



COMPETITION COMMISSION OF INDIA

Reference Case No. 01 of 2015

In Re:

**Department of Sports
Ministry of Youth Affairs and Sports
Government of India
Shastri Bhawan, New Delhi**

Informant

And

**Athletics Federation of India
WZ-72, Todapur Man Road,
Dev Prakash Shastri Marg, New Delhi**

Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

Appearances:

For the Informant:

*Shri Arun Kumar Yadav, Deputy Secretary and
Shri Ashok Kumar Patro, Under Secretary.*



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For the Opposite Party: *Adille J. Sumariwalla, President, Athletics Federation of India; Shri Hrishikesh Barua, Shri Hemant Raj Phalpher and Shri Parth Goswami, Advocates.*

Order

1. This matter is based on a reference filed by the Department of Sports, Ministry of Youth Affairs & Sports ('MYAS'), Government of India (hereinafter, '**Informant**') under Section 19(1)(b) of the Competition Act, 2002 (hereinafter, the '**Act**') with the Commission against Athletics Federation of India (hereinafter, '**OP**'/ '**AFI**') for its alleged contravention of the provisions of Section 4 of the Act.

About the Parties

2. The Informant is a department of the MYAS, Government of India and is engaged *inter alia* in the activity of creation of sports infrastructure and promotion of capacity building for broad-basing sports as well as for achieving excellence in various competitive events at the National and International level.
3. The OP is a National Sports Federation ('**NSF**') recognised by the Informant and responsible for promotion of the sport of athletics in India. It was established in 1946 under the Societies Registration Act, 1860 with the objectives to promote and encourage athletics; organise and manage/ control athletics; provide facilities for training in athletics and physical exercises; render assistance to individual athletes, officials and affiliated organisation for promotion of training in athletics and holding competitions, athletics/ sporting events as and when possible; provide athletes and coaches with new



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knowledge and technique in athletics; enforce all Rules and Regulations of the International body governing the sport of athletics *etc.* It is the apex body for running and managing athletics in India and affiliated to International Association of Athletics Federation ('IAAF'), Asian Athletics Association ('AAA') and Indian Olympic Association ('IOA'). AFI has 32 affiliated state units across the country along with 13 institutional units. Besides receiving financial support from the Informant, AFI has also been generating financial resources through sponsorship, royalty *etc.* while organising various National and International athletic events.

Facts, in Brief

4. The Informant is stated to be aggrieved by the decision taken by AFI in its Annual General Meeting ('AGM') held at Varanasi on 11.04.2015 and 12.04.2015 to take action against its state units/ officials / athletes who encourage marathons not authorised by AFI and become part of such marathons. The relevant excerpt from the minutes of the said AGM of AFI is reproduced below:

“The House unanimously approved to take action against the state units/ officials/ athletes and individuals who encourage the unauthorised marathons and become part of such marathons where AFI permission was not taken and it was made mandatory to seek permission of AFI before organising any road race/ marathon on National and International level.”

5. It has been averred that the decision taken by AFI in its AGM held on 11.04.2015 and 12.04.2015 is restrictive and not conducive for development of the sport of athletics in India at the grass-root level. As per the Informant, the said decision of AFI would have an adverse impact on promotion of sports as well as protection of the interest of the sports persons and prohibit healthy competition in organising athletic events in India. Based on the



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above averments, the Informant requested the Commission to initiate action against AFI in terms of the provisions of the Act.

6. After forming a *prima facie* opinion that there exists a case of contravention of the provisions of the Act in the matter, the Commission, *vide* its order dated 16.03.2016 passed under Section 26(1) of the Act, directed the Director General (hereinafter, 'DG') to cause an investigation into the matter and submit the investigation report to the Commission in terms of the provisions contained in Section 26(3) of the Act.

Findings of the DG

7. The DG, in his investigation report submitted on 05.10.2016, while delineating the relevant product market as 'provision of services relating to organisation of athletics/ athletic activities', considered both the demand and supply side substitutability of the services in organising the sport of athletics and found that the services relating to organisation of athletics/ athletic activities are unique and not substitutable with the services relating to organisation of other sport events. On the relevant geographic market, the DG gathered that since the Rules and Regulations governing the sport of athletics throughout India are same, the relevant geographic market to be considered in this matter is India. Accordingly, the market for '*provision of services relating to organisation of athletics/ athletic activities in India*' has been delineated as the relevant market in the investigation report of the DG.
8. As per the DG report, being the apex body for running and managing the sport of athletics in India and its affiliation with the IAAF, AAA and IOA, AFI is in a dominant position in the relevant market as defined above. It was found by the DG that the OP, by making it mandatory to seek its permission before conducting marathons / road races in India through the decision taken in its AGM in April, 2015, has limited or restricted the entry of other



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organisers of the sport of athletics and athletes in the relevant market and foreclosed the market for organisation of athletics/ athletic activities in India. The DG found that permission was not granted to Procam International Private Limited ('Procam') for organising Standard Chartered Marathon, Mumbai ('SCMM') in 2011 and to Rotary Bengaluru IT Corridor ('RBITC') for organising Bengaluru Midnight Marathon ('BMM') in 2014. Further, Chennai Runners Association ('CRA') - the organiser of The Wipro Chennai Marathon ('TWCM') was informed by AFI that if an event is not recognised by it, then National level athletes would not participate in such event. These conduct of AFI were found to be in contravention of the provisions of Section 4(2)(b)(i) and 4(2)(c) of the Act.

Circulation of DG investigation report

9. The Commission, *vide* its order dated 12.01.2017, decided to send an electronic copy of the DG investigation report to the Informant as well as AFI for filing their submissions / objections, if any.

Informant's Reply to the investigation report of the DG

10. The Informant, *vide* its submission dated 11.05.2017, stated that it has advised AFI to act promptly on a request made by any organisation or person to hold a sport/ athletic event and grant sanction, except in case where it decides on cogent ground that holding of such event would be detrimental to the best interest of the sport. The Informant submitted that a NSF can impose reasonable conditions on the organisations or persons proposing to hold a sport event such as payment of reasonable and non-discriminatory sanction fee, provision for validation of results including records made during an event, engagement of qualified technical staff for conduct of an event, provision for necessary medical facilities and safety measures for the athletes, spectators *etc.*



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11. The Informant submitted that a meeting was held between its Secretary and the President of AFI on 03.03.2017 on the issue of the alleged abusive conduct of the OP. Following the meeting, AFI submitted a letter to the Informant clarifying that the objective of discussion about the marathon/ road race in its AGM held at Varanasi during 11.04.2015 and 12.04.2015 was to curb uncontrolled and unauthorised conduct of marathons/ road races in the country. It was also pointed out by AFI that its decision not to permit National level athletes to participate in unauthorised marathons/ road races was taken in order to ensure their personal safety and physical fitness.
12. Further, AFI clarified to the Informant that in the said AGM, its member associations had raised concerns about the uncontrolled conduct of marathons / road races and the manner in which the organisers of such events were bypassing the Rules and Regulations as set out in the competition manual of AFI as well as the manual of IAAF putting the health and safety of athletes at grave risk. In the AGM, it was also discussed that organisers of such events were earning huge sums of money by exploiting the young and talented athletes and cheating the public by making them believe that such marathons/ road races were being conducted under the aegis of AFI/ IAAF.
13. Besides, AFI explained, through its letter, that the athletes who are under training are participating in such events because of the lure of prize money. This is not only detrimental to their training schedule but also has adverse impact on their health and well-being. It was also explained by AFI that, being the apex body recognised by the Government of India to regulate the sport of athletics in India, it was duty bound to protect the athletes from falling prey to the organisers of such marathons/ road races whose only motive was to make money or gain political mileage by organising such events. Further, based on the submissions of AFI, the Informant stated that AFI is in the process of creating a comprehensive policy for conduct of



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marathons/ road races in India keeping in view the Rules and Regulations laid down by IAAF in this regard and followed in other countries.

AFI's Reply to the investigation report of the DG

14. In its response to the findings of the DG report, AFI argued that the DG had carried out the investigation in this matter in a *mala fide*, unfair and arbitrary manner and proceeded to investigate the OP with a preconceived mind to make a false case of abuse of dominance under Section 4 of the Act. As per AFI, it had submitted a detailed written representation along with the documents in support of its case before the DG, but the same were not taken into consideration while investigating the matter. It was submitted that around 300 marathons/ road races are taking place across India during a year by different organisers, but the DG has recorded the statements of only six organisers and there too, incorporated the responses of the organiser of BMM and SCMM only in the investigation report. At the same time, statements / submissions of the organiser of Vasai–Virar Marathon ('VVM') and TWCM, which were in favour of AFI, were not considered by the DG. Further, it was submitted that the DG has arrived at conclusion against AFI on many issues without even putting a single question to it in relation to those issues which is in violation of the principles of natural justice.
15. AFI contended that the information filed against it was only a gist of discussion that took place at its AGM in April, 2015 and in no manner, it reflected what was actually decided in said meeting. Further, as per the Constitution of AFI, the minutes of an AGM are to be approved in the subsequent AGM. It was submitted that the minutes of its AGM of April, 2015 was finally approved in its AGM at Delhi held on 15.04.2016 and 16.04.2016 and the final approved minutes of AGM of April, 2015 do not contain anything which can be said to be against any marathon / road race organiser or person or athlete.



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16. In support of its contention, AFI submitted that in case no. T-193/02, in the matter of '*Laurent Piau v. Commission of the European Communities*', the Hon'ble Court of First Instance of the European Communities noted that during the course of investigation, the Federation of International Football Association ('**FIFA**') amended its rules by removing the most restrictive limitations. Since the initial concerns of the European Commission were removed, the complaint was rejected due to lack of community interest. As per AFI, since the concerns raised in the information regarding its alleged anti-competitive decision in the minutes of its AGM of April, 2015 no more exist, the findings of the DG should be rejected in light of the ratio pronounced in the order of the Hon'ble Court of First Instance of the European Communities.
17. It was submitted that subsequent to its AGM of April, 2015 no action was taken by AFI against any marathon/ road race organisers or person or athlete. The DG has also not provided any evidence in this regard. As per the OP, the DG has not questioned a single member present in the said meeting to verify whether the impugned minutes of AGM held on 11.04.2015 and 12.04.2015 were correctly recorded or the same were modified in the subsequent AGM of AFI held at Delhi on 15.04.2016 and 16.04.2016. It was stated that as per the Evidence Act, 1872, the DG is bound to accept the minutes of its AGM of April, 2015 as amended in April, 2016 as a true and correct reflection of the deliberations and decisions taken in the AGM held at Varanasi on 11.04.2015 and 12.04.2015. Further, it was contended that the information filed by the Informant was essentially against the policy decision of AFI with regard to control and management of marathon/ road races and not with respect to any alleged conduct of AFI.
18. AFI further submitted that the definition of relevant market as provided in the investigation report of the DG is incorrect. As per the OP, though the



provisions of services relating to organisation of athletics and athletic activities has been considered as the relevant product market in the investigation report of the DG, during the entire course of investigation, the DG had not asked a single question relating to other athletic events / activities, except the marathons/ road races conducted during 2010 and 2013. It was submitted that no part of the DG's report provides any observation or conclusion on the issue of provision of services relating to organisation of athletics/ athletic activities, except marathon/ road race.

19. As per AFI, the sport of athletics consists of many traditional athletics events/ disciplines such as hurdles (60 metres, 100 metres, 110 metres, 400 metres, 3000 metres steeplechase), 10000 meters, half marathon (road), marathon (road), 20 kilometres race walk (road), 50 kilometres race walk (road), cross country running, 4x100 metres relay, 4x400 metres relay, pole vault, high jump, long jump, triple jump, shot put, discus throw, hammer throw, javelin throw, pentathlon, heptathlon and decathlon. Besides the traditional events as stated above, the events such as sprints (50 meters, 55 meters, 100-yard dash, 150 metres, 200 metres straight, 440-yard dash), middle-distance (880-yard run, 1000 metres, mile run, 2000 metres, two miles), hurdles (50 metres hurdles, 55 metres hurdles, 300 metres hurdles, 2000 metres steeplechase), relays (4x800 metres relay, 4x1500 metres relay, distance medley relay, sprint medley relay, swedish relay ekiden), road events (5 kilometres road race, 5-mile road race, 10-mile road race, quarter marathon, 25 kilometres road race, 30 kilometres road race, ultra marathon) and times events (one hour run, 12-hour run, 24-hour run, multiday race) are also part of the sport of athletics. It was stated that marathon/ road race is only one out of fifty-five odd events/ disciplines which forms the part of athletics activities and the DG has not considered any of the aforesaid athletic activities, except marathon/ road race while delineating the relevant market.



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20. As per the OP, for an ‘enterprise’ to be in a dominant position, it must have control over the substantial part of the relevant market, but in this matter the DG has only investigated a very small segment of the relevant market *i.e.* organisation of marathons/ road races and has come to an illogical conclusion that AFI is in a dominant position in the market for the provision of services relating to organisation of athletics/ athletic activities in India. It was stated that the said conclusion of the DG is based on examination of one out of fifty-five athletic activities which is perverse and bad in law. It was also contended that every year more than 300 marathons/ road races are conducted in India, out of which only 11 marathons are recognised by AFI. This fact was completely ignored by the DG while arriving at the conclusion that AFI is in a dominant position in the relevant market of provision of services relating to organisation of athletics/ athletic activities in India.
21. Arguing on its alleged abuse of dominant position, AFI submitted that this conclusion of the DG is not based on the material available on record and depositions made by the parties, witnesses and third parties before the DG. It was submitted that the DG’s investigation has failed to consider and appreciate the statement made by the President, AFI before the DG that *“anyone can run a marathon including the Competition Commission of India where we will stand and cheer. However, the results will not be ratified for any records or measurement of route or water points or ambulances or health points etc. If somebody wants to run a marathon at National level for which they want authorisation they will come to AFI for the same. This is evident from the fact that 300 odd marathons took place throughout the country in a year and only 11 of them are authorised by AFI. Further, we are educating our runners that they should not be taking parts for more than four marathons in a year else it would be hazardous to their health and well-being. We are not a body to stop running but a body that encourages running following certain laid out regulations”*. It was submitted that running marathons by an athlete below the age of 21 years is hazardous to his/ her



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health and can have devastating effect in case they are made to run numerous marathons. However, if someone intends to hold a run for fun, AFI has no role to play and its permission for the same is not required.

22. On the findings of the DG that the intention of AFI was to get a sizeable chunk of revenue from the athletic events organised by private parties, AFI submitted that the organiser of a marathon/ road race who seeks recognition/ approval from AFI is required to pay a fee in lieu of which AFI provides services such as provision for measurement of routes, water points, ambulances / health points, authentication of results of the event, recognition of any record made during the event, appointment of technical persons for supervision and conduct of the event and to ensure that IAAF and AFI Rules and Guidelines are being followed (hereinafter, '**Services of AFI**').
23. With regard to the findings of DG that AFI had not approved the marathon/ road race conducted by BMM in 2014 and SCMM in 2011, the OP contended that the organisers of BMM had categorically stated before the DG that they did not seek approval of AFI because of high royalty fee demanded by AFI. It was further stated that the organiser of SCMM *i.e.* Procam informed the DG that they were not aware of any action taken by AFI against the athletes who had participated in the said marathon. Further, the AFI stated that it did not stop SCMM taking place in 2011.
24. AFI argued that there is no material available on record whatsoever to show that it had disallowed any marathon/ road race. The only evidence which the DG relied upon is the statements of the organisers of SCMM and BMM. As per AFI, the submissions of Procam only shows that there was disagreement on the amount of sanction fee to be paid to AFI and the said marathon was conducted with the support of IAAF. It was submitted that Bombay City District Amateur Athletics Association ('**BCDAAA**') supported SCMM by appointing a technical team for a capitation fee and royalty of



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Rs. 2,00,000/-. In regards to BMM, AFI submitted that the organisers of BMM never asked for the approval of AFI.

25. On the DG's findings that other NSFs viz. All India Football Federation ('A~~I~~FF'), Amateur Kabaddi Federation of India ('A~~K~~FI') and Wrestling Federation of India ('W~~F~~I') are not following any obstructionist practice like AFI, it was submitted that the findings of the DG in this regard are contrary to the statements of the office bearers of the said federations made before the DG as these NFSs are also following practices which are akin to the practices followed by AFI.
26. AFI submitted that any decision by a sport governing body to achieve the objectives laid down in its Constitution should not fall under the ambit of competition law. It was stated that the activities to pursue the objectives as laid down in the Constitution of a sport governing body such as maintenance of competitive balance, fairness, openness in the sport; promotion of youth training; protection of athlete's health and safety; uniform application of rules and maintenance of integrity in sport *etc.* are considered as legitimate objectives of a sport governing body and the activities to achieve these objectives are not likely to breach any of the provisions of the competition law. As per the OP, anti-competitive effects of such activities, if any, should be considered as proportionate to the objectives pursued. In this regard, the OP submitted the observations of the Commission of the European Community in its white paper on Sports (2007) wherein the Hon'ble Commission of the European Community observed that:

“the Court recognised that the specificity of sport has to be taken into consideration in the sense that restrictive effects on competition that are inherent in the organisation and proper conduct of competitive sport are not in breach of EU competition Rules, provided that these effects are proportionate to the



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legitimate genuine sporting interest pursued. The necessity of a proportionality test implies the need to take into account the individual feature of each case. It does not allow for the formulation of general guidelines on the application of competition law to the sport section”.

27. It was also submitted that the European Court of Justice (‘ECJ’) in case no. C-49/07 MOTOE (2008) has explicitly recognised the sports federations’ powers to authorise alternative sport events if such power is subject to restrictions, obligations and review. Further, the ECJ in case no. C-250/92 in the matter of Gottrup-Klim (1994) ruled that regulations of an association that prohibit its members from joining competing associations does not necessarily infringe Article 101 (1) TEFU where such dual membership would jeopardise both the proper functioning of the association.

Findings of the Commission

28. The Commission perused the information, the investigation report of the DG, submissions filed by the Informant and the OP in response to the investigation report of the DG and other material available on record. The Commission also heard the arguments put forth by the learned counsels appearing on the behalf of the OP and the representatives of the Informant.
29. The Commission is of the view that in order to arrive at a decision in the matter the only issue to be determined is whether AFI has abused its dominant position in contravention of the provisions of Section 4 of the Act. However, determination of the said issue requires delineation of relevant market, assessment of the position of dominance of AFI in the relevant market so determined and examination of the alleged abusive conduct of the OP in case it is found to be in a dominant position in the relevant market.



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Relevant Market

30. The Commission is required to delineate the relevant market in terms of Section 2(r) of the Act. The relevant market is to be determined with reference to the relevant product market as defined under Section 2(t) of the Act and the relevant geographic market as defined under Section 2(s) of the Act. As per the provisions of the Act, relevant product market means 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 and the relevant geographic market means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas.
31. While determining the relevant product market, the Commission has to give due regard to all or any of the factors such as physical characteristics or end-use, price, consumer preferences, exclusion of in-house production, existence of specialised producers and classification of industrial products as provided in Section 19(7) of the Act. Further, as provided in Section 19(6) of the Act, the Commission has to give due regard to all or any of the factors such as regulatory trade barriers, local specification requirements, National procurement policies, adequate distribution facilities, transport costs, language, consumer preferences and need for secure or regular supplies or rapid after-sales services while determining the relevant geographic market.
32. The Commission takes note of the fact that while defining the relevant product market as the market for '*provision of services relating to organisation of athletics/ athletic activities in India*', the DG has considered both demand and supply side substitutability of the said services. The DG gathered that AFI is the *de-facto* regulator of the sports of athletics and athletic activities in India. As per the investigation report of the DG, the services of AFI do not have supply side substitutability as it is the apex body



governing the sports of athletics in India, and so recognised by the Informant as well as IAAF. Further, the authority to select athletes from India for participation in National and International events lies only with AFI. On the demand-side substitutability, the DG stated that an athlete cannot shift to a body governing any other sport in response to a change in the supply conditions of the provisions of services for conducting and governing athletic activities. Further, the athletes desirous of participating in National and International events cannot avail the services of a body other than AFI which governs and conducts athletic activities in India.

33. With regard to the relevant geographic market, the DG reported that AFI recognises, accepts, applies, observes and abides by the Constitution, Rules and Regulations of IAAF and AAA as amended from time to time. It governs the entire activity in relation to the athletics events undertaken in India and representation of Indian athletes in International athletic events. Not only that, AFI has also been entrusted with the responsibility of coordination for International events and to finalise the playing schedule for the National team. Further, as per the investigation report of the DG, the Rules and Regulations as prescribed by IAAF, AAA, IOA and AFI for organising athletics events are uniformly applicable throughout the country. Accordingly, the DG reported that the relevant geographic market to be considered in this matter is 'India'.
34. The Commission notes that even though the OP contended that the DG has incorrectly delineated the relevant product market it has not suggested any alternative relevant product market for analysis of the matter. As per the OP, while delineating the relevant market, the DG has examined the activities related to marathon/ road race only, which is one out of fifty-five athletics events/ activities of AFI.



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35. After considering the submissions of the OP and the findings of the DG in this regard, the Commission observes that the gravamen of the present information relates to the conduct of AFI in organising the sport of athletics/ athletic activities. Considering the fact and circumstances of the matter, the Commission is of the view that in order to determine the relevant product market in this case, it is to be ascertained whether provision of services relating to organisation of athletics/ athletic activities is substitutable with the provision of services relating to organisation of any other sport activities or whether there exists another product/ service which can be considered as close substitute of the services related to organisation of athletics/ athletic activities.
36. In this regard, the Commission observes that athletics as a sport is not substitutable with any other sport like table-tennis, badminton, football, hockey, cricket *etc.* because of differences in their characteristics/ features such as nature of sport, number of players, playing time, type of sport *i.e.* indoor or outdoor, rules to conduct the sport, technique and training requirements for the players, physical fitness of the players; consumer preference; regulatory mechanism *etc.* Since, different sports have their peculiar characteristics, services required for organisation of different sport events cannot be the same. Further, from the investigation report of DG, the Commission notes that the services provided by a sport governing body are not substitutable with the services provided by any other sport governing body. For example, an athlete cannot avail the services of a body governing any other sport such as football, tennis, *etc.* in place of the services of AFI as the infrastructure, services, Rules and Regulations required for governing athletics/ athletic activities are different from the other sports such as football, tennis, *etc.* Thus, the Commission is of the view that the services relating to organisation of athletics/ athletic activities is distinct and distinguishable from the services relating to organisation of other sport activities. Moreover, the Commission observes that AFI has neither



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suggested any alternate relevant product market to be considered in this matter nor provided any acceptable reason for delineating relevant product market differently. Therefore, based on the above, the Commission holds the view that the market for *'provision of services relating to organisation of athletics/ athletic activities'* is to be considered as the relevant market in the instant matter.

37. The Commission observes that considering the fact that the Rules and Regulations of the International bodies viz. IAAF, AAA and IOA as well as AFI are applied uniformly throughout India and there is no distinction in the conditions of supply of services relating to organisation of athletics/ athletic activities in the entire territory of India, the DG has delineated the relevant geographic market in this case as *'India'*. The Commission observes that the market for the services relating to organisation of athletics/ athletic activities cannot be confined to a specific area or region of the country as any organisation or person in the country can provide such services and any athlete can avail the said services and participate in any events organised in any part of the country. Further, the Commission observes that the geographic region of India exhibits a homogeneous and distinct market condition for provision of services relating to organisation of athletics/ athletic activities. In view of the above, the Commission holds the view that the relevant geographic market to be considered in the present matter as *'India'*.

38. Based on the determination of relevant product market and relevant geographic market as above, the Commission delineates the relevant market in this case as *'provision of services relating to organisation of athletics/ athletic activities in India'*.

39. In Commission's view, there is another possible relevant market involved in this case viz., *'market for services of athletes in India'*, keeping in mind the



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intended restriction sought to be imposed on those athletes who participate in marathons not authorized by the AFI (through its decision taken by AFI in its April, 2015 AGM held at Varanasi). However, since there is no instance of coercive action taken by AFI against any athlete, the Commission does not deem it fit to inquire the conduct of AFI in this relevant market.

Assessment of Dominance of AFI

40. Having defined the relevant market, now it is to be examined whether AFI is a dominant entity in the relevant market as defined above. As per the provisions of the Act, dominant position means a position of strength, enjoyed by an enterprise in the relevant market to (a) operate independently of competitive forces or (b) affect its competitors or consumers or the relevant market in its favour.
41. To determine whether an enterprise is in a dominant position or not in a relevant market the Commission is required to have due regard to all or any of the factors as enumerated under Section 19(4) of the Act such as market share of the enterprise; its size and resources; size and importance of its competitors; its economic power including commercial advantages over competitors; vertical integration of the enterprise or sale or service network of such enterprise; dependence of consumers; whether monopoly or dominant position acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise; entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers; countervailing buying power; market structure and size of market; social obligations and social costs; relative advantage by way of contribution to the economic development by the enterprise enjoying a



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dominant position and any other factor which the Commission may consider relevant for the inquiry.

42. While assessing dominance of AFI in the relevant market as defined in *para* 37, the DG has taken note of the fact that it is the apex body which controls and manages athletics/ athletic activities in India. It trains and selects athletes for various National and International events such as Olympics, Asian Games, Common Wealth Games *etc.* AFI conducts International and National championships and various meets to promote and popularise the sport of athletics in India. It also supervises and assists its state units in their activities, sets up special coaching centres, and takes various initiatives for development and promotion of athletics at grass root level in India. Further, the DG has found that AFI is the only recognised National association in India which is affiliated to IAAF, AAA and IOA. Thus, considering the fact that (i) AFI is affiliated with IAAF, AAA and IOA and recognised by the Government of India for organising and coordinating the International athletic events as well as selecting athletes for such events; (ii) it is the apex body in the pyramid structure of governance of the sport of athletics in India and (iii) it is the apex body to control and manage the sport of athletics in India, the DG has found that AFI is in a dominant position in the relevant market.
43. However, the OP has argued that the DG has investigated only a small part of the relevant market in order to draw the conclusion regarding its position of dominance in the relevant market as defined above. It was stated that the DG has taken the services relating to the organisation of athletics/ athletic activities as the relevant product market which consists of fifty-five sport events/ disciplines. While assessing dominance of AFI, the DG has examined only about the organisation of marathon/ road race, which is only one out of the fifty-five athletic events. Further, AFI submitted that more than 300 marathons/ road races are conducted throughout the country in a year, out of



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which only 11 marathons/ road races are recognised by it. As per AFI, the DG has drawn a wrong conclusion regarding its position of dominance in the relevant market.

44. The Commission notes that as far as organisation of athletics/ athletic activities in India is concerned, AFI is the apex body. It is responsible for controlling and managing the athletes and athletic activities in India for National as well as International events. AFI also provides training facilities to the athletes and selecting athletes for various National and International events including various championship leagues both at National and International levels. Apart from these, it has been vested with the power to be the official organisation in complete and sole in-charge of all athletic matters in India. Being the sole organisation to run, manage, select and train athletes as well as handles all matters relating to athletics, AFI has a huge advantage over other organisers who organise athletic events. Further, its affiliation with International athletics governing bodies viz. IAAF, AAA and IOA as well as with its state units and other institutions in India puts it in a position of strength in the relevant market. The Commission is of the view that since the OP is the leading organiser of athletics/ athletic activities in India as well as the apex body to control and manage the sports of athletics and related activities in India, it has a definite advantage over the other organisers of athletic events in India.
45. The Commission notes that the OP has contended that it recognised only 11 marathons/ road races vis-a-vis more than 300 marathons/ road races conducted in a year in the country and therefore, it is not in a dominant position in the relevant market. It is noted that the '*market for provision of services for organisation of athletics/ athletic activities in India*' has been considered as the relevant market in this matter, in which dominance of the OP is to be seen, and not in the market of provision of services for organisation of marathons/ road races in India. Hence, the aforesaid data i.e.



number of marathons/ road races conducted in a year has little relevance as far as assessment of dominance of AFI in the relevant market is concerned.

46. With regard to the contention of the OP that the DG has examined only a small portion of the relevant market *i.e.* the activities relating to marathon/ road races alone to arrive at the conclusion that AFI is dominant, the Commission notes that the said conclusion of the DG is based on the activities of the OP related to athletic activities including marathon/ road races and its power to regulate the sport of athletics in India *vis-à-vis* other organisers of athletic events in India. Further, the Commission notes that OP is the apex body in the pyramid structure of administration of athletics/ athletic activities in India. Not only that, because of its affiliation with International bodies governing the sports of athletics *viz.* IAAF, AAA and IOA, the OP has an edge in the relevant market *vis-à-vis* other organisers.
47. Based on the above, the Commission is of the view that AFI has a position of strength in the relevant market to operate independently of the market forces or affect its competitors or consumers or the relevant market in its favour. Thus, in consonance with the findings of the DG, the Commission is of the view that AFI is in a dominant position in the relevant market as defined in *para 37*.

Examination of the alleged conduct of AFI

48. Now, the Commission proceeds to examine whether the alleged conduct of AFI is abusive in terms of the provisions of Section 4 of the Act.
49. From the information and the DG report, the Commission notes that, in the minutes of the AGM of AFI of April, 2015, a decision was taken to take action against its state units / officials / players etc. who encourage unauthorised marathons and become part of such marathons. The DG reported that even though AFI modified the said decision in its subsequent



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AGM held at Delhi on 15.04.2016 and 16.04.2016, it was an afterthought act in order to escape from the scrutiny under the provisions of the Act. It was observed by the DG that earlier AFI never modified the minutes of any of its AGM in the subsequent AGM.

50. It was also noted by the DG that AFI did not grant its approval for conduct of marathons/ road races to private organisers viz. Procam and RBITC for organising SCMM in 2011 and BMM in 2014, respectively. In another instance, AFI was paid Rs. 1,00,000/- by CRA as royalty fee for grant of approval for organising TWCM in 2012, as AFI threatened that no National level athletes would participate in TWCM without its approval. It was also reported by the DG that the conducts of other NSFs like AIFF, AKFI and WFI were not as restrictive as it was found in case of the OP. Thus, the DG concluded that the restrictions placed by AFI on the organisers of marathons/ road races and athletes limits or restricts the services of organising athletic activities and the services of athletes which is in violation of Section 4(2)(b)(i) of the Act. Further, the DG concluded that the aforesaid conduct of the OP tantamounts to denial of market access to the organisers, sponsors of the athletic events and the athletes which is in contravention of the provisions of Section 4(2)(c) of the Act.
51. On the other hand, the OP has submitted that it has not abused its dominant position in contravention of the provisions of Section 4 of the Act. It was argued that anyone can run marathon/ road race in India and permission for the same from AFI is not needed. Only in case, the organiser of a marathon / road race wants the services of AFI and use its name, then its approval / affiliation is required. On the impugned minutes of its AGM of April, 2015, it was submitted that no decision was taken in the said AGM and rather the views expressed by its member associations on uncontrolled marathon / road races were recorded in the minutes of the said meeting which were subjected to approval in its next AGM. It was contended that the minutes of the said



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AGM were approved with appropriate modification in its subsequent AGM held in Delhi in April, 2016. On the issue of denial of permission to Procam and RBITC for organisation of marathons, it was contended that whereas the organisers of BMM did not seek approval of AFI as the fee demanded was considered to be too high by RBITC, SCMM was never stopped by AFI. Further, it was argued by AFI that it is incorrect to say that other NSFs are not putting similar conditions on events organised by the private parties. As per AFI, to achieve its laid down objectives, a sport governing body can legitimately impose certain reasonable restrictions on the organisers or players of an event to ensure the specified standard of the sport and well-being of the players which cannot be termed as anti-competitive.

52. The Commission notes that the OP in the minutes of its AGM held at Varanasi on 11.04.2015 and 12.04.2015 has recorded that action will be taken against its state units/ officials/ athletes and individuals who encourage unauthorised marathons and become part of such marathons, where permission of AFI was not obtained. Further, *vide* minutes of the said AGM, AFI made it mandatory for the organisers to seek its permission before organising any marathon/ road race at National and International level. The Commission observes that even though the DG has found that the impugned minutes of AGM of April, 2015 of the OP is restrictive and therefore abusive, the contention of the OP in this regard that the minutes of 11/04/2015 and 12/04/2015 were only draft minutes which required to be finalized in subsequent AGM and which had not been effected cannot be overlooked. The Commission notes that the OP has modified the minutes of its AGM of April, 2015 in its subsequent AGM in April, 2016 in the following terms:

“it is decided that State Association and the Federation must be very careful and should restrict and educate the athletes which



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can be subversive to their health and they are also cheated sometimes for not having paid the money”.

53. The Commission observes that the modified/ amended minutes of AGM of April, 2015 of the OP does not contain anything which can be said to abusive in terms of the provisions of Section 4 of the Act. Unlike the language of minutes of AGM of April, 2015, which were found to be restrictive by the DG, the contents of the modified minutes cannot be termed abusive and are more in the nature of an advisory issued by AFI to its state associations and athletes to ensure well-being of athletes.
54. The Commission observes that even though the OP had taken the alleged abusive decision in its AGM of April, 2015, the same was not implemented. The OP in its submission has categorically stated that it never disallowed anybody for organising marathon/ road race. It is also not borne out from the material available on record that AFI had disallowed any organiser marathon/ road race in furtherance of the alleged decision. The Commission is of the view that in the absence of any evidence that the alleged decision was ever implemented, it cannot be termed as abusive in terms of Section 4 of the Act especially when those minutes were not adopted and significantly modified by AFI in subsequent AGM. Moreover, neither the athletes nor the organisers of the athletic events *i.e.* competitors of the OP have been adversely affected because of the alleged decision.
55. The Commission also takes note of the submission of the OP that anyone who is interested to organise a marathon/ road race is free to do so and approval of AFI for the same is not necessary. Only in case the organiser of a marathon is wanting to avail the services of AFI and use its name, the approval of AFI is required. The organiser also has to pay a fee in lieu of the services rendered by AFI. Thus, there is no compulsion on any organiser of marathon/ road race to take permission from AFI. The Commission is of the



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view that, being the regulator of the sport of athletics, demanding a fee in lieu of provision of certain services as specified above to maintain standard of the sport and to achieve its laid down objectives does not seem to be unreasonable.

56. The Commission also observes that AFI recognising only 11 marathons / road races out of more than 300 marathons / road races conducted every year throughout the country, indicates that more than 96% of road races / marathons conducted in India during a year are without the recognition / approval of AFI. Therefore, these facts negate the findings by the DG that AFI, by putting restriction on the organisers for conducting marathons/ road races, is limiting the market for organisation of athletics/ athletic activities in India and foreclosing the market to the organisers, sponsors and participating athletes.
57. It is also noted that the DG has found that the OP had prohibited Procam and RBITC from organising SCMM in 2011 and BMM in 2014, respectively as well as restricted the athletes to participate in the said marathons. Further, AFI threatened non participation of the National level athletes in TWCM in 2012 without its approval. Considering the submissions of the OP in this regard, the Commission notes that AFI and RBITC had some differences regarding the royalty fee demanded by AFI and because of this, RBITC did not seek its approval for conducting BMM. The Commission also notes that AFI did not stop SCMM in 2011 and it was conducted with the approval of BCDAAA. It was observed that TWCM was conducted by CRA in 2012 with the approval of AFI on payment of Rs. 1,00,000/- as royalty fee. The Commission further notes the fact that RBITC after ignoring the demand of AFI went ahead and conducted BMM in 2014, but AFI did not take any action against the organizers of the event or athletes who participated in that event.



58. The Commission further observes that the instances of SCMM in 2011 and BMM in 2014 happened much before the impugned decision recorded in the minutes of AGM of April, 2015. The Commission observes that the DG has linked the alleged decision of AFI which was taken in April, 2015 with its conduct which took place much prior to that *i.e.* in 2011 and 2014. The Commission is of the view that the past conduct wherein AFI did not grant its approval to Procam and RBITC for organising SCMM in 2011 and BMM in 2014, respectively cannot be linked to the decision taken by AFI in 2015. The Commission further noted that DG has not found any instance of denial / restriction to organization of any marathon between 2015-16.
59. In the context of the above factual scenario, the Commission is of the view that it cannot be held that the OP through its alleged conduct has limited the provision of services for organising athletics/ athletic activities in India and denied market access to the organisers of the athletic events or athletes in contravention of the provisions of Section 4(2)(b)(i) and 4(2)(c) of the Act, respectively.
60. Furthermore, the Commission notes that with a view to streamline the procedure for organisation of marathons/ road races in the country, the OP has already submitted a draft policy framework on marathons and road races to the Informant for its approval. The Commission hopes that once the said policy becomes operational, the existing ambiguity relating to organisation of marathons/ road races in India will stand addressed.
61. Based on the foregoing, the Commission is of the view that even though the OP is found to in a dominant position in the relevant market of 'provision of services relating to organisation of athletics/ athletic activities in India', its alleged conduct is not found to be abusive in terms of the provisions of Section 4 of the Act. Since, no case of contravention of any of the provisions of Section 4 of the Act is made out against AFI, the matter relating to this



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information is disposed of accordingly and the proceedings are closed forthwith.

62. The Secretary is directed to inform the parties, accordingly.

Sd/-

(Devender Kumar Sikri)
Chairperson

Sd/-

(Sudhir Mital)
Member

Sd/-

(Augustine Peter)
Member

Sd/-

(U. C. Nahta)
Member

New Delhi
Date: 12.07.2018