

Law & Economics of Competition Law

Indian Competition Law- Part 2- Cases

Avinash S. Ganu

Advocate

B.Sc. LL.M. (Pune), LL.M. In International Economic Law (Warwick, U.K.)

1

Belaire vs. DLF

2

- ▶ Decided on 12-8-2011
- ▶ Relevant market for services of developer/ builder in respect of high end residential properties in Gurgaon.
- ▶ DLF dominant player with market share of 65- 70 % and its size, resources, economic power, vertical integration, entry barriers were considered.
- ▶ Abuses – Imposing unfair conditions upon consumers who were vulnerable, had no ability to act against abuse
- ▶ Penalty - Aggravating factors, undue economic gains, consistent unfair practice, false representation
 - No mitigating factors
 - at 7% of average turnover at Rs. 630 Crores
- ▶ Appeal to COMPAT (Competition Appellate Tribunal) dismissed

Shamsher Kataria vs. Honda Siel & Ors.

- Primary market – Market consisting of manufacture and sale of passenger vehicles
- Secondary/ Aftermarket – Comprising complimentary or secondary products and services which are purchased after primary product is purchased
- Two segments of aftermarket –
 - a) supply of spare parts including diagnostic tools, technical manuals, catalogues, etc for aftermarket usage
 - b) Provision of aftersales services providing servicing of vehicles, maintenance and repair services
- Geographic market- India
 - Each OEM in a dominant position in supply of spares of its own brand of cars.
 - Contravention of Section 3 and 4
 - Penalty- Considering mitigating factors penalty at 2% of average turnover
 - Subsequently after remand considered relevant market

CIL (Coal India Ltd) Cases

4

CIL Subsidiaries - South Eastern Coal Fields Ltd

- Mahanadi Coal Fields Ltd

- Western Coal Fields Ltd

- Eastern Coal Fields Ltd

- Central Coal Fields Ltd

- Northern Coal Fields Ltd

► Complaints by various coal users

Mah. State Power Gen. Co. vs Mahanadi, CIL(Coal India Ltd)

- CIL handles entire production and distribution of coal directly and through its eight subsidiaries, regulates production, distribution and supply of coal.
- Relevant market – production and sale of non-coking coal to thermal power generators
- CIL and subsidiaries dominant as can operate independently of market forces
- Abuse under Section 4 (2) (a) (i) - Imposing unfair/ discriminatory conditions in matter of supply of non-coking coal to power producers
- Mitigation – CIL modified some clauses
- Penalty- At 3% of average turnover at Rs. 1773.05 Crores

EIPL (East India Petroleum Pvt Ltd) vs. SALPG (South Asia LPG Co. Pvt Ltd)

- Relevant market for upstream terminalling services at Vishakhapatnam Port
- Dominant position as monopoly in terminalling infrastructure, absence of alternative, significant entry barriers, high degree of consumer dependence.
- Abuse- SALPG requiring users to necessarily use cavern and pay higher charges for terminalling services, restriction on by-pass of cavern facility restricting business volumes of EIPL amounting to denial of market access.
- Penalty- Highest penalty of 10% at Rs.19.207 Crores

Sunil Bansal vs. Jai Prakash Associates

- DG held that market for provisions of services for integrated township in Noida and Greater Noida.
- CCI held relevant market as services for development and sale of residential apartments in Noida and Greater Noida. CCI held no dominance and case was closed u/Section 26(6)
- Minority disagreed, held integrated township as relevant market, held abuse and imposed penalty at 5%
- COMPAT disagreed with this finding and remitted back.

Some orders under Section 26 (6) of the Competition Act

- Anila Gupta vs. BEST
- Pravanan Mohanty vs. HDFC (credit card market)
- Neeraj Malhotra vs. HDFC, LIC and Others (pre-payment charges- 6 cases)