



CASE STUDY 01

AUGUST 2013

The case of Board for Control of Cricket in India (BCCI) Abuse of Dominant Position*

Forum:

Competition Commission of India (CCI), New Delhi.

Act/ Sections referred:

The Competition Act, 2002¹

1. Section 2(h) “**enterprise**”
2. Section 4 “**Abuse of dominant position**”
3. Section 19(1)(a) “**Inquiry into certain agreements and dominant position of enterprise**”
4. Section 26 (1) “**Procedure for inquiry under Section 19**”
5. Section 27 “**Orders by commission after inquiry onto agreements or abuse of dominant position**”

Parties:

1. Informant- Sh. Surinder Singh Barmi
2. Opposite Party (OP)- Board for Control on Cricket in India (BCCI)
3. Investigator- Director General (DG), Competition Commission of India (CCI)

Facts:

The instant complaint was filed by the Informant who is a cricket fan, against the OP to the CCI under Section 19 (1) (a) of the Act on November 2, 2010. His allegations were pertaining to the irregularities in the organization of Indian Premier League (IPL), Twenty 20 and professional league tournament conducted by BCCI. He alleged irregularities in the following:

- a. grant of franchise rights for team ownership;
- b. grant of media rights for coverage of the league;
- c. award of sponsorship rights and other local contracts related to organisation of IPL.

BCCI is a society registered under the Tamil Nadu Societies Registration Act, 1975 with the primary objectives of controlling, promoting, selecting teams to

represent India and framing laws for the game of cricket in India. It is also a ‘full member’ of International Cricket Council (ICC).

Pursuant to the above information, CCI opined that there exists a prima facie case and directed the DG under Section 26(1) to investigate the matter. The DG submitted its report on February 21, 2012.

Issues on which DG investigated the matter

1. Whether the Act is applicable to BCCI? Whether BCCI is an ‘enterprise’ as defined under section 2(h) of the Act?
2. What would be the relevant market in the said case?
3. Whether BCCI has a dominant position in the relevant market as determined?
4. If so, whether BCCI has abused its dominant position in the relevant market in contravention of the provisions of Section 4 of the Act?

Submissions made by BCCI and DG

ISSUE 1:

BCCI: Denied the applicability of the Act upon their organisation. It submitted that it is a ‘not-for profit’ society for the promotion of cricket and its activities is outside the purview of the Act, especially Section 3 and 4. Their commitments are not driven by commercial considerations and the revenue obtained is utilized in the game of cricket.

They relied on the decision of the Apex Court² wherein it was held that sporting organisations like BCCI/CAB should not be denigrated by placing them at par with business organizations sponsoring sports events for

¹ Hereinafter referred to as the Act.

² Secretary, Ministry of Information and Broadcasting, Government of India and Others v. Cricket Association of Bengal and Others (1995) 2 SCC 161

* Sh. Surinder Singh Barmi v. Board for Cricket Control in India (BCCI), Date of order 08.02.2013, available at <http://www.cci.gov.in/May2011/OrderOfCommission/612010.pdf>, as accessed on August 12, 2013.

profit. Thus, it does not qualify to be an 'enterprise' under the Act.³

DG: The DG concluded that BCCI is a society and supposed to be a non-profit organization. However the activities related to IPL involve huge revenues and fall in the commercial sphere making them different from the so-called non-profit activities. The DG relied on the Income Tax Order⁴ wherein the registration of OP granted u/s 12A of the Income Tax Act was withdrawn given the change in its status and memorandum. The DG also relied on the decision of High Court⁵ wherein the Court considered Chess Federation as an enterprise under the Act.⁶ In view of the above, DG submitted that the OP is an enterprise under the Act.⁷

ISSUE 2:

BCCI: submitted that the market for various rights pertaining to IPL viz. franchise rights, media rights are separate markets given these rights are not interchangeable.

DG: The very fact that rights related to economic activities with regard to IPL cannot be awarded by any other agency except the OP, the DG concluded that the "underlying economic activities ancillary to organizing of IPL under BCCI" as the relevant market.

ISSUE 3

BCCI: admitted that it holds a monopoly however it needs to be treated differently owing to the unique nature of market for professional sports league.

DG: submitted that OP is the national governing body for all types of cricket activities in India. Based on the conduct of OP to oust its rival ICL on earlier occasions, he held that BCCI is in a position of strength in the relevant market.

ISSUE 4:

BCCI: stated that as franchise rights were to be awarded to multiple successful bidders, there was a need for non-discriminatory terms to create a level playing field for all.

DG: He found contravention to the fact that terms of the franchise agreements were in favour of OP and the

franchises had no say in the terms of contract. Further, he concluded that OP is guilty under Section 4 of the Act w.r.t. grant of franchise and media rights.

CCI Order

It opined that BCCI has no statutory status but their actions in terms of laying down rules of the game and selection fall under the purview of a regulatory role. Given the implicit recognition by GOI as the national association for cricket, BCCI is a de facto regulator of cricket in India. It is conclusive that all Sports Associations are to be regarded as an enterprise in so far as their entrepreneurial conduct is concerned.

It went on to state that the situation where the regulator is also the economic beneficiary is definitely a competition concern. CCI observed that BCCI's dominance was a definite factor in ICL's failure hence leading to abuse of its dominant position.

The order also directed BCCI to stop denying market access to potential competitors or make such anti-competitive agreements in future. CCI concluded that BCCI was abusing its dominant position in violation of section 4(2) (c) of the Act and imposed a penalty @ six per cent of the average turnover of the BCCI in 2007-08, 2008-09 and 2009-10 amounting to Rs. 52.24 crores.

Analysis of the Order

The present order is a welcome step especially in the context of the raging controversy over the Indian Premier League match-fixing incidents. It is an eye opener for the policy makers to carve out a path for a better regulatory system for cricket without transgressing the basic freedom of sports authorities in India. The ineffectiveness of cricket regulation in India cannot be denied. Therefore the need of the hour is draw a clear demarcation between the governing body's governance function and commercial activities. This demarcation can be only achieved by assigning various roles to different bodies and committees that shall ensure feasibility of open tenders for any commercial contracts. As the saying goes, 'Power corrupts; absolute power corrupts absolutely', similarly the powers of BCCI should be subjected to restrictions to prevent them from thwarting competition by favouring events that it organise.

Prepared By: Nidhi Singh, CIRC

³ Section 2 (h) of the Competition Act, 2002.

⁴ Income Tax Assessment Order under section 143 (3) of the Income Tax Act dated 28.12.2009 (Director of Income Tax-Exemptions) for the Assessment year 2008-2009.

⁵ Hemant Sharma & Others v. Union of India and Others, WP (C) 5770/2011

⁶ Section 2 (h) of the Competition Act.

⁷ Ibid.