

'Immunity from competition law will allow Coal India to abuse its dominant position'

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The Supreme Court on Thursday reserved its order on Coal India's plea seeking immunity from the applicability of competition law.

Countering the plea of Coal India, N Venkatraman, Additional Solicitor General, representing CCI, argued before the apex court that the complete grant of immunity to Coal India from the applicability of the Competition Act should be eschewed and should not be allowed as that would result in permitting this "monopolist" company to abuse its dominant position.

An anti-competitive practice of abuse of dominance will have the effect of a common detriment, and Parliamentary legislation (competition law) preventing and regulating the same should not be held to be inapplicable, according to Venkatraman.

CCI'S SUBMISSION

Meanwhile, in its submission to the apex court, the Competition Commission of India (CCI) has rejected Coal India's contention that it being a statutory corporation implied that it cannot possibly be subject to the Competition Act 2002.

Coal India had submitted that it was set up under a statute, the Coal Mines (Nationalisation) Act 1973 (Nationalisation Act), as a statutory monopoly with the objective of fulfilling the State's constitutional obligations.

This fact, by itself, cannot and does not exempt such public sector enterprises from compliance with the general law of the land and for the same reason, it cannot exempt these enterprises from the discipline of the Competi-



LANDMARK CASE. The SC verdict will be a trend-setter on the application of competition law to public sector firms

tion Act, as the CCI has submitted.

The Competition Commission has asserted that the definition of "enterprise" in the Competition Law makes it clear that public sector companies are covered within its ambit and are subject to the rigour and discipline of the Competition Act, including the prohibitions on anti-competitive agreements and abuse of dominant position enshrined in Sections 3 and 4, respectively.

TREND-SETTER

The Supreme Court verdict in the Coal India matter is likely to be a trend-setter on the application of competition law to public sector firms, especially in the current milieu of a free market economy that India has adopted over the last three decades.

For the apex court, this could be a sort of toss between the old economic policy thought process and the policies driving the new India, said competition law experts.

In a protected economy, dominance of the public sector was seen as the norm without much challenge, but now taking recourse to the Nationalisation Act to shield oneself from any abusive conduct owing to their dominance may not be easy, they said.