

## **Sports in the Era of Competition and Law**

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### **Abstract:**

“Sport has the power to change the world. It has the power to inspire, it has the power to unite people in a way that little else does. It speaks to youth in a language they understand. Sport can create hope, where once there was only despair. It is more powerful than governments in breaking down racial barriers. It laughs in the face of all types of discrimination.”-Nelson Mandela

Sport(s) consists of all form of competitive physical activities which aims at maintaining and improving physical ability and skills through casual or organised participation. It also acts as a means of entertainment. Sports contribute to overall development of a nation, besides being a means of physical well-being and recreational activity. However, in today’s scenario, Sports is not limited to physical activities but has moreover become a source of huge revenues. Thus, Sports Associations are no longer non-profit making institutions but its huge profit making stories have started knocking the doors of the Competition Law. One of the prime issues rocking the Sports sector is restricting the Competition in Sports. This is because we follow Pyramid Structure in Sports where for one Sport and Member State; there is a single National Sport Association that comes under the umbrella of a single Continental/ National Federation. Further this Continental/ National Federation comes under the single Worldwide Federation lying at the top of the structure. Thereby, giving sanctioning power and power to organize events to the designated National Sports Association. Pyramid Structure ensures uniformity in rules and timetable for competitions. This structure also ensures smooth organization of National Championships and selection procedure for players participating in International Competition. Not only this, but also protects the integrity of the Sport and maintain public confidence through enforcement of these rules. A system which ensures some positive aspects, also has some drawbacks and sometimes the drawbacks suppress the positive aspect of its functioning. As the selection process lies in the hands of National Sports Associations, there are clear chances of curtailment of free movements of players and on the other hand the power to organize National Championships can also be misused by discriminating amongst the different leagues and may sometimes result into foreclosure of entries for rival leagues.

**Keywords:** Sports Association, discrimination

### **Introduction**

An Act to give, keeping taking into account the monetary improvement of the nation, for the foundation of a Commission to forestall works on having antagonistic impact on rivalry, to advance and support rivalry in business sectors, to secure the premiums of purchasers and to

guarantee opportunity of exchange carried on by different members in business sectors, in India, and for issues associated therewith or coincidental thereto.<sup>1</sup>

The Competition Act, 2002 (herein after as "the Competition Act") depends on the way of thinking of present day Competition Laws and was conceived so as to encourage rivalry and ensure Indian markets against hostile to serious practices by ventures. The primary focal point of the Act is to restrict against serious understandings, maltreatment of prevailing situation by ventures, and controls mixes (mergers, amalgamations, and acquisitions) so as to guarantee that there is no antagonistic impact on Competition in India.

The Statement of Objects and Reasons of the said Act shows that the said Act has been authorized by the Parliament because of the opening up of the economy, in quest for globalization. The reason for existing is to equip the Indian market to confront rivalry from inside, and outside. The Preamble of the Act gives that the Act is sanctioned considering the financial advancement of the nation, to forestall works on having unfriendly impact on rivalry, to advance and support rivalry in business sectors, to secure the premiums of purchasers and to guarantee opportunity of exchange did by different members and markets in India,<sup>2</sup> thus the Act sought at ensuring fair competition in India by prohibiting such trade practices that cause appreciable adverse effect on the Competition in the Indian market and in furtherance to seek this purpose, establishment of quasi-judicial, Competition Commission of India was considered essential. This body was fused so as to check the negative parts of the opposition, which was given different forces through the Act to perform various types of capacities, including going of interval arranges and in any event, granting pay and forcing punishment. The specialized investigation wing of the Commission, the Director General is appointed under section 16(1)<sup>3</sup> of the Competition Act.

The outcome of Competition is a total welfare of consumers' as well as producers' welfare. Like other competition laws, Indian Competition Act promotes and protect competitive forces in the market. The Competition Law keeps a check on the structure, conduct and performance of firms at a market place, thus assessment of conduct of any non- economic or non- market entity would be futile. Enterprise is one of the four factors of production in economics. The other three are- Labour, Capital, and Land. Where labour earns wages, capital earns interest,

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<sup>1</sup>Preamble, The Competition Act, 2002

<sup>2</sup>Hemant Sharma and Ors. V. Union of India and Ors., W.P. (C) 5770/ 2011 (Decided on 04.01.2011- DHC)

<sup>3</sup>Section 16(1) of the Competition Act: The Central Government may, by notification, appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.

and land earns rent, enterprise earns profit.<sup>4</sup> Therefore, the definition of enterprise under section 2(h)<sup>5</sup> of the Act reflects the market theories which essentially applies to the economic factor of production and represents entities operating in market as a firm with a view to earn profit.

In order to determine whether an entity is an enterprise or not, its functional aspect is to be taken into account, rather than its form. The notion “enterprise” is a relative one. It may be the case that on one hand, an entity may operate as charitable or public capacity, but on the other hand may conduct commercial activities. In such case, an entity will be considered an “enterprise” only to the extent, if it gets engaged in an economic activity.<sup>6</sup>

The Hon’ble Supreme Court of India defined “enterprise” as any entity which is engaged in economic activity. The Supreme Court held that when some of the members of the association are found to be engaged in the production, distribution or exhibition- the same could not be ignored by merely considering it a cloak of trade unionism. The Apex Court took into account the functional aspect, rather than the form. It also held that “an economic activity includes any activity, whether or not profit making that involves economic trade.” The same was followed in the case of *Shri Vipul A. Shah v. All India Film Employee Confederation and others*<sup>7</sup>.

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<sup>4</sup>*Pitambra Books Private Limited, Delhi v. Primary Education Department, Office of the Director, Andhra Pradesh Open School, Andhra Pradesh & Ors.* (30-11-2011, Competition Commission of India)

<sup>5</sup>“ section 2(h) of the Act: enterprise means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Explanation -For the purposes of this clause, -

- (a) “activity” includes profession or occupation;
- (b) “article” includes a new article and “service” includes a new service;
- (c) “unit” or “division”, in relation to an enterprise, includes
  - (i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;
  - (ii) any branch or office established for the provision of any service;”

<sup>6</sup>*Competition Commission of India v. Coordination Committee of Artistes and Technicians of W.B Films and Television* (07- 03-2017- SC)

<sup>7</sup> *Shri Vipul A. Shah v. All India Film Employee Confederation and others*, Case No. 19 of 2014 (Decided on 31.10.2017).

### **Applicability of competition law to sports**

As witnessed by the pyramid structure, for each sport in India there is a National Sports Federation. So this means that these National Sports Federations are the custodians of their particular Sports like Board of Cricket Control of India is the custodian for cricket in India, HI is the custodian for Hockey in India, AICF is the custodian of chess in India, and so on. These Federations are responsible for making rules and regulations under the guidance of the International Federations in order to maintain the uniformity of rules. Not only this but they are also responsible for selection of players for national as well as international tournaments, organization of various tournaments at national level, and deals with the distribution of various rights such as broadcasting rights, media rights, franchisee rights, TV rights, sponsorship rights, etc. These rights are distributed for gaining economic benefits which are a source of income for these Federations. In addition to distribution of these rights, there are numerous other ways by which these Federations are gaining economic benefits. So, this makes them fall under the category of enterprise mentioned under section 2(h) of the Competition Act, 2002.

Although these Federations are registered as non-profit making organizations as per the National Sports Development Code, 2011 and claim that their primary function is to act as custodian of that particular Sports. They also claim that they plough back their profits back in promoting the game. In *Motosyklististiki Omospondia Ellados NPID (MOTOE) v. Elliniko Dimosio*<sup>8</sup>, it was held that where a person handles both administrative as well as organizational functions, such falls within the scope of Articles 82 EC and 86 EC. The White Paper<sup>9</sup> released by EC on Sports note that post *Mecca Medina*<sup>10</sup> judgement, National sports associations and International Sports Associations may be both undertaking under Articles 81<sup>11</sup> and 82<sup>12</sup> EC and associations of undertakings under Article 81<sup>13</sup> EC. Sports associations

<sup>8</sup> Case No. C-49/07 (2008) ECR I - 4863

<sup>9</sup> White Paper on Sport- European Commission, COM (2007) 391 final, (Assessed on 15<sup>th</sup> May, 2020, 15:45PM) [https://www.aop.pt/upload/tb\\_content/320160419151552/35716314642829/whitepaperfullen.pdf](https://www.aop.pt/upload/tb_content/320160419151552/35716314642829/whitepaperfullen.pdf)

<sup>10</sup> *Meca-Medina and Majcen v. Commission Case C- 519/04P, Meca-Medina and Majcen v. Commission, 2006 E.C.R I06991*

<sup>11</sup> Article 81 EC (now as Article 101 TFEU)

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

are undertakings where they themselves carry out economic activity, e.g., by commercially exploiting a sport event. Sports associations are associations of undertakings under Article 81<sup>14</sup> EC to the extent they constitute groupings of sport clubs/teams or athletes for which the practice of sport constitutes an economic activity.<sup>15</sup>

The Commission in the case of Hemant Sharma<sup>16</sup> held that the term enterprise under section 2(h) of the Competition Act, 2002 must be given a wider interpretation so as to include Any economic activity carried on by any entity within its purview. Be it production, storage, supply, distribution, acquisition, control of any article or goods or provision of services. The Only requirement is that there has to be some economic activity carried on by the entity in some market consisting of buyers as well as sellers. Thus, the Commission concluded AICF to be an enterprise within the meaning of section 2(h) of the Competition Act, 2002 because it not only organizes chess tournaments but also undertakes income generating activities.

## 4.2 BCCI Case<sup>17</sup>

### 4.2.1 About BCCI

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(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

<sup>12</sup> Article 82 EC (now as Article 102 TFEU)

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

<sup>13</sup> Supra note 11

<sup>14</sup> *ibid*

<sup>15</sup>Sh. Dhanraj Pillay and others v. M/s. Hockey India, Case No. 73 of 2011, (Decided on 31/05/2013), para 10.8.3

<sup>16</sup>Hemant Sharma and Ors. v. All India Chess Federation, Case No. 79 of 2011, (Decided on 12/07/2018)

<sup>17</sup> Surinder Singh Barmi v. The Board of Control for Cricket in India, Case No. 61/ 2010, (29.11.2017, CCI)

BCCI, being registered under the Tamil Nadu Societies Registration Act, 1975 as a society regulates Cricket in India. BCCI operates under the pyramid structure of Sports Governance under the guidelines of the International Cricket Council (“herein after as ICC”). Amongst the various other guidelines, the one in conflict in this present case is Rule 28<sup>18</sup> of BCCI which talks about grant of permission to only members of BCCI. And in case of non-compliance of Rule 28 of BCCI rules, Section 32<sup>19</sup> of the ICC Bye-laws comes into picture, which provides for disapproval of cricket event conducted in contravention of Rule 28 of BCCI rules. And in addition to this is

Rule 29<sup>20</sup> of BCCI rules provides for ‘ban on participation in unapproved tournament.’

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<sup>18</sup> Rule 28 of BCCI

a) No club affiliated to a member or any other organization shall conduct or organize any tournament or any matches in which players /teams from the region within the jurisdiction of a member are participating or are likely to participate without the previous permission of the member affiliated to the Board.

b) No member or a club affiliated to a member or any other organization shall conduct or organize any tournament or any match/matches in which players/teams from region outside their jurisdiction are participating or are likely to participate without the previous permission of the Board. Permission for conducting or organizing any tournament or match/matches will be accorded only to the members of the Board and will be in accordance with the rules framed by the Board in this regard from time to time.

c) No member or a club affiliated to a member shall conduct or organize any international tournament or International match/matches in which foreign players/teams are participating or are likely to participate without the previous permission of the Board. Permission for conduction or organizing any International Tournaments or International match/matches will only be accorded to the Member of the Board and that too on very special occasions (e.g. celebration of jubilees of the member or club affiliated to a Member).

d) Private Organizations shall not be allowed to organize an International Tournament of International match/matches in which foreign players/teams are participating or likely to participate. If at all such a tournament/match/matches is to be staged, then it should be exclusively by the affiliated member which recommends the proposal and within whose jurisdiction the tournament/match/matches will be staged.

e) All International Tournaments, except in very exceptional cases, should be managed by the Board only.

<sup>19</sup> 32.1 A cricket match will be deemed to be “Disapproved Cricket”, and the terms of section 32.4 will apply to it, if:

32.1.1 it has not been approved by the Member in whose territory it is played; or

32.1.2 it is the subject of a Disapproval Notice issued by the ICC pursuant to section 32.2.

For these purposes, “Member” means any member board recognised as such by the ICC from time to time....

32.4 A Member shall, to the greatest extent permitted by applicable law (as determined in the reasonable opinion of the Member):

32.4.1 not participate in any way in any form of Disapproved Cricket;

32.4.2 not release or permit any players, match officials, coaching or management staff contracted to the Member to participate in any way in any form of Disapproved Cricket;

32.4.3 prohibit the participation by organisations and individuals under its jurisdiction in any form of Disapproved Cricket;

32.4.4 prohibit organisations under its jurisdiction from releasing or permitting any players, match officials, coaching or management staff contracted to them to participate in any form of Disapproved Cricket;

32.4.5 impose appropriate disciplinary sanctions on any organisation or individual under its jurisdiction who breaches the foregoing prohibitions;

32.4.6 recognise and enforce within its own jurisdiction any sanction, restriction or exclusion imposed on a player or organisation by another Member for breach(es) of the foregoing prohibitions; and

32.4.7 make it a condition of eligibility to participate in cricket matches/events played under its jurisdiction that the individual or organisation in question has not participated in any form of Disapproved Cricket for a specified period.

<sup>20</sup> Rule 29 of BCCI rules

### 4.2.2 Facts

The case before Competition Commission of India (herein after as CCI) came alleging abuse of dominant position by BCCI. To this the CCI delivered judgement under Section 27<sup>21</sup> of the Competition Act holding BCCI liable under section 4<sup>22</sup> of the Competition Act for abusing its

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- (a) no member, associate member or affiliate member of BCCI shall participate or extend help of any kind to an unapproved cricket tournament;
  - (b) no player registered with BCCI or its member, affiliate member or associate member could participate in an unapproved tournament; and
  - (c) no umpire or scorer on the BCCI Panel shall associate with an unapproved tournament.

<sup>21</sup>Section 27 of the Competition Act: Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:

- (a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;
- (b) impose such penalty, as it may deem fit which shall be not more than ten percent of the average of the turnover of the last three preceding financial years, upon each of such person or enterprises which are parties to such agreement or abuse.

Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader, or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten percent of its turnover for each year of the continuance of such agreement, whichever is higher.

- (c) [Omitted by Competition (Amendment) Act, 2007]
- (d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;
- (e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;
- (f) [Omitted by Competition (Amendment) Act, 2007]
- (g) pass such other order or issue such directions as it may deem fit.

Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.

<sup>22</sup>Section 4 of the Competition Act (1) No enterprise or group shall abuse its dominant position.

(2) There shall be an abuse of dominant position 4 [under sub-section (1), if an enterprise or a group]-

- (a) directly or indirectly, imposes unfair or discriminatory—
  - (i) condition in purchase or sale of goods or service; or
  - (ii) price in purchase or sale (including predatory price) of goods or service.

Explanation -For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

- (b) limits or restricts—
  - (i) production of goods or provision of services or market therefore; or
  - (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
- (c) indulges in practice or practices resulting in denial of market access [in any manner]; or
- (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation, -For the purposes of this section, the expression-

- (a) “dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to-
  - (i) operate independently of competitive forces prevailing in the relevant market; or
  - (ii) affect its competitors or consumers or the relevant market in its favour.

dominant position through its conduct of entering into an agreement with respect to IPL Media Rights for a period of 10 years. But this judgement could not stand long as it was set aside in appeal and the appellate tribunal sent back the matter to CCI for fresh disposal.

### 4.2.3 Findings

#### 4.2.3.1 BCCI- as an enterprise

According to section 4<sup>23</sup> of the Competition Act, the entity in order to fall within the purview of this section needs to be an enterprise or group. Section 2(h)<sup>24</sup> of the Competition Act provides a wider definition of the word enterprise which includes economic activity carried on by any entity. The activity relating to the enterprise must be economic, no matter whether it relates to production, storage, supply, distribution, acquisition or control of any article or goods or provision of services. Not only this, but also BCCI being a registered society under the Tamil Nadu Societies Registration Act, 1975 falls within the definition of the word person under section 2(l)<sup>25</sup> of the Competition Act. Although BCCI is the only body

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(b) “predatory price” means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

(c) “group” shall have the same meaning as assigned to it in clause (b) of the Explanation to section 5.

<sup>23</sup> Supra note 12

<sup>24</sup>section 2(h) of the Act: enterprise means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Explanation -For the purposes of this clause, -

(a) “activity” includes profession or occupation;

(b) “article” includes a new article and “service” includes a new service;

(c) “unit” or “division”, in relation to an enterprise, includes

(i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;

(ii) any branch or office established for the provision of any service;

<sup>25</sup> (l) “person” includes-

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm;

(v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(vii) any body corporate incorporated by or under the laws of a country outside India;

(viii) a co-operative society registered under any law relating to co-operative societies;

which regulates cricket in India but it operates under the whims and fancies of the apex body i.e. International Cricket Council. For Cricket in India, BCCI acts as custodian as well as responsible for organising different format of cricket matches/ tournaments. Therefore, these matches as well as tournaments form the source of income for BCCI. Thus, the regulatory role played by the BCCI does not affect its income generating role which makes him an enterprise under section 2(h) of the Competition Act. Along with this, the commission relied upon the financial statements of BCCI regarding IPL and its contribution towards GDP; which stands out to be nearly INR 11.5 billion for a 60 days event.

The Commission relied upon the pattern followed in European Union with regard to the status of Sports Federation engaged in economic activities. In *Motosyklististiki Omospondia Ellados NPID (MOTOE) v. EllinikoDimosio*<sup>26</sup>, it was held that where a person handles both administrative as well as organizational functions, such falls within the scope of Articles 82 EC and 86 EC.

#### **4.2.3.2 Relevant Market**

The Commission relied on the findings of the Director General who stated that relevant market in this case is the market for organisation of professional domestic cricket leagues/events in India. The Commission clarified the fact that professional domestic leagues like IPL stand on a different footing than other forms of Cricket in several ways. In private leagues like IPL, the team not only includes national players but also foreign players who are selected through bidding process by private clubs/ franchisees, who see it as profit-making ventures. Unlike other formats of cricket where the team represents the Nation or the concerned States in International or general domestic cricket events.

IPL in India shows a new era of Cricket in India and has contributed to the idea of Professional Domestic Cricket League in India, as in Europe and USA of football and Baseball. This form of cricket which is organized as per the viewer's convenience as well as for an interval of three hours is best suited for commercial exploitation. And incomparable revenue potentials of IPL adds on to it. Thus, on the basis of the above discussed points, the Commission concluded that the professional domestic cricket leagues like IPL stands on a different footing than other formats of cricket.

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(ix) a local authority;

(x) every artificial juridical person, not falling within any of the preceding sub-clauses;

<sup>26</sup> Case No. C-49/07 (2008) ECR I - 4863

The Commission realized that cricket, as a product stands on a different footing altogether as compared to general entertainment television programmes and other sports even though they possess common viewership. There is nothing to show that on lowering the price of ticket of football event, or on increasing the price of ticket for cricket match, or increasing the amount for channel subscription, the viewers will prefer other sports over cricket. This shows the inclination of viewers towards cricket. This shows non-substitutability of the cricket as a sports with other form of sports or with general entertainment programmes.

#### **4.2.3.3 Dominant Position**

After examination of the given facts and circumstances, the Commission held BCCI to be enjoying dominant position with respect to the above held relevant market based on the following conclusions drawn by the director general: The BCCI, custodian of cricket in India is the only authority which regulates cricket in India and it gains its authority from ICC. Some of the sections of ICC manual which authorises BCCI are:

- Section 32<sup>27</sup> of ICC manual states that the exclusive authority to sanction/ approve cricket events in India vests in the BCCI. Any tournament which is not approved by BCCI, is Disapproved. This section gives a position of dominance to the BCCI in context of authorising cricket tournaments in India. I.e. without the previous sanction from BCCI, no tournament can be held in India. Therefore, this section enables the BCCI enjoy his independent position in the Cricket sector in India.
- Section 28<sup>28</sup> of the BCCI Rules which provides for the permission to conduct tournaments.
- Section 29<sup>29</sup> of the BCCI Rules which provides for ban on participation in unapproved tournaments.

The above sections clearly illustrate the dominant nature of the BCCI, being the only regulatory authority of Cricket in India, a member of ICC. Thus, through the above sections and rules the BCCI derives dominant position in the relevant market of organising professional private cricket tournaments and provides entry barriers for the cricket leagues, other than organised by it. In addition to this the market shares and the revenue it makes during IPL add to its dominant position.

#### **4.2.3.4 Abuse of Dominant Position:**

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<sup>27</sup>Supra note 9

<sup>28</sup> Supra note 8

<sup>29</sup> Supra note 10

The Commission in order to determine the abuse of dominant position considered the agreement entered by BCCI in-order to grant IPL media rights which stated that during the period of 10 years i.e. the agreement period between BCCI and the SONY TV, BCCI will not sanction, support, organise, recognise another professional T20 cricket which is competitive to IPL. Along with this rules and regulation laid down by the BCCI comprising rule 28(b)<sup>30</sup> and 28(d)<sup>31</sup> are in contravention of the section 4(2)(c)<sup>32</sup> of the Competition Act as it acts as an entry barrier for other cricket leagues to organise, conduct professional domestic cricket tournaments. These restrictions are in no way for development of Cricket in India, in fact they act as an entry barrier for new entrants thereby, restricting the development to and from BCCI only.

Thus these restrictive conditions in no case suggests that they preserve the interest of Sports in the country but are highlighting the way BCCI is protecting the commercial interest of the Sports in the Country. Thus, BCCI intended to foreclose the competition and restrictions had no nexus with the objective/ Interest of Cricket in India. Thus the BCCI cannot seek the protection under the section 32<sup>33</sup> of the ICC bye-laws. The same policy was followed by European Commission in Mecca-Madina Case.<sup>34</sup>

#### **4.2.5 ORDER**

Order of cease and desist was passed and BCCI was directed not to pass blanket restrictions regarding organization of professional domestic cricket leagues/ events by non-members. And in order to avoid BCCI to take advantage of its dominant position, BCCI was directed to clarify the rules with respect to the organization of professional domestic cricket leagues/ events in India. Along with this pecuniary liability was imposed of INR 52.24 crores.

#### **4.3 Hockey Case<sup>35</sup>**

##### **4.3.1 Facts**

##### **4.3.1.1 Jurisdiction**

Although the Hockey India (herein after 'HI') and International Hockey Federation (herein after as 'FIH') are non-profit making federations but their involvement in award of rights like franchisee rights, media rights, TV rights, sponsorship rights and different rights help create incomes by these alliances make them fall under the classifications of business exercises.

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<sup>30</sup> Supra note 8

<sup>31</sup> *ibid*

<sup>32</sup> Supra note 12

<sup>33</sup> Supra note 9

<sup>34</sup> Case C-519/04P, ECR 2006, I-6991

<sup>35</sup> Sh. Dhanraj Pillay and others v. M/s. Hockey India, Case No. 73 of 2011, (Decided on 31/05/2013)

Such activities are to be viewed differently from the non-profit making nature of these federations. Therefore, the activities carried on by HI and FIH fall under the category of economic activities. Thus fall under the category of ‘enterprise’ and ‘person’ defined under the section 2(h)<sup>36</sup> and section 2(l)<sup>37</sup> of the Competition Act respectively.

The Director General (herein after as ‘DG’) relied on the case Hemant Sharma & Ors. v. Union of India & Anr.<sup>38</sup>, where the Delhi High Court held Chess Federation as an ‘enterprise’ under section 2(h)<sup>39</sup> of the Act. The judgement is also applicable to the instant case where HI and FIH fall under the same category as the All India Chess Federation.

#### **4.3.1.2 Relevant Market**

The DG considered supply side and demand side in-order to evaluate the Relevant Market. According to DG the Indian Hockey players who are the primary beneficiaries of the services rendered by the International Hockey activities in relation to conduct and governance of Hockey constitute the demand side. On the other hand, HI which is responsible for conducting and organising hockey tournaments constitute the supply side. In response to a change in supply side by conducting any other sports, the hockey players will not shift to that Sports. In this way, the market for leading and overseeing household and global hockey exercises for the two people alongside the financial exercises led by them in India framed the pertinent market under section 2(r)<sup>40</sup> of the Competition Act.

#### **4.3.1.3 Dominant Position**

Under the Pyramidal Structure of Sports, the HI is the National Level Regulatory Authority responsible for conducting and governing all hockey activities and enjoys dominant position in team selection and organising international events, etc. The DG took into account the restrictions imposed by the HI on its player under Code of Conduct Agreement (herein after as ‘CoC agreement’) which highlights its dominant position. The DG placed its reliance on the Minnesota Made Hockey, Inc. V Minnesota Hockey, Inc., Civil No.10-3884(JRT/JJK), United States District Court, District of Minnesota) affiliated to United States Olympic Committee, where it was held, “Given the unique status of defendants as an organization under the auspices of the USOC, Supreme Court precedent involving

<sup>36</sup> Supra note 14

<sup>37</sup> Supra note 15

<sup>38</sup> W.P.(C)5770/2011 decided by Delhi High Court

<sup>39</sup> Supra note 14

<sup>40</sup>Section 2(r) of the Competition Act, 2002: relevant market means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.

similar sporting entities, such as the National Collegiate Athletic Association, is instructive. The Supreme Court has noted that the NCAA's role "in the regulation of amateur collegiate sports" has rendered it such a powerful player in areas that touch collegiate sports that "the absence of proof of market power does not justify" anti-competitive behaviour."<sup>41</sup>

#### **4.3.1.3.1 Abuse of Dominant Position**

Abuse of dominant position was alleged by the informants on the basis of following grounds:

- a) By introducing rules related to sanctioned and unsanctioned events, HI has foreclosed the market for competitors with respect to organisation of domestic hockey events.
- b) Dictating the participation of players in domestic hockey events organised by competitors of HI, by imposing strict terms and conditions in the CoC agreement.

The DG found that the rules laid down by the HI in collaboration with FIH came up only after the WSH, which is indicative of the fact that the intention of laying the rules after WSH was to continue enjoying the monopoly which was being enjoyed by the HI over the game of Hockey. WSH was one of the domestic event of Hockey which was organised after sanction from one of the National Association for Hockey i.e. IHF. HI and FIH in-order to prevent the hockey players from participating in WSH issued a letter that in-case any of the player participated; he will not be permitted to play for 12 months in National Hockey Team. Hence this warning letter was a clear indicative of the anti-competitive practice carried on by HI and FIH. This information was corroborated by the letter dated 05-06-2012 from the Ministry of Youth Affairs and Sports which proved that those players who played in World Series Hockey (herein after 'WSH'), those players were restricted from playing 4 nation test matches in London and 7 nation Azlan shah hockey tournaments in Malaysia.

This sort of conduct is anti-competitive whereby it forecloses the market for new organisers of Hockey matches. In addition to this, these rules are not in the interest of Hockey, Hockey Players, Consumers as well as the spectators. Thus this conduct was in violation of Section 4(2) (a) (i)<sup>42</sup> and 4(2) (c)<sup>43</sup> of the Competition Act.

#### **4.3.1.4 Conflict with Section 3 of the Competition Act**

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<sup>41</sup> Supra note 25, para 7.3.1

<sup>42</sup> Supra note 12

<sup>43</sup> *ibid*

Whether the Code of Conduct signed between HI and FIH is in contravention of section 3(4)<sup>44</sup> of the Competition Act?

<sup>44</sup>section 3(1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

- (a) directly or indirectly determines purchase or sale prices;
- (b) limits or controls production, supply, markets, technical development, investment or provision of services;
- (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
- (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation, -For the purposes of this sub-section, “bid rigging” means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including-

- (a) tie-in arrangement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal;
- (e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Explanation, - For the purposes of this sub-section, -

- (a) “tie-in arrangement” includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
- (b) “exclusive supply agreement” includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;
- (c) “exclusive distribution agreement” includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;
- (d) “refusal to deal” includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;
- (e) “resale price maintenance” includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

(5) Nothing contained in this section shall restrict—

- (i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under-
  - (a) the Copyright Act, 1957 (14 of 1957);
  - (b) the Patents Act, 1970 (39 of 1970);
  - (c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);
  - (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);
  - (e) the Designs Act, 2000 (16 of 2000);

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The relationship between the HI and the FIH lack the following particulars:

- a) The players are not contracted by HI as professional player to play for the national team.
- b) No match fee or retainer-ship fee is given to the players by HI to players for representing the national team.
- c) There is no system of a regular employment or engagement of players by HI.
- d) No commercial relationship whatsoever is existing between players and HI at present.<sup>45</sup>

Thus due to lack of commercial relationship between the players and the HI, section 3(4)<sup>46</sup> of the Competition Act is not attracted. In addition to this the decision of the HI and FIH to not allow and cooperate with any event not organised or proposed by the members of the FIH amounts to contravention of section 3(3)(b)<sup>47</sup> of the Competition Act.

#### **4.3.2 Analysis by Commission**

When the power to sanction an event or organization is vested in a single entity i.e. National Association in the present case, there are more likelihoods of misusing their powers by abusing their dominant position in the Sports. This case highlights the same, whereby the players of the hockey are restricted from participating in unsanctioned events; which results in denial of entry to the Competitors. Thus the Sports sector is nowadays not only limited to conducting and organization of Sports events, but is earning lots of revenue.

##### **4.3.2.1 Pyramidal Structure**

For analysing the present issue, the Commission analysed the pyramidal structure of Sports which is followed in India. In the Pyramidal Structure, every member state has a single National Sport Association per Sport. In a hierarchy, the National Sports Association operates under a single continental/ national federation, which operates under a single worldwide federation lying at the top of the pyramid. For Olympic Level Sports, International Olympic Committee ('IOC') forms the top of the pyramid, followed by FIH, then Asian Hockey Federation, which is a continental federation and then National Association – Hockey India, lying at the base of the Pyramid structure.

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(f) the Semiconductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);

(ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.”

<sup>45</sup>Supra note 25, para 7.6.1

<sup>46</sup> Supra note 34

<sup>47</sup> ibid

#### **4.3.2.1.1 Merits of Pyramid Structure**

- i. Pyramid structure helps ensure that proper account, of uniform rules and uniform time table for Competition, are taken care of.
- ii. Pyramid Structure ensure:
  - a) Organization of National Events;
  - b) Selection of National Players for International Competitions;
  - c) Enforcement of rules for:
    1. Organisation and prioritisation of International Competition;
    2. Protecting integrity of the Sports;
    3. Maintaining Public Confidence in Sports.

#### **4.3.2.1.2 Effect of Pyramidal Structure on Competition**

Pyramidal structure is being used in a negative sense by:

- Affecting the decision makings of the players with respect to the selection of Federations/ Clubs.
- Discriminating and fore-closing of entry of the rival leagues.

Although this model was established for enhancing the efficiency of Sports, but is now being misused in order to abuse its dominant position.

#### **4.3.2.2 Inherence Proportionality Test**

So as to address the Competition Issues in Sports division, the proper methodology is the Inherence-proportionality test. This test gives that if the supposed prohibitive conditions are inalienable to the goals of the Sports Federation. The prohibitive conditions will not be viewed as hostile to serious, if:

- i. The asserted prohibitive conditions are intrinsic to the targets of the Sports Federation;
- ii. The impact of the prohibitive conditions on the financial rivalry among the partners or on free development of the players is proportional to the genuine sporting interest examined

Rather than categorising rules under the notion “Purely Sporting Rules”, now all the rules, whether organizational/ structural/ regulatory in nature must be judged in the light of Inherence and Proportionality test.

#### **4.3.2.3 Issues**

Thus keeping in view the above considerations, the Commission framed the following issues for determination:

- i. Whether the Commission has jurisdiction over the HI and FIH?
- ii. Whether there has been any abuse of dominance by HI/ FIH?
- iii. Whether there has been a contravention of Section 3 of the Act?

### **4.3.3 Decision**

#### **4.3.3.1 Jurisdiction**

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In order to decide on the issue of Jurisdiction, the Commission relied on some foreign judgements as well as International Jurisprudence and literature on Sports Sector laid down in other countries related to the nature of the Sports Federations. The main contention of the opponent was the non-profit making nature of the Federations which are not carrying any economic activities. Thus are not the subject matter of the Competition Law. The Commission relied on the case MOTOE case<sup>48</sup> in which it was held that the way that MOTOE, the candidate in the primary procedures, is itself a non-benefit making affiliation has, starting there of view, no impact on the arrangement as an endeavour of a legitimate individual, for example, ELPA. In the first place, it isn't incomprehensible that, in Greece, there exist, notwithstanding the affiliations whose exercises comprise in sorting out and monetarily misusing motorcycling occasions without trying to make a benefit, affiliations which are occupied with that action and do try to make a benefit and which are in this manner in rivalry with ELPA. Second, non-benefit making affiliations which offer merchandise or administrations on a given market may wind up in rivalry with each other. The achievement or monetary endurance of such affiliations relies at last upon their having the option to force, on the pertinent market, their administrations to the disadvantage of those offered by different administrators. The Commission further relied on the Minnesota made Hockey Inc. case<sup>49</sup> in order to decide on the non-profit making contention raised by the HI in the present case. The US District Court held that:

“Since the defendants here offer services in exchange for money, their actions are commercial and trigger potential liability (“The exchange of money for services, even by a non-profit organization, is a quintessential commercial transaction. Therefore, the Court finds unavailing defendants” argument for immunity from antitrust law based on their non-profit status.”).”

The White Paper<sup>50</sup> released by EC on Sports note that post Meca Medina<sup>51</sup> judgement, National sports associations and International Sports Associations may be both undertaking under Articles 81<sup>52</sup> and 82<sup>53</sup> EC and associations of undertakings under Article 81<sup>54</sup> EC.

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<sup>48</sup> Motosykletistiki Omospondia Ellados NPID (MOTOE) v. Elliniko Dimosio, Case No C-49/07, THE COURT (Grand Chamber)

<sup>49</sup> Minnesota Made Hockey, Inc. V Minnesota Hockey, Inc., Civil No.10-3884(JRT/JJK)

<sup>50</sup> White Paper on Sport- European Commission, COM (2007) 391 final, (Assessed on 15<sup>th</sup> May, 2020, 15:45PM)

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<sup>51</sup> Meca-Medina and Majcen v. Commission Case C- 519/04P, Meca-Medina and Majcen v. Commission, 2006 E.C.R I06991

<sup>52</sup> Article 81 EC (now as Article 101 TFEU)

Sports associations are undertakings where they themselves carry out economic activity, e.g., by commercially exploiting a sport event. Sports associations are associations of undertakings under Article 81<sup>55</sup> EC to the extent they constitute groupings of sport clubs/teams or athletes for which the practice of sport constitutes an economic activity.<sup>56</sup>

Based on above considerations, Commission held that the National Sports Association are the subject matter of the Competition Law and the HI fall within the jurisdiction of the Commission. With respect to FIH, which is an International Federation. The Commission held that it has jurisdiction over it placing reliance on section 2(1)<sup>57</sup> of the Competition Act which talks about 'person' and section 32<sup>58</sup> of the Competition Act which talks about extra-territorial jurisdiction.

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

<sup>53</sup> Article 82 EC (now as Article 102 TFEU)

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

<sup>54</sup> Supra note 42

<sup>55</sup> *ibid*

<sup>56</sup> Supra note 25, para 10.8.3

<sup>57</sup> Supra note 15

<sup>58</sup> The Commission shall, notwithstanding that, -

- (a) an agreement referred to in section 3 has been entered into outside India; or

### 4.3.3.2 Relevant Market

The word applicable item showcase is characterized under the section 2(t) of the Competition Act as: a market involving each one of those items or administrations which are viewed as compatible or substitutable by the buyer, by reason of attributes of the items or administrations, their costs and expected use." But so as to characterize the significant item advertise as for this case, it is basic to recognize the buyers and the substitutability from the customer perspective. The commission characterized important item advertise contingent on the two primary issues before the Commission for example significant item advertise, as respect to the claims of dispossession of adversary classes as, "the market for association of private expert hockey groups in India. And as regard to the second issue i.e. restrictions on the movements of the players- in this case HI was taken as a consumer, because HI hired the service of the Hockey Players in consideration of the match fees.

### 4.3.3.3 Dominance

The regulatory power of HI is the most significant source of dominance in the above-said defined market. HI, a National Association for Hockey in India is vested with various rights by the FIH operating in the Pyramidal Structure. Amongst the various other rights, one such right is the right to sanction/ approve hockey events to be organised by other competing leagues. This creates an entry barrier for the other competing leagues. Not only this but also the players willing to participate in the events organised by other leagues have to obtain a NOC from HI. This clearly shows that HI enjoyed a dominant position under the pyramidal structure. The Commission relied on the MOTOE<sup>59</sup> case in which it was observed that: An arrangement of undistorted rivalry, for example, that accommodated by the bargain, can be ensured just if uniformity of chance is made sure about between the different financial administrators. To depend a legitimate individual, for example, ELPA, the National Association for Motorcycling in Greece, which itself sorts out and financially abuses

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- (b) any party to such agreement is outside India; or
  - (c) any enterprise abusing the dominant position is outside India; or
  - (d) a combination has taken place outside India; or
  - (e) any party to combination is outside India; or
  - (f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India, have power to inquire in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 of the Act into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India and pass such orders as it may deem fit in accordance with the provisions of this Act."

<sup>59</sup> Motosykletistiki Omospondia Ellados NPID (MOTOE) v. EllinikoDimosio No C-49/07, THE COURT (Grand Chamber)

motorcycling occasions, the errand of giving the equipped organization its agree to applications for approval to compose such occasions, is equivalent accepted to giving upon it the ability to assign the people approved to arrange those occasions and to set the conditions wherein those occasions are composed, consequently setting that element at an undeniable bit of leeway over its rivals. Such a privilege may in this way lead the endeavour which has it to deny different administrators access to the pertinent market.

Amongst all other facts, the fact that HI was in a position to choose from many players and not vice-versa; shows the nature of HI – a monopsony buyer. These facts clearly establish that HI was in a position to act independent of the Hockey players.

#### **4.3.3.4 Abuse of Dominant Position**

In order to decide on the abuse of dominant position, the Commission relied on the FIH byelaws which provided for sanctioned/ unsanctioned event: “Where a proposed domestic event would be open only to teams in membership of or affiliated to one National Association, and would be staged entirely within that National Association’s territory, then in order for that event to be recognised as a Sanctioned Event it must be organised or sanctioned by that National Association. Where a proposed Domestic Event would be open to more than one National Association’s teams and/or Athletes, and/or would be staged by one National Association in another National Association’s territory or in more than one National Association’s territory, then in order for that event to be recognised as a Sanctioned Event: a. if the event is open only to teams and/or Athletes in membership of or affiliated to National Associations within one Continental Federation, and the event would be staged entirely within that continent, then it must be sanctioned by that Continental Federation; while if the event is open to teams and/or Athletes in membership of or affiliated to National Associations from different Continental Federations, and/or it would be staged (in whole or in part) outside of the teams” continent, it must be sanctioned by the relevant Continental Federations and by the FIH.”

Keeping in view the above byelaw and the nature of event to be conducted by the WSH, the sanctioning authority was the Continental Federation and FIH, and not the National Association. Thus, HI was not indeed the sanctioning authority. The Commission concluded that the allegations against HI/ FIH of denying access to rivals to the market was not proved. And hence there was no contravention of section 4(2)(c)<sup>60</sup> of the Act.

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<sup>60</sup> Supra note 12

#### 4.3.4 Conclusion

In BCCI case, whereby the Competition Commission of India held that BCCI to be in dominant position, and abused its dominant position. The Act of BCCI in which BCCI imposed a self-regulatory condition in the agreement for IPL Media Rights and the other were the Rules 28(b)<sup>61</sup> and 28(d)<sup>62</sup> of the BCCI rules which required prior approval from BCCI in order to conduct a cricket match; were held to be violative of section 4(2)(c)<sup>63</sup> of the Act.

Contrary to the BCCI case, in Hockey India case the Commission failed to take account of the commercial nature of the Hockey India. In the case of Hockey India, Hockey India imposed restrictions on the free movement of the hockey players. And the case clearly shows the monopsony nature of HI, whereby the players had no option rather than being ruled by the monopolistic policies of the HI. But the Commission failed to take cognizance of the point of HI being a commercial exploiter of the Sport and not merely a regulator.

The facts of the BCCI case and the HI case resembled the facts in the case *Hendry v. World Professional Billiards and Snooker Association Ltd.*<sup>64</sup>; whereby the Court held that the WPBSA the governing body of snooker and billiards to be violating Article 81<sup>65</sup> and 82<sup>66</sup> of the E.C. Along with this the Competition Commission of India failed to apply proportionality test in Hockey India case. The Inherence proportionality test was propounded in the *Meca-medina* case.

#### 4.4 Chess Case<sup>67</sup>

##### 4.4.1 Facts

The informants filed information under section 19(1)(a)<sup>68</sup> of the Competition Act, 2002 alleging that All India Chess Federation (herein after as AICF), being a society registered under the Tamil Nadu Societies Registration Act, 1975 is a National Sports

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<sup>61</sup> Supra note 8

<sup>62</sup> *ibid*

<sup>63</sup> Supra note 12

<sup>64</sup> (2002) E.C.C.8.

<sup>65</sup> Supra note 42

<sup>66</sup> Supra note 43

<sup>67</sup> *Hemant Sharma and Ors. v. All India Chess Federation*, Case No. 79 of 2011, (Decided on 12/07/2018)

<sup>68</sup> Section 19(1) of the Competition Act: The Commission may inquire into any alleged contravention of the provisions contained in subsection (1) of section 3 or sub-section (1) of section 4 either on its own motion or on-

(a) receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or

(b) a reference made to it by the Central Government or a State Government or a statutory authority.

Federation (herein after as “NSF”) for sport of Chess. AICF is also affiliated to Federation Internationale des Echecs (herein after as “FIDE”), which is the apex International body governing the Sport of Chess. The Informants, being the Chess Players are registered with AICF on an annual basis, which is necessary in order to be selected for National or International events. Being registered to AICF, the players are prohibited from participating in an unauthorized tournament/ championship by AICF. In case of participation in an unauthorized tournament/ championship, the participant players are banned for a period of one year from participating in the National Chess Championships and other events. In addition to this, such players have to surrender fifty (50) percent of the prize money to AICF, if any, which that players may have gain through participation in an unauthorized event; and has to make an unauthorized apology along with an understanding that he/she will not participate in any unauthorized tournament in future. AICF, without giving any prior notice to the participants removed the ELO Rating<sup>69</sup> of the informants. These all were the consequences of participating in the Chess tournament sponsored by the Chess Association of India (“CAI”), which was not authorized by AICF. Thus, the informants alleged the practices in contravention of the provisions of the section 3<sup>70</sup> and 4<sup>71</sup> of the Competition Act.

#### 4.4.2 Conflict

The preliminary issue was whether AICF is an enterprise or not; whereas other issues involved were:

1. What is/ are the relevant market(s)<sup>72</sup>?
2. Whether AICF enjoys dominant position in the relevant market(s)? If the answer to issue no.2 is positive, the next question to be decided is whether there has been an abuse of dominant position by AICF?

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<sup>69</sup>ELO Rating System is a method for calculating the relative skill levels of players in a two player games such as Chess, and Go.

"Elo" is often written in capital letters (ELO), but it is not an acronym. It is the family name of the system's creator, Arpad Elo (1903–1992), a Hungarian-born American physics professor. Elo was originally invented as an improved chess rating system although it is used in many games today. It is also used as a rating system for competitive multi-player play in a number of computer games, and has been adapted to team sports including international football, American college football and basketball, and Major League Baseball. Arpad Elo was a master-level chess player and an active participant in the United States Chess Federation (USCF) from its founding in 1939. The USCF used a numerical ratings system, devised by Kenneth Harkness, to allow members to track their individual progress in terms other than tournament wins and losses. The Harkness system was reasonably fair, but in some circumstances gave rise to ratings which many observers considered inaccurate. On behalf of the USCF, Elo devised a new system with a more statistical basis.

<sup>70</sup> Supra note 34

<sup>71</sup> Supra note 12

<sup>72</sup> Supra note 30

3. Whether the declaration, which the players are made to sign by understanding not to play any open tournament, is anti-competitive agreement as per the Act and it causes appreciable adverse effect on Competition as per section 3(4)<sup>73</sup> of the Competition Act read with section 3(1)<sup>74</sup> of the Competition Act?

#### 4.4.3 Conclusions reached by Commission

##### 4.4.3.1 AICF- an enterprise

AICF, being a registered society under the Tamil Nadu Societies Registration Act, 1975 is a person under section 2(1)<sup>75</sup> of the Competition Act. AICF, on one hand enjoys the status of National Sports Federation assigned by the Government of India; and on the other hand is the only body in India, for regulating and organising events for the Sport of Chess, recognised and affiliated from FIDE<sup>76</sup>. In addition to this, the Constitution and the Bye- Laws of the AICF provides that it was established to organise national and international championships. Therefore, the activity of organising chess events/ tournaments is a revenue generating activity falling within the ambit of Section 2(h)<sup>77</sup> of the Competition Act. Even though AICF conducted Chess events through or in collaboration with the State Association/ Clubs, it's deemed to be organised by the AICF. The Commission took into account the financial statements of AICF for the financial year 2008-09, 2010-11, 2015-16 to evaluate the income earned by AICF through the sale of advertisement space, sale of media rights and sponsorship; and financial statements of 2011-12, 2012-13, 2013-14 to evaluate the income from registration fee, recognition fees (i.e. share of prize) entry fee, non- refundable earnest money deposits, donor entry fees, etc. The Commission upheld that AICF is an enterprise within the meaning of section 2(h)<sup>78</sup> of the Competition Act.

“The Commission notes that though AICF may plough back all its revenue into the game of chess but that still does not change the nature of economic activities performed by it. It is observed that concept of enterprise does not depend on profit motive alone. The characterizing highlight of the idea 'undertaking' is that it takes part in a financial movement inside the ambit of Section 2(h) of the Act. On the off chance that an individual is occupied with any such action, regardless of with or without benefit thought process, it would be

<sup>73</sup> Supra note 34

<sup>74</sup> ibid

<sup>75</sup> Supra note 15

<sup>76</sup>The Fédération Internationale des Échecs is an international organization based in Switzerland that connects the various national chess federations and acts as the governing body of international chess competition.

<sup>77</sup> Supra note 14

<sup>78</sup> ibid

considered as a venture, as it interfaces with the market and subsequently, with different options for the item or administration being referred to. The essential assignment of a games alliance is to embrace administrative exercises, for example, confining guidelines and undertaking measures to save the respectability of the game. Nonetheless, nonappearance of a benefit thought process doesn't adjust the endeavour status if the concerned substance seeks after monetary exercises, and that too salary creating financial exercises.<sup>79</sup>

Thus, the Commission concluded that the AICF is an enterprise within the meaning of section 2(h) of the Competition Act. Reference is drawn to the decisions of the Commission in *Dhanraj Pillay and others v. Hockey India* (Case No. 73 of 2011) and *Surinder Singh Barmi v. Board for Control of Cricket in India* (Case No. 61 of 2010) in this regard. Oppressing monetary exercises of sports alliance to rivalry law is additionally reliable with the practices followed by develop rivalry systems like the European Union. In *Motosyklestistiki Omospondia Ellados NPID (MOTOE) v. EllinikoDimosio* [Case No. C-49/07 (2008) ECR I - 4863], it was held that "A legitimate individual whose exercises comprise not just in partaking in regulatory choices approving the association of motorcycling occasions, yet in addition in sorting out such occasions itself and in entering, in that association, into sponsorship, promoting and protection contracts, falls inside the extent of Articles 82 EC and 86 EC."<sup>80</sup>

#### **4.4.3.2 Issue 1: Relevant Market**

Regardless of supposed maltreatment of prevailing position, outline of significant market is significant as it defines out the limits of rivalry investigation. Appropriate outline of pertinent market is important to recognize in a precise way, the contending options accessible to the buyers and likewise the serious requirements looked by the venture under investigation. The way toward characterizing the significant market is generally a procedure of deciding the substitutable merchandise or administrations as likewise to portray the geographic extension inside which such products or administrations contend. It is inside the characterized item and geographic limits that the serious impacts of a specific business lead are to be evaluated.<sup>81</sup>

For this situation, the Director General finished up the Relevant Market as the market for 'leading and overseeing residential and universal chess exercises for the two people and hidden financial exercises in India.' But the CCI chose the opposite and saw that there are two

<sup>79</sup>Supra note 25, para 26

<sup>80</sup>ibid, para 27

<sup>81</sup>ibid, para 32

important markets in the moment case-in particular 'showcase for association of expert chess competition/occasions' and 'market for administrations of chess players'.

“In Dhanraj Pillay case<sup>82</sup>, the Commission noted that the sports sector comprises multitude of relationships. For example, a sports federation may be a seller of various rights such as media rights, sponsorship rights, and franchise rights associated with sport event (s) under its purview and correspondingly, there would be a separate set of consumers for each of such rights. However, the ultimate viewers of sport events are the end consumers, who influence the popularity of the sport, which in-turn determines the value proposition of the commercials associated in different verticals. Also, a sports federation requires services of players, officials etc. for staging an event which makes sports federations themselves as consumers. In this multitude of relationships, defining the relevant consumer would enable defining the relevant market.”<sup>83</sup>

“The Commission notes that every sport has unique characteristics which distinguish it from other sports. Given the unique characteristics of chess, it is unlikely that consumers will regard any other sport or event as substitutable. Similarly, from an intended use perspective also entertainment from sport may not be regarded as substitutable with other forms of general entertainment. Thus, other sports and other forms of entertainment do not constrain chess in any manner.”<sup>84</sup>

#### **4.4.3.3 Issue 2: Dominant Position**

The Commission considered the perceptions made by the Director General and maintained that AICF appreciated predominant situation in the pertinent market, for example, 'showcase for association of expert chess competitions/occasions' and 'market for administrations of chess players'. The Commission relied on the observations made by the DG that the AICF is a National Sports Federation for the game of Chess in India i.e. the only national level chess federation affiliated to FIDE. Being the sole and exclusive authority to regulate and govern the game of chess in India, it has the authority to select Indian chess players, conduct national, open and international tournaments, approve tournaments, place restrictions on participation of players, etc.

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<sup>82</sup> Supra note 25

<sup>83</sup> Supra note 25, para 35

<sup>84</sup> Ibid, para 36

Under the pyramid structure of the Sports Governance, AICF being the regulatory body enjoyed the dominant position for controlling and managing the game of Chess. The Regulatory power of the AICF include sanctioning/disapproving proposals for organisation of chess events and subjecting players to disciplinary action in case of participation in unauthorised chess events. The ‘Code of Conduct of the players’<sup>85</sup> provided under the Constitution and Bye- Laws of the AICF and the rules related to Organisation of National Championship/Tournaments; Conditions for organising chess events also indicated the same<sup>86</sup>.

“These rules undoubtedly confer AICF with control over professional chess players in India, who have no bargaining power. As per the rules, the players desirous of participating in FIDE/Asian/Commonwealth Championships are mandatorily required to participate in National Championships organised by AICF. Further, players registered with AICF alone can participate in State, National and International Championships recognised by FIDE and AICF. By controlling the participation of professional chess players in chess events organised by other entities, AICF enjoys control over organisation of chess events. The Commission notes that sports federation like AICF engaged/ involved in organisation of sports events and economic exploitation of such events are put to advantage if they are vested with the authority to approve/sanction organisation of similar events by other. Without a doubt, such favourable position is a critical wellspring of market power. Further, AICF's administrative job enables it to make passage obstructions for different chess occasions other than those perceived by it, in type of requiring acknowledgment.”<sup>87</sup>

Here in the present case, it is clear that AICF is a dominant consumer of services provided by chess players, which is illustrated by clause Z<sup>88</sup> of the Code of Conduct for players provided in the Constitution and Bye-laws of AICF and along with that the declaration given by the

<sup>85</sup>(x) Players desirous of participating in any official FIDE/ Asian/ Commonwealth Championships should have participated in the last year's respective age group, open National Championships. However, the Federation shall have the right to accept or reject any such requests.

y) Players shall strictly abide by the Constitution, Rules, Regulations and Orders/Instructions of the Federation in force from time to time and also abide by the Instructions of Arbiters and AICF office bearers. (z) No player shall participate in any tournament not authorised by All India Chess Federation or its affiliate members or District Association and units affiliated to them. The above violation shall attract disciplinary proceedings including cash penalties apart from debarring from participating in any tournaments in future.

<sup>86</sup>(j) Players registered with AICF alone will be eligible to participate in the Championships.

<sup>87</sup>Supra note 25, para 47

<sup>88</sup> No player shall participate in any tournament not authorised by All India Chess Federation or its affiliate members or District Association and units affiliated to them. The above violation shall attract disciplinary proceedings including cash penalties apart from debarring from participating in any tournaments in future.

players at the time of their registration with AICF for not participating in any event other than organized by AICF. Therefore, subjecting a registered player to disciplinary proceedings, including cash penalties and debarment from participating in any tournaments in future, justified the monopsony power enjoyed by AICF.<sup>89</sup>

Subsequently, the Commission inferred that AICF appreciates prevailing situation in both the significant market for example advertise for association of expert chess competitions/occasions in India and market for administrations of chess players; on the basis of the regulatory power enjoyed by AICF under the pyramid structure of Sports Governance and being the predominant buyer of the services provided by professional chess players.<sup>90</sup>

#### **4.4.3.4 Issue 3: Abuse of Dominant Position**

At the beginning, the Commission takes note of that opposition cases identifying with sports affiliations/alliances as a rule emerge because of contention between their administrative capacities and financial exercises embraced by them. The Commission is of the view that arrangement of endorsement under the pyramid structure of sports administration is a typical marvel of sports organization. In any case, rules overseeing the players and the association of game occasions/competitions frequently make a prohibitive situation for the financial exercises that are coincidental to wear. Not at all like other maltreatment cases, could these be supported on the off chance that it is exhibited that the limitation on rivalry is a fundamental prerequisite to serve the improvement of game or safeguard its honesty. Be that as it may, if limitations hinder rivalry without having any conceivable defence, the equivalent would fall foul of rivalry law. In *Dhanraj Pillay v. Hockey India* (Order dated 31st May, 2013 in Case No. 73 of 2011), the Commission has noticed that "The Commission... .. is of the supposition that purpose/reason behind presentation of the rules as put together by FIH identifying with endorsed and unsanctioned occasions should be acknowledged before coming to any end results. Factors, for example, guaranteeing supremacy of national agent rivalry, discourage free riding on the ventures by national affiliations, keeping up the schedule of exercises in a strong way not cutting over the interests of taking an interest of individuals, protecting the honesty of the game, and so forth are intrinsic to the precise improvement of the game, which is the prime target of the games affiliations. Moving further,

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<sup>89</sup>Supra note 25, para 49

<sup>90</sup> Supra note 25, para 50

on the proportionality viewpoint, the Commission opines that proportionality of the guidelines must be chosen by considering the way in which guidelines are applied.<sup>91</sup>

A comparable methodology has been the act of develop rivalry systems too. The White Paper on Sports gave by the European Commission [COM (2007) 391] states that "... in regard of the administrative parts of game, the evaluation whether a specific brandishing rule is perfect with EU rivalry law must be put forth on a defence by-case premise, as of late affirmed by the European Court of Justice in its Meca-Medina administering [Case C-519/04P, ECR 2006, I-6991]. The Court gave an explanation with respect to the effect of EU law on brandishing rules. It excused the idea of "simply donning rules" as insignificant for the topic of the material ness of EU rivalry rules to the game area... The Court perceived that the particularity of game must be thought about as in prohibitive consequences for rivalry that are characteristic in the association and appropriate lead of serious game are not in break of EU rivalry rules, given that these impacts are proportionate to the real certifiable brandishing interest sought after. The need of a proportionality test suggests the need to consider the individual highlights of each case. It doesn't take into consideration the plan of general rules on the use of rivalry law to the game segment.<sup>92</sup>

AICF puts restraint on the free movement of players by enabling non-participation policy in its registration form. Through this policy, AICF not only provides restraint on the free movement of players, but also forecloses the market for new event/ tournament organizers. Clause Z of the Code of Conduct for players provides for the actions taken against the players participating in an unauthorized event which provides for both pecuniary as well as debarring the participants from future tournaments. This practice of acting against the players have been operative since long.

"Being the de-facto regulator of the game of chess, it is understandable that AICF would have to put in place certain restrictions or some regulatory mechanism that are indispensable to preserve the interest of the game. Such stipulations however have to be proportionate and inherent to preserving the integrity of the sport. Due regard needs to be given to the specificity of the sport while stipulating any conditions. It is important that restrictions imposed by sports federations serve the interest of the sport and at the same time maintain a fine balance between the extent of regulation and its implication on the

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<sup>91</sup>Supra note 25, Para 53

<sup>92</sup> Ibid, Para 54

competition in the economic activities incidental to the sport. Some of the relevant factors to be considered in this regard are nature of sport, limited professional life and level of opportunities for professional players.”<sup>93</sup>

“The Commission also notes that chess unlike other sports does not involve physical stress and is not as popular as cricket etc. in India. Thus the restrictions in the Registration Form, Clause Z of Code of Conduct of the Players and actions such as those taken against the Informants have put the professional chess players and potential organisers at a disproportional disadvantage and are thus found to be unjustified and unfair. Further, the censured presentation/rules and limitations streaming in this way have the article just as the impact of confining free development of chess players and subsequently, dispossessing section of likely coordinators by denying them of the administrations gave by proficient chess players. The Commission observes that entry of rival chess organisations/ federations and participation of chess players in tournaments organised by them cannot be a sufficient reason to restrain competition. In view of the foregoing, the Commission concludes that AICF indulged in practices that result in denial of market access to organisers of chess events/ tournaments.”<sup>94</sup>

“At this juncture it is also pertinent to note that an entity which commercially exploits a game and is also vested with the authority to regulate the game, by way of imposing rules and regulations including sanctioning of third party chess events, has incentives to foreclose competition and protect its commercial interest in organizing sports events and competitions. There is thus an inherent conflict of interest due to dual capacity of Regulator and organiser.”<sup>95</sup> Thus the Commission concluded that the impugned restrictions were in contravention of Section 4(2)(b)(i) and section 4(2)(c) of the Competition Act.

#### **4.4.3.5 Order**

Having discovered the direct of AICF in repudiation of section 4 of the Competition Act, the Commission requested stop this instant from revealing into the previously mentioned lead. Other than this AICF shall lay down the process and parameters governing authorization/ sanctioning of chess tournaments. In doing so, AICF will ensure that those governing parameters should be necessary to serve the interest of the Sport and applied in a

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<sup>93</sup>Supra note 25, para 59

<sup>94</sup> Supra note 25, para 60

<sup>95</sup> *ibid*, para 61

fair, transparent and equitable manner. And the disciplinary action to be taken against chess players must be proportional, fair and transparent. The compliance of the aforesaid directions must be reported by AICF within 60 days from the receipt of the order and a penalty of INR 6, 92,350/- only was imposed upon AICF for infringing the provisions of Section 4 of the Competition Act.

#### **4.5 Conclusion**

“The character of sports has evolved over a period of time and the organization of sports events generates significant revenues. The commercial dimension of sports is enormous and according to a recent Competition Commission of India A.T. Kearney study of sports teams, leagues and Federations, today's global sports industry is worth between €350 billion and €450 billion (\$480-\$620 billion). This includes infrastructure construction, sporting goods, licensed products and live sports events. Sports Federations across the world have opted for a non-profit institutional form, to highlight that revenue forms a secondary consideration and generation of significant qualities, for example, cooperation, solidarity, resistance and reasonable play are primary objectives of the sport. But with surge in revenues, there is every likelihood that preferences and priorities in practice may be different from the original or stated objectives. And it is this possibility of anti-competitive conduct, which has seen substantial increase in case filings with competition agencies across the world against the conduct of sports bodies. The Commission has taken note of increasing cases against sports federations in India also and, therefore, considers it appropriate to first analyse the sports sector as a whole, through the prism of competition regulation.”<sup>96</sup>

India follows Pyramid Structure for Sports Governance, whereby there is a solitary national games affiliation per sport working under the umbrella of a solitary mainland organization and a solitary overall league – at the head of the pyramid. “The structure implies that the organizations responsible for regulating the sport and committed to orderly development of the sport are also the organisers of sports or the commercial beneficiaries of sport. As the revenues have soared of late, a new dimension of pyramid structure has surfaced. There are now clear concerns that the pyramid structure can be used to engage into conducts such as infringing the free movements of players by the Federations/Clubs, discrimination and foreclosure of entry of the rival leagues, which may fall foul of the

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<sup>96</sup>Sh. Dhanraj Pillay and others v. M/s. Hockey India, case 73/ 2011, (Decided on 31/05/ 2013), Para 10.2, 10.3

competition laws. Thus, we have a model which has been purportedly established for enhancing efficiency, but also has the potential to cause anticompetitive practices.”<sup>97</sup>

In spite of the fact that the pyramid structure offers uniform standards and uniform schedule for rivalry, fundamental for association of national titles and the determination of national competitors and national groups for International Competition, basic for implementation of decides that secure the honesty of the game and keep up open certainty. The structure implies orderly development of the sport through regulations laid down by the sports federations under the umbrella of the International Federations, but this structure can be used to engage into conducts such as infringing the free movements of players by the federations/ clubs, discrimination and foreclosure of entry of the rival leagues, which may fall foul of the competition law. “The scope afforded for restricting competition in sports is a strong possibility when the ‘power to sanction’ an event and the ‘organisation’ of the event is vested with a single entity namely the designated National Association...Duality of roles assigned or appropriated by the designated National Association also raises concerns about the possible violation of the Competition Act 2002.”<sup>98</sup>

Hence, these sports federations clearly fall under the ambit of the Competition Law so far as the economic nature of these sports federations are concerned. The facts may prove that sports alliances might not have the goal to fundamentally make benefit. Nonetheless, the undertaking status as an element doesn't rely on benefit intention alone. The characterizing highlight of the idea 'undertaking' is that it takes part in a monetary movement secured inside the ambit of Section 2(h) of the Act. In the event that an individual is occupied with any such movement, regardless of with or without benefit thought process, it would be viewed as an undertaking as it interfaces with the market and consequently, with different options for the item or administration being referred to. The commitment of sports league in administrative exercises, for example, surrounding rules and undertaking measures to protect the honesty of the game doesn't adjust its status as an endeavour on the off chance that it is seeking after pay creating financial exercises alongside.<sup>99</sup>

## **CHAPTER 6**

### **CONCLUSION AND SUGGESTIONS**

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<sup>97</sup> *ibid*, para 10.5.3

<sup>98</sup> *ibid*, para 10.1

<sup>99</sup> *Surinder Singh Barmi v. The Board of Control for Cricket in India, Case 61/ 2010, (Decided on 27.11.2017-CCI), para 16*

## 6.1 Conclusion

Today sport is not just a means of recreational physical activity, it is regarded as wide global industry in terms of money, employment, business, consumer demand and needs. This business has increased exponentially over past few years and is expanding globally. It has contributed around 2 to 4 percent of total employment in developed countries. A variety of carrier profiles originate from sport sector such as, athlete's coaches, trainers, event managers, public relation officers, coordinators of sports organizations, marketing consultant, program and facility manager, sport equipment and product sales, professional sport promoter, sport event planner and manager and sport sponsorship specialist. The total contribution of sports with respect to employment in India is approximately 0.5% which by the introduction of games like Indian Premier League, Indian Super League, Indian Badminton League, Pro Kabaddi etc. is likely to increase commercial aspect of Sports which involves management and marketing to make money. Sponsorships and media have now significant influences on sports to generate income which helps in making the sport better with more world class facilities.

“The character of sports has evolved over a period of time and the organization of sports events generates significant revenues. The commercial dimension of sports is enormous and according to a recent Competition Commission of India A.T. Kearney study of sports teams, leagues and Federations, today's global sports industry is worth between €350 billion and €450 billion (\$480-\$620 billion). This includes infrastructure construction, sporting goods, licensed products and live sports events. Sports Federations across the world have opted for a non-profit institutional form, to highlight that revenue forms a secondary consideration and generation of important values such as camaraderie, solidarity, resistance and reasonable play are primary objectives of the sport. But with surge in revenues, there is every likelihood that preferences and priorities in practice may be different from the original or stated objectives. And it is this possibility of anti-competitive conduct, which has seen substantial increase in case filings with competition agencies across the world against the conduct of sports bodies. The Commission has taken note of increasing cases against sports federations in India also and, therefore, considers it appropriate to first analyse the sports sector as a whole, through the prism of competition regulation.”<sup>100</sup>

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<sup>100</sup>Sh. Dhanraj Pillay and others v. M/s. Hockey India, case 73/ 2011, (Decided on 31/05/ 2013), Para 10.2, 10.3

India follows Pyramid Structure for Sports Governance, which involves national sports association operating under single continental federation, which is operating under world-wide federation per sport. “The structure implies that the organizations responsible for regulating the sport and committed to orderly development of the sport are also the organisers of sports or the commercial beneficiaries of sport. As the revenues have soared of late, a new dimension of pyramid structure has surfaced. There are now clear concerns that the pyramid structure can be used to engage into conducts such as infringing the free movements of players by the Federations/Clubs, discrimination and foreclosure of entry of the rival leagues, which may fall foul of the competition laws. Thus, we have a model which has been purportedly established for enhancing efficiency, but also has the potential to cause anticompetitive practices.”<sup>101</sup> For instance, “The Board is a society registered under the Tamil Nadu Societies Registration Act. It enjoys a monopoly status as regard regulation of the sport of cricket in terms of its Memorandum of Association and Articles of Association. It controls the sport of cricket and lays down the law therefor. It inter alia enjoys benefits by way of tax exemption and right to use stadia at nominal annual rent. It earns a huge revenue not only by selling tickets to the viewers but also selling right to exhibit films live on TV and broadcasting the same. Ordinarily, its full members are the State Associations except, Association of Indian Universities, Railway Sports Control Board and Services Sports Control Board. As a member of ICC, it represents the country in the international fora’s. It exercises enormous public functions. It has given authority for selection of players, umpires and other officials representing county at international level. It exercises total control over the players, umpires and other officers. The Rules of the Board clearly demonstrate that without its recognition no competitive cricket can be hosted either within or outside the country. Its control over the sport of competitive cricket is deep pervasive and complete.”<sup>102</sup>

Thus, when a particular authority has a complete and total control over a game, just like Board of Cricket Control of India has over Cricket, it is likely to act in a manner such as to exclude other entrants from the market. This is where the competition act comes up. “The primary purpose of competition law is to provide solution for situations where the activities of one firm or two may lead to breakdown of the free market system and also prevent such things by laying down on basis of which rival business can compete with each other. The other object was to curb the negative aspects of competition through such a body namely, the

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<sup>101</sup> Supra note 1, para 10.5.3

<sup>102</sup>BCCI and Another v. Netaji Cricket Club and others (JT 2005(1) SC 235), para 80

`Competition Commission of India' (for short, the `Commission') which decides how to perform various kinds of functions involving passing interim orders and even awarding compensation and imposing penalty.”<sup>103</sup>

“The Commission feels it is important to consider the way in which competition laws applies to sports federations, considering sports involving specifications due to pyramidal structure of governance which may make them different from other commercial activities. These specificities involve various aspects like limitation on participation in sports, separate participation for men and women, different categories, competitive spirit, outcomes of games etc. The specificities can also be with respect to a structure notable among them are: pyramidal structure, autonomy, diversity and principles of organisations, federations, sports authorities at various national and international levels.

Although the pyramid structure offers uniform rules and uniform timetable for competition, essential for organising national championships for selecting best athletes and teams for competing at international level, essential for enforcement of rules that protect the integrity of the sport and maintain public confidence. The structure implies orderly development of the sport through regulations laid down by the sports federations under the umbrella of the International Federations, but this structure can be used to engage into conducts such as infringing the free movements of players by the federations/ clubs, discrimination and foreclosure of entry of the rival leagues, which may fall foul of the competition law. “The scope afforded for restricting competition in sports is a strong possibility when the ‘power to sanction’ an event and the ‘organisation’ of the event is vested with a single entity namely the designated National Association Duality of roles assigned or appropriated by the designated National Association also raises concerns about the possible violation of the Competition Act 2002.”<sup>104</sup>

Although free entry has now become necessary for competition to flourish, but due to specificities of certain sectors, entry may be subjected to regulatory conditions. A case by case evaluation is required for understanding the effects of such entry rules stipulated by the regulator considering legitimate regulatory goals such as quality, safety, orderly growth of the sector etc. In this case, the impugned clause in the IPL Media Rights Agreement and Rule

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<sup>103</sup>Competition Commission of India v. Steel Authority of India Ltd. and Anr., Civil Appeal No. 7779 of 2010, (Decided on 9/09/2010)

<sup>104</sup>Supra note 1, para 10.1

28(b)<sup>105</sup> create an insurmountable entry barrier in the relevant market for organization of domestic professional cricket leagues. The anti-competitive effect of the impugned clause is indubitable in the absence of any plausible regulatory rationale or necessity of the same for promotion of the sport. The Commission has concluded that the representation and warranty given by BCCI in the IPL Media Rights Agreement that “it shall not organize, sanction, recognize, or support during the Rights period another professional domestic Indian T20 competition that is competitive to the league” and Rule 28(b)<sup>106</sup> of the BCCI Rules, amounts to denial of market access for organization of professional domestic cricket leagues/ events in India, in contravention of Section 4(2)(c)<sup>107</sup> read with Section 4(1)<sup>108</sup> of the Act.<sup>109</sup>

“The Commission also notes that chess unlike other sports does not involve physical stress and is not as popular as cricket etc. in India. Thus the restrictions in the Registration Form<sup>110</sup>, Clause Z<sup>111</sup> of Code of Conduct of the Players and actions such as those taken

<sup>105</sup> b) No member or a club affiliated to a member or any other organization shall conduct or organize any tournament or any match/matches in which players/teams from region outside their jurisdiction are participating or are likely to participate without the previous permission of the Board. Permission for conducting or organizing any tournament or match/matches will be accorded only to the members of the Board and will be in accordance with the rules framed by the Board in this regard from time to time.

<sup>106</sup> *ibid*

<sup>107</sup>Section 4 of the Competition Act (1) No enterprise or group shall abuse its dominant position.

(2) There shall be an abuse of dominant position 4 [under sub-section (1), if an enterprise or a group]-

(a) directly or indirectly, imposes unfair or discriminatory—

(i) condition in purchase or sale of goods or service; or

(ii) price in purchase or sale (including predatory price) of goods or service.

Explanation -For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

(b) limits or restricts—

(i) production of goods or provision of services or market therefore; or

(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access [in any manner]; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation, -For the purposes of this section, the expression-

(a) “dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to-

(i) operate independently of competitive forces prevailing in the relevant market; or

(ii) affect its competitors or consumers or the relevant market in its favour.

(b) “predatory price” means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

(c) “group” shall have the same meaning as assigned to it in clause (b) of the Explanation to section 5.

<sup>108</sup> *ibid*

<sup>109</sup>Surinder Singh Barmi v. The Board of Control for Cricket in India, Case 61/ 2010, (Decided on 27/11/2017), para 49

<sup>110</sup> In the present case, while registering with AICF, chess players are made to sign a registration form, which amongst other declarations also contain a declaration to the effect that they will not participate in any unauthorised tournament/ championship. Relevant portion of the Registration Form reads as follows:

against the Informants<sup>112</sup> have put the professional chess players and potential organisers at a disproportional disadvantage and are thus found to be unjustified and unfair. Further, the impugned declaration/rules and restrictions flowing therefrom have the object as well as the effect of restricting free movement of chess players and thereby, foreclosing entry of potential organisers by depriving them of the services provided by professional chess players. The Commission observes that entry of rival chess organisations/ federations and participation of chess players in tournaments organised by them cannot be a sufficient reason to restrain competition. In view of the foregoing, the Commission concludes that AICF<sup>113</sup> indulged in practices that result in denial of market access to organisers of chess events/ tournaments.”<sup>114</sup>

The aforesaid are the instances of the restrictions imposed by the sports regulators who act under the pyramid structure. Although the restrictive practices are necessary for regulating

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“I also declare that I will not participate in any un-authorized tournament/ championship”.

It is noted that the restriction is absolute and does not leave any scope for players to participate in any tournament not authorised by AICF. Further, neither the Bye laws nor the constitution of AICF define what is an unauthorised tournament.

<sup>111</sup>Clause Z of the Code of Conduct for the Players further stipulates that players participating in unauthorised chess tournaments may be subjected to disciplinary action including cash penalties apart from debarring them in participating in any tournaments in future. The text of this provision reads as follows: “No player shall participate in any tournament not authorised by All India Chess Federation or its affiliate members or District Association and units affiliated to them. The above violation shall attract disciplinary proceedings including cash penalties apart from debarring from participating in any tournaments in future.”

<sup>112</sup>The information in the case of Hemant Sharma and Ors. v. All India Chess Federation, was brought by Mr. Hemant Sharma (‘Informant No.1’), Mr. Devendra Bajpai (‘Informant No.2’), Mr. Gurpreet Pal Singh (‘Informant No.3’) and Mr. Karun Duggal (‘Informant No.4’) (All collectively referred to as the ‘Informants’) against All India Chess Federation (the ‘OP’/ ‘AICF’), alleging, inter-alia, contravention of the provisions of Sections 3 and 4 of the Competition Act. The Informants are chess players registered with AICF on an annual basis. The Informants have contended that the registration form, inter-alia, contains a declaration which states that the player will not participate in any tournament / championship that is not authorised by AICF. It has been further contended that such registration is necessary if the players want to be selected for National or International events. The Informants have alleged that if any player participates in any tournament not authorised by AICF, he/she will be banned for a period of one (1) year from participating in the National Chess Championships and other events. Further, such player would have to surrender fifty (50) percent of the prize money to AICF, if any, from such unauthorised events and tender an unconditional apology along with an undertaking that he/she will not participate in any unauthorised tournament in future. The Informants submitted that chess players all over the world are given International ELO ratings by FIDE according to their playing strength in various tournaments, ELO rating is an important benchmark for all chess players. Being the benchmark, this rating is essential for any professional chess player. It has been alleged that the ELO rating points of the Informants were removed by AICF without giving any prior notice due to their participation in the chess tournament sponsored by the Chess Association of India (“CAI”), which was not authorised by AICF. In addition to Informants, AICF also removed ratings of 151 chess players on the ground. According to the Informants, the above conduct and practices of AICF are in contravention of the provisions of the Sections 3 and 4 of the Act.

<sup>113</sup> AICF is a society registered under the Tamil Nadu Societies Registration Act, 1975 as the National Sports Federation (‘NSF’) for the sport of chess. AICF is also recognised by and affiliated to, Federation Internationale des Echecs (‘FIDE’), which is the apex International body governing the sport of chess.

<sup>114</sup> Hemant Sharma and Ors. v. All India Chess Federation, Case No. 79 of 2011 (Decided on 12/ 07/ 2018), para 60

sports and maintaining the integrity of it, but they cannot be given complete defence under the umbrella of “specificity of sports” from the application of the competition law. The test to decide whether a particular restriction imposed by sports regulator is against the letter and spirit of the competition law – is the Inherence proportionality test laid down in the Meca-Medina case<sup>115</sup>.

“The decisions of EC in cases such as Walrave ( Case 36/74 Walrave and Koch [1974] ECR 1405) , Deliege ( Case C191/97 Deliège[2000] ECR), Meca Medina (Case C-519/04 P, David Meca Medina and Igor Majcen V. Commission of the European Communities), which have considered that competition laws should not stop sports Federations issuing regulations required for proper organization and conduct of the sport, so long as the restrictive side effects of those regulations are inherent in and proportionate to the achievement of that objective.”<sup>116</sup>

The inherence-proportionality test which is right now considered as the fitting way to deal with address the opposition issues in sports area gives that if the supposed prohibitive conditions is characteristic to the goals of the games organization and the impact of prohibitive condition on monetary rivalry among partners or on free development of players is proportionate to authentic donning interest scrutinized, the equivalent may not be seen as hostile to serious. This test might be applied to all standards, without expecting to group them as simply donning or something else. In the beginning phases of utilization of rivalry law to sports, there was an idea that "simply donning rules" must be excluded from Competition laws, however now all guidelines whether on the hierarchical/basic/administrative job might be decided on case to case premise thinking about their inherence and proportionality.<sup>117</sup>

Thus, summing it up, when it comes to the application of the Competition Law to the Sports sector, the foremost thing is whether the Competition Commission of India has jurisdiction over the issues of abusing dominance arising in sports sector. Although, the Sports federations are non- profit organizations, however, they conduct activities for example, award of franchisee rights, media rights, TV rights, sponsorship rights and every single other right, that include age of income and has a business part in it. Such activities have to be seen differently from the ‘not-for-profit’ nature of certain other activities of the sports federations. These activities have a prime objective of maximizing revenue and are executed through

<sup>115</sup> Meca- Medina and Majcen v. Commission Case C-519/04 P, Meca-Medina and Majcen v. Comm’n, 2006 E.C.R. I06991.

<sup>116</sup> Supra note 1, Para 8.2.3

<sup>117</sup> Ibid, para 10.6.5

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agreements that are commercial. Hence, these federations are covered within the meaning of the inclusive definition of the “person” contained in the Competition Act- as these federations are registered as co-operative societies under the Co-operative Societies Act. Moreover, the activities in which these federations are involved are not covered under the exceptions provided under section 2(h) of the Competition Act. Hence, these sports federations clearly fall under the ambit of the Competition Law so far as the economic nature of these sports federations are concerned. Even though the sports federations do not operate to make profit alone, but the involvement of the sports federations in the economic activities make them subject matter of the competition law. So it, is said that even if entities operate with a primary objective of regulating Sports in order to preserve the integrity of sports, the so called nature of the sports federation of conducting economic activity will not change. Thereby, making the sports federation a subject matter of competition law.<sup>118</sup>

And as to the role played by the Sports federations of that being the sole regulators of the concerned sport under the pyramid structure of governance; such regulatory nature of sports federations cannot be controlled by the Competition Law. Thus, clearing out the picture that the Competition Law does not hinder the Sports federations so far as their regulatory nature is concerned. It is only when the regulation concerned adversely affects the competition in the market and is not inherent and proportional to the objective- the Sports federations aims to achieve i.e. ensuring development and protecting the integrity of Sports. Thus, keeping the regulatory role of the sports federations intact. Thus, the dual nature of a sports federation is a reason for conflict as to the applicability of the competition law to sports federations. The way out to the underlying conflict is the test of reasonability. If a rule laid down by sports federation stands the test of reasonability aimed at maintaining the integrity of sports, it is allowed to stand else not.<sup>119</sup>

## **6.2 Testing of the Hypothesis**

The Researcher truly agrees with the hypothesis as it stands proved that the provisions in the Competition Act, 2002 are either inadequate or silent regarding the issues arising in Sports sector so far as the economic activities are concerned. The Competition Act is not clear as to the extent to which this Act shall apply to the activities conducted by Sports Federations. Sports Sector cannot be equated to other industries; therefore, the Act must clearly state the

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<sup>118</sup>Surinder Singh Barmi v. The Board of Control for Cricket in India, Case 61/ 2010, (Decided on 27/11/2017), para 16

<sup>119</sup>Ibid, para 42

extent to which the Competition Act must encroach upon activities conducted by the Sports sector. Although laying down a formula for all sports federation is not possible, because every case involves its own peculiarities. But there has to be somewhat clarity in the provisions so far as its applicability to sports sector is concerned. This is so because, the Sports Federations operate as regulators of that particular sport with which it deals, for proper organization and conduct of the sport; and now with advent of time they have started earning revenue through sale of tickets, issuing of broadcasting rights, issuance of sponsorship rights, etc. Thus, keeping the specificities of Sports in mind, the Competition Law must be applied to the Sports sector with sufficient flexibility after taking into account the unique features inherent in sports that distinguish it from other sectors.

The involvement of sports federations in revenue gaining exercise such as grant of franchisee rights, media rights, television rights, sponsorship rights and other rights add a commercial component to the non-profit making nature of Sports Federations. Such activities have to be seen differently from the ‘not-for-profit’ nature of certain other activities of the Sports federations. These activities have a prime objective of maximising revenue and are executed through agreements that are commercial. Hence these federations are covered within the meaning of the inclusive definition of the “person”<sup>120</sup> contained in the Competition Act- as these federations are registered as co-operative societies under the Co-operative Societies Act. Moreover, the activities in which these federations are involved are not covered under the exceptions provided under section 2(h)<sup>121</sup> of the Competition Act. Therefore, the

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<sup>120</sup>(l) “person” includes-

- (i) an individual;
- (ii) a Hindu undivided family;
- (iii) a company;
- (iv) a firm;
- (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (vii) any body corporate incorporated by or under the laws of a country outside India;
- (viii) a co-operative society registered under any law relating to co-operative societies;
- (ix) a local authority;
- (x) every artificial juridical person, not falling within any of the preceding sub-clauses;

<sup>121</sup>“enterprise” means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any

economic activities carried out to organize the game in which the sports federations deal cannot be excluded from the definition of an “enterprise”<sup>122</sup> as contained in the Competition Act. When the Competition Act can intervene in the functioning of the Sports Federations so far as the economic activities are conducted by them. The economic culture followed by sports federations by grant of rights like franchisee, media, television and sponsorship rights proves out the hypothesis of the research, even though competition act remains silent on the same.

### 6.3 Suggestions

The suggestive approach in these types of research could be formulation of new policies or new laws to handle the issues and controversies of sports sector. This sector has a lot of potential to change the economic profile of a country as well as to gain identity in international games where our players represent India. But we have been ignoring this sector from time immemorial and treating it casually; whereas we need to change our perception and devote some time and resources towards this section to enlighten it and to enjoy the tremendous outcome of this section. Therefore, this all could be possible by ensuring transparency in this section in order to hold the benefit of players and associations simultaneously. The only way out is a comprehensive sports law which must comprise of provisions for all sections of sports. The complete detailed and comprehensive law, rather than this scattered approach which ignores the specificity of the sports sector. Because, although this research concerns only as to the applicability of competition law on sports sector, but suggesting amendments to competition law would not be a complete solution. Because the Sports sector has faced many issues from time to time like matters of sexual harassment, use of drugs by players, non- transparency issue while selection of players, lack of proper facilities and arrangements for players, lack of proper funding, etc. Along these issues, the other set of issues concerning this research are treating sports industry like any other industry gaining profit under the realms of competition law; when the sports sector has

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activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Explanation. -For the purposes of this clause, -

- (a) “activity” includes profession or occupation;
- (b) “article” includes a new article and “service” includes a new service;
- (c) “unit” or “division”, in relation to an enterprise, includes
  - (i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;
  - (ii) any branch or office established for the provision of any service;

<sup>122</sup> Ibid.

its own specificity. When we talk about the economic nature of the sports industry which includes broadcasting rights, media rights, and sponsorship rights- transparency is required to deal with these issues; which is possible only if rules governing the same are clearly laid down. Instead of subjecting the Sports sectors to other general laws in order to resolve the issues; there shall be one comprehensive Sports Law which must provide provisions in order to deal with every issue of sports sector. Instead of scattered laws, there must be one single comprehensive Sports Law having laws on all aspect of it. This is much easy to adopt and amend as per the changing scenario.