SUN TV COMES CLEAN FROM THE COMPETITION COMMISSION'S SCANNER

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The CCI was recently investigating a complaint from the Informant under Sections 3 and 4 of the Act against Sun TV. According to the Informant, Sun TV was spending INR 4500 to acquire a single customer and was offering its services (DTH operations) for only INR 440 as a four month subscription fee along with a free set-top box. The Informant also alleged that Sun TV was charging subscription charges of INR 99/month which was less than the INR 156.55, i.e. the price prescribed by TRAI by a circular dated April 18, 2008. According to the Informant, such acts by Sun TV were eliminating competition for the Informant and other players who were also in the business of transmitting cable signals to the customers either directly or through local cable operators. The CCI met both parties on numerous occasions and held that a prima facie case existed for the director general ("DG") to initiate investigation. The DG's report concluded that the "relevant product market" for determining any contravention of the Act was only the DTH market since the services provided by other operators was not inter-changeable or substitutable with those provided by DTH operators. Further, since DTH operators provide services at a pan-India level, the DG concluded that the "relevant geographical market" shall be the entire Indian market and not just south India, where the Informant did business. After determining the relevant markets, the DG stated that a case of abuse of dominant position cannot be made out since all DTH operators in India have almost the same market share and no single player is dominant. The DG also held that the packages and schemes offered by each of them is almost similar and therefore the pricing of services by Sun TV alone does not eliminate competitors. Among other findings, the DG concluded that the agreement between Sun TV and its customers is a vertical agreement but does not create any barriers to new entrants and therefore is not anti-competitive. The DG also concluded that the subscription pricing of channels was less because DTH operators purchase a bouquet of channels as against buying a-la-carte channels. The CCI also upheld the report of the DG and did not accept the Informant's argument that the relevant market ought to be the "distribution of TV signals in southern India" and not DTH services all across India. The CCI also concluded that Sun TV was not indulging in any predatory pricing, i.e. pricing services at subsidized rates with a view to eliminate competition.

PSA view – Firstly, it is pleasing to witness complaints being filed with the CCI from one of the southern most states of India. This only demonstrates how people across India have slowly begun to understand the mandate of the CCI and its powers under the Act. Now, purely on the merits of the case, while it is fair to say that DTH is unique and cannot be substituted by a multi-system operators/cable operators, it is also important to assess the geographical uniqueness of a specific service. Sun TV is dominant in the south and has specific south zone channel packages. This has been recognized in the dissenting opinion of one of the members of the CCI. This case is a peculiar example of how practices adopted by players at a pan-India level may not be deemed to be anti-competitive, but may certainly be trigger provisions of the Act if the pan-India presence is largely accumulated in a specific geographical area. Therefore, it is extremely important to assess the correct relevant market before deciding on any case alleged to be in contravention of section 3 or 4 of the Act. In case the relevant geographical market is considered as the "south India," Sun TV could be held to be a dominant player and indulging in predatory pricing under section 4(2)(ii) of the Act. This order of the CCI, along with the earlier order in the case filed by consumer online foundation against Tata Sky and all other prominent DTH operators, should highlight some of the business areas of the broadcasting sector which can potentially fall within the ambit of the Act. A careful assessment and study of all businesses, not just for the broadcasting sector, but across industries, is required to assess and minimize any risk of exposing oneself to the CCI.

Mobile operators hike under question by TRAI

Recently, Bharti Airtel, one of the largest mobile operator in India proposed to increase its tariffs, which in the TRAI's opinion further lead to similar announcement by its competitors. The TRAI viewing this as a reason for increase in the tariffs offered by other small and medium operators, has sought clarification from the mobile operators for the increase in tariff hike. The TRAI has probed into the questions of whether the increase in tariffs is due to a substantial reason, or simply for increasing revenue, in order to ascertain whether the increase in tariffs is justified. Airtel and other mobile operators on the other hand have stated in media reports that the increase is due to continuously declining margins, high auction prices for 3G and BWA (broadband wireless access), constrained spectrum and roll-out of mobile services in the rural areas.

PSA view – Taking into consideration the declining tariff rates in mobile telephony, the mobile operators should be able to determine the tariff rates in line with market conditions. That being said, with increasing competition, small mobile operators face the maximum challenge in meeting revenue positives due to lower tariffs by established operators. In our view, the market players should be free to determine tariff rates to promote competition, however, this should be within the framework of the telecom regulations put in place by the TRAI. This way, there is minimal interference by the regulatory agencies, and competition is promoted.

National bio-energy mission in the 12th Five Year Plan

The government is preparing a national bio-energy mission to boost power generation from biomass, a renewable energy source abundantly available in India. The mission will be launched during the 12th Five-Year Plan and will offer a policy and regulatory environment to facilitate large-scale capital investments in biomass-fired power stations. Currently, India has a total installed capacity of 3,000 MW of biomass-based power generation. The ministry of new and renewable energy is targeting to double this capacity during the 12th Plan (2012-17). The national mission will aim at improving energy efficiency in traditional biomass consuming industries, seek to develop a bio-energy city project and provide logistics support to biomass processing units. It will also propose a GIS-based National Biomass Resource Atlas to map potential biomass regions in the country. According to some estimates, biomass from agro and agro-industrial residue can potentially generate 25,000 MW of power in India. This can be further raised with wasteland-based integrated energy plantation and power generation systems.

PSA view – India's surplus biomass is estimated to be 150 million tonnes which could potentially be used to generate 16 giga watt of power. Biomass is derived from agriculture, animal and human waste and can be harnessed to produce fuel, power and heat so it has potential to encourage development of rural enterprises. Also, the power projects based on biomass could generate employment in rural areas, besides helping in the stabilization of electricity grid.

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