Competition Commission of India

(Case No.73 of 2011)

Date: 31.05.2013

In the matter of:

Sh. Dhanraj Pillay and Others — Informants

And

M/s Hockey India — Opposite Party

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. H C Gupta
Member

Mr. R Prasad
Member

Dr. Geeta Gouri
Member

Mr.AnuragGoel
Member

Mr. Justice (Retd.) S N Dhingra
Member

Present: _____ for the informants

_____ for the Opposite Party

Majority Order by Shri Ashok Chawla, Shri H.C. Gupta, Dr. Geeta Gouri, Shri Anurag Goel and Justice (Retd.) S.N. Dhingra

1. The case was initiated on the basis of information filed by Sh. Dhanraj Pillay, aformer Olympian and Captain of Indian Hockey Team against Hockey India (hereinafter "HI") to the Competition

Commission of India (hereinafter "Commission") under Section 19(1)(a) of The Competition Act, 2002 (hereinafter "Act") on November 15, 2011.

2. The case centered on the events leading to the organization of World Series Hockey League (hereinafter "WSH") by Indian Hockey Federation in collaboration with Nimbus Sport. The case pertains to the alleged imposition of restrictive conditions by HI, on players for participation in un-sanctioned prospective private professional leagues resulting in undue restrictions on mobility of players and on prospective private professional leagues leading to denial of entry to competing leagues.

3. **Parties to the Case and related parties**

3.1 **The Informants** in this case are a group of former Olympians and professional Indian Hockey players namely Sh. Dhanraj Pillay, Sh. Gundeep Kumar, Sh. Gurbax Singh Grewal, Sh. Balbir Singh Grewal, Sh. Alloysius Edwards and Sh. V Baskaran.

3.2 **The Opposite Party**, **Hockey India**, is the National Sports Federation of India for the sport of Hockey affiliated to the Indian Olympic Association (IOA), Asian Hockey Federation (AHF) and International Hockey Federation (FIH).

3.3. **A related party to HI is FIH**. FIH is the international governing body for the sport of Hockey recognized by the International Olympic Committee (IOC). FIH is responsible for integrity of the sport at the international level and to ensure the development of sport throughout the world.

3.4 **Indian Hockey Federation (IHF)** is the National Sports Federation for the sport of Hockey affiliated to Indian Olympic Association, but it

is not affiliated to FIH or AHF. IHF is the co-organizer of World Series Hockey (WSH) League along with Nimbus Sport (Nimbus).

3.5 **Nimbus Sport**, a subsidiary of Nimbus Communications Ltd., is a leading full sports rights management and marketing company.

4. Information

4.1 In December 2010, IHF and Nimbus announced the WSH league, designed and conducted on a franchisee model. The League was to feature 8 city based teams and players from India and overseas. The first tournament was scheduled to be organized from November 2011 to February 2012.

4.2 After the announcement of the WSH League, the organizers started entering into negotiations with players and signing them for the league. When the process of negotiations was on, the FIH notified regulations relating to sanctioned and unsanctioned events and communicated the same to all National Associations vide their letter dated 11th March 2011. These sanctions were to be applied prospectively w.e.f. 31st March 2011. The informants have stated that FIH and HI also started making statements prohibiting players from participating in WSH, on account of it being an unsanctioned event.

4.3 HI adopted the regulations relating to unsanctioned events and accordingly modified its Code of Conduct (CoC) Agreement with players to include the clauses related to disciplinary action such as disqualification from Indian National Team for any participation in unsanctioned events. In this backdrop, HI along with FIH also announced that they intended to introduce their own league in India in 2013.

4.4 A month before the scheduled start of the inaugural WSH League, the informants, based on the above sequence of events made a filing to the

Commission for inquiring into alleged anti-competitive activities of HI.

4.5 **Allegations**

4.5.1 The specific allegations leveled by the informants are as under:

(i) HI is misusing its regulatory powers and promoting its own Hockey League at the exclusion of WSH and is engaging in practices resulting in denial of market access to rivals, in contravention of Section 4(2)(c) of the Act.

(ii) HI is using its dominance in conducting international events in India to enter into the market of conducting a domestic event in India, in contravention of Section 4(2)(e) of the Act.

(iii) The CoC Agreement entered by HI with the players is an exclusive supply agreement and the restrictive conditions included thereunder, constitute a violation of Section 3(4) of the Act.

The informants made the following submissions in support of their allegations against HI

4.6 Jurisdiction issue

4.6.1 The informants submitted that HI, which is a society registered under Societies Registration Act 1860 qualifies to be a person as defined under Section 2(l)(v) of the Act. Also, the informant submitted that HI is engaged in activities related to conducting and governing of international hockey tournaments in India, facilitating sponsorship for the team, obtaining training facilities etc. According to the informants, these activities are commercial and HI is an enterprise under section 2(h) of the Act.

4.7 **Abuse of dominance**

4.7.1 Relevant Market

The informants defined the relevant market as, "the market for conducting and governing international hockey activities for both men and women in India". The definition given by informants covered in their view, both demand and supply side substitutability.

4.7.1.1Demand Side substitutability

The informants submittedthat the hockey players are the consumers of services rendered by HI and the players do not consider the services of conducting and governing international hockey activities for men and women interchangeable with any other service. Consequently,hockey players are not in a position to shift to a body conducting any other sport in response to a change in the supply side of the market, which comprises of HI, as it is the only body conducting and governing international hockey events in India.

The informants also stated that there is no substitutability between the conducting and governing of international activities and domestic activities.

4.7.1.2 Reference was made to the ECJ decisions on the Billiards Case (Henry v. The World Professional Billiards & Snooker Association Ltd (WPBSA), [2001 EWCA Civ 1127]) to support their delineation of the relevant market. In this case it was held:

> *"The first criterion in deciding whether particular suggested market is a relevant one for competition law purposes is as to demand substitutability: is there another product which is a close substitute in the eyes or purchasers for that which is the subject of the suggested market? As between snooker players and tournament promoters, there is clearly no substitute, as far as the players are concerned, for the services of promoters.*
>
> *From the point of view of the players, whether one considers him as seller (of his services) or as buyer (of the services of a tournament organisers), he is dependent on tournament*

organisers, since without tournaments he will have no opportunity to exercise his skills for profit."

4.7.1.3Supply Side substitutability

As regards supply side substitutability, the informants submitted that the conduct and governance of activities for a certain sport is a specialized area of service which involves important responsibilities and crucial functions by the service provider. Services in relation to conduct and governance of sport can only be provided by persons with special expertise and huge sport related resources in their command. Therefore the supply of services related to conducting and governing international hockey activities cannot be considered substitutable with any other service. The informants also clarified that supply substitutability does not exist between international and domestic hockey events as provision of services related to international events require recognition by international Federations and service providers for domestic events cannot shift to international events in the absence of such recognition.

4.7.1.4On the issue of geographic marketthe informants submitted that uniformity in the conditions of CoC agreements with players implies the market is pan India. On the possibility of extending the the market beyond the boundaries of India, the informants averred that that development of the game, requirement of players and factors relevant for team selection vary from country to country restricting the relevant market to India.

4.8 Assessment of Dominance

In their submissions the informants have stated that HI is in a dominant position in the relevant market as defined on account of the following factors:

i) *Monopoly position of HI as a regulatory body for Hockey in India:*Emphasis was laid on the monopoly of HI on

account of the pyramid structure of sports governance and consequent endorsement from FIH as the National Association for Hockey in India. HI is the only body empowered to select the national team to represent India in international competition and to enter into CoC agreements with players. These powers enable HI to impose restrictive conditions on the players movements and impose sanctions on players on disciplinary grounds and is the source of dominance.

ii) *Consumer dependence and countervailing buying power:*At the same time it was averred that hockey players cannot exert any kind of countervailing pressure on HI, given the sole mandate of selection of Indian National team being vested with HI. Reference was made to the WPBSA Snooker case, where it was held that players were heavily dependent on the services of WPBSA and the decision in Minnesota Made Hockey, Inc. v. Minnesota Hockey, Inc [-F.Supp. 2d-, 2011 WL 1833102(D.Minn.)] where it was held that absence of proof of market power does not justify anti-competitive behaviour.

4.9 Abuse of Dominance

The informants submitted that HI, by not sanctioning WSH (a domestic event) and prohibiting players from participating in WSH, is abusing its dominant position in the market for conducting and governing international hockey events to enter the market for conducting and governing domestic hockey activities for promoting its own proposed league. The informants hold that the conditions imposed by HI are not inherent and proportionate to the legitimate objectives of sports but are a disproportionate use of its regulatory power for the objective of promoting its own league, and thereby, excluding others in contravention of Section 4(2)(e) of the Act.

4..9.1 It was also submitted by the informants that the actions of HI including warning players, umpires, coaches not to participate in WSH, adopting regulations related to unsanctioned events and not sanctioning WSH are meant to secure the market for its own league. HI, by selectively sanctioning some tournaments in which it has a commercial interest and stake, over those organized by others, is making it virtually impossible for competent organizers to stage an event.Furthermore the informants submitted that, hockey players are also being denied an opportunity to compete, and develop themselves, as well as make a career out of playing the sport. Thus, the actions of HI constitute practices leading to denial of market access to new sport organizers, players and sponsors and broadcasters in contravention of Section 4(2)(c) of the Act.

4.9.2 Reference was made to the decision in Ice Hockey case by Australian Competition and Consumer Commission (ACCC)*(Australian Ice Hockey Federation Notification No.N94049, dated 02nd March 2010, Public Register No. C2009/1391, Australian Competition and Consumer Commission)* where it was noted that the power of IHA to expel or suspend members of the IHA for participating in unsanctioned events would not only restrict the number of leagues in the market and the overall consumer choice but would also affect the choices available to Ice Hockey players.

4.10 Anticompetitive agreements: Violation of Section 3(4)

According to the informants, the CoC agreement which is entered into between HI and the players is a vertical agreement and is in the nature of an exclusive supply agreement as it exclusively ties down the player to HI and restricts their options to participate in other tournaments.

4.10.1 All Hockey players that sign the CoC agreement are entirely dependent on HI's approval to play in any event. HI is in a position to refuse permission even if there is no conflict in the schedule of such event

when it is the duty of a player to represent India in an international tournament. Specific clauses of CoC Agreement related to seeking of NOC, disciplinary actions against the players were pointed out to bring out the alleged exclusivity.

4.10.2 The informants also submitted that this agreement causes appreciable adverse effect on competition in India as it creates barriers to entry for new players into the relevant market and drives existing competitors out of the market with no benefits accruing to the players as a result of such restrictive conditions in theCoCagreement. The informants highlighted some of the merits of tournaments such as WSH for the players' viz. source of remuneration, source of practice and training, and, development of infrastructure.

On the basis of these arguments, the informants alleged contravention of Section 3(4)(b) of the Act.

4.11 Relief sought

The informant prayed that the Commission may:

1. direct that the CoC agreement be modified to the extent that it is in contravention of Section 3(1) read with Section 3(4) of the Act.
2. direct that HI discontinue their practice of abusing their dominant position in the market for governing and conducting of international hockey events in India which is in contravention of Section 4(1) read with Section 4(2) (c) and 4(2) (e) of the Act, by engaging in conduct which includes:
   a) Warning hockey players with non-selection into the Indian national team if they participate in the WSH and/ or if they sign the player's contract;
   b) Warning hockey players with disciplinary action if they participate in the WSH and /or if they sign the player's contract.

3. direct HI and FIH acting through HI to publish a scheduled calendar of international events including training in preparatory camps thereof, one year in advance and having published the same direct that they do not amend it without giving atleast a minimum of 180 days' notice.
4. impose the highest penalty on HI for contravening section 3 and 4 of the Act
5. pass any other order that the CCI deems fit.

5. Prima Facie Order of the Commission

The Commission, upon examination of the facts of the information, passed an order under Section 26(1) of the Act, on February 09, 2012 recording its opinion that there exists a *prima facie* case, and directed the Director General (hereinafter "DG") to investigate into the matter.

6. Application for interim relief

The informants requested the Commission to pass an interim order under section 33 of the Competition Act restraining HI from abusing its dominant position and entering into anti- competitive agreements. However, the Commission was of the opinion that there is no irreparable or irretrievable harm to the players and the application filed by informants under section 33 was declined.

7. DG Investigation Report

The DG investigated the following key issues pertaining to the case:

i. jurisdictionof the Commission on HI and FIH and the application of competition laws.
ii. delineation of the relevant market in the case
iii. assessment of dominance in the relevant market.
iv. allegations related to violation of Section 4 of the Act
v. allegations related to anti-competitive agreements in violation of Section 3 of the Act.

On the basis of investigation carried out, the findings of DG are as under:

7.1 Jurisdiction on HI and FIH and application of competition laws.

7.1.1 On the issue of jurisdiction of the Commission the DG in his report has observed that, while it is true that HI and FIH are non-profit organizations, however, the activities carried out by the HI as well as FIH such as grant of franchisee rights, media rights, television rights, sponsorship rights, and all other rights, involves generation of revenue and has a commercial component to it. Such activities have to be seen differently from the ' not-for-profit' nature of certain other activities of HI and FIH.The prime objectives of these activities is to maximize revenues and these activities are executed through agreements that are commercial. The HI and FIH, are hence squarely covered within the meaning of the inclusive definition of "person" contained in the Act. Moreover these activities are also not covered under 'exceptions' as mentioned in the definition of an enterprise. The activities that enjoy exception for the purpose of the Act arerelated to atomic energy, currency, defence or space. Therefore, the economic activities carried out to organize the game of Hockey by HI and FIHcannot be excluded from the definition of an "enterprise" as contained in the Act.

7.1.2 In arriving at his conclusions regarding HI and FIH being recognized as an "enterprise" for the purpose of the Act, the DG also considered the decision of Hon'ble Delhi High Court in ***Hemant Sharma &Ors* V. *Union of India &Anr*** ***(****Source-W.P.(C)5770/2011 decided by Delhi High Court)*where while disposing the writ petition the Hon'ble court has considered the Chess Federation as an enterprise within the meaning of the provisions of section 2(h) of the Act. Thus, the observation of the Hon'ble High Court is also applicable in the instant case in as much as the HI and FIH are also placed on the similar circumstanced position as of the All India Chess Federation because

both are the paramount sports bodies in their respective fields, having the international recognition.

7.1.3 On the issue of extra territorial jurisdiction of the Act over FIH, DG stated that as per Section 2 (l), the definition of *"person"* includes an association of persons or a body of individuals, whether incorporated or not, in India or outside India. The DG also referred to Section 32 of the Competition Act, whereby Commission has been empowered to examine the agreements or abuse of dominant position or combination if such agreement or dominant position is likely to have an appreciable adverse effect on competition in the relevant market in India. Based on the definition of person and scope of Section 32, it has been concluded in the DG reportthat FIH falls well within the ambit of Competition Act.

7.2 Delineation and defining Relevant Market

7.2.1 On the aspect of delineation of relevant market, DG agreed with the informants that given the facts of the case, hockey players are the consumers of services rendered by HI. Accordingly, DG considered the supply side substitutability from the viewpoint of HI and demand side substitutability from the view point of Hockey players to define the relevant market.

7.2.2 The DG report recognizes that the conduct and governance of activities for a certain sport is a specialised area of service which involves important responsibilities and crucial functions by service provider. Conducting and governing international hockey activities in India constitute a separate and unique service market and the supply of such service cannot be considered substitutable or interchangeable with any other service.

7.2.3 The market for conducting and governing international hockey is different from market for conducting and governing domestic hockey activities because conducting international hockey activities require fulfilment of additional conditions in form of recognition by international sporting associations such as FIH etc.

7.2.4 The DG has observed in his report that the Indian hockey players who are the primary beneficiaries of the services rendered in relation to conduct and governance of international hockey activities, constitute the demand side.

7.2.5 It has also been observed thathockey players cannot shift to a body conducting any other sport in response to change in the supply side of the market, where HI is responsible for conducting and governing hockey events. The DG also stated that these conditions are different for international and domestic hockey events. Hockey players desirous of playing for the national hockey team at international events cannot avail the services of a body conducting and governing domestic hockey activities.

7.2.6 On the basis of supply and demand side substitutability as examined above, DG found, that the sport of hockey cannot be substituted by any other sport andhence concluded that the market for "*conducting and governing domestic and international hockey activities for both men and women and the underlying economic activities in India"* constitutes the relevant market as per the provisions of section 2(r) of the Act.

7.3 Assessment of dominance in the relevant market.

7.3.1 By the virtue of HI being a National Association and as a consequence of the regulatory powers vested with HI, the DG has observed in his report that HI is the sole body responsible for conducting and governing all hockey activities and enjoys monopoly powers in team selection, organizing of international events etc. The

DG also considered the imposition of restrictive conditions on players through the CoC Agreementas evidence of the strength of HI to affect its consumers (players) in its favour. In this context, a reference to USjudgement has been made by the DG. It was a case involving Minnesota Hockey Association (*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 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."*

7.3.2 To DG, it wasthe pyramidal structure that leads to creation of regulatory barriers which constrain entry in the relevant market as defined. Equally important fallout of these regulatory powers of HI is that, the hockey players who are the consumers and constitute the demand side of the market, are not in any position to exert countervailing pressures on HI, primarily because of the sole mandate of HI to select the members of Indian National Hockey Team. On the aspect of position of strength of National Associations' vis a vis the players, DG referred to the judgement cited by the informants in the Snooker case, where WPBSA was the regulatory body for professional Snooker where it was held,

> *"From the point of view of the player, whether one considers him as seller (of his services) or as buyer (of the services of a tournament organizer), he is dependent on tournament*

organizers, since without tournaments he will have no opportunity to exercise his skills for profit. Equally a tournament organizer depends on players, since the players are the essential basic ingredient of the tournament. However, whereas a tournament organizer would have skills and resources that could be applied to other activities, snooker players are not likely to have transferable skills."

7.4 Analysis of abuse of dominance

7.4.1 After concluding the dominance of HI, the DG examined the allegations levelled by the informants against HI pertaining to contravention of Section 4 of the Act. The allegations investigated are as under:

i) foreclosure of market to prospective organizers for the organization of domestic hockey events by HI through the introduction of rules related to sanctioned and unsanctioned events.

ii) prohibition of players from participation in domestic hockey events organized by competitors of HI, through the terms and conditions included in CoC agreement entered into with Hockey players.

7.4.2 Foreclosure of market to competing organizers of hockey events

7.4.2.1 On examination of the facts the DG found that the rules relating to sanctioned and unsanctioned events were introduced in March 2011, after the announcement of WSH. This delayed introduction was considered to be an afterthought on the part of FIH and HI to eliminate the danger of breaking their monopoly and control over the game of hockey. The DG in his report asserts that the chronology of events after the announcement of WSH tournament clearly shows that HI and FIH pressurized NIMBUS to either join them or face the consequences of non-participation by the current national team players.

7.4.2.2The perusals of these rules and regulationsclearly reveal that the intention of FIH and HI was to prevent the hockey players from participating in WSH. The DG has further held that the rules for domestic events were deliberately categorized into two categories:one, where only domestic national level players participate, and another where players of other countries also participate. TheDG in his report hasmentioned that in football or cricket it is very common that players from different countries participate in the domestic league organized at a national level. Thus in WSH also there would have been no problem if the players from different countries were allowed to participate.

7.4.2.3The DG held WSH to be a domestic event which was approved by one of the national associations for hockey in India, the IHF, and observed that the action of HI and the FIH to prevent the national hockey players to play WSH series by issuing a warning letter and forfeiting their right to play in a national hockey team for a period of 12 months is anti-competitive in violations of the provisions of the Act.

7.4.2.4Based on the statement of Sh. Dhanraj Pillay and the information provided by the Ministry of Youth Affairs and Sports vide their letter dated 05.06.2012, the DG concluded that the Indian Hockey Team which went to London to play 4 nation test matches and 7 nation Azlan Shah hockey tournament in Malaysia, did not include any of the players who participated in WSH. Similarly the Junior team also have not taken any player, who had participated in the WSH.

7.4.2.5In light of the above mentioned facts, DG concluded, that HI acting through FIH has abused its dominance to maintain their control over hockey sports in India. They have restricted players to participate in any match or event which is not sanctioned by them. Their conduct has also resulted in foreclosure of market for any other enterprise to organize hockey tournaments. It has not resulted in any benefit or advantage to the hockey and hockey players as well as consumers and spectators in any manner whatsoever.DG also noted that HI& FIH had a plan of launching hockey leagues in India on the similar lines of

WSH. The actions of HIwere to ensure that the hockey players are restricted to its ownhockey event and by imposing restrictive conditions denied market access to the players.Based on the aforesaid, DG held that the conduct of HIis in contravention of the provisions of section 4(2)(a)(i) and 4(2)(c) of the Act.

7.5 CoC Agreement and Restraints on Players

7.5.1 The allegation that the CoC Agreement of HI and hockey players included terms and conditions on players participation in domestic events organized by those other than HI was next examined by DG. DG took note of the changes in Bye laws by FIH relating to role of a national association with respect to participation of players, officials etc. in unsanctioned events and an email from FIH to the General Secretaries of the all the national associations of hockey dated 04.05.2012 with a suggestion that the executive board would recommend that, other than in exceptional circumstances, any person who participated in the 'World Series Hockey' event held in February – April 2012 should be deemed to have forfeited his eligibility to participate in international events (i.e. events involving national representative team) for a minimum of 12 months, starting from 31.03.2012.

7.5.2 In the background of above, HI included certain conditions in its CoC Agreement in September 2011 which read as

- *Disciplinary action shall be taken against any player or official who participates in any event which is not sanctioned by Hockey India.*
- *Players and Officials are required to obtain a No Objection Certificate (NOC) from Hockey India before playing for any foreign team/club etc. other than Hockey India or their registered Member Unit."*

7.5.3 The DG noted that, for obtaining a NOC from HI, no time frame has been fixed and rather it has been stipulated that an application for no objection certificate pursuant to this may not be deemed granted unless and until written approval isissued by the HI.

7.5.4 The DG also took note of MoYAS statement. MoYAS in its reply had observed that in the camp held at Bangalore for preparation and selection of Indian team after the WSH series, none of those players, who participated in the WSH series were included in the 48 core probables. Further, the Indian team which went to London to play four nation test matches and seven nations Azlan Shah Hocke tournament in Malaysia, none of the players who participated in the WSH, and junior players who had participated in WSH were included in the squad.

7.5.5 The DG further observes that theCoC signed by the hockey players required the HI approval to play in any event by way of NOC. As such the pre-condition of not allowing the top hockey players to play unsanctioned event on a threat of not taking them into the national hockey team selected to play international Olympic match is unfair and without any justification, places restrictive conditions on hockey players in India. Further, the action of the HI of not taking any player in the national team who had played WSH in 2012 substantiates the allegation of the IP.

7.5.6 The DG also concluded that, by virtue of the powers vested in the HI vis-à-vis the selection of the national team, HI is able to determine the tournaments in which the players can participate and the tournaments in which they cannot. It is obvious that hockey tournaments are only possible when adequate numbers of players are willing to participate in them. Without the consent of HI, players are effectively prohibited from participating in any event, even if the event is of a world class quality and standard, and vital for their development, remuneration and training, and do not conflict with their national team obligations. In

effect, by using its position as the sole selector of the Indian hockey team and by virtue of its dominance in the market for conduct and governance of hockey activities in India, HI can restrain the market for conduct of domestic hockey activities in India, as it is the sole body which can exercise this power. This gives them a significant advantage over other organizers such as IHF and enables them to leverage their dominant position in one market to protect their position in another market.

7.5.7 Thus, according to DG, the act of the OP for restricting the players to play hockey in unsanctioned events organized by the recognized association sport (IHF) and not issuing No Objection Certificate (NOC) as well as not including their name in the 48 probables for the camp held at Bangalore for preparation and selection of Indian team which went to London to play 4 nation test match etc. is in contravention of Sections 4(2)(a)(i) and 4(2)(c) of the Competition Act.

Contravention of Section 3 of the Act

7.6 The allegation leveled by the informant that the CoC agreement entered into between HI and players wasin contravention of Section 3(4) of the Act was then examined by the DG. Another aspect that was also examined was the decision of FIH and HI decision to ban WSH and whether this conduct attracts the provisions of Section 3(3) of the Act. The DG findings on the two issues are as under.

Whether the Code of conduct signed between HI and Players attracts the provisions of section 3(4)?

7.6.1 The DG observedthat the relationship between HI and Players are not on the footing of distribution or production chain as provided in section 3(4) of the Act on the following grounds:

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.

The lack of commercial relationship between HI and players nullified the application of Sec 3(4)of the Act and the allegation of contravention of this section.

Whether the decision of FIH & HI to impose ban on WSH attracts provisions of section 3(3) of the Act?

7.6.2 The DG stated that the recommendations made by an association are deemed to be arrangement between the members of the association and are covered under the definition of agreement as contained in the Act.

7.6.2.1 It was found that the decision regarding sanctioned and unsanctioned events was taken during the meeting of its executive body during 4th-6thMarch 2011. Article 18 of the FIH Statute provides the method of amendment or modification in the bye-laws. Article 18 of Statues and Bye-laws of FIH says that

- these statutes may be amended added to or rescinded by a resolution of the Congress passed by a special majority.
- no such resolution shall be submitted to the Congress unless the prior notice prescribed by the Bye-laws has been given to all NAs.
- any modification of the statutes must be proposed by a member or by the executive Board.

- the proposal must reach the CEO not later than three (3) months before the date fixed for the ordinary meeting of the Congress.

7.6.2.2 DG concluded that in this case it appears that the amendment made by FIH regarding sanctioned and unsanctioned events were not done in accordance with the provisions of Article 18, as it was done in haste to counter the forth coming WSH series only. The executive body comprises of the representatives of various national associations.

7.6.2.3 DG noted that the FIH is a body comprising of 127 member national associations' including Hockey India. All these associations including HI are engaged in identical market or provisions of services i.e. governing the Hockey sports in their respective territory. The executive body of FIH is elected from these members only. Thus the regulations and decision of FIH governing its members will be treated as horizontal agreement falling under the definition of section 3(3) of the Act.

7.6.2.4 According to the DG, these Bye laws give full authority to FIH for sanctioning all the international events as well as the domestic events where players from different countries participate. These Bye laws do not allow sanctioning any domestic event which is not organized by body other than the national association. Thus by way of these Bye laws no sanctioned tournament whatsoever, domestic or international can be organized at any level by any enterprise who is not a member of FIH.Further, if a player wishes to participate in an unsanctioned tournament he will have to obtain a NOC from his national association. The Bye laws also lay down the factors to be considered by the national association by granting NOCs to the players. A perusal of these factors show that in normal circumstances it may not be possible for any player to obtain NOC for participation in an unsanctioned tournament.

7.6.2.5 Based on the above facts, the DG concluded that decision of FIH and HI infringes the provisions of section 3 of the Act. Its decision to not allow and not cooperate with any event which is not proposed or organized by the members of FIH amounts to contravention of section 3(3) (b) of the Act. Its activities have resulted in restriction in the market. The Association collectively decided not to have any dealing with a person who does not agree with the directions of the Association. Thus based on the practice of non-cooperation and imposition of ban on WSH is found to be in contravention of section 3(3) (b) of the Act. Its conduct ultimately impedes competition in the market.

7.6.2.6As per the DG, the inquiries revealed that the opposite party and FIH has taken decisions as well as given directions to its members to not deal with WSH. The activities of any association should not be intended to restrain competition or to harm consumers. But, the purpose of the association should be to promote competition and to benefit consumers. Neither the association nor any of its committees or activities should be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, between and among competitors with regard to their prices, terms or conditions of sale, distribution, volume of production, territories, customers, or credit terms. Each member of the association is obligated and required to exercise its independent business judgment in pricing its services or products, dealing with its customers and suppliers, and choosing the markets in which it will compete. No activity or communication of the association or any of its members, in connection with their participation in the association, shall include any discussion or statement which could reasonably be construed as an agreement or understanding among members to refrain, or to encourage other members to refrain, from purchasing any raw materials, product,

equipment, services or other supplies from any supplier or from dealing with any supplier. Further, the conduct of FIH and HI clearly shows that they are exercising their authority to regulate entries and exits in the Hockey sport. Thus, realizing that the association has the authority to boycott and penalize, members obey the directions and orders of the Association.

7.6.2.7 The decision of FIH and HI regarding sanctioned and unsanctioned events has the elements of potential competitive harms which may restrict freedom of trade in the market. When seen under the conditions of Section 19(3) of the Competition Act, 2002, these conducts do not bring any efficiency or any other possible defence for imposing such conditions/decisions on its members. The decisions of boycott or non-cooperation by Associations cannot be justified in the garb of maintaining integrity in the sport of Hockey. Imposition of ban on WSH or similar events has not resulted in promotion or development of Hockey.

7.6.2.8 The above mentioned facts clearly show that the decision taken by FIH in consultation with its members including HI is anti-competitive in nature and hence, in violation of the provisions of section 3(3) (b) of the Act since it restricts any other person except its members to organize any event of Hockey in India. It also imposes restriction on players, and technical staff to participate in the events not organized by the member of FIH.

7.6.2.9 In view of the discussion in foregoing paras, the DG established that the decision of FIH and HI regarding sanctioned and unsanctioned event is anti-competitive and violate the provisions of section 3(3)(b)of the Act.

8. Submissions of HI and FIH

8.1 HI and FIH made separate submissions on issues concerning them. However, on certain issues such as jurisdiction and abuse of dominance, their submissions were on common ground and similar in approach. The important points made by opposite parties on each aspect of DG's investigation are as under:

8.2 Jurisdiction

8.2.1 HI and FIH stated that their activities fall outside the scope of the Competition Act, 2002. It was submitted that both FIH and HI are acting as a custodian of sport which is a public good, promoting the public interest by organizing, governing and regulating the sport in the way that will allow it to flourish. It was also stated that sports governing bodies are not a commercial enterprise working for profit to generate a return for investors, and its organizational, governance and regulatory role is not an economic activity.

8.2.2 The issue of 'specificities of sport' recognized in number of cases by the European Court of Justice and European Commission was also raised. Emphasis was placed on the fact, that given the specificities of sport, the competition law must be applied with sufficient flexibility to take account of the unique features inherent in sports that distinguish it from other sectors.

8.2.3 The parties cited the decisions of EC in cases such as Walrave *(Case 36/74 Walrave and Koch [1974] ECR 1405)* , Deliege *(Case C-191/97 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.

8.2.4 FIH submitted that the objectives underlying the regulations in the given case are clear, transparent, and entirely proper and legitimate: (i) to protect the integrity of the sport, and the public's confidence in the ability of its governing bodies to take any action necessary to safeguard that integrity; and (ii) to ensure that due priority is given in the sporting calendar to international events (i.e. events between teams representing different nations), because such events are the lifeblood of the sport, the driver of the popular interest in the sport that is essential to its long-term health.

8.2.5 As regardsthe jurisdiction of the Act over FIH, in addition to the 'specificities of sport' and 'non-economic activities' arguments as claimed above, that it is an international sports federation founded under Swiss law and with its seat in Lausanne, Switzerland and is not subject to the jurisdiction of the Commission, and in particular the Commission does not have power to require it to provide information.

8.3 Relevant Market Definition

8.3.1 HI in response to the DG Report submitted that no relevant market can be identified as HI does not provide any product or service within the meaning of the Act. HI also stated that DG has failed to identify the consumer, and the informants and Hockey players cannot be regarded as consumers. In support of their argument HI made reference to the National Consumer Dispute Resolution Commission judgement in the case of Deputy Registrar (Colleges) v. Ruchika Jain*(Source-III (2006) CPJ 343 NC decided on 07th July 2006),* where it held,

> *"In our view, a student who appears in the examination conducted by the University cannot be held to be a consumer as defined under Section 2(1)(b) read with Section 2(1)(o). Such a person does not hire or avail of the services of University or the Board for consideration."*

8.3.2 HI stated that it exercised its regulatory role and not an economic function with respect to selection of the national team and training of sportsmen and other activities undertaken for the development of the sport.

8.3.3 On the issue of Relevant Geographic Market, HI submitted that WSH is an international event and Nimbus intended to broadcast the event worldwide and therefore the relevant geographic market cannot be pan India.

8.4 Assessment of Dominance

8.4.1 HI submitted that the pyramid structure for regulation and organisation of competitive sport is vital and in line with established sport structure. HI as the National Association of India, is entrusted with upholding the values enshrined in the Olympic Charter. The sole purpose and function of sports governing bodies such as HI is to act as custodian of the sport in promoting the public interest by organizing, governing and regulating the sport in the way that will allow it to flourish. It stated that regulatory functions cannot be assessed against the yardstick of market forces.

8.4.2 As regards DG's findings on regulatory powers being the source of dominance, HI submitted that the responsibility of sanctioning sports events being held in their country and involving players of that nationality comes from the unique nature of governance of organized sport and having and exercising such regulatory authority does not in itself result in abuse of dominant position.

8.4.3 Moreover, HI cannot be held to be in a position of dominance as it is not a sanctioning authority for an event of the nature of WSH. As WSH involved players from multiple nationalities and different continents, sanction was required from each Continental Federation and FIH.

8.4.4 Based on above submissions, HIcontended that conclusion of its dominance, based upon the pyramid structure of sports governance, is incorrect.

8.5 Allegations of Abuse of Dominance

The following submissions were made by FIH:

(i) On the Pyramid Structure

8.5.1 FIH submitted that the governance of the sport of hockey is organised in a pyramid structure. The pyramid governance structure is mandatory within the Olympic movement and is necessary to protect and promote the sport. The most significant merits of pyramid structure are ensuring integrity of the sport, proper organisation and conduct of sporting calendar, ensuring primacy of national representative competition, etc.

8.5.1.1There can only be one team representing a nation, and therefore there can only be one national association organising national representative teams. Similarly, there can only be one world 'champion', and therefore those national associations can only recognise one international Federation. Therefore, *'one sport, one international Federation'* and *'one country, one national association'* are principles inherent in and essential to the organisation of competitive sport.

(ii) On the application of competition laws

8.5.2 FIH referred to the experience of ECJ and the European Commission and submitted that the competition laws do not stop sports federations issuing regulations required for the *'organisation and proper conduct of competitive sport'*, so long as any restrictive side-effects of those regulations are inherent in and proportionate to the achievement of that objective. Thus FIH submitted to consider the inherence and proportionality of the restrictive condition to the achievement of sporting objectives before concluding on violation of competition laws.

(iii) On the justification behind regulation related to sanctioned and unsanctioned events.

8.5.3 FIH submitted that the objectives underlying the Regulations are clear, transparent, and entirely proper and legitimate: (i) to protect the integrity of the sport, and the public's confidence in the ability of its governing bodies to take any action necessary to safeguard that integrity; and (ii) to ensure that due priority is given in the sporting calendar to international events (i.e. events between teams representing different nations).

8.5.3.1FIH also clarified that the rules requiring participants in official ('sanctioned') events not to participate in unofficial ('unsanctioned') events are inherent in and indispensable to the proper organisation and conduct of competitive sport. It was submitted that unsanctioned events threaten to undermine the sporting imperatives on account of:

(a) Unsanctioned events are not developed as an integrated part of the official sporting calendar and thereby create potential conflicts between different stake holders that could be damaging to the sport.

(b) Organisers, participants of unsanctioned events are not accountable for compliance with rules and regulations of the sport, and pose a significant risk to sport as the public is unlikely to appreciate the distinction between unsanctioned and sanctioned events.Any problem associated or arising in with the unsanctioned events would cause damage to the reputation of the entire sport.

(c) Private entrepreneurs are concerned with generating returns on their investment and will cut across the official frame work and lure the players away from national representative competition, which is the life blood of any sport.

(d) A private entrepreneur is able to pay more prize money to professional players as it does not have to share the revenues with the grass roots of the sport.

(e) €Lack of any restrictive condition regarding participation of players in unsanctioned events could lead to the private entrepreneurs free riding on investment made by official bodies working for development of the sport.

(f) From the players' point of view, movement to an unsanctioned event that benefits him constitute a breach of duty of solidarity that he owes to the sport.

8.5.3.2FIH also justified the regulations on grounds that these regulations do not deny market access to third party entrepreneurs. Entrepreneurs, who want their events to be sanctioned events, need only to obtain the requisite sanction from the relevant authority. Thus there is no ban on any organiser who is not a member of FIH or HI from organising an event; instead it requires the organizer to seek sanction for holding the event which shall be considered as per the provision contained in regulation (4) of Bye lawsto Article (5) of FIH regulations

(iv) On the allegations by informants on WSH being a domestic tournament and application for sanction

8.6.1 The depiction of 'World Series Hockey' as simply a 'domestic' event by the informants FIH considers as deliberately misleading. Nimbus has sought to derive profits by inviting not only the leading Indian players but also leading overseas players to participate in its 'World Series Hockey' event. And that means other national associations (not just Hockey India) are faced with the loss of their key players to events over which they have no control, held during periods when they may want those players to participate in or to prepare for (or to rest in preparation for) those international events. In other words, their ability to prioritise the interests of the national representative team, and so

their ability to develop the sport in their countries through the success of their national teams (a matter in which Nimbus has no interest), are completely undermined.

8.6.2 FIH added that an act for refusal of sanction, actuated by reasons that are anti-competitive in nature, without countervailing considerations, may be determined to be anti-competitive, but in the instant case, Nimbus never applied to FIH for sanction of WSH. FIH referred to the communications with WSH to highlight its position on the issue.

(v) On the regulations being aimed to counter WSH

8.7.1 FIH defended its regulations by stating that even though the regulations were issued after the announcement of WSH, yet they were applied prospectively and the players/ officials who entered into binding agreements with WSH before 31 March 2011 were not to be acted against. When FIH announced the regulations, it is stated that these are not to put off outside interest and investment, rather the aim is protecting the integrity and long term interest of the sport and to ensure that athletes give precedence to participation in national representative teams over other events. The regulations are not limited to India, they are applied to all 120+ countries where FIH has members.

(vi) On the harm to WSH caused by regulations

8.8.1 FIH submitted that all the 160+ players who signed for Nimbus prior to 11 March 2011 were able to play in the inaugural edition of WSH with impunity. Furthermore Nimbus was able to sign more players between 11 March 2011(the date on which regulations were issued) and 31 March 2011(the date on which regulations came into effect). The fact that the contracts signed were multi-year also protected the WSH.

(vii) On the issue of threatening players against participation in WSH

8.9.1 FIH submitted that the evidence presented for the alleged threats of players being banned for their participation in WSH is in form of newspaper reports, which cannot be considered as evidence. Neither FIH nor HI took any legal action to try to prevent player signing a contract or honouring his contract with Nimbus at any point. FIH added that the proof comes from the fact that Nimbus was able to stage its event with more than 160 players, it had contracted.

8.9.2 On the issue that HI did not select any player for the Indian team who played in WSH, FIH stated that as it understands, HI selected its national team from players who attended its training camps. Certain players, who decided to play in World Series Hockey rather than in a previously scheduled training camp, could not be considered for national team selection.

9. HI made the following submissions on DG's findings relating to abuse of dominance

9.1 HI in their submissions stressed upon the specificities of the sports sector, the pyramidal structure of sports governance to highlight that the competition laws cannot be applied to this sector as are applied to commercial enterprises. On the basis of specificities of the sports and regulatory nature of activities, HI challenged the jurisdiction of the Competition Act. The substance of submissions made was in line with submission of FIH as detailed above.

The submissions of HI on specific anti-competitive practices as alleged are as under:

(i) On the Issue of adopting the FIH Bye laws related to sanctioned and unsanctioned events.

9.2.1 HI in their submissions maintained that the Olympic Charter mandates that in order to be eligible for participation in the Olympics, "a competitor, coach, trainer or other team official must comply with the Olympic Charter, including the conditions of eligibility established by the IOC, as well as the rules of the International Federation (IF)

concernedas approved by the IOC, and the competitor, coach, trainer or other team official must be entered by his NOC." It is therefore, essential for every National Association (NA) to comply with the rules of the concerned IF. In India, Hockey India is the NA affiliated to FIH. In order to maintain its affiliation to FIH, and consequently for India to field its team in international events, it is necessary for Hockey India to comply with all rules and regulations of FIH. Failure to comply with FIH rules by any NA could result in consequences that include suspension or expulsion, thereby precluding India from participating in international events, including events such as the Olympics, Asian Games and Commonwealth Games.

9.2.2 Article 5.4 of the FIH Bye laws(as on 31.03.2011) provides for sanctioned and unsanctioned events. "Domestic Events" have been defined as events that do not involve national representative teams, while "International Events" are events where national representative teams compete and include multisport events such as the Olympics, Commonwealth Games and Asian Games.

9.2.3 The sanctioning authority for Domestic Events depends on whether the event involves athletes from other countries/continents. If a Domestic Event involves participation of more than one National Association's team and/or athlete, 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 the said event to be recognised as a Sanctioned Event the conditions are:

a) If the event is open to only 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 the relevant Continental Federation.

b) If the event is open to teams and/or athletes in membership of or affiliated to national associations from different continental

federations, and the event would be staged outside of team's continent, then it must be sanctioned by the relevant Continental Federation and by the FIH.

9.2.4 HI also clarified that WSH, being a league involving players from 7 countries and 5 continents, requires the approval of each concerned Continental Federation and the FIH. HI is only authorized to sanction domestic events involving teams in membership of or affiliated to one National Association and where the event would be staged entirely within that National Associations territory, and then in order for that event to be recognised as a Sanctioned event, it must be organised or sanctioned by the relevant National Association.International events can only be sanctioned as per FIH rules by the relevant Continental Federation and/or FIH depending on the circumstances. National associations have no authority and play no role in the process of sanctioning International Events.

(ii) On the issue of non-selection of players who played in WSH for representing Indian team at the Olympics

9.3.1 HI stated that the selection of 48 probables for the Olympics qualifiers was through a series of selection camps starting with a pool of 96 players. This pool was shortlisted to 32 players after the camp held on 03.12.2011. The selectors were Mr.Harbinder Singh and Mr.Dilip Tirkey, both former Olympians and two government observers. The entire selection process was video recorded as mandated by the Government. The list of 48 probables was released on 25.02.2012 and WSH started on 29.02.2012. Hence, the question of penalizing the players does not arise.

9.3.2 On a related issue of change of dates of the training camps with WSH, HI submitted that the training calendar for the Indian team was prepared and submitted to Sports Authority of India almost a year in advance, well before the announcement of WSH. The schedule for the preparation camp of the Olympic qualifiers was submitted to the Sports

Authority of India in early 2011 and was approved by Ministry of Youth and Sports on 07.03.2011. The dates for the preparatory camp were recorded in these minutes as 15th December 2011 to 06th January 2012 and from 16th January 2012 till the Olympics qualifier.

On DG's findings of refusal of sanction to WSH

9.4.1 HI submitted that no sanction was sought by the organizers of WSH from HI, and therefore HI had no occasion to refuse such a sanction. It was further submitted that HI is not a sanctioning authority for such an event.

Allegations of contravention of Section 3 of the Act.

9.5.1 On the aspect of DG Report, that the adoption of FIH Bye laws by HI amount to an anti-competitive agreement under section 3(3)(b) of the Act

The submissions of HI and FIH on this matter are given below.

9.5.2 HI submitted that it has not taken any action against players who participated in WSH. All players that attended the requisite camps were considered for selection. HI also stated that, Bye laws cannot be termed as agreement u/s 3 of the Act as there is no 'concurrence of wills'. Bye laws are a decision taken by the Executive Board of FIH and not all its members (including HI) are represented on the Executive Board. There is hierarchy between FIH and HI, which means the functions of FIH and HI are at variance from one another and cannot be said as identical, which is a requirement of Section 3(3).

9.5.3 As regards the contention that the Bye laws were inherently anti-competitive, HI submitted that their actions in maintaining the primacy of national representative sport, promotes public interest in the game. This interest is the backbone of success of private commercial leagues such as WSH.No 'harm' has been identified by DG, DG has talked only about potential harm.

9.5.4 FIH in their submission have stated that its Bye laws are not aimed to deny entry to leagues such as WSH and pointed out that DG completely misunderstood the regulations adopted by FIH. The Regulations do not impose a ban on any organizer who is not a member of FIH or HI from organizing any event. The Regulations only require that the organizer should approach FIH, CF or NA to seek sanction for holding the event. The right of the sports governing body cannot be held to be anti-competitive *per se*. Instead, an act of refusal actuated by reasons that are anti-competitive in nature, without countervailing considerations may be determined to be anti-competitive. It also pointed out that the amendments to the Bye laws was prospective in nature and did not restrict the ability of Nimbus to hold the WSH event.HI and FIH submitted their disagreements with the DG's findings. They maintained that the rules relating to sanctioned and unsanctioned events and the conditions contained in the CoC Agreement are ' inherent and proportionate' to the attainment of their objectives as sports governing bodies.

Analysis of the Commission

10.1 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. The case pertains to the alleged imposition of restrictive conditions by Hockey India, the National Association for the sport of Hockey, on players in un-sanctioned prospective private professional leagues resulting in denial of entry (permission) to competing leagues. Duality of roles assigned or appropriated by the designated National Association also raises concerns about the possible violation of the Competition Act'2002.

10.2 The character of sports has evolved over a period of time and the organizationof sports events generates significant revenues. The commercial dimension of sports is enormous andaccording to a recent

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.

10.3 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 team spirit, solidarity, tolerance and fair 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 analyze the sports sector as a whole, through the prism of competition regulation.

10.4 Determination of Issues

10.4.1 In order to evaluate the possibility of distortions that can occur in the sports sector, it is necessary to understand the structure of sports which has certain specificities. An understanding of the sports structure, and its specificities, will provide an appropriate framework to examine the allegations of the informant, the responses of the opposite parties and the DGs report, before arriving at conclusions, as regards, the alleged violations of the Act.

10.4.2 The Commission considered the following issues of relevance to the understanding of sports sector and application of competition laws.

Pyramid Structure

10.5. At the outset, it is important to understand the pyramidal structure of sports which forms the basis of regulation and governance.

What is Pyramid structure of sports governance?

10.5.1 Pyramid structure means a single national sport association per sport and Member State, which operates under the umbrella of a single continental/ national Federation and a single worldwide Federation, which is at the top of the pyramid. For Olympic sports, the worldwide Federation is affiliated to International Olympic Committee (IOC), which forms the top of pyramid. In the context of this case, the hierarchy is IOC at top, followed by FIH, followed by Continental Federations such as Asian Hockey Federation (AHF), followed by National Association that is Hockey India.

What are the merits of pyramid structure?

10.5.2 The Commission examined a number of articles/papers on the aspect of significance of the pyramid structure for successful development of the sport, such as White Paper on Sport issued by EC and international jurisprudence. The Commission took note of most important merits of the pyramid structure which are:

i) Pyramid structure helps to ensure that the special requirements of sports, such as uniform rules and a uniform timetable for competitions, are taken into account*(Source: Opinion of Advocate-General in MOTOE case).*

ii) Pyramid structure is essential for organization of national championships and the selection of national athletes and national teams for international competitions.

iii) Enforcement of rules that ensure proper organization and prioritisation of international competition as the international competition is recognized to be an essential and valuable feature of sport. *(Source: Case 36/74 Walrave and Koch [1974] ECR 1405).*

iv) Enforcement of rules that protect integrity of the sport and maintain public confidence.

What are the potential competition concerns that arise because of pyramid structure?

10.5.3 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 anti-competitive practices.

Specificities of Sport and application of Competition Laws

What are the specificities of sport which make it distinct from other commercial enterprises?

10.6.1 Sport has certain specific characteristics, which are often referred to as the 'specificity of sport'. These specificities can be on the aspect of sporting activities and of sporting rules such as separate competitions for men and women, limitations on the number of participants in competitions, or the need to ensure uncertainty concerning outcomes and to preserve a competitive balance between clubs taking part in the same competitions. The specificities can also be with respect to a structure notable among them are: the autonomy and diversity of sport organisations, a pyramid structure of competitions from grassroots to elite level; organised solidarity mechanisms between the different levels and operators; the organisation of sport on a national basis; and the principle of a single Federation per sport.

How should restrictive conditions/practices emanating from pyramid structure be evaluated for compliance with competition laws?

10.6.2 The Commission feels it is important to consider the manner in which competition laws are applied to the sports federations, given the fact that sports involve specificities emanating from pyramid structure of governance, which make them different from other commercial activities. As noted, there are strong efficiency arguments in favour of a pyramid structure as also there are tendencies and scope for potential anti-competitive practices. The contending tension of pyramid structure and competition and role that needs to be played by competition authorities is well enunciated in the White Paper on Sports issued by EC in Brussels dated 11.07.2007, which states:

> *"The Commission acknowledges the autonomy of sporting organisations and representative structures (such as leagues). Furthermore, it recognises that governance is mainly the responsibility of sports governing bodies and, to some extent, the Member States and social partners. Nonetheless, dialogue with sports organisations has brought a number of areas to the Commission's attention, which are addressed below. The Commission considers that most challenges can be addressed through self-regulation respectful of good governance principles, provided that EU law is respected, and is ready to play a facilitating role or take action if necessary."*

10.6.3 In context of this case, while the Commission appreciates the relevance and requirement of pyramid structure with the consequence of one National Association per sport, per Member State, it is the duty of the Commission that their functioning and activities must not violate theobjectives of the Act. The Commission affirms the right of self-regulation of sports bodies with regard to issues, which are purely sporting, such as selection of teams, formulation of rules of the sport

etc. or, even the issues which have economic aspects such as grant of various rights related to sports events or organization of leagues etc. However, given the inherent overlap of regulation and economic gains, outright grant of immunity to the rules and method of application of the rules by the federations is not possible.

10.6.4 It is important to consider and evaluate the efficiency arguments behind the allegedly restrictive anti-competitive regulations/practices of sports federations before arriving at a decision. The Commission is of the view that the appropriate approach would be to examine the regulations and the manner of application of regulations, for anti-competitive effects on economic competition on the lines of inherence proportionality principle laid down in the Meca Medina judgment of Grand Chamber of ECJ.

10.6.5 The inherence-proportionality test which is currently considered as the appropriate approach to address the competition issues in sports sector provides that if the alleged restrictive conditions is inherent to the objectives of the sports federationand the effect of restrictive condition on economic competition among stakeholders or on free movement of players is proportionate to legitimate sporting interest perused, the same may not be viewed as anti-competitive. This test may be applied to all rules, without needing to classify them as purely sporting or otherwise. In the early stages of application of competition law to sports, there was a notion that "purely sporting rules" must be exempted from Competition laws, but now all rules whether on the organizational/structural/regulatory role may be judged on case to case basis considering their inherence and proportionality.

10.7 In the backdrop of the above discussions on specificities of sports sector, the Commission considered it appropriate to delve on the competition issues related to the present case. The issues considered for determination are:

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 any contravention of Section 3 of the Act?

Jurisdiction

10.8 After considering the structural aspects of sports organization and governance and the manner of application of competition laws to sports cases, the Commission examined the issue of jurisdiction. The jurisdiction of Competition Authorities has been challenged in some cases in other jurisdiction by sports federations; and in the given case, HI and FIH have also disputed the jurisdiction of the Commission. The issues related to jurisdiction are examined below.

What is the scope of jurisdiction of the Act over sports federations?

10.8.1 The Commission considered it appropriate to examine the issue of jurisdiction in detail and considered the international jurisprudence and literature on sports sector to draw relevant broad principles, and also the provisions of the Competition Act. Thegeneral arguments of the opposite parties have centred on their non-profit institutional form and their so callednon-economic activities.The pleas of sports federations not being subject to Competition laws, given their non-profit form was observed in a case against ELPA*(Source-MotosykletistikiOmospondiaEllados NPID (MOTOE) v EllinikoDimosio,Case No C-49/07, THE COURT (Grand Chamber)*) (the authority participating in authorisation by a public body of motor cycling events and also responsible for organising motor sports competitions in Greece). It was held that:

> *"..The fact that MOTOE, the applicant in the main proceedings, is itself a non-profit-making association has, from that point of view, no effect on the*

classification as an undertaking of a legal person such as ELPA. First, it is not inconceivable that, in Greece, there exist, in addition to the associations whose activities consist in organising and commercially exploiting motorcycling events without seeking to make a profit, associations which are engaged in that activity and do seek to make a profit and which are thus in competition with ELPA. Second, non-profit-making associations which offer goods or services on a given market may find themselves in competition with one another. The success or economic survival of such associations depends ultimately on their being able to impose, on the relevant market, their services to the detriment of those offered by the other operators..."

10.8.2 The plea of non-profit status to be considered for granting immunity from Competition laws was also considered in Minnesota Made hockey Inc. case*(Minnesota Made Hockey, Inc. V Minnesota Hockey, Inc., Civil No.10-3884(JRT/JJK), United States District Court, District of Minnesota).* The US District Court ruled in a similar case:

"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.")."

Similarly, the dimension of activities being non-economic and hence immunity from Competition laws was also addressed in ELPA judgment of ECJ. The Grand Chamber of ECJ on the case against

ELPA had also observed on the question of whether sports constitute economic activity:

> *"……It should be borne in mind in this regard that any activity consisting in offering goods or services on a given market is an economic activity (see, in particular, Case C-35/96Commission v Italy [1998] ECR I-3851, paragraph 36, and Joined Cases C-180/98 to C-184/98 Pavlov and Others [2000] ECR I-6451, paragraph 75). Provided that that condition is satisfied, the fact that an activity has a connection with sport does not hinder the application of the rules of the Treaty (Case 36/74 Walrave and Koch [1974] ECR 1405, paragraph 4, and Case C-415/93 Bosman [1995] ECR I-4921, paragraph 73) including those governing competition law (see, to that effect, Case C-519/04 P Meca-Medina and Majcen v Commission [2006] ECR I-6991, paragraphs 22 and 28)…"[Source* C-49/07, REFERENCE ibid.)

10.8.3 The White Paper released by EC on Sports note that post Meca Medina judgement, National sports associations and International Sports Associations may be both undertakings under Articles 81 and 82 EC and associations of undertakings under Article 81 EC. 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 EC to the extent they constitute groupings of sport clubs/teams or athletes for which the practice of sport constitutes an economic activity.

10.8.4 The Commission also considered this issue in deciding on the BCCI case, *(In Re BCCI Case No.61/2010).* The Commission noted that the Act focuses on the functional aspects of an entity rather than institutional aspects. The scope of the definition on the institutional front has been kept broad enough to include virtually all the entities as it includes 'person' as well as departments of the government. The specific exception has been provided only to the activities related to the sovereign functions of the government. It is in substance the nature of activity that would decide whether the entity is an enterprise for the

purpose of the Act or not. The aspect of 'organization' brings in activities contributing to the revenues of sports federations such as grant of media rights, sale of tickets etc. The activities of 'organizing events' are definitely economic activities as there is a revenue dimension to the organizational activities of sports federations.

10.8.5 On the basis of principles emerging from international jurisprudence, the provisions of the Act and a holistic consideration of all relevant factors, the Commission opines that the National Sports Federations do not have any immunity under the Act and the Competition laws are applicable to these bodies. Therefore, the Commission concludes that it has jurisdiction over HI.

10.8.6 On the aspect of jurisdiction of the Commission over FIH being an international federation founded under Swiss law, the Commission concurs with findings of DG that given the scope of definition of person contained under Section 2(l) and the extra territorial jurisdiction of the Commission under Section 32 of the Act, it has jurisdiction over FIH.

Abuse of Dominance

10.9 The pivotal inquiry in a case of alleged abuse of dominance is assessment of dominance in the defined relevant market, followed by inquiry into the conduct. The Commission considered the issue of delineation of relevant market and assessment of dominance of HI.

Definition of Relevant Market

10.9.1 The Commission is not in agreement with the definition of relevant market as proposed by the informants and as found by DG. The informants and DG had defined the relevant product market in terms of conducting and governing activities. While the informants argued for limiting the definition to international hockey activities only, the DG took both the international and domestic hockey events. HI, in their

response to DG's report submitted to the Commission that the definition of relevant market does not arise as its services are not covered under the Act *(see para 8.3.1)*.

Firstly, the Commission is of the view that governing activities cannot be a part of market definition, but governing powers can be a source of dominance. Secondly, on the aspect of limiting the market to international and/ or domestic events, the Commission considered the related definitions and Bye laws of FIH. As per FIH Bye laws, a domestic event is defined as, *"any event that does not involve National Representative Teams."*

10.9.2 An International Event is defined as, *"an event in which National Representative Teams compete. It includes (without limitation) events staged as part of a multi-sport event such as the Olympic Games."*

FIH Bye laws in relation to sanctioning of events, provide

> *"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*
>
> *b. 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."*

10.9.3 On perusal of these Bye laws, the Commission noticed that even if a particular event is defined as "domestic", it may still require,

sanctioning from FIH or CFs based on nationality of participating athletes. Thus, the Commission concluded that the market need not be limited to a particular type of event as defined.

10.9.4 The Commission also considered and findsno merit in the submission of HI that there is no relevant market, as its activities are not covered in the definition of activity or service as contained in the Act. The Commission has already stated that its activities are commercial and stand covered by Competition Act.

10.9.5 Under Section 2(t) of the Competition Act, 2002, the relevant product market is defined as,

> *"a market comprising all those products 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."*

10.9.6 The definition considers substitutability by the consumer. Thus, the appropriate framework for defining the relevant market would be to identify the consumer and consider the substitutability from the point of view of the consumer on the parameters of characteristics, price and intended use.

Consumers in Sports sector

10.9.7 Who is the consumer in sports sector? According to the informants, the Hockey players are the consumers, while according to HI, the players cannot be regarded as consumers. The DG also defines hockey players as consumers. The Commission is of the opinion 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 each event and correspondingly there would be a separate set of consumers for such rights. Similarly, the ultimate viewers of sports event are consumers of the final product that is a sports event. 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 *apriori* would enable defining the relevant market.

10.9.8 In the instant case, there are two issues at broader level, the first relates to alleged practices of FIH/HI to foreclose the market for rival leagues by bringing in regulations related to sanctioned and unsanctioned events; the second relates to restrictive conditions imposed by HI on players through the CoCagreement. The allegations of foreclosure of rival leagues, grant of media rights and imposing restrictive conditions on movement of players form the crux of almost all the major antitrust inquiries in the sports sector. In order to properly evaluate the competition concerns, the Commission considered the relevant markets for the two allegations separately. The Commission opines that the concerns of abuse of dominance by an entity *vis a vis* its rivals can best be examined in the market for final product which is the event and whose consumer is the ultimate viewer of the sport. The second issue of restrictive conditions on the Hockey players however needs to be examined in context of the market for services of Hockey players where Hockey India is the consumer and Hockey players, the service providers.

Relevant Market for analysis of foreclosure of market for hockey events to rival leagues

10.9.10 The Commission considers delineation of relevant market for analysis of allegations pertaining to foreclosure of market for hockey events to rival leagues from the viewpoint of the spectator i.e. the ultimate viewer of sport in accordance with the criteria laid down under the Act of ' characteristics, intended use and price'.

10.9.11 At the outset, the Commission takes note of characteristics of hockey events. Every sport has unique characteristics that lead to development of fan following, the end consumers of the event. A hockey match,

like a cricket match cannot be perceived as substitutable by any other sport based on characteristics. Also, the Commission notes differences in various types of hockey events. There are hockey events, which include representative teams of member nations of FIH, defined as international events. Similarly, there are events which are played between the teams representing the members of National Associations such as HI. Clearly distinct from these two types of events are the latest genre of sports events which take the form of'private professional leagues', where the teams represent franchises and not any member of National Association or member of International Federation.

10.9.12 The approach of defining relevant market narrowed to sports events within a particular sport finds support from international cases decided on similar issues. In the Dutch Football case*(Source- KNVB* v *Feyenoord,* High Court of Amsterdam verdict of 08.11.1996), the Dutch F.A (KNVB) were taken to court by on affiliated club (Feyenoord). The KNVB decided in 1996 to sell the rights to transmission of all national league games, and all games of the Dutch national team, to a sports channel for seven years. The plaintiff maintained that under Dutch Law this amounted to an illegal price fixing agreement. This view was upheld by the court. The court held that the relevant product market was '*the market for (Dutch) football broadcasting rights*.'

10.9.13 On the aspect of the intended use, it may be argued that the basic objective of end consumer is entertainment and which would mean and imply that a consumer would consider different entertainment forms as substitutes and therefore a case for broadening the market. The Commission also considered the substitutability of cricket with other entertainment forms in the BCCI case, but is of the opinion that the issue is of more relevance in examination of cases where allegations have an impact on media and broadcasting industry. For a live viewer

of the sport, the entertainment from sport may not be regarded as substitutable with other general entertainment forms.

10.9.14As regards the price factor or defining the relevant market, Considering the basic test of non-transitory relative price rise of 5% to 10% also known as SNNIP test and in considering consumer behaviour towards sport, it is unlikely and difficult to believe that a consumer would substitute hockey event with any other form of entertainment viz. Films, TV shows etc. or any other sporting event.

10.9.15The Commission, after taking note of aforesaid factors concludes that the relevant product market, as regards the allegation of foreclosure of rival leagues is, *"the market for organization of private professional hockey leagues in India"*. This definition is neutral of the definitions of domestic event and international events contained in Bye laws of FIH and HI.

10.9.16On the issue of relevant geographic market, DG concluded that the market is pan India while HI argued for a broader market on the ground that WSH was supposed to be televised to a global audience.

10.9.17The Commission considered that though the markets are becoming more and more international and cross border due to the events being televised on a global basis, yet there are factors such as regulatory regimes, consumer preferences, which differ from country to country. Moreover, the Commission is mandated to look into the anti-competitive practices impacting Indian consumers, therefore there are enough reasons to maintain the geographic market as pan India.

Relevant market for analysis of allegations related to restrictions on players' movements

10.9.18Hockey India which is the organizer of hockey events requires the services of hockey players for conducting events. There is a degree of

complementarity between the two. DG and informants have argued that the players are the consumers of service of HI. The Commission holds a different view.

The definition of consumer as contained in the Act reads:

"consumer means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system ofdeferred payment and includes any user of such goods other thanthe person who buys such goods for consideration paid orpromised or partly paid or partly promised, or under any system ofdeferred payment when such use is made with the approval of suchperson, whether such purchase of goods is for resale or for anycommercial purpose or for personal use;

(ii) hires or avails of any services for a consideration which has beenpaid or promised or partly paid and partly promised, or under anysystem of deferred payment and includes any beneficiary of suchservices other than the person who hires or avails of the servicesfor consideration paid or promised, or partly paid and partlypromised, or under any system of deferred payment, when suchservices are availed of with the approval of the first-mentionedperson whether such hiring or availing of services is for anycommercial purpose or for personal use."

10.9.19The Commission notes that in this case, HI is hiring the services of Hockey players where themonetary consideration is in the form of match fees etc. which implies that HI is the consumer in this market. The arguments cited by DG and informants based on treatment of hockey players as consumers on the aspects of demand and supply side substitutability with HI being the consumer are valid in so far as delineating the relevant market "market for services of hockey players"

10.9.20 The definition of the informant and the DG pertain to Relevant Market which is significant for analysis of abuse of dominance *vis a vis* rival leagues only and as such fails to bring out the criticality of arguments which hinge on labour restrictions. More importantly, the governance aspect emphasized by DG and informant as a source of dominance cannot be part of definition of the market in understanding the scope of abuse of dominance vis a vis players and officials involved in sports of Hockey*"*. Commission considers it appropriate to define a relevant market in the context of the specific allegation more so where there are multitude of consumers as in the case of sports as pointed out earlier.

Assessment of Dominance in the market for organization of private professional hockey activities in India.

10.10.1At the time of submission of the case, HI was not a part of the relevant market. WSH was the first league to fall in the definition of 'private professional league'. The talks of introducing a league of their own by Hockey India had started at that time. HI, as anticipated made the entry by way of Hockey India League, which was organized in 2013.

10.10.2Undoubtedly in the defined market, the most significant source of dominance is the regulatory powers of HI. HI is a national association for hockey in India within the pyramid and in this capacity is vested with certain rights by FIH, prime among them is the right of HI to sanction/approve hockey events in India. This right to approve leagues has significant impact on any private professional league which might be proposed to be organized. The HI's regulatory role empowers it, along with FIH to create entry barriers for other leagues in the form of requiring rival leagues to obtain sanctions for their tournament and requiring players to obtain NOCs from HI to participate in rival tournaments. The aspects of granting sanctions for a league and giving NOCs for participation are regulatory in nature, but are in a clear

position to impact the market for organising events and are a vital source of dominance.

10.10.3Dominance also stems from the role of HI as an organizer of International hockey events. With this role, HI controls a pool of players that sign the CoC agreement for playing in such events. Players are a vital input to the organization of any sport and ability to control top players lead to dominance of HI.

10.10.4The Commission also considered the cases settled in other jurisdictions inthis aspect. In the ELPA Case, the Court 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…"*
>
> *[Source C-49/07, REFERENCE for a preliminary ruling under Article 234 EC, from the Diikitiko EfetioAthinon (Greece), made by decision of 21 November 2006, received at the Court on 5 February 2007, in the proceedings,* ***MotosykletistikiOmospondiaEllados NPID (MOTOE)*** *v* ***EllinikoDimosio,*** *THE COURT (Grand Chamber)]*

10.10.5The Commission having due regard to the factors mentioned above and the decision in case of BCCI and of Grand Chamber of ECJ in ELPA case concludes that HI is in a dominant position in the market for organizing private professional hockey leagues in India.

Assessment of Dominance in Market for services of hockey players.

10.10.6As emphasised having due regard to the complementarity of the consumer and the provider of services for delivering a final product, the Commission considered it appropriate to define the relevant market as that of services of hockey players. In such a market, assessment of dominance can be made in terms of weight of the parties and the countervailing power asserted on each other. Interestingly, the fact that both require each other for fulfilment of economic objectives makes them indispensable to each other. Thus, what remains to be seen is whether any one of the two has powers to impose conditions on the other.

10.10.7The most important aspect relevant to assessment of dominance in this market is the fact that HI is a monopsony buyer. The DG has drawn attention to the CoC agreement as an instrument for foreclosure by way of restrictions on the players. The Commission, after perusal of conditions contained in the CoC agreement, opines that these regulations stand testimony to the monopsony power and dominance of HI vis a vis hockey players. With the instruments such as CoC agreement, HI is in a position to restrict the freedom of movement of players which makes it dominant. However, whether the imposed conditions constitute abuse of dominance needs to be seen.

10.10.8The Commission notes that there are no hockey players associations which further imply the reduced bargaining power of hockey players as well as the fact that the monopsony situation implies ability of HI to choose from many players and not vice versa which implies HI in a position to act independently of the hockey players.

10.10.9Based on these factors and the decision in WPBSA case referred by DG, the Commission concludes that HI is dominant in the market for services of Hockey players.

Analysis of Abuse of Dominance

10.11Having established dominance of HI in the two delineated relevant markets, we now proceed to examine whether there has been any abuse of dominance. The specific allegations to recollect, levelled by informants were:

(i) HI is misusing its regulatory powers and promoting its own Hockey League to the exclusion of WSH and is engaging in practices resulting in denial of market access to rivals, in contravention of Section 4(2)(c) of the Act.

(ii) HI is using its dominance in conducting international events in India to enter into the market of conducting a domestic event in India, in contravention of Section 4(2)(e) of the Act.

(iii) The CoC Agreement entered by HI with Players is an exclusive supply agreement and the restrictive conditions included thereunder, constitute a violation of Section 3(4) of the Act.

10.11.1The DG in his report noted that the conditions relating to sanctioned and unsanctioned events were introduced by FIH and implemented in India by HI as an afterthought to the announcement of WSH. DG also pointed out to the actions of HI and FIH issuing warning letters to players from participation in WSH and non-selection of players who played in WSH in the Indian Hockey Team which went to London and Malaysia. According to DG, the restrictions imposed by HI resulted in foreclosure of market for any other enterprise to organize hockey tournaments in contravention of Section 4(2)(a)(i) and Section 4(2)(c) of the Act.

10.11.2DG further noted the changes made in conditions of CoC Agreement relating to disciplinary action against players participating in

unsanctioned events, and, requirement of NOC by players from HI before playing forany foreign team/club etc other than Hockey India or their registered Member Unit. According to DG, the pre-condition of not allowing the top hockey players to play unsanctioned event on a threat of not taking them into the national hockey team selected to play international Olympic match is unfair and without any justification,and places restrictive conditions on hockey players in India.Note was also taken of MoYAS statement asper which, none of those players, who participated in the WSH series were included in the 48 core probable for the camp held at Bangalore for preparation and selection of Indian team after the WSH series. On the above facts, DG found the conduct of HI to be in contravention of Section 4(2)(a)(i) and 4(2)(c) of the Act. However, DG did not consider the aspect of Section 4(2)(e) violation.

10.11.3On the allegation of informants that the CoC Agreement is an exclusive supply agreement in contravention of Section 3(4), DG noted that there is lack of commercial relationship between HI and players and concluded that the allegation cannot be substantiated.

10.11.4Another allegation which was pointed out by DG was contravention of Section 3(3)(b) of the Act. DG stated that the recommendations made by an association are deemed to be an arrangement between the members of the association and are covered under the definition of agreement as contained in the Act. DG found the acts of HI and FIH related to introduction of bye laws on sanctioned and unsanctioned events in violation of the provisions of section 3(3)(b) of the Act restricts any other person except the members of FIH and HI to organize any Hockey event in India.

10.11.5The Commission, after perusal of allegations levelled by the informants and findings of DG, notes that all allegations are stemming from the following two primary issues:

(a) Regulations brought by FIH and implemented by HI relating to sanctioned and unsanctioned events; and

(b) Conditions contained in CoC Agreement signed between HI and players.

These issues are dealt in hereunder.

Regulations relating to sanctioned and unsanctioned events

The Commission considered the following approach for determination of abuse of dominance relating to FIH Bye laws regarding sanctioned and unsanctioned events.

Intent and manner of application of regulations

10.12.1 The Commission examined in depth the findings of DG that the manner of application and the timing of these regulations as indicative of abuse of dominance, and 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.

10.12.2 It is the manner of applying regulations that raise competition concerns as it may be used as a tool for foreclosing new entrants. The present allegations centre on foreclosure of market to rival leagues by sports associations in the garb of rules and Bye laws relating to sanctioned and unsanctioned events. In the present case, the Commission notes the following:

10.12.3Firstly, no approval was sought by WSH. The rules contained in FIH Bye laws stated that,

> *"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."*

10.12.4The WSH was a domestic event as per definition contained in FIH Bye laws, but it was very clear that the sanction was to be given by the respective Continental Federations and by FIH. Since, HI was not the sanctioning authority for such an event and hence cannot be faulted for refusing the sanction which was neither to be granted by HI nor asked to be granted from HI.

10.12.5The DG pointed out that informants were in talks with FIH for the approval, but it is equally important to note that a formal application

for sanction was not made to any sports authority outlined in Bye laws of FIH.

10.12.6Secondly, the rules apply prospectively. The FIH guidelines were issued on 11th March 2011 and came into effect on 31st March 2011. The prospective application of Bye laws negates the *'afterthought to WSH'* finding by DG. DG considered a letter from FIH dated 04th May 2012 in which according to DG, the FIH had recommended that any person who had participated in the WSH be deemed to have forfeited his eligibility to participate in international events for a minimum of 12 months. The Commission notes that DG did not consider the full contents of the paragraph, which clearly provided that this statement was in context of those players/officials who had committed to play for WSH after the regulations related to unsanctioned events came in force. This implies that FIH was not advocating disciplinary action on those players/officials who entered into binding agreements with WSH before the regulations of FIH were notified.

10.12.7Thirdly, based on the reply from Ministry of Youth and Sports Affair (MoYaS) on the selection of probables for the Indian team, DG had concluded that none of those players, who participated in the WSH series were included in the 48 core probable and subsequent tours to London and Malaysia. The Commission considered HI's submissions that, the reason behind the players not being selected was their non-participation in training camp, which otherwise was mandatory, and not owing to participation of players in WSH. HI had also clarified that the dates for training camp were as per schedule approved by Ministry almost a year in advance and HI also stated that the list of probables were issued before commencement of WSH. Thus, the Commission noted that the evidences areinsufficient to conclude that HI has indeed acted against the players who participated in WSH.

10.12.8 The Commission thus concludes that the allegation against HI/FIH for causing denial of market access under Section 4(2)(c), to WSH is

not substantiated, considering the provisions of Bye laws as well as the manner of application of Bye laws.

10.12.9On the allegation of violation of Section 4(2)(e) of the Act made by the informant, the Commission notes that the allegation by informants was based on their definition of relevant market being the market for domestic hockey events and further considering WSH to be a domestic event that requires sanctioning from national association of hockey in India. The Commission's definition differentiates between the representative events and private professional leagues and is neutral to the definitions of domestic/international events as contained in FIH bye laws. Thuson the basis of the above facts and keeping in mind 'inherent and proportionality' approach to regulations, the Commission finds no validity in the allegations relating to contravention of Section 4(2)(e).

Conditions contained in CoC Agreement

10.13.1The issue of restrictions on free movement of players through the CoC Agreement has been alleged to be in contravention of Section 3(4) and also Section 4(2)(c) i.e. denial of market access to players desirous of playing in events such as WSH. However, the DG concluded that the relationship between HI and players cannot be interpreted as a commercial relationship amongst enterprises at different stages or levels of the production chain in different markets. CHence, the CoC agreement cannot be considered as a vertical agreement as understood under section 3(4) of the Act.

10.13.2The Commission does not agree with the DG's conclusions, that the CoC is not a vertical agreement. The key aspect of a vertical relationship is that the agents in such a relation should be at different stages of the production chain. Competition concerns in a vertical

relationship arise if one of the agent on account of its' market power is able to impose unreasonable restraints on the other, that are likely to cause an appreciable adverse effect on competition. In context of this case, HI is the buyer of services of hockey players for the production/organization of any hockey event. This relationship between HI and the players is, hence, tantamount to a vertical relationship where HI and the players are at different stages of the production chain. The standards applied to test the effect of vertical restraints on competition have already been spelt out in the the Commission's Order in case no. 24 of 2011, Sonam Sharma vs. Apple Inc. and Ors. 10.13.3 There the Commission held that for concluding that a vertical agreement has caused an appreciable adverse effect on competition, the person imposing the vertical restriction should be in a dominant position and the intent behind the restriction should be foreclosure,without any obvious efficiency justifications.

10.13.4Given, that the allegations in respect of violation of section 3(4) and 4(2)(c) are arising from the same instrument i.e. CoC agreement, the Commission considers it appropriate to examine the CoC Agreement in detail for contravention of Section 3(4) and 4(2)(c) of the Act.

10.13.5At the outset it needs to be reiterated that the conditions contained in CoC agreement need to be analysed for their restrictive effects in conjunction with specificities of sports. The conditions relating to restrictions on participation (non-participation the phrase used) in unsanctioned events and players being subjected to requirement of obtaining NOC for participating in events involving foreign teams/clubs has to be in the opinion of the Commission examined in the given perspective. The Commission noted -

a. The CoC mandates non - participation in unsanctioned events and does not require non participation in any event. The system of sanctioning of events is put in place with clear description on types of events and the sanctioning authorities. Sanctioning an

event is a regulatory function of sports bodies and cannot be found foul of, *per se*, for violation of competition laws. It is necessary to prove that the application of system was not in accordance with sporting objectives. In BCCI's case, ICC clearly asked members to address revenue concerns ahead of sanctioning others events which was an indicator of intent of ICC behind introduction of such a system. BCCI's intent was clear from the Clause inserted in Media Agreement. Thus, unless and until there is an instance where HI applies this clause in an unfair/discriminatory manner, there is no contravention of the Act.

b. Requirement of NoC does not amount to a blanket restriction to play in other events involving foreign teams/clubs. Requirement of NOC arises from the efficiency dimensions that it introduces to the game and therefore some restrictive effects can be considered as proportionate. CoC Agreement not only includes the conditions related to participation in other events, but also includes standards of behaviour and conduct such as: players are expected not to indulge in verbal/physical abuse towards other players/officials/members of public; disputing the official decisions; charging towards officials in an aggressive manner; failure of following dress protocols, hostility towards Anti-Doping Control Test Officer; use of illegal drugs etc. Some of these standards are critical to the sport and can warranta ban for life. Including a statement to that effect cannot be fouled unless there is an instance of disproportionate bans being imposed on players for small breaches.

10.13.6 The Commission is of the opinion that these restrictive conditions are inherent and proportionate to the objectives of HI and cannot be fouled on *per se* basis till there is any instance where theseare applied in a disproportionate manner, for which there is no evidence at present. The

Commission concludes that allegations of violation of Section 3(4) and 4(2)(c) cannot be substantiated.

10.14 After evaluation of the primary issues which were the core of the case, the Commission also considers the findings of DG on the aspect of adoption of FIH bye laws by HI being in contravention of Section 3(3)(b) of the Act.

Whether there is any contravention of Section 3(3)(b) of the Act?

10.14.1 The Commission notes and agrees with the submissions of HI on the aspect of hierarchy, and not being entitled to vote at the time of adoption of resolution. Accordingly, the Commission concludes that adoption of Bye laws does not amount to a horizontal agreement in contravention of Section 3(3)(b) of the Act.

Order

The Commission after considering all the aspects relating to the case concluded that there is no contravention of Section 3(3)(b), 3(4), 4(2)(a), 4(2)(c) and 4(2)(e) of the Act in this instance.

However, the nature of the present system itself, with the possible conflict of interest between the 'regulatory' and 'organising of events' roles of Hockey India, has raised certain potential competition concerns in the mind of the Commission.The manner in which rules relating to sanctioned and unsanctioned events and restrictive conditions included in CoC agreement are applied becomes critical in this context.

The Commission observes that the lack of parameters that define and demarcate the scope afforded by the term 'organisation of events'can lend itself to several interpretations. A regulator must necessarily

follow the dictum that 'Caesar's wife must be above suspicion'In this case the DG report points out circumstantial evidence which, though not establishing violation of the Competition Act, further persuades the Commission about the inherent potential of violation,and the need for clear articulation and separation of the two roles of HI. As pointed out in the Order on BCCI,

"The Commission strongly holds the view that competition is essentially for benefits to be widespread. The game of cricket and the monetary benefits of playing professional league matches must be spread out and not concentrated in a few hands, in a few franchisees. In a country of large young population more private professional leagues opens up more venues for youngsters to play cricket, to earn a livelihood and to find champions where least expected. BCCI in its dual role of custodian of cricket and organizer of events has on account of role overlap restricted competition and the benefits of competition. The objective of BCCI to promote and develop the game of cricket has been compromised."

HI's economic power is enormous as a regulator. Virtually, there is no other competitor of HI. The dependence of competitors on HI for sanctioning of the events, as also dependence of players, has been total, considering the terms of Bye laws of FIH and CoC Agreement. The Commission concluded that though these regulations are inherent and proportionate to the objectives of sports federation, the manner of application is always a concern given the duality of roles leaving scope for possible violations of the Competition Act.

Notwithstanding the fact that the Commission did not find a violation of Section 3 or 4 of the Act, it took note of the responsibility enjoined on the Commission by the Preamble and Section 18 of the Act, *inter alia* requiring,*'to promote and sustain competition and protect the interests of consumers'*. The Commission, therefore, felt that it would be appropriate if HI were to put in place an effective internal control

system to its own satisfaction, in good faith and after due diligence, to ensure that its regulatory powers are not used in any way in the process of considering and deciding on any matters relating to its commercial activities; and also set up a streamlined fair and transparent system of issuing NOCs to the players for participating in events organized by foreign teams/clubs.

In view of the discussion above and the structure of the opposite party being akin to BCCI, having dual role of regulator as well as organizer; the possibility of transgression of the lines shall always remain there. The Commission is alive to this fact and as and when any new facts come to its notice, the Commission shall consider them in the light of responsibilities enjoined upon it by the Act and shall act accordingly.

The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(H C Gupta)
Member

Sd/-
(Dr.GeetaGouri)
Member

Sd/-
(AnuragGoel)
Member

Sd/-
(Justice (Retd.) S N Dhingra)
Member