

SC DIRECTS TRAI TO FIX CABLE TV TARIFFS FOR NON-CAS AREAS

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January 2010

On January 18, 2010, the Supreme Court of India (“**SC**”) directed the Telecom Regulatory Authority of India (“**TRAI**”) to complete the process involved in fixing tariffs for cable television for non-Conditional Access System (“**CAS**”) areas by June 30, 2010. For this tariff fixation process, TRAI will have to consider the views of all stake-holders in the industry. TRAI will also have to look at the entire cable television market while determining tariffs since the content provided by broadcasters is the same for the CAS, non-CAS and even Direct-To-Home (“**DTH**”) platform.

PSA view – Since the cable television market in India is extremely fragmented and caters to nearly 80 million subscribers, it is imperative that TRAI formulates guidelines for fixing cable TV tariffs for non-CAS as well as DTH areas. Non-CAS areas are those areas where the pay channels are transmitted in unencrypted formats and, therefore, the ultimate consumer does not have the freedom to choose his channels, but has to pay for all channels transmitted by the cable operator. It is essential that TRAI takes a holistic view of the market since the cost of content production is the same for the CAS, non-CAS and DTH platform. The fixation of tariff, coupled with the Standards of Quality of Service (Broadcasting and Cable Services in non-CAS Areas) Regulations of 2009, enforced by TRAI since April 2009, will certainly help in reducing the quality and pricing gap between CAS and non-CAS areas.

“Public Authority” under RTI – new interpretations!

In a recent judgment, the Central Information Commission (“**CIC**”) has clarified that the elected representative in India are not public authority. However, the Delhi High Court (“**DHC**”) bench recently upheld a single bench order making the office of the Chief Justice of India (“**CJI**”) within the ambit of the Act. The bench stated that judicial independence is not a judge’s privilege but a responsibility of the judiciary which cannot be seen in isolation.

PSA view – The Right to Information (“**RTI**”) Act, 2005 (“**Act**”) has brought forth practical regime for Indian citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the day-today functioning of the public authority. “Public Authority” as defined in the Act means any authority or body or institution of self-government established or constituted by or under the Constitution, by any other law made by Parliament or by State Legislature, by notification issued or order made by the appropriate Government, and includes any (i) body owned, controlled or substantially financed; (ii) non-Government organization substantially financed, directly or indirectly by funds by the appropriate Government.

Pursuant to the decision of the CIC, the member of Parliaments, state legislatures, councilors, and even members of village panchayat are outside the scope of the RTI and cannot be queried under the Act. However, following the decision of the DHC, now the documents and information related to assets, administrative acts, including appointments with the office of CJI will be open for scrutiny by public. The Supreme Court Registry is yet to appeal against this judgement. Interestingly, in yet another RTI plea filed seeking reasons from a judge for passing a judgement against him, the CJI slammed the RTI application stating that no party has the right to demand any information from a judge with regard to a judgement. It will be, however, interesting to note how these decisions reach their finality.

ACMA demands to make fake auto production non-bailable offence!

The Automobile Component Manufacturer's Association ("**ACMA**"), which is the nodal agency for the Indian Auto Component Industry and is actively involved in trade promotion, technology up-gradation, quality enhancement and collection and dissemination of information made a representation to the government requesting to make the production of fake auto parts a non-bailable offence in India. ACMA had also conducted a study which revealed the enormity of the fake auto parts in the Indian market. It revealed that almost one-third of the auto component market in India comprises of fake parts.

PSA view – The automobile industry is witnessing a boom and so is the auto parts industry. Realizing the threat from the fake auto component industry eating away not only the business of the auto component companies but also the loss of revenue suffered by the government, ACMA prudently made this representation and demanded that the fake parts be treated at par with the spurious drugs as fake parts results in most of the accidents, which the ACMA study has revealed. Though, taking such stringent stand by the government cannot be speculated, however, taking strict measures to curb the fake auto industry menace will be a welcome and endearing step.

CCI may begin "stalking" the DTH family

According to the report of a leading business daily, the Competition Commission of India ("**CCI**") may issue show-cause notices to the leading DTH operators in the country. They are speculated to be charged for engaging in "anti-competitive agreements" and "abuse of dominant position" under section 3 and 4 of the Competition Act, 2002, respectively. According to the CCI, the practice adopted by the DTH operators does not allow inter-operability of set-top boxes and hence, is against the interest of consumers, who are not permitted to change their DTH operator without forgoing the enormous hardware cost.

PSA view – This step by the CCI is on the right track and demonstrates how the newly set-up body is showing pro-activeness to ensure consumer satisfaction on all fronts. The set-top boxes provided by DTH operators do not provide the option of using another competitor's card, even though set-top boxes can be made inter-operable. Conditional Access Module, a card that facilitates feeds of one or more service provider to be read by the same set-top box, is absent in the hardware, none of the set-top boxes are inter-operable. This clearly limits the consumer's options and discourages competition in the market. Inter-operable set-top boxes can hamper the revenue model of these DTH companies and, therefore, it would be interesting to see how this issue is addressed by the CCI.

By:

Neeraj Dubey

Dhruv Suri



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