

LEGAL UPDATES

NCLAT ACKNOWLEDGED THAT THE BAR COUNCIL OF INDIA IS NOT AN "ENTERPRISE" AND UPHOLDS CCI ORDER REJECTING DOMINANCE-ABUSE COMPLAINT

National Company Law Appellate Tribunal NCLAT in New Delhi reiterated that the Bar Council of India is not an "enterprise" and upheld the orders of the Competition Commission of India.

NCLAT also dismissed an accusation of abuse of dominance, and affirmed CCI's decision to dismiss the appellant's complaint that claimed misuse of a dominant position against the Bar Council of India (the "BCI") on the grounds that the BCI is "not a business" under Section 2(h) of the Competition Act.

The facts that led to filing of complaint before the CCI were:-

(i) In order to limit competition for its electors, BCI and its members plotted to impose indirect entry barriers into the legal services industry; and

(ii) BCI was violating Section 4 of the Competition Act by abusing its dominant position to regulate legal education in India under Clause 28 of the Rules of Legal Education, which lays down that *"...the activities mentioned in Section 2(h) 'enterprise' of the Competition Act have to be 'Economic' and commercial in character...the words employed in preceding the words 'any activity' reflect not only regularity and continuing of activities made mention of in the Section."*

Bare perusal of the section 2(h) of the Competition Act, The Hon'ble NCLAT concluded that *"...it is crystalline clear that the...'Bar Council of India'...has its primordial role to perform its duties and hence, this 'Tribunal' without any haziness holds that...'Bar Council of India' is not an 'enterprise' having any economic and commercial activity."*

Additionally, Hon'ble NCLAT clarified that BCI is connected with upholding the norms of the legal profession and preparing those who wish to enter it with the necessary knowledge and abilities, and maintained that *"averments made by the Appellant...on the file of Competition Commission of India are not of any economic and commercial/business activity and further...'Bar Council of India'...which is to perform its role as a Regulatory one, cannot be said by any stretch of the imagination that the ingredients of Section 4 of the Competition Act...are attracted in the present case..."*