all measures to be adopted by the TRAI as the Regulator to deal with any anti-competitive activity and maintain and encourage healthy competition in the broadcasting sector. Only one regulator should regulate any particular activity/industry to avoid any confusion, fight for supremacy or dispute over jurisdiction. As broadcasting services are governed by a special law, *i.e.*, TRAI Act, TRAI, being the sectoral regulator, should examine the allegations, and no other Regulator, such as CCI, should entertain the complaint in respect of the alleged noncompliance/violation of the TRAI Act and the Regulations framed thereunder.

9.3 It is further submitted that as the TRAI Act covers all aspects, including competition, and the Competition Act, being the general law dealing with competition, should not entertain complaints/Information in respect of the alleged anti-competitive activities of a market player in broadcasting activity/services. The special law will prevail over the general competition law under the Competition Act. Therefore, the CCI ought not to have entertained the Information and passed the impugned order.

10. The ADNPL itself understood this aspect that any such allegation/dispute can only be raised before the TRAI/TDSAT and not before the CCI. In the past, ADNPL had filed petitions raising

similar issues for redressal before the TDSAT. One such petition was Broadcasting Petition No.150/2018, in which the TDSAT held that Asianet was not similarly placed as KCCL. This order was not disclosed by the ADNPL in its Information filed before the CCI. This Order passed by the TDSAT would have rendered the ADNPL's Information to the CCI unsustainable at the threshold. The learned Senior Counsel further submitted that the past conduct of the ADNPL would act as an estoppel against it for approaching the CCI with the present complaint. The ADNPL had obtained forbearance from TRAI and had obtained orders for confidentiality of commercial agreements from this Court.

10.1 The ADNPL had challenged the requirement of disclosure of commercial agreements before this Court in W.P.(C) No.428/2020, wherein the Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreements Regulations 2019 were challenged, so far as they required the distributors of signals of television channels to disclose the information regarding agreements with regard to placement/marketing and any other technical or commercial activities.

10.2 This Court *vide* judgment dated 12.07.2021 in the aforesaid writ petition quashed the Regulation so far as they required a disclosure of the placement and marketing agreements bilaterally entered into between the broadcasters and the distributors. The submission is that the Information filed by the ADNPL before the CCI has sought disclosure of SIPL's marketing agreements. Once the ADNPL itself obtained the order from the Court against the disclosure of marketing /placement agreements, the ADNPL is estopped from seeking the same disclosure from the petitioner before the CCI.

11. It is further submitted that the commercial/ marketing agreements after interconnection had been covered by the TRAI

in its Regulations (registration of agreements). The ADNPL had themselves requested the TRAI for forbearance on placement agreements and other marketing agreements. In fact, they had challenged the stipulation for registration of placement agreements and commercial agreements by the TRAI in its Regulations by filing W.P.(C) No.428/2020 before this Court.

11.1 Therefore, it would not be proper to say that the TRAI would not have jurisdiction to regulate commercial agreements post-interconnection, and only forbearance is being observed by the TRAI, at present. Forbearance would mean that the Regulatory Authority would have jurisdiction, but the issue is being continuously monitored. Section 11(1)(b)(iv) provides for regulating and forbearing the arrangements among service providers, which is an overriding power of the TRAI. The TRAI generally gives freedom to the parties to enter into commercial agreements on their own, and it is in the event of failure that the

TRAI exercises its regulatory powers. In the event of interconnections, the TRAI need not extend the commercial freedom to the parties at the threshold and can regulate interconnection from the very beginning. The submission is that, after seeking forbearance from the TRAI over placement arrangements and commercial agreements, it would not be permissible for the ADNPL to contend that the TRAI would not have jurisdiction after interconnection.

11.2 Grant of forbearance is an integral part of the regulatory regime exercised by the TRAI, and it constitutes the continuing pendency of that issue before the TRAI. Whenever the Regulatory Authority deems it appropriate to intervene, the state of forbearance would be withdrawn with the insistence on compliance with the regulatory stipulations imposed by the TRAI. As the TRAI is observing forbearance, the issue is pending for monitoring, and the TRAI may intervene in future to remove the state of forbearance.

11.3 The TRAI, in paragraph 18 of its Explanatory Memorandum to the 2017 Regulations, stipulated that TRAI, being a Sectoral Regulator of broadcasting services and cable services, had been entrusted with the task of ensuring a level playing field and fair competition in the sector and also ensuring that the interest of consumers and service providers are protected. Therefore, the TRAI had the power to look at all issues affecting competition in the market and to craft remedies for the same on an *ex-ante* basis.

11.4 The submission is that the TRAI Act, being a Self-Contained Code in the subject of telecom/broadcasting, and it being a subject of broadcasting, it covers every aspect of competition as well. The Competition Act in respect of the broadcasting service has become the general law on competition. The TRAI, being a Sectoral Regulator of broadcasting services and cable services, is entrusted with the task of ensuring a level playing field and fair competition in the sector to ensure that the interests of the consumers and the service providers are protected.

11.5 The learned Senior Counsel has further submitted that in view of the judgment in ***Competition Commission of India v. Bharti Airtel Limited***[1], CCI would have sequential jurisdiction where there was a cartelisation. If there is no allegation of cartelisation, the CCI would not possess any jurisdiction at all. It is further submitted that the jurisdiction issue has to be decided at the threshold. The CCI ought to have decided whether it had the jurisdiction to proceed with the complaint or not, as per the provisions of Section 21A of the Competition Act. To decide the existence or absence of jurisdiction of any authority at the threshold, issuance of notice by the CCI to the parties against

[1] (2019) 2 SCC 521

whom the Information has been filed is required. In the present case, no notice has been issued, and the CCI *ex parte* has directed the Director General to conduct the investigation and submit the report and, without issuing notice, decide the issue of jurisdiction. As jurisdiction goes to the root of the matter, without issuing notice and giving a hearing to the petitioner, passing an order for investigation is an exercise in nullity and in violation of the principles of natural justice. Therefore, the impugned order is unsustainable and is liable to be set aside.

Asianet Digital Network Private Limited's:

12. Mr Ritin Rai, learned Senior Counsel, assisted by Mr Tarun Donadi, learned Counsel, appearing for the ADNPL, in response to the submissions advanced by Mr Maninder Singh, learned Senior Counsel, has submitted that the ADNPL has submitted information to the CCI about the SIPL's abuse of dominant position and denial of market access to the ADNPL in

violation of Sections 4(2)(a)(ii) and 4(2)(c) of the Competition Act by entering into sham marketing agreements with KCCL. These agreements/arrangements are entered into after interconnection and are not regulated by the TRAI. The commercial agreements/arrangements made after interconnection are outside the jurisdiction of the TRAI. Pursuant to the order of the CCI, the Director General has completed its investigation and submitted the report to the CCI, and the CCI will afford a hearing to the petitioner before it passes any order under Sections 26/27 of the Competition Act. The petitioner may raise the issue of jurisdiction before the CCI, and the CCI would decide the matter.

12.1 It is further submitted that even otherwise, the subject matter of Information, *i.e.*, the marketing agreements, would squarely fall within the jurisdiction of the CCI. The question which needs to be decided by the CCI is whether the petitioner, SIPL, has abused its dominant position and indulged in unfair and discriminatory conduct by entering into the marketing arrangements/agreements with the KCCL. The TRAI's regulatory scope is limited to 'interconnection'. A Sectoral Regulator cannot exercise forbearance over an issue which falls outside its regulatory regime.

12.2 The present dispute does not involve any question of sequential jurisdiction. The petitioner had not approached the TRAI/TDSAT, and even otherwise, it could not have approached these authorities for the reliefs sought in the Information, which is predominantly an abuse of the dominant position by the SIPL and a denial of market access to the ADNPL. The marketing agreements and placement arrangements are outside the purview of the TRAI's regulatory regime. The issue squarely falls within the jurisdiction of the CCI, and there is no jurisdictional fact involved for decision by the CCI.

12.3 The submission is that the CCI has the jurisdiction to proceed with the investigation regarding the petitioner's abuse of the dominant position and denial of market access to ANDPL. These issues are outside the TRAI's jurisdiction, and TRAI does not have the jurisdiction to investigate the allegations in the Information merely because the matter pertains to the broadcasting entities. There is no obligation for the CCI to provide a right of hearing at the stage of Section 26(1), which is a purely administrative stage. The Order Section 26(1) does not entail any civil consequences. At the investigation stage, this Court may not interfere with the matter. Before passing the order under Section 26(1), there is no requirement for notice and hearing. In the present case, even otherwise, the Director General's investigation stands concluded.

12.4 The learned Senior Counsel has placed reliance on the judgment in the case of ***CCI v. SAIL***[2]. In ***AIDCF v. TRAI***[3], the

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[2] (2010) 10 SCC 744
[3] (2021) SCC Online Ker 7162

contention of the AIDCF, another MSO, was that the TRAI would not have jurisdiction *vis-à-vis* marketing agreements. However, that would not mean that the CCI would not have the jurisdiction to investigate sham marketing agreements entered by the SIPL with the KCCL in abuse of the dominant market position, which has the consequence of denial of market access to the ADNPL. The decision in the **AIDCF**'s case is that TRAI does not exercise forbearance over marketing agreements, as marketing agreements would not fall within TRAI's regulatory regime, and the regulatory regime of TRAI is limited to interconnection. The issue before the CCI is whether the petitioner/SIPL is indulging in unfair/discriminatory conduct by entering into sham marketing agreements with KCCL in abuse of its dominant position in violation of Section 4 of the Competition Act.

12.5 The learned Senior Counsel has submitted that the judgment of the Supreme Court in ***Bharti Airtel*** (supra) is not applicable to the facts of the present case. TRAI may have primary jurisdiction when the dispute relates to a jurisdictional domain of the TRAI's regulatory regime. However, in the present case, the matter relates to the marketing agreements/arrangements which are outside the jurisdictional regime of the TRAI. Therefore, the TRAI cannot decide the issue involved in the present case, inasmuch as there is no jurisdictional issue pertaining to the interconnection involved in the present case. There is no question of sequential jurisdiction or overlap of jurisdiction between the CCI and the TRAI. Further, it would be open to the petitioner to raise the question of the jurisdiction of the CCI and whether the CCI is competent to hear and decide on its own jurisdiction. Reliance is placed on the judgment in the case of ***Aamir Khan Productions India Private Limited v. Union of India***[4].

Competition Commission of India's:

[4] 2010 SCC OnLine Bom 1226

13. Mr N Venkataraman, learned Additional Solicitor General of India, assisted by Mr Jaishankar V Nair, learned Central Government Counsel, has submitted that this Court had not interfered with the investigation and the investigation has been completed by the Director General and the report has been submitted before the CCI for further adjudication. When the investigation is complete, the CCI should be allowed to pass an order as envisaged under Section 26 or Section 27 of the Competition Act. At this stage, it would not be proper to interfere with the matter when the investigation is complete.

13.1 From the scheme of the Act, it is evident that the CCI is empowered and entitled to inquire into any matter which may contravene the provisions of Section 4 of the Act. The CCI is the only Regulator constituted by the Parliament, which has the power to direct investigations to be carried out into matters violating Section 4 of the CCI Act. The TRAI does not have the

2025:KER:36755

power to examine a transaction in the context of abuse of dominant position, which is the power exclusively vested with the CCI. There is no such power vested with the TRAI under the provisions of the TRAI Act as provided in Section 19(4) of the Act, in respect of the transactions pertaining to the abuse of the dominant position. Therefore, when the allegations are in respect of the abuse of the dominant position by a market player in the relevant field, it is the CCI which will have jurisdiction and not the TRAI, even in respect of the broadcasting and cable services.

13.2 The TRAI, in its regulatory regime and part of its licensing conditions, may impose certain obligations and restrictions on parties to ensure a level playing field and fairness in the market. Any breach of these may certainly invite an action from the TRAI, being a Sectoral Regulator. However, the TRAI would have the jurisdiction for initiating an action on a breach of a licensing condition alone. It could not have jurisdiction in respect of the abuse of the dominant position by a market player in the relevant field. If the petitioner's contentions are accepted, then every transaction involving a Sectoral Regulator would be outside the ambit of inquiry under the Competition Act, even though such a Sectoral Regulator is not vested with the powers to examine the transactions from a Competition Law perspective. The TRAI's action is limited to the license holder. However, any investigation by the CCI in a matter involving the abuse of dominance would be from the perspective of the end consumer and the wide market impact that such dominance has.

13.3 Further, it is submitted that the CCI in its impugned order passed under Section 26(1) had, *prima facie*, found violations of Sections 4(2)(a)(ii) and 4(2)(c) of the Competition Act. Therefore, it ordered the investigation by the Director General. The final order under Section 26(1) would be passed after hearing the parties and considering the report submitted by the Director

General to the CCI. The issue raised in the Information is wholly outside the purview of the regulatory regime of the TRAI.

13.4 Furthermore, it is further submitted that the judgment of ***Bharti Airtel*** (supra) was delivered on the three underlying facts:

i) Under TRAI's licensing conditions, each telecom operator is required to provide a point of interconnection with other telecom operators.

ii) Reliance Jio's grievance was that the point of interconnection was not provided to it by other telecom operators. It also sought specific performance that TRAI direct the operators to provide such points of interconnection.

iii) TRAI/TDSAT was already seized of the matter and held the jurisdiction to settle the dispute raised by Reliance Jio.

13.5 The Supreme Court did not oust the CCI's jurisdiction to examine transactions from a Competition Law perspective. However, on the basis of the above three factual aspects, it was held that the matter may need to be examined by the TRAI first since it involved interpreting certain areas that would lie within the TRAI's exclusive domain, making them jurisdictional issues and for which the TRAI alone is competent to examine.

13.6 In the present case, the TRAI would not have to resolve any question first. Even if it is held by the TRAI that the pricing mechanism adopted by the SIPL would not be violative of any licensing condition prescribed by the TRAI, it would not render the proceedings initiated by the CCI invalid. The CCI would retain its jurisdiction to examine the matter under Section 4, read with Section 19(4) of the Act, to determine whether there was an abuse of dominance by the SIPL in the relevant market. The CCI is not required to examine the regulatory framework of the TRAI or interpret any licensing conditions. There are no jurisdictional requirements that need to be ironed out by the TRAI first.

13.7 The learned Additional Solicitor General of India has relied on the judgment of the Delhi High Court in ***WhatsApp Llc v. Competition Commission of India***[5], which held that the CCI has the exclusive jurisdiction to examine the matter through the prism of Competition Law.

Salient Provisions of the Statutes:

The Competition Act 2002:

14. The object of the Competition Act is to establish a Commission to prevent practices having an adverse effect on competition, to promote and sustain competition in markets, to protect the interest of consumers and ensure freedom of trade carried on by the participants in markets in India. The relevant statutory provisions of the Competition Act 2002 are taken note of hereunder:

[5] 2021 SCC OnLine Del 2308

14.1 Section 2(c) defines "*cartel*" as an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or trade in goods or provision of services.

14.2 Section 2(h) defines "*enterprise*" to mean a person or a department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, but does not include any activity of the Government relatable to the sovereign functions of the

Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space;

Explanation: For the purposes of this clause,

(a) "*activity*" includes profession or occupation.

(b) "*article*" includes a new article, and "*service*" includes a new service.

(c) "*unit*" or "*division*", in relation to an enterprise, includes—

(i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods.

(ii) any branch or office established for the provision of any service.

Enterprise means a Government department engaged in any activity related to the various Government activities.

The only exception is the government activities relating to sovereign functions, including atomic energy, currency, defence, and space.

14.3 Section 2(r) defines "*relevant market*" to mean 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.

15. Chapter II of the Competition Act deals with the prohibition of anti-competitive agreements regarding production, supply, distribution, storage, acquisition or control of goods or provision of services, which may have an appreciable adverse effect on competition within India. This provision is also against the formation of a cartel engaged in identical or similar trade of goods or provision of services, which directly or indirectly determines the purchase or sale price.

15.1 Sub-section (5) of Section 3 provides an exemption for protection from infringement of intellectual property holders in the context of anti-competitive agreements under Section 3. It is designed to restrain any infringement of reasonable conditions for protecting any rights under the Copyright Act, Patents Act, Trade and Merchandise Marks Act, etc, may be prescribed in agreement, and such an agreement shall be outside the purview of the anti-competitive agreements as defined in Section 3.

15.2 The anti-competitive agreements entered into in contravention of the provisions shall be void. Section 3 also specifies certain activities which shall be presumed to have an appreciable effect on competition. It specifies certain agreements which shall be in contravention of sub-section (1) of Section 3 if such an agreement causes an appreciable adverse effect on competition.

16. Section 4 prohibits abuse of dominant position by an enterprise or group. Sub-section (1) of Section 4 casts an

obligation on every enterprise or group not to abuse its dominant position. Sub-section (2) of Section 4 lists certain activities/circumstances that would constitute abuse of dominant position by an enterprise or group. If an enterprise or group directly or indirectly imposes an unfair or discriminatory price on the purchase or sale (including a predatory price) of goods or services, then it amounts to an abuse of the dominant position under Section 4(2)(a)(ii) of the Competition Act.

16.1 If an enterprise or group indulges in practice or practices resulting in the denial of market access in any manner, then it would amount to an abuse of dominant position under Section 4(2)(c). *Explanation* to Section 4 defines "*dominant position*" to mean 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

(ii) affect its competitors or consumers or the relevant market in its favour;

17. The Duties, Powers and Functions of the Competition Commission are defined under Chapter IV of the Competition Act. The Act casts a duty on the Commission to eliminate practices having an adverse effect on competition, to promote and sustain competition, to protect the interests of consumers and ensure freedom of trade carried on by other participants in markets in India.

18. Under Section 19 of the Competition Act, the Competition Commission is entitled to inquire into any 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 receipt of a complaint from any person, consumer or their association or trade association or on a reference made to it by the Central Government or a State Government or a statutory

authority raising violation of both provisions.

18.1 Section 19(4) lists thirteen criteria and parameters to which the Competition Commission of India is mandated to give due regard when determining whether an enterprise enjoys a dominant position or whether a market constitutes a relevant market.

19. Section 20 empowers the Commission, on its own knowledge or information relating to acquisition as referred to in Section 5(a) and (b) or merger or amalgamation referred to in clause (c) to determine whether such combination has caused or is likely to cause an appreciable adverse effect on competition in India. It lays down the limitation of time for initiation of inquiry under Section 20 as one year from the date on which the combination has taken effect as a result of acquisition, merger or amalgamation, etc, when such inquiry is conducted by the Commission upon its own knowledge or information.

19.1 Sub-section (4) of Section 20 lays down the factors which the Commission should take into consideration to determine whether the combination has an appreciable adverse effect on the competition in the relevant market or not.

20. Section 21 and 21A provide for reference to be made by the Statutory Authority and reference by the Competition Commission, respectively. Under Section 21, if a Statutory Authority is entrusted with the responsibility of regulating any goods or service or market and concludes that the decision taken by such Statutory Authority would be contrary to the provisions of the Competition Act, then the Statutory Authority shall be bound to refer to the Commission. The Commission, after hearing the parties to the proceedings, shall give the Statutory Authority its opinion, and thereafter the Statutory Authority shall pass its order.

20.1 Under Section 21A if the Competition Commission during the course of the proceedings forms an opinion on a issue raised by any party that a decision taken by the Commission during such proceedings or the decision which is proposed to be taken would be contrary to any provision of the Act whose implementation is entrusted to a Statutory Authority, then the Commission may make a reference in respect of such issue to the Statutory Authority. The Commission may also make a *suo motu* reference to the Statutory Authority. On receipt of the reference by the Competition Commission, the Statutory Authority shall give its opinion within sixty days of receipt of such a reference, and the Commission shall consider the opinion of the Statutory Authority and thereafter give its findings recording reasons thereof on the issues referred to in the said opinion.

21. Section 26 lays down the procedure to be followed for conducting the inquiry by the Commission under Section 19. The CCI is empowered to direct the Director General to cause an

investigation to be made into the matter if it is of the opinion that there exists a *prima facie* case. The Director General is required to submit a report under sub-section (3) of Section 26, based on which the Competition Commission can either close the matter forthwith or order further investigation and pass orders under Section 27.

21.1 Sections 26(5) to 26(8) provide opportunities to parties to file objections and be heard before any order is passed that may prejudice a right of a party.

22. Section 27 lays down the orders which may be passed by the Commission after inquiry if it finds that any agreement referred to in Section 3 or action of an enterprise in a dominant position is in contravention of Section 3 or Section 4, which would include a direction to the enterprise to discontinue such abuse of dominant position and *inter alia* impose penalty.

23. Section 28 empowers the CCI to order the division of an

enterprise enjoying a dominant position.

24. Section 60 provides that the provisions of the Competition Act will have an effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

<u>Telecom Regulatory Authority of India (TRAI) Act 1997</u>:

25. The object of the TRAI Act is to provide for the establishment of the Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector as well as to promote and ensure orderly growth of the telecom sector.

25.1 The Statement of Objects and Reasons of the TRAI Act of 1997 would disclose that the Act has been amended to bring the quality of telecom services to world standards, to provide a wide range of services to meet the customers' demand at reasonable price, and participation of the companies registered in India in the area of basic as well as value added telecom services and making arrangements/provisions for protection and promotion of consumer interest and ensuring fair competition, for which a Regulator (TRAI) has been established to regulate the telecom services and infrastructure for orderly and healthy growth apart from protection of the consumer interest.

26. Section 2 is the definition clause. Clause (k) of sub-section (1) of Section 2 defines "*telecommunication service*" to mean service of any description (including electronic mail, voice mail, data services, audio tax services, video tax services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not

include broadcasting services. Provided that the Central Government may notify other services to be telecommunication services, including broadcasting services.

27. Section 3 of the TRAI Act is in respect of the establishment and incorporation of the Authority, *i.e.*, the Telecom Regulatory Authority of India. The powers and functions of the Authority are prescribed in Chapter III of the TRAI Act in Sections 11 to 13. Section 11 defines the functions of the Authority, which would include making recommendations either *suo motu* or on a request from a licensor on various aspects as provided in sub-clauses (i) to (viii) of Clause (a) of Section 11.

27.1 Clause (b) mandates the Authority to discharge the enumerated functions, which *inter alia* are (i) ensure compliance of the terms and conditions of the licence; (ii) notwithstanding anything contained in the terms and conditions of the licence granted before the commencement of the Telecom Regulatory

Authority of India (Amendment) Act, 2000 (2 of 2000), fix the terms and conditions of inter-connectivity between the service providers; (iii) ensure technical compatibility and effective inter-connection between different service providers; (iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services; (v) lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service; (vi) lay-down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers; (vii) maintain register of inter-connect agreements and of all such other matters as may be provided in the regulations; (viii) keep register maintained under clause (vii) open for inspection to any member of public on payment of such fee and compliance of such other requirement as may be provided in the regulations; (ix) ensure effective compliance of universal service obligations;

27.2 The Authority is also mandated to perform such other functions, including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of the Act.

28. Section 12 defines the powers of the Authority to call for information and conduct investigations, etc. The Authority is empowered to direct a service provider to furnish in writing such information or explanation relating to its affairs as the Authority may require or appoint one or more persons to make an inquiry in relation to the affairs of any service provider and inspect the books of accounts or other documents of any such service provider. Sub-section (4) of Section 12 empowers the Authority to issue such directions to service providers as may be considered

necessary for proper functioning by the service providers.

29. Section 13 empowers the Telecom Authority to issue such directions to the service provider from time to time for the discharge of its functions as described under sub-section (1) of Section 11, as may be considered necessary.

30. Chapter IV is in respect of the establishment of the Appellate Tribunal. Section 14 of the said Chapter provides for the establishment of the Appellate Tribunal for the adjudication of the dispute between a licensor and a licensee, between two or more service providers, or between a service provider and a group of consumers. However, the Appellate Tribunal does not have the power to inquire into the monopolistic trade practices, restrictive trade practices and unfair trade practices which were the subject matter of the erstwhile Monopolies and Restrictive Trade Practices Commission established under the provisions of the MRTP Act 1969. The procedure and powers of the Appellate

Tribunal are defined in Section 16 of the TRAI Act. Against an order or decision of the Appellate Tribunal, an appeal lies to the Supreme Court under Section 18 of the TRAI Act.

31. Section 19 provides that the orders passed by the Appellate Tribunal are executable as a decree. Section 20 is the penal provision for willful failure to comply with the orders of the Appellate Tribunal, which provides that in case of willful failure to comply with the orders of the Appellate Tribunal, the person will be punishable with a fine which may extend to one lakh rupees and in case of a second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which such default continues.

32. Section 25 empowers the Central Government to issue directions to the Authority as it may think necessary in the interest of sovereignty and integrity of India, the security of the

State, friendly relations with foreign States, public order, decency or morality. Section 29 prescribes the penalty for contravention of the directions issued by the Authority. Section 30 is in respect of the offences by Companies. Section 35 is the rule-making power of the Central Government for carrying out the purposes of the Act. Section 36 is the regulation-making power of the Authority. Section 38 provides that the provisions of the TRAI Act shall be in addition to the provisions of the Indian Telegraph Act 1885 and the Indian Wireless Telegraphy Act 1933.

Key Legal Developments:

MTNL v. Telecom Regulatory Authority Of Delhi[6]

33. The Delhi High Court, in this judgment, held that the power under Section 11(1)(d)(iv) of the TRAI Act to regulate and forbear the arrangement(s) amongst service providers is an overriding power. The TRAI generally gives freedom to the

[6] AIR 2000 Delhi 208

parties to enter into commercial agreements on their own, and in the event of interconnection, the TRAI need not extend the commercial freedom to the parties at the threshold and can regulate interconnection from the very beginning. Paragraphs 47 and 48 are extracted hereunder:

> 46. Thus, it is clear that the Authority itself understood that its own function under Section 11(1)(d) was only to intervene in the event of the service providers not being able to arrive at an arrangement. It is clear that an arrangement does not necessarily imply an agreement. However, these are matters in which the service provider must be first given an opportunity to arrive at an arrangement amongst themselves. The question of regulation would only arise if the service providers are not able to arrive at an arrangement. The Authority may lay down guidelines regarding those arrangement, provided the guidelines are not contrary to the terms of a license or a policy decision taken by the Government.
>
> 47. Section 14 is also relevant. One of the matters on which a dispute could be adjudicated upon by the Authority is revenue sharing arrangement between service providers. If the Authority had powers to issue regulations which were binding on service providers and/or upon the Central Government then everybody would be bound to follow those regulations. If such a regulation could be

issued in the absence of any arrangement, then there may be no arrangement. In that case, there would be no question of adjudicating dispute on a matter relating to "revenue sharing arrangement". To be noted that the adjudication is not in respect of revenue sharing between service provider. The adjudication is in respect of "revenue sharing arrangements" between the service providers."

Aamir Khan Productions Private Limited vs Union Of India[7]

34. The Bombay High Court in this case held that the question whether the Competition Commission has jurisdiction to initiate the proceedings is a mixed question of law and fact which the Competition Commission is competent to decide, especially when the matter is at the stage of further inquiry. The Commission has not taken a decision in the matter, and there is no reason to believe that the Competition Commission will not consider the contentions sought to be raised by the petitioners. Paragraphs 14 to 19 of the said judgment are extracted hereunder:

"14. It is vehemently contended on behalf of the petitioners that

[7] 2010 SCC Online Bombay 1226

issuance of notices by the Competition Commission proceeds on the basis of incorrect assumption of certain facts and issues. It is, therefore, necessary to discuss the power of the Commission to determine jurisdictional facts. It is true that the jurisdictional fact is a fact which must exist before a Court, Tribunal or an Authority assumes jurisdiction to decide a particular matter.

In Chaube Jagdish Prasad v. Ganga Prasad Chaturvedi, AIR 1959 SC 492 (para 17), the Apex Court quoted with approval the following observations of Lord Esher M.R., in the Queen v Commissioner for Special Purposes of the Income-tax, (1888) 21 QBD 313, 319 :

> "When an inferior Court or tribunal or body, which has to exercise the power of deciding facts is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction they give them, whether there shall be any appeal from their decision, or there will UPA 20 wp358-10 be none. In the second of two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on

> which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

The Apex Court then stated as under :

> "These observations which relate to inferior Courts or tribunals with limited jurisdiction show that there are two classes of cases dealing with the power of such a tribunal (1) where the legislature entrusts a tribunal with the jurisdiction including the jurisdiction to determine whether the preliminary state of facts on which the exercise of its jurisdiction depends exists and (2) where the legislature confers jurisdiction on such tribunals to proceed in a case where a certain state of facts exists or is shown to exist. The difference is that in the former case the tribunal has power to determine the facts giving it jurisdiction and in the latter case it has only to see that a certain state of facts exists."

Whatever may be the debate about the scope of review by the Writ Court of the decision of a Tribunal on a jurisdictional fact, every Tribunal has the jurisdiction to determine the existence or otherwise of the jurisdictional fact, unless the statute establishing the Tribunal provides otherwise.

On a bare reading of the provisions of the Competition Act, 2002, it is clear that the Competition Commission has the jurisdiction to determine whether the preliminary state of facts (on which the further exercise of its jurisdiction depends) exists. There is nothing in the UPA 21 wp358-10 Competition Act, 2002 to indicate that the Competition Commission is not invested with the jurisdiction to determine such jurisdictional fact.

15. The question whether the Competition Commission has jurisdiction to initiate the proceedings in the fact situation of these cases is a mixed question of law and fact which the Competition Commission is

competent to decide. The matter is still at the stage of further inquiry. The Commission is yet to take a decision in the matter. There is no reason to believe that the Competition Commission will not consider all the contentions sought to be raised by the petitioners in these petitions including the contention based on sub-section (5) of Section 3 of the Competition Act.

16. The submission of the respondents that the Writ Court would not entertain a petition challenging a show cause notice, is sought to be countered on behalf of the petitioners by relying on the decision in Calcutta Discount Co. Ltd, (supra).

The contention which appealed to the Apex Court in the above case was the following:-

> "26. Mr. Sastri next pointed out that at the stage when the Income Tax Officer issued the notices he was not acting judicially or quasi-judicially and so a writ of certiorari or prohibition cannot issue. It is well settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where UPA 22 wp358-10 such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences."
>
> (emphasis supplied)

17. In the facts of the instant case, it cannot be said that requiring the petitioners to appear before the Competition Commission will subject the petitioners to lengthy proceedings and unnecessary harassment. Sections 8 and 9 of the Competition Act provides that the Commission shall consist of a Chairperson and two to six Members having special

knowledge of, and professional experience of at least fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy. The Chairperson and Members of the Commission are to be appointed by the Central Government from a panel of persons recommended by a Selection Committee headed by the Chief Justice of India or his nominee.

In case the final decision of the Competition Commission is adverse to the petitioners, the petitioners will have right to challenge the same in an appeal before the Competition Appellate Tribunal established under Section 53A of the Competition Act and the said Appellate Tribunal is headed by a former Judge of the Supreme Court of India. It, therefore, appears to us that the decision of the Apex Court in Calcutta Discount Co. Ltd. (supra), in which the challenge was to the show cause notice issued by an Income Tax Officer for re-assessment, cannot be UPA 23 wp358-10 applied to a case where a show cause notice has been issued by the Competition Commissioner under the Competition Act. Against the decision of the Commission an appeal would lie before the Appellate Tribunal headed by a sitting or a former Judge of the Supreme Court of India or a Chief Justice of a High Court as provided in Section 53D of the Competition Act. Sub-section (2) of Section 53D of the Competition Act also provides that Members of the Appellate Tribunal shall be persons of ability, integrity and standing having special knowledge of and professional experience of at least twenty-five years in competition matters, including competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration. As provided in Section 53E of the Competition Act, the Chairperson and Members of the Appellate Tribunal are appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of the Chief Justice of India or his nominee as the Chairperson, and the Secretary in the Ministry of Corporate Affairs and the Secretary in the Ministry of Law and Justice as the Members of the selection committee.

18. The contention that the Competition Commission has already pre-judged the issue also cannot be accepted. Under sub- section (1) of Section 26, the Commission directed an investigation by Director General into the complaint of FICCI-Multiplex Owners' Association. Under sub-section (3) thereof, the Director General submitted a report of his findings that there is contravention of Section 3(3) of the Act and under sub-section (4), the Commission forwarded a copy of the report to the petitioners. After consideration of the petitioners' objections, the Commission has formed an opinion under UPA 24 wp358-10 sub-section (8) that further inquiry is called for. Hence all that the Commission is doing is to hold an inquiry into such contravention as reported by the Director General. All the authorities including disciplinary authority in service matters initiate departmental inquiries upon receiving preliminary inquiry report of subordinate officer indicating misconduct having been committed,

but once the inquiry is held by observing the applicable statutory provisions and the principles of natural justice, the concerned disciplinary authority takes a final decision in the matter in accordance with law. Hence, mere issuance of a show cause notice under Section 26(8)/ Section 27, like issuance of a charge-sheet in a departmental inquiry, cannot be treated as pre-judging the issue, merely because the petitioners had raised some of the legal contentions in the replies to the notice issued by the Director General of Investigation and thereafter also the Commission has issued show cause notices. That can never mean that the Competition Commission will not consider the petitioners' objections against maintainability of the proceedings.

19. Since we are inclined to dismiss the petitions only on the ground that the petitions challenge show cause notices and that it is open to the petitioners to raise all available contentions, including preliminary objection against legality or otherwise of initiation of the proceedings against the petitioners, we do not express any opinion on merits of controversy between the parties and, therefore, we do not think it fit to deal with those contentions on merits, as we do not wish to express any opinion either way even on the merits of the preliminary objections raised by the petitioners about jurisdiction of the Tribunal to initiate the proceedings against the petitioners. All contentions are kept open."

Competition Commission of India v. Steel Authority of India

Limited[8].

35. The judgment deals extensively with the nature and scope of the orders passed under Section 26 of the Competition Act. The Supreme Court held that when information is received, the Commission is expected to satisfy itself and express its opinion that a *prima facie* case exists, from the record produced before it and then pass a direction to the Director General to cause an investigation to be made into the matter. Section 19 does not suggest that any notice is required to be given to the informant, affected party or any other person at that stage. Such parties cannot claim the right to notice or hearing, but it will always be open to the Commission to call any "*such person*" for rendering assistance or to produce such records as the Commission may consider appropriate.

35.1 In terms of Section 26(3) when the Director General

[8] (2010) 10 SCC 744

submits the report to the Commission, the Commission is duty bound to issue notice to the affected parties to reply with regard to the details of the information and the report submitted by the Director General and thereafter permit the parties to submit objections and suggestions to such documents.

35.2 Paragraphs 21 to 23 of the said judgment reads thus:

> "21. The informant i.e. the person who wishes to complain to the Commission constituted under Section 7 of the Act, would make such information available in writing to the Commission. Of course, such information could also be received from the Central Government, the State Government, statutory authority or on its own knowledge as provided under Section 19(1)(a) of the Act. When such information is received, the Commission is expected to satisfy itself and express its opinion that a prima facie case exists, from the record produced before it and then to pass a direction to the Director General to cause an investigation to be made into the matter. This direction, normally, could be issued by the Commission with or without assistance from other quarters including experts of eminence. The provisions of Section 19 do not suggest that any notice is required to be given to the informant, affected party or any other person at that stage. Such parties cannot claim the right to notice or hearing but it is always

open to the Commission to call any "such person", for rendering assistance or produce such records, as the Commission may consider appropriate.

22. The Commission, wherever, is of the opinion that no prima facie case exists justifying issuance of a direction under Section 26(1) of the Act, can close the case and send a copy of that order to the Central Government, the State Government, statutory authority or the parties concerned in terms of Section 26(2) of the Act. It may be noticed that this course of action can be adopted by the Commission in cases of receipt of reference from sources other than of its own knowledge and without calling for the report from the Director General.

23. In terms of Section 26(3), the Director General is supposed to take up the investigation and submit the report in accordance with law and within the time stated by the Commission in the directive issued under Section 26(1). After the report is submitted, there is a requirement and in fact specific duty on the Commission to issue notice to the affected parties to reply with regard to the details of the information and the report submitted by the Director General and thereafter permit the parties to submit objections and suggestions to such documents."

35.3 It is further held that the direction under Section 26(1) of the Competition Act, after formation of a prima facie opinion, is an administrative direction to one of its own wings and is without entering upon any adjudicatory process. Paragraphs 37 to 39 of the said judgment, which are relevant, are extracted hereunder:

> "37. As already noticed, in exercise of its powers, the Commission is expected to form its opinion as to the existence of a prima facie case for contravention of certain provisions of the Act and then pass a direction to the Director General to cause an investigation into the matter. These proceedings are initiated by the intimation or reference received by the Commission in any of the manners specified under Section 19 of the Act. At the very threshold, the Commission is to exercise its powers in passing the direction for investigation; or where it finds that there exists no prima facie case justifying passing of such a direction to the Director General, it can close the matter and/or pass such orders as it may deem fit and proper. In other words, the order passed by the Commission under Section 26(2) is a final order as it puts an end to the proceedings initiated upon receiving the information in one of the specified modes. This order has been specifically made appealable under Section 53-A of the Act.
>
> 38. In contradistinction, the direction under Section 26(1) after formation of a prima facie opinion is a direction simpliciter to

cause an investigation into the matter. Issuance of such a direction, at the face of it, is an administrative direction to one of its own wings departmentally and is without entering upon any adjudicatory process. It does not effectively determine any right or obligation of the parties to the lis. Closure of the case causes determination of rights and affects a party i.e. the informant; resultantly, the said party has a right to appeal against such closure of case under Section 26(2) of the Act. On the other hand, mere direction for investigation to one of the wings of the Commission is akin to a departmental proceeding which does not entail civil consequences for any person, particularly, in light of the strict confidentiality that is expected to be maintained by the Commission in terms of Section 57 of the Act and Regulation 35 of the Regulations.

39. Wherever, in the course of the proceedings before the Commission, the Commission passes a direction or interim order which is at the preliminary stage and of preparatory nature without recording findings which will bind the parties and where such order will only pave the way for final decision, it would not make that direction as an order or decision which affects the rights of the parties and therefore, is not appealable."

Amazon Seller Services Private Limited v. Competition Commission

of India[9]

36. The Karnataka High Court held that the Order under Section 26 of the Competition Act is an administrative direction, and it does not provide issuance of any notice to any party before or at the time of formation of an opinion by the Commission on the basis of the information received by the Commission.

36.1 Paragraph 36 of the said judgment is extracted hereunder:

> " 36. Thus, from the above authorities, it is clear that:
> An order under Section 26(1) of the Act passed by the Commission is an 'administrative direction' to one of its wings departmentally and without entering upon any adjudicatory process; and Section 26(1) of the Act does not mention about issuance of any notice to any party before or at the time of formation of an opinion by the Commission on the basis of information received by it.

WhatsApp LLC v. Competition Commission of India[10]

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[9] Judgment dated 23.07.2021 in W.A. No.562, 563/2021
[10] 2022 SCC OnLine Del 2582

37. Paragraph 28 of the Delhi High Court, the Division Bench outlined the issue, which is the overlapping jurisdiction of the CCI and the Constitutional Courts and whether CCI should abstain from exercising its jurisdiction to maintain comity between decisions of different authorities on the same issue. It was held that even if the issues considered by the CCI and TRAI are the same, the approach of the authorities was vastly dissimilar, and there exists no inviolable rule that the CCI would completely lack jurisdiction in such a case. Parallel enquiries by two different authorities in their respective spheres of adjudication are not uncommon, and a slight overlap between the enquiries does not mean that one must lead to ouster of the other.

37.1 Paragraphs 30 to 32 of the said judgment are extracted hereunder:

> "30. A reading of the aforesaid paragraphs of the Judgment indicates that the sole issue therein was a conflict between the jurisdiction of a sectoral regulator and the market regulator. The Supreme Court

came to a finding that the matter pertained to the telecom sector, which was specifically regulated by the TRAI Act. However, it noted that the jurisdiction of TRAI would not oust that of CCI to deal with violations of Competition Act and violations thereunder. Moreover, Paragraph 100 of the Judgment states that in the case therein, the dispute pertained to how Incumbent Dominant Operators (IDOs) had not given Points of Interconnect (POIs) as per the license conditions, and Reliance Jio Infocomm Ltd. (RJIL) had specifically approached TRAI for the settlement of this dispute. TRAI, being the authority that would mandate the adherence to licensing conditions, was, therefore, deemed fit to be seized of the matter before the charge of investigation could be given to the CCI.

31. It is the contention of the Appellants that since the underlying issues arising before the Apex Court and this Court, and the investigation that is sought to be conducted by the CCI are common, this can potentially lead to conflicting opinions. This contention of the Appellants is not acceptable. It is the case of the Appellants that while the Apex Court is looking into whether the 2021 Policy is violative of the right to privacy under Article 21 of the Constitution of India or not, the investigation by CCI is confined to whether the 2021 Policy is in furtherance of the dominant position occupied by WhatsApp and institutes anti-competitive practices. The sphere of operation of both are vastly different. Neither this Court nor the Supreme Court are analysing the 2021 Policy through the prism of competition law. The Order dated 24.03.2021 rendered by the CCI

also notes the same:

> "13. In relation to the above mentioned contentions of WhatsApp, the Commission is of the view that the judgments relied by WhatsApp have no relevance to the issues arising in the present proceedings and its plea is misplaced and erroneous. The judgment of the Hon'ble Supreme Court in Bharti Airtel Case has no application to the facts of the present case as the thrust of the said decision was to maintain 'comity' between the sectoral regulator (i.e. TRAI, in the said case) and the market regulator (i.e. the CCI). WhatsApp has failed to point out any proceedings on the subject matter which a sectoral regulator is seized of. Needless to add, the Commission is examining the policy update from the perspective of competition lens in ascertaining as to whether such policy updates have any competition concerns which are in violation of the provisions of Section 4 of the Act. Further, the Commission is of the considered view that in a data driven ecosystem, the competition law needs to examine whether the excessive data collection and the extent to which such collected data is subsequently put to use or otherwise shared, have anti-competitive implications, which require anti-trust scrutiny. The reliance of WhatsApp on Vinod Kumar Gupta and other cases is also misplaced as the Commission has only observed that breach of the Information Technology Act does not fall within its purview. However, in digital markets, unreasonable data collection and sharing thereof, may grant competitive advantage to the dominant players and may result in exploitative as well as exclusionary effects, which is a subject matter of examination under competition law. It is trite to mention that the provisions of the Act are in addition to and not in derogation of the provisions of any other law, as declared under Section 62 of the Act."

32. The observation of the learned Single Judge that certain issues that the CCI is seized of "may substantially be in issue before the Supreme Court and this Court" does not lead to a conclusion that the Supreme Court or this Court are adjudicating upon the same issue. Contrary to

what has been submitted by the Appellants, this observation cannot be interpreted as a holding that the issues being considered by both the authorities are the same. Even if the issues are the same, the approach of the authorities is vastly dissimilar, and there exists no inviolable rule that the CCI would completely lack jurisdiction in the instant matter. Parallel inquiries by two different authorities in their respective spheres of adjudication is not uncommon and a slight overlap between the inquiries does not mean that one must lead to the ouster of the other. Therefore, in the absence of any irreconcilable repugnancy between the jurisdiction of both the authorities, i.e. CCI and the Constitutional Courts, the CCI has the liberty to proceed ahead with its investigation under Section 26(1) of the Act."

Competition Commission of India v. Bharti Airtel Limited[11]

38. The Supreme Court again reiterated that the order under Section 26(1) of the Competition Act is administrative in nature. The Commission forms a *prima facie* opinion while directing the Director General to carry out the investigation, and the High Court would not be competent to adjudge the validity of

[11] (2019) 2 SCC 521

such an order on merit. Paragraph 121 of the judgment is extracted hereunder:

> "121. Once we hold that the order under Section 26(1) of the Competition Act is administrative in nature and further that it was merely a prima facie opinion directing the Director General to carry the investigation, the High Court would not be competent to adjudge the validity of such an order on merits. The observations of the High Court giving findings on merits, therefore, may not be appropriate."

38.1 The Supreme Court further held that the TRAI has been constituted for the orderly and healthy growth of the telecommunication infrastructure, apart from the protection of consumer interest. It is the duty of the TRAI to see the achievement of the universal service, which should be of world-standard quality and to ensure that the telecom services are provided to the customers at a reasonable price. The TRAI is required to ensure arrangements for the protection and promotion of consumer interests and ensure fair competition.

Specific functions which are assigned to TRAI, amongst others, include ensuring technical compatibility and effective inter-relationship between different service providers, ensuring compliance of licence conditions by all service providers, and settlement of disputes between service providers.

38.2 In the aforesaid case, Reliance Jio Infocomm Limited (for short, 'RJIL'), a new entrant in the telecom sector, had raised a grievance regarding whether the Incumbent Dominant Operators (for short, ‘IDOs’) had not given Point of Interconnection (POIs) to RJIL as per the licence conditions, resulting in non-compliance and failure to ensure *inter-se* technical compatibility. The RJIL had approached TRAI for the settlement of the aforesaid dispute, which had arisen between service providers, *i.e.*, RJIL and IDOs. The TRAI was seized of the said dispute at that time, and the RJIL also approached the CCI, alleging an anti-competitive agreement/cartel having been formed by the IDOs (three major telecom operators - Airtel, Vodafone and Idea. The allegation was that the IDOs had, through anti-competitive agreements/cartels, limited the provision of services by delaying or denying POIs to RJIL to block its entry into the market. The CCI took cognisance of the said complaint (Information) and came to a *prima facie* conclusion that a case for investigation was made out and directed the Director General to cause an investigation in the case.

38.3 The Supreme Court held that the TRAI is an expert regulatory body governing the telecom sector and the following issues:

(a) Whether IDOs were under any obligation to provide POIs during the test period?

(b) As per the letter dated June 21, 2016, from RJIL, when were IDOs to commence provisioning of POIs to RJIL?

(c) Whether the demand for POIs made by RJIL was reasonable or not?

(d) Whether there was any delay/denial at the end of Vodafone in the provisioning of POIs?

(e) Whether the POIs were to be provided 'immediately' and during 'test phase'?

(f) Whether IDOs have provided a sufficient number of POIs to RJIL in conformity with the licence conditions?

These are to be decided by the TRAI in the first instance. These issues involve jurisdictional aspects. Unless the TRAI finds fault with the IDOs on the aforesaid aspects, the matter cannot be taken further, even if it is assumed that the CCI would have the jurisdiction to deal with the complaint/Information filed before it.

38.4 Paragraphs 103 to 105 of the said judgment are extracted hereunder:

> "103. We are of the opinion that as TRAI is constituted as an expert regulatory body which specifically governs the telecom sector, the aforesaid aspects of the disputes are to be decided by TRAI in the first instance. These are jurisdictional aspects. Unless TRAI finds fault with the IDOs on the aforesaid aspects,

the matter cannot be taken further even if we proceed on the assumption that CCI has the jurisdiction to deal with the complaints/information filed before it. It needs to be reiterated that RJIL has approached the DoT in relation to its alleged grievance of augmentation of POIs which in turn had informed RJIL vide letter dated 6-9-2016 that the matter related to interconnectivity between service providers is within the purview of TRAI. RJIL thereafter approached TRAI; TRAI intervened and issued show- cause notice dated 27-9-2016; and post issuance of show-cause notice and directions, TRAI issued recommendations dated 21-10-2016 on the issue of interconnection and provisioning of POIs to RJIL. The sectoral authorities are, therefore, seized of the matter. TRAI, being a specialised sectoral regulator and also armed with sufficient power to ensure fair, non-discriminatory and competitive market in the telecom sector, is better suited to decide the aforesaid issues. After all, RJIL's grievance is that interconnectivity is not provided by the IDOs in terms of the licences granted to them. The TRAI Act and Regulations framed thereunder make detailed provisions dealing with intense obligations of the service providers for providing POIs. These provisions also deal as to when, how and in what manner POIs are to be provisioned. They also stipulate the charges to be realised for POIs that are to be provided to another service provider. Even the consequences for breach of such obligations are mentioned.

104. We, therefore, are of the opinion that the High Court is right in concluding that till the jurisdictional issues are straightened and answered by TRAI which would bring on record findings on the aforesaid aspects, CCI is ill-equipped to proceed in the matter. Having regard to the aforesaid nature of jurisdiction conferred upon an expert regulator pertaining to this specific sector, the High Court is right in concluding that the concepts of "subscriber", "test period", "reasonable demand", "test phase and commercial phase rights and obligations", "reciprocal obligations of service providers" or "breaches of any contract and/or practice", arising out of the TRAI Act and the policy so declared, are the matters within the jurisdiction of the Authority/TDSAT under the TRAI Act only. Only when the jurisdictional facts in the present matter as mentioned in this judgment particularly in paras 72 and 102 above are determined by TRAI against the IDOs, the next question would arise as to whether it was a result of any concerted agreement between the IDOs and COAI supported the IDOs in that endeavour. It would be at that stage CCI can go into the question as to whether violation of the provisions of the TRAI Act amounts to "abuse of dominance" or "anti-competitive agreements". That also follows from the reading of Sections 21 and 21-A of the Competition Act, as argued by the respondents.

105. The issue can be examined from another angle as well. If CCI

is allowed to intervene at this juncture, it will have to necessarily undertake an exercise of returning the findings on the aforesaid issues/aspects which are mentioned in para 102 above. Not only TRAI is better equipped as a sectoral regulator to deal with these jurisdictional aspects, there may be a possibility that the two authorities, namely, TRAI on the one hand and CCI on the other, arrive at conflicting views. Such a situation needs to be avoided. This analysis also leads to the same conclusion, namely, in the first instance it is TRAI which should decide these jurisdictional issues, which come within the domain of the TRAI Act as they not only arise out of the telecom licences granted to the service providers, the service providers are governed by the TRAI Act and are supposed to follow various regulations and directions issued by TRAI itself."

38.5 The Supreme Court thus held that only when the TRAI determined the jurisdictional facts against IDOs would the question arise as to whether it was a result of any concerted agreement with them. It would be at that stage that the CCI can go into the question as to whether violation of the provisions of the TRAI Act amounts to 'abuse of dominance' or 'anti-competitive agreements'. The Supreme Court also held that the

TRAI is a sectoral regulator that is better equipped to deal with the aforesaid jurisdictional aspects.

38.6 The Supreme Court also held that the CCI is empowered to deal with and decide the following three issues:

(a) where agreements are entered into by certain persons with a view to cause an appreciable adverse effect on competition;

(b) where any enterprise or group of enterprises, which enjoys a dominant position, abuses the said dominant position; and

(c) regulating the combination of enterprises through mergers or amalgamations to ensure that such mergers or amalgamations do not become anti-competitive or abuse the dominant position that they can attain.

The jurisdiction of the CCI is to eliminate such practices which have an adverse effect on competition, to promote and sustain competition and to protect the interests of the consumers and ensure freedom of trade, carried on by other participants in India.

To this extent, the functions of the CCI are distinct from the functions of TRAI under the TRAI Act.

38.7 The Supreme Court specifically held that it would be within the jurisdiction of the CCI to find out whether IDOs were acting in concert and colluding, thereby forming a cartel to block or hinder entry of RJIL in the market in violation of Section 3(3)(b) of the Competition Act. Whether there was an anti-competitive agreement between the IDOs using the platform of COAI. The CCI would be required to determine whether the conduct of the parties was unilateral or collective action based on an agreement. And such an exercise has to be undertaken by the CCI. The Supreme Court further held that when the two statutes operate in different fields and have different purposes, it cannot be said that there is implied repeal of one by another. The Competition Act is a special statute which deals with anti-competition practices/agreements. It is further held that the

TRAI is not at all equipped to deal with these issues. The TRAI returns a finding that a particular activity was anti-competitive; its powers would be limited to the action that can be taken under the TRAI Act alone. It is only the CCI which is empowered to deal with the same anti-competitive act from the lens of the Competition Act.

38.8 Paragraphs 109 to 113 are extracted hereunder:

> "109. CCI is specifically entrusted with duties and functions, and in the process empower as well, to deal with the aforesaid three kinds of anti-competitive practices. The purpose is to eliminate such practices which are an adverse effect on the competition, to promote and sustain competition and to protect the interests of consumers and ensure freedom of trade carried on by other participants in India. To this extent, the function that is assigned to CCI is distinct from the function of TRAI under the TRAI Act. The learned counsel for the appellants are right in their submission that CCI is supposed to find out as to whether the IDOs were acting in concert and colluding, thereby forming a cartel, with the intention to block or hinder entry of RJIL in the market in violation of Section 3(3)(b) of the Competition Act. Also, whether there was an anti-competitive agreement between the

IDOs, using the platform of COAI. CCI, therefore, is to determine whether the conduct of the parties was unilateral or it was a collective action based on an agreement. Agreement between the parties, if it was there, is pivotal to the issue. Such an exercise has to be necessarily undertaken by CCI. In Haridas Exports[3], this Court held that where statutes operate in different fields and have different purposes, it cannot be said that there is an implied repeal of one by the other. The Competition Act is also a special statute which deals with anti-competition. It is also to be borne in mind that if the activity undertaken by some persons is anti-competitive and offends Section 3 of the Competition Act, the consequences thereof are provided in the Competition Act.

110. Section 27 empowers CCI to pass certain kinds of orders, stipulated in the said provision, after inquiry into the agreements for abuse of dominant position. The following kinds of orders can be passed by CCI under this provision:

> "27. Orders by Commission after inquiry into agreements or abuse of dominant position. Where after inquiry the Commission finds that any agreement referred to in Section 3 or action of an enterprise in a dominant position, is in contravention of Section 3 or Section 4, as the case may be, it may pass all or any of the following orders, namely-
>
> (a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;
>
> (b) impose such penalty, as it may deem fit which shall be not more than

ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:

Provided that in case any agreement referred to in Section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent of its turnover for each year of the continuance of such agreement, whichever is higher.

(c) repealed;

(d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

(e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any; repealed;

(g) pass such other order or issue such directions as it may deem fit.

Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to Section 3 or Section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to Section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group."

111. Moreover, it is within the exclusive domain of CCI to find out as to whether a particular agreement ment will have appreciable adverse effect on competition within the relevant market in India. For this purpose, CCI is to take into consideration the provisions contained in the Competition Act, including Section 29 thereof. Sections 45 and 46 also authorise CCI to impose penalties in certain situations.

112. Obviously, all the aforesaid functions not only come within the domain of CCI, TRAI is not at all equipped to deal with the same. Even if TRAI also returns a finding that a particular activity was anti-competitive, its powers would be limited to the action that can be taken under the TRAI Act alone. It is only CCI which is empowered to deal with the same anti-competitive act from the lens of the Competition Act. If such activities offend the provisions of the Competition Act as well, the consequences under that Act would also follow. Therefore, the contention of the IDOs that the jurisdiction of CCI stands totally ousted cannot be accepted. Insofar as the nuanced exercise from the standpoint of the Competition Act is concerned, CCI is the experienced body in conducting competition analysis. Further, CCI is more likely to opt for structural remedies which would lead the sector to evolve a point where sufficient new entry is induced thereby promoting genuine competition. This specific and important role assigned to CCI cannot be completely wished away and the "comity" between the sectoral regulator (i.e. TRAI) and the market regulator (i.e. CCI) is to be maintained.

113. The conclusion of the aforesaid discussion is to give primacy to the respective objections (sic objectives) of the two regulators under the two Acts. At the same time, since the matter pertains to the telecom sector which is specifically regulated by the TRAI Act, balance is maintained by permitting TRAI in the first instance to deal with and decide the jurisdictional aspects which can be more competently handled by it. Once that exercise is done and there are

findings returned by TRAI which lead to the prima facie conclusion that the IDOs have indulged in anti-competitive practices, CCI can be activated to investigate the matter going by the criteria laid down in the relevant provisions of the Competition Act and take it to its logical conclusion. This balanced approach is construing the two Acts would take care of Section 60 of the Competition Act as well."

MRF Limited rep. by its Company Secretary Mr Ravi Mannath v. Ministry of Corporate Affairs (MCA) rep by Secretary to Government of India[12]

39. The Madras High Court held that the power of the CCI to go into the merits of the Information is within its exclusive domain as the original adjudicating authority, and the writ Court is not expected to interfere at the preliminary stage. The CCI, being a fact-finding authority, shall be left free to find out the truth of the allegations after conducting a proper inquiry. The order directing an investigation would not cause any prejudice to the parties, inasmuch as at this stage, the rights of the parties are

[12] 2022 SCC OnLine Mad 50

not affected till the dispute is finally determined. The CCI owes a public duty to protect the interests of consumers when parties have formed a cartel to increase the price.

39.1 Paragraphs 19 to 21 are extracted hereunder:

"19. Firstly, the power of the Competition Commission of India (CCI) to go into the merits of the allegations in the reference as well as the information is within its domain as the original adjudicating authority, with which the writ Court is not expected to interfere at the preliminary stage, because the CCI being the fact finding authority shall be left free to find out the truth of the allegations after conducting a proper inquiry. Therefore, the interference at the stage of investigation would certainly amount to usurping the original jurisdiction of such authority, unless the interference is so warranted for want of jurisdiction.

20. Secondly, the impugned order directing a mere investigation will not cause any prejudice to the parties, as their rights are not affected or finally determined in the said order.

21. Thirdly, the Competition Commission of India owes a public duty to protect the interest of the consumers, more particularly, when there was a serious allegation that the writ petitioner and the supporting parties forming a cartel, increase the prices of tyres whenever the price of natural rubber goes up, but when there is a corresponding reduction in the price of rubber, they did not reduce

the prices of tyres."

39.2 It is further held that the order of investigation does not attract any civil consequences, inasmuch as it does not finally determine the issue raised against the parties. Paragraph 50 is extracted hereunder:

> 50. A close and careful reading of the proviso to Section 27 supports the arguments of the respondents 2 & 3 that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten percent. of its turnover for each year of the continuance of such agreement, whichever is higher. Therefore, the principles of res judicata may not apply, inasmuch as the expression 'for each year of the continuance of such agreement', the CCI is empowered to investigate the complaint of cartelization, as it concerns with each year. Moreover, if the CCI taking up the complaint for the year 2008, finding want of acceptable evidence, dismissed the complaint for the year 2008, it does not mean that the same CCI is precluded from entertaining a fresh complaint for the next year against the same producer or distributor, trader, etc., by virtue of Section 27. When the Act permits the CCI to initiate

action on the complaint of cartelization independently for each year, the argument of the appellant on the principles of res judicata cannot be accepted. This issue is also answered against the appellant, accordingly."

Samir Agrawal v. Competition Commission of India (CAB Aggregators case)[13]

40. The Supreme Court held that under the provisions of the Competition Act and the 2009 Regulations, "any person" may provide information to the CCI, which may then act upon it in accordance with the provisions of the Act. In this regard, the definition of "person" in Section 2(l) of the Competition Act is an inclusive definition and is extremely wide, which would include individuals of all kinds and every artificial juridical person. The proceedings under the Competition Act are proceedings *in rem* which affect the public interest. The CCI may inquire into any alleged contravention of the provisions of the Act on its own

[13] (2021) 3 SCC 136

motion, as provided under Section 19(1) of the Competition Act. Section 45 of the Act provides deterrence by providing information to the CCI *mala fide* or recklessly false statements and omissions of material facts are punishable with a penalty.

40.1 Paragraphs 14 to 18 of the said judgment is extracted hereunder:

> "14. A reading of the provisions of the Act and the 2009 Regulations would show that "any person" may provide information to CCI, which may then act upon it in accordance with the provisions of the Act. In this regard, the definition of "person" in Section 2(1) of the Act, set out hereinabove, is an inclusive one and is extremely wide, including individuals of all kinds and every artificial juridical person. This may be contrasted with the definition of "consumer" in Section 2(f) of the Act, which makes it clear that only persons who buy goods for consideration, or hire or avail of services for a consideration. are recognised as consumers.
>
> 15. A look at Section 19(1) of the Act would show that the Act originally provided for the "receipt of a complaint from any person, consumer or their association, or trade association. This expression was then substituted with the expression "receipt of any information in such manner and" by the 2007 Amendment.

This substitution is not without significance. Whereas, a complaint could be filed only from a person who was aggrieved by a particular action, information may be received from any person, obviously whether such person is or is not personally affected. This is for the reason that the proceedings under the Act are proceedings in rem which affect the public interest. That CCI may inquire into any alleged contravention of the provisions of the Act on its own motion, is also laid down in Section 19(1) of the Act. Further, even while exercising suo motu powers, CCI may receive information from any person and not merely from a person who is aggrieved by the conduct that is alleged to have occurred. This also follows from a reading of Section 35 of the Act, in which the earlier expression "complainant or defendant has been substituted by the expression, "person or an enterprise", setting out that the informant may appear either in person, or through one or more agents, before CCI to present the information that he has gathered.

16. Section 45 of the Act is a deterrent against persons who provide information to CCI, mala fide or recklessly, inasmuch as false statements and omissions of material facts are punishable with a penalty which may extend to the hefty amount of rupees one crore, with CCI being empowered to pass other such orders as it deems fit. This, and the judicious use of heavy costs being imposed when the information supplied is either frivolous or mala fide, can keep in check what is described as the growing

tendency of persons being "set up" by rivals in the trade.

17. The 2009 Regulations also point in the same direction inasmuch as Regulation 10, which has been set out hereinabove, does not require the informant to state how he is personally aggrieved by the contravention of the Act, but only requires a statement of facts and details of the alleged contravention to be set out in the information filed. Also, Regulation 25 shows that public interest must be foremost in the consideration of CCI when an application is made to it in writing that a person or enterprise has substantial interest in the outcome of the proceedings, and such person may therefore be allowed to take part in the proceedings. What is also extremely important is Regulation 35, by which CCI must maintain confidentiality of the identity of an informant on a request made to it in writing, so that such informant be free from harassment by persons involved in contravening the Act.

18. This being the case, it is difficult to agree with the impugned judgment of NCLAT in its narrow construction of Section 19 of the Act, which therefore stands set aside."

All India Digital Cable Federation, represented by its Secretary General v. Telecom Regulatory Authority of India, represented by its Secretary[14]

[14] 2021 SCC OnLine Ker 7162

41. The Single Judge of this Court considered the validity of the Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreements and all such Other Matters Regulations, 2019 issued by the Telecom Regulatory Authority of India. Under Section 11(1)(b)(vii) of the TRAI Act, the TRAI is required to maintain a register of interconnection agreements and of all such other matters as may be provided in the Regulations. The TRAI's access to information and regulation 2005 have been framed by the TRAI, which provides that a service provider furnishing any Information to the authority under the TRAI may make or request in writing to keep that information confidential and in which case, it shall furnish a non-confidential summary of the portions sought to be kept confidential. However, the TRAI, if it is of the opinion that it is necessary or expedient to disclose that information in public interest, may reject the request of the service provider after informing him in writing of the

reasons for doing so and giving him an opportunity to make a representation against the same.

41.1 It is further provided in Regulation 6 that the information covered regarding any of the following categories shall be exempt from disclosure:

(i) trade and commercial secrets and information protected by law;

(ii) Commercially and financially sensitive information, the disclosure of which is likely to cause unfair gain or unfair loss to the service provider, or to compromise,

in the placement of the channel in the Electronic Program Guide.

41.2 The learned Single Judge held that the requirement in the Regulation that all placement and marketing agreements have to be reported to the regulator is not a decision which could have been taken without considering and addressing the objections of the MSOs on this point. The power of the TRAI to form an opinion that it is necessary or expedient to disclose the information of public interest, even in respect of commercially and financially sensitive information, is clearly a total discretion of the authority, and such discretion is not guided by any criteria or guidelines.

41.3 As the Court found that no proper consultation and consideration were given to the objections of MSOs, the Regulation, so far as the required disclosure of the placement agreements bilaterally entered into between the broadcasters and the distributors was unsustainable. Paragraphs 54 to 58 are extracted hereunder:

> "54. It is admitted that the placement of the channels in the Electronic Program Guide is now fully regulated and channels are to be placed genre wise and language wise as provided by the TRAI. Therefore, even if it is admitted that a discount given by a broadcaster to the distributor for placement of a channel would have a bearing on the rate at which a particular channel is carried in the network, the requirement by the impugned Regulations that all placement and marketing agreements also have to be reported to the regulator is not a decision which could have been taken quite so lightly without considering and addressing the objections of the

MSOs on the point. Apart from relying on the access to Information Regulations 2005 which empowers the TRAI to decide on the nature of the information that is to be disclosed to the public, no satisfactory answer is forthcoming with regard to the contention of the petitioners of the confidentiality of their commercial information. On the other hand, it is contended that all placements/marketing/promotional activities and incentive and claims for placing a channel in a particular slab forms part of the Reference Interconnect Offer and are therefore not confidential information. It is stated that the RIO being non-confidential in nature, all agreements entered into with reference to the said RIO are also non-confidential as they are based on the RIO published by the broadcaster/distributor on their website and is available in their portal. This, to my mind, is an apparent contradiction which vitiates the decision of the authority.

55. Further, though it is contended that all trade and commercial secrets and information protected by law and commercially and financially sensitive information, the disclosure of which is likely to cause unfair gain or unfair loss to the service provider or to compromise his competitive position is exempt from disclosure, it is not clear as to what the criteria are to decide what information that is so exempt from disclosure. Further, the power of the TRAI under the Access to Information Regulations also seems to be an absolute power, in as much as, once the TRAI forms an opinion that it is necessary or expedient to disclose the information in public

interest, then, the order passed on the representation filed by the service provider would be final. What, therefore, follows is that the protection given by the Regulations from disclosure of commercially and financially sensitive information is clearly at the total discretion of the authority and the pleadings placed on record would show that such discretion is not guided by any specific criteria or guidelines.

56. I also find that the authority has proceeded on the specific premise that placement agreements are a part of interconnection and are entered into under the RIO and therefore no further consideration is required for bringing such placement agreements within the scope of the Regulations with regard to maintenance of Registers. This reasoning, according to me, is completely untenable in view of the fact that specific issue is still pending consideration. Therefore, even if it is accepted that the power of the TRAI to issue Regulations is not limited to regulating inter-connection, the exercise of the power should be strictly in accordance with the statute. When the statute specifically provides for transparency in the framing of the Regulations, the specific issues were required to be put to consultation and the objections raised require a proper consideration before any Regulations can be effected.

57. Having considered the consultation process supporting the impugned regulations at considerable depth. I am of the considered view that apart from stating that certain broadcasters contended that DPOs are arm-twisting them to enter into exploitative contracts, no proper consideration of the contention of the different

stake holders has been undertaken by the authority. The very question whether placement agreements are part of inter-connection being still at large, the reasoning of the respondent that placement agreements being agreements subject to the RIO are automatically required to be registered cannot be accepted.

58. In the above view of the matter, I am of the opinion that the impugned Regulations, in so far as they require a disclosure of the placement agreements bilaterally entered into between the broadcasters and the distributors are unsustainable. The challenge, therefore, must succeed to that extent. The impugned regulations, to the extent that they require registration of placement agreements/Marketing are, therefore, set aside. There will be no order as to costs."

Telefonaktiebolaget Lm Ericsson (Publ) v. Competiton Commisison of India[15]

42 The Division Bench of the Delhi High Court, after considering the provisions of the Patent Act 1970 and the Competition Act 2002, held that the Competition Act is general legislation pertaining to anti-competitive agreements and abuse of dominant position generally. It was further held that Chapter

[15] Judgment dated 13.07.2023 in LPA 24/2016 and conn. cases

XVI of the Patents Act is a complete code in itself on all issues pertaining to unreasonable conditions in the agreements of licensing of patents, abuse of status as patentee, inquiry in respect thereof and relief that can be granted.

42.1 Paragraphs 50 to 55 of the said decision are extracted here under:

> "50. In our view, the Competition Act is a general legislation pertaining to anti-competitive agreements and abuse of dominant position generally. The inclusion of Section 84(6)(iv)[11] in the Patents Act by way of an amendment after the Competition Act was passed with Section 3(5)(i)(b)2 is particularly instructive of the above legislative intent as regards anti-competitive agreements.
>
> 51. For deciding an application for compulsory licensing, the Controller is empowered by the Patents Act to consider the reasonability of conditions imposed in a license agreement. The CCI is empowered under the Competition Act to examine anti-competitive agreements and abuse of dominant position. However, the Competition Act makes provision for reasonable conditions being imposed in an agreement concerning exercise of rights under the Patents Act. Since such reasonable conditions are exempted from examination under section 3(5)(i)(b) of the Competition Act, it is indicative of the legislature's intendment as to the exclusive

domain of the Patents Act regarding reasonable conditions. Similar, in our view, is the situation with the language of Section 83(f) of the Patents Act as compared with that of Section 4 of the Competition Act.

52. In our opinion, Chapter XVI of the Patents Act is a complete code in itself on all issues pertaining to unreasonable conditions in agreements of licensing of patents, abuse of status as a patentee, inquiry in respect thereof and relief that is to be granted therefor.

53. In reconciling the two statutes, the subject matter that is in focus is not merely anti-competitive agreements and abuse of dominant position, which both the Patents Act (in Chapter XVI) and the Competition Act (in Sections 3 and 4) deal with. The subject matter that is relevant for this assessment is anti-competitive agreements and abuse of dominant position by a patentee in exercise of their rights under the Patents Act.

54. On this issue, there is no scope of doubt beyond the pale of doubt that the Patents Act is the special statute, and not the Competition Act. It is also a fact that Chapter XVI of the Patents Act is a subsequent legislation as compared to the Competition Act.

55. Therefore, when assessed by the maxim *generalia specialibus non derogant* or by the maxim *lex posterior derogat priori*, the Patents Act must prevail over the Competition Act on the issue of exercise of rights by a patentee under the Patents Act. Even assessed by the rigours of Ashoka Marketing (supra), which require the conflict to be resolved by reference to the purpose and policy underlying the

> two enactments and the clear intendment conveyed by the language of the relevant provisions therein, the Patents Act must necessarily prevail over that of the Competition Act."

Pharmacy Council of India v. Dr S K Toshniwal Educational Trusts[16]

43. The Supreme Court held that the Pharmacy Act 1948 is a special Act and is a complete code in itself in the field of Pharmacy. The Pharmacy Act shall prevail over the All India Council of Technical Education (AICTE) Act 1987. The Supreme Court held that there is a well-known rule that the subsequent general Act does not affect a prior special Act by implication. The maxim "*Generalia specialibus non derogant*", *i.e.*, general provisions will not abrogate the special provisions, is a well-known rule of interpretation of the Statute. In order to determine whether a statute is special or general one, the court has to take into consideration the principal subject matter of the statute and the particular perspective for the reason that for certain purposes an

[16] (2021) 10 SCC 657

Act may be general and for certain other purposes it may be special and such a distinction cannot be blurred. It was also held that the Pharmacy Council of India, being an expert in Pharmacy and other related subjects, must be given the power to regulate the field of Pharmacy.

43.1 Paragraphs 14 to 16 and 20 to 22 are extracted hereunder:

> "14. Applying the law laid down by this Court in the aforesaid decisions and as observed hereinabove, the Pharmacy Act is a special Act in the field of pharmacy and it is a complete code in itself in the field of pharmacy, the Pharmacy Act shall prevail over the AICTE Act which, as observed hereinabove, is a general statute dealing with technical education/institutions. Therefore, the submission on behalf of AICTE and/or educational institutions concerned that the AICTE Act is a subsequent law and in the definition of "technical education" it includes the "pharmacy" and therefore it can be said to be an "implied repeal", cannot be accepted. At his stage, it is required to be noted that as such in the AICTE Act there is no specific repeal of the Pharmacy Act, more particularly when, as observed hereinabove, the Pharmacy Act is a special Act and the subsequent enactment of the AICTE Act is general and therefore the Pharmacy

Act being a special Act must prevail. Apart from that, with regard to several aspects, there is no provision made in the AICTE Act which are exclusively within the domain of PCI. Thus, it cannot be accepted that there is "implied repeal" of the Pharmacy Act.

15. Now the next question which is required to be considered is whether in the field of pharmacy, PCI would have the jurisdiction or AICTE constituted under the AICTE Act which is held to be a general law. The constitution and composition of Central Council under the Pharmacy Council of India is as under:

> "3. Constitution and composition of Central Council. The Central Government shall, as soon as may be, constitute a Central Council consisting of the following members, namely-
>
> (a) six members, among whom there shall be at least one teacher of each of the subjects, pharmaceutical chemistry, pharmacy, pharmacology and pharmacognosy elected by the University Grants Commission from among persons on the teaching staff of an Indian University affiliated thereto which grants a degree or diploma in pharmacy; or a college
>
> (b) six members, of whom at least four shall be persons possessing a degree or diploma in, and practising pharmacy or pharmaceutical chemistry, nominated by the Central Government;
>
> (c) one member elected from amongst themselves by the members of the Medical Council of India;
>
> (d) the Director General, Health Services, ex officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;
>
> (dd) the Drugs Controller, India, ex officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;
>
> (e) the Director of the Central Drugs Laboratory, ex officio;
>
> (f) a representative of the University Grants Commission and a representative of the All India Council for Technical Education;

> (g) one member to represent each State elected from amongst themselves by the members of each State Council, who shall be a registered pharmacist;
> (h) one member to represent each State nominated by the State Government, who shall be a registered pharmacist:"

Therefore, PCI consists of experts in the field of pharmacy and related subjects connected with the education of pharmacy. Therefore, under the statute, specialised persons in the field of pharmaceutical, pharmacy, etc. shall be the members of PCI.

15.1. On the other hand, so far as AICTE is concerned, only one member would be from the field of pharmacy and that too representative of PCI. Under the circumstances, PCI is the body of experts connected with the subject of pharmacy and related subjects and therefore it will be in the larger interest and more particularly in the interest of education of pharmacy that PCI shall alone have the jurisdiction in the field of pharmacy, rather than AICTE.

16. The aforesaid question is also required to be viewed from another angle. Both, PCI and AICTE are the creature of the statute. Therefore, it is not at all healthy that the two regulators, both being Central authorities, can be permitted to fight for supremacy. The fight of supremacy between both the regulators is unhealthy for the education sector as well as the institutions to permit two regulators to function in the same field. Therefore, also and more particularly when PCI consists of the experts in the field of pharmacy and other related subjects, it is in the larger interest of the field of pharmacy that PCI must be given the power to regulate in the field of

pharmacy.

*** *** ***

20. In view of the above and for the reasons stated above, it is held that in the field of pharmacy education and more particularly so far as the recognition of degrees and diplomas of pharmacy education is concerned, the Pharmacy Act, 1948 shall prevail. The norms and regulations set by PCI and other specified authorities under the Pharmacy Act would have to be followed by the institutions concerned imparting education for degrees and diplomas in pharmacy, including the norms and regulations with respect to increase and/or decrease in intake capacity of the students and the decisions of PCI shall only be followed by the institutions imparting degrees and diplomas in pharmacy. The questions are answered accordingly.

21. Now the next question which is required to be considered is with respect to students already admitted pursuant to the orders passed by this Court and the High Courts concerned. The conflict and the dispute arose because despite refusal by PCI, AICTE increased the intake capacity in the respective institutions, which were not approved by PCI. By the interim orders, this Court and the respective High Courts have directed to allow those students to appear in the examinations and to register them as pharmacists. Such interim orders are also made final. Therefore, the present decision shall not affect those students admitted in the increased intake capacity and/or pursuant to the interim orders passed by this

Court and/or final judgments and orders passed by the respective High Courts. PCI is therefore directed to give consequential benefit of registration to such students. However, at the same time, all pending applications for increase in intake capacity and/or for recognition and/or approval of course/institutions in pharmacy shall be as per the provisions of the Pharmacy Act, 1948 and the regulations, if any, thereunder and as per the norms and regulations fixed by PCI.

22. It is further directed that the institutions concerned who increased their intake capacity as approved by AICTE and their increase in intake capacity was not approved by PCI, shall apply afresh for increase in intake capacity and/or evening shift for the next academic year within a period of four weeks from today and their cases for increase in intake capacity and/or applications for recognition and/or applications for approval of the course or evening shift shall be considered by PCI in accordance with the Pharmacy Act, 1948 and rules and regulations framed therein and the norms prescribed by PCI."

All India Council for Technical Education v. Sri Prince Shivaji Maratha Boarding House's College of Architecture[17]

44. The Supreme Court considered the question as to

[17] 2019 SCC OnLine SC 1445

whether the mandate of the Council of Architecture (CoA) is that of the All India Council for Technical Education (AICTE) would prevail on the question of granting approval and related to matters of Institutions for conducting architectural education courses, if there is any contradiction in the opinion of these two bodies which are regulatory bodies constituted by the two parliamentary legislations.

44.1 It was held that Section 10 of the AICTE Act mandates AICTE to undertake the duties on the subjects specified therein. AICTE exercises the power to regulate institutions imparting architectural education to the strength of the definition of technical education, which has been defined to mean programs of education, research and training in architecture. The Supreme Court held in respect of the provisions of Section 2 (g) of the 1987 Act, the definition of "technical education" would have to be given such a construction and the word "*architecture*" should be treated to have been inapplicable in cases where the AICTE imports its regulatory framework for institutions undertaking technical education. Furthermore, so far as recognition of degrees and diplomas of architecture education is concerned, the 1972 Act prevails, and AICTE will not be entitled to impose any regulatory measure in connection with the degrees and diplomas in the subject of architecture. Norms and Regulations set by CoA and other specified authorities under the 1972 Act would have to be followed by an institution imparting education for degrees and diplomas in architecture.

Discussion:

45. The ADNPL is a Multi-System Operator in the business of providing digital cable services predominantly in Kerala. It also operates in Karnataka, Andhra Pradesh, Telangana and Orissa for more than 30 years. The SIPL, including its subsidiaries and group companies, is a broadcaster of satellite-based TV channels in

India, having multiple channels of different languages and various genres. ADNPL receives broadcasting signals from SIPL for monetary consideration, and they have had a business relationship for more than 22-23 years. In terms of the successive regulations selected by the TRAI, the broadcasters have to ensure non-discrimination in pricing and the terms across different MSOs/distributors. According to the ADNPL, the SIPL has consistently flouted the principles of non-discrimination and has offered better terms and prices to its competitors. There have been several disputes between the parties before the TDSAT in the past.

45.1 The present dispute has emanated post the introduction the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017 (for short, 'Interconnection Regulations 2017') and the Telecommunication (Broadcasting and Cable) Services (Eighth)

(Addressable Systems) Tariff Order 2017 (Collectively, New Regulatory Framework). The SIPL has unsuccessfully challenged the new regulatory framework up to the Supreme Court. The Supreme Court, in its judgment in ***Star India Pvt Ltd v. Department of Industrial Policy and Promotion***[18], [Civil Appeal Nos 7326- 7327 of 2018 and 7328 - 7329 of 2018], had upheld the validity of the new regulatory framework.

45.2 The concept of Maximum Retail Price (MRP) for each paid channel has been introduced in the new regulatory framework. Interconnection Regulations 2017 mandate broadcasters to deal with distributors on a non-discriminatory basis. Regulation 3(2) of the Interconnection Regulations 2017 is relevant, which is extracted hereunder:

> "Clause 3. General obligations of broadcasters:
> (1) ......
> (2) Every broadcaster shall, within sixty days of receipt of written request from a distributor of television channels for obtaining

[18] (2019) 2 SCC 104

> signals of television channel or within thirty days of signing of interconnection agreement with the distributor, as the case may be, provide, on non-discriminatory basis, the signals of television channel to the distributor
>
> Provided that imposition of any term or condition by the broadcaster, which is unreasonable, shall be deemed to constitute a denial of request:
>
> Provided further that this sub-regulation shall not apply to a distributor of television channels, who requests signals of a particular television channel from a broadcaster while at the same time demands carriage fee for distribution of that television channel or who is in default of payment to the broadcaster and continues to be in such default."

45.3 As mentioned above, the Regulation further capped the total discount (15% of MRP) and distribution fees (20% of MRP) payable to distributors at 35% of MRP. Regulation 7(4) of the Interconnection Regulations 2017 mandates broadcasters to offer discounts based on fair, transparent, and non-discriminatory terms to ensure a level playing field for distributors. Regulation 7(4) is extracted hereunder:

“**Clause 7. Publication of reference interconnection offer by broadcaster for pay channels**:

(1) ...

(2) ...

(3)....

(4) It shall be permissible to a broadcaster to offer discounts on the maximum retail price of pay channel or bouquet of pay channels, to distributors of television channels, not exceeding fifteen percent of the maximum retail price:

Provided that the sum of distribution fee declared by a broadcaster under sub-regulation (3) and discounts offered under this sub-regulation in no case shall exceed thirty five percent of the maximum retail price of pay channel or bouquet of pay channels, as the case may be:

Provided further that offer of discounts, if any, to distributors of television channels, shall be on the basis of fair, transparent and non-discriminatory terms:

Provided also that the parameters of discounts shall be measurable and computable.”

45.4 The Subscription License Agreement dated 17.12.2018 was executed between SIPL and ADNPL under the New Regulatory Framework for signals of Channels with effect from 01.02.2019 for a period of one year, which was extended till August 2021. It is stated that despite the provisions under the Interconnection Regulations 2017 that no extra benefits should be offered to any MSOs, the ADNPL started losing subscribers to KCCL as the SIPL allegedly offered lower prices to KCCL, which was passed on to the subscribers. It was said that up to a 50% discount was given to KCCL instead of 15% as per the Interconnections Regulations 2017. These additional discounts were offered in the form of promotion and advertisement payments to KCCL.

Analysis:

46. The questions which are required to be considered in these petitions are:

(I) Whether the TRAI Act is a special statute and the Competition Act is said to be a general statute dealing with the anti-competitive practices, or whether both these statutes are special statutes for the subject matters of telecom and broadcasting services as well as the anti-competitive practices?

(II) Whether the CCI would not have the jurisdiction to entertain the information of the ADNPL regarding the allegation of misuse of the dominant position by the SIPL in the relevant market as defined under Section 4 of the Competition Act?

(III) Whether the TRAI, being the sectoral regulation in respect of the telecom and broadcasting services, should first examine the allegation, and the ADNPL should have filed the complaint before the TRAI/TDSAT and not have approached the CCI at the first instance?

(IV) When the information contains the allegation of misuse of the dominant position in the relevant market, as well as the violation of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017 (for short, 'Interconnection Regulations 2017') and the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order 2017 (Collectively, New

Regulatory Framework), the CCI should direct the informant, the ADNPL, to approach the TRAI and once the jurisdictional facts are determined by the TRAI, then only the CCI should proceed with the matter, if it is so required?

47. Mr Maninder Singh, learned Senior Counsel, has submitted that primarily the allegations in the Information filed by the ADNPL before the CCI are about the non-compliance of the Interconnection Regulations 2017. The entire gravamen of the ADNPL in its Information with the CCI is that the SIPL is circumventing TRAI's Regulation. The TRAI, being a specific sectoral regulator, is assigned the powers, duties and responsibilities to regulate broadcasting activities/services under the provisions of the TRAI Act and the Regulations made thereunder. Therefore, if the primary allegation is non-compliance with the Interconnection Regulations 2017, the sectoral regulator needs to first examine the issue to decide the

jurisdictional fact and then if it is of the opinion that the issue involves misuse of the dominant position in the relevant market, it can refer to the said aspect for investigation and decision of the CCI. The TRAI Act is a complete code in itself. It covers all aspects, including competition, and the Competition Act is a general law dealing with competition. The TRAI, being a special statute to regulate broadcasting services, including anti-competitive conduct, shall prevail over the general competition law under the Competition Act.

Issue No.I: *Whether the TRAI Act is a special statute and the Competition Act is said to be a general statute dealing with the anti-competitive practices, or whether both these statutes are special statutes for the subject matters of telecom and broadcasting services as well as the anti-competitive practices?*

48. The CCI has been enacted to ensure fair competition in India by prohibiting trade practices which cause an appreciable adverse effect on competition within markets in India and for the establishment of an expert body in the form of the Competition

Commission of India, having the duty to curb negative aspects of competition. The Competition Act's salient provisions have already been noted in the preceding paragraph; therefore, the same is not reproduced herein. However, it is relevant to mention here that Section 60 of the Competition Act provides for the overriding effect of the provisions of the CCI Act in the event of any inconsistency in any other law. The objective behind the Competition Act has been stated in paragraph 21 in ***Excel Crop Care Limited v. Competition Commission of India***[19], and is reproduced hereunder:

> "21. In the instant case, we are concerned with the first type of practices, namely, anti-competitive agreements. The Act, , which prohibits anti-competitive agreements, has a laudable purpose behind it. It is to ensure that there is a healthy competition in the market, as it brings about various benefits for the public at large as well as economy of the nation. In fact, the ultimate goal of competition policy (or for that matter, even the consumer policies) is to enhance consumer well-being. These policies are directed at

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[19] (2017) 8 SCC 47

ensuring that markets function effectively. Competition policy towards the supply side of the market aims to ensure that consumers have adequate and affordable choices. Another purpose in curbing anti-competitive agreements is to ensure "level playing field" for all market players that helps markets to be competitive. It sets "rules of the game" that protect the competition process itself, rather than competitors in the market. In this way, the pursuit of fair and effective competition can contribute to improvements in economic efficiency, economic growth and development of consumer welfare. How these benefits accrue is explained in the ASEAN Regional Guidelines on Competition Policy, in the following manner:

"**2.2. Main Objectives and Benefits of Competition Policy** 2.2.1.1. *Economic efficiency*: Economic efficiency refers to the effective use and allocation of the economy's resources. Competition tends to bring about enhanced efficiency, in both a static and a dynamic sense, by disciplining firms to produce at the 16 (2017) 8 SCC 47 lowest possible cost and pass these cost savings on to consumers, and motivating firms to undertake research and development to meet customer needs.

2.2.1.2. *Economic growth and development*:

Economic growth—the increase in the value of goods and services produced by an economy—is a key indicator of economic development. Economic development refers to a broader definition of an economy's well-being, including employment growth, literacy and mortality rates and other measures of quality of life. Competition may bring about greater economic growth and development through improvements in economic efficiency and the reduction of wastage in the production of goods and services. The market is therefore able to more rapidly reallocate resources, improve productivity and attain a higher level of economic growth. Over time, sustained economic growth tends to lead to an enhanced quality of life and greater economic development.

2.2.1.3. *Consumer Welfare*: Competition policy contributes to economic growth to the ultimate benefit of consumers, in terms of better choice (new products), better quality and lower prices. Consumer welfare protection may be required in order to redress a perceived imbalance between the market power of consumers and producers. The imbalance between consumers and producers may stem from market failures such as information asymmetries, the lack of bargaining position towards producers and high transaction costs. Competition policy may serve as a complement to consumer protection policies to address such market failures."

49. The CCI is entrusted with duties, powers and functions to deal with three kinds of anti-competitive practices and to eliminate such practices which are having adverse effect on the competition, for which the CCI has been given ample power in this

regard.

50. Thus, this Court is of the considered view that the CCI is a special Act to inquire into any allegations regarding the three kinds of anti-competitive practices, including misuse of the dominant position by a market player in the relevant market. The relevant market has been defined in both its product and geographic dimensions. The objective is to identify the competitors that can constrain those undertakings' behaviour and prevent them from behaving independently of effective competitive pressure. Thus, it would not be proper to say that the Competition Act is general, but it is a special Act which deals with anti-competitive practices as defined under the Act itself. The CCI is a sectoral regulator, so far as it relates to the curbing of anti-competitive practices in India is concerned.

51. The TRAI Act has been enacted to bring the quality of telecom services to world standards, to provide a wide range of

services to meet the consumers' demand at a reasonable price, and to ensure the participation of companies registered in India as well as value added telecom services and making arrangements/provisions for protection and promotion of consumer interest and ensuring fair competition. To protect the interests of service providers and consumers of the telecom sector, to ensure technical compatibility and effective inter-relationship between different service providers and to ensure compliance with license conditions by all the service providers, a sectoral regulator, *i.e.*, TRAI, has been constituted under the TRAI Act.

51.1 TRAI performs a recommendatory/advisory and regulatory body discharging the functions envisaged under sub-section (1) of Section 11 of the said Act. TRAI, *inter alia*, is required to ensure fair competition amongst the service providers, including fixing the terms and conditions of inter-connection between the service providers and laying down the standards of Quality of Service (QoS) to be provided by each service provider. The TRAI, a sectoral regulator in the telecom sector, has been constituted to ensure orderly and healthy growth of the telecommunication infrastructure, apart from the protection of consumer interests. This is evident from the statement of the object and the reasons of the TRAI Act. Thus, the TRAI Act is constituted as an expert regulatory body to govern the telecom sector, and thus, TRAI is a special statute in the field of telecommunication, and TRAI is a sectoral regulator.

52. Considering the above, this Court is of the view that both the Competition Act and the TRAI Act are special legislation in their respective field. There may be some overlapping while discharging the functions by the CCI and the TRAI in respect of the telecom market in India is concerned, but there is no provision under the TRAI Act to deal with the three anti-competitive

practices as mentioned above, including misuse of the dominant position of a market player as defined under Section 4 of the Competition Act.

<u>Issue II</u>: *Whether the CCI would not have the jurisdiction to entertain the information of the ADNPL regarding the allegation of misuse of the dominant position by the SIPL in the relevant market as defined under Section 4 of the Competition Act?*

53 As discussed above, when the allegations are regarding the misuse of the dominant position by the SIPL, the petitioner in the relevant market, as defined under Section 4 of the Competition Act, predominantly, it is the CCI which will have the jurisdiction to determine the said issue of misuse of the dominant position and not the TRAI. However, if there are allegations of non-compliance with the license conditions or violation of the Regulations framed by the TRAI, it would be the TRAI which shall examine the said allegations and not the CCI. Both the authorities operate in different and distinct fields, and some overlapping of the jurisdiction will not oust the jurisdiction of one sectoral

2025:KER:36755

regulator at the expense of the other. The CCI, which is the sectoral regulator for dealing with anti-competitive practices in the relevant market and misuse of the dominant position, will have the jurisdiction to deal with the said allegation and not the TRAI. If there are allegations regarding violation of the terms of the license conditions or the provisions of the Regulations framed by the TRAI, the TRAI, being the sectoral regulator of the field, would assume jurisdiction to deal with those allegations.

This Court, therefore, is of the view that there is no conflict insofar as the jurisdiction of the two sectoral regulators is concerned.

Issue Nos III and IV

Whether the TRAI, being the sectoral regulation in respect of the telecom and broadcasting services, should first examine the allegation, and the ADNPL should have filed the complaint before the TRAI/TDSAT and not have approached the CCI at the first instance?

When the information contains the allegation of misuse of the dominant position in the relevant market, as well as the violation of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017 (for short, 'Interconnection Regulations 2017') and the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order 2017 (Collectively, New Regulatory Framework), the CCI should direct the informant, the

ADNPL, to approach the TRAI and once the jurisdictional facts are determined by the TRAI, then only the CCI should proceed with the matter, if it is so required?

54. It is also important to mention here that the order passed under Section 26 of the Competition Act does not have civil consequences, and it is an order *in rem*. The petitioners will have an opportunity to address their arguments before the CCI even regarding its jurisdiction. This Court, therefore, at this stage of the proceedings before the CCI, does not want to scuttle the proceedings, and the CCI itself is competent to deal with the jurisdictional issue as well.

Conclusion:

55. In view thereof, the present writ petitions, so far as the Order dated 28.02.2022 passed by the Competition Commission of India under Section 26 of the Competition Act is concerned, are dismissed. However, the petitioners shall have the liberty to address their arguments on jurisdiction before the CCI itself, and

2025:KER:36755

the CCI will decide the issue of jurisdiction at the first instance before proceeding with the matter on merit.

Result:

Thus, the writ petitions are dismissed with the above observation, however, without costs.

All Interlocutory Applications regarding interim matters stand closed.

Sd/-D K SINGH

JUDGE

jjj

APPENDIX OF WP(C) 29767/2022

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE ORDER DATED 28.02.2022 ISSUED BY RESPONDENT NO. 1 IN CASE NO. 9 OF 2022.
Exhibit P2	A TRUE COPY OF INFORMATION ON BEHALF OF RESPONDENT NO. 2 IN CASE NO. 9 OF 2022 BEFORE THE CCI.
Exhibit P3	A TRUE COPY OF THE ORDER DATED 01.09.2022 PASSED BY THE HON'BLE NCLAT IN COMPETITION APPEAL (AT) NO. 12 OF 2022.
Exhibit P4	A TRUE COPY OF THE NOTIFICATION NO. 39 BEARING ORDER NO. SO 44(E) DATED 09.01.2004.
Exhibit P4 A	A LEGIBLE TYPED COPY OF THE EXT. P4 NOTIFICATION NO. 39 BEARING ORDER NO. SO 44(E) DATED 09.01.2004.
Exhibit P5	A TRUE COPY OF THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2017 AND THE EXPLANATORY MEMORANDA THERETO ISSUED BY TRAI.
Exhibit P6	A TRUE COPY OF THE TRAI CONSULTATION PAPER TITLED "ISSUES RELATED TO NEW REGULATORY FRAMEWORK FOR BROADCASTING AND CABLE SERVICES" DATED 07.05.2022. .
Exhibit P7	A TRUE COPY OF THE AUTHORIZATIONS ISSUED BY THE PETITIONER COMPANY AUTHORIZING SHRI. BIJU K.S. TO REPRESENT THE PETITIONER FOR THE PURPOSE OF THIS WRIT PETITION.
Exhibit P8	A TRUE COPY OF THE REPLY AFFIDAVIT SERVED ON THE PETITIONER ON 09.05.2022 BY RESPONDENT NO. 1 IN WRIT PETITION NO. 3860 OF 2022 BEFORE THE HON'BLE BOMBAY HIGH COURT.
Exhibit P9	A TRUE COPY OF THE REPLY AFFIDAVIT DATED 04.06.2022 FILED BY RESPONDENT NO. 2 IN WRIT PETITION NO. 3860 OF 2022 BEFORE THE HON'BLE

BOMBAY HIGH COURT.

Exhibit P10	A TRUE COPY OF THE REJOINDER DATED 03.06.2022 FILED BY THE PETITIONER IN RESPONSE TO EXT. P8.
Exhibit P11	A TRUE COPY OF THE REJOINDER DATED 24.06.2022 FILED BY THE PETITIONER IN RESPONSE TO EXT. P9.
Exhibit P12	A TRUE COPY OF THE ORDER DATED 06.04.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3860 OF 2022.
Exhibit P13	A TRUE COPY OF THE ORDER DATED 08.06.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3860 OF 2022.
Exhibit P14	A TRUE COPY OF THE ORDER DATED 28.06.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3860 OF 2022.
Exhibit P15	A TRUE COPY OF THE ORDER DATED 10.08.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3860 OF 2022.
Exhibit P16	A TRUE COPY OF THE ORDER DATED 19.08.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3860 OF 2022.
Exhibit P17	A TRUE COPY OF THE NOTICE DATED 11.04.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER.
Exhibit P18	A TRUE COPY OF THE NOTICE DATED 22.04.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER.
Exhibit P19	A TRUE COPY OF THE NOTICE DATED 11.05.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER.
Exhibit P20	A TRUE COPY OF THE NOTICE DATED 19.05.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER.
Exhibit P21	A TRUE COPY OF THE NOTICE DATED 07.07.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER.
Exhibit P22	A TRUE COPY OF THE SUMMONS DATED 05.09.2022 ISSUED BY THE RESPONDENT NO. 5

Exhibit P23	**A TRUE COPY OF THE LETTER DATED 08.09.2022 ISSUED BY THE PETITIONER.**
Exhibit P24	**A TRUE COPY OF THE INTERLOCUTORY APPLICATION DATED 12.09.2022 FILED BY THE PETITIONER BEFORE THE HON'BLE BOMBAY HIGH COURT.**
Exhibit P25	**A TRUE COPY OF THE JUDGMENT AND ORDER DATED 16.09.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3860 OF 2022.**
Exhibit P26	**A LIST OF DATES IN RELATION TO THE SUBSCRIPTION LICENSE AGREEMENT AND VARIOUS INTERIM EXTENSIONS GRANTED BY STAR INDIA PVT. LTD. TO ASIANET DIGITAL NETWORK PVT. LTD.**
Exhibit P27	**A LIST OF DATES FOR CORRESPONDENCES BETWEEN STAR INDIA PVT. LTD. AND ASIANET DIGITAL NETWORK PVT. LTD.**
Exhibit P28	**A TRUE COPY OF THE JUDGMENT OF THE HON'BLE SUPREME COURT IN CCI V. BHARTI AIRTEL LTD. REPORTED IN (2019) 2 SCC 521.**
Exhibit P29	**A TRUE COPY OF THE JUDGMENT OF THE HON'BLE BOMBAY HIGH COURT TITLED AS STAR INDIA PVT. LTD. V. CCI REPORTED IN 2019 SCC ONLINE BOM 3038.**
Exhibit P30	**A TRUE COPY OF THE ORDER DATED 06.03.2020 ISSUED BY THE HON'BLE SUPREME COURT IN SPECIAL LEAVE PETITION NO. 3832 OF 2020.**
Exhibit P31	**A TRUE COPY OF THE ORDER DATED 22.05.2020 ISSUED BY THE HON'BLE SUPREME COURT IN SPECIAL LEAVE PETITION NO. 3832 OF 2020.**
Exhibit P32	**A TRUE COPY OF THE ORDER DATED 05.06.2020 ISSUED BY THE HON'BLE SUPREME COURT IN SPECIAL LEAVE PETITION NO. 3832 OF 2020.**
Exhibit P33	**A TABLE TITLED 'LIST OF DATES OF PAST LITIGATION BETWEEN THE PARTIES' WITH RELEVANT PARTICULARS OF ALL THE PETITIONS / REPLIES / TDSAT ORDERS IN DISPUTES RELATING TO INTERCONNECTION RAISED BY**

	RESPONDENT NO. 2.
Exhibit P34	A TRUE COPY OF JUDGMENT OF THE HON'BLE KERALA HIGH COURT IN ALL INDIA DIGITAL CABLE FEDERATION V. TELECOM REGULATORY AUTHORITY OF INDIA REPORTED IN 2021 SCC ONLINE KER 7162.
Exhibit P35	A CHART TITLED 'CHART DEPICTING INHERENT CONTRADICTIONS IN THEIR OWN SUBSCRIBER CLAIMS BY ASIANET DIGITAL NETWORK PVT. LTD. NUMBERS' WHICH SHOWS THE FLUCTUATING CLAIMS OF SUBSCRIBERS OF RESPONDENT NO.2 VIS-À-VIS KCCL AS PER RESPONDENT NO.2'S OWN PLEADINGS / LETTERS.
Exhibit P36	A TRUE COPY OF THE ORDER DATED 19.03.2018 ISSUED BY THE HON'BLE HIGH COURT OF BOMBAY IN W.P. NO. 975 OF 2018.
Exhibit P37	A TRUE COPY OF THE ORDER DATED 01.04.2019 ISSUED BY THE HON'BLE HIGH COURT OF BOMBAY IN W.P. NO. 975 OF 2018.
Exhibit P38	A TRUE COPY OF THE ORDER DATED 16.08.2018 ISSUED BY THE HON'BLE BOMBAY HIGH COURT IN W.P. 9175/2018.
Exhibit P39	TRUE COPY OF THE TARIFF ORDER 2022 ISSUED BY TRAI DATED 22/11/2022.

RESPONDENT EXHIBITS

Exhibit R2(a)	A TRUE COPY OF THE DAILY ORDER PASSED BY THE 1ST RESPONDENT ON 21.03.2023
Exhibit R2(b)	A TRUE COPY OF THE EMAIL DATED 23.02.2023 SENT BY THE 2ND RESPONDENT TO THE PETITIONER
Exhibit R2(c)	A SAMPLE COPY OF THE INVOICE DOCUMENT NO. M03300007054 DATED 10.01.2023 UNDER THE PREVIOUS RIO AGREEMENT
Exhibit R2(d)	A SAMPLE COPY OF THE INVOICE DOCUMENT. NO.M03300007420 DATED 12.05.2023 UNDER THE NEW RIO AGREEMENT ISSUED BY THE PETITIONER IN THE WRIT PETITION

Exhibit R2(e)	**A TRUE COPY OF THE DISCONNECTION NOTICE DATED 25.8.2023 ISSUED BY THE PETITIONER IN THE WRIT PETITION TO THE 2ND RESPONDENT**
Exhibit R2(f)	**TRUE COPY OF THE REPLY DATED 28.08.2023 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER IN THE WRIT PETITION**
Exhibit R2-(g)	**THE ACCOUNTING STATEMENT OF ASIANET DIGITAL NETWORK PRIVATE LIMITED & STAR INDIA PVT LTD AS ON 24 AUGUST, 2023 (BILLING UP TO 31, JULY 2023 AND COLLECTIONS AS ON 23RD AUGUST 2023) PREPARED BY STAR INDIA PVT LTD AS ATTACHED TO THE DISCONNECTION NOTICE**
Exhibit R2-(h)	**TRUE COPY OF THE TABLE PREPARED BY THE SECOND RESPONDENT ELUCIDATING THE CALCULATIONS, BASIS THE MARKET INTELLIGENCE, DEMONSTRATING THE DISCRIMINATORY TREATMENT**

PETITIONER EXHIBITS

Exhibit P42	**True Copy of Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Third Amendment) order 2022 dated 22.11.2022**
Exhibit P43	**True Copy of Press release issued by the 2nd respondent dated 22.11.2022**
Exhibit P44	**True Copy of list of Members of AIDCF**
Exhibit P40	**True copy of Interim Order dated 06.10.2022 in WPC 29767/2022.**
Exhibit P41	**True Copy of Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Fourth Amendment) Regulations 2022 dated 22.11.2022**
Exhibit P45	**True Copy of Memorandum of Writ petition filed by AIDCF numbered as W.P.C 193/2023 before this Honourable Court**

Exhibit P46	**True Copy of Interim Order dated 06.01.2023 in W.P.C 193/2023 of this Honourable Court**
Exhibit P47	**True Copy of direction issued by TRAI dated 19.01.2023**
Exhibit P48	**True Copy of Disconnection Notice dated 15.02.2023 Issued to the 2nd respondent by the petitioner**
Exhibit P49	**True Copy of IA. No. 4 of 2023 dated 16.02.2023 in W.P.C 193 of 2023**
Exhibit P50	**True Copy of the SLA dated 24.02.2023**
Exhibit P51	**True Copy of Judgement Dated 04.04.2023 in W.P.C 193 of 2023**
Exhibit P52	**True Copy of Case Status of WA. No. 852 of 2023**
Exhibit P53	**True copy of the disconnection notice issued to the 2nd respondent by the petitioner dated 25.08.2023**
Exhibit P54	**True copy of reply sent to the petitioner by the 2nd respondent dated 28.08.2023**
Exhibit P55	**True Copy of response dated 09.09.2023 issued by the petitioner to the 2nd respondent**
Exhibit P56	**A TRUE COPY OF THE LETTER DATED 23.10.2023 ISSUED BY THE PETITIONER TO RESPONDENT NO. 2**
Exhibit P57	**A TRUE COPY OF THE LETTER DATED 30.10.2023 ISSUED BY THE RESPONDENT NO. 2 TO THE PETITIONER**
Exhibit P58	**A COPY OF THE ORDER DATED 24.11.2023 PASSED BY THE LD. TDSAT**
Exhibit P59	**A COPY OF THE EMAIL DATED 08.11.2023 ALONG WITH THE INVOICES ISSUED BY THE PETITIONER UPON THE RESPONDENT NO. 2 AND THE STATEMENT OF ACCOUNTS OF THE RESPONDENT NO. 2 .**
Exhibit P60	**A COPY OF THE EMAIL DATED 14.12.2023 OF THE**

PETITIONER

Exhibit P61	A COPY OF THE ORDER DATED 08.01.2024 PASSED BY THE LD. DIVISION BENCH OF THIS HON'BLE COURT
Exhibit P62	A COPY OF THE EMAIL DATED 08.01.2024 OF THE PETITIONER
Exhibit P63	A COPY OF THE EMAIL DATED 10.01.2024 OF RESPONDENT NO. 2
Exhibit P64	A COPY OF THE STATEMENT OF ACCOUNTS OF THE PETITIONER

RESPONDENT EXHIBITS

Exhibit R2(i)	TRUE COPY OF THE TABLE PREPARED BY THE ADNPL ELUCIDATING THE CALCULATIONS, BASIS THE MARKET INTELLIGENCE, DEMONSTRATING THE DISCRIMINATORY TREATMENT
Exhibit R2(j)	TABLE PREPARED BY THE APPLICANT/ 2ND RESPONDENT ELUCIDATING THE CALCULATIONS , BASIS THE MARKET INTELLIGENCE, DEMONSTRATING DISCRIMINATORY TREATMENT

PETITIONER EXHIBITS

Exhibit P65	A true copy of the letter dated 07.02.2024 issued by the Writ Petitioner to Respondent No. 2 in the Writ Petition
Exhibit P66	A Statement of Accounts as on 05.02.2024

RESPONDENT ANNEXURES

Annexure	Annexure 1-2010 SCC OnLine Bom 1226

APPENDIX OF WP(C) 29768/2022

PETITIONER EXHIBITS

Exhibit P1	**A TRUE COPY OF THE ORDER DATED 28.02.2022 ISSUED BY RESPONDENT NO. 1 IN CASE NO. 9 OF 2022.**
Exhibit P2	**A TRUE COPY OF INFORMATION ON BEHALF OF RESPONDENT NO. 2 IN CASE NO. 9 OF 2022 BEFORE THE CCI.**
Exhibit P3	**A TRUE COPY OF THE ORDER DATED 01.09.2022 PASSED BY THE HON'BLE NCLAT IN COMPETITION APPEAL (AT) NO. 12 OF 2022.**
Exhibit P4	**A TRUE COPY OF THE NOTIFICATION NO. 39 BEARING ORDER NO. SO 44(E) DATED 09.01.2004.**
Exhibit P4 A	**A LEGIBLE TYPED COPY OF THE EXT. P4 NOTIFICATION NO. 39 BEARING ORDER NO. SO 44(E) DATED 09.01.2004.**
Exhibit P5	**A TRUE COPY OF THE RELIEF EXHIBITS OF TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2017 AND THE EXPLANATORY MEMORANDA THERETO ISSUED BY TRAI.**
Exhibit P6	**A TRUE COPY OF THE TRAI CONSULTATION PAPER TITLED "ISSUES RELATED TO NEW REGULATORY FRAMEWORK FOR BROADCASTING AND CABLE SERVICES" DATED 07.05.2022.**
Exhibit P7	**A TRUE COPY OF THE AUTHORIZATIONS ISSUED BY THE PETITIONER COMPANY AUTHORIZING SHRI. BIJU K.S. TO REPRESENT THE PETITIONER FOR THE PURPOSE OF THIS WRIT PETITION.**
Exhibit P8	**A TRUE COPY OF THE REPLY AFFIDAVIT DATED 06.05.2022 BY RESPONDENT NO. 1 IN WRIT PETITION NO. 3845 OF 2022 BEFORE THE HON'BLE BOMBAY HIGH COURT.**
Exhibit P9	**A TRUE COPY OF THE REPLY AFFIDAVIT DATED 03.06.2022 FILED BY RESPONDENT NO. 2 IN WRIT**

	PETITION NO. 3845 OF 2022 BEFORE THE HON'BLE BOMBAY HIGH COURT.
Exhibit P10	A TRUE COPY OF THE REJOINDER DATED 03.06.2022 FILED BY THE PETITIONER IN RESPONSE TO EXT. P8.
Exhibit P11	A TRUE COPY OF THE REJOINDER DATED 24.06.2022 FILED BY THE PETITIONER IN RESPONSE TO EXT. P9.
Exhibit P12	A TRUE COPY OF THE ORDER DATED 06.04.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3845 OF 2022.
Exhibit P13	A TRUE COPY OF THE ORDER DATED 08.06.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3845 OF 2022.
Exhibit P14	A TRUE COPY OF THE ORDER DATED 28.06.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3845 OF 2022.
Exhibit P15	A TRUE COPY OF THE ORDER DATED 10.08.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3845 OF 2022.
Exhibit P16	A TRUE COPY OF THE ORDER DATED 19.08.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3845 OF 2022.
Exhibit P17	A TRUE COPY OF THE NOTICE DATED 11.04.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER.
Exhibit P18	A TRUE COPY OF THE NOTICE DATED 26.04.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER.
Exhibit P19	A TRUE COPY OF THE NOTICE DATED 04.05.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER.
Exhibit P20	A TRUE COPY OF THE NOTICE DATED 07.07.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER.
Exhibit P21	A TRUE COPY OF THE JUDGMENT AND ORDER DATED 16.09.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3845 OF 2022.

Exhibit P22	**A LIST OF DATES IN RESPECT OF PETITIONER'S RIO AGREEMENT ALONG WITH THE NOTICE OF ASSIGNMENT AND ALL INTERIM EXTENSIONS PROVIDED THERETO.**
Exhibit P23	**LIST OF DATES COMPRISING THE BRIEF DETAILS OF ARE ALL CORRESPONDENCES EXCHANGED BETWEEN SIPL AND RESPONDENT NO. 2 DURING JUNE NOVEMBER 2021.**
Exhibit P24	**A TRUE COPY OF THE JUDGMENT OF THE HON'BLE SUPREME COURT IN CCI V. BHARTI AIRTEL LTD. REPORTED IN (2019) 2 SCC 521.**
Exhibit P25	**A TRUE COPY OF THE JUDGMENT OF THE HON'BLE BOMBAY HIGH COURT TITLED AS STAR INDIA PVT. LTD. V. CCI REPORTED IN 2019 SCC ONLINE BOM 3038.**
Exhibit P26	**A TRUE COPY OF THE ORDER DATED 06.03.2020 ISSUED BY THE HONBLE SUPREME COURT IN SPECIAL LEAVE PETITION NO. 3832 OF 2020.**
Exhibit P27	**A TRUE COPY OF THE ORDER DATED 22.05.2020 ISSUED BY THE HON'BLE SUPREME COURT IN SPECIAL LEAVE PETITION NO. 3832 OF 2020.**
Exhibit P28	**A TRUE COPY OF THE ORDER DATED 05.06.2020 ISSUED BY THE HON'BLE SUPREME COURT IN SPECIAL LEAVE PETITION NO. 3832 OF 2020.**
Exhibit P29	**A TRUE COPY OF JUDGMENT OF THE HON'BLE KERALA HIGH COURT IN ALL INDIA DIGITAL CABLE FEDERATION V. TELECOM REGULATORY AUTHORITY OF INDIA REPORTED IN 2021 SCC ONLINE KER 7162.**
Exhibit P30	**A TRUE COPY OF THE ORDER DATED 19.03.2018 ISSUED NY THE HON'BLE HIGH COURT OF BOMBAY IN W.P. NO. 975 OF 2018.**
Exhibit P31	**A TRUE COPY OF THE ORDER DATED 01.04.2019 ISSUED BY THE HON' BLE HIGH COURT OF BOMBAY IN W.P. NO. 975 OF 2018.**
Exhibit P32	**A TRUE COPY OF THE ORDER DATED 16.08.2018 ISSUED BY THE HON'BLE BOMBAY HIGH COURT IN W.P. 9175/2018.**

Exhibit P33	**TRUE COPY OF THE TARIFF ORDER 2022 ISSUED BY TRAI DATED 22/11/2022.**

RESPONDENT EXHIBITS

Exhibit R2(i)	**TRUE COPY OF THE TABLE PREPARED BY THE ADNPL ELUCIDATING THE CALCULATIONS, BASIS THE MARKET INTELLIGENCE, DEMONSTRATING THE DISCRIMINATORY TREATMENT**

APPENDIX OF WP(C) 29766/2022

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE ORDER DATED 28.02.2022 ISSUED BY RESPONDENT NO. 1 IN CASE NO. 9 OF 2022.
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Exhibit P3	A TRUE COPY OF THE ORDER DATED 01.09.2022 PASSED BY THE HON'BLE NCLAT IN COMPETITION APPEAL (AT) NO. 12 OF 2022.
Exhibit P4	A TRUE COPY OF THE NOTIFICATION NO. 39 BEARING ORDER NO. SO 44(E) DATED 09.01.2004.
Exhibit P4A	LEGIBLE TYPED COPY OF EXHIBIT P4
Exhibit P5	A TRUE COPY OF RELEVANT PORTIONS OF THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2017 AND THE COMPLETE EXPLANATORY MEMORANDA THERETO ISSUED BY TRAI.
Exhibit P6	A TRUE COPY OF THE CONSULTATION PAPER DATED 07.05.2022
Exhibit P7	A TRUE COPY OF THE AUTHORIZATION LETTER AUTHORIZING SHRI. BIJU K.S. TO REPRESENT THE PETITIONER FOR THE PURPOSE OF THIS WRIT PETITION
Exhibit P8	A TRUE COPY OF THE REPLY AFFIDAVIT FILED BY RESPONDENT NO. 1 IN WRIT PETITION NO. 3755 OF 2022 BEFORE THE HON'BLE BOMBAY HIGH COURT.
Exhibit P9	A TRUE COPY OF THE REPLY AFFIDAVIT FILED BY RESPONDENT NO. 2 IN WRIT PETITION NO. 3755 OF 2022 BEFORE THE HON'BLE BOMBAY HIGH COURT.
Exhibit P10	A TRUE COPY OF THE REJOINDER FILED BY THE PETITIONER IN RESPONSE TO THE REPLY AFFIDAVIT FILED BY RESPONDENT NO. 1 IN WRIT PETITION NO. 3755 OF 2022 BEFORE THE HON'BLE BOMBAY HIGH

	COURT.
Exhibit P11	A TRUE COPY OF THE REJOINDER FILED BY THE PETITIONER IN RESPONSE TO THE REPLY AFFIDAVIT FILED BY RESPONDENT NO. 2 IN WRIT PETITION NO. 3755 OF 2022 BEFORE THE HON'BLE BOMBAY HIGH COURT.
Exhibit P12	A TRUE COPY OF THE ORDER DATED 06.04.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3755 OF 2022.
Exhibit P13	TRUE COPY OF THE ORDER DATED 08.06.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3755 OF 2022.
Exhibit P14	TRUE COPY OF THE ORDER DATED 28.06.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3755 OF 2022.
Exhibit P15	TRUE COPY OF THE ORDER DATED 10.08.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3755 OF 2022.
Exhibit P16	TRUE COPY OF THE ORDER DATED 19.08.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3755 OF 2022.
Exhibit P17	TRUE COPY OF THE NOTICE DATED 11.04.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER
Exhibit P18	TRUE COPY OF THE NOTICE DATED 22.04.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER
Exhibit P19	TRUE COPY OF THE NOTICE DATED 11.05.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER
Exhibit P20	TRUE COPY OF THE NOTICE DATED 18.05.2022, ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER
Exhibit P21	TRUE COPY OF THE NOTICE 24.05.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER
Exhibit P22	TRUE COPY OF THE NOTICE DATED 07.07.2022 ISSUED BY THE RESPONDENT NO. 5 TO THE PETITIONER

Exhibit P23	A TRUE COPY OF THE JUDGMENT AND ORDER DATED 16.09.2022 PASSED BY THE HON'BLE BOMBAY HIGH COURT IN WRIT PETITION NO. 3755 OF 2022
Exhibit P24	A LIST OF DATES IN RELATION TO THE SUBSCRIPTION LICENSE AGREEMENT AND VARIOUS INTERIM EXTENSIONS GRANTED BY STAR INDIA PVT. LTD. TO ASIANET DIGITAL NETWORK PVT. LTD.
Exhibit P25	A LIST OF DATES FOR CORRESPONDENCES EXCHANGED BETWEEN STAR INDIA PVT. LTD. AND THE RESPONDENT NO. 2, ASIANET DIGITAL NETWORK PVT. LTD. DURING JUNE - NOVEMBER 2021.
Exhibit P26	TRUE COPY OF THE JUDGMENT OF THE HON'BLE SUPREME COURT IN CCI V. BHARTI AIRTEL LTD. REPORTED IN (2019) 2 SCC 521.
Exhibit P27	A TRUE COPY OF THE JUDGMENT OF THE HON'BLE BOMBAY HIGH COURT TITLED AS STAR INDIA PVT. LTD. V. CCI REPORTED IN 2019 SCC ONLINE BOM 3038.
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Exhibit P30	A TRUE COPY OF THE ORDER DATED 05.06.2020 ISSUED BY THE HON'BLE SUPREME COURT IN SPECIAL LEAVE PETITION NO. 3832 OF 2020.
Exhibit P31	A TRUE COPY OF JUDGMENT OF THE HON'BLE KERALA HIGH COURT IN ALL INDIA DIGITAL CABLE FEDERATION V. TELECOM REGULATORY AUTHORITY OF INDIA REPORTED IN 2021 SCC ONLINE KER 7162.
Exhibit P32	A COPY OF THE ADVERTISING AND PROMOTION SERVICES AGREEMENT DATED 25.11.2019.
Exhibit P33	A TRUE COPY OF THE ORDER DATED 19.03.2018 ISSUED BY THE HON'BLE HIGH COURT OF BOMBAY IN W.P. NO.

975 OF 2018.

Exhibit P34	**A TRUE COPY OF THE ORDER DATED 01.04.2019 ISSUED BY THE HON'BLE HIGH COURT OF BOMBAY IN W.P. NO. 975 OF 2018.**
Exhibit P35	**A TRUE COPY OF THE ORDER DATED 16.08.2018 ISSUED BY THE HON'BLE BOMBAY HIGH COURT IN W.P. 9175/2018.**
Exhibit P36	**True Copy of the Tariff Order dated 22.11.2022**

RESPONDENT EXHIBITS

Exhibit R3(1)	**TRUE COPY OF THE ORDER OF THE NCLT DATED 20.01.2023**
Exhibit R3(2)	**TRUE COPY OF LETTER DATED 10.05.2023 OF THE MINISTRY OF INFORMATION AND BROADCASTING GOVERNMENT OF INDIA.**
Exhibit R2(i)	**TRUE COPY OF THE TABLE PREPARED BY THE ADNPL ELUCIDATING THE CALCULATIONS, BASIS THE MARKET INTELLIGENCE, DEMONSTRATING THE DISCRIMINATORY TREATMENT**