



COMPETITION COMMISSION OF INDIA



Case No.91/2013

In Ref:

Pan India Infra Projects Private Limited
(formerly known as Essel Sports Private Ltd.)
Essel House, B-10, Larence Road, Industrial Area,
New Delhi. Regd. Office 135, Continental Building,
Annie Besant Road, Worli, Mumbai-400018.

Informant

And

Board of Control for Cricket in India
Brabourne Staidum (North Stand), Veer Nariman Road,
Mumbai-400020.

Opposite Party

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. Anurag Goel
Member

Mr. M. L. Tayal
Member

Mr. Justice (Retd.) S. N. Dhingra
Member

Mr. S.L. Bunker
Member



ORDER UNDER SECTION 26(2) OF THE COMPETITION ACT

The informant has filed this information under section 19(1) (a) of the Competition Act against Opposite Party with a prayer that the Commission should pass orders:-

- (i) Directing the OP to “cease & desist” from indulging in abusive conduct;
- (ii) Dividing and separating the regulatory functions of the OP from the commercial aspects of the sport of cricket.
- (iii) Imposing appropriate penalty on the OP for abuse of dominant position in contravention of Section 4(2) (c) and 4(2) (e) of the Act;
- (iv) Grant such other reliefs as the Hon’ble Commission may deem appropriate in the facts and circumstances of the instant case.

2. The Commission had considered similar information against the Opposite Party filed by one Surinder Singh Barmi and decided the matter on 8th February, 2013 as case No.61/2010. The Commission had considered as to what was the status of BCCI (whether it was an enterprise or not), whether BCCI abused its dominant position in the relevant market in contravention of section 4 of the Act. The Commission gave its detailed findings in this case and observed that BCCI was donning two hats one of regulator and other of organizer of cricket events. It was a de facto regulator of sport of cricket in India and was an enterprise within the meaning of section 2(h) of the Act. The Commission studied the activities of BCCI as a regulator as well as an enterprise and took into account the sectoral study of the entire cricket sports in India and abroad and other relevant factors and facts. The Commission then went on to determine dominance of BCCI and came to conclusion that BCCI was dominant in the relevant market of Organising of First Class/International Cricket as well in the market of private professional league cricket. The Commission also observed that the approval of BCCI was



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critical to the success of any competing leagues desirous of organizing professional cricket and was a very important source of dominance for BCCI. The detailed reasons along with facts, situation have been given by the Commission for arriving at this conclusion in its order of 8.2.2013. The Commission went on to observe that BCCI's ability to control an input (of all the players, stadiums, etc.), which is indispensable to the success of cricket event, was also a source of dominance for it. The Commission observed that though failure of Indian Cricket League (ICL) was not solely attributable to BCCI's dominance, but it can be said that BCCI was definitely a factor in ICL's failure. The Commission did consider BCCI's regulatory role in not giving sanction to private professional leagues and being a cause of failure. After considering all the factors, the Commission had passed the order dated 8.2.2013 giving following directions to BCCI.

“i) to cease and desist from any practice in future denying market access to potential competitors, including inclusion of similar clauses in any agreement in future.

ii) to cease and desist from using its regulatory powers in any way in the process of considering and deciding on any matters relating to its commercial activities. To ensure this, BCCI will set up an effective internal control system to its own satisfaction, in good faith and after due diligence.

iii) To delete the violative clause 9.1(c)(i) in the Media Rights Agreement.

iv) The Commission considers that the abuse by BCCI was of a grave nature and the quantum of penalty that needs to be levied should be commensurate with the gravity of the violation. The Commission has to keep in mind the nature of barriers created and whether such barriers can be surmounted by the competitors and the type of hindrances by the dominant enterprise against entry of competitors into the market. The



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Commission has also to keep in mind the economic power of enterprise, which is normally leveraged to create such barriers and the impact of these barriers on the consumers and on the other persons affected by such barriers.

BCCI's economic power is enormous as a regulator that enables it to pick winners. BCCI has gained tremendously from IPL format of the cricket in financial terms. Virtually, there is no other competitor in the market nor was anyone allowed to emerge due to BCCI's strategy of monopolizing the entire market. The policy of BCCI to keep out other competitors and to use their position as a de- facto regulatory body has prevented many players who could have opted for the competitive league. The dependence of competitors on BCCI for sanctioning of the events and dependence of players and consumers for the same reason has been total. BCCI knowing this had foreclosed the competition by openly declaring that it was not going to sanction any other event. BCCI undermined the moral responsibility of a custodian and defacto regulator. The Commission however, notes that BCCI in their submissions have claimed that the funds of IPL have been re-ploughed in developing the game and considers it appropriate that the penalty of 6% of the average annual revenue of BCCI for past three years be imposed under Section 27(b) of the Act as under:

Name	Gross Turnover for 2007-2008 (Rs. Crore)	Gross Turnover for 2008-09 (Rs.crore)	Gross Turnover for 2009-10 (Rs.crore)	Average Turnover for 3 years* (Rs. Crore)	Penalty @ 6% of Average Turnover (Rs.crore)
BCCI	1000.41	725.83	886.11	870.78	52.24

*Data as available from DG's report.

The Commission decides accordingly. The directions of the Commission must be complied within 90 days of receipt of this Order. The amount of



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penalty determined of Rs.52.24 Crore must also be deposited within a period of 90 days from the date of receipt of this Order. “

3. BCCI went in appeal against the order of the Commission before the Competition Appellate Tribunal. The appeal is pending before the Competition Appellate Tribunal. However, the COMPAT was pleased to pass an interim order to the following effect.

“As regards the grant of stay, we feel that, in the present circumstances, it will be better to stay the effect of the order by staying the directions issued under Section 27 of the Act. This shall obviously be until further orders.

As regards the payment of the penalty which is Rs.52.24 crores, in the circumstances, it will be better if the Appellant deposits 25% of the penalty within the time frame granted by us now which would be one month from today. The recovery of rest of the amount, which would be 75% of the total amount, would stand stayed until further orders.”

4. In the present information, the informant in the very beginning has stated that it was promoter of Indian Cricket League and seeks to provide information to the Commission regarding contravention of section 4 of the Act by BCCI by bringing to the notice of the Commission the facts of anti competitive and abusive practices being carried out by OP in the market for organization of private professional league cricket in India (para-3). The informant further stated that it was desirous of submitting the information to demonstrate the exploitative and abusive conduct of OP in the market for organization of private professional league cricket events in India.

5. This Commission in its previous order had already considered all facts concerning organization of private cricket leagues in India and has categorically observed the role of BCCI as well as the dominance of BCCI in this field and after giving the findings, issued cease and desist order which is a



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subject matter of appeal before COMPAT. We do not find that there was necessity of fresh investigation to be done into the role of BCCI in respect of its dominance or abuse of dominance when the Commission has already got these aspects investigated and passed a detailed speaking order. The various other facts stated by the informant in its information to the Commission are not germane to the issues and the informant is pursuing independent remedies available to him before different tribunals/courts. The informant talked of hostility of OP in awarding broadcast contracts to informant. It is admitted by informant that the matter regarding broadcasting contract was taken to arbitration and the Arbitration Tribunal has held that black listing of informant and its group companies in terms of media rights was unlawful. The informant reproduced excerpts of the order of the Tribunal in the information. The informant also stated that it approached Delhi High Court and filed a suit of permanent injunction seeking various reliefs against OP, its office bearers, employees, agents, successors etc. and prayed for restraining OP from issuing any threats to the players or inducing them or inciting them in not joining ICL as well as against other actions of the OP. The suit was pending before Delhi High Court at the stage of recording evidence. The informant informed that the suit was also filed against public sector undertakings & Govt. of India seeking a restraint on action by the employers against players for being associated with ICL. When OP amended its rules and regulations during pendency of the suit, the informant accordingly amended its suits to get such rules and regulations declared illegal and void. It is also informed that OP filed a suit NO. C.S.(O.S) No.2312 of 2009 seeking an anti-suit injunction against the informant preventing it from instituting proceedings against ICC, OP and ECB before courts in U.K. Delhi High Court granted interim relief to OP in that suit. Against the order of Delhi High Court, an appeal was filed before Division Bench and the Division Bench modified the order passed by the single Judge. Against the order of Division Bench, an SLP has been preferred before the Supreme Court by the



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informant. It is also informed that suit regarding registration of internet domain names filed by the informant was decreed in its favour. The informant, apart from details of litigation, has highlighted the hostility of BCCI towards Indian Cricket League. It also gave facts about IPL and Mr. Lalit Modi, the erstwhile Commissioner of IPL.

6. The informant specifically stated that the relevant market relied upon by it in the instant case was market for organization of private professional league cricket in India and sought relief as stated in para-1 above. The informant further stated that the Opposite Party with malafide intention black listed it for allocation of broadcast rights for the IPL. It is stated that the informant was the only broadcaster excluded from bidding for IPL. In January, 2013, the President of OP exhibited its hostility towards informant and its group companies publically. OP continued to deal unfairly and arbitrarily towards the informant. Against this conduct of OP, a well reasoned unanimous arbitral award was passed by a three member Arbitral Tribunal observing that BCCI was exploiting its dominant position in respect of game of cricket in India. The Tribunal awarded damages for illegal and unlawful termination of agreement by OP. It is submitted that the conduct of the OP in the market for organization of private professional league cricket was in gross violation of section 4 (2) (c) and 4(2) (e).

7. After going through the entire facts submitted with information, the Commission finds that as far as determination of dominance of the OP in the relevant market and abuse of dominance are concerned, the Commission has already considered this in case No.61/2013, after detailed investigation by the DG and there was no necessity of doing another investigation in this aspect. The Commission categorically gave findings about the areas of abuses by OP and passed order under section 27 of the Competition Act. We do not consider necessity of another investigation into the same aspect. The present matter is covered by the earlier order of the Commission, the operation of



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which has been stayed by the Competition Appellate Tribunal. If the order of the Commission is upheld by the COMPAT and the abuse of dominance is continued by the OP despite cease and desist order of the Commission, the applicant would have a right to move the Commission under section 42 of the Act and the Commission shall consider the matter. In the opinion of the Commission, no new prima facie case was made out against the OP and no fresh investigation was required to be ordered by the Commission in this case. The matter is therefore closed under section 26(2) of the Act.

8. The Secretary is directed to inform the parties accordingly.

New Delhi

Dated: 16.1.2014

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
(Anurag Goel)
Member

Sd/-
(M.L. Tayal)
Member

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

Sd/-
(S.L. Bunker)
Member