

BHARAT SANCHAR NIGAM LIMITED VS. M/S INDUS TOWERS LIMITED

Case No. 10/2018

Decision date: 09/11/2018

Keywords: denial of access, passive infrastructure, abuse of dominant position

Issue: Whether the denial of access to passive infrastructure would amount to abuse of dominant position.

Rule: Sec. 4(2)(a)(ii) read with Sec. 4(2)(e) of the Competition Act, 2002.

The case arose out of allegations made by Bharat Sanchar Nigam Limited (“BSNL”) against Indus Towers (“Indus”), that the latter’s denial of granting access to telecom tower sites (passive infrastructure) amounts to abuse of dominant position. BSNL and Indus had entered into an Infrastructure Sharing Agreement (“ISA”), under which Indus agreed to provide access to its passive infrastructure to BSNL on mutually agreed terms. It was submitted by BSNL that it had been requesting Indus to provide feasible sites to it since 2016. Allegedly, despite the ISA and obligation of Indus under the guidelines issued by the Telecom Regulatory Authority of India (“TRAI”), Indus has acted in violation of such guidelines by refusing to provide feasible sites to BSNL.

In order to determine whether there was any abuse of dominant position, the CCI first held the relevant market to be the “market for provision of passive infrastructure services to telecom service providers in Kolkata Circle”. The CCI also held that Indus does, in fact, hold the dominant position in the relevant market based on the relative competitive strength of Indus as compared to other competitors in terms of their respective market shares.

The CCI went on to observe first, that the record of discussion of the minutes of a specific meeting, indicates that Indus agreed to give new sites to the BSNL as per its terms and conditions. Further, Indus was agreeable to sharing of sites, subject to fulfilment of commercial terms and conditions and site feasibility, which as per Indus, were not fulfilled by the BSNL. The CCI also took note of the contentions of Indus wherein it stated that BSNL did not provide the required information in the prescribed form or utilise the ismartcube online facility to place site request and service ordered. Further, the CCI noted that the BSNL had earlier placed a request for six operational towers in 2010, which goes on to show that it was aware of the process which is required to be followed in making site requests. Therefore, the CCI found that there were unresolved issues between the parties, which were germane for provision of services as sought by BSNL.

As a result, the CCI held that the allegation of BSNL levelled against the Indus with regard to denial of access to sites was unsubstantiated, and therefore disposed of the case.