



COMPETITION COMMISSION OF INDIA

Case No. 61/2010

In Re:

Surinder Singh Barmi
2190/63, Naiwala, Karol Bagh,
New Delhi-110005.

Informant

And

The Board of Control for Cricket in India
Cricket Centre Wankhede Stadium,
D Road, Churchgate,
Mumbai, Maharashtra-400020.

Opposite Party

CORAM

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. U. C. Nahta
Member

Mr. Justice G. P. Mittal
Member



Appearances during the final hearing on 21st and 22nd December 2016 and 11th July, 2017:

For the Informant: None

For the Opposite Party: Mr. Amit Sibal and Mr. Ramji Srinivasan, Senior Advocates, along with Mr. Bharat Budholia, Ms. Aishwarya Gopalakrishnan, Mr. Kaustav Kundu, Mr. Vinay Tripathi and Mr. Namit Suri, Advocates.

Order under Section 27 of the Competition Act, 2002

A. Background

1. In the instant matter, the Competition Commission of India (hereinafter, the “**Commission**”) had passed an order dated 8th February, 2013 under Section 27 of the Competition Act, 2002 (hereinafter, the “**Act**”) wherein the conduct of the Board of Control for Cricket in India (hereinafter, “**BCCI**”) was found to be in contravention of the provisions of Section 4 of the Act.
2. The Commission had found BCCI dominant in the market for organization of private professional cricket leagues/events in India. The representation given by BCCI under clause 9.1(c)(i) of its IPL Media Rights agreement entered into with the broadcasters of Indian Premier League (“**IPL**”), 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*” was found to be an exercise of regulatory powers for arriving at a commercial agreement. The said conduct of BCCI was found to be in contravention of Section 4(2)(c) of the Act.



3. Aggrieved by the above order of the Commission, BCCI had preferred an appeal before the erstwhile Hon'ble Competition Appellate Tribunal (hereinafter, "COMPAT"). The COMPAT, *vide* its order dated 23rd February, 2015, had set aside the Commission's aforesaid order dated 8th February, 2013 on the ground of violation of principles of natural justice and remitted the matter to the Commission for fresh disposal. The operative portion of the order of the COMPAT reads as under:

"36...I hold that the finding recorded by the Commission on the issue of abuse of dominance is legally unsustainable and is liable to be set-aside because the information downloaded from the net and similar other material do not have any evidentiary value and, in any case, the same could not have been relied upon by the Commission without giving an effective opportunity to the appellant to controvert the same.

37. The discussion made by the Commission in the context of clause 9.1(c)(i) of the media agreement is also vitiated due to breach of principles of natural justice because the same was neither referred in the order passed under Section 26(1) nor the Director General recorded any finding qua its validity or otherwise and on this count the appellant did not get an opportunity to defend the said clause."

4. Upon considering the matter, the Commission, *vide* its order dated 5th May, 2015, directed the Director General (hereinafter, 'DG') to conduct further investigation into the matter in accordance with the directions contained in the above order of COMPAT.

B. Findings of Supplementary Investigation by DG

5. After further investigation, the DG filed the supplementary investigation report on 28th March, 2016. The major findings/conclusions in the supplementary investigation report, in brief, are as under:



सत्यमेव जयते



- 5.1. The DG found the relevant market to be the market for ‘*organization of professional domestic cricket leagues/events in India*’. For arriving at such finding, the DG relied upon the pyramid structure of cricket governing bodies; different types of cricket matches; differences between sport and entertainment programmes broadcasted on television channels, cricket and other sports, and professional domestic cricket leagues and other formats of cricket; and the similarity of rules and regulations for organization of cricket events across India.
- 5.2. The supplementary investigation concluded that BCCI enjoys a dominant position in the relevant market on the basis of analysis of its market share, size, resources and economic power, dependence of consumers and high entry barriers. Further, the rules/ regulations/ byelaws of International Cricket Council (hereinafter, ‘ICC’) and BCCI were relied upon by the DG to state that they reinforce the absolute dominance of BCCI in the relevant market.
- 5.3. The DG also found Rules 28(b) and 28(d) of BCCI Rules to be anticompetitive as the same did not provide scope for any enterprise, other than BCCI or its members, to organize professional domestic cricket league/events in India. After taking into consideration the submission of BCCI, the DG found the said rules to be in contravention of Section 4(2)(c) of the Act.

C. Consideration of the Supplementary Investigation report

6. Upon considering the supplementary investigation report, the Commission, *vide* its order dated 31st August, 2016, observed that “*On a perusal of the supplementary investigation report, it is observed that Rule 28 of the Board of*



Cricket Control of India (BCCI) Rules provides that permission for conducting cricket match or tournament will be accorded only to the members of BCCI. In terms of Section 32 of the ICC Bye-laws, any cricket tournament or match conducted without the approval of BCCI will be deemed to be Disapproved Cricket. Further, Rule 29 of the BCCI Rules provide that: (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. Against this background, it appears that no private organizer could conduct any meaningful cricket match or tournament without the support of BCCI. Seen in the backdrop of these restrictive rules, the representation and warranty given by BCCI under clause 9.1(c)(i) of the IPL Media Rights Agreement that it shall not organize, sanction, recognize, or support to any other league that is competitive to the professional domestic Indian T20 competition, during the rights period i.e. for a sustained period of ten years, forecloses the market for organization of professional domestic cricket leagues/events in India. Therefore, the aforesaid representation and warranty given by BCCI, read in conjunction with its restrictive rules/bye-laws cited above, is found to be in violation of the provisions of Section 4(2)(c) of the Act.” Copies of the supplementary investigation report and the above order dated 31st August, 2016 were sent to the parties for filing their suggestions/ objections thereto.

7. Despite due service of notice, the Informant was neither present during the hearings nor filed any written submissions.
8. BCCI filed its written submission on 1st December, 2016. The Commission heard BCCI on the supplementary investigation report of the DG on 21st and



22nd December, 2016 and asked it to file certain additional information regarding IPL. Upon considering the additional information filed by BCCI, the Commission directed BCCI to furnish further information. The Commission also directed the broadcasters of IPL to furnish details of their revenue generated from IPL Media Rights as well as the basis of fixing considerations for grant of the same. Accordingly, Sony Pictures Network India Private Limited (hereinafter, “**Sony**”) and Times Internet Limited (hereinafter, “**Times**”) filed their respective replies. In response thereto, BCCI filed its written reply on 8th June, 2017 and advanced oral submissions before the Commission on 11th July, 2017.

D. Submission of the parties

9. In its written replies and oral submissions, BCCI raised the following contentions:

BCCI is not an enterprise

- 9.1. BCCI is a not-for-profit society registered under the Tamil Nadu Societies Registration Act, 1975, established to promote the sport of cricket in India. BCCI is not engaged in any commercial activity with the objective of earning profits. Thus, BCCI cannot be equated with business organisations and is not an ‘enterprise’ within the meaning of Section 2(h) of the Act. Accordingly, Section 4 cannot be applicable upon BCCI. In support of such contention, reliance was placed upon the judgment of the Hon’ble Supreme Court in *Secretary, Ministry of Information and Broadcasting, Government of India and Others v. Cricket Association of Bengal and Others* [1995 (2) SCC 161] and the supplementary decision dated 30th September, 2011 of the Commission



in *Arun Kumar Tyagi v. The Software Engineering Institute* [Case No. 19 of 2011].

Relevant Market

- 9.2. The DG was influenced by the impugned clause in the IPL Media Rights agreement and the Rules of BCCI, which led to adoption of a reverse engineering process for delineation of relevant market.
- 9.3. The relevant market delineated by the DG is from a supply side perspective and the substitutability of IPL has not been analysed from the viewpoint of consumers. The DG has also failed to take into consideration the perspective of any aggrieved person. These have resulted in adoption of an extremely narrow market, which ignores other competing forms of entertainment and leisure available to viewers of television at any given point of time. The relevant market defined is based on an imaginary organiser who will only be interested in organizing a Twenty-20 cricket tournament/ event. The primary objective of any such private organiser is to earn profits, which makes it debatable as to why the organiser will not be interested in organizing cricket in other formats or other sports tournament. To emphasise the shortfalls of narrower market definition, reliance was placed upon the observations of the Commission in its order dated 23rd May, 2011 in *Consumer Guidance Society v. Hindustan Coca Cola Beverages* [UTPE No. 99 of 2009] and order dated 3rd July, 2012 in *Prints India v. Springer India Private Limited* [Case No. 16/2010].
- 9.4. The DG has come to the following conclusions without any empirical evidence: (i) sporting events have distinct features and characteristics as compared to products like soap operas, serials and films telecasted



on television; (ii) different programmes cannot be considered as a single product merely on the basis that they all are shown on television; and (iii) the coverage and expansion of sporting events is much broader than entertainment events.

9.5. Although cricket might be different and distinctive from other sports and entertainment programmes, they all compete for viewers or eyeballs. The Economist Report filed by BCCI also demonstrates how the relevant market can be the market for entertainment programmes from consumer perspective, given that all such programmes consumable in a typical household compete equally for viewers'/ members' viewing time. In support of such contention, reliance was placed upon articles portraying IPL's popularity and it being described as an 'action-packed reality show' and compared with Bollywood movies. The excerpts of Annuals Report of BCCI for the FY 2007-08, relied upon by the DG, also show that IPL has always been promoted as an entertainment programme as it titles IPL as '*Cricketainment*' '*Manoranjan Ka Baap*' and calls it as 'best ever reality television show'.

9.6. The DG has given undue significance to IPL being a unique format of cricket as it was designed for commercial purposes and to attract television broadcasters. A particular format of a sport like IPL only denotes a way of conducting competition and does not result in new stakeholders at each level. The promoters of all sports get keen in making efforts to attract and retain viewers' interest and for such purpose, they revise the rules and formats of games in response to audience enthusiasm. However, the viewers of different formats of the game as well as other entertainment programmes remain the same.



- 9.7. Unlike other jurisdictions, in India, IPL and other sports programmes are not broadcasted on channels dedicated for sports, but on general entertainment channels. IPL matches are telecasted on Set Max channel, which is a general entertainment channel. The charges paid by consumers for subscription of Set Max are for a number of programmes including IPL. The subscription is on a monthly basis and IPL matches cannot be watched on pay-per-view basis in India. These suggest that the relevant market in the instant case is broader than private professional cricket leagues/events.
- 9.8. Also, the telecast of IPL during prime time affirms that IPL is an entertainment programme for consumers. From a study by *Mint*, it can be seen that IPL faces competitive constraints from soap operas. Viewership data for 'India's Got Talent' and '2016 Summer Olympics Final badminton match' shows that they garnered more viewership than IPL. Thus, the DG erred in its finding that in terms of consumer preference, cricket cannot be replaced by any other sport or event.
- 9.9. The DG erred in considering the pre-viewing and post-viewing behaviour of cricket fans, which is neither a consideration under the Act nor backed by any empirical evidence. The DG also proceeded on a stereotypical assumption that only men are more interested in sports, which again lacks empirical support. KPMG-FICCI 2016 Report on Indian Media and Entertainment Industry shows the increasing female viewership base of various sports events including IPL.
- 9.10. The ratings of TAM Media Research Pvt. Ltd. (TAM) for different entertainment programmes before and after IPL shows that Television



Rating Points (TRP) of many entertainment programmes increased post IPL, which again implies that IPL is not a distinct market by virtue of TRPs as projected by the DG. The popularity of some of the entertainment programmes telecasted during IPL and higher advertisement rate of '3 idiots' movie, further suggest the substitutability between IPL and other entertainment programmes.

- 9.11. The consumer choice should ideally be determined on the basis of available alternatives at that times. The difference in ratings between different events/ programs at different time is only indicative of product differentiation and does not indicate substitutability.
- 9.12. The DG has relied upon the difference in advertisement rates for IPL and non-sport television programmes to suggest absence of substitutability between them. However, high demand of a programme leads to high advertising rates which cannot be considered as 'price' to determine market power.
- 9.13. The finding of the DG that cricket and other sports are specific separate products and not substitutable is based on TAM ratings and assertions that in India, cricket is superior to other kind of sports is without any empirical analysis. Each sport or game is designed with distinct objectives, rules and regulations, which do not imply that audience/ viewers are also different. As different sports compete for viewers, it is affirmed that cricket and other sport events form part of same relevant product market.



Dominant position

- 9.14. The DG relied upon market share, size, resources and economic power of BCCI, dependence of consumers and high entry barriers to conclude that BCCI enjoys dominant position in the relevant market.
- 9.15. Since BCCI is a not-for-profit organisation and its profits are being used for development of cricket, its economic strength cannot be considered as a factor to conclude its dominance. The DG concluded that there are high entry barriers and BCCI has 100% market share on the presumption that no other person can organize professional domestic cricket event in India. However, there is no such prohibition, which was also conveyed to the DG in the written submissions dated 2nd March, 2016. As regard the finding that consumers are absolutely dependent on BCCI, it was submitted that the same has been found by DG without clarifying who is the consumer.
- 9.16. The DG has also placed wrong reliance on BCCI Rules, restricting participation of its players and match officials in disapproved cricket, even though such rules are essential to protect the interest of the sport. The DG also did not appreciate the fact that BCCI derives its authority purely from ICC Rules and as a result of the pyramid structure of the sport industry. Such authority cannot be considered as dominance in view of Section 19(4)(g) of the Act.

Abuse of dominant position

- 9.17. It has been concluded in the supplementary investigation report of the DG that the impugned clause in the IPL Media Rights agreement and



Rules 28(b) and 28(d) of the BCCI Rules are abusive and amounts to contravention of the provisions of Section 4 of the Act.

a. Impugned clause in the IPL Media Rights Agreement

9.18. The restriction in the impugned clause is narrow and limited to Twenty-20 competitions. There is no restriction to conduct other forms of cricket such as 5-day matches under lights, 5 days day matches, 4 days matches, 50 over matches, 40 over matches, *etc.* Without prejudice to the submissions regarding relevant market, it has been submitted that such different formats of cricket are substitutable and interchangeable with each other.

9.19. The impugned clause was not part of the initial draft of media rights agreement but was inserted later at the behest of the bidders. The insertion was sought by the bidder broadcasters in light of various factors such as: (i) nascency of IPL in India having no market of its own; (ii) limited duration of broadcast of IPL season as a result of which there was a limited period of time for recouping investments; (iii) high risk involved in the new venture; and (iv) the inherent constraints prevalent in the broadcasting market. It is also relevant to note that Clause 32.3 of the ICC rules recognises the need for restrictive stipulations to protect sport's commercial partners. The DG itself has stated that the impugned clause was added through mutual discussion between BCCI and the bidders for media rights of IPL. Reliance was placed upon the judgment of the European Court of Justice in *General Motors Continental NV v. Commission of European Communities* [(1975) ECR 1367 (Case 26/75)] and that of Court of First Instance, European Union in *Microsoft v. Commission* [2007 ECR II-3601] to



suggest that the Commission has to consider the objective justifications advanced.

- 9.20. Further, the impugned clause has also not caused any harm to any party. None of the persons having direct or indirect commercial interest in IPL, including the successful and unsuccessful bidders/ investors, have raised any issue concerning the impugned clause. Even after the impugned clause, BCCI has organized CL T20 and Syed Mushtaq Ali League. BCCI has also expressly extended its support to Toyota University Cricket Championship and Twenty-20 Private Cricket League organized by NDTV and Ministry of Human Resource Development. Further, other competing leagues also include the Tamil Nadu Cricket League, Karnataka Cricket League, *etc.*
- 9.21. Additionally, in its written reply dated 8th June, 2017, BCCI contended that neither in the supplementary investigation report nor in the Commission's order dated 8th February, 2013, there was any adverse finding against BCCI in relation to the ten year duration of the impugned clause in the IPL Media Rights Agreement. Long-term exclusivity of media rights is standard practice in sports industry to incentivise investment. This is also evident from the reply of Amateur Kabaddi Federation of India (hereinafter, 'AKFI') wherein, it has been stated that it also grants exclusive rights for ten years. The data provided by Sony and Times regarding revenues earned from IPL Media Rights should not be used/relied upon by the Commission since the success of IPL could not be predicted with any precision at its infancy stage.



b. Rules 28(b) and 28(d) of BCCI Rules

- 9.22. The DG misinterpreted Rules 28(b) and Rule 28(d) of the BCCI rules and held them anti-competitive, as they do not allow any private organisation to conduct cricket match/ tournament. Rule 28(b) provides that no member or a Club affiliated to a member or any other organisation shall conduct cricket match or tournament specified therein, without the approval of BCCI. The principle of *ejusdem generis* is to be applied in interpreting the scope of the term ‘*any other organisation*’ and thus, the said phrase does not include private organisations. Accordingly, there is no prohibition on private organisers to organise a professional domestic cricket league/event. The restriction on private organisations stipulated under Rule 28(d) applies only in respect of international matches.
- 9.23. With regard to the need for BCCI’s approval to conduct cricket matches, it was submitted that such requirement is observed across various sports formats and is a necessary part of pyramid structure of governance. Approval being a common aspect of sports federations can be observed from the responses filed by All India Football Federation (hereinafter, ‘**AIFF**’), Wrestling Federation of India (hereinafter ‘**WFI**’) and AKFI, before the DG.
- 9.24. Further, the DG has not been able to show any instance of a private organisation seeking permission of BCCI for conducting a cricket match or tournament, which was rejected by BCCI. Thus, it is incorrect for the DG to state that ‘*till date no private organisation has been allowed to conduct a professional domestic cricket tournament in India*’. The supplementary order dated 24th October, 2013 of the Commission in Case No. 51/2011 in *HNG Float Glass Ltd. v. Saint*



Gobain Glass India Ltd. was relied upon to assert that the finding of abuse of dominant position would require establishment of actual exclusionary conduct.

- 9.25. Lastly, the judgments or orders of General Court, European Union in *AstraZeneca AB v. European Commission* (Case T-321/05) [(2010) ECR II-2805], European Court of Justice in *Commission of European Communities v. Tetra Laval BV* (Case No. C-12/03) [(2005) ECR I-987], Commission in *Neeraj Malhotra v. North Delhi Power Limited* [Case No. 6/2009 decided on 11th May, 2011], UK Competition Appeals Tribunal in *Naap Pharmaceuticals Holdings Ors. v. Office of Communications* [(2002) CAT 1], *Baustahlgewebe v. Commission* (Case No. C-185/95 P) [(1998) ECR I-8417], *JFE Engineering v. Commission* (Case T-67/00) [(2004) ECR II-2501] and *Commission v. Ani Partecipazioni SpA* (Case No. C-49/92 P) [(1999) ECR I-4125] were relied upon to assert that a finding of abuse of dominant position should be based on clear and cogent evidence.

E. Analysis and findings of the Commission

10. The Commission has perused the supplementary investigation report of the DG, the suggestions/ objections filed by BCCI and third parties and other material available on record. It also heard the learned counsel for the Opposite Party. On consideration of the aforesaid, the following issues arise for determination in the present matter:
- (i) Whether the DG is correct in concluding that the relevant market is the market for ‘organization of professional domestic cricket leagues/events in India’?



- (ii) If the relevant market defined by the DG is correct, whether BCCI enjoys a dominant position therein?
- (iii) If answer to Issue No. 2 is in affirmative, whether BCCI has abused its dominant position in the relevant market?
11. Before dealing with the merits of the case and determining the above issues, the Commission would first deal with the preliminary issue raised by BCCI regarding its status *i.e.* whether BCCI is an ‘enterprise’ within the meaning of Section 2(h) of the Act and therefore, whether Section 4 of the Act applies upon?.
12. In this regard, the Commission notes that Section 4 of the Act stipulates that no enterprise or group shall abuse its dominant position. Section 2(h) of the Act defines the term ‘enterprise’ as under: *“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 relatable 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.* The term person in turn has been defined under Section 2(l) of the Act to



include ‘a co-operative society registered under any law relating to co-operative societies’.

13. Hence, it may be noted that the definition of ‘enterprise’ is wide enough to include within its purview any economic activity carried on by any entity. As per this definition, an entity which is engaged in an activity relating to production, storage, supply, distribution, acquisition or control of any article or goods, or provision of services is an enterprise. Activity in question only needs to be an economic activity. An activity can be considered as an economic activity if an entity is operating in some market and where there are buyers and sellers.

14. From the facts of the present case, the Commission notes that BCCI is a society registered under the Tamil Nadu Societies Registration Act, 1975 and is, hence, a ‘person’. BCCI is a full member of ICC and is established to promote cricket in India. In terms of its Memorandum of Association, BCCI has been, *inter alia*, established to control the game of cricket in India and give its decision on all matters including women’s cricket, which may be referred to by any of its member association in India. In addition to being the custodian of cricket in India, BCCI also organizes different formats of cricket matches/ tournament. By organizing such matches/tournament, it generates income. For instance, in case of IPL, details of the financial statements of BCCI provided with its submission dated 27th March, 2017 show that it grants media rights to broadcasters, enters into franchisee arrangements with business houses, raises sponsorship, *etc.* Revenues generated from these activities run into hundreds of crore. No doubt, these may be ploughed back into cricket and allied activities; but that does not imply that the said activities of BCCI are not economic in nature. The DG has noted from the news release of BCCI regarding IPL that “*the economic output associated with IPL matches in India*



for 2015 is estimated to be INR 26.5 billion (Rs. 2650 crores) and the contribution of GDP of INR 11.5 billion through 60 days event”. The economic value associated with IPL was acknowledged by the learned counsel for BCCI as well during the hearing in the matter.

15. The fact bodies like BCCI undertake economic activities is also acknowledged by ICC. Clause 32 of the ICC Rules has been relied upon by BCCI to justify one of its impugned conduct. It states that:

“it is common for a sport’s commercial partner to require certain commitments to protect their respective investment in the sport....Members ought not to put themselves or the ICC in breach of their respective commitments to those commercial partners, as this would threaten the generation of commercial income for distribution throughout the sport.”

This brings out the factual position that members of ICC, including BCCI, generate income through cricket and for such purpose, they partner with other entities. Thus, the Commission has no hesitation in concluding that organization of IPL and the attendant activities mentioned above, are economic in nature and thus are covered within the ambit of Section 2(h) of the Act.

16. BCCI has argued that it being a not-for-profit society, would not qualify as an ‘enterprise’ for the purposes of the Act. It may be true that sports federations may not have the intention to necessarily make profit. However, the enterprise status as an entity does not depend upon profit motive alone. The defining feature of the concept ‘enterprise’ is that it engages in an economic activity covered within the ambit of Section 2(h) of the Act. If a person is engaged in any such activity, no matter with or without profit motive, it would be considered an enterprise as it interfaces with the market and hence, with other alternatives for the product or service in question. The engagement of sports



federation in regulatory activities such as framing rules and undertaking measures to preserve the integrity of the sport does not alter its status as an enterprise if it is pursuing income generating economic activities alongwith. Thus, the reliance placed by BCCI upon *Cricket Association of Bengal Case (supra)* is not of any relevance to BCCI for the purpose of excluding itself from the definition of enterprise under the Act. Subjecting economic activities of sports federations to competition law is consistent with the practice adopted and followed by mature competition regimes like the European Union. In *Motosyklististiki Omospondia Ellados NPID (MOTOE) v. Elliniko Dimosio* [Case No. C-49/07 (2008) ECR I - 4863], it was held that “*A legal person whose activities consist not only in taking part in administrative decisions authorising the organisation of motorcycling events, but also in organising such events itself and in entering, in that connection, into sponsorship, advertising and insurance contracts, falls within the scope of Articles 82 EC and 86 EC.*”

17. Based on the above, the Commissions holds BCCI to be an ‘enterprise’ within the meaning of Section 2(h) of the Act.

Issue No. 1. Whether the DG is correct in concluding that the relevant market is the market for ‘organization of professional domestic cricket leagues/events in India’?

18. In any case of alleged abuse of dominant position, delineation of the relevant market is of significance as it sets out the boundaries for competition analysis. Proper delineation of relevant market is necessary to identify, in a systematic manner, the competing alternatives available to the consumers and accordingly, the competitive constraints faced by the enterprise under scrutiny. The process of defining the relevant market is in essence a process of



determining closely the substitutable goods or services as also to delineate the geographic scope within which such goods or services compete. It is within the defined product and geographic boundaries that the competitive effects of a particular business conduct are to be assessed. Section 2(r) of the Act defines 'relevant market' as the market determined with reference to the relevant product market or the relevant geographic market or with reference to both the markets. Section 2(s) of the Act defines 'relevant geographic market' as a market comprising of the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogeneous and can be distinguished from the conditions prevailing in the neighbouring areas. Section 2(t) of the Act defines 'relevant product market' as a market comprising of all those product or services which are regarded as interchangeable or substitutable by the consumer by reason of characteristics of the products or services, their prices and intended use.

19. In the instant case, the DG has found the relevant market to be the market for '*organization of professional domestic cricket leagues/ events in India*'. Since BCCI contended that IPL and general entertainment television programmes are substitutable and form part of the same relevant product market, the DG analysed the substitutability between them. The DG concluded that professional domestic cricket leagues/ events are neither substitutable with general entertainment programmes nor with other sports nor even with other formats of cricket itself. BCCI objected to the definition adopted by the DG as being narrow and erroneous. It argued that IPL competes with all forms of entertainment programmes telecasted on television and therefore, all of them constitute one relevant product market. On the issue of substitutability between professional domestic cricket leagues and other formats of cricket, BCCI contended that a particular format of cricket is only a way of conducting competition and does not denote a separate relevant market.



20. At the outset, the Commission notes that every sport has unique characteristics, leading to the development of its own fan-following. While popularity of each sport depends upon the players, teams and the tournament involved, none is interchangeable with the other by virtue of characteristics. Thus, a cricket match cannot be perceived to be substitutable with any other sport based on characteristics of the game. More importantly, strong consumer preference for cricket in India is a well-known fact. The report of Justice Lodha Committee, which has been relied upon by the DG, notes that *“Cricket is a national sport that connects the people of India in a unique way.....We understand that the cricket fan is emotionally wedded to the game, and is willing to sacrifice much for a mere taste of what cricket has to offer.... If there has been one unifying factor in India, it has been cricket. From C. K. Nayudu to Virat Kohli, the 32 captains of India and the men they have led have been equally deified and vilified by the masses, for such is the ability of the game to inflame passions.”* Having due regard to the characteristics and consumer preference, the Commission concludes that cricket is not substitutable with any other sport in India.
21. Within cricket also, there are different formats. The ICC Rules categorize cricket events into the following:
- (a) *ICC Events* - any event organized by or on behalf of ICC from time to time, for example ICC Cricket World Cup, ICC Champions Trophy, ICC under-19 World Cup, etc.;
 - (b) *International Cricket Events* – any match or event involving one or more national representative team that is incorporated into the future



tour programmes, for example, Test Matches, ODI and T-20 involving two or more nations, approved by ICC; and

- (c) *Domestic Cricket Events* – any cricket match, tournament, cup or league that is not under disapproved cricket and that does not qualify as international cricket. Domestic cricket may take two forms, first, domestic cricket tournaments amongst the member state teams like Ranji Trophy in India and second, in the form of professional leagues like IPL where foreign players also participate after obtaining approval from respective country’s sport’s body.

22. The Commission notes that professional domestic leagues like IPL differ from other formats of cricket in several ways. In case of international cricket or general domestic cricket events, the teams represent nations or the concerned states and the members of the team comprise of national level players or players belonging to the concerned state, as the case may be. On the other hand, in private leagues like IPL, the teams represent clubs/franchisees and may also include foreign players. Unlike other formats of cricket events, the private franchisees who own the IPL teams see it as a profit-making venture. Further, the format of the matches and the process of selection of players are markedly different in the case of professional domestic leagues like IPL. The entire organization of IPL like event, including selection of players through bidding process by private clubs is different from the mainstream cricket events. It is also a fact that revenue generation becomes incidental to the main objective of development and promotion of the sport in case of mainstream cricket events while profit is the primary consideration in private professional leagues like IPL.



23. Apart from these differences, the impugned clause in the IPL Media Rights Agreement also provides guidance in delineating the relevant market in the instant matter. As per the this clause, BCCI

“shall not organize, sanction, recognize, or support during the Rights period another professional domestic Indian T20 competition that is competitive to the league”

This clearly indicates that even as per the understanding of BCCI and the concerned broadcaster, IPL faces constraint only from another professional domestic Indian T20 competition but not from other formats of cricket.

24. Further, as pointed out by the DG, IPL has given birth to the idea of professional cricket league in India, similar to the style of football and baseball leagues played in Europe and US. It is a new era of cricket which takes time of little over three hours and is scheduled as per the convenience of viewers. This form is better suited for commercial exploitation by the industry and the media due to quicker pace and shorter duration. A scrutiny of the audited financial results of BCCI stand testimony to the incomparable revenue potential of IPL when compared with other forms of cricket. With the advent of professional cricket league like IPL involving private clubs and franchisees, the sentiment and experience of viewers, fans and other stakeholders has reached a different plane altogether, contributing to the commercialisation of the game and as a result, new genre of cricket has emerged with a market distinct from other formats of cricket.

25. During the hearing, the learned counsel for BCCI submitted that it supported organization of Tamil Nadu Premier League and Karnataka Cricket League, which are also domestic cricket leagues. The Commission notes that these are organized by the members of BCCI and are focussed/ restricted to the particular



state/ region, falling within the jurisdiction of the concerned member. These regional leagues do not involve participation by foreign players and are limited to particular regions/states and thus, do not constrain IPL, which has a pan-India reach.

26. Based on a collective consideration of the above differences, the Commission concludes that professional domestic cricket league like IPL is distinct from other formats of cricket.
27. BCCI has vehemently contended that IPL has been promoted as entertainment and the end-use of every content telecasted on television being entertainment, they all compete with each other for viewers/ eye-balls. Accordingly, BCCI has asserted that all television content/ programmes, including IPL, constitute one relevant product market. The Commission is of the view that such an argument is misconceived as it lacks appreciation of consumer preferences and characteristics of cricket, other sports and general television programmes. Cricket, as a product, is completely different and not comparable with general entertainment television programmes and other sports, although there may be common viewership. It has different verticals and can be followed live in stadium, on television, radio, internet or newspaper, and each of these mediums is likely to give different levels of satisfaction to the viewers/ followers. There is no denial that cricket in general and IPL in particular has the element of entertainment. However, grouping of all entertainment programmes in one relevant market is erroneous, as the same does not accord importance to consumer preferences that influence the boundaries of any market. Television content is a broad and diversified category, which can be classified into different genres such as news, sports, kids, comedy, science, *etc.* These can further be distinguished on the basis of language and other characteristics with



some content being restricted to audience of a particular region and some having nationwide reach.

28. The Commission notes that the purpose of defining market in abuse of dominance cases is primarily to ascertain the extent of market power enjoyed by the party in question and determine whether the same confers upon it a position of strength to operate independently of the market forces or affect its competitors or consumers or the relevant market in its favour. The definition must capture the economic realities so as to appreciate the competitive constraints prevailing in the market. In general, the alleged abuse plays an important role in identifying the focal product. Upon such identification, availability of substitutes are assessed on the basis of characteristics, price and intended use of the focal product and the purported alternative in question. Alternatively, in a bottom up approach, the effect of the conduct in a given economic activity can indicate the boundaries of the market.
29. To assess whether IPL and other television content form part of the same relevant market, one has to see whether they constrain each other. Given its characteristics, the DG has found that domestic cricket leagues like IPL is unique and not substitutable with other forms of cricket, other sports and general entertainment programmes telecasted on television. The DG has also concluded that *“There is no evidence of any price competition amongst sports. There is nothing to conclude that on lowering of ticket price of football events, the viewers of cricket will switch over to football match or if the price of cricket match ticket or channel subscription fee is increased, the viewer will switch over to other sports or events. The loyalty of fans of any sport is so strong that there is negligible chance of any cross elasticity of demand...The [supplementary] investigation has not found anything to indicate any kind of impact on the demand of cricket in case of any reduction or increase in the*



prices”. In its reply dated 1st December, 2016, BCCI has confirmed that IPL cannot be viewed on pay-per-view basis in India and the subscription of the concerned channel has to be on monthly basis. Although empirical evidence based on price parameters is not available to test the substitutability of IPL with other forms of cricket, other sports and general entertainment programmes broadcasted on television, one can infer consumer preference and substitutability based on other parameters.

30. The provisions of the Act state that products or services that are substitutable or interchangeable, form part of the same relevant market. However, as noted earlier, such determination has to be realistic and every shifting of consumers from one product or service to another need not necessarily indicate substitution. Similarly, it would be erroneous to group two things into the same market merely because the same customers buy both. For instance, if a consumer prefers to have pizza in a food court but upon reaching the food court (s)he finds an unusual food like ‘dal bati’ and ‘churma’, which is not normally available, (s)he opts to eat the latter but this does not imply that pizzas are substitutable with dal bati just because they both fall under the category of food and the consumer has chosen one instead of another. It is observed that mechanical application of substitutability test, as advocated by BCCI, will lead to erroneous assessment and one has to always keep in mind the purpose of defining market which is to determine whether two or more alternatives in the market constrain each other. One of the suggested tests to determine substitutability for the purpose of competition law is ‘small but significant non-transitory increase in price’ (SSNIP), where the reaction of consumers and producers to 5-10% increase in price of the focal product is assessed. If such increase in price is unprofitable for the producer due to shifting of consumers to alternative product, such alternative will be included in the relevant market as the focal product is constrained by the substitute. Conceptually applied in the instant matter, given



the characteristics and consumer preference for cricket/IPL in India, it is unlikely that such a large proportion of consumers would substitute IPL with any other form of entertainment viz. films, TV shows, etc. or any other sporting event thereby making a 5-10% increase in price unprofitable.

31. Both before the DG as well as the Commission, BCCI sought to draw inferences based on viewership details of various television programmes to suggest that IPL is substitutable with other television programmes. As pointed out by the DG, TRP ratings or viewership details of IPL, other forms of cricket and television programmes at most reflect the popularity of the concerned programme/ content. However, they do not in any manner reflect consumer perception in treating two different programmes as substitutable or interchangeable. The Commission notes that BCCI has taken a contradictory stand regarding the basis of determining relevant market. At para 66 of the BCCI's submission dated 1st December, 2016, it is stated that consumer preferences should ideally be determined on the basis of available alternatives at a given time and higher ratings of one event/ program in comparison with another measured at different points in time may not be the best tool to indicate anything about the relevant market. On the other hand at para 57, BCCI relies upon the TRP ratings of various television programme before and after IPL to suggest that the said programmes are substitutable with IPL. However, no basis what so ever has been shown to demonstrate that IPL and the said programmes have common viewership and the viewers see both these categories as substitutes.
32. At para 47 of its reply dated 1st December, 2017, BCCI relies upon the popularity of certain general entertainment TV programmes to assert that they exert competitive constraints on IPL. The article relied upon by BCCI to portray the impact of *Yeh Rishta Kya Kehlata Hai*, *Balika Vadhu* etc. on IPL



states that “*The Star Study shows that the viewership for Hindi General Entertainment Channels is intact during IPL.*” Although not useful in determining substitutability, the said statement just means that there was no impact on the viewership of the said television programmes on account of IPL. The comparison of IPL with *India’s Got Talent* and *Khatron Ke Khiladi* is of no relevance as the concerned viewership details across genres do not reflect *inter-se* consumer preference, substitutability and the constraint, if any, exerted by these programmes on each other. The characteristics of these television programmes and regional distribution of their target audience being different, they are not comparable with professional domestic cricket league like IPL, which has a pan-India reach and popularity. Seasonal nature of IPL is also a relevant factor that distinguishes it from other television contents.

33. BCCI has blamed the DG for not conducting any survey to determine consumer behaviour/ preference for IPL *vis-à-vis* general television entertainment programmes. The Commission notes that such exercise is neither a statutory requirement nor the only tool to determine relevant market. Given that the characteristics of IPL/ cricket are different from general entertainment programmes telecast on television, the Commission does not see the need for consumer survey in the instant matter. Based on the unique characteristics of cricket and distinct consumer preference for the same, the Commission concludes that general entertainment programmes telecast on television are not substitutable or interchangeable with cricket as the content of both these categories do not constrain each other.
34. In view of the foregoing, the Commission concludes that BCCI has not been able to provide any material that could show that consumers view IPL as substitutable or interchangeable with other formats of cricket or with any other sport or programmes broadcasted on television. Further, based on distinctive



characteristics and consumer preferences, the relevant market in the instant matter is found to be the market for *organization of professional domestic cricket leagues/events in India*.

Issue No. 2. Whether BCCI enjoys a dominant position in the above-defined relevant market?

35. The Commission notes that the historical evolution of BCCI has enabled it to attain a monopoly status in the organization of cricket events in India. BCCI assumes the role of *de facto* regulator of cricket in India on account of the pyramid structure of sports governance and endorsement from ICC as the national body for cricket in India. ICC declares its members like BCCI as the ‘custodian’ of cricket in the concerned territory and vests them the right of deciding on any matter relating to the said sport. By virtue of the conditions laid down in Section 32 of the ICC Manual, only BCCI has the exclusive authority to sanction/ approve cricket events in India. Further, any match or tournament not approved by BCCI would be regarded as ‘*disapproved cricket*’ in India. Relevant extracts of the ICC Manual are as under:

“32. Disapproved Cricket

35.1 A cricket match will be deemed to be “Disapproved Cricket”, and the terms of Section 32.4 will apply to it, if:

35.1.1 it has not been approved by the Members in whose territory it is played; or

35.1.2 it is the subject of 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....



सत्यमेव जयते



32.4 *A Member shall, to the greatest extent permitted by applicable law:*

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 organizations and individuals under its jurisdiction in any form of Disapproved cricket;*

32.4.4 *prohibit organizations under its jurisdictions 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 organization or individual under its jurisdiction who breaches the foregoing prohibitions;*

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

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

36. Authority of BCCI in relation to organization of cricket is also evident from the following Rules framed by it:



28. *Permission to Conduct Tournaments*

- 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.*

29. *Ban on participation in unapproved tournaments:*

No Member, Associate Member or Affiliate Member shall participate or extend help of any kind to an unapproved Tournament.

No player, (Junior & Senior) registered with the BCCI or its Member, Associate Member or Affiliate Member shall participate in any unapproved tournament.

No umpire, Scorer on the BCCI Panel shall associate with an unapproved tournament.

Any individual deriving financial or any other benefit shall not associate himself with an unapproved tournament. The working Committee would take appropriate action including suspension and stoppage of financial benefits and any other action against individuals/members contravening these rules.

30. *Organize foreign tours or invite teams from abroad*

No organization other than a Member of Association member clubs of Institution affiliated to such members shall organize foreign tours to or invite teams from abroad. Members or Associate Members or such clubs or institutions, desirous of undertaking tours abroad or inviting foreign teams shall obtain the previous permission of the Board. Such permission be given in accordance with the Rules framed by the Board.

37. Undoubtedly, the most significant source of dominance in the relevant market is the regulatory/ governance powers of BCCI emanating from the pyramid structure of the sport governance. BCCI is the only association for cricket in India at national level and in that capacity, ICC vests it with certain rights. Prime amongst them is the right to sanction/approve cricket events in India.



BCCI's regulatory role empowers it to create entry barriers for cricket leagues, other than those organized by it, in the form of requiring approval.

38. Besides the authority vested in BCCI under the pyramid structure of sports governance and the Rules discussed above, the DG has drawn attention to the undisputable market share and strong position of BCCI in terms of size, resources and economic power to conclude its dominant position in the relevant market. As per the audited financials of BCCI, its financial surplus ranged between Rs. 53.77 crore in 2008-09 and Rs. 525.95 crore in 2013-14.
39. BCCI's bone of contention is that regulatory powers under pyramid structure of sports governance cannot be treated similar to dominance enjoyed by business houses. It has been further contended that economic strength of BCCI is of no relevance as all its revenue is ploughed back into cricket itself. The Commission however, notes that source of market power is immaterial in determining dominant position and there is no legal basis to hold that authority vested pursuant to the pyramid structure of sport governance cannot be regarded as dominance. The Commission also considers the cases settled in other jurisdictions in this aspect. In *MOTOE (supra)*, the Court (Grand Chamber) on the issue of dominance of sports association insisted that:

“...a system of undistorted competition, such as that provided for by the treaty, can be guaranteed only if equality of opportunity is secured between the various economic operators. To entrust a legal person such as ELPA, the National Association for Motorcycling in Greece, which itself organizes and commercially exploits motorcycling events, the task of giving the competent administration its consent to applications for authorization to organize such events, is tantamount de facto to conferring upon it the power to designate the persons authorized to organize those events and to set the conditions in which those events are organized, thereby placing that entity at an obvious advantage over its competitors. Such a right may therefore lead the



undertaking which possesses it to deny other operators access to the relevant market...”

Thus, it is a known fact that sports federations engaged in organization of tournaments/ leagues and are put to advantage if they also possess the authority to grant approval for organization of similar events by others and set conditions for such organization.

40. Having due regard to the above discussed factors, the Commission concludes that BCCI enjoys a dominant position in the relevant market for organization of professional domestic cricket leagues/events in India.

Issue No. 3. Since dominance of BCCI in the relevant market has been ascertained, whether BCCI has abused its dominant position in the relevant market?

41. In addition to the findings of the DG, at the time of forwarding the supplementary investigation report to the parties, the Commission, *vide* its order dated 31st August, 2016, had noted 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 [IPL]”*, is in contravention of Section 4(2)(c) of the Act. In the supplementary investigation report, the DG has concluded that the said clause of the IPL Media Rights Agreement is nothing but a clarification in consonance with Rules 28(b) and 28(d) of the BCCI Rules and Regulations. The DG has also found that Rules 28(b) and 28(d) of BCCI Rules and Regulations are in contravention of Section 4(2)(c) of the Act as they leave no scope or window for conduct of any kind of professional domestic cricket other than by BCCI or its members. The DG has also stated that there is nothing on record to consider these restrictive



conditions as inherent to the objectives of the cricket and that the effect of such restrictive condition is proportionate to the legitimate sporting interest of cricket administration. The parties have been afforded opportunity to file their submissions on the findings of the supplementary investigation report as well as the above observation of the Commission in its order dated 31st August, 2016.

42. At the outset, the Commission notes that competition cases relating to sports associations/ federations usually arise due to the conflict between their regulatory functions and their economic activities. Therefore, it is necessary to appreciate whether the impugned clause in the IPL Media Rights Agreement and the impugned rules of the BCCI rules are in place to serve the development of the sport or preserve its integrity or otherwise. If the impugned restrictions impede competition without having any reasonable justification for protection of the legitimate interest of the sport, the same would fall foul of competition law. In *Dhanraj Pillay v. Hockey India* (Order dated 31st May, 2013 in Case No. 73 of 2011), the Commission has noted that “*The Commission... ..is of the opinion that intent/rationale behind introduction of the guidelines as submitted by FIH relating to sanctioned and unsanctioned events needs to be appreciated before arriving at any conclusions. Factors such as ensuring primacy of national representative competition, deter free riding on the investments by national associations, maintaining the calendar of activities in a cohesive manner not cutting across the interests of participating members, preserving the integrity of the sport, etc. are inherent to the orderly development of the sport, which is the prime objective of the sports associations. Moving further, on the proportionality aspect, the Commission opines that proportionality of the regulations can only be decided by considering the manner in which regulations are applied.*”



43. A similar approach is followed in mature competition regimes. The White Paper on Sports issued by the European Commission [COM(2007) 391] states that “...in respect of the regulatory aspects of sport, the assessment whether a certain sporting rule is compatible with EU competition law can only be made on a case-by-case basis, as recently confirmed by the European Court of Justice in its Meca-Medina ruling [Case C-519/04P, ECR 2006, I-6991]. The Court provided a clarification regarding the impact of EU law on sporting rules. It dismissed the notion of “purely sporting rules” as irrelevant for the question of the applicability of EU competition rules to the sport sector...The Court recognised that the specificity of sport has to be taken into consideration in the sense that restrictive effects on competition that are inherent in the organisation and proper conduct of competitive sport are not in breach of EU competition rules, provided that these effects are proportionate to the legitimate genuine sporting interest pursued. The necessity of a proportionality test implies the need to take into account the individual features of each case. It does not allow for the formulation of general guidelines on the application of competition law to the sport sector.”
44. The Commission is of the considered view that the system of approval under pyramid structure of sports governance is a normal phenomenon of sports administration. However, sporting rules often create a restrictive environment for the economic activities that are incidental to the sport. In case of BCCI, Rule 28 of BCCI Rules stipulates that the permission for conducting cricket match or tournament will be accorded only to its members and their affiliates. BCCI has argued that Rule 28(b) is not applicable for organization of leagues like IPL. However, there appears no merit in such contention as any cricket tournament or match conducted without the approval of BCCI will be deemed to be Disapproved Cricket in terms of Section 32 of the ICC Bye-laws. Further, Rule 29 of the BCCI Rules provide that: (a) no member, associate member or



सत्यमेव जयते



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. In the absence of these resources, no private entity can organize any meaningful cricket match or tournament without the support of BCCI. Seen in the backdrop of such restrictive Rules, the Commission finds that the representation and warranty given by BCCI that it shall not organize, sanction, recognize, or support any other league that is competitive to the professional domestic Indian T20 competition, during the rights period *i.e.* for a sustained period of ten years, forecloses the market for organization of professional domestic cricket leagues/events in India.

45. BCCI has not provided any justification as to how this self-imposed restriction of not organizing, sanctioning, approving or supporting another T20 cricket event that will be competing with IPL, is connected to the interest of cricket. The limited defence advanced by BCCI is that the impugned clause was inserted at the behest of the bidders. It was further contended that the bidders asked for the impugned clause as the market for IPL was nascent, broadcast of IPL is for a limited time resulting in limited time for recouping investment and inherent constraints being there in the broadcasting market. The Commission notes that the responsibility cast upon dominant enterprises under Section 4(1) of the Act does not get diluted on the pretext of the abuse being pursued at the behest of the consumers or other stakeholders. Further, claims of nascency, limited time for recoupment and the need for the self-imposed restriction running for a sustained period of ten years have not been substantiated by BCCI. Thus, these claims are no more than vague assertions. In today's dynamic world where sports and formats of sports are fast evolving, the



impugned restriction for ten years is found to be enduring and has the potential to impede competition as well as the development/ evolution of the game.

46. Despite being specifically asked for, *vide* order dated 15th February, 2017, BCCI did not provide any explanation to the Commission regarding the basis of determining the consideration for grant of media rights. When the same was asked for from Sony, which has been telecasting IPL, it replied that *“As for the basis for determination of the value of IPL media rights, just like for any other sports property the media rights (limited to broadcast) of which can be acquired only by way of participating in a tender, we broadly determine the valuation of rights fee payable for a sports property pursuant to the monetisation projections and estimates that a broadcaster has on the potential of the sports property over the entire proposed licence period in terms of revenue from sub-licencing, and selling of advertisements and broadcast sponsorships which becomes the basis of a broadcaster’s bid. In the case of a sports property the rights of which have been exploited in the past, in the relevant market, we look into the performance of such sports property in terms of ratings and the revenue garnered by such exploitation of media rights (to the extent such information is available)”* (emphasis added)
47. From the submission of Sony, it is clear that the consideration for media rights is fixed on the basis of revenue potential of the content during the rights period. That being it, the license period for media rights is not being determined on the basis of a pre-determined amount. BCCI in its submission has stated that the impugned clause was pursued to facilitate recoupment of the investment made by broadcasters. However, it has not explained as to why the monopoly of IPL, created through the self-imposed restriction, has to run for a sustained period of ten years and how it serves the legitimate interest of cricket. The impugned restriction been given as a commitment in a commercial agreement and has not



been shown to have been pursued in the interest of sport is held to be unfair and anti-competitive. In the absence of any plausible explanation, it is found that the impugned clause was pursued to enhance the commercial interest of the bidders of broadcasting rights and the consideration in turn received by BCCI. As discussed earlier, the impugned clause is restrictive of the competitive constraints that would have prevailed otherwise.

48. Being the *de facto* regulator of cricket in India, it is understandable that imposition of restrictive conditions, in certain circumstances, might be indispensable to preserve the interest of the sport in the country. However, in this case, the only rationale offered by BCCI for the impugned clause in the IPL Media Rights Agreement is protection of commercial interest of the media company. While the restriction may serve the interest of the media company by helping it recoup investments, BCCI has not been able to show how the impugned restriction serves the legitimate interest of cricket in the country and the consumers in the relevant market. This explanation by BCCI is not acceptable as the restriction helps BCCI to ensure monopoly for itself in the relevant market for organization of domestic professional cricket leagues. In fact, the clause clearly reflects the intent of BCCI to foreclose competition. Further, restriction that has no nexus or is disproportional to the objective/interest of cricket cannot seek protection under Section 32 of the ICC Bye-laws. On a purposive reading of the ICC Bye-laws, it cannot be said that the same allows protection of commercial interest over and above the interest of cricket.
49. Though free entry is one of the necessary conditions for competition to flourish, it is well accepted that in view of the specificities of certain sectors, entry may be subject to regulatory conditions. The effects of such entry rules stipulated by the regulator need a case-by-case evaluation taking into account



the 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 28(b) create an insurmountable entry barrier in the relevant market for organization of domestic professional cricket leagues. In the absence of any plausible regulatory rationale or necessity of the same for promotion of the sport, the anti-competitive effect of the impugned clause is indubitable. Based on the foregoing assessment, the Commission concludes 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) 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) read with Section 4(1) of the Act.

ORDER:

51. To address the contravention found in the preceding paragraphs and to remedy the harm flowing therefrom, the Commission directs as under:
- (a) BCCI shall cease and desist from indulging into the aforesaid conduct, which is found to be in contravention of the provisions of Section 4(2)(c) read with Section 4(1) of the Act;
 - (b) BCCI shall not place blanket restriction on organization of professional domestic cricket league/ events by non-members. This shall, however, not preclude BCCI from stipulating conditions while framing/ modifying relevant rules for approval or while granting specific approvals, that are necessary to serve the interest of the sport. Such



changes shall entail norms that underpin principles of non-discrimination and shall be applied in a fair, transparent and equitable manner;

- (c) Having done the above, BCCI shall issue appropriate clarification regarding the rules applicable for organization of professional domestic cricket leagues/ events in India, either by members of BCCI or by third parties, as well as the parameters based on which applications can be made and would be considered. Besides, BCCI shall take all possible measure(s) to ensure that competition is not impeded while preserving the objective of development of cricket in the country ; and
- (d) BCCI shall file a report to the Commission on the compliance of the aforesaid directions from (a) to (c) within a period of 60 days from the receipt of this order.

52. Under the provisions contained in Section 27(b) of the Act, the Commission may impose such penalty upon the contravening parties, as it may deem fit which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreement or abuse.

53. The Commission has given thoughtful consideration to the issue of quantum of penalty. BCCI has argued that the Commission should take into consideration the following mitigating factors, in case of imposition of penalty: (a) BCCI is a not for profit organization; (b) revenue generated by BCCI, including by way of IPL, is ploughed back to the game of cricket; and (c) there has been no instance where any new entrant has been denied the opportunity to enter the relevant market on account of the impugned clause in the IPL Media Rights Agreement or otherwise.



54. In this connection, first of all, it would be apposite to refer to the decision of the Hon'ble Supreme Court in *Excel Crop Care Limited v. Competition Commission of India and Anr.* [common judgment dated 8th May, 2017 in CA No. 53-55, 2874 and 2922 of 2014] , holding that 'turnover' to be taken for imposition of penalty should be the relevant turnover from the product in question and not the total turnover of the enterprise. The Hon'ble Court has observed as under:

“92. When the agreement leading to contravention of Section 3 involves one product, there seems to be no justification for including other products of an enterprise for the purpose of imposing penalty. This is also clear from the opening words of Section 27 read with Section 3 which relate to one or more specified products. It also defies common sense that though penalty would be imposed in respect of the infringing product, the 'maximum penalty' imposed in all cases be prescribed on the basis of 'all the products' and the 'total turnover' of the enterprise. It would be more so when total turnover of an enterprise may involve activities besides production and sale of products, like rendering of services etc. It, therefore, leads to the conclusion that the turnover has to be of the infringing products and when that is the proper yardstick, it brings home the concept of 'relevant turnover'.

55. Therefore, the starting point of determination of appropriate penalty should be to determine the relevant turnover and then, to calculate the appropriate percentage of penalty based on facts and circumstances of the case. The Commission has held that the contravening anti-competitive conduct of BCCI amounts to denial of market access to the market for organization of professional domestic cricket leagues/events in India. The relevant turnover for this contravention would be the revenue of BCCI from organization of professional domestic cricket leagues in India. Accordingly, the average of the relevant turnover during the last three preceding financial year works as under:



Rs. in crore

Party	Revenue of from IPL/ professional domestic cricket league/ events in India			Average
	FY 2013-14	FY 2014-15	FY 2015-16	
BCCI	1194.73	999.63	1299.04	1164.47

Note: Since the impugned restriction is still in place/existence, the Commission takes the last three available audited financial statements of BCCI for the purpose of calculating the relevant turnover.

56. Having decided what constitutes relevant turnover, the Commission now proceeds to calculate the appropriate percentage of penalty. The twin objectives behind imposition of penalty are: (a) to reflect the seriousness of the contravention; and (b) to ensure that the threat of penalties will deter the infringing undertakings. Therefore, the quantum of penalty imposed must be proportional to the gravity of the contravention and must be determined after having due regard to the mitigating and aggravating circumstances of the case.
57. The Commission notes that denial of market access is one of the severe forms of abuse of dominant position. The assessment of the Commission clearly brings out that the impugned clause in the IPL Media Rights Agreement has been pursued by BCCI consciously to protect the commercial interest of the bidders of broadcasting rights as well as the economic interest of BCCI. The deliberate engagement of BCCI in the said abusive conduct is taken as an aggravating factor. BCCI being a not for profit organization and its revenue being ploughed back into cricket are general features of any sports federation and the same cannot be taken as mitigating factors, as proposed by BCCI. Similarly, the Commission does not find merit in the argument that there is no actual instance of refusal to any proposal for organization of domestic leagues similar to IPL. After assuring monopoly of IPL for a sustained period of ten years by excluding all potential competition, there is no reason for BCCI or anyone to expect a proposal for organization of a similar league. Thus, the



Commission is of the view that no mitigating factor exists in the facts and circumstances of the present case.

58. Earlier, the Commission *vide* its order dated 8th February, 2013 had imposed a penalty of INR 52.24 crore on BCCI. Although, at present, the average of the relevant turnover for the last three financial years is slightly higher than the one which was considered by the Commission while passing the earlier order dated 8th February, 2013, the Commission prefers to maintain the penalty of INR 52.24 crore, which comes to nearly 4.48% of the average of the relevant turnover during the last three preceding financial years.
59. The Commission directs BCCI to deposit the aforesaid penalty amounts within 60 days of the receipt of this order.
60. It is ordered accordingly.
61. The Secretary is directed to transmit copies of this order to all concerned forthwith.

**Sd/-
(Devender Kumar Sikri)
Chairperson**

**Sd/-
(S. L. Bunker)
Member**

**Sd/-
(U. C. Nahta)
Member**

**New Delhi
Date: 29/11/2017**

**Sd/-
(Justice G. P. Mittal)
Member**