



ERGO

Analysing developments impacting business

SC clarifies: Delineation of relevant market not mandatory for all allegations of anti-competitive agreements

5 July 2018

On 7 May 2018, the Supreme Court of India (Supreme Court) passed an important order (Clarification Order) in *Competition Commission of India (CCI) v. Coordination Committee of Artist and Technicians of West Bengal Film and Television Industry* clarifying certain ambiguous portions of its judgment dated 7 March 2017 (2017 Order).

Background

In the 2017 Order, the Supreme Court dealt with an issue of alleged cartelisation and anti-competitive conduct under section 3 of the Competition Act, 2002 (Section 3). In this regard, the Supreme Court noted that section 19(3) of the Competition Act, 2002 (Competition Act) sets out criteria for ascertaining whether an agreement causes appreciable adverse effect on competition (AAEC) in terms of Section 3 (Anti-competitive agreements). The Supreme Court observed that since section 19(3) specifically uses the term 'market' (which the Supreme Court construed to mean 'relevant market'), it was necessary to first define the relevant market in which competition was "effected", prior to making an assessment of AAEC under Section 3. This observation led to certain uncertainties among parties as well as the CCI, since the Supreme Court's views were divergent from the decisional practice of the CCI and the explicit language of the legislation (specifically relating to the presumption of AAEC under sub-section 3 of Section 3). Consequently, the CCI preferred an application for clarification of the 2017 Order before the same bench resulting in the Clarification Order.

Decision of the Supreme Court

By way of the Clarification Order, the Supreme Court has now clarified that the delineation of the relevant market is not a mandatory pre-condition for determination of violations of Section 3, particularly where the agreement/conduct of the parties falls under the statutory presumptions set out in Section 3.

Comment

Under the construct of the Competition Act, presumption of AAEC in an agreement between competitors under Section 3(3) of the Competition Act is condition precedent to decide "cartel" and therefore, there is no requirement to define a relevant market in such cases. The 2017 Order appeared to be varied from this settled position to include the need for defining the relevant market as well as affected markets in all Section 3

ERGO | SC clarifies: Delineation of relevant market not mandatory for all allegations of anti-competitive agreements

cases. The Clarification Order provides much needed clarity on the subject and equally reaffirms the decisional practice of the CCI. It is expected that the Clarification Order will relax the burden on the CCI to define and demonstrate effects on the market while discharging its adjudicatory powers in relation to cartel cases.

- *Sagardeep Rathi (Associate Partner), Anisha Chand (Principal Associate) and Akash Karmarkar (Associate)*

For any queries please contact: editors@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).

For private circulation only

The contents of this email are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2018 Khaitan & Co. All rights reserved.

Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com