



# CAP ON PERSONAL SMSS QUASHED

Home → [Cap on personal SMSs quashed](#)

**July 2012**

## **Cap on personal SMSs quashed**

On July 13, 2012, the DHC set aside an order of TRAI that had capped the sending of SMSs at 200 per day per person for personal communications. The DHC has, however, allowed this restriction for unsolicited commercial communication SMSs. This restriction was brought about by the Telecom Commercial Communications Customer Preference Regulations, 2010 which was supposed to be an adequate step to curb the menace of unsolicited commercial SMSs; however, little did people realize that this blanket ban will also affect the personal SMSs. TRAI had asked telecom operators to limit the number of SMSs per day per SIM to 100, which was later increased to 200. While discussing the objective of unsolicited SMSs, the DHC observed that they are normally commercial advertisement meant for furtherance of trade and commerce and not sent with the objective of propagation of ideals, social, political or economic or in furtherance of literature or human thought. Accordingly, it felt that this restriction when made to apply on personal SMSs, infringes the freedom of speech of the citizens and, therefore, should be done away with.

PSA view – The unsolicited messages disturb the recipients, intrude into their privacy and impose a cost in terms of time and efforts and, therefore, any curb on them is justifiable. By doing away with such a restriction on personal SMSs, DHC has allowed the individuals to exercise their personal choice to send more than the capped personal messages. This is a welcome decision. Interestingly, on July 17, 2012, while responding to a petition, the Telecom Disputes Settlement Appellate Tribunal (“TDSAT”) also passed a similar order.

## **CCI imposes penalty of MINR 80 on MSOs operating out of Punjab**

CCI's recent order dated July 03, 2012, imposed a fine of approximately INR 80 million on Punjab-based MSOs pursuant to information filed by Kansan News Pvt. Ltd. (“Kansan”), a company running a local news channel “Day and Night News.” Kansan alleged that (i) the MSOs were abusing their dominant position in the market for cable television in Punjab and Chandigarh under Section 4 of the Competition Act, 2002 (“Act”), and (ii) had formed a cartel under section 3 of the Act. Kansan complained that the MSOs had distorted/discontinued its channel when it was set to broadcast news that may have had negative repercussions for a leading political party of Punjab. The MSOs dismissed these reports as being wrong and highly selective in their choice of information, and also questioned the jurisdiction of the CCI to pass judgment on such a matter which, according to them, fell in the domain of the TRAI. In its order, the CCI dismissed the allegations of cartelization; however it still found the MSOs guilty of abusing their dominant

position under Section 4 of the Act. The CCI also asked them to “cease and desist” from such activities in the future.

PSA view – This order of the CCI has put a legal proposition in the forefront on the issue of “collective dominance.” In some of its previous orders, the CCI has acknowledged that a case of abuse of dominant position under section 4 of the Act can only be initiated against a single enterprise as Indian competition laws do not recognize the principle of “collective dominance.” It is possible that the MSOs file an appeal before the Competition Appellate Tribunal on such grounds, challenging the basis of the CCI arriving at its finding under section 4 of the Act, especially when all the MSOs were independent and unrelated entities.

By:

Neeraj Dubey

Dhruv Suri



[SITEMAP](#) | [CONTACT US](#)

PSA © 2021 | Developed by iNFOTYKE