

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8594 OF 2017****WITH****WRIT PETITION NO. 8596 OF 2017**

Vodafone India Limited

....Petitioner

Vs.

The Competition Commission of India
represented by its Secretary & ors.

...Respondents

WITH**WRIT PETITION NO.7164 OF 2017****WITH****CAWST NO.17736 OF 2017****IN****WRIT PETITION NO. 7164 OF 2017**

Idea Cellular Ltd.

.....Petitioner

Vs.

The Competent Commission of India,
(through the Secretary)

.....Respondents

WITH**WRIT PETITION NO. 7172 OF 2017**

Cellur Operator Association of India

....Petitioner

Vs.

Competition Commission of India and Ors.

....Respondents

WITH**WRIT PETITION NO. 7173 OF 2017**

Bharati Airtel Limited and Anr.

....Petitioners

Vs.

Competition Commission of India and Ors.

....Respondents

APPERANCES:-**(1) W.P. No.8594/2017**

Mr. Iqbal M. Chagla, Senior Advocate along with Ms. Pallavi Shroff, Mr. Aashish Gupta, Mr. Ameya Gokhale, Ms. Meghana Rajadhyaksha, Mr. Vaibhav Singh, Ms. Sukriti Jaiswal i/by M/s. Shardul Amarchand Mangaldas & Co. for the Petitioner.

(2) W.P.Nos. 8594/2017, 8596/2017, 7172/2017, 7173/2017 and WP No. 7164/2017

Mr. Iqbal M. Chagla, Senior Advocate along with Mr. Punit B. Anand & Siddharth Rajamohan for the Petitioner in WP No.8596 of 2017 and for Respondent No.6 in WP No.7172/2017, for Respondent Nos. 8 & 9 in WP No.7173/2017, for Respondent Nos. 9 & 10 in WP No.7164/2017 and for Respondent No.10 in WP No.8594/2017.

(3) W.P. No. 8594 and 8596/2017

Mr. Amit Sibal, Senior Advocate a/w Mr. Sachin Mandlik, Ms. Avaantika Kakkar, Mr. Ritin Rai, Mr. Raghav Shankar, Mr. Dhruv, Rajain, Ms. Sakshi Aagarwal, Mr. Zacarias Joseph, Mr. Abhas Kshetarpal, Mr. Kanwar Vivasan, Ms. Anvita Mishra, Mr. Rajagopal Venkatakrishnan, Mr. Bhavuk Agarwal, Mr. Hiten Sampat i/by Khaitan & Co. in W.P. No.8594 for Respondent No.5, for Respondent No.3 in W.P.No.8596/17 i.e. Reliance Jio Infocomm Ltd.

(4) W.P. No.7172/2017

Mr. Aspi Chinoy, Sr.Advocate a/w Mr. Jafar Alam, Mr. Gautam Shahi, Mr. Siddharth Ranade i/by Trilegal Advocates for the Petitioner.

(5) W.P. No. 7173 of 2017

Mr. Janak Dwarkadas, Senior Advocate with Mr. Navroz Seervai, Senior Advocate with Mr. Harsh Kaushik, Ms. Kunal Dwarkadas, Mr. Ankush Walia, Mr. Param Tandon, i/by Seth Dua & Associates for the Petitioner.

(6) W.P. No.7172/2017 and 7173/2017

Mr. Ramji Srinivasan, Senior Advocate a/w Mr. Sachin Mandlik, Ms. Avaantika Kakkar, Mr. Ritin Rai, Mr. Raghav Shankar, Mr. Dhruv Rajai, Ms. Sakshi Agarwal, Mr. Zacarias Joseph, Mr. Aabas Kshetarpal, Mr. Kanwar Vivasan, Ms. Anvita Mishra, Mr. Rajagopal Venkatakrishnan, Mr. Bhavuk Agarwal, Mr. Hiten Sampat i/by Khaitan & Co. for Respondent No.4 in W.P.No. 7172/2017, for Respondent No.3 in W.P.No.7173/17 i.e. Reliance Jio Infocomm Ltd.

(7) W.P. No.7164/2017 a/w CAWST No. 17736 of 2017 in W.P. No.7164/2017-

Mr. Darius Khambata, Senior Advocate with Mr. Soli Cooper, Senior Advocate along with Ms. Alka Bharucha, Ms. Swathi Girimaji, Mr. Areen De, Advocates i/by M/s. Bharucha & Partners for the Petitioner and for the Applicant in CAWST 17736 of 2017.

Mr. Harish Salve, Senior Advocate a/w Dr. Milind Sathe, Senior Advocate a/w Mr. Sachin Mandlik, Ms. Avaantika Kakkar, Ritin Rai, Mr. Raghav Shankar, Mr. Dhruv Rajain, Ms.Sakshi Agarwal, Mr. Zacarias Joseph, Mr. Abhas Ksheterpal with Mr. Kanwar Singh, Ms. Anvita Mishra, Mr. Rajgopal Venkatakrishnan, Mr. Bhavuk Agarwal, with Mr. Hiten Sampat i/by Khaitan & Co. for Respondent No.5 in W.P.No.7164/17 i.e. Reliance Jio Infocomm Ltd.

(8)W.P. NO. 8594/2017, 8596/2017 and 7164 of 2017

Mr. Shrihari Aney, Senior Advocate a/w Mr. Prateek Pai, Ritika Gadoya i/by Key Stone Partners for Respondent Nos. 1 and 2 i.e. CCI.

(9) W.P. No. 7172/2017 and 7173/2017

Mr. Naushad R. Engineer, a/w Mr. Prateek Pai, Ritika Gadoya i/by Keystone Partners for Respondent Nos. 1 and 2 i.e. CCI.

(10) W.P. No. 8594/2017, 8596/2017, 7172/2017, 7173/2017 and 7164/2017.

Ms. Shruti Tulpule a/w Indrajeet Bhosale i/by Abhineet Pange for Respondent No.3 in WP 7172 of 2017, for Respondent No.4 in WP No. 7164 of 2017 and WP No. 8594 of 2017, for Respondent No.5 in WP No. 7173 of 2017 and for Respondent No.11 in WP No. 8596 of 2017.

**CORAM : ANOOP V. MOHTA AND
SMT. BHARATI H. DANGRE, JJ.**

DATE : 21 SEPTEMBER 2017.

ORDER :-

Today, all the matters are listed for order/judgment.

2 In view of the reasons already dictated and recorded, we are pronouncing the conclusion and operative part of the Judgment in the open Court today.

conclusions-

- a) All the Writ Petitions are maintainable and entertainable. This Court has territorial jurisdiction to deal and decide the challenges so raised against impugned order (majority decision) dated 21 April 2017, passed by the Competition Commission of India (CCI) under the provisions of Section 26(1) of the Competition Act, 2002 in case

Nos. 81 of 2016, 83 of 2016 and 95 of 2016 and all the consequential actions/notices of the Director General under Section 41 of the Competition Act arising out of it.

- b) The telecommunication Sector/Industry/Market is governed, regulated, controlled and developed by the Authorities under the Telegraph Act, the Telecom Regulatory Authority of India Act (TRAI Act) and related Regulations, Rules, Circulars, including all government policies. All the “parties”, “persons”, “stakeholders”, “service providers”, “consumers” and “enterprise” are bound by the statutory agreements/contracts, apart from related policy, usage, custom, practice so announced by the Government/Authority, from time to time.
- c) The question of interpretation or clarification of any “contract clauses”, “unified license” “interconnection agreements”, “quality of service regulations”, “rights and obligations of TSP

between and related to the above provisions”, are to be settled by the Authorities/TDSAT and not by the Authorities under the Competition Act.

- d) The concepts of “*subscriber*”, “*test period*”, “*reasonable demand*”, “*test phase and commercial phase rights and obligations*”, “*reciprocal obligations of service providers*” or “*breaches of any contract and/or practice*”, arising out of TRAI Act and the policy so declared, are the matters within the jurisdiction of the Authority/TDSAT under the TRAI Act only.
- e) The Competition Act and the TRAI Act are independent statutes. The statutory authorities under the respective Acts are to discharge their power and jurisdiction in the light of the object, for which they are established. There is no conflict of the jurisdiction to be exercised by them. But the Competition Act itself is not sufficient to decide and deal with the issues, arising out of the provisions of the TRAI Act and the contract

conditions, under the Regulations.

- f) The Competition Act governs the anti-competitive agreements and its effect- the issues about “abuse of dominant position and combinations”. It cannot be used and utilized to interpret the contract conditions/policies of telecom Sector/Industry/ Market, arising out of the Telegraph Act and the TRAI Act.
- g) The Authority under the Competition Act, has no jurisdiction to decide and deal with the various statutory agreements, contracts, including the rival rights/obligations, of its own. Every aspects of development of telecommunication market are to be regulated and controlled by the concerned Department/ Government, based upon the policy so declared from time to time, keeping in mind the need and the technology, under the TRAI Act.
- h) Impugned order dated 21 April 2017, passed by the Competition Commission of India (CCI) under the provisions of Section 26(1) of the Competition

Act, 2002 and all the consequential actions/notices of the Director General under Section 41 of the Competition Act proceeded on wrong presumption of law and usurpation of jurisdiction, unless the contract agreements, terms and clauses and/or the related issues are settled by the Authority under the TRAI Act, there is no question to initiating any proceedings under the Competition Act as contracts/agreements go to the root of the alleged controversy, even under the Competition Act.

- i) The Authority like the Commission and/or Director General, has no power to deal and decide the stated breaches including of “*delay*”, “*denial*”, and “*congestion*” of POIs unless settled finally by the Authorities/TDSAT under the TRAI Act. Therefore, there is no question to initiate any inquiry and investigations under Section 26(1) of the Competition Act. It is without jurisdiction. Even at the time of passing of final order, the

Commission and the Authority, will not be in a position to deal with the contractual terms and conditions and/or any breaches, if any. The uncleared and vague information are not sufficient to initiate inquiry and/or investigation under the Competition Act, unless the governing law and the policy of the concerned “market” has clearly defined the respective rights and obligations of the concerned parties/persons.

- j) Impugned order dated 21 April 2017 and all the consequential actions/notices of the Director General under the Competition Act, therefore, in the present facts and circumstances, are not mere *“administrative directions”*.
- k) Impugned order dated 21 April 2017 and all the consequential actions/notices of the Director General under the Competition Act, are therefore, illegal, perverse and also in view of the fact that it takes into consideration irrelevant material and ignores the relevant material and the law.

- l) Every majority decision cannot be termed as “*cartelization*”. Even ex-facie service providers and its Association COAI, have not committed any breaches of any provisions of the Competition Act.

4 Hence the following order-

ORDER

- a) Impugned order dated 21 April 2017, passed by the Competition Commission of India (CCI) under the provisions of Section 26(1) of the Competition Act, 2002 in case Nos. 81 of 2016, 83 of 2016 and 95 of 2016 and all the consequential actions/notices of the Director General under Section 41 of the Competition Act, are liable to be quashed and set aside, in exercise of power under Article 226 of the Constitution of India. Order accordingly.
- b) All the Writ Petitions are allowed.
- c) There shall be no order as to costs.
- d) In view of the above, nothing survives in Civil

Application (Stamp) No. 17736 of 2017 in Writ
Petition No. 7164 of 2017 and the same is also
disposed of. No costs.

(BHARATI H. DANGRE, J.)

(ANOOP V. MOHTA, J.)