

Coal India falls under competition law purview, top court rules, rejecting its immunity plea

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By [Freny Patel](#)

Coal India falls under the purview of competition law, India's top court has ruled, rejecting the state-owned company's plea seeking immunity under the Coal Mines Nationalization Act. In its ruling today, the Supreme Court of India sent the case back to the antitrust watchdog to decide the issue on its merits. The Competition Commission of India had argued that Coal India cannot take refuge under the 1973 Coal Mines Nationalization Act to claim that it does not come under the purview of the 2002 Competition Act to sidestep a finding that it abused its dominant position.

Coal India falls under the purview of competition law, India's top court has ruled, rejecting the state-owned company's plea seeking immunity under the Coal Mines Nationalization Act. In its order today, the Supreme Court of India sent the Coal India case back to the antitrust watchdog to decide the issue on its merits.

The Competition Commission of India, or CCI, had told the court that Coal India cannot take refuge under the 1973 Coal Mines Nationalization Act to claim that it does not come under the purview of the 2002 Competition Act to sidestep a finding that it abused its dominant position (see [here](#)).

Coal India argued before the three-judge bench of the Supreme Court on the concept of "common good" under Article 39 of the Indian Constitution. The three-judge bench comprised Judge K. M. Joseph, who retires tomorrow, Judge B. V. Nagarathna and Judge Ahsanuddin Amanullah.

The CCI pointed out that Coal India was operating with a motive to make profits and not serving any "common good" when found to have unilaterally fixed the terms of fuel-supply agreements with power companies.

Moreover, the Coal Nationalization Act does not relate to the trade of coal, and hence the state-owned company could not use it as a shield in this case, the antitrust watchdog had said.

Coal India had approached the Supreme Court arguing against the applicability of the Competition Act to its operations because of alleged terms in the Coal Nationalization Act. It had claimed that factors beyond its control, including government policies and environmental regulations, influence the coal market.

The Supreme Court ruling is a major win for the CCI as it endorses the view that competition law will apply regardless of ownership, Nisha Kaur Uberoi, partner & national head Competition at Trilegal, told MLex.

The erstwhile 1969 Monopolies and Restrictive Trade Practices Act had exempted all government-owned undertakings or corporations. But the 2002 Competition Act, which replaced the earlier act, reversed this aspect of the law, making the act applicable to all, unless exempted by the government through a notification under Section 54 of the Competition Act. The government has not exempted Coal India from the purview of the legislation.

The court ruling upholds the existence of a level playing field between government companies and private companies with no immunity for government-owned companies carrying out economic activities from the applicability of the Competition Act, Uberoi said.

In December 2013, the CCI imposed a penalty of 17.73 billion rupee (\$221.6 million) on Coal India for abusing its dominant position and imposing unfair conditions in agreements with the power companies for the supply of non-coking coal (see [here](#)). This was then the single largest penalty imposed on an entity and the first decision against a state-owned company.

In response to Coal India challenging the CCI order, the erstwhile Competition Appellate Tribunal, reduced the penalty by more than 50 percent to 5.91 billion rupee but upheld the CCI's overall order.

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