2025:KER:93252

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 3RD DAY OF DECEMBER 2025 / 12TH AGRAHAYANA, 1947

WA NO. 1551 OF 2025

AGAINST THE JUDGMENT DATED 28.05.2025 IN WP(C) NO.29767 OF 2022 OF HIGH COURT OF KERALA

APPELLANTS:

**JIOSTAR INDIA PRIVATE LIMITED
(FORMERLY KNOWN AS 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.
SHRI.MATHEW NEVIN THOMAS
SRI.ARUN THOMAS
SHRI.SAIKRISHNA RAJAGOPAL
SHRI.SIDHARTH CHOPRA
SMT.SNEHA JAIN
SMT.RUBY SINGH AHUJA
KUM.SWIKRITI SINGHANIA
SHRI.RANJEET SINGH SIDHU
SHRI.KUBER MAHAJAN
SMT.VEENA RAVEENDRAN
SMT.KARTHIKA MARIA
SRI.ANIL SEBASTIAN PULICKEL
SHRI.SHINTO MATHEW ABRAHAM
SHRI.KURIAN ANTONY MATHEW
SMT.APARNNA S.
SHRI.KARTHIK RAJAGOPAL
SMT.LEAH RACHEL NINAN
SHRI.NOEL NINAN NINAN
SHRI.ARUN JOSEPH MATHEW
SHRI.ADEEN NAZAR**

2025:KER:93252

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 **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 N.VENKATARAMAN, ASG
**BY ADV SHRI.JAISHANKAR V.NAIR, SENIOR PANEL COUNSEL
BY CRISTY THERESA SURESH
BY ADV.AVINASH AMARNATH
BY ADV.RITIN RAI**

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 10.10.2025, THE COURT ON 03.12.2025 DELIVERED THE FOLLOWING:

2025:KER:93252

JUDGMENT

[W.A.No.1551 of 2025]

SUSHRUT ARVIND DHARMADHIKARI

1. The present intra court appeal, under Section 5 of the Kerala High Court Act, 1958 assails the judgment dated 28.05.2025 passed in WP(c) No.29767 of 2022 whereby the writ petition filed by the appellant has been dismissed.

2. The appellant herein is the original writ petitioner (*for short,* 'OWP'). Through the judgment under challenge, the Single Bench has affirmed the order passed under **Sec. 26(1)** of The Competition Act, 2002 (*for short,* 'Comp. Act'), whereby The Competition Commission of India (*for short,* 'CCI') has *vide* **Paras 20** and **21** directed the Director General (*for short,* 'DG') to cause an investigation to be made into the information/ complaints filed by **Asianet Digital Network Private Limited (*for short,* 'ADNPL')** against **Jiostar India Private Limited,** formerly known as **Star India Private Limited (*for short,* 'SIPL'), Disney Broadcasting (India) Private Limited (*for short,* 'Disney')** and **Asianet Star**

Communications Private Limited (*for short,* 'Asianet Star') under **Sec. 19(1)(a)** of Comp. Act, 2002.

2.1 ADNPL alleged contravention of the various sub-provisions of **Sec. 4** of the Comp. Act by the opposite parties, the appellant herein, of which complaint/ information cognizance has been taken by the CCI and investigation directed through the DG. Though *vide* **Para 21**, the CCI has abundantly made luminescent that no expression on merits has been reflected in the case by it and the investigation report so prepared in pursuance of its orders shall be open ended without being swayed by observations made in the order, however SIPL attribute grave prejudices caused to them by the order directing investigation *per se* by the DG. Such a direction has been necessitated by the CCI after forming a *prima facie* opinion of violation of the provisions of **Sec. 4(2)(a)(ii)** r/w **4(2)(c)** of the Comp. Act owing to discriminatory pricing, conduct and denial of market access by the SIPL abusing its dominant position in the market *qua* the ADNPL, the informant before the CCI.

VERDICT OF THE SINGLE BENCH UNDER CHALLENGE

3. The Single Bench of this Court through its comprehensive judgment analysing all the contentions of the contesting parties,

including the CCI itself, returned the following findings and directions:

A. The Comp.Act is an independent special enactment which will operate unhindered by the provisions of the Telecom Regulatory Authority of India Act, 1997 (*for short,* 'TRAI Act'), dealing with anti-competitive practices and would therefore, the CCI possess the jurisdiction to entertain information regarding the allegations of misuse of dominant position by the bigger players in the market. Resultantly, the information of ADNPL alleging abuse of dominant position by SIPL in the '*relevant market*' under **Sec. 4** was clearly maintainable, regardless of the provisions of the TRAI Act and the Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2017 (*for short,* 'TRAI Regulations, 2017');

B. The contention that since violation and non-compliance of TRAI Regulations, 2017 is involved and therefore TRAI is the authority primarily enjoined with the responsibility to decide upon such allegations of violations as the '*sectoral regulator*' is not tenable. The CCI cannot be restrained from enquiring into allegations of discriminatory pricing and excessive discounting to Kerala

Communicators Cable Limited (*for short,* 'KCCL'), to whom excessive discounting arrangements have been provided. When allegations pertaining to anti-competitive practices are involved, CCI becomes the *'sectoral regulator'* and has independent authority to examine the allegations; get the investigation done through the DG and pass orders after hearing all concerned, post receipt of the investigation report;

C. The Comp. Act and the TRAI Act are the special legislations in their respective field and merely because TRAI is constituted as an expert regulatory body governing the telecom sector, it cannot override the provisions of Comp. Act, even though some overlapping in the discharge of functions of both the authorities (CCI and TRAI) may be involved. As such under the TRAI Act, there are no specifically worded provisions dealing with anti-competitive practices and their remedies. The allegations raised by ADNPL are not pertaining to non-compliance of the license conditions or violations of regulations framed by TRAI simpliciter, but go much beyond, for dealing with, CCI is equally competent to investigate and inquire;

2025:KER:93252

D. The judgement of ***Competition Commission of India v. Bharti Airtel Limited and others***[1] is distinguishable in the facts of the case and would not restrict the powers of CCI from inquiry into the same. ***Bharti Airtel (supra)*** is the law laid therein must be appreciated in the context thereof and cannot be read, as laying down a generic proposition, that whenever TRAI is involved as a *'sectoral regulator'*, CCI cannot exercise jurisdiction;

E. The order passed under **Sec. 26** of the Comp. Act by CCI is an order *'in rem',* without any civil consequences on the petitioners. As such the writ petition is therefore premature, whereby the petitioners still have sufficient opportunity to address their arguments before the CCI, on questions including even its jurisdiction. The Court therefore shouldn't just scuttle the proceedings pending before the CCI when the CCI can decide the jurisdictional issue itself.

---

[1] (2019) 2 SCC 521

4. Accordingly, the writ petition was dismissed reserving the liberty to the petitioner to address the arguments on jurisdiction before the CCI itself, which the CCI was obligated to decide at the first instance before proceeding with the matter on merit.

OPENING OF APPEAL BEFORE THIS COURT

5. When the present writ appeal was being argued finally, the appellant was specifically inquired as to whether they are limiting their challenge to the jurisdiction of CCI to pass the order under challenge in the proceedings or the collateral issues as well, which constitute the jurisdictional facts also, and were raised on behalf of ADNPL before the CCI. All the contesting parties, including the CCI, have made their submissions extensively, touching upon the jurisdictional facts as well as to whether the allegations would constitute *prima facie* the ingredients of **Sec. 3** and **Sec. 4** of the Comp. Act. Both the parties have argued *for and against* the preposition that **Sec. 4** ingredients were not at all attracted and at the highest what is involved are the TRAI Regulations, 2017 and their interpretation.

6. Therefore, in view of the extensive submissions made by all the contesting parties before this Court, this Court shall also be dealing

and answering the contention of the appellant that *prima facie* the rigours of **Sec. 4** were attracted in the present case. This is because the appellant SIPL has been vehement in its submissions that the heart and soul of the information filed under **Sec. 19** before CCI by the ADNP doesn't constitute the abuse of dominant position or adoption of anti-competitive practices by it. It is simply masking the allegation of violation of TRAI Regulations, 2017 with a different cover and projecting the same cause of action by indulging in '*forum shopping*' at the behest of the ADNPL. In this aspect extensive reference was made by the learned Senior counsel on behalf of the SIPL to the information filed before the CCI by ADNPL as also the accompanying documents relating to the *inter se* mutual correspondences between both the parties to contend that CCI does not possess the jurisdiction at all to have entertained the information or directed any investigation under **Sec. 26** of the Comp. Act. Therefore, in view of the expansive submissions made questioning the competence of the CCI itself in touching the whole grievance and taking cognizance of the information filed by it, we would in the judgement touching and dealing the said aspect as well to respond to contentions of the SIPL.

7. Against the order of the CCI dated 28.02.2022, certain writ proceedings were taken up at the behest of Asianet Star and the appellant SIPL before the Bombay High Court *vide* WP(C) Nos. 3755, 3845 and 3860 of 2022. Through its interim order dated 06.04.2022, the Bombay High Court restrained the CCI from passing any further orders or proceeding further on the complaint filed by ADNPL as an interim arrangement till the further directions of the Court. The aforesaid writ petitions were eventually disposed off through the judgement dated 16.09.2022 passed by the Bombay High Court on the ground of lack of territorial jurisdiction to entertain the *lis*. Accordingly, the petitioners were relegated to take out the proceedings before the appropriate forum, in consequence of which the writ petitions were thereafter instituted before this Court. Since the interim order passed by the Bombay High Court was operational till its final disposal by the Bombay High Court, therefore the Single Bench of this Court through its interim order dated 06.10.2022 continued the interim relief as was existing earlier in favour of the writ petitioner. This culminated in the final impugned judgment. In view of the above, therefore during the pendency of the appellate proceedings before this Court, the interim relief operational in favour of the petitioner was

2025:KER:93252

accordingly continued in the same terms through the interim order dated 08.07.2025 of this Court.

FACTUAL MATRIX OF THE DISPUTE AT HAND

8. The appellant SIPL along with its subsidiaries and group of companies are the broadcasters of satellite based TV channels in India having multiple channels of different languages and various genres including general entertainment, movies, sports and kids entertainment. SIPL (as a group conglomerate) is stated to be the largest broadcaster in India's television broadcasting industry in terms of numbers of channels and revenues with its Malayalam channel Asianet. Asianet is arguably Kerala's most popular channel which in the month of August- September of 2021 enjoyed the highest rating along with other dominant regional and sports channels. SIPL is stated also to be possessing exclusive rights for major sporting events like BCCI Test Cricket, ODIs, T20, IPL, International Cricket Council (*for short,* 'ICC'), ODI World Cup as well as T20 World Cup, etc.

9. ADNPL on the other hand is a Multi System Operator (*for short,* 'MSO') which engages at the regional level in the business of

providing digital TV services primarily in Kerala. It also operates in other southern States of Karnataka, Andhra Pradesh, Telangana and Odisha, having been one of the leading MSO players for the last almost 3 decades. It provides digital TV services to its customers directly as well as through local cable operators (*for short*, 'LCO'). It is a wholly owned subsidiary of Asianet Satellite Communications Private Limited (*for short,* 'ASCPL').

10. There have been ongoing disputes between the appellant SIPL, ADNPL and KCCL in Kerala over the allegations of according to more favourable terms of pricing to some other MSOs operational in the region. ADNPL receives broadcasting signals from SIPL for monetary consideration, and both have had business relationships for the last 20 years. This relation is being governed through subscription and distribution agreements being entered into between ADNPL and SIPL from time to time as per the successive regulations enacted by TRAI. The TRAI Regulations, 2017 (which we shall be referring to in a worthwhile) broadly ensure non-discrimination in pricing and terms across MSOs/ distributors.

11. Disputes between ADNPL and SIPL have arisen in the past on multiple occasions admittedly over the allegations of

discrimination in pricing and terms of treatment being accorded to ADNPL *vis-à-vis* its competitor MSOs. Such disputes had even travelled to Telecom Disputes Settlement & Appellate Tribunal (For short 'TDSAT') and up to the Hon'ble Supreme Court in the past wherein on some occasions either the matter was settled out of Court, or the appellant was subjected to certain directions of ensuring a level playing field to ADNPL by various ancillary directions in said regard having been issued by TDSAT and the Hon'ble Supreme Court of India. The reference to all such spate of litigation and disputes between both the parties is not relevant except to give a background that both the parties have had a fair share of hotly contested litigation before Telecom Regulatory Authority of India (For short 'TRAI') and TDSAT under the applicable TRAI Act and the Regulations framed thereunder between March 2006 and October 2019. The dispute at hand emanated post the enactment of the TRAI Regulations, 2017, wherein a maximum retail price (*for short,* 'MRP') was prescribed for each paid channel. The TRAI Regulations, 2017, to be referred below requires broadcasters to deal with distributors on a non-discriminatory basis. **Regulations 3(2), 7(3) and 7(4)** mandate the broadcaster not to provide the cumulative discounts of more than

35% to any distributor and even the treatment to be extended to all distributors of the region at a common plane. However, it is averred by ADNPL that special discounts of more than 50% were being offered by SIPL to KCCL and other competitor MSOs and business entities. These discounts were stated to have been offered in the form of promotional and advertisement payments to KCCL by introduction of test channels on which promotional content and advertisements were to run round the clock with payments being made to KCCL by SIPL. The information filed before the CCI under **Sec. 19** in January 2022 provides at length the manner in which these special discounts exceeding 35% (as capped under **Regulation 7** of the TRAI Regulations, 2017) were provided. Suffice to say such discounts or benefits were not provided to the informant ADNPL.

12. ADNPL thus accused SIPL of abusing its dominance in the television broadcasting space in Kerala in contravention of the Comp. Act by providing discriminatory discounting payments and preferential treatment to KCCL. Owing to this preferential treatment to KCCL, ADNPL suffered a colossal loss/ migration of its subscriber base which fell down steeply within a short span of 5-6 months. The cost content for ADNPL increased manifold for offering services to

subscribers and LCOs at a price higher than the price at which services were offered by KCCL.

13. It has been averred further in the writ petition that *sham marketing agreements* were executed between SIPL and KCCL as elaborated *vide* **Para 8.11** of the information filed with the CCI. Being a dominant entity, SIPL thus caused irreparable damage to the market standing of ADNPL without treating the latter on parity with other MSOs.

14. ADNPL alleged that marketing agreements are nothing but a sham arrangement to route back the money and to provide additional discounts to KCCL. SIPL itself admitted in one of his correspondences to ADNPL that such a marketing agreement is different from the subscription agreement to which the TRAI Regulations, 2017 and the discount cap of 35% won't apply. ADNPL took up the issue of providing additional discounts through indirect means and marketing agreements to KCCL selectively, claiming transparency and parity with the discounts offered to KCCL, however all these communication correspondences have been of no avail.

15. Accordingly, sometime in January 2022, information under **Sec. 19** was filed before the CCI by ADNPL alleging unfair treatment and

adoption of discriminatory and anti-competitive practices by SIPL and its subsidiaries in its broadcasting services. The perusal of complaint/ information so lodged before CCI reflects that ADNPL has vocally pitched the violations specifically of **Regulations 3, 4** and **7** of the TRAI Regulations, 2017 at the hands of SIPL and discrimination met out to ADNPL *qua* KCCL. However, the eventual relief sought for before the CCI was passing an order under **Sec. 26** r/w **Sec. 27** of CCI finding the SIPL guilty of abusing its dominant position in the market by indulging in discriminatory pricing and conduct resulting in denial of market access to ADNPL.

16. The CCI through the impugned order dated 28.02.2022 delving into the facts and allegations raised in the complaint as also *inter se* relations between the parties directed the DG to conduct an investigation and file a report, a direction which has become the bone of contention between both the parties.

CONTENTIONS AND SUBMISSIONS OF THE APPELLANT

17. Mr. Mukul Rohatgi, learned Senior Advocate appearing on behalf of the appellant SIPL offered his contentions as follows:

I. The relation between SIPL and ADNPL came into existence by virtue of a contractual agreement entered into under the TRAI

Regulations, 2017 governed by the TRAI Act. TRAI Act is a special Act which regulates the entire gamut of nature of business and the rights between both the broadcaster and the distributor. Referring to various provisions, he contended that a distributor cannot be dealt with in an arbitrary manner but as per the mandate of the TRAI Regulations, 2017 or as per the arrangement made under the TRAI enactment itself. The complaint therefore so made before the CCI, ought to have been made before the TRAI at the first instance, alleging the violations of the TRAI Regulations, 2017. For delving and deciding upon the breach of its Regulations, TRAI is the specialised regulatory authority competent to look into the violation of the TRAI Regulations, 2017;

II. TRAI has sweeping powers to issue directions, impose prohibitions and restrictions and the order passed by TRAI is appealable before TDSAT, presided by a former Supreme Court Judge or a former Chief Justice. Referring to **Sec. 14**, his contention has been that all disputes arising between the distributor and the broadcaster are to be dealt with by the *TDSAT only*. In view thereof, the complainant therefore could not have approached CCI directly instead of first approaching the TRAI. It was obligatory for the ADNPL or any other

similarly circumstanced aggrieved entity to have first availed the remedy under **Sec. 14** of the TRAI Act;

III. Referring to the order dated 28.02.2022 passed by the CCI, specifically **Paras 7, 9, 12, 15** and **16,** it has been argued that the order of investigation by the DG has been passed without extending any opportunity of hearing or deciding the issue of jurisdiction by the CCI itself. The order passed *ex parte* fails to therefore consider the objection of applicability of the TRAI Act and the Regulations made thereunder and the inherent defect of jurisdiction in entertaining such a complaint. By entertaining such a complaint and directing investigation, the CCI has done nothing. The CCI has in fact allowed the ADNPL to arm-twist and squeeze the appellant. The direction of investigation by the CCI amounts to serious inroads in the freedom of doing business available to the appellant and the rights guaranteed under **Art. 19(1)(g)** of the Constitution of India;

IV. Referring to the ***Bharti Airtel (supra)*** he contended that the matter is no longer *res integra.* In view of the observations made in the aforesaid judgment, specifically through **Paras 99** to **104**, the Supreme Court has made it abundantly clear that a complaint

arising out of violations of the regulatory regime under TRAI Act must originate and be examined by TRAI itself, whereafter only can the matter be referred to the CCI. Listing various functions and duties of TRAI, like ensuring technical compatibility; effective inter-relationship between different service providers and settlement of disputes amongst them, he stated that TRAI is the '*sectoral regulator*' and that jurisdictional aspects must be decided by TRAI at the first instance. Unless TRAI finds fault with the action of the broadcaster or violation of the Regulations so alleged, the CCI cannot order an investigation. Referring to **Para 104** of the judgment, with emphatic iteration, he submitted that unless jurisdictional issues are straightened and answered by TRAI, the CCI would be ill-equipped to proceed in the matter on its own. This Court being bound by the ***Bharti Airtel (supra),*** therefore ought to quash and set aside the impugned order passed by the CCI;

V. Referring next and placing abundant reliance upon the judgment of the Bombay High Court in ***Star India Pvt. Ltd. v. CCI***[2]***,*** specifically

[2] 2019 SCC Online Bom 3038

Paras 62, 67, 70 and the conclusions eventually at **Paras 94** and **95**, Mr. Rohatgi contended that the Bombay High Court in a similar factual matrix between the broadcaster and a distributor/ MSO had quashed the indulgence made by the CCI on a complaint made to it. The Bombay High Court had, following the ***Bharti Airtel (supra),*** held that the CCI cannot entertain or take cognizance of any complaint unless TRAI deals and settles the same. The allegations regarding discriminatory pricing and additional discounts so raised in the instant matter were similarly raised before the Bombay High Court as well which were favourably answered in favour of TRAI;

VI. Only in the eventuality of a complaint being made formally to it, that TRAI comes to a finding that *prima facie* contravention or anti-competitive, discriminatory conduct adopted by SIPL, can the jurisdiction of the CCI be triggered to consider the information filed by ADNPL. However, at the present stage the CCI is precluded from proceeding itself with the information in view of the express bar recognised in ***Bharti Airtel (supra).*** The progress or even

completion of an investigation by the DG will not validate a referral that is otherwise found wanting for lack of jurisdiction. Jurisdictional objections remain justiciable at all stages of proceedings;

VII. In short it is the contention of the appellant that the powers by the CCI, as a market regulator, can be examined only after the *'sectoral regulator',* i.e. the TRAI has first determined the jurisdictional facts and not before. The ADNPL cannot be allowed to *forum shop* and circumvent the established legal route to approach the CCI.

VIII. Appellant is a 'service provider' under **Regulation 2(1)(kk)** of the Regulations, 2017 and is thus exclusively regulated and subjected to the statutory framework of the TRAI Act. The broadcasting and telecommunication sectors of which ADNPL is one of a component of, are subject to the exclusive jurisdiction of the '*sectoral regulator*', *viz.* TRAI and no one else.

CONTENTIONS AND SUBMISSIONS OF THE RESPONDENTS

18. Mr. Ritin Rai, learned senior advocate representing ADNPL, the respondent No. 2 made his arguments as follows:

A. ***Bharti Airtel (supra)*** is distinguishable on facts and involves the factual matrix entirely different from the case at hand. Elaborating the facts of the said matter which involved a dispute between Reliance Jio India Limited (*for short,* 'RJIL') on one hand and other telecommunication companies on the other, relating to interconnectivity points being provided to RJIL, he contended that the dispute arose on the application of RJIL itself. RJIL had itself raised the jurisdictional issue and grievance before TRAI first and thereafter approached CCI in ***Bharti Airtel (supra)***. In that context, the Supreme Court held that jurisdictional issues must first be straightened out by TRAI and not by the CCI. In the present case, to the contrary the information under **Sec. 19** has been filed directly before the CCI and that on the same subject, cause of action, no grievance has been raised before the TRAI at all. Therefore, the ratio of ***Bharti Airtel (supra)*** has to be applied with this fine distinction in mind.

B. It is not in dispute in the present case that 'marketing agreements' have been entered separately into by SIPL with KCCL which are admittedly the competitor distributors and by virtue of these marketing agreements, admittedly additional discounts are being provided to KCCL. SIPL itself has admitted that these 'marketing

agreements' are different from the distribution agreements and would not be covered by the discount cap of 35% prescribed under **Regulation 7(3)** of the TRAI Regulations, 2017. Therefore, enquiry relating to the legality of marketing agreements can be made only by the CCI and not by the TRAI as such.

C. Relying on ***Competition Commission of India v. Steel Authority of India Limited***[3], it is contended that order under **Sec. 26(1)** of Comp. Act is an administrative order, directing investigation in the nature of an intra-departmental enquiry. Being an administrative order purely, no hearing is required and not even an appealable order under the Comp. Act. If such an order is allowed to be interfered on the grounds of violation of natural justice, then everyone/ anyone would be able to scuttle the investigation by challenging the **Sec. 26(1)** order.

---

[3] (2010) 10 SCC 744

D. The information/ public complaint filed before CCI is not *per se* about the violation of TRAI Regulations but directed against anti-competitive agreements and practices adopted by SIPL by abusing its dominance in the broadcasting market. Referring to **Clause 101** of the Explanatory Memorandum to the Regulations, 2017, it is contended that marketing agreements parallelly excluded to other subscription related agreements are not covered within the ambit of the TRAI Regulations, 2017. The allegation of ADNPL is essentially against execution of marketing agreements as sham agreements which are not therefore outside the purview of the Regulations, 2017. The nature of complaint lodged by ADNPL is on a larger issue traversing much beyond **Regulations 7 clauses (3)** and **(4)** to highlight how SIPL is giving undue advantage intentionally to the competitors of respondent no. 2;

E. Referring to **Paras 8** and **11** of the reply of SIPL to one of its objections dated 13.09.2021, it is contended that in view of the specific admission of SIPL about marketing agreements being executed for promoting the contents and programme on their channels with other MSOs, the ingredients of **Sec.4** of the Comp. Act are clearly attracted and the dispute is therefore more about

anti-competitive nature of such agreements and not about violation of TRAI Regulations;

F. Referring to **Sec. 21-A** of the Comp. Act, it has been contended that CCI can always make reference to TRAI and seek opinion at the appropriate stage through consultations from TRAI about the allegations of abuse of dominance by SIPL. Therefore, it is unmerited to argue that TRAI is being bypassed, or the '*sectoral regulator*' is not being approached;

G. Referring extensively to the stipulations of the marketing agreements executed by SIPL with KCCL, ADNPL contended that as a market regulator, CCI has independent, standalone, separate powers and jurisdiction to inquire into the allegations raised *vide* the complaint/ information filed by them. Being a separate Parliamentary enactment, the Comp. Act, therefore cannot be governed or overshadowed by the provisions of the TRAI Act which do not possess the robust mechanism and machinery to inquire into and take suitable penal action against the errant dominant player abusing their market position.

H. CCI assesses the impact of an agreement or practice on competition as the '*market regulator*', whereas a '*sectoral*

regulator' like the TRAI, adjudicates the validity of the same under its sector specific law. An agreement or practice that is valid/ compliant with sectoral law may still fall foul of the Comp. Act if it has an appreciable adverse effect on competition. Agreements which are otherwise valid/ legal under the sectoral laws can even be declared void if they cause or are likely to cause appreciable adverse effects on competition. Therefore, even if any agreement/ conduct is found to be in compliance with sectoral regulations, this would not take away the CCI's jurisdiction to inquire into the impact of the agreement/ conduct on competition.

19. Mr. N. Venkataraman, learned Additional Solicitor General appearing on behalf of the CCI in response to the contentions of the appellant responded as follows:

A. It would be jurisprudentially incorrect to canvass a point that merely because an entity is governed by a regulatory enactment and a '*sectoral regulator*', it cannot be regulated by the CCI or ceases to be subject to the Comp. Act. After all, the Comp. Act is one of such enactments in the category of the consumer protection laws which makes the market as

competitive and transparent as possible so that consumers buy products at affordable prices. Explaining the scheme of the Comp. Act, he contended that Comp. Act is an extremely specialised branch of law which focuses on curbing anti-competitive practices in terms of **Secs. 3, 4, 5** and **6** of the Act. TRAI Act to the contrary nowhere provides such an all-rounded mechanism statutorily to deal with anti-competitive behaviour and to prevent the abuse of dominance in the market. TRAI is holistically not designed to decide upon the anti-competitive behaviour of any entity because that is clearly not the object behind the enactment of the TRAI Act;

B. Object and purpose of the Comp. Act and the TRAI Act is entirely different and distinct, with latter being enacted to regulate the telecom market and to not to decide upon the anti-competitive agreements. Comp. Act cannot be rendered as redundant legislation to wait for TRAI to give the CCI a green signal to proceed as the TRAI Act itself does not contemplate any such an eventuality. No provision under the TRAI Act exists which mandates that jurisdictional fact must be decided by TRAI, whereafter only on reference that the CCI can spring into action;

C. Referring to **Secs. 21** and **21-A** of the Comp. Act, it is contented that the CCI may on itself make reference to the statutory authority and they are guardians for ensuring mutual respect amongst regulators for ensuring each regulator operates within its sphere. The TRAI Act in fact does not oust the jurisdiction of the CCI to deal with matters like the one at hand;

D. Arguing that CCI consists of experts and its various verticals such as cyber experts, financial experts and special investigating team headed by DG, it is a most suited body to scrutinise allegations of commercial cartelization or domination by various business entities. Defending the observations made in the impugned order passed by the CCI, it is apprised by him that the investigation has been completed by the DG and a report shall be filed shortly before the CCI which has been kept on hold owing to interim orders of this Court;

E. An order passed under **Sec. 26(1)** is simply an expression of opinion by the CCI about the *prima facie* existence of grounds warranting invocation of **Sec.4** of the Comp. Act. Reference to

enquiry by the DG through an order is akin to an administrative exercise to which principles of *Audi alteram partem* shall not be applicable nor can such order be assailed on the grounds of having been passed *ex-parte*;

F. Referring to the ***Bharti Airtel (supra)*** it is contented that the said judgment was in an entirely different factual context relating to the dispute as agitated by RJIL for non-supply of POIs by other established operators and players of the telecommunication market. Referring to **Paras 64, 65** and **66** and **Paras 100** to **105** of the said judgement, special emphasis was laid on the observations of the Supreme Court to state that the arrangement of TRAI having first say in the matter over CCI was passed in the special facts of the said case and cannot be treated as a generic finding, laying down the law that CCI cannot open its doors till the remedy before TRAI is exhausted foremost. Facts of ***Bharti Airtel (supra)*** were entirely different and there is no interconnectivity between the aforesaid case and the case at hand;

G. The enquiry by the CCI under **Sec.26** considers the broader market, consumer welfare and impact on the economy. The

Proviso to Sec. 14 (a) of the TRAI Act itself creates legroom and makes an exception for the TRAI to keep its hands off in cases being enquired under the **Monopolies and Restrictive Trade Practices Act, 1969.** Therefore, the legislative intent behind the TRAI Act itself is explicitly clear that CCI shall have prevalence over the provisions of TRAI Act;

H. Referring to **Secs. 60, 61 and 62**, it is further contended by CCI that the *non-obstante* clause employed under **Sec. 60** gives it a premium over all other legislations. The Comp. Act was enacted in the year 2002, when TRAI Act was already holding the field from much before in 1997. Referring to the judgement of Delhi High Court in the matter of ***Whatsapp LLC v. CCI***[4]**,** and highlighting the '*aspect doctrine*', it was argued that CCI has exclusive powers to assess matters from a competition law perspective and are retained as existing powers being

[4] 2022 SCC Online Del 2582

provided by the Parliament itself. Parallel proceedings before different authorities are permissible and minor overlaps do not oust one forum's jurisdiction. Therefore, the independence of CCI to investigate the *prima facie* issue of violation of Comp. Act cannot be undermined or excluded by subjecting the complaint in question to be triable exclusively before TRAI.

ISSUES FOR CONSIDERATION

20. In view of the pleadings and submissions raised before us as also the detailed judgment of the learned Single Bench, following issues arise for consideration of this Court:

a. Whether parallel inquiry or proceedings can continue under the dispensation of the two different enactments of the Comp. Act and the TRAI Act with CCI and TRAI doing the said exercise under their respective enactments; the effect and impact of TRAI Act over the inquiry mechanism of CCI and the theory of contemporaneous operation of parallel legislations *& implied repeal*?

b. Which of the two enactments, *viz.* the Comp. Act and the TRAI Act be treated as a special enactment; the effect and interplay

of the *non-obstante* clause under **Sec. 60** of the Comp. Act over other special sectoral enactments like the TRAI Act?

c. To what extent the ***Bharti Airtel (supra)*** shall apply to the dispute at hand and whether CCI possesses the jurisdiction to pass orders of inquiry under **Sec. 26** on the complaint/ information of ADNPL for having adopted anti-competitive practices and abusive tactics under **Sec.4** of the Comp. Act?

d. Whether the CCI can be allowed to proceed further with the matter ahead beyond passing of the impugned order or ADNPL be directed to approach the TRAI for determination of the jurisdictional facts?

21. Before we undertake issue wise discussions, it is necessary to first dive deep into the aims and objectives and the relevant statutory provisions of both the enactments involved in the present matter, *viz.* the Comp. Act and the TRAI Act. It would be more convenient to answer the issues posed above after having undertaken comprehensive reference to the statutory provisions of the enactments and the regulations framed thereunder.

DISCUSSIONS ON THE ANATOMY OF THE COMPETITION ACT

22. The aims and objectives of the Comp. Act clearly reflects that it is an enactment introduced for ensuring that markets function effectively and to prevent practices that have adverse effects on competition. The provisions ensure that freedom of trade is kept intact by all the participants in markets in India and achieve the ***three-fold destinations of a perfect market competition***, *viz.* **(a)** allocative efficiency, **(b)** productive efficiency and **(c)** dynamic efficiency. The Comp. Act replaced the earlier Monopolies and Restrictive Trade Practices Act, 1969 which was found to have become obsolete in certain respects in light of the international economic developments relating more particularly to competition laws. The transition of the Indian economy from being governed by the MRTP Act to being subjected to the Comp. Act shows the tectonic shift of our focus from curbing monopolies to promoting competition. The aforesaid aspects were discussed at length in the matter of ***Excel Crop Care Limited v. CCI***[5]***,*** when the Supreme Court

[5] (2017) 8 SCC 47

expounding the purpose of Comp. Act held that the avowed purpose of enactment is curbing of anti-competitive agreements 'for ensuring level playing field for all the market players'; setting the 'rules of the game', which protect the competition process itself rather than competitors in the market. Referring to the ASEAN Regional Guidelines on Competition Policy pertaining to 'main objectives and benefits of open competition', the Supreme Court underscored the necessity of curbing anti-competitive practices in an increasingly globalised world where worldwide deregulation, privatization and liberalization of markets is happening at a swift pace. Discussing how competition contributes to increase productivity through 'pressure on firms to control costs', 'easy market entry and exit' and 'encouraging innovation' pressure to improve infrastructure and benchmarking, it was highlighted that exercise of undue market power by any dominant entity in the market results in consumer harm in the form of higher prices, lower quality, limited choices and lack of innovation. Cartels or anti-competitive agreements cause harm to consumers by fixing prices, limiting outputs on allocating markets.

23. Therefore, the Indian Parliament felt it acutely necessary to enact the Comp. Act, 2002. The law enforcement agencies under the

Comp. Act includes CCI and Competition Appellate Tribunal (now substituted by National Company Law Tribunal (*for short,* 'NCLT') to ensure that these objectives are fulfilled by curbing anti-competitive agreements. The Parliamentary intent, objective and purpose behind the Comp. Act is evinced by **Sec. 18** of the Act which obligates the CCI with the primary duty of eliminating anti-competitive practices and promoting competition, protecting and advancing interests of the consumers and free trade in the economy.

24. The Supreme Court in the matter of ***CCI (supra)*** which preceded the judgement of ***Excel Crop Care Limited (supra),*** had already underlined the necessity of according beneficial and purposive construction to the various provisions of the Comp. Act. It had also underscored that proceedings instituted by the CCI should be dealt with and taken to the logical end of pronouncement of final orders without any undue delay and hindrances by the writ or the Constitutional Courts. In the event of delay for any reason, the very purpose and object of the Comp. Act. is likely to be frustrated and possibility of great damage to the open market and resultantly country's economy becomes inevitable.

25. CCI as such is entrusted with three different types of anti-competitive practices as mentioned under **Sec. 3, 4 & 5** of the Comp. Act. These are 3 parallel verticals, *viz.* providing for three different sets of circumstances, when the jurisdiction of the CCI may be triggered. They are as follows:

    a. Anti competitive agreement *vide* **Sec. 3,** whereunder vertical agreements as defined in **sub-section 1** which causes or likely causes appreciable adverse effects on competition within India are treated to be void;

    b. Abuse of dominant position *vide* **Sec. 4**, whereunder there is an affirmative statutory mandate that no enterprise or group shall abuse its dominant position. **Sec. 4(2)** list the circumstances that constitute abuse of dominant position. If an enterprise or the group directly or indirectly imposes an unfair and discriminatory price in purchase or sale (including predatory price) of goods or services, then it amounts to abuse of dominant position under **Sec. 4(2)(a)(ii)** of the Act. Similarly, if an enterprise or a group indulges in practice resulting in denial of market access in any manner, then it amounts to abuse of dominant position under **Sec. 4(2)(c).**

c. Regulation of combinations (cartelization) *vide* **Secs. 5** and **6.** Under this vertical CCI places a hawk's eye on any person and enterprise who enters into a combination which causes or is likely to cause adverse effect on competition within the relevant market, treating such combinations as void. Also known as *cartelization*, it restrains the execution of any approval or proposal of corporate conglomerates possessing assets above the prescribed benchmark by the CCI, without whose approval such mergers or amalgamations would not come into existence. There is a penalty also prescribed for non-compliance of **Sec. 6(2)**.

From the above, it is thus clear that CCI as a regulatory watchdog is empowered to inquire into any contravention of the aforesaid three verticals, which are harmful for a healthy competition in any liberalised, privatised and free market economy.

26. Since the various provisions have already been quoted in the impugned judgment, we do not find it appropriate to unnecessarily stretch the length of this judgment by quoting all the statutory provisions threadbare, except certain few and foremost ones which are as follows:

2025:KER:93252

*" **2. Definitions.**—*

***

*(m) **"practice"** includes any practice relating to the carrying on of any trade by a person or an enterprise;*

***

*(u) **"service"** means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;*

***3. Anti-Competitive Agreements**- (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition*

within India.

(2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

(a) directly or indirectly determines purchase or sale prices;

(b)limits or controls production, supply, markets, technical development, investment or provision of services;

(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(d) directly or indirectly results in bid rigging or collusive bidding,

shall be presumed to have an appreciable adverse effect on

competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

*Explanation.—For the purposes of this sub-section, "**bid rigging**" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.*

***4. Abuse of dominant position**. —[(1) No enterprise or group shall abuse its dominant position.]*

(2) There shall be an abuse of dominant position 3[under sub-section (1), if an enterprise or a group],—

(a) directly or indirectly, imposes unfair or discriminatory—

(i) condition in purchase or sale of goods or service; or

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

Explanation.—For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such 4[condition or price] which may be adopted to meet the competition; or

(b) limits or restricts—

(i) production of goods or provision of services or market therefor; or

(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access 5[in any manner]; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation.—For the purposes of this section, the expression— (a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—

(i) operate independently of competitive forces prevailing in the relevant market; or

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

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

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

***

***19. Inquiry into certain agreements and dominant position of enterprise.**—(1) The Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on—*

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

(b) a reference made to it by the Central Government or a State Government or a statutory authority. 4 [Provided that the Commission shall not entertain an information or a reference unless it is filed within three years from the date on which the cause of action has arisen: Provided further that an information or a reference may be entertained after the period specified in the first proviso if the Commission is satisfied that there had been sufficient cause for not filing the information or the reference within such period after recording its reasons for condoning such delay.]

(2) Without prejudice to the provisions contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7).

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

(a) creation of barriers to new entrants in the market;

(b) driving existing competitors out of the market;

(c) foreclosure of competition;

(d) accrual of benefits to consumers;

(e) improvements in production or distribution of goods or provision of services;

(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

***

21. Reference by statutory authority

(1) Where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission:

[Provided that any statutory authority, may, suo motu, make such

a reference to the Commission.]

[(2) On receipt of a reference under sub-section (1), the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefor on the issues referred to in the said opinion.]

***21A. Reference by Commission.**—(1) Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of 4[an 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;*

Provided that the Commission, may, suo motu, make a reference to a statutory authority on any issue that involves provisions of an Act whose implementation is entrusted to that statutory authority.

(2) On receipt of a reference under sub-section (1), the statutory authority shall give its opinion, within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording

reasons therefor on the issues referred to in the said opinion.

***

26. Procedure for inquiry under section 19.—*(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter.*

Provided that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

(4) The Commission may forward a copy of the report referred to in 4[sub-sections (3) and (3B)] to the parties concerned: Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General referred to in recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

(6) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its

order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General referred to in recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

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 or income, as the case may be, for the last three preceding financial years, upon each of such person or enterprise which is a party to such agreement or has abused its dominant position.

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 or income, as the case may be, for each year of the continuance of such agreement, whichever is higher.

Explanation 1.—For the purposes of this clause, the expression "turnover" or "income", as the case may be, shall be determined in such manner as may be specified by

regulations.

Explanation 2.—For the purposes of this clause, "turnover" means global turnover derived from all the products and services by a person or an enterprise.

(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;

(g) pass such other 6[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.

***

36. Power of Commission to regulate its own procedure.—*(1)* ***

(2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses or documents;

(e) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such record or document from any office.

***

60. Act to have overriding effect.—*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*

61. Exclusion of jurisdiction of civil courts.—*No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission or the Appellate Tribunal] is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*

62. Application of other laws not barred.—*The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."*

27. The perusal of the above provisions of the Comp. Act shows that under **Sec. 19** CCI is empowered to inquire into any contravention of **Sec. 4**. In fact **Sec. 19(4)** obligates the CCI to take into consideration various criteria and parameters duplicated therein whilst enquiring whether an enterprise enjoys a dominant position or not. **Secs. 19(5) and (6)** explain how the *'relevant market'* for the

purposes of the Comp. Act is to be ascertained by enlisting various factors mentioned thereunder. The relevant market comprises the 'relevant geographic market' and 'relevant product market' which are to be ascertained in the statutory inquiry.

28. The enumeration of various factors under **Sec. 19(4)** of the Comp. Act empowers the CCI to be guided by social obligations and social costs, for example, mention of *'dependence of consumers on the enterprise'* or *'market structure and size of market'* or *'social obligations and social costs.'* Likewise under **Sec. 19(6) and (7),** the CCI is required to consider various factors for determining the '*relevant market*' or the '*relevant geographic market*'. We are clearly not adjudicating as to whether all the factors have to be seen holistically or only some, few or one of the factors may enter into consideration for the CCI to arrive at its conclusions as mentioned under **Secs. 19(4), (6) and (7)** of the Comp. Act. That is another sphere of inquiry reserved in appropriate facts or a case. For the present, it will suffice to state that CCI takes a cumulative and holistic view of various factors relevant in a given case to ascertain whether the penal provisions of **Secs. 3, 4 or 5** are attracted in any given case or not. The enquiry to be held under **Sec. 26** may

emanate from three different sources, which contemplates the CCI acting upon:

a. Reference by the Central Government or a State Government or a statutory authority;

b. Information given under **Sec. 19** of the Act;

c. On its own motion.

Thus, the CCI has been conferred even *suo motu* powers to act on its own motion if it finds that a cause of action is constituted to exercise its powers under the Act. The vesting of *suo motu* powers is another indication of comprehensive sweep of powers vested with the CCI to address the menace of anti-competitive practices which may be adopted by dominant market players.

29. Under **Sec. 26,** the CCI is empowered to direct the DG for conducting investigation after being satisfied *prima facie* about the breach of various provisions of the Comp. Act. **Sec. 21-A** which is like a stopover between **Sec. 19** and **Sec. 26** places discretion in the hands of the CCI to enter into consultations and make reference to the statutory authority. Such a reference may be made if CCI feels that any order or direction passed by it may be contrary to any

other enactment or powers enjoined with another statutory authority. The statutory authority under **Sec. 21-A(2)** is obligated to tender its opinion within a period of 60 days on receipt of the report of the Commission.

30. Under **Sec. 27,** if after the enquiry post submission of report by the DG before the CCI and hearing all the parties, if the CCI feels that any enterprise in a dominant position has contravened **Sec. 4**, it can direct such an enterprise to discontinue such abuse of dominant position and *inter alia* even impose penalty. **Sec. 27,** thus in a way is a repository of remedial, corrective and penal measures that can be taken by the CCI on finding the infraction of various provisions under the Act, especially of **Secs. 3, 4 & 5. Sec. 28** goes step further by empowering the CCI to direct the division of an enterprise enjoying the dominant position. There are other provisions under the enactment which empower CCI to take remedial and penal measures with respect to other verticals of the Comp. Act as above mentioned.

31. **Sec. 36** titled as **'Power of Commission to regulate its own procedure**' vests the CCI with the same powers as that of a Civil Court under the CPC, 1908. As has been contended by the learned

ASG, by alluding us to various provisions of the Comp. Act that the office of the DG comprises experts in the field of economics, taxation and accounts, law and policy, unlike the TRAI, therefore the investigation undertaken by the CCI is multidimensional and multifaceted. Under the provisions of **Chapter VIII-A** titled as 'Appellate Tribunal,' comprehensive provisions have been made for providing the remedy of appeal against any direction, decision or order of the CCI before the NCLAT. NCLAT itself is a highly specialised tribunal, headed by a former Judge of the Supreme Court and former Judges of High Courts as also various experts and technical members.

32. **Sec. 60** in the above backdrop is ingrained with a *non-obstante* clause giving all-pervasive superseding powers to the CCI over all other overlapping or overriding enactments. However, at the same time **Sec. 62** also provides a safety valve to **Sec. 60** by mentioning explicitly that provisions of the Comp. Act are in addition to and not in derogation of the provisions of any other law for the time being in force. This implies that whenever overlap or conflict arises of any other enactment (like the TRAI Act), there in view of **Sec. 60**, the provisions of the CCI shall have an upper hand. However, at the same time if the provisions of the TRAI Act do not cross ways with

the Comp. Act, then both shall go hand in hand contemporaneously, supplemental and complementary to each other.

33. The *non-obstante* clause under **Sec. 60** is a widely couched one, whereby **'*anything inconsistent*'** with the Comp. Act shall become ineffective *qua* the powers, functions and discharge of duties by the CCI, which includes very much the inquiry proceedings instituted under **Sec. 19** r/w **Sec. 26** by the DG.

DISCUSSIONS ON THE ANATOMY OF THE TRAI ACT AND THE REGULATIONS FRAMED THEREUNDER

34. After having discussed about the Comp. Act, its interplay with the TRAI Act cannot be discussed without making a comprehensive reference to the provisions of the TRAI Act and the Regulations framed thereunder.

35. The TRAI Act has been enacted with the objective of regulating the telecommunication services, adjudicating disputes arising between them and to protect the interest of service providers and consumers of the telecom sector. Perusal of the 'Statement of Objects and Reasons' shows that TRAI has been constituted under

the TRAI Act with the essential purposes of regulation of arrangement among service providers sharing their revenue derived from providing telecommunication services; ensuring compliance of license conditions; protection of the interests of consumers; fixation of rates of providing telecommunication service within India and outside India. **Sec. 11** of the TRAI Act occurring under **Chapter III** prescribes the powers and functions of TRAI, as already mentioned *supra*. **Sec. 12** vests with the power of TRAI to call for information and conduct investigations, whereunder it is authorised to conduct enquiry in relation to the affairs of any service provider**. Sec. 14** relates to the establishment of the appellate tribunal that empowers the TDSAT to adjudicate any dispute between two or more service providers. However, the first Proviso to **Sec. 14(a)** clearly excludes the predecessor of Comp. Act, *viz.* MRTP Act from the purview of the adjudicatory mechanism provided under. **Sec. 14** reads thus:

> ***"14. Establishment of Appellate Tribunal.****—The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to—*
>
> *(a) adjudicate any dispute—*

(i) between a licensor and a licensee;

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers:

Provided that nothing in this clause shall apply in respect of matters relating to—

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969(54 of 1969);

(B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986(68 of 1986);

(C) the dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885 (13 of 1885);

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act."

[emphasis supplied]

36. In exercise of its powers conferred under **Sec. 36** of the TRAI Act, the TRAI has enacted the TRAI Regulations, 2017. These Regulations are enacted with the objective of regulating commercial and technical arrangements for service providers for interconnection and for broadcasting services relating to television provided through addressable systems in India. **Regulation 7** of these regulations is at the heart of the dispute, which reads thus:

*"7. **Publication of reference interconnection offer by broadcaster for pay channels.**—*

(1) Every broadcaster shall publish, on its website, reference interconnection offer, in conformance with the regulations and the tariff orders notified by the Authority, for providing signals of all its pay channels to the distributor of television channels—

(a) within sixty days of commencement of these regulations; and

(b) before launching of a pay channel.

and simultaneously submit, for the purpose of record, a copy of the same to the Authority.

(2) The reference interconnection offer, referred to in sub-regulation (1), shall contain the technical and commercial terms and conditions relating to, including but not limited to, maximum retail price per month of pay channel, maximum retail price per month of bouquet of pay channels, discounts, if any, offered on the maximum retail price to distributors, distribution fee, manner of calculation of 'broadcaster's share of maximum retail price', genre of pay channel and other necessary conditions:

Provided that a broadcaster may include in its reference interconnection offer, television channel or bouquet of pay channels of its subsidiary company or holding company or subsidiary company of the holding company, which has obtained, in its name, the downlinking permission for its television channels from the Central Government, after written authorization by them.

Explanation.—For the purpose of these regulations, the definition of "subsidiary company" and "holding company" shall be the same as assigned to them in the Companies Act, 2013 (18 of 2013).

(3) Every broadcaster shall declare a minimum twenty per cent of

the maximum retail price of pay channel or bouquet of pay channels, as the case may be, as the distribution fee:

[Provided that the rate of distribution fee declared by the broadcaster shall be same for pay channel and bouquet of pay channels and shall be uniform across all the distribution platforms.]

[(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 per cent 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 per cent 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 based on combined subscription of the channel, both in bouquets as well as in a-la-carte, and such discount, if any, shall be offered on proportionate revenue from such channel as a-la- carte and as part of (any) bouquet:

Explanation: ***Any discount, offered as an incentive by a broadcaster on the maximum retail price of the pay channel or boulquet, based on actual number of subscribers or actual subscription percentage, recorded in a month, shall take into account total subscription of the channel both in a-la-carte as well as bouquet.***

Provided also 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.]

(5) Every broadcaster of pay channel shall mention in its reference interconnection offer the names of persons, telephone numbers, and e-mail addresses designated to receive request for receiving interconnection from distributors of television channels and grievance redressal thereof.

(6) The terms and conditions mentioned in the reference interconnection offer shall include all necessary and sufficient provisions, which make it a complete interconnection agreement on signing by other party, for distribution of television channels."

[emphasis supplied]

37. Reading of the above would show that **Regulation 7** puts a cap on maximum discount which can be offered under a subscription/ distribution agreement to the extent of 35%. However, the Regulation *per se* does not include marketing agreements which in the present case is agreed to by both the parties and is the source of offering of additional discounts through the backdoor payments made by SIPL to KCCL. **Regulation 7(4)** obligates. the broadcaster to treat all the distributors of television channels on fair, common, transparent and non-discriminatory terms. The grievance of ADNPL essentially arises from the discriminatory treatment meted out by the broadcaster to it as a distributor.

38. The complete glance of TRAI Act and Regulations made thereunder would show that it is an enactment predominantly enacted for governing the license agreements, resolution of disputes between various stakeholders in the telecommunication sector; disputes between the service providers and the consumers. However, the TRAI Act being the predecessor of Comp. Act nowhere contains any provision which restricts or eclipses the operation of the Comp. Act over its operation. To the contrary **Proviso to Sec. 14(1)** eliminates

the disputes arising under the MRTP Act from the ken of the TDSAT, making it non-justifiable under the TRAI regime. Therefore, as such, there is no impact of the existence of the provisions of TRAI Act on the existence and exercise of powers by the CCI under the Comp. Act.

39. From the above provisions, especially the objective behind enactment of the TRAI Act, it is candescent that TRAI is constituted for the orderly and healthy growth of telecommunication sector in the country, apart from the conservation and protection of consumer's interest. TRAI statutorily is enjoined with the obligation to achieve international standards of service delivery by the players in the telecommunication field of the country, whilst simultaneously ensuring that it is made accessible to the consumers at a reasonable price.

40. Therefore, TRAI as the sectoral watchdog brings in place arrangements for protection and promotion of consumer interest by ensuring fair and free competition between the various market players. For this reason, only the powers and functions assigned to TRAI are highlighted in the Statement of Objects and Reasons which is something distinct *qua* the TRAI Act. Specific functions

assigned to TRAI amongst many, include at the forefront, ensuring technical compatibility and effective inter-relationships between different service providers; overseeing compliance of licencing conditions by all service providers to ensure that the telecommunications market remains stable, competitive and accessible to a common consumer at reasonable prices.

TRAI *versus* CCI:- The '*special being general*' and the '*general being special*' for the applicability of maxim- '*generalia specialibus non derogant*'

41. It has been vehemently contended across the bar by the petitioners that the TRAI Act being a special enactment shall prevail over the CCI Act when complaint and cause of action arises by virtue of alleged breach of its Regulations. Being a special legislation with a special regime for inquiry and penalty prescribed thereunder the TRAI Act, the remedy under TRAI must be first resorted to by the complainant ADNPL instead of directly approaching the CCI at the threshold.

42. This contention has been opposed by the CCI and ADNPL by stating that CCI is a special enactment over TRAI, when it comes to regulation of market forces or checking anti-competitive or anti-

dominant practices. Both sides have relied upon the off-quoted '*generalia specialibus non derogant*' to pull the tug rope on their side for having TRAI or CCI being declared as the special legislation prevailing over the other one. Since plenary submissions were made over the superseding power of one enactment over another being a special legislation, we find it condign and necessary to express our view on this as well.

43. It is not uncommon that on the same subject matter two legislations may overlap and both may be claimed by their proponents to be the special prevailing over the other being general. It must be remembered that special and general are like two extreme ends of the swinging pendulum. Just like a swinging pendulum between the two extremes, a legislation may become special for certain purposes, whilst it may retain its generality with respect to other facets. Likewise, its overlapping legislation may also assume a specialty for certain purposes, whilst being general for multiple others. Therefore, the Court has to examine the context, purpose and end result for which any legislation is being interpreted and to what extent of the twins, the legislation shall become special in light of the context, purpose and the end result. It cannot happen that once a legislation is labelled as a special

legislation, it automatically leads to disappearance of the overlapping/ conflicting parallel legislation as was sought to be contended by the petitioners. Rather the Court's task is to ensure that both the legislations co-exist and co-apply depending on the circumstances and exigencies, when the question of their applicability comes on the plane.

44. In the earlier paragraph we have noted that the CCI Act is an enactment subsequent to the TRAI Act with a *non-obstante* clause of **Sec. 60**. TRAI Act to the contrary does not contain any such *non-obstante* clause, rather *vide* **Proviso to Sec. 14 (a),** it eliminates its applicability to cases falling under the purview of CCI's predecessor, the MRTP Act. How to determine which is special and which is general of the two is to be answered now.

45. We must at this juncture refer to the recent most judgment of ***Interplay between Arbitration agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899[6], In Re:*** wherein the

[6] (2024) 6 SCC 1

Constitution Bench of the Supreme Court was posed with an interesting question of admissibility of non-stamped or improperly stamped arbitration agreements. Whereas **Sec. 5** of the Arbitration Act restricted the extent of judicial intervention, requiring the Courts to look at the arbitration agreement as it is, it was argued that the provisions of the Indian Stamp Act, specifically **Secs. 33, 35** and **42,** stand in the way, treating the said unstamped document as a void document.

46. The Constitution Bench speaking through the illuminating & scholastic judgment of CJI, Dr. Justice Chandrachud answered the question succinctly as to which of the two legislations, the Arbitration Act or the Stamp Act is special, and which is general. In the above context, the Constitution Bench of the Supreme Court held that the Arbitration Act will have primacy over the provisions of the Stamp Act as well as the Indian Contract Act in relation to the '*arbitration agreements*' and for the said purposes, it shall be treated as a special law. The Arbitration Act being a codified law relating to domestic arbitration and international commercial arbitration, it shall govern the law entirely on arbitration including

'*arbitration agreements*' and the provisions of the other two enactments shall give way to **Secs. 2(1)(b), 5** and **7** of the **Arbitration Act.** The Court also falling back upon the *non-obstante* clause employed under **Sec. 5** observed that the *non-obstante* clause allows the Arbitration Act to take precedence over any other law for the time being in force. Resultantly, **Secs. 33** and **35** of the Stamp Act cannot be allowed to operate in proceedings under **Sec. 11** or **Sec. 8** as the case may be. The Court further held that Parliament was well aware of the Stamp Act and the Indian Contract Act, when it enacted the Arbitration Act. Despite this, it chose consciously not to specify stamping as a precondition to the existence of a valid arbitration agreement. The insertion of the *non-obstante* clause under the Arbitration Act was held to be demonstrative of the Parliamentary intent of giving a one-way highway to the Arbitration Act to operate and prevail over the provisions of the Stamp Act and the Indian Contract Act. The illuminating & scholastic observations of the Constitution Bench of the Supreme Court relevant for our discussion can be reproduced below:

"180. *The following position of law emerges from these precedents:*

180.1. The principal subject-matter as well as the particular perspective or focus illuminate the path to ascertain whether a law is a general law or a special law; and

180.2. *The Court should examine whether its jurisdiction has been ousted in terms of the procedure prescribed by a special law.*

181. To determine which of the three statutes that this Court is faced with is a special law, it is necessary to first refer to their subject-matter:

181.1. The Stamp Act is a law governing the payment of stamp duty for all manner of instruments. Schedule I to the Stamp Act sets out various types instruments which fall within the ambit of the said legislation;

181.2. The Contract Act, as the name suggests, sets out the rules in relation to contracts in general. An arbitration agreement is one of the many different types of contracts to which it is applicable; and

181.3. The Arbitration Act contains the law relating to domestic arbitration, international commercial arbitration, the enforcement of foreign arbitral awards, and conciliation.

182. Second, the "particular perspective" of this case pertains to whether an unstamped arbitration agreement is rendered unenforceable pending the payment of stamp duty so as to interpose a bar on the Referral Court to refer parties to arbitration. The issue is not whether all agreements are rendered unenforceable under the provisions of the Stamp Act but whether arbitration agreements in particular are unenforceable.

183. *The Arbitration Act is a special law in the context of this case because it governs the law on arbitration, including arbitration agreements — Section 2(1)(b) and Section 7 of this statute define an arbitration agreement. In contrast, the Stamp Act defines "instruments" as a whole and the Contract Act defines "agreements" and "contracts".*

184. It is not only the definition of "arbitration agreement" but also the other provisions of the Arbitration Act and the purpose for which it was enacted that makes it a special law. *As observed by this Court in Bhaven Construction, "the Arbitration Act is a code in itself." It provides for a detailed mechanism by which arbitration may be conducted, with a*

view to ensuring its success as a speedy and efficacious alternative to the Courts. The Statements of Objects and Reasons of the Arbitration Act records that the main objective of this law was to comprehensively cover international and commercial arbitration and conciliation as also domestic arbitration and conciliation.

(b) Section 5 of the Arbitration Act

185. *In the above segments, we have dealt with the scope of Section 5 of the Arbitration Act. It restricts the extent of judicial intervention in various matters governed by Part I of the Arbitration Act.* ***The non obstante clause in this provision is of particular significance. It indicates that the rule in Section 5 (and consequently, the provisions of the Arbitration Act) must take precedence over any other law for the time being in force. Any intervention by the Courts (including impounding an agreement in which an arbitration clause is contained) is, therefore, permitted only if the Arbitration Act provides for such a step, which it does not. Sections 33 and 35 cannot be allowed to operate in proceedings under Section 11 (or Section 8, as***

the case may be), in view of the non obstante clause in Section 5. *This being the case, we are unable to agree with the decision in N.N. Global (2), that the Court in a proceeding under Section 11 must give effect to Sections 33 and 35 of the Stamp Act despite the interdict in Section 5. The Court held : (SCC p. 87, para 129)*

"129. Section 5 no doubt provides for a non obstante clause. It provides against judicial interference except as provided in the Act. The non obstante clause purports to proclaim so despite the presence of any law which may provide for interference otherwise. However, this does not mean that the operation of the Stamp Act, in particular, Sections 33 and 35 would not have any play. We are of the clear view that the purport of Section 5 is not to take away the effect of Sections 33 and 35 of the Stamp Act. The Court under Section 11 purporting to give effect to Sections 33 and 35 cannot be accused of judicial interference contrary to Section 5 of the Act."

***

(c) Parliament was aware of the Stamp Act when it enacted

the Arbitration Act

188. Parliament was aware of the Stamp Act when it enacted the Arbitration Act. Yet, the latter does not specify stamping as a precondition to the existence of a valid arbitration agreement. Further, Section 11(6-A) of the Arbitration Act requires the Court to confine itself to the examination of the existence of the arbitration agreement. This provision stands in contrast to Section 33(2) of the Stamp Act which also uses the word "examine". Section 33(2) requires the person before whom an instrument is produced, to examine whether it is stamped with a stamp of the value and description required by the law when such instrument was executed or first executed. Although Parliament was aware of the mandate of Section 33(2), it did not require the Court acting under Section 11 to also undertake the examination required by Section 33(2)."

[emphasis supplied]

47. A similar tool for interpretation and harmonious construction of two overlapping/ conflicting enactments was carried out by the

Supreme Court in the matter of ***Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd., & Anr.***[7], wherein the question arose about the applicability of the Sick Industrial Companies (Special Provisions) Act, 1985 (*for short,* 'SICA'), *vis-à-vis* the State Financial Corporations Act, 1951 (*for short,* 'SFCA') during pendency of inquiry under **Sec. 16** or approval/ sanction of scheme under **Sec. 17** of SICA.

48. Discussing the settled law that statutes may become special depending on the different situations they have to deal with. The SICA, 1985 was a subsequent enactment, compared to its predecessor the SFCA, 1951. Though both the enactments carried *non-obstante* clauses, but however the facts and context in which the applicability of both the enactments arose must be closely examined. *Vide* **Para 9**, holding that the SICA, 1985 being a special

[7] (1993) 2 SCC 144

enactment in the facts and context of the case at hand to prevail over the earlier 1951 enactment, the Supreme Court held thus:

> "***9.*** *Having reached the conclusion that both the 1951 Act and the 1985 Act are special statutes dealing with different situations — the former providing for the grant of financial assistance to industrial concerns with a view to boost up industrialisation and the latter providing for revival and rehabilitation of sick industrial undertakings, if necessary, by grant of financial assistance, we cannot uphold the contention urged on behalf of the respondent that the 1985 Act is a general statute covering a larger number of industrial concerns than the 1951 Act and, therefore, the latter would prevail over the former in the event of conflict.* ***Both the statutes have competing non obstante provisions. Section 46-B of the 1951 Act provides that the provision of that statute and of any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force whereas Section 32(1) of the 1985 Act also provides that the provisions of the said Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law. Section 22(1) also carries a non obstante clause***

and says that the said provision shall apply notwithstanding anything contained in Companies Act, 1956 or any other law. The 1985 Act being a subsequent enactment, the non obstante clause therein would ordinarily prevail over the non obstante clause found in Section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 Act is a special one. In that event the maxim generalia specialibus non derogant would apply. But in the present case on a consideration of the relevant provisions of the two statutes we have come to the conclusion that the 1951 Act deals with pre-sickness situation whereas the 1985 Act deals with the post-sickness situation. It is, therefore, not possible to agree that the 1951 Act is a special statute vis-a-vis the 1985 Act which is a general statute. Both are special statutes dealing with different situations notwithstanding a slight overlap here and there, for example, both of them provide for grant of financial assistance though in different situations. We must, therefore, hold that in cases of sick industrial undertakings the provisions contained in the 1985 Act would ordinarily prevail and govern."

[emphasis supplied]

49. A similar craftsmanship was employed by the Supreme Court in the matter of ***Life Insurance Corporation of India v. D. J. Bahadur and Ors.***[8]***,*** wherein the question arose about the *inter se* applicability of the Industrial Disputes Act, 1947 (*for short,* 'ID Act') and the Life Insurance Corporation Act, 1956. The Supreme Court discussed threadbare the test for determining which statute is a special and which is general in the case of overlap. The focus, as was held, must be on the principal subject matter and the particular perspective and the issues which arise for consideration before the Court for resolution. Holding that in the context of industrial disputes between employers and workmen, the ID Act becomes a special statute *vis-à-vis* the LIC Act, the ID Act would prevail over the provisions of the LIC Act. **Paras 50 to 53** of the judgement of ***D. J. Bahadur (supra),*** can be vitally referred at this juncture as follows:

> *"**50.** The crucial question which demands an answer before we settle*

[8] (1981) 1 SCC 315

the issue is as to whether the LIC Act is a special statute and the ID Act a general statute so that the latter pro tanto repeals or prevails over the earlier one. What do we mean by a special statute and, in the scheme of the two enactments in question, which can we regard as the special Act and which the general? An implied repeal is the last judicial refuge and unless driven to that conclusion, is rarely resorted to. ***The decisive point is as to whether the ID Act can be displaced or dismissed as a general statute. If it can be and if the LIC Act is a special statute the proposition contended for by the appellant that the settlement depending for its sustenance on the ID Act cannot hold good against Section 11 and Section 49 of the LIC Act, read with Regulation 58 thereunder. This exercise constrains me to study the scheme of the two statutes in the context of the specific controversy I am dealing with.***

51. *There is no doubt that the LIC Act, as its long title suggests, is an Act to provide for the nationalisation of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. Its primary purpose*

was to nationalise private insurance business and to establish the Life Insurance Corporation of India. Inevitably, the enactment spelt out the functions of the Corporation, provided for the transfer of existing life insurance business to the Corporation and set out in detail how the management, finance, accounts and audit of the Corporation should be conducted. Incidentally, there was provision for transfer of service of existing employees of the insurers to the Corporation and, sub-incidentally, their conditions of service also had to be provided for. The power to make regulations covering all matters of management was also vested in appropriate authorities. ***It is plain and beyond dispute that, so far as nationalisation of insurance business is concerned, the LIC Act is a special legislation, but equally indubitably, is the inference, from a bare perusal of the subject, scheme and sections and understanding of the anatomy of the Act, that it has nothing to do with the particular problem of disputes between employer and employees, or investigation and adjudication of such disputes.*** *It does not deal with workmen and disputes between workmen and employers or with industrial disputes. The Corporation has an army of employees who are not workmen at*

all. For instance, the higher echelons and other types of employees do not fall within the scope of workmen as defined in Section 2(s) of the ID Act. Nor is the Corporation's main business investigation and adjudication of labour disputes any more than a motor manufacturer's chief business is spraying paints!

52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes — so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial dispute coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission — the resolution of industrial disputes through specialised agencies according to specialised procedures and

with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all about disputes with reference to workmen. *On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and employers qua workmen are beyond the orbit of and have no specific or special place in the scheme of the LIC Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to.*

53. ***What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is an industrial dispute between the Corporation and its workmen qua workmen.*** *If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion*

that flows, in the wake of the study I have made, is that vis-a-vis 'industrial disputes', at the termination of the settlement as between the workmen and the Corporation the ID Act is a special legislation and the LIC Act a general legislation. ***Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the general maxim, as expounded by English textbooks and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law."***

[emphasis supplied]

50. The above 3 judgments rendered in the context of 3 different pairs of overlapping/ conflicting legislations have clearly illuminated the path to be chosen by this Court. To assess the context, purpose and the perspective in which we are called upon to decide which of the two enactments, *viz.* the Comp. Act or the TRAI Act shall be special *vis-à-vis* the other one.

51. The TRAI Act as stated *supra* has been enacted with the avowed objective of regulating tariff, interconnection conditions and licensing compliances. Its jurisdiction is confined essentially therefore to the licensees, being subjected to an umbrella

regulatory framework. TRAI statutorily imposes obligations and restrictions on parties to ensure level playing field and fairness in the market being the '*sectoral regulator*'. TRAI adjudicates disputes emanating out of the regulation and operation of the telecom sector in the country, to ensure that the overall growth of telecommunications infrastructure is a healthy one whilst ensuring protection of consumer interest.

52. The Comp. Act on the other hand pertains to examining market effects of conduct that distorts competition. It encompasses the broader market and consumer welfare impact. As stated *supra* and rightly contended by the learned ASG, CCI under the Comp. Act is entrusted with the duties, powers and functions to handle the 3 verticals of anti-competitive practices, *viz.* anti-competitive agreements, abuse of dominant position and regulation of combinations/ cartels. The domain and area of operation of Comp. Act therefore is entirely different *vis-à-vis* the TRAI Act.

53. The CCI whilst carrying out the investigation under **Sec. 19** r/w **Sec. 26** of the Comp. Act ascertains multiple factors for arriving at the decision as to whether the conduct by the dominant player is anti-competitive or not and we must mention some of the factors

to comprehend the nature and the domain and territory of operation of the Comp. Act. The DG whilst carrying out the inquiry on the directions of the CCI examines the *'relevant market'* for ascertaining the *'dominant position'* of the defaulter entity accused of indulging in anti-competitive practices. It then enquires how the said dominant entity is indulging in practices which result in denial of market access directly, indirectly to the aggrieved party by misusing/ abusing its position of strength. This also includes an inquiry about the *'relevant product market',* for finding out whether dominance accompanied with abuse of such dominance is stretching across all products or is confined to certain products in the market. For example, in the present case the broad relevant product market as argued on the behalf of the ADNPL and CCI is the market for provision of broadcasting services on genre and language basis. They are further sub-classified as follows:

a. Market for the provisions of broadcasting services of Malayalam general entertainment channels;

b. Market for provision of broadcasting services of Malayalam movie channel; and

c. Market for provision of broadcasting services for sports channels,

54. The CCI or the DG on its behalf also inquires and ascertains the geographical territories of the concerned market. Like in the present case, the geographical market of ADNPL where the grievance arises are the geographical limits of Kerala and the subscriber base existing therein. The CCI therefore under the provisions of Comp. Act takes a 360° view of the presence of both the dominant and the aggrieved player in the market and whether the dominance stands abused or not. Such an enquiry clearly cannot happen under the provisions of the TRAI Act or the TRAI Regulations, 2017 enacted thereunder at the instance of TRAI.

55. Therefore, insofar as the abuse of dominant position or allegations of adoption of anti-competitive practices are concerned, ***the Comp. Act becomes the special law to prevail over the provisions of TRAI***. Insofar as the merits of the present dispute are concerned, they shall be dealt with at a later stage, however suffice to say that the scales of doctrine of ***generalia specialibus non derogant*** shall tilt in favour of the CCI in the present dispute as against TRAI as contended by the petitioners. We therefore repel the contention

that the TRAI Act being a special legislation shall supersede and prevail over the Comp. Act if the breach of TRAI Regulations is alleged for. Rather we hold and declare that there has to be a comprehensive factual and issue-based analysis as to the perspective in which the particular enactment is to be interpreted. The dispute at hand is not simpliciter about violation/ breach/ non-compliance of the TRAI Regulations, 2017, but goes much beyond and therefore *qua* those allegations the CCI will possess the jurisdictional facts under the provisions of Comp. Act to enquire into.

Comp. Act being a *Sui Generis* legislation, cannot be subjected to the doctrine of implied repeal

56. It was argued with a lot of vehemence on behalf of the petitioners that wherever provisions and the Regulations of the TRAI Act would apply, the provisions of Comp. Act must bend to them and till TRAI exhausts its jurisdiction on the grievance so raised by the ADNPL, the CCI cannot spring into action under the provisions of Comp. Act. The necessary fallout of this contention of the petitioner is, if accepted, would be that the exercise of powers by the CCI would remain under suspension till and until TRAI takes a

call over the dispute at hand. In a way, therefore to that extent the provisions of the CCI Act would therefore stand eclipsed to a limited extent by the TRAI Act and the Regulations framed thereunder. The CCI, on the other hand contended that both can co-exist parallelly to each other and there cannot be any question of keeping the provisions of Comp. Act or powers of CCI in abeyance till TRAI adjudicates upon the grievances and complaints of ADNPL.

57. We have discussed above that the *non-obstante* clause of **Sec. 60** of the Comp. Act must be given full force and effect to, being a subsequent legislation. However, there is another principle of statutory interpretation on which we arrive at the same conclusion through a different route. If the contention of the petitioners is accepted by this Court, then we would be broadly holding that the provisions of the TRAI Act eclipse and overshadow the provisions of Comp. Act, which we would extremely be afraid of doing so. As stated *supra*, the area and territory of Comp. Act, powers and functions of the CCI are entirely different than that of TRAI envisaged under the TRAI Act. Both operate in their respective fields and there is no impediment absolutely for their coexistence side by side, parallelly to each other and contemporaneous of each other. The provisions under both the legislations clearly are

mutually exclusive and the question of one eclipsing or suspending the effect of the another, as contended by the petitioners, is clearly not supposed to arise. There is always a statutory presumption against a limited or an absolute repeal of any statute or statutory provision by implication. This is because the legislature whilst enacting a subsequent law has been presumed to be in complete knowledge of the existing laws on the same or overlapping subject matter. Therefore, till and until it provides for a repealing provision expressly or a provision making the subsequent legislation '*subject to*' the provisions of the previous/ former enactment, the legislative intent of the subsequent legislation is clear not to repeal or affect the existing legislation, nor affect the operation of the subsequent legislation on the premise of the previously enacted legislation. The fundamental question to be asked in such a situation is whether the legislature whilst enacting the subsequent law intended to replace the earlier law or modify its application or make the subsequent legislation being conditional upon the exercise of powers under the previous legislation. If the subsequent legislation does not have any such restrictive or limiting statutory provisions, then the Court always lean against reading inbuilt restrictions on the full and complete

operation of the statutory provisions of both the enactments. Ready reference can be made to the judgment of the Supreme Court passed in matter of ***State of Madhya Pradesh v. KEDIA Leather and Liquor Ltd.*** **& Ors.**[9] wherein the question of parallel applicability of **Sec. 133** Cr.PC, 1973 arose *vis-à-vis* the provisions of the Water (Prevention and Control of Pollution) Act, 1973. It was held by the High Court of Madhya Pradesh in the judgment assailed before Supreme Court that provisions of the Water and Air Acts are in essence elaboration and enlargement of the powers conferred under **Sec. 133** of the code and therefore, they impliedly repealed the said provisions of CrPC, especially **Sec. 133.** This is because the allegations of public nuisance by air and water pollution by industries or persons covered by the two enactments would automatically rule out the previously enacted statutory provision. The provisions of **Sec. 133** Cr.PC were held not to be available to be invoked in cases of nuisance by air and water pollution. Setting

[9] (2003) 7 SCC 389

aside the aforesaid view of the High Court of Madhya Pradesh as patently erroneous, the Supreme Court held that until and unless the latter/subsequent statute repeals an earlier statute expressly, the Court must always treat both the enactments as co-existential in nature. Both the enactments must be held operational in their respective fields, with no impediments for their implementation side by side. *Vide* **Paras 15** to **17** the Supreme Court in the ***KEDIA Leather*** **(supra)** above judgment held on the simultaneous operation of two enactments on overlapping subject areas as follows:

> *"15. **The doctrine of implied repeal is based on the theory that the legislature, which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine, it does no more than give effect to the intention of the legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. The matter in each case is one of the construction and comparison of the two statutes. The court leans against implying a repeal, unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same***

time, a repeal will not be implied, or that there is a necessary inconsistency in the two Acts standing together. To determine whether a later statute repeals by implication an earlier statute, it is necessary to scrutinize the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments. *The area of operation in the Code and the pollution laws in question are different with wholly different aims and objects, and though they alleviate nuisance, that is not of identical nature. They operate in their respective fields and there is no impediment for their existence side by side.*

16. *While, as noted above, the provisions of Section 133 of the Code are in the nature of preventive measures,* ***the provisions contained in the two Acts are not only curative but also preventive and penal. The provisions appear to be mutually exclusive and the question of one replacing the other does not arise. Above being the position, the High Court was not justified in holding that there was any implied repeal of Section 133 of the Code.*** *The appeals deserve to be allowed to the extent indicated above, which we direct.*

> ***17.*** *However,* ***<u>if applications are pending before the Board, it would be appropriate for the Board to take necessary steps for their disposal. The question whether there was no infraction under Section 133 of the Code or the two Acts is a matter which shall be dealt with by the appropriate forum</u>*** *and we do not express any opinion in that regard."*
>
> ***[emphasis supplied]***

58. Similar is the view taken by the Supreme Court in the matter of ***Kishorebhai Khamanchand Goyal v. State of Gujarat & Anr[10].,*** wherein the same principle of harmonious co-existence of legislations was reiterated.

59. Somewhat similar controversy arose before the Supreme Court in ***Coal India Limited*** v ***Competition Commission of India[11]*** the context

[10] (2003) 12 SCC 274

[11] (2023) 10 SCC 345

of parallel operation of the Coal Nationalisation Act, *vis-a-vis* the powers of CCI in the context of Central Government owned nationalised corporation-Coal India Limited. The issue that arose before the Supreme Court was whether in the face of statutory remedies before the Controller of Coal under the Coal Nationalisation Act, being a nationalised government-owned enterprise, CCI be allowed to exercise its parallel powers available under the Comp. Act. In that context, whilst answering the argument pertaining to conflict between **Sec. 28** of the Comp. Act and **Sec. 32** of the Nationalisation Act, the Supreme Court *vide* **Paras 123, 124, 128 to 130,** held thus:

> *"**123.** We have projected some of the concerns of the appellant in the matter of the appellant being disabled to put up a justifiable defence under Section 4 of the Act.*
>
> ***124.** It is true that the actions of the appellant can be challenged in proceedings in judicial review as contended by the appellant. Equally, the appellant is justified in pointing out as a matter of*

fact that there may be forums other than CCI such as the Controller of Coal whereunder redress may be sought against action of the appellant. ***But that by itself, cannot result in denial of access to a party complaining of contravention of a law which is otherwise applicable. It must also be remembered that action can also be taken by CCI suo motu. Such is the width of the power vouchsafed for the authority under the Act.***

***

128. *There are certain salient features to be noticed. In the first place, there is no challenge to the Act. Secondly, taking the Act as it plainly reads, the power to order division and, what is more, all the things enumerated in Section 28(2), are clearly conferred on CCI.* ***Apart from the general non obstante clause contained in Section 60 of the Act, a noticeable feature about Section 28 of the Act is that it is made even more clear, apparently, by way of abundant caution in Section 28(1), that all that CCI could order would be notwithstanding anything contained in any other law for the time being in force. Parliament has authored both the Nationalisation Act as***

also the Act. There is no question of lack of legislative competence. We are not called upon to pronounce on the vires of the Act. *There is absolutely no scope, at any rate, for reading down the provision even proceeding on the basis that an attempt can be made even in the absence of the challenge. The words of the provision do not admit of reading down the same. What follows is, therefore, Parliament has intended, in order to ensure the proper implementation of the Act, confer power to order division of an enterprise enjoying dominant power. This would include the appellant as well. We must, no doubt, understand the provision to mean that it is not a power to be exercised lightly. It is a special power intended to ensure prevention of abuse of dominant position. The generality of the power is revealed in Section 27. We incidentally notice that though there can be abuse of dominant position by an enterprise and a group, which is sought to be prohibited, Section 28 speaks about the division of an enterprise. Having regard to the discussion above, we find no merit in the case sought to be made for escaping from the net of the Act.*

129. *Section 54 of the Competition Act gives power to the Central Government to exempt from the application of the Act or any*

provision and for any period, which is specified in the Notification. The ground for exemption can be security of the State or even public interest. It is not as if the appellant, if there was a genuine case made out for being taken outside the purview of the Act in public interest, the Government would be powerless. We say no more.

130. We would hold that there is no merit in the contention of the appellant that the Act will not apply to the appellant for the reason that the appellant is governed by the Nationalisation Act and that the Nationalisation Act cannot be reconciled with the Act. *This is subject to the appellant had all the rights to defend their actions under the law and as indicated hereinbefore. The transferred cases shall be sent back so that they may be dealt with on their own merits. The transferred cases are disposed of."*

[emphasis supplied]

60. Bare reference to the above observations of the Supreme Court fortresses our understanding of the **Sec. 60** of the Comp. Act that the *non-obstante* clause must be allowed to have a thorough operation and effect *qua* all other predecessor Parliamentary

enactments. Parliament has authored both the TRAI Act as well as the Comp. Act, and there is no question of lack of legislative competence. The Supreme Court following the aforementioned line of reasoning itself negated the argument that the Coal Nationalisation Act must prevail over the CCI Act, falling back upon the *non-obstante* clause of **Sec. 60.** On the same rationale and principle, we are also convinced to hold that even if the provisions of the TRAI Act or the Regulations framed thereunder overlap or crossroads with the provisions of the Comp. Act, it will not have any effect or bearing on the powers of the CCI, in the context of the fact situation at hand.

61. It is therefore luminescent that the TRAI Act and the Comp. Act can both coexist together, rather in view of *non-obstante* clause under **Sec. 60** of the Comp. Act, it will take precedence over and above any other provision overlapping or coming into conflict with it including the TRAI Act. The coexistence and the parallel operation of both the enactments have nowhere been jettisoned by any provision in either of the enactments which reflects the Parliamentary intent that the Parliament allowed CCI to function unhindered, unobstructed and without being eclipsed by the provisions of TRAI Act or the regulations made thereunder.

62. There is one more reason we hold that Comp. Act should be allowed to have its full play. The Comp. Act is a *sui-generis* legislation which is enacted for the special purpose of controlling anti-competitive and anti-dominant activities by the bigger giants of the market. A comprehensive inquiry *cum* investigative mechanism is to be carried out by an expert body DG followed by taking of corrective and punitive measures by the CCI after hearing all the parties. The menace and mischief which the Comp. Act intends to cure, relates to the overall market and economic well-being of the country, as already stated *supra*. For this reason, it is widely termed as a *'market regulator',* in which every consumer and even a common citizen of the country has a stake and an interest involved. Comp. Act is a special legislation also because it tethers the regulatory collar around all those business entities who are in a position to influence the market policies and economic weather of the country by keeping a check over their activities in a way that they do not strangulate the smaller players in the market. The comprehensive manner in which DG under his supervision conducts the inquiry, followed by quasi-judicial proceedings of hearing before the CCI preceded by the final decision leaves no room of doubt that as a

competition regulator, Comp. Act is a *self-contained code*, applicable to all the business sectors horizontally across the board.

63. Being a *sui-generis* legislation and a *self-contained code*, therefore operation or exercise of jurisdiction by CCI on jurisdictional facts coming into existence before it cannot be whittled down on the pretext of existence of another legislation governing the said business sector, *viz.* TRAI Act in the present case.

64. The concept of *sui-generis* legislation recently came to be discussed by the Supreme Court in the matter of ***V. Senthil Balaji v. State***[12], wherein the question arose about interplay of various provisions of CrPC *vis-a-vis* the Prevention of Money Laundering Act, 2002 (*for short,* 'PMLA, 2002'). The argument was that the PMLA must give way to provisions of CrPC to operate, especially in the context of powers of search, seizure and arrest. Negating the contention, the Supreme Court scanning the anatomy of PMLA, 2002 held that

[12] (2024) 3 SCC 51

PMLA is a *sui-generis* legislation enacted with the specific objective of prevention of money laundering and generation of proceeds of crime in the economy. Being a *sui-generis* legislation, therefore the elaborate mechanism and machinery provided thereunder for thorough investigation under the provisions of the PMLA, 2002 must be given overriding effect over CrPC, 1973. The Supreme Court further held that being an especially enacted *sui-generis* legislation, the comprehensive procedure for summons, searches and seizures, etc. must be as stipulated under the said special enactment, and not be governed by the CrPC. Reference can be made to **Paras 32, 91** and **92** observed thus:

*"**32.** Due interpretation of this provision of utmost importance has been given by this Court on more than one occasion [Arnesh Kumar v. State of Bihar and Satender Kumar Antil v. CBI.] The interpretation of this provision, meant to preserve and safeguard the liberty of a person, is taken note of in the aforestated judgments. This provision cannot be termed as a supplement to Section 19 of the PMLA, 2002. **The PMLA, 2002 being a sui generis legislation, has its own mechanism in dealing with arrest in the light of its objectives. The concern of the PMLA, 2002 is to prevent money-laundering, make adequate recovery and punish the offender.** That is the*

reason why a comprehensive procedure for summons, searches, and seizures, etc. has been clearly stipulated under Chapter V of the PMLA, 2002. An arrest shall only be made after due compliance of the relevant provisions including Section 19 of the PMLA, 2002. Therefore, there is absolutely no need to follow and adopt Section 41-A CrPC, 1973 especially in the teeth of Section 65 of the PMLA, 2002.

***

91. *Despite our conclusion that the writ petition is not maintainable, we would like to go further in view of the extensive arguments made by the learned Senior Advocates appearing for the appellant.* ***As rightly contended by the learned Solicitor General the scheme and object of the PMLA, 2002 being a sui generis legislation is distinct.*** *Though we do not wish to elaborate any further, we find adequate compliance of Section 19 of the PMLA, 2002 which contemplates a rigorous procedure before making an arrest. The learned Principal Sessions Judge did take note of the said fact by passing a reasoned order. The appellant was accordingly produced before the court and while he was in its custody, a judicial remand was made. As it is a reasoned and speaking order, the appellant ought to have questioned it before the appropriate forum. We are*

only concerned with the remand in favour of the respondents. Therefore, even on that ground we do hold that a writ of habeas corpus is not maintainable as the arrest and custody have already been upheld by way of rejection of the bail application.

92. *The arguments of the learned Senior Advocates on the interpretation of Section 167(2) CrPC, 1973 cannot be accepted as the law has been quite settled by this Court in Deepak Mahajan [8]. One cannot say that while all other safeguards as extended under Section 167(2) CrPC, 1973 would be available to a person accused but nonetheless, the provision regarding remand cannot be applied.* ***Section 167(2) CrPC, 1973 merely complements and supplements Section 19 of the PMLA, 2002. We do not find any inherent contradiction between these two statutes. Obviously, an arrest under Section 19 of the PMLA, 2002 can only be made after the compliance of much more stringent conditions than the one available under Section 41 CrPC, 1973."***

[emphasis supplied]

65. Therefore, it is beyond any pale of doubt that Comp. Act is a somewhat specially enacted *sui-generis* legislation for regulating the open market competition and resultantly moving towards free

and fair Indian economy. The especially engrafted method and mechanism must be allowed to operate instead being interfered by any other legislation like the TRAI Act.

66. We, therefore, hold that even for the aforesaid reasons, Comp. Act and TRAI Act being two parallel legislations ***would operate unhindered and unobstructed by each other***, with the Parliament not putting any inbuilt restrictions on the exercise of powers by the agencies created therein (CCI or TRAI) in the said matter. The contentions of the petitioners therefore that where the jurisdiction of TRAI is to be invoked, there ADNPL could not have approached the CCI or invoke the provisions of the Comp. Act, is taken forward only to be rejected. The contention in the same breath that ADNPL is engaging and indulging in *forum shopping* by approaching the CCI instead of TRAI also deserves to be repelled on the same rationale, holding that for grievances and jurisdictional facts concerning adoption of anti-competitive practices by SIPL, the ADNPL was well within its rights and discretion to have approached the CCI as per the mandate of **Secs. 19** and **26** of the Comp. Act. The ADNPL cannot be required to approach the TRAI first, exhaust that remedy, and thereafter take recourse to the regulatory provisions of the Comp. Act.

67. The ratio of ***Bharti Airtel (supra)*** has been at the heart of vehement arguments by both the sides. The petitioners contending that in view of the said judgement the matter needs to be referred to the TRAI from CCI during which CCI needs to wait till the TRAI adjudicates, decides and reaches a logical conclusion on the grievance of ADNPL. However, ADNPL and CCI have argued that ***Bharti Airtel (supra)*** was decided in the facts of its own case and cannot be applied in the present factual matrix. Both have argued in the same voice that ***Bharti Airtel (supra)*** was relating to compliance of conditions of licensing agreement and for which compliance only RJIL had approached the TRAI for the resolution of its legislation a grievance, which was related to providing points of interconnectivity (*for short,* 'POIs') for telephonic connection of its subscribers. It is in this backdrop that the Supreme Court had held that *the CCI must wait till the TRAI decides.*

68. The ***Bharti Airtel (supra)*** was based on some material facts, which must be set out herein to avoid any confusions :

a. Under the erstwhile TRAI's licensing conditions every telecom operator was obligated to provide POIs to all other

operators including the new entrants in the market amongst whom RJIL was one of them;

b. RJIL was not provided with sufficient POIs by all the other service providers like Bharti Airtel, Vodafone and Idea Cellular, when the subscribers of RJIL started facing network connectivity issues. This led RJIL to approach the TRAI airing its grievance relating to denial of POIs contrary to TRAI's licensing conditions by its competitors. In short, the relief sought for by RJIL was that of specific performance and implementation of the license conditions therein. TRAI's intervention was therefore sought for enforcement and execution of this obligation arising out of the extant Licensing Regulations;

c. TRAI accordingly took cognizance of the grievance of RJIL being seized of the matter and proceeded with the same. In the meanwhile, RJIL also approached the CCI seeking punitive action against all other market players who were the dominant players in the market;

d. RJIL, therefore alleged before TRAI, as also CCI both that the other network operators and service providers have failed to

ensure *inter se* technical compatibility, for obstructing the growth and allowing RJIL to establish its foothold in the open market;

e. In the above factual backdrop, did the Supreme Court hold that RJIL ought to have first allowed TRAI to have concluded its proceedings and not jumped over to CCI directly. The proceedings before CCI were accordingly quashed and directed to be kept on hold till TRAI formally decided the dispute between all the contesting parties. Clearly the observations of the Supreme Court of TRAI having exclusive jurisdiction to decide whilst requiring the CCI to postpone its inquiry was premised upon the specific fact context of the said case. This is evident from **Paras 100** to **103** of the ***Bharti Airtel (supra)*** wherein the Supreme Court repeatedly employed the phrase *'the aforesaid aspects of the dispute' to be decided by TRAI*:

> ***"100.*** *In the instant case, dispute raised by RJIL specifically touches upon these aspects as the grievance raised is that the IDOs have not given POIs as per the licence conditions resulting into non-compliance and have failed to ensure*

inter se technical compatibility thereby. ***Not only RJIL has raised this dispute, it has even specifically approached TRAI for settlement of this dispute which has arisen between various service providers, namely, RJIL on the one hand and the IDOs on the other, wherein COAI is also roped in. TRAI is seized of this particular dispute.***

101. *It is a matter of record that before the TRAI, IDOs have refuted the aforesaid claim of RJIL. Their submission is that not only required POIs were provided to RJIL, it is the RJIL which is in breach as it was making unreasonable and excessive demand for POIs. It is specifically pleaded by the IDOs that:*

101.1. *RJIL raised its demand for POIs for the first time on 21-6-2016.*

101.2. *In the letter dated 21-6-2016, it was admitted that RJIL was in test phase.*

101.3. *There was no express mention of any commercial launch date.*

101.4. *As per the letter, immediately on commercial launch*

RJIL would have a 22mn subscriber base for which number series was already allotted.

101.5. *As per the DoT Circular dated 29-8-2005 test customers are not considered as subscribers and test customers can only be in the form of business partners. It was highlighted that problem, if any, of congestion has been suffered on account of provisioning of full-fledged services during test phase.*

101.6. *RJIL in its complaint before TRAI was not considering the period of 90 days as was prescribed in the Interconnection Agreement. It was instead proceeding on the basis that the demand for POIs should be met on an immediate basis.*

101.7. *There were several errors in the forecast made by RJIL.*

101.8. *The tables given by the RJIL are wrong as they take into account its total demand at the end of nine months against what was actually provided.*

102. *The learned counsel appearing for the IDOs had also argued that the first firm demand for provisioning of POIs was*

made by RJIL on 21-6-2016. According to the IDOs, in that letter, RJIL had expressly admitted that it was under test phase and had not commenced "commercial services". RJIL had also stated that the demand for POIs was being made to "provide seamless connectivity to targeted subscribers" as against "test consumers". Their submission was that it was not disclosed at all as to when RJIL was going to launch commercial services. ***On the basis of the aforesaid stand taken by the IDOs, their argument is that in the first instance it is the TRAI which is not only competent but more appropriate authority to consider these aspects*** *as it is TRAI which is the specialised body going by the nature of dispute between the parties, the following aspects have to be determined by TRAI:*

102.1. *Whether IDOs were under any obligation to provide POIs during test period?*

102.2. *As per the letter dated 21-6-2016 from RJIL, when IDOs were to commence provisioning of POIs to RJIL?*

102.3. *Whether the demand for POIs made by RJIL were reasonable or not?*

102.4. *Whether there was any delay/denial at the end of Vodafone in provisioning of POIs?*

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."

[emphasis supplied]

Thus, the observations of the Supreme Court in the ***Bharti Airtel (supra)*** were fact specific and can't be treated to be laying down a generic law across the board to be applicable to all the disputes arising before CCI for future. Had this been the case, then there was no occasion for the Supreme Court to have held *vide* **Paras 109** to

112 that allegations of anti-competitive agreement between the other business players ought to be gone into necessarily and enquired into by the CCI. The Supreme Court even further observed that Comp. Act is a special statute dealing with anti-competitive practices in the market and for violation of its provisions, remedy is to be resorted to as available under the same enactment. **Paras 109, 110, 111 and 112** read as follows:

> *"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 having adverse effect on the competition, to promote and sustain competition and to protect the interest of the 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 appellant is 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 Hardidas Exports, 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:*

***

111. Moreover, it is within the exclusive domain of CCI to find out as to whether a particular agreement 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, 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."

[emphasis supplied]

69. The specific purpose behind the Comp. Act must always be kept in mind. As already discussed in the earlier parts of the judgement, the hawk's eye of CCI under the Comp. Act is at all those practices, which may be classified as anti-competitive. The 3 distinct categories are the various kinds of practices treated as prohibitive under the Comp. Act, which are as follows:

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 a group of enterprises, which enjoys dominant position abuses the said dominant position; and

c. Regulating the combination of enterprises by means of mergers or amalgamations to ensure that such mergers or amalgamations do not become anti-competitive or abuse the dominant position which they can attain.

70. Therefore, the functions enjoined with the CCI stand in a different *silo* than that prescribed for TRAI under the TRAI Act. For example, CCI can always investigate to find out whether telecom companies are acting in concert and collusion, thereby forming a cartel/ illegal unfair combination with the motive of blocking the entry and growth of new entrants in the market. Such can clearly not be the domain of the TRAI Act, even though the licensing conditions may overlap and provide for certain stipulations touching upon the aforesaid aspect. The existence of a formal, overt or covert anti-competitive agreement between the major telecom players for the aforesaid can be examined and determined by the CCI itself through its specialised wing of investigation, the Director General. CCI determines through its investigation wing whether the conduct of the major telecom players smells foul of the provisions of the Comp. Act. If it is found that the conduct of the telecom players is offensive of **Secs. 3, 4 or 5** of the Comp. Act, the consequences shall automatically ensue, regardless of the express provisions of the TRAI Act and the regulations framed thereunder. This is because as discussed *supra*, the advent of the Comp. Act is for a specific purpose a *sui generis* legislation and cannot be diluted or eclipsed by other overlapping legislation.

71. Likewise, it is within the exclusive domain of CCI to ascertain whether the conduct or the particular agreement of the *business goliaths* of any sector has appreciable adverse effect on competition within the relevant sector or market in India. The Comp. Act is empowered to proceed under **Sec. 29** and impose penalties as prescribed under **Secs. 45 and 46** upon the errant companies/ entities. Clearly, TRAI is not at all equipped to deal with all the aforesaid issues, even though it is arguable that some share of such controversies may fall within the purview and jurisdiction of TRAI. Even if concededly, TRAI finds that a particular activity or agreement by the *business goliaths* of the telecommunication sector is anti-competitive, it cannot exercise its powers or stretch its arms beyond the provisions of the TRAI Act. It is only the CCI which can exercise such powers by imposing exorbitant penalties and passing orders that may suitably tailor and size down the anti-competitive behaviour of the *business goliaths*. The contention therefore that CCI stands totally ousted of the petitioners cannot be accepted, as that would lead to absurd results, leaving the Comp. Act otiose and merely a paper legislation. We must reiterate that CCI is the experienced body in conducting competition analysis, inquiry and arriving at just and fair conclusions. The structural and

organisational set up of CCI as also explained by the learned ASG is far more suited to deal with such anti-competitive practices than a sectoral specialised authority like TRAI. This specific and important role assigned to CCI ought not be washed off and wished away by making high-pitched arguments of ensuring harmony and comity between the '*sectoral regulator*' (TRAI) and market regulator (CCI), and accordingly, we decline to accept the arguments of the appellant SIPL on the said aspect.

72. We have not overlooked the various observations *vide* **Para 105 to 107** of aforesaid judgement, which was extensively referred to & relied upon by the SIPL to contend that jurisdictional issues must be straightened out first before the sectoral authority like the TRAI. However, as aforementioned, the above findings were returned by the Supreme Court essentially for two reasons: *firstly,* the TRAI was already seized of the whole dispute at the instance of RJIL; and *secondly*, it was a dispute relating simpliciter to enforcement of licensing conditions of various telecom companies to which they were bound by.

73. Accepting the submission of SIPL as a blanket proposition that wherever question of enforcement or violation of TRAI Regulations

is involved, only TRAI will have the jurisdiction to inquire and decide the issue, to the exclusion of CCI would leave a catastrophic impact on the existence and parallel operation of the Comp. Act. It will render the workability of **Secs. 3, 4, 19 and 26** of the Comp. Act as completely paralysed. As stated *supra,* the *non-obstante* clause under **Sec. 60** of the Comp. Act read with the definite and specific purpose for which it has been enacted must be allowed to have a full play without being restricted by any overlapping legislation. Therefore, SIPL's contention deserves to be rejected by this Court wherein it expects this Court to read the ***Bharti Airtel (supra)*** in a manner suiting its interests.

74. On the same rationale, the view taken by the Bombay High Court relying on the ***Bharti Airtel (supra)*** in the matter of ***Star India (supra)*** is also distinguishable. The judgment of Bombay High Court with due respect has not comprehensively analysed the provisions of the Comp. Act as has been done by us and it has also not delved into the issue of parallel co-existence and jurisdiction of the CCI on the matters of anti-competitive practices and abuse of dominant position enshrined under **Secs. 3** and **4** of the Comp. Act. For the reasons stated above, we find ourselves persuaded enough to take

a different view than the Bombay High Court which we respectfully take.

OTHER GROUNDS & REASONS FOR REJECTION OF SIPL'S SUBMISSIONS

75. Apart from the above analysis, there are other equally compelling reasons for our declining to accept the contentions of SIPL assailing the validity of pending proceedings before the CCI.

76. The **Explanatory Statement No. 101** appended to the TRAI Regulations, 2017 was adverted to by both ADNPL as well as the learned ASG, representing CCI. Titled as 'Explanatory Memorandum to the Telecommunication (Broadcasting and cable) Services Interconnection (Addressable Systems) Regulations, 2017 (No. 1 of 2017)', it reads thus:

> "***101.*** *It is also observed that many times a fee in the name of marketing is paid by a service provider to other service provider for the promotion and advertisement of its services. Sometimes broadcasters provide incentives to the distributors for inclusion of channels in the bouquets offered by the DPO in the name of marketing. In these regulations, the Authority has clearly mandated that no incentive, in whatsoever name, can be given*

by the broadcaster to the DPO for inclusion of its channels in the DPO's bouquet because it results in pushing of channels to the subscribers. ***The marketing fee towards promotion and advertisement of services contributes towards increase in business which is due to the effort of the two parties. Therefore, there cannot be a specific parameter for regulating such fee. Hence, at this stage, any regulation by Authority on such fee is bound to be a porous regulation.*** *Still the Authority has permitted that a service provider may offer transparent discount to the other service provider out of the limit of 15% if it is mutually agreed. However, it has been decided that any agreement, for any kind of fee for a channel, between two service providers should be made part of interconnection agreement and reported to the Authority to enable the Authority to monitor the industry practices."*

Reading of the above Explanation clearly demonstrates that fees paid in the name of marketing by a service provider to other service providers for promotion and advertisement of its services under various nomenclatures cannot be the subject matter of regulation by TRAI. It clearly falls outside the regulatory regime, especially of the maximum cap of 35% discounts under the TRAI

Regulations, 2017 which doesn't apply to it. Meaning thereby that TRAI itself has treated marketing agreements as falling beyond its own regulatory competence and compliances. ADNPL therefore cannot be made to run pillar to post in the face of such a categorical explanatory stipulation on the part of TRAI itself of first approaching the TRAI and then procuring a negative response about its inability to govern and regulate on the marketing agreements. The allegations of offering of back-to-back extra discounts by SIPL to KCCL is ***admittedly affected through marketing agreements, which have been alleged by ADNPL to be sham agreements for subsidising the costs incurred by KCCL.*** SIPL has also not laid a serious contest to the submission that discounts in disguised form are being offered through marketing agreements to KCCL and not through the subscription and distribution agreements, which are explicitly mentioned under **Regulations 7(3)** and **7(4)** of the TRAI Regulations, 2017.

77. In view of Explanation No. 101 above, there is an additional ground to hold that for inquiring into the marketing agreements CCI shall only be the competent authority since TRAI itself doesn't regulate them.

78. The CCI therefore retains jurisdiction under **Secs. 3, 4 and 19(4)** of the Comp. Act to examine allegations of abuse of dominance through the market agreements executed with various other MSOs including KCCL by SIPL in the relevant market. The enquiry before CCI does not require interpretation of TRAI's regulatory framework for licensing terms only, but also multiple other aspects. Hence, there is no question of any jurisdictional conflict as argued by the appellant SIPL. Extensive reference was made to the judgment of the Delhi High Court in the matter of ***WhatsApp LLC (supra),*** wherein CCI's exclusive jurisdiction to assess matters from a competition law perspective was questioned and challenged. The Delhi High Court, after examining various provisions of the Comp. Act categorically held that parallel proceedings before different authorities are clearly envisaged and permissible under Comp. Act and mere overlapping would not result in ousting of CCI's jurisdiction. *Vide* **Paras 28** to **31** of the ***WhatsApp LLC (supra)***, the Delhi High Court held thus:

> *"28. The primary issue that has been submitted before this Court is with regard to 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 issues. *In this context, the Appellant has placed heavy reliance on Competition Commission of India v. Bharti Airtel (supra) to submit that therein the sectoral regulator, i.e. TRAI, had been given leeway by the Supreme Court to conduct its inquiry, over CCI.*

29*. The learned Single Judge has culled out the relevant portion of the said Judgment wherein the scope and ambit of the two specialised regulators have been considered to deal with a complaint regarding denial of Points of Interconnection to one of the telecom operators. This Court deems it fit to reproduce the relevant paragraphs of the said Judgment as follows:*

***

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 Appellant 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 Appellant is not acceptable. It is the case of the Appellant 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 (supra) 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."

[emphasis supplied]

79. The High Court therefore negated the contention regarding exclusion of powers of CCI to inquire and investigate in the face of the existence of overlapping powers of the *'sectoral regulator'*. Despite the issue of right to privacy under **Art. 21** pending before the Supreme Court, the Delhi High Court held the CCI competent to inquire into allegations of dominance on the ground that there is no inviolable rule that CCI would stand denuded of exercising

powers, when inquiry by any other authority is being carried out. The aforesaid judgment of the Delhi High Court was taken before the Supreme Court in appeal *vide* the matter of ***Meta Platforms Inc. v. CCI & Anr.***[13]**,** in which SLP was dismissed *vide* order dated 14.12.2022 by the Supreme Court. The Supreme Court whilst passing the aforesaid order pertinently affirmed that CCI is an independent authority statutorily competent to investigate *prima facie* violations alleged under the Comp. Act. Through its reasoned judgment, with CCI also as a contesting party, the Supreme Court declined from interfering with the pending proceedings before the CCI with the following observations:

> *"In view of the above,* ***the CCI should not be restrained from proceeding further with the enquiry/investigation for the alleged violation of any of the provisions of the Act****.*

[13] **S.L.P. (C) 17121/ 2022**

The Special Leave Petitions stand dismissed.

However, it is observed that ***all the contentions which may be available to the petitioners are kept open to be considered by the CCI in accordance with law and on its own merits*** *and any observations made while initiating the proceedings recorded in para 43 and any observations made by the High Court be considered and treated as tentative/prima facie while initiating the proceedings under the Act and the proceedings shall be decided and disposed of in accordance with law and on its own merits."*

[emphasis supplied]

80. From the above, it is luminescent that the ***Bharti Airtel (supra)*** fell into debate and active consideration in the litigation originating from the Delhi High Court as well, but the Supreme Court clearly chose not to strip CCI of its powers. To the contrary, the Supreme Court allowed the CCI to conclude its proceedings expeditiously. The learned Single Judge has committed no error whilst holding that all the issues and objections are open to be raised before the CCI by SIPL and other aggrieved parties which the CCI must consider. We have absolutely no reasons to depart from the aforesaid view taken by the learned Single Judge.

81. A faint attempt was made on behalf of the appellant SIPL that the impugned order passed under **Sec. 26** by the CCI is violative of principles of natural justice (*for short,* 'PNJ'). Insofar as this ground of violation of PNJ is concerned as echoed by SIPL, the ***Bharti Airtel (supra)*** concludes the issue by holding that since direction of inquiry under **Sec. 19** r/w **Sec. 26** by the CCI to be held by the DG is purely administrative in nature, therefore opportunity of hearing at this stage is not necessitated or specifically required. We find ourselves bound by the said observations of the Supreme Court insofar as the ground of applicability of PNJ is concerned. The CCI itself in the impugned order has observed that all the contentions are kept open, and as a responsible statutory authority any conclusions and findings shall be recorded only after hearing all the stakeholders by the CCI. Therefore, SIPL is relegated to take all objections and grounds of opposition before the CCI including the ground of jurisdiction, which the CCI must decide through a speaking reasoned order.

82. The contention that PNJ have been violated by the CCI is further repelled by the fact that under **Sec. 36**, CCI is obligated to be mandatorily guided by PNJ and regulates its own procedure in a way that nobody is denied a fair and reasonable opportunity to

defend himself. The Supreme Court also echoed the aforesaid procedure of providing fair and reasonable opportunity to all the concerned stakeholders before passing any final order by the CCI in the matter of ***Coal India Limited (supra).*** *Vide* **Paras 93 to 96**, it has been underscored by the Supreme Court that *vide* **Sec. 26(8)** if the recommendations of DG points to contravention of any of the provisions of the Comp. Act, the CCI must before proceeding, hold enquiry on its own level. *Vide* **Paras 93 to 96**, the Hon'ble Supreme Court in the matter of ***Coal India Limited (supra),*** observed thus:

> *"**93.** We may notice in this regard that **CCI under Section 36 is to be guided by Principles of Natural Justice and subject to the provisions of the Act and any of the Rules made by the Central Government, CCI is to have powers to regulate its own procedure.** Section 36(2) confers powers vested in a civil court in regard to certain matters on CCI. Section 36(3) is significant. It reads:*
>
> > *"36. (3) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry by it."*

94. *We have already noticed that CCI itself is to consist of persons of ability, integrity and standing who have special knowledge of and such professional experience of not less than 15 years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy. We notice this for the reason that both the composition of CCI and it being enabled to call for inputs from experts would go a long way in assuring the Court that the decision-making process would be meticulous, fair and informed. There is also a provision for an appeal to the Tribunal and further appeal to the Supreme Court.*

95. *As contended by the learned Additional Solicitor General in the matter of proceeding under Section 4 read with Section 19 of the Act, in the matter of abuse of dominant position, there are three stages. There must be an enterprise as defined or a group as provided under Section 5. Once it is so found, then, it must be inquired as to whether the said enterprise or group enjoys a dominant position. We have explained how this is to be found with the aid of Section 19(4) and the Second Explanation to Section 4. After it is found that there is an enterprise or group which enjoys a dominant position, the matter progresses to the*

third stage. At this stage, CCI would have to inquire in an appropriate case as to whether there is abuse of dominant position by the enterprise or group. The third stage is embraced by Section 4(2) of the Act. Under Section 4(2), the lawgiver has declared certain acts or omissions to constitute abuse of dominant position. We have already extracted the provision. While on Section 4, we posed the question as to whether Section 4(2), which declares that there shall be an abuse of dominant position, if the facts attract clauses (a) to (e), is a species of a genus, which genus is contained in Section 4(1). In other words, is Section 4(2) exhaustive of abuse of dominant position prohibited under Section 4(1) or is it only illustrative of what can constitute abuse of dominant position? The learned Additional Solicitor General would submit that this question may not be gone into in the facts of this case. We agree with his request.

96. *Dealing with what would indeed constitute abuse of dominant position as declared imperatively in Section 4(2), if we take Section 4(2)(a), it forbids imposing of unfair or discriminatory condition in purchase or sale of goods and services either directly or indirectly. It further likewise forbids an imposition of an unfair or discriminatory price in purchase or sale including a predatory*

price of goods or service. The Explanation indicates that discriminatory conditions or prices, which may be adopted to meet competition, is not within the scope of the mischief. Next, under Section 4(2)(b), the lawgiver has proclaimed that there will be abuse of a dominant position by an enterprise or group if it limits or restricts production of goods or provision of services or market therefor."

[emphasis supplied]

It is, therefore, no more *res integra* that an order passed under **Sec. 26(1)** of the Comp. Act is a purely administrative order and just a *prima facie* view expressed therein without entailing any serious adverse consequences for any of the affected parties. Though CCI had passed the aforesaid order on the basis of the application/ information filed by ADNPL along with the accompanying documents, especially the marketing agreements, however the mere fact that appellant is being subjected to investigation by the DG is in no way prejudicial for them. The aforesaid issue had also been squarely answered in the matter of ***CCI (supra),*** wherein after analysing the scheme of **Secs. 19, 21** and **26** of the Comp. Act, the Supreme Court held

categorically that an order passed under **Section 26(1)** is an administrative order simpliciter and not a quasi-judicial order. *Vide* **Paras 94, 97** and **98**, succinctly it was held that PNJ shall not be attracted to such a decision. Vide Paras 94, 97 and 98 the Hon'ble Supreme Court held thus -

> ***"94.*** *The Tribunal, in the impugned judgment, has taken the view that there is a requirement to record reasons which can be express, or, in any case, followed by necessary implication and therefore; the authority is required to record reasons for coming to the conclusion. The proposition of law whether an administrative or quasi-judicial body, particularly judicial courts, should record reasons in support of their decisions or orders is no more res integra and has been settled by a recent judgment of this Court in* ***CCT v. Shukla & Bros.****, wherein this Court was primarily concerned with the High Court dismissing the appeals without recording any reasons. The Court also examined the practice and requirement of providing reasons for conclusions, orders and directions given by the quasi-judicial and administrative bodies.*
>
> ***

97. *The above reasoning and the principles enunciated, which are consistent with the settled canons of law, we would adopt even in this case. In the backdrop of these determinants, we may refer to the provisions of the Act. Section 26, under its different sub-sections, requires the Commission to issue various directions, take decisions and pass orders, some of which are even appealable before the Tribunal. Even if it is a direction under any of the provisions and not a decision, conclusion or order passed on merits by the Commission, it is expected that the same would be supported by some reasoning.* ***At the stage of forming a prima facie view, as required under Section 26(1) of the Act, the Commission may not really record detailed reasons, but must express its mind in no uncertain terms that it is of the view that prima facie case exists, requiring issuance of direction for investigation to the Director General.*** *Such view should be recorded with reference to the information furnished to the Commission. Such opinion should be formed on the basis of the records, including the information furnished and reference made to the Commission under the various provisions of the Act, as aforereferred. However, other decisions and orders, which are not directions simpliciter and determining the rights*

of the parties, should be well reasoned analysing and deciding the rival contentions raised before the Commission by the parties. ***In other words, the Commission is expected to express prima facie view in terms of Section 26(1) of the Act, without entering into any adjudicatory or determinative process and by recording minimum reasons substantiating the formation of such opinion, while all its other orders and decisions should be well reasoned.***

98. *Such an approach can also be justified with reference to Regulation 20(4), which requires the Director General to record, in his report, findings on each of the allegations made by a party in the intimation or reference submitted to the Commission and sent for investigation to the Director General, as the case may be, together with all evidence and documents collected during investigation. The inevitable consequence is that the Commission is similarly expected to write appropriate reasons on every issue while passing an order under Sections 26 to 28 of the Act."*

[emphasis supplied]

The aforesaid view was reiterated and followed without any

deviation in the ***Bharti Airtel (supra).*** Therefore, we have no hesitation in even negatively responding to this contention of the petitioner that the impugned order of the CCI stands vitiated for want of compliance of PNJ.

ISSUE WISE ANSWER OF THE CONTROVERSY

83. **We have framed 4 issues *vide* Para 20 above.** In view of the discussion undertaken by us, the short answers to the issues, therefore are as follows:

A. Whether parallel inquiry or proceedings can continue under the dispensation of the two different enactments of the Comp. Act and the TRAI Act with CCI and TRAI doing the said exercise under their respective enactments, the effect and impact of TRAI Act over the inquiry mechanism of CCI and the theory of *implied repeal*?

Ans. The parallel enquiry or proceedings can continue under both Comp. Act as well as TRAI Act under their respective enactments. However, the only exception is the situation as dealt with in the ***Bharti Airtel (supra)*** where the sectoral authority has already been approached, and the grievance has been taken cognizance of by TRAI. If the grievance relates simpliciter to the licensing

regulations, or broadcasting regulations, without having any overtones of the subject matter of the Comp. Act, then TRAI must proceed with the inquiry and CCI must lay its hands off. However, if the grievance stems from and raises the dispute falling within any of the three categories of anti-competitive practices, then CCI can proceed with the inquiry regardless of the overlap with the powers and functions of TRAI under the TRAI Act.

B. Which of the two enactments, *viz*. the Comp. Act and the TRAI Act be treated as a special enactment and the effect and interplay of the non-obstante clause under Sec. 60 of the Comp. Act over other special sectoral enactments like the TRAI Act?

Ans. As stated *supra,* both are special enactments and neither of the two can be treated as general. Depending on the facts, nature of controversy, issues arising in the matter and the perspective from which the whole dispute is to be adjudicated, the concerning Act becomes special contextually to prevail over the other and the latter enactment shall become general in the said event to give way to the former. However, in view of **Sec. 60** of the Comp. Act, the CCI shall have a much larger territory to cover and deal with if the nature of the dispute falls within the subject matter of **Sec. 3, 4 or**

5 of the Comp. Act. Even though the TRAI Act is a special sectoral enactment in matters relating to competition, it will have to give way to the Comp. Act.

The width of the powers lodged with the CCI is indicative of the Parliamentary intent of bringing about sweeping changes in the economy which were necessitated owing to transition of the market from a *licence/ permit raj* to liberalisation in the late 1990s and from the opening up of the Indian territories to the international market owing to globalisation and trans-border/ trans-country businesses and investments in the country. Therefore, the Court has to be mindful and conscious of the background in which the Comp. Act came to be enacted as no enactment can be interpreted dehors the context, social and economic background in which it came to be enacted. **Sec. 19(4)** is further indicative of the wide amplitude of powers vested with the CCI to reckon *'all' or 'any'* of the factors whilst arriving at the finding as to whether any enterprise (like the SIPL in the instant case) enjoys a dominant position or not. So when **Sec. 19(4)(g)** declares 'monopoly' or 'dominant position' as a trigger for ascertaining whether anti-competitive practices have been adopted or competition being adversely affected, it is the CCI which can take

into consideration singular or plural factors for such a determination. A monopolistic position under **Sec. 19(4)(g)** may be enjoyed by any *business goliath* may be attributable to a singular or pluralistic league of factors. It is for the CCI to determine whether any enterprise/ entity actually enjoys a dominant position in the market or not. Clearly, TRAI is handicapped statutorily in doing so. This is yet another reason why we are persuaded to hold that CCI is the *only agency* competent to determine the 'monopolistic' and 'dominant position' of any enterprise

C. To what extent the Bharti Airtel *(supra)* shall apply to the dispute at hand and whether CCI possesses the jurisdiction to pass orders of inquiry under Sec. 26 on the complaint/ information of ADNPL for having adopted anti-competitive practices and abusive tactics under Sec. 4 of the Comp. Act?

Ans. The ***Bharti Airtel (supra)*** is distinguishable on facts and therefore the ratio of the said judgement has to be understood and be treated as binding only in the facts of said case specifically. The ratio cannot be telescoped to be treated as a universal proposition of law that wherever the powers of TRAI stretch up to, CCI cannot exercise its powers. To the contrary the ***Bharti Airtel (supra)*** had held

explicitly and specifically that the CCI has a niche role carved out for itself, which cannot be hindered or eclipsed by the provisions of the TRAI Act and the CCI can exercise its powers contemporaneously and collaterally with the TRAI functioning under the TRAI Act. CCI in view of the peculiar facts circumstances of the present matter possesses ample powers to pass an order of inquiry under **Sec. 26(1)** on the complaint/ information of ADNPL ***if it is prima facie satisfied that anti-competitive practices have been resorted to by SIPL under the provisions of the Comp. Act.***

However, the same being in the nature of an administrative order, forming just a *prima facie* opinion on the allegations on the allegations of ADNPL, therefore the scope of judicial review shall stand severely restricted, it being an administrative order and if the jurisdiction of the CCI exists to entertain such a complaint and pass an order of investigation by the DG, then the High Court under writ jurisdiction shall be extremely loathe to interfere with the same. Having found that CCI can exercise parallel powers under the Comp. Act, we have no hesitation to hold that jurisdictional facts in the present case were existing for the CCI to have entertained the information/ complaint of ADNPL and form a *prima facie* opinion on the matter under **Sec. 26(1)**. The contention of the

appellant SIPL that CCI could not have even formed a *prima facie* opinion or passed an order under **Sec. 26(1)** is therefore liable to be rejected. However, it shall be open to all the aggrieved parties to appear before the SIPL and raise all contentions, whatever available to them under law, including the aspect of jurisdiction of CCI after filing of the investigation report by the DG. The liberty and right of the appellant reserved in this respect by the learned Single Bench is not being disturbed at all, rather being preserved and kept intact to be considered by the CCI at an appropriate stage and pass orders.

D. Whether the CCI can be allowed to proceed further with the matter ahead of passing of the impugned order or ADNPL be directed to approach the TRAI for determination of the jurisdictional facts?

Ans. In view of the foregoing discussion, we hold that CCI is entitled under law to proceed further with the matter after passing out the impugned order under **Sec. 26(1)** and that ADNPL cannot be relegated to raise its dispute or grievance before the TRAI. However, under **Sec. 21-A,** as rightly contended by the learned ASG, the CCI should, if found appropriate at the relevant stage must

invite comments, opinion and consult the TRAI in view of the nature of allegations relatable to and touching upon the provisions of **Regulation 7(3) and (4)** of the TRAI Regulations, 2017.

85. Accordingly, all the issues are being answered as above.

CONCLUSION

86. In view of the above, we conclude and direct as follows:

A. The impugned judgement passed by the learned Single Bench dated 28.05.2025 in WPC No.29767 of 2022 is affirmed and the Writ Appeal is dismissed with the aforesaid directions finding no ground for interference. We find no fault or any error, much less perversity in the view taken on the interpretation and interplay of both the enactments in question by the learned Single Bench.

B. The CCI shall on the basis of the report received from DG proceed to provide sufficient opportunity of hearing to all the stakeholders and aggrieved parties accompanied with the reasonable opportunity to file their replies and written submissions and thereafter proceed to pass a reasoned and

speaking order considering all the contentions of the various aggrieved parties;

C. Whilst deciding the whole issue finally, CCI must decide as a preliminary point, its jurisdiction to take up the whole matter and proceed with it in the face of specific provisions of TRAI Regulations, 2017, especially **Regulation 7,** breach/ violation of which has been alleged by ADNPL. A reasoned speaking order be passed separately on the issue of jurisdiction by the CCI in this regard. If CCI, after answering the jurisdictional issue in its favour, comes to a conclusion that the matter needs to be agitated before the TRAI first, it may accordingly defer the consideration of the same suitably till TRAI takes a viewpoint and decides the whole dispute. If the CCI decides otherwise, then it shall as stated *supra* pass reasoned orders on the complaint/ information of the ADNPL;

D. The entire exercise be carried out by CCI within an outer time limit of 8 weeks from today. If any of the party intends to have the time extended as fixed by this Court, suitable proceedings by way of an extension application may be moved by any of the interested parties in the present matter.

2025:KER:93252

87. Accordingly, the Writ Appeal stands dismissed.

Sd/ SUSHRUT ARVIND DHARMADHIKARI
JUDGE

Sd/ SYAM KUMAR V.M.
JUDGE

css/

2025:KER:93252

APPENDIX OF WA NO. 1551 OF 2025

PETITIONER ANNEXURES

Annexure A1	**A TRUE COPY OF THE CERTIFICATE OF INCORPORATION DATED 08.05.2025**
Annexure A2	**A BRIEF HISTORY OF THE TRAI'S REGULATORY REGIME**
Annexure A	**Relevant Excerpts from the Information filed by Respondent No. 2**
Annexure A1	**The previous Written Submissions filed by the Appellant dated 06.10.2025**

RESPONDENT ANNEXURES

Annexure 1	**copy of the judgment in N. Sampath Ganesh v. Union of India and Anr**
Annexure 2	**Copy of the judgement in Samir Agrawal v Competition Commission of India and Ors**
Annexure 3	**Copy of the judgement in Sanjay Singh v. Uttar Pradesh Public Service Commission**
Annexure 4	**Copy of the judgement in WhatsApp LLC v. Competition Commission of India**
Annexure 5	**Copy of judgement in Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) v. Competition Commission of India**
Annexure 6	**Copy of the judgement in Coal India Limited and Western Coalfields Limited v Competition Commission of India**
Annexure 7	**Copy of Proceedings against Torrent Power Limited by the CCI under Section 43A of the Competition Act**