

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can

bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



14th, 2019

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



methodology and teaching and learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

The Conflicts Between Competition Act And TRAI Act In Arriving At An Effective Control Over Infiltration Of Foreign Media And Broadcasting Content In India.

Authored By - Maanavi Gupta

maanavigupta8@gmail.com

UPES Dehradun BBA.LLB-IPR(Hons) third year

9837043016

The telecommunication Industry in India has become one of the distinguished accomplishments of monetary liberation at some stage in the past due 1990s. With the view of this phenomenal growth of the telecommunication industry, this sector is converting from being entirely ruled through the Department of Telecommunications ('DoT') to diverse non-public operators coming into the arena and imparting facilities that include global calling, net offerings, and increasing into different branches of telecommunications. However, even after this boost, there appears to be a sense of disgruntlement among the non-public operators.

Telecommunication Industry in India has experienced superb growth after liberalization. The service providers have a fair and sturdy competition among themselves that the providers have reached a point where they provide service touch anybody inside within seconds without paying excessive fees thus pushing forward the service for betterment.

Under section 18¹ of the competition act 2002 it is stated that it is non other than the legislation which delegates the overall responsibility of "promoting and sustaining competition" in the Indian economy to the CCI. Thus, this implies that it is the Competition Commission of India that has the primary jurisdiction relating to the regulation of competition in different sectors and markets of the economy.

Telecom Regulatory Authority of India Act, 1997 is the legislation that controls the telecommunication industry as stated in section 11² that the TRIAC Act delegates power and

¹ Competition Act 2002 section 18 Acts of Parliament 2002

² Telecom Regulatory Authority of India Act 1997 section 11 Acts of Parliament 1997

responsibility to the Telecom Regulatory Authority of India to; “facilitate competition and promote the telecommunication service providing a ground for the full-fledged improvement and growth of this sector”³

For the welfare and development of the telecom sector in the Indian economy, both legislations are meant to be read together with the objective of creating such conditions which push the telecommunication department upward through healthy and sturdy competition.

The statutes speak approximately the equal goal i.e. truthful opposition, the safety of the hobby of the members and the customers, and constructing surroundings that promote healthy opposition. However, the two laws imbricate and this has brought about conflicts within the jurisdiction. While TRAI tries to keep the tariff rate reasonable as a customer-centric approach CCI thinks this is a case of predatory pricing being a more business-centric approach as it cut downs the doors for potential healthy market competition.⁴

To subdue this conflict the court has tried this matter in many cases over a long period of time. This issue first came into light in the case of *Star India v. Sea T.V. Network*⁵; here the court laid the judgment that the Commission that's now referred to as the Competition Commission of India has no authority to cope with disputes associated with TRAI. Later in the case of *Consumer Online Foundation v. Tata sky and ors.*⁶; dish TV challenged the jurisdiction of CCI in the matter when it was a case under the jurisdiction of TRAI and already under the hands of Telecom Disputes Settlement and Appellate Tribunal. Here the CCI stated that though it is TRAI that regulates the telecommunication sector when the subject matter is about the competition in any sector the CCI holds the power.

Ending this state of confusion and resolving the jurisdiction on the 5th of December a two-judge bench adjudicated this issue in the case of *Competition Commission of India v. Bharti Airtel ltd. and others*⁷ The main issues in this case were-

1. Whether CCI has the power to regulate and exercise its power in matters of the telecommunication sector when TRAI is the act that governs the whole sector.

³ Rajvansh Singh Supreme Court on Jurisdictional Conflicts between the CCI and TRAI January 28, 2019

⁴ Hindu Business Line, October 07,2005, “Long distance operators dismiss cartel allegations”.

⁵ (2006) 2 CompLJ 487 TelecomDSAT

⁶ Case No. 2 / 2009 24 March 2011

⁷ 2018 SCC OnLine SC 2678, decided on 05-12-2018.

2. Whether or not the writ petition filed under sect 26(1) be admitted in the concerned high court or not.⁸

Here the Hon'ble Supreme court delivered the judgment that though TRAI is specialized legislation that has a frame in the telecommunication sector the CCI is special legislation with the vocation to inspire honest and fair competition. TRAI manages best a unique area and CCI is the preferred regulator within the marketplace. The main objective of both legislation differs and so do their functions. It is within the jurisdiction of CCI to examine a settlement that's anti-aggressive in nature and the impact of that settlement within the marketplace. This feature is best protected via way of means of the CCI and the TRAI has no jurisdiction in such matters. The Supreme Court did now no longer agree that during such matters the jurisdiction of CCI may be taken away.⁹

It became additionally stated that if the TRAI had observed that a cartel became created via way of means of the IDOs in order to prevent Jio's access within the marketplace then it's far the CCI could have jurisdiction to decide whether or not the exercise followed by the IDOs is an anti-aggressive and its unfavorable effects. The TRAI Act limits the power of the TRAI and its jurisdiction while CCI had jurisdiction to inspire honest competition.¹⁰

If each of the CCI and TRAI has been given jurisdiction to adjudicate the dispute this could bring about contradictory views. Thus it became important to keep away from a concurrent jurisdiction. The Supreme Court stated that CCI ordered research and offer justice to the events. The order became, especially an administrative order. The Supreme Court stated that if an administrative order is given through a court or tribunal that order needs to receive with positive motives and the writ petition became maintainable.¹¹

Lastly, Supreme Court stated that it's far the TRAI who shall be exercising its jurisdiction first in case of telecom disputes and CCI may have a observe jurisdiction i.e. if the TRAI feels that an anti-aggressive exercise is followed by the IDOs it shall refer the dispute for adjudication to the CCI.¹²

⁸ Rajvansh Singh Supreme Court on Jurisdictional Conflicts between the CCI and TRAI January 28, 2019, <https://indiacorplaw.in/2019/01/supreme-court-jurisdictional-conflicts-cci-trai.html>

⁹ Ibid.

¹⁰ Vaish Associates Advocates, "Supreme Court ends jurisdictional conflict between CCI and TRAI," <https://www.lexology.com/commentary/competition-antitrust/india/vaish-associates-advocates/supreme-court-ends-jurisdictional-conflict-between-cci-and-trai>

¹¹ Dhruv Dhawan CCI v. TRAI July 1, 2021 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3898366

¹² Ibid.