

Competition Commission of India
Case No. 61 of 2010

February 08, 2013

In re

Surinder Singh Barmi

Informant

v.

IPL & Anr.

Opposite Parties

Present: Shri C A Sundaram, Senior Advocate alongwith Ms. Nisha Kaur Uberoi, Ms. Rohini Musa and Shri Ragu Raman, Advocates for the opposite parties.

O R D E R

Per M.L. Tayal, Member (Dissenting)

I have had the advantage of reading the draft order prepared by my learned brethren. For the reasons recorded below, I regret my inability to lend concurrence with the reasoning and the decision arrived at therein. Therefore, I am writing this separate order.

BACKGROUND

1. The present information was filed by Shri Surinder Singh Barmi ('the informant') against Indian Premier League ('the opposite party No.1'/IPL) and Board of Control for Cricket in India ('the opposite party No.2'/BCCI) alleging *inter alia* contravention of the provisions of the Competition Act, 2002 ('the Act').

2. The informant, who claims to be an avid cricket fan and enthusiast, is appalled by the tendering/bidding process adopted by IPL to bid for the teams and other associated contracts. The informant had alleged that the unfair tendering process adopted by IPL has distorted the competition in the market with the possibility of IPL/BCCI officials earning major profits through kickbacks. The informant, in support of his allegations, has made references to various news reports (through April 2010) regarding the visit of revenue officers to the Office of BCCI, Mumbai seeking certain documents related with IPL bidding process including the funding details of certain franchisees. The news reports also revealed that Shri Lalit Modi, the then chief of IPL, had allegedly called all the parties bidding for two new IPL franchisees for a discussion before the media rights contracts *etc.* were auctioned off. Certain newspaper reports further claimed that Shri Lalit Modi had used unfair tactics to award franchisees and contracts to his relatives and kin. Other newspaper reports alleged that Shri Modi was apparently involved in generation of black money, money laundering and match fixing. Further, some of the newspaper report alleged that Shri Modi has silent ownership in three IPL teams *viz.* Rajasthan Royals, Kolkata Knight Riders and Kings XI Punjab.

3. Based upon the above newspaper reports regarding the unfair tendering/bidding process adopted by IPL, the informant had alleged lack of transparency in the bidding process for eight IPL franchises; favouring particular companies for granting of media rights with longer exclusive periods; flouting of the bidding process for the event management contracts; and flouting of the bidding process and application of single vendors in cases of catering services, transportation and procurement of other ancillary items and services used during the IPL tournaments.

4. It is averred by the informant that BCCI and IPL manipulated the bidding process for awarding contracts related to the franchisees of eight IPL cricket teams. The bidding process was managed in a manner to favour particular agencies rather than ensuring that the party with the highest bid offer

manages to secure the franchisee contracts. The informant has also alleged that since the OPs were the only parties that could award such franchisee contracts, that they have dispensed with a fair bidding process creating barriers of entry for new entrants in the market. It is further alleged that the franchisee contracts for the IPL teams and associated contracts were awarded in a non-competitive manner in contravention of the provisions of the Act.

5. The informant had alleged that IPL being the sole organiser of Twenty-20 cricket league, is in a dominant position as no other enterprise is in the position to invite tenders for contracts associated with the T-20 cricket league ('T-20 Contracts'). As per the informant, the OPs by favouring certain parties in awarding the T-20 Contracts related to the franchisee of cricket teams, sponsorship rights, television rights, mobile and internet rights, even management rights, sporting equipments, dresses, transportations, *etc.*, have abused dominance and denied market access to other players in the market.
6. Based on the above averments and allegations, the informant had sought initiation of an investigation by the DG with consequential prayers.

Reference to the DG

7. The Commission considered the information and *vide* its order dated 09.12.2012 under section 26(1) of the Act opined that there exists a *prima facie* case of violation of the provisions of the Act and therefore directed the Director General (DG) to investigate into the matter.
8. In terms of the aforesaid order of the Commission, an investigation was conducted by DG and an investigation report (confidential version) was submitted to the Commission on 17.01.2012. The DG report was considered by the Commission in its meeting held on 02.02.2012, in which the

Commission decided that on receipt of non-confidential version of the DG Report, copies thereof be sent to the parties for filing of their replies/objections thereto. The Commission had also directed the OPs to file profit and loss accounts and balance sheets of their respective enterprises for the last three financial years along with the reply/objections to the report. An opportunity to the parties to appear for oral hearing, if they so desire, either personally or through their authorised representatives, was also afforded.

Findings of the DG

9. From the discussions and analysis of the information, submissions made during the course of investigation and the evidence gathered from the various parties, it was noted by the DG that the BCCI is a society registered under the Tamil Nadu Societies Registration Act and mandated for the development of the cricket in India. BCCI and IPL are one and the same as IPL is a committee of BCCI. The cricket in Twenty-20 format is organized under the aegis of BCCI and is called as Indian Premiere League. The accounts related to IPL are merged with the final accounts of BCCI. Considering the economic activities being carried out for organizing IPL cricket tournament, the conduct and behaviour of BCCI was found by the DG to fall within the purview of the definition of an 'enterprise' under section 2(h) of the Act.
10. The investigation and analysis was carried out by the DG taking the underlying economic activities, which are ancillary for the organization of IPL cricket tournament, as the relevant market. As per the DG, it is not substitutable to any other format of cricket such as test cricket, one day cricket or other domestic cricket. The viewers of the game also cannot substitute the Twenty-20 format of the cricket *vis-a-vis* any other game or any format of the cricket.
11. On investigation and analysis of the facts and materials of the case, the DG concluded that the OPs are in dominant position within the meaning of the

provisions of section 4 read with section 19(4) of the Act. As per DG, the BCCI-IPL enjoys a monopoly status for the Twenty-20 format of cricket and consequently has a monopoly for the economic activities related to organizing such events in the relevant market.

12. The DG while analyzing the conduct of the various IPL franchisees with respect to the awarding of franchise rights had found that some of the franchisees who did bid and were awarded tenders have either changed their status or shareholding pattern. As per the DG, BCCI itself has, later on, discovered irregularities in the award of franchise and had also issued show cause notice to the then IPL Commissioner Shri Lalit Kumar Modi. Therefore, as per the DG, BCCI itself has conceded that the bid rigging or collusive bidding had taken place. The DG was of the view that BCCI cannot distance or shirk its responsibility on the basis that the manipulation of the tender process was conducted by Shri Modi. On the contrary, the responsibility lied with BCCI since all the tenders and agreements were floated or entered into under the name and authority of BCCI and BCCI ought to have knowledge of such fraudulent practices.
13. Based on perusal of the documents submitted by the BCCI and other relevant parties, the DG concluded that the franchises for IPL cricket teams have been awarded till IPL tournament continues, which is perpetual in nature. Such agreements would have the effect *in finitum*, until and unless a breach of such contract occurs. Therefore, as long as the current contract is valid, no other team or franchisee can bid for the same location. Further, no more franchisees (presently there are 10 in number) are being contemplated in future and, therefore, the number of teams playing IPL tournament cannot be enhanced. Consequently, the parties to whom the current contracts were awarded have successfully excluded other enterprises from the relevant market.
14. The DG has also found that the entry into the IPL Twenty-20 cricket franchise requires high cost of capital as the Invitation to Tender (ITT)

stipulates that the lowest bid for the IPL Twenty-20 cricket contracts would be US \$ 50 million. Further, the standard form of contract for the franchise which has been drafted by BCCI is required to be signed and agreed upon by the bidding parties at the time of submission of the bid documents. Consequently, the parties did not have any say in the terms of such contracts. Additionally, the DG, on examining the standard form of contract, found several terms and conditions which were unfair to the bidding parties and were anti-competitive in nature. However, since the OPs are in a dominant position in the relevant market for Twenty-20 cricket tournament, the franchisees wanting to bid for such contracts were obliged to comply with such conditions. The DG has also found that BCCI has abused its dominant position, by entering into the agreements with the different franchisees on its unilateral terms and conditions which are unfair and discriminatory in nature and result in restricting the relevant market for others players in contravention of the provisions of section 4 (2) of the Act.

15. The DG analyzed the whole process of the grant of media rights by BCCI and found several irregularities in the process. For example, during the course of initial bidding for the media rights of Twenty-20 cricket tournament, extra time was allowed to Multi Screen Media (MSM- a subsidiary of Sony Pictures Entertainment, USA) and World Sports Group India (WSGI- a wholly owned subsidiary of WSG Pte Ltd, a company incorporated in Singapore) to form a consortium in order to qualify for bidding for the media rights contracts. The DG further found that though the tender was supposed to be submitted by 08.01.2008, the bid of consortium was accepted on 14.01.08 (which was originally set as the date of opening the tender), in order to allow MSM and WSG to form the consortium. Subsequently, within a period of one year, such contracts were terminated and again re-executed between the same parties without recourse to a fresh tendering process. This way, as per the DG, by abusing its dominant position, BCCI has not only provided benefits to certain favoured parties but also foreclosed market for eligible entities thereby causing an adverse effect on competition in the relevant market.

Additionally, the term of such media rights contract was for a period of 10 years which clearly reflected that no other party could bid for such contracts for a further period of 10 years thereby further restricting the entry to such relevant market. The DG, accordingly, concluded that actions of BCCI-IPL are in violation of the provisions of section 4(2) of the Act.

16. The DG's investigation also revealed that even in the case of auction of other rights such as associate sponsorship rights, web portal rights, transport services, event management, umpiring *etc.*, no fair tendering process has taken place. Further, in case of awarding of various other rights, BCCI has suggested the names of the vendors or entered into tripartite agreements without adhering to the tendering process. The DG has further found that even the process of granting of theatrical rights and Free Commercial Time (FCT) rights was also not transparent and fair. Accordingly, the DG noted that BCCI has abused its dominant position by imposing unfair or discriminatory conditions and by imposing barriers to entry to the market for other eligible vendors in contravention of the provisions of section 4 (2) of the Act.

Reply of BCCI to DG Report

17. At the outset, BCCI emphatically denied that it is engaged in any anti-competitive or abusive behavior in violation of the provisions of the Act and contended that findings of the DG are baseless, devoid of any merit and are antithetical to the principles of competition law. It was submitted that the DG report clearly evidenced strong prejudice against BCCI, which lacks any legal basis and cannot be upheld in any court of law let alone before the Commission.
18. Making elaborate submissions, it was vehemently contended that BCCI is a not-for-profit society and is not covered under the definition of 'enterprise', to be liable under the provisions of the Act. It was submitted that the activities conducted by BCCI are not covered under the provisions of the

Act. The substantive provisions of the Act dealing with anti-competitive agreements, abuse of dominant position and regulation of combinations are applicable only to 'enterprises' which are engaged in certain economic activities as defined under section 2(h) of the Act. In this regard, BCCI submitted that it is a not-for-profit society registered under the Tamil Nadu Societies Registration Act, 1975 and has been established with the objective of promoting the sport of cricket in India. The following objectives of BCCI are sought to be highlighted from its Memorandum of Association (MoA) which are :

- (i) To encourage formation of state, regional or other cricket associations and the organization of inter-state and other tournaments;
- (ii) To promote the game of cricket throughout India by organizing coaching schemes, establishing coaching academies and holding tournaments and exhibitions of Test Matches, One Day internationals ('ODIs'), Twenty-20 and other matches;
- (iii) To foster the spirit of sportsmanship and the ideals of cricket amongst school, college and university students and others and to educate them in the same;
- (iv) To donate sums for causes conducive to the promotion of the game of cricket; and
- (v) To organize matches in aid of public charities and relief funds.

19. Further, placing reliance upon MoA, it is sought to be contended that the income, funds and properties of BCCI shall be utilized and applied solely for the promotion of the objects of BCCI, as provided in MoA, to aid and assist financially or otherwise and to promote, encourage, advance and develop and generally to assist the game of cricket or any other sports throughout India. It was pointed out that BCCI does not engage in any commercial activities or services with the sole intention or objective of earning profits. Further, it was canvassed the revenue generated by BCCI during the course

of undertaking such promotional activities is always ploughed back to promote sport of cricket.

20. It has been submitted that the income of BCCI comes primarily from the grant of media rights for its domestic and international matches, conducted in India, surplus from the IPL and Champions League T20 (CL T20) and surplus from tours. 70% of the gross revenues generated by the BCCI from grant of media rights for BCCI's matches as well as 70% of the gross revenue of franchise fees generated by the BCCI for the conduct of IPL matches, is provided to state associations for conducting cricket matches and domestic tournaments like Ranji Trophy, Dulip Trophy *etc.*, besides providing for the Indian cricket team's international tours. BCCI has highlighted that it is the member state associations who own and operate the infrastructure required to host a cricket match and not BCCI. The surplus of income over expenditure is transferred to the general fund. Additionally, the BCCI has created several specific earmarked funds such as the infrastructure development fund, cricketer's benevolent fund, Ranji Trophy fund, platinum jubilee benevolent fund *etc.* for the end use of cricketing activities.
21. Based on the assessment of the financial report of BCCI for the past 4 years, it is sought to be argued that substantial amount of the expenditure has been incurred for the purpose of development and promotion of cricketing activities including payments made to cricketers.
22. In the specific context of the IPL, it has been submitted that 70% of the franchise fees received by BCCI are provided to the state cricket associations which, in turn, invest the funds for development of cricket stadiums and other facilities related to cricket. The central rights (as defined under the draft franchise agreement) are, however, shared with the franchisees by BCCI. It has also been highlighted that recently BCCI provided as a onetime payment Rs. 70 crores (approx.) to former

international and first class cricketers from India and also to the widows of certain former cricketers in recognition of their service to Indian cricket.

23. Refuting the conclusions of the DG, it has been strenuously argued that the DG has failed to appreciate the fact that the amount of revenue generated by an organization cannot be the sole criteria for determining the status of an organization as an 'enterprise' under the provisions of the Act. As such, the legal status of the entity and the objective behind the activities of an entity should be of prime consideration while determining whether an entity is engaged in economic activity and should be considered as an 'enterprise' under the provisions of the Act. BCCI submitted that it is not the revenue generation but the manner in which such revenue is applied which is the prime factor in determining whether an entity is engaged in an economic activity.
24. It has been pointed out that BCCI receives only a portion of the revenue generated from various rights, which is ploughed back into the game of cricket. Further, it was submitted that BCCI did not award any rights (including franchise rights and central rights) to an investor with the sole object of maximization of profit. This was sought to be corroborated by the fact that on various occasions BCCI awarded contracts to bidders other than the highest bidders.
25. To support the submissions, reliance has also been placed upon the observations made by the Hon'ble Supreme Court in *Secretary, Ministry of Information & Broadcasting, Government of India and Ors. v. Cricket Association of Bengal & Ors.*, (1995) 2 SCC 161.
26. Reference has also been made to the supplementary order passed by me in the case of *Arun Kumar Tyagi v. The Software Engineering Institute*, Case No. 19 of 2011 decided on 30.09.2011 to contend that BCCI is not an 'enterprise' as defined in section 2(h) of the Act, as it is not engaged in any 'economic activity'.

27. In view of the above, it was contended that owing to the nature of its activities, BCCI cannot be compared to a commercial organization and is not an 'enterprise' as defined under section 2(h) of the Act as it is not engaged in any activity or service that can qualify as an 'economic activity'. Accordingly, it has been submitted that BCCI can neither be considered an 'economic enterprise' under the provisions of the Act nor can it be said to operate with the economic motive or objective of earning profits.
28. Grievance is also made of the fact that the DG erroneously cited the minority judgment of the Hon'ble Supreme Court of India in *Zee Telefilms Limited v. Union of India & Ors.*, (2005) 4 SCC 649 to the effect that BCCI is 'State' within the meaning of Article 12 of the Constitution of India. Thus, it was prayed that the DG's report should be rejected by the Commission at the outset given that BCCI cannot be considered as 'State' or an 'enterprise' to which the provisions of the Act apply.
29. On merits, BCCI has assailed the determination and delineation of the relevant market by the DG as *the underlying economic activities which are ancillary for organizing the IPL Twenty-20 cricket tournament being carried out under the aegis of BCCI* as per provisions of section 2(r) of the Act. It has been submitted that such a definition of the relevant market as delineated by the DG is incorrect, flawed and antithetical to what competition law seeks to regulate. The DG has erred in its report by focusing on a flawed definition of relevant market without taking into account substitutability of various rights related to IPL, their end-uses and characteristics, pricing, differing demand *etc.*
30. It has been further submitted that the definition of the relevant market put forward in the DG's report is narrow and does not take into consideration other competing forms of entertainment and leisure available to sports viewers, media and broadcasting companies, supporting sponsors *etc.*

31. Based on above, it is submitted that the market for various rights related to IPL such the franchise rights, media rights, web portal rights, local sponsorship rights, associate sponsorship rights, *etc.* are separate markets as these rights are not interchangeable *inter se*. Further, different types of benefits are attached to different rights. Therefore, each of the rights in relation to the IPL is intrinsically different with different price, demand function and end users, and therefore cannot be considered as substitutable to each other.
32. It is also contended that the framework for defining the relevant market and conducting competition analysis which was primarily developed keeping ordinary or traditional types of industries, products or services in mind cannot be readily applied to the professional sports leagues such as IPL. In sum, BCCI had submitted that the market for each of these rights is a separate relevant market and the DG has wrongly aggregated different rights related to IPL, each of which constitutes a separate relevant market.
33. Before advertng to the issue of dominance, attention was drawn to the peculiar nature of professional sports leagues/ organizations compared to 'ordinary' industries.
34. In relation to the dominant position of BCCI in the realm of professional cricket in India, it was submitted that professional sports industry, owing to its unique nature and characteristics (such as the nature of competitive process involved and the structure and organization of professional sports) needs to be treated differently from the other 'ordinary' industries and markets under the competition law. It is argued that this principle is widely recognized in several jurisdictions, notably the United States of America, the United Kingdom and the European Union ('EU') among others.
35. In particular, it has been pointed out that the professional sports industry is characterized by the following factors: interdependence between competing adversaries; need to preserve the uncertainty of results; freedom

of internal organization of sport associations-anticipation and excitement; and socio- cultural objectives.

36. Accordingly, it is argued that professional sports league are distinct from ordinary market and industries, Further, it is a common phenomenon globally to have one professional sports league per sport. In other words, monopoly of professional sports league in a particular sport is a prevalent phenomenon which is based on sound economic rationale. For instance, having a single professional sports league results in economies of scale (*i.e.* reduction in unit costs per competition with an increase in number of matches resulting from shared resources, reduced transaction cost and mutual learning) and economies of scope (*i.e.* reduction in cost per match if organized by a single professional sports league resulting from minimization of administrative and organizational costs and inefficiencies if a tournament is being organized by a single professional sports league). Furthermore, if more than one professional sports league is present in the same sport, then there would be greater competition between such leagues for scarce resources such as individual players and sports infrastructure, thus resulting in higher cost of such resources. Multiple professional leagues could also lead to waning of enthusiasm for the sport and creating unnecessary confusion in the market leading to multiple organizations, with their varied rules and regulations, thereby reducing the overall value of a professional sports league.

37. Based on above, BCCI argued that it is in the best interest of the sport and the consumer that a single professional sports league regulates a sport and its related activities. Accordingly, monopoly by a single professional sports league is found to be pro-competitive in the case of professional sports. This is especially true in situations like that of BCCI, where the professional sports body in question is not acting for profit, because that means that the negative effects of a monopoly, including seeking economic rent from the activity, do not take place. Further, as per BCCI, the dominance of BCCI can additionally be attributed to its membership with the International

Cricket Council (ICC), which typically only recognizes one cricket board/authority from each country as its member.

38. In the light of the aforesaid, BCCI had prayed that it should be treated on a different footing even though it holds a monopoly owing to the unique nature of the market for professional sport league and the pro-competitive effects of the existence of a single professional sports league.
39. Denying any abuse of dominant position in the relevant market in India, BCCI had submitted that the DG's report does not provide any evidence, let alone precise and consistent evidence to establish an abuse of dominance by BCCI in relation to the grant of franchise rights, media rights and other rights in relation to the IPL tournament. Moreover, no complaints had been made against BCCI by any party having direct or indirect interests in IPL, including successful or unsuccessful bidders/investors for franchise rights, media rights, sponsorship rights and other rights or various suppliers of ancillary services such as catering, transportation, ticket sales *etc.* as well as the end consumers, thereby causing no harm to raise any competition concerns. It is also contended that it is a commonly recognized principle in the enforcement of competition law and policy in most jurisdictions that authorities conduct investigations based on complaints by customers in the relevant market. It is usually necessary that there are a number of such complaints, the complaints are credible to show and provide reasonable grounds to believe that a violation of the law has occurred and, there is clear evidence or at least a presumption that economic harm in terms of restriction of competition and/or loss of consumer welfare has or is likely to take place.
40. In particular, BCCI has responded *seriatim* to the findings of the DG relating to abuse of dominant position.

41. At the outset, BCCI has described the findings of the DG as completely misconceived and devoid of any merit that is critical to establish a breach under section 4 of the Act.
42. Dealing with the findings of the DG relating to abuse of dominant position in the matter of grant of franchise rights, it has been submitted that in 2007, BCCI decided to start IPL, in order to provide Indian domestic players the opportunity to play with and against international players to nurture their talents and to promote the game of cricket with a sense of competition at domestic levels in India. In 2008, the award for the franchise rights for 8 teams was made by adopting a fair tendering process. In this regard, the advertisement for the ITT-2008 was published in the Times of India (a newspaper with wide circulation in India), thereby providing an opportunity to all the interested investors across India to bid for the franchise. It has been pointed out that a total of 14 companies/consortiums submitted their bids for the franchise rights for any or all of the 10 locations *viz.* Mumbai, Delhi, Kolkata, Chennai, Bangalore, Hyderabad, Mohali, Jaipur, Ahmadabad and Kanpur. The detailed procedure for the award of the franchise rights was clearly mentioned in Clause 9.3 of the ITT-2008. The bids were opened in the meeting of the Governing Council of the IPL ('GC IPL') held on 24 January 2008 in the presence of all the bidders and the successful bids were selected by verifying the best bids for each venue based on the procedure provided in the ITT- 2008.
43. Further, the advertisement for ITT for grant of the franchise rights for 2 additional teams was published in the Hindustan Times (a newspaper with wide circulation in India) on 9 March 2010 (ITT-2010). A total of 5 companies/consortium submitted their bids for the two new teams in an open tendering process conducted in March 2010 for any or all the five locations *viz.* Ahmadabad, Kanpur, Nagpur, Pune and Kochi. The successful bids were selected by verifying the best bids for each venue based on the procedure provided in the ITT-2010. The bids were opened in the meeting of the GC IPL held on 21 March 2010 in the presence of all the bidders.

44. In view of the above, BCCI submitted that the facts actually demonstrate that an open and transparent bidding process was adopted for the grant of franchise rights in relation to IPL.
45. Besides, it was submitted that in the absence of any complaint from the successful as well as unsuccessful bidders, (who would have been directly affected if the fair tendering process was not followed) the observations made by the DG in the report are without any basis in law and devoid of any merit. It was also pointed out that the companies involved both successful and unsuccessful, are large conglomerates with substantial resources and understanding of their legal options, and yet no one complained about any anti-competitive or abusive behaviour.
46. Joining issues on creation of entry barriers, it has been submitted that the terms of ITT-2008 and ITT-2010 relating to minimum floor price pre-requirement of the bidders are not unreasonable and are based on commercial expedience. Further, it is contended that terms of ITT-2008 and ITT-2010 do not create barriers to entry and instead seek to ensure that companies with real competence having financial stability and capacity, participate in the tender of the franchise rights. Regarding the DG's observation that small companies/consortium did not have the opportunity to participate in the bidding process due to high cost of entry, it was submitted by BCCI that the DG's observation relating to the high cost of entry is also inaccurate owing to the fact that BCCI allowed submission of bids by various companies as a consortium. Accordingly, BCCI contended that it had provided an opportunity to small companies/individuals to form a consortium and to fulfill the eligibility criteria on a collective basis. Further, no small bidder or consortium has complained that they were left out due to the conditions and therefore submitted that BCCI has not created barriers to entry for small investors to bid for a franchise. On the contrary, pointed out BCCI, as per clause 2.3.2 of the ITT-2008 all the interested investors (big or small) were provided opportunity to take part in

the bidding process. Thus, it was submitted that the conditions were necessary, legitimate and had been applied in a fair and non-discriminatory manner. As per BCCI, it has taken all the possible measures to ensure that maximum number of bidders can be accommodated in IPL. Not only this, BCCI had also placed a limit on the number of franchisees that can be held by a single bidder thereby opening doors for more bidders.

47. Alluding to the findings of the DG that BCCI has abused its dominant position by providing franchisee *ad infinitum* rights for a location in the IPL 4 Twenty-20 cricket tournament and also by imposing conditions as mentioned in ITT as well as in the franchise agreement are such that it has left no room for anybody to enter the relevant market as the agreement is *ad infinitum* and no other franchisee can be engaged either for the same location or for a new location, it was submitted by BCCI that the observations made by the DG in its report are incorrect and unfounded in law and fact.

48. It was sought to be canvassed by BCCI that the DG has wrongly interpreted the provisions of the franchise agreement to conclude that the franchise rights are granted in favour of the franchisees *ad infinitum*. As per BCCI, the franchise agreement specifically contemplated listing of the franchise on a stock exchange (*i.e.* an initial public offering), thereby providing an opportunity to the public at large to invest in such franchise. This is stated to be clearly demonstrative of the fact that franchises are not *ad infinitum* and neither are there barriers to entry for small investors who will be provided the opportunity to invest on a listing. Hence, it is contended by BCCI that the conditions imposed are only to ensure that the standards with respect to suitability, business experience, financial solvency and ability as imposed on the original franchisee is not diluted due to the acquisition of the franchise by the purchaser (*i.e.* new entrant) and no unfair/discriminatory terms are imposed on the new investor *vis-a-vis* the original franchisee. In light of the above, it is submitted that there is no barrier on any franchisee to sell the franchise or to effect a change in control

of the franchise in favour of any new entrant which can meet the above requirements. Further, it is contended that the provision for lock-in on the sale of franchise stipulated under the ITT-2008 is not unfair as such provision was incorporated with a view to: (a) ensure that the ownership of the 8 franchises remained unchanged in the incipient years of the IPL in order to foster and reinforce the brand image of the IPL as a professional sports league; and (b) to attract such investors who were committed to operating and managing the franchise (and who did not view the IPL merely as an investment opportunity to harness commercial gains). BCCI has also submitted that the lock-in period for the first three years was only applicable to the 8 franchisees created in 2008. The subsequent 2 franchisees had no such restriction.

49. Moreover, it is contended that the franchise agreement has clear grounds for termination and therefore such an agreement cannot be assumed to be granted for an indefinite period of time. The franchise agreement was not intended to be in effect for perpetuity as it clearly provides a termination clause.
50. On the issue of standard franchise agreement provided by BCCI, it has been submitted that providing draft franchisee agreement with the ITT is a globally accepted commercial practice. Further, it was submitted that the standard franchise agreements for award of franchise rights was necessary as the franchise agreements were to be signed with multiple successful bidders for 8 teams. Since all the franchise rights were awarded simultaneously through one tender process, there was a need for non-discriminatory and consistent terms and conditions to be applied on a uniform basis to all the bidders, thereby creating a level-playing field and maintaining integrity of IPL.
51. It has been pointed out that a separately negotiated franchise agreement for each franchise would have resulted in an unfair and discriminatory situation and could have led to a potential violation of section 4(1) (a) of the

Act. Applying standard terms and conditions to each of the franchise is, in fact, fair and non-discriminatory in nature, providing a level playing field to all bidders and maintaining the integrity of IPL, which is in compliance with the provisions of the Act. It has been reiterated that none of the successful or unsuccessful bidders has raised any objection to the effect that the conditions under the franchise agreement were not fair.

52. Alluding to the finding of the DG that clause 5.5 of the franchise agreement appears to be unfair and discriminatory on the perception that it imposes restrictive conditions upon the franchisee for not selling the products of IPL without the prior approval of BCCI, it has been submitted that the condition imposed under clause 5.5 of the franchise agreement are reasonable and are not intended to act as a hindrance or restriction on the franchisee to sell any franchisee licensed product. Further, it has been pointed out that the condition under clause 5.5 of the franchise agreement cannot be termed as discriminatory as such conditions have been uniformly imposed on all the franchisees. Moreover, as per BCCI, to date, BCCI has not restricted or unreasonably withheld any franchisee from using the League Marks in a manner that is unfair or discriminatory.

53. Further, BCCI has submitted that allegations of bid rigging on the part of BCCI in relation to the grant of franchise rights are wholly misconceived and devoid of any merit or basis in law and fact. As per BCCI, the question regarding bid rigging has arisen because the show cause notice dated 26th April 2010 ('Show Cause Notice') issued by BCCI to Shri Lalit Modi which alleged that Shri Modi has been involved in bid rigging activities. On this point, BCCI submitted that the term 'bid rigging' as used in the said Show Cause Notice, was not in reference to the provisions the Act. Rather, the words were used in their colloquial/lay-person terminology in the said Show Cause Notice and not in the context of the Act. Therefore, no reliance ought to be placed on the term 'bid rigging' appearing in the Show Cause Notice and the same should not be construed as an acceptance on the part of BCCI regarding the offence of bid rigging as defined under the Act. Further, the

DG's reliance on the Show Cause Notices as evidence of wrongdoing on the part of BCCI is entirely misconceived and lacks legal basis for the reason that (i) the Show Cause Notice only alleged Shri Lalit Modi of misconduct, which is being enquired into by the BCCI separately; (ii) the terms used by BCCI in the Show Cause Notice must be understood in the context of which such notice was written; and (iii) placing reliance on such document, without understanding its context, questions the very basis of such allegation. As per BCCI, it is important to note that BCCI was not asking Shri Modi to show cause as to why action should not be taken against him for violating the Act. BCCI was asking him to explain certain acts and omissions, which BCCI believed went beyond the scope of his authority and were committed without the knowledge of BCCI. BCCI has submitted that even if the terms used therein have a meaning in competition law, this meaning cannot be imputed to BCCI, as BCCI had no knowledge of this fact and no intention of accusing Shri Modi for a violation of the provisions of the Act.

54. Further, BCCI has submitted that the Act clearly includes bid rigging as a part of horizontal anti-competitive agreement *i.e.* an agreement between competitors. The only place where bid rigging is mentioned in the Act is in section 3(3) (d), which deals with agreements between enterprises engaged in identical or similar trade of goods or provision of services (*i.e.*, agreements between competitors). Bid rigging is, in fact, specifically defined in the explanation to section 3(3) of the Act, as 'any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely effecting or manipulating the process for bidding.' Therefore, as per BCCI, given that the definition of bid rigging refers to an agreement amongst competitors and BCCI and the franchisees are not competitors as such, BCCI cannot be held liable for a breach under section 3(3) of the Act.

55. BCCI has submitted that essentially, bid rigging involves a collective decision on how to respond to a particular ITT. The object of a bid rigging agreement is usually to avoid competition between bidders/competitors for a product, to the detriment of the vendor. The vendor in this case is BCCI, which makes it clear that the allegation of bid rigging is misconceived, as BCCI would be the party that is most adversely affected if collusive bidding were to take place. Further, it is submitted that BCCI and the bidders for the ITT 2010 cannot by any stretch of imagination qualify as 'competitors'.
56. Further, it was submitted by BCCI that assuming but not conceding that the issuance of the initial ITT by BCCI in 2010 ('Initial ITT-2010') could be considered bid rigging under the Act, it has been pointed out that the Initial ITT-2010 was *suo-moto* cancelled by BCCI when it became clear that the terms had discouraged and excluded several bidders from bidding for the tender, resulting in only 2 bids for the 2 franchises up for auction. Therefore, in the interests of fairness and transparency, BCCI cancelled the Initial ITT-2010 on 7 March 2010 and issued a fresh ITT with the onerous terms covered in the Initial ITT-2010 removed. As a result of the BCCI's intervention, the number of bidders for the franchises increased from 2 to 5. Therefore, BCCI contended that its efforts had the effect of expanding the market, and not foreclosing it and any allegation by the DG that BCCI created barriers to entry for new franchisees in the IPL is baseless. Therefore, BCCI has submitted that since the award of franchises did not take place on the basis of the original tender issued on 22 February 2010 in which bid rigging was alleged to have taken place by the DG because of the intervention of BCCI, the allegation of bid rigging against the BCCI through this tender is entirely unfounded and without any merit.
57. Further, it was submitted by BCCI that, assuming but not conceding, the conduct of Shri Lalit Modi was, in fact, anti-competitive, BCCI cannot be held liable for the actions of Shri Modi as he was acting outside the scope of his authority, real or apparent. In this regard, BCCI has submitted that: (a) any alleged 'arm-twisting' of Rendezvous Sports World (RSW) as well as any

other unauthorized actions, were not within the scope of Shri Modi's actual or apparent authority; (b) BCCI made no inducement to the effect that Shri Modi was acting within the scope of the authority conferred upon him by BCCI *i.e.* Shri Modi had the authority to 'arm twist'; (c) Shri Modi was indulging in alleged illegal activities without the consent, authority and knowledge of BCCI; (d) no franchisees believed or could have legitimately believed that Shri Modi was acting within the scope of his authority; and (e) BCCI has no incentive to support such actions as otherwise BCCI would not have awarded the franchise rights by adopting a tendering process. BCCI further elaborated the above mentioned submissions and it is not necessary to reproduce the same in the order.

58. Coming to the findings on abuse of dominant position in relation to grant of Media Rights, it was submitted by BCCI that it cannot be found to have abused its dominant position with regard to any conduct in relation to: (a) the Media Rights License Agreement ("1st India Territory Agreement") executed between BCCI and MSM which, *inter alia*, provided for the grant of media rights on exclusive basis for the Indian sub-continent to MSM from 2008-2012 with an option for a renewal for a further 5 year period; (b) the Media Rights License Agreement ("1st ROW Agreement") executed between the BCCI and WSGI which, *inter alia*, provided for the grant of Media Rights on an exclusive basis for the rest of the world (excluding India) to WSGI from 2008-2017; and (c) the 2nd India Territory Agreement on account of the fact that these agreements were terminated by BCCI prior to the date of notification of section(s) 3 and 4 of the Act *i.e.* 20 May 2009. In other words, the arrangement under the said agreements ceased to be valid, operative, subsisting and binding on parties prior to the notification date. In this regard, BCCI has drawn attention of the Commission to the decision of the Hon'ble Bombay High Court in *Kingfisher Airlines Limited v. Competition Commission of India* in which it was held that all acts committed prior to coming into force of the Act would be valid and cannot be questioned unless such actions have a continuing effect after the notification date.

59. Further, BCCI, at the outset, has submitted that the market for media rights is part of a separate relevant market and BCCI does not have a dominant position in this market. The market for media rights is a sub-market within the broader market of broadcast of entertainment programs. Also, media rights are not a unique product unlike franchise rights which are specific to the IPL. There are various substitutes available to an investor looking to invest in media rights as the IPL is only one of the sporting events available in the entertainment broadcast segment. Programs (aired simultaneously) such as other domestic and international sporting events, soap operas, comedies, dramas, movies, game shows, news programs and documentaries among others compete for the viewers' attention. Given the growth of subscription based broadcast in India, the marginal cost of choosing one or more of these alternative shows is zero as it is part of the fixed monthly channel TV subscription fee. Accordingly, BCCI has submitted that BCCI does not hold a dominant position in the market for media rights.
60. Accordingly, as per BCCI, the DG's entire analysis in relation to the dominant position of BCCI in relation to media rights is flawed and must be disregarded by the Commission. However, without prejudice to the foregoing, BCCI has sought to demonstrate that BCCI has not abused its dominant position or engaged in any unfair or discriminatory practice in relation to the award of media rights.
61. Regarding the allegation of adoption of unfair or discriminatory practices by BCCI in relation to the award of media rights, it has been submitted by BCCI that engaging in such conduct would not benefit BCCI in any manner. Given that media rights have accounted for 45%-65% of the revenue of BCCI in past 3 years, it is clear that BCCI has no incentive to engage in any kind of unfair or discriminatory practices in relation to the award of media rights.

62. As far as the extension of the time for the submission of bids for media rights from 11:00 a.m. to 1:00 p.m. on 14 January 2008 is concerned, BCCI has submitted that the DG has not furnished any evidence to substantiate the claim that the extension of deadline for the submission of bids for media rights was done with a view to facilitate the submission of the WSGI bid. Further, neither NDTV nor ESPN Star Sports (ESS) has complained that BCCI's conduct was anti-competitive. In fact, the DG in paragraph 10.6 of the DG's Report has quoted ESS as stating that it has no complaint against BCCI and that they are not aware of any unfair or discriminatory conduct of the BCCI. Therefore, BCCI contended that it cannot be held liable for any anti-competitive conduct under the provisions of the Act.
63. BCCI has also submitted that in response to the Media ITT only two bids were received by the BCCI from WSGI and BCCI entered into two separate agreements: (a) ROW Agreement; and (b) 1st India Territory Agreement.
64. In relation to the finding by the DG that WSGI and MSM were favoured over the other bidders by BCCI, it had submitted that WSGI Bid was the only eligible bid received in response to the Media ITT. BCCI is not under any obligation under the Media ITT or applicable law to entertain any request for extension of the deadline for submission of bids for media rights. Regarding the finding of the DG that BCCI was aware of the pre-bid arrangement between MSM and WSGI, BCCI has submitted that it is completely unsubstantiated. As per BCCI, it may be noted that there is no evidence, direct or circumstantial, to corroborate the claim that BCCI was aware of any bid proposal agreed amongst WSGI and MSM prior to submission of the WSGI bid.
65. BCCI has further stated that the submission of WSG-MSM bid and execution of separate agreements with WSGI and MSM are not anti-competitive in nature. The DG has raised two-fold objections in relation to the submission of the WSG-MSM Bid: (i) the Media ITT was purchased separately by WSGI and MSM but the bid was submitted as a consortium by

WSGI and MSM; and (ii) even though WSGI Bid was a consortium bid, separate agreements were entered into with WSGI and MSM. BCCI has submitted that the BCCI entered into separate agreements at the behest of and upon the insistence of WSGI and MSM. Further, the execution of separate agreements does not violate the provisions of the Media ITT or applicable law. It was commercially expedient to execute separate agreements for Media Rights, given that only WSGI Bid qualified for Media Rights, that WSGI and MSM agreed to use their respective synergies and work towards the broadcast of IPL, in India as well as worldwide.

66. Referring to the observation of the DG that the WSG-MSM Bid was conditional in nature, it was submitted that stipulation which is based on commercial expedience, does not constitute condition and the allegation by the DG that the WSG-MSM Bid is conditional is vague and unsubstantiated. As per BCCI, the aforesaid stipulation merely relates to a provision for shortfall which is a fairly common provision in an agreement of the nature such as the Media ITT and does not render the bid conditional.
67. It was submitted by BCCI that the duration of the Media ITT was fixed at 10 years, pursuant to the requests made by the bidders for the Media ITT. It was queried by the bidders whether BCCI would consider accepting bids for a 10 year term even if there exists a provision under the Media ITT to renew the Media Rights, for a further 5 years. To the extent, BCCI clarified that such bids will be considered. Accordingly, the extension of the duration of the Media ITT was made known to all the bidders and was therefore applied in a uniform and non-discriminatory manner to all the bidders and BCCI took into account the requirements indicated by the bidders, commercial considerations and extended the term of the Media ITT to 10 years.
68. As per BCCI, there was no established market for IPL. IPL was a completely new idea introduced by BCCI. Therefore, given the nascence of IPL in the Indian market and the short duration of its existence (*i.e.* only 2 months), it was important to first create a market for T-20 IPL cricket (especially among

women and children) and attract consumer attention towards the new format introduced in cricket, and then to develop that market with increased popularity and viewership to increase IPL's market share and make it a profitable venture. Thus, it was important to grant long term contracts for media rights, in order to attract the broadcaster to invest in the new product to create and develop a market of its own, given the short duration in which it was operational. Therefore, given that nascency of IPL in India, having no market of its own, and thus required substantial development; the streamlining of viewership to the new T20 format of cricket and increase the market share of IPL; the limited duration of the broadcast of IPL season in India; the high risk involved in the new venture; and the inherent constraints prevalent in the market for broadcasting (*i.e.* advertisement being the only source, limited channels, limited viewership), as per BCCI, it was imperative to grant long term Media Rights based on justifiable objective economic reasons.

69. Further, any allegations relating to the foreclosure of the market in relation to the media rights are unfounded as a new player willing to enter the market for media rights can negotiate in respect of the same with the media rights holder. Thus, there is no foreclosure of the market as a result of the duration of the agreements for media rights.
70. BCCI has submitted that from a competition law perspective, long term exclusive supply agreements are a form of vertical agreements and are not *per se* anti-competitive. In this regard, BCCI had placed reliance on the *Guidelines on Vertical Restraints European Commission Notice* which provide that “under certain conditions vertical agreements are likely to help realize efficiencies and the development of new markets and that this may offset possible negative effects.” Accordingly, the EU law (on which the Act is largely patterned) provides for application of the rule of reason on vertical restraints. Further, BCCI has drawn attention of the Commission towards its order in case of *Consumer Guidance Society v. Hindustan Coca Cola Beverages Pvt. Ltd. & Ors.*, UTPE 99 of 2009 wherein it was held that ‘..the

conclusion of the DG that both the parties have contravened section 3(4) of the [Competition] Act cannot be accepted in the absence of proper assessment of AAEC (appreciable adverse effect on competition) in the present case by the DG. If the reasoning advanced by the DG in his report is accepted then every exclusive supply agreement will become *per se* anti-competitive'. Therefore, as per BCCI, it is well established jurisprudence that the rule of reason applies to vertical restraints and appreciable adverse effect on competition in the relevant market in India has to be demonstrated in order to hold a vertical restraint to be anti-competitive. Further, it is contended that there is nothing to show that execution of contracts in relation to media rights by BCCI have led to appreciable adverse effect on competition in the relevant market in India. BCCI has also placed reliance on *Jindal Steel and Power Limited v. Steel Authority of India Limited*, Case No. 11 of 2009 ('SAIL case') wherein the Commission has upheld the validity of an open ended exclusive supply agreement for supply of iron rails entered into between Indian Railways and Steel Authority of India Limited. The Commission examined the question as to whether the MoU was anti-competitive and led to foreclosure of the market and it was noted that the economic rationale underlying MoU is to '...ensure steady and secure supply of domestically produced rail steel and that a long term price quantity agreement, which is complete and is common knowledge among all potential market participants, is not inherently exclusionary in nature..'

71. In light of the observations made by the Commission in SAIL case, BCCI has submitted that the 1st India Territory Agreement provides for an exit opportunity (termination rights) to both the parties and contains provisions for further assignment and sub-licensing, was therefore is not a long term contract. Similarly, based on the decision of the Commission in SAIL case, the 1st ROW Agreement is also not a long term contract and not exclusionary in nature. Further, MSM and WSGI were the only eligible bidders (as per the eligibility criteria provided in the Media ITT) at the time of opening of the bid and providing for long duration of contract cannot be held to be exclusionary as it is justifiable on objective economic criteria.

72. After making reference to case law, it has been submitted that the minimum turnover requirement and net worth requirement set out in the Media ITT was incorporated with a view to ensure financial stability of the bidders as their inability to perform their obligations could severely jeopardize the entire conduct of IPL. Further, it has been argued that accepting a bid from a bidder who is not the highest bidder cannot be assailed as being discriminatory as price consideration alone need not always be the determining factor while awarding a contract. Past track record, experience and expertise, presence in the industry historically, available resources and economies of scale are also relevant non-price considerations. As per BCCI, the non-price considerations that were employed by the BCCI to determine whether a particular contract should be awarded to a particular bidder were applied in a fair, transparent and non-discriminatory manner.

73. As per BCCI, the current judicial trend leans towards judicial restraint while examining the terms and conditions of a tender in cases other than those involving undue influence or unequal bargaining power. It has been stated to be held that the terms of an ITT are not open to judicial scrutiny as they fall in the realm of contract. It is a standard practice across industries to have standard form contracts. It is the established position of law in India (and UK) that the courts interfere with the provisions of standard form contracts only in instances where it appears that a party may have exercised undue influence over the weaker counterparty. Referring to the decision of the Hon'ble the Supreme Court of India in the case of *Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly*, AIR 1986 SC 1571, to contend that reasonableness and fairness of a clause in a contract could be examined in cases where the bargaining power of the parties is unequal to the extent that the liberty given to one of the parties is liberty of a Limb before the Lion. It is further argued that in the present case no such unequal bargaining power of the parties to the Media ITT is discernible which may warrant an examination of fairness of the terms stipulated in the Media ITT as the bidders (whether successful or not) were

parties of strong commercial standing and none of them has alleged any sort of arbitrariness on part of the BCCI in relation to the terms of the Media ITT. Lastly, it has been submitted that the bidders enjoyed a fair amount of countervailing buying power and the terms of the Media ITT were not cast in stone and were open to amendments, which were uniformly applicable to all bidders.

74. It was submitted that the terms of the Media ITT were unilaterally decided by BCCI and were imposed on the bidders as there was scope for amendment, discussion, deliberation and negotiation between the bidders and BCCI as evidenced by the response of BCCI in relation to the queries of the bidders pertaining the duration of the Media ITT. Further, the Media ITT was amended by BCCI in order to incorporate a response to a clarification sought by one of the unsuccessful bidders and the provision in relation to exit opportunity for franchisees was incorporated. Additionally, in relation to the grant of media rights by BCCI, It was submitted that the tendering procedure adopted by BCCI with respect to the media rights in 2011 has been fair, transparent and non-discriminatory and there have been receipt of no complaints in respect of the same by the bidders (whether successful or not).

75. Resultantly, it is sought to be canvassed that in relation to grant of media rights BCCI has adhered to a fair, transparent tendering process and there has been no abuse of dominant position by BCCI in relation thereto in terms of section 4(2) of the Act. Moreover, it is contended that the responsibility for the purported actions of Shri Lalit Modi in relation to award of Media Rights should not be imputed to BCCI.

76. Next, it is contended that the market for web portal rights is a separate relevant market and BCCI does not have a dominant position in such markets. The market for web portal rights is a sub-market within the broader market of internet portals. Unlike franchise rights which are specific to IPL, the web portal rights are not a unique product. There are

various substitutes available to an investor looking to invest in web portal rights. Accordingly, it was submitted by BCCI that it does not hold a dominant position in the market for web portal rights. Further, BCCI submits that, assuming but not conceding, it has a dominant position in the market for web portals, it is argued that BCCI has not abused its dominant position or engaged in any unfair or discriminatory practice in relation to the award of web portal rights.

77. As per BCCI, the tender notice for the grant of web portal rights was opened on 17 December 2011 inviting bids for web portal rights for a period of 4 years. However, only one bid was received in this regard from the Cricket Network which failed to meet the eligibility criteria. Since there were no successful bidders for web portal rights, a memorandum of understanding was executed on 16 April 2008 with Live Current Media ('Web Portal MoU') for a period of 10 years. In this regard, BCCI submitted that it had issued a show cause notice dated 26 April 2010 to Shri Lalit Modi in relation to the Web Portal MoU and the irregularities in the grant of web portal rights to Live Current Media. Shri Modi had acted outside the scope of his authority in relation to grant of web portal rights. The Web Portal MoU was terminated by BCCI and the web portal is currently operated/ managed by BCCI itself. Accordingly, BCCI has contended that the conclusion of the DG in relation to the violation of section 4(2)(a) and (b) of the Act by BCCI in relation to the grant of web portal rights, is erroneous as it would be incorrect to impute the responsibility for the purported misconduct of Shri Modi in relation to grant of web portal rights to BCCI.

78. Adverting to the issues relating to grant of global title sponsorship rights and associated sponsorship rights, it has been stated that the rights for global title sponsorship was awarded to DLF as it was the highest bidder as noted in the minutes of the meeting of the IPL GC dated 13 February 2008. However, with reference to associate sponsorship rights, it has been pointed out that the DG has noted in the report that the same were granted to the 6

parties without any advertisement or issue of public tender thus constituting a violation of section 4(2) of the Act by BCCI.

79. In this regard, BCCI submitted that the aforesaid contracts for associate sponsorship (including umpire sponsorship rights and strategic time out rights) were awarded by BCCI without any advertisement or tendering process as these contracts were granted for relatively short duration of time (*i.e.* for 2-5 years) and did not involve substantial consideration *vis-a-vis* the consideration paid for franchise rights. Additionally, any interested party has the option of approaching BCCI for associate sponsorship rights for the remaining period of IPL. BCCI was aware that the market for the associate sponsorship rights is thin and did not anticipate widespread interest from the vendors in relation to the same. The cost of tendering and inviting bids for associate sponsorship rights from the public would have been a cost and time intensive process given the constrained time lines for the launch of IPL, it was a prudent decision on the part of BCCI. Further, there is no complaint filed by the bidders or any other interested party in relation to the award of the associate sponsorship rights by BCCI to award the associate sponsorship rights on a private placement basis which as per BCCI is indicative of the fact that there was no economic harm or foreclosure of the market caused as a result of private placement of contracts for associate sponsorship rights by BCCI. Consequently, BCCI has argued that there has been no breach of the provisions of the Act in relation to the grant of the associate sponsorship rights.

80. Next a response has been made towards other franchise rights. It has been submitted that there are a host of other rights such as sponsorship rights, mobile rights, rights in relation to catering services, event management services, sporting goods and equipments, ticketing services, theatrical rights and free commercial time *etc.* (together, 'other rights') that are ancillary to the organization of IPL. BCCI has submitted that each of the other rights is part of a separate relevant market and BCCI does not have a dominant position in such market. There are various substitutes available to an

investor looking to invest in these other rights. Accordingly, it was submitted that BCCI does not hold a dominant position in the markets for any of the other rights and, therefore, the question of abuse of dominance does not arise.

81. Alternatively, it was submitted that BCCI has not abused its dominant position or engaged in any unfair or discriminatory practice in relation to the award of other rights. BCCI has contended that the DG has erroneously concluded that BCCI has not adopted fair tendering process for the grant of other rights and has abused its dominant position in the relevant market for other rights.

82. In relation to the grant of various rights relating to ticketing, transportation, accommodation, catering services, event management *etc.* (together, 'other franchise rights'), the DG has noted that such contracts were either (i) directly entered into by the franchisee with the relevant vendors (which may or may not have been recommended by BCCI); (ii) tripartite agreements that were executed with BCCI, relevant vendor and the franchisee as the parties; or (iii) executed between BCCI and the relevant vendor (with the expenses subsequently debited to the relevant franchisee by BCCI). The DG's report has erroneously concluded that '...the BCCI being in a monopoly position in the relevant market have controlled and guided the franchisee to enter into contract with specific vendors. The franchisees were obliged to follow the dictate of the BCCI, being the sole controller of the relevant market and hence the BCCI has abused its dominant position to impose unfair and discriminatory conditions and restricted the market of other vendors directly as well as indirectly. This is violative of section 4(2) of the [Competition] Act.'

83. In this regard, it was submitted by BCCI that it has in certain cases provided a list of recommended vendors upon request for the same by the franchisees and not on its own accord. BCCI in such instances recommended the names of the vendors only with a view to facilitate the

selection of vendors who are reliable, offer quality services and have a good proven track record in providing the services that are specific to the game of cricket, since the franchisees were new to the realm of organizing cricket and wanted to be guided by BCCI in the selection of vendors. The franchisees are free to execute contracts with any vendor (whether recommended by BCCI or not). There are no adverse consequences (whether incentives or disincentives) for not executing contracts with the vendors recommended by BCCI and BCCI has in no way benefitted (directly or indirectly or in any manner whatsoever) from the grant of the other franchise rights to any vendor. Additionally, BCCI stated that none of the franchisees has complained of any element of coercion or undue influence exerted by BCCI in relation to the award of contracts with respect to the other rights to any vendor, whether or not recommended by BCCI.

84. As per BCCI, there has been no abuse of dominant position by BCCI in relation to the grant of theatrical rights and FCT Rights. The theatrical rights with respect to IPL were purportedly granted to Entertainment and Sports Direct for a period of 10 years. Based on the investigations undertaken by BCCI in relation to the grant of free commercial time rights ('FCT Rights'), it was found that in doing so, Shri Lalit Modi appeared to have rejected more competitive bids and did not consider previous vendors who had provided reliable services to BCCI in the past. BCCI has submitted that it has issued a show cause notice to Shri Lalit Modi in relation to the grant of theatrical rights and FCT Rights and it would be incorrect to attribute liability for the actions of Shri Modi to BCCI. Accordingly, BCCI has submitted that there has been no abuse of dominant position by BCCI in relation to the grant of theatrical rights and FCT Rights as well.

85. Lastly, a response has been made to the actions relating to Indian Cricket League (ICL) launched by M/s Essel Sports Pvt. Ltd. in 2007. In this connection, BCCI has challenged the finding of the DG to the effect that the allegations made by ICL showed that BCCI owing to its dominant position had tried to sabotage ICL tournament through various ways and means and

subsequently ICL tournament was not organized. In this regard, BCCI had submitted that there is nothing to substantiate the allegation that BCCI has abused its dominant position to the detriment of ICL. Further, it was submitted that the demise of ICL is attributable to its own inefficiencies and the weakness of its business and marketing model and not to the conduct of BCCI and that such failure of ICL cannot be a ground for holding that BCCI has abused its dominant position as the events relating to ICL took place in 2007-08, which preceded the introduction of IPL and also preceded the date of notification of sections 3 and 4 of the Act *i.e.* 20 May 2009. In this regard, BCCI had also relied upon the judgment of the Hon'ble Bombay High Court in the case of *Kingfisher Airlines Limited v. Competition Commission of India* wherein it was held that all acts committed prior to coming into force of the Act would be valid and cannot be questioned unless such actions have a continuing effect after the notification date. Similarly, it has been submitted that the Commission has also previously held that the actions committed prior to the notification date are not within the purview of the Commission unless such actions have a continuing effect.

86. Further, it has been pointed out that the dispute between ICL and BCCI is pending adjudication before the Hon'ble Delhi High Court on the similar issue. Irrespective of this, it was submitted that given that acts alleged by the DG against BCCI in relation to ICL related to the period prior to the notification date under the Act, the Commission has no jurisdiction in relation to this issue.

87. It has been canvassed that the DG in his report has stated that BCCI precluded cricket players from participating in ICL. In this regard, BCCI submitted that several organizations and institutions (like BCCI) impose restrictions on their members from engaging in outside activities which may adversely affect their performance in relation to their country and their primary organization. Any commitment by the cricket players to ICL matches could lead to potential conflict with their prior commitments to BCCI to play the international matches for the Indian cricket team

scheduled to take place during ICL season, given that BCCI is under an obligation to ICC to honor its commitment, on behalf of the cricket players. Any default by Indian cricket player(s) in meeting the international commitments which typically gets decided at least 2 years in advance could severely jeopardize the international cricketing community's interest and comity. It has also been pointed out that the Indian cricket team does not have any international cricket commitments during IPL season. Accordingly, the restrictions, if any, allegedly placed by BCCI on cricket players in relation to ICL are reasonable and justifiable on objective criteria and cannot be construed as being discriminatory. Further, It has been stated that BCCI does not restrict any player from other countries from representing their respective international teams during IPL season. Any restriction imposed by BCCI on the players participating in ICL to honour cricket related prior commitments should not be considered as an attempt to sabotage ICL, submits BCCI. BCCI had pointed out that ICL had access to stadiums. Accordingly, in light of the aforesaid submissions, it was argued that ICL failed and was unable to cash in on its 'first mover advantage' in the realm of T-20 format of cricket on the account of its inherent inefficiencies and mismanagement, which cannot be attributed to BCCI.

88. In view of the above detailed submissions made by BCCI, it was prayed to the Commission to reject the findings made by the DG in the report; to dismiss the allegations made by the informant in the information; to direct the closure of the case; and to pass any such order(s) as the Commission may deem fit.
89. Shri C.A. Sunderam, Senior Advocate along with associates appeared on behalf of the opposite parties on 11.07.2012, 01.08.2012 and 02.08.2012 and made elaborate submissions. A summary of oral arguments (confidential and non-confidential version) was also filed.

Issues

90. I have carefully perused the information, the report of the DG and the replies/ submissions filed by BCCI and the informant thereto. The following issues arise for consideration and determination in the matter:

- I. Whether BCCI is an 'enterprise' within the meaning of the term as defined under section 2(h) of the Act?
- II. Whether the opposite parties have contravened the provisions of section 4 of the Act?
- III. Whether the provisions of section 3 of the Act have been violated

Determination of Issues

Whether BCCI is an 'enterprise' within the meaning of the term as defined under section 2(h) of the Act?

91. The DG in the investigation report has observed that the economic activities carried out by BCCI to organize the game of cricket including IPL tournament bring it within the ambit of the expression 'enterprise' as defined in section 2(h) of the Act. The DG had further observed that the object of BCCI may be to promote the game of cricket in India, but the conduct with respect to the economic activities carried out for organizing IPL tournament is not incidental but has assumed a primary concern, which is perpetual in nature. The DG while holding BCCI an 'enterprise' has relied upon the Income Tax Assessment Order under section 143 (3) of the Income Tax Act, 1961 in the case of BCCI for the assessment year 2008-09 which holds that BCCI is in business of cricket and not charity. As per the DG, this gives force to the fact that activities carried out by BCCI are for the profit motives.

92. *Per contra*, BCCI contended that it is not an 'enterprise' as defined in section 2(h) of the Act as it is not engaged in any 'economic activity'. Regarding the DG's reliance upon the Income Assessment Order of BCCI for the

assessment year 2008-09 and the observations of the Income Tax Authority (Director of Income Tax, Exception) dated 28.12.2009 in relation to the Income Tax Assessment Order 2008-09, BCCI submitted that the said order is based on incorrect principles of taxation laws and is patently erroneous. As per BCCI, the said order had been impugned by BCCI by filing an appeal which is pending adjudication. Therefore, as per BCCI, reliance on such order by the DG, which is *sub judice* is misleading and lacks legal basis. BCCI further contends that owing to the nature of its activities, it cannot be compared to a commercial organization. BCCI is not engaged in any activity or service that can qualify as an 'economic activity' to fall within the purview of the definition of 'enterprise' under the provisions of the Act.

93. In order to determine whether BCCI is an 'enterprise', it would be appropriate to quote the definition of 'enterprise' as given in section 2(h) of the Act:

" enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

94. From the above, it is manifest that 'enterprise' means a *person* or a department of the Government, who or which is, or has been, engaged in the specified activities. The term 'person' has been defined in section 2(l) of the Act which *inter alia* includes an association of persons or a body of individuals, whether incorporated or not, in India or outside India. There is little difficulty in holding that BCCI squarely falls within the meaning of the inclusive definition of 'person.'

95. I may observe that BCCI is a not-for-profit society registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 and has been established with the objective of promoting the sport of cricket in India. From the Memorandum of Association of BCCI, it may be gleaned that BCCI has been set up with the objectives of encouraging formation of state, regional or other cricket associations and the organization of inter-state and other tournaments; promoting the game of cricket throughout India by organizing coaching schemes, establishing coaching academies and holding tournaments and exhibitions of Test Matches, One Day internationals , Twenty-20 and other matches; fostering the spirit of sportsmanship and the ideals of cricket amongst school, college and university students and others and to educate them in the same; donating sums for causes conducive to the promotion of the game of cricket; and organizing matches in aid of public charities and relief funds.
96. Further, it may also be noticed that the income, funds and properties of BCCI are to be utilized and applied solely for the promotion of the objects of BCCI, as provided in MoA *i.e.* to aid and assist financially or otherwise and to promote, encourage, advance and develop and generally assist the game of cricket or any other sports throughout India.
97. I may also note that BCCI does not *per se* engage in commercial activities or services with the sole intention or objective of earning profits and the revenue generated by BCCI during the course of undertaking such promotional activities are ploughed back into further activities for the promotion of cricket.
98. In view of the above, it may be noted that the main objectives of BCCI are: to encourage formation of state, regional or other cricket associations and the organization of inter-state and other tournaments; to promote the game of cricket throughout India by organizing coaching schemes, establishing coaching academies and holding tournaments and exhibition of Test Matches, One Day internationals , Twenty-20 and other matches; to foster

the spirit of sportsmanship and the ideals of cricket amongst school, college and university students and others and to educate them in the same; to donate sums for causes conducive to the promotion of the game of cricket; and to organize matches in aid of public charities and relief funds.

99. To attain these objectives, BCCI controls other commercial activities related to the game of cricket, such as grant of franchisee rights, media rights, television rights, sponsorship rights and all other rights, related to the sport of cricket in India. These incidental, ancillary or auxiliary activities are in the commercial sphere which generate revenue for BCCI and the revenue so generated during the course of undertaking such activities are ploughed back into further activities for the promotion of cricket.

100. In this connection, a reference may also be made to a decision of the Hon'ble High Court of Delhi in W.P. (C) 5770 of 2011 in the case of *Hemant Sharma & Ors v. Union of India & Ors.* where while disposing of the writ petition, the Hon'ble Court has considered the Chess Federation as an 'enterprise' within the meaning of section 2(h) of the Act. The relevant part of the order may be excerpted below:

"27. Respondent No. 2, prima facie, would also fall within the expression 'enterprise' as used in the Act which is very widely worded to even include a person or a department of the government rendering services "of any kind" and excludes only those activities of the government which are relatable to sovereign functions of the government and all activities carried out by the departments of the Central Government dealing with atomic energy, currency, defence and space. Respondent No. 2 does not fall in any of the said exceptions....

"29. The preamble of the Competition Act, when closely read, shows that the said Act has been enacted to provide, keeping in view the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interest of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto. (emphasis supplied)

"30. Therefore, one of the purposes of the said Act is to prevent practices having adverse effect on competition. The said practices need not necessarily be related to trade or commerce.

“31. The definition of the expression “enterprise” as used in the Competition Act read with the definition of “services” thereof, in my view, clearly shows that the respondent no. 2 is an enterprise which is covered by the said provisions.”

101. Even otherwise, the activities carried out by BCCI to organize the game of cricket brings it within the purview of the definition of ‘enterprise’ as given in section 2(h) of the Act, since such definition includes an entity that provides ‘*services of any kind*’. The definition of ‘service’, as defined under section 2(u) of the Act, includes service of any description including *entertainment and amusement activities*. In this connection, though I agree with the finding of the DG that BCCI falls within the purview of the term ‘enterprise’ as defined under the Act, the reasoning given by the DG taking activities of BCCI as economic activities cannot be sustained. It may be noted that BCCI was formed *inter alia* with the objects of encouraging the formation of State, Regional or other Cricket Associations and organizing Inter-State and other tournaments. Besides, one of the avowed objectives of BCCI is to promote the game throughout India by organizing coaching schemes, establishing coaching academies, holding tournaments, exhibition matches, Test Matches, ODIs Twenty/20 *etc.* Thus, BCCI is predominantly engaged in the activities as detailed above and the so-called economic activities are only incidental, ancillary and auxiliary in nature which arise out of its pursuit of the main objectives as delineated *supra*.

102. In this connection, it may be noted that BCCI is devoted to the promotion of the game of cricket, and, therefore, it cannot be placed in the same scale as the business organisations whose only intention is to make as large a profit as can be made by telecasting the game. The sporting organization is interested in promoting the sport and is under an obligation to organise the sports events and can legitimately be accused of failing in its duty to do so. The promotion of sports also includes its popularization through all legitimate means. For this purpose, they are duty bound to select the best means and methods to reach the maximum number of listeners and viewers. Since at present, radio and TV are the most efficacious methods, thanks to the technological development, the sports organisations will be

neglecting their duty in not exploring the said media and in not employing the best means available to them to popularise the game. That while pursuing their objective of popularising the sports by selecting the best available means of doing so, they incidentally earn some revenue, will not convert either them into commercial organisations or the right claimed by them to explore the said means, into a commercial right or interest. It may further be noted that sporting organisations such as BCCI in the present case, have not been established only to organise the sports events or to broadcast or telecast them. The organisation of sporting events is only a part of their various objects and even when they organize the events, they are primarily to educate the sportsmen, to promote and popularise the sports and also to inform and entertain the viewers. The organisation of such events involves huge costs. Whatever surplus is left after defraying all the expenses, is ploughed back by them in the organisation itself. It will be taking a deliberately distorted view of the right claimed by such organisations to telecast the sporting event to call it an assertion of a commercial right.

103. Thus, I am of the opinion that notwithstanding the aforesaid peculiar features of sporting organization, for the reasons noted above and taking into consideration the observations of the Commission in the case of *Jupiter Gaming Solutions Private Limited v. Government of Goa & Anr.*, Case No. 15 of 2010 decided on 12.05.2011 where it was held that the Act seeks to cover service 'of any description' within its purview since the expression 'service of any description' has a wide meaning, BCCI stands covered within the ambit of the Act.

104. In view of the foregoing discussion, I hold that BCCI is an 'enterprise' within the meaning of the term as defined in section 2(h) of the Act.

Whether the opposite parties have contravened the provisions of section 4 of the Act?

105. The informant has alleged that BCCI being the sole organiser of IPL Twenty – 20 cricket matches, is in a dominant position, as no other enterprise is in a position to invite tenders for contracts associated with the T-20 Contracts. As per the informant, the opposite parties by favouring certain parties in awarding the T-20 Contracts, related to: the franchisee of cricket teams, sponsorship rights, television rights, mobile and internet rights, management rights, sporting equipments, dresses, transportations *etc.* have abused their dominance and denied market access to other players in the market.
106. For determination of this issue, it is necessary to first determine and define the 'relevant market' in the present case. Under the Act, the 'relevant market' is defined under section 2(r) as the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. Further, the Act defines 'relevant geographic market' in section 2(s) of the Act as a market comprising of an 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 and the 'relevant product market' is defined in section 2(t) of the Act as a market comprising of 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.
107. Before proceeding further, it may be noticed that the DG has concluded the relevant market in the present case as the underlying economic activities which are ancillary for organizing the IPL Twenty-20 cricket tournament being carried out under the aegis of BCCI.
108. BCCI in its response to the DG report has submitted that such a definition of the relevant market as delineated by the DG is incorrect, flawed and antithetical to what the competition law seeks to regulate. BCCI has

vehemently contended that the DG has erred by focusing on a flawed definition of relevant market without taking into account substitutability of various rights related to IPL tournament, their end-uses and characteristics, pricing, differing demand *etc.*

109. Accordingly, it was submitted by BCCI that the relevant market is a function of the relevant product market as well as the relevant geographic market. For determination of the relevant product market, it is important to consider the common, identical, substitutable products and/or services (which are regarded as interchangeable or substitutable by the consumer) which would include factors such as characteristics of the products or services, end use of the products or services, pricing, consumer preferences, *etc.* BCCI has submitted that determination of the relevant market by the DG is narrow and does not take into consideration other competing forms of entertainment and leisure available to sports viewers, media and broadcasting companies, supporting sponsors *etc.* Accordingly, BCCI contends that the market for various rights related to IPL such the franchise rights, media rights, web portal rights, local sponsorship rights, associate sponsorship rights *etc.* are separate markets as these rights are not interchangeable *inter se.*

110. It was further submitted that each of the rights in relation to the IPL is intrinsically different with different price, demand function and end users, and therefore cannot be considered as substitutable to each other. For example, the relevant market for Media Rights is different from the sponsorship rights. The market for viewers of cricket matches in stadium is different from the viewers of the cricket matches on the television. Similarly, the market for catering rights is not the same as the market for transportation rights. It has also been pointed out that the bidders/investors having commercial interests in various rights related to IPL are not the same.

111. In view of the above, BCCI has submitted that the market for each of the aforesaid rights is a separate relevant market and the DG has wrongly aggregated different rights related to IPL.
112. I have very carefully examined the provisions of the Act relating to determination and delineation of the relevant market. It may be observed that BCCI is discharging various activities *viz.* to encourage formation of state, regional or other cricket associations and the organization of inter-state and other tournaments; to promote the game of cricket throughout India by organizing coaching schemes, establishing coaching academies and holding tournaments and exhibitions of Test Matches, One Day internationals, Twenty-20 and other matches; to foster the spirit of sportsmanship and the ideals of cricket amongst school, college and university students and others and to educate them in the same; to donate sums for causes conducive to the promotion of the game of cricket; and to organize matches in aid of public charities and relief funds *etc.* Having regard to the dominant nature of the activities discharged by BCCI as enumerated earlier and taking into consideration the nature of the allegations and averments in the information, it may be concluded that the *promotion and regulation of sport of cricket in India* is the relevant market.
113. To determine whether an enterprise enjoys a dominant position or not under section 4, the Commission has to consider all or any of the following factors *viz.* market share of the enterprise; size and resources of the enterprise; size and importance of the competitors; economic power of the enterprise including commercial advantages over competitors; vertical integration of the enterprises or sale or service network of such enterprises; dependence of consumers on the enterprise; monopoly or dominant position whether 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 the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition; and any other factor which the Commission may consider relevant for the inquiry.

114. In the relevant market as delineated above and after considering the factors for determining dominance, it may be noted that BCCI is the sole authority responsible for regulating the game of cricket in India. Therefore, BCCI exercises monopolistic hold over the cricket players and the entities that want to enter in fast growing business related to the sport of cricket. BCCI also controls other ancillary commercial activities related to the game of cricket, such as grant of franchisee rights, media rights, television rights, sponsorship rights and all other rights, related to the sport of cricket in India. The advent of satellite television with dedicated sports channels has considerably increased the market for sports broadcasts. The commercial significance of broadcasting sport has grown for both sports authorities and broadcasters. The growth results principally from televisions technological revolution, with the development of cable communication, subscription channel and more recently of 'package' subscriptions and per pay view. Broadcasting provides a fast growing source of revenue for some sports, especially cricket. These activities are in the commercial sphere which generate revenue for BCCI on perpetual basis and are generally executed through agreements.

115. Further, the dominance of the BCCI can additionally be attributed to its membership with the International Cricket Council (ICC), which typically only recognizes one cricket board/authority from each country as its member.

116. In view of the above, it may be concluded that BCCI is in a dominant position in the relevant market.

117. Before examining the alleged abusive conduct, I deem it appropriate to preface the order by noting that IPL is not the only format of cricket which is being promoted by BCCI. As may be noticed from the Memorandum of Association of BCCI, it also promotes the game of cricket through other tournaments, exhibition matches, test matches, ODIs, Twenty/20 and, any other matches which also involve the incidental economic activities which are the subject matter of enquiry in present case. Thus, BCCI cannot be compared with other private football/ rugby sports leagues *etc.* which operate world-over. It needs emphasis to point out that IPL is not the only format which is promoted by BCCI. It may also be highlighted that, through IPL, sport of cricket also gets promoted and new and young emerging players get opportunities to play cricket alongwith the best players in the International cricket. For all these reasons, BCCI cannot be compared with other private sporting organizations. Besides, I am also not oblivious of the fact that BCCI in promoting IPL laid a lot of emphasis on building local talent when the event was conceived in late 2007.

118. Now, the allegations made by the informant relating to abuse of dominance may be examined. It may be noted that the allegations relating to abusive conduct fall in the realm of incidental, ancillary and auxiliary activities conducted by BCCI *viz.* franchisee rights for IPL; media rights for IPL; portal rights for IPL; local sponsorship rights; and associate sponsorship rights *etc.* At the outset, I may observe that no sport including cricket can be promoted without adequate infrastructure and other resources and it becomes *perforce* necessary to generate revenue through incidental, ancillary and auxiliary activities for promotion of the game. It may be pointed out that BCCI is not engaged in any commercial activities *per se* or services with the sole intention or objective of profit maximization. Further, as canvassed by BCCI, the revenue generated during the course of undertaking promotional activities is always ploughed back for further promoting the sport of cricket. Therefore, the organization of IPL cricket tournaments does not essentially change the intrinsic character of BCCI which is to promote sport of cricket

in India. In this backdrop, the allegations relating to anti-competitive conduct against BCCI may, now, be examined.

Franchise Rights

119. It may be noted that in 2007, BCCI decided to start IPL, in order to provide opportunity to larger number of Indian domestic players to play with and against international players to nurture their talents and to promote the game of cricket with a sense of competition at domestic levels in India. In 2008, the award for the franchise rights for eight teams was made by adopting a tendering process. An advertisement for the ITT-2008 was published in the Times of India thereby providing an opportunity to all the interested investors across India to bid for the franchises. In this connection, it may be noted that a total of 14 companies/consortiums submitted their bids for the franchise rights for any or all of the 10 locations *viz.* Mumbai, Delhi, Kolkata, Chennai, Bangalore, Hyderabad, Mohali, Jaipur, Ahmadabad and Kanpur. The detailed procedure for the award of the franchise rights was clearly mentioned in Clause 9.3 of the ITT-2008. The bids were opened in the meeting of the Governing Council of the IPL ('GC IPL') held on 24 January 2008 in the presence of all the bidders and the successful bids were selected by verifying the best bids for each venue based on the procedure provided in the ITT- 2008.
120. Further, it may also be noted that the advertisement for ITT for grant of the franchise rights for 2 additional teams was published in the Hindustan Times on 9 March 2010 (ITT-2010). A total of 5 companies/consortium were stated to have submitted their bids for the two new teams in an open tendering process conducted in March 2010 for any or all the five locations. Ahmadabad, Kanpur, Nagpur, Pune and Kochi. The successful bids were selected by verifying the best bids for each venue based on the procedure provided in the ITT-2010. The bids were opened in the meeting of the GC IPL held on 21 March 2010 in the presence of all the bidders.

121. Thus, I may observe that an open bidding process was adopted for the grant of franchise rights in relation to IPL and as such no infirmity can be found therewith which can be said to be in contravention of the provisions of the Act.
122. I am also not oblivious of the fact that no complaint was made by any bidder whether the successful or unsuccessful in this regard.
123. I am also of opinion that no entry barriers were sought to be created by BCCI in the matter of grant of franchise rights by fixing a minimum floor price as the same is neither unreasonable or can be described as commercially inexpedient. Further, on a fair reading of the terms of ITT-2008 and ITT-2010, it is difficult to agree with the allegations or the findings that the same create barriers to entry. Rather, the objective appears to be to ensure that companies with real competence having financial stability and capacity, participate in the tender of the franchise rights.
124. I am also of the further opinion that the findings of the DG that BCCI abused its dominant position by providing franchisee *ad infinitum* rights are unsustainable. As submitted by BCCI, the franchise agreement contemplated listing of the franchise on a stock exchange and thereby provided an opportunity to the public at large to invest in such franchise. Moreover, it has also been brought to the notice of the Commission that the franchise agreement has clear grounds for termination and, therefore, such an agreement cannot be assumed to be granted for an indefinite period of time.
125. Further, no fault can be found with BCCI for providing draft franchisee agreement with the ITT. On the contrary, I am of the view that standard franchise agreement for award of franchise rights was necessary as the franchise agreements were to be signed with multiple successful bidders for 8 teams. Since all the franchise rights were awarded simultaneously through one tender process, there was a need for non-discriminatory and

consistent terms and conditions to be applied on a uniform basis to all the bidders, thereby creating a level-playing field and maintaining integrity of IPL. Applying standard terms and conditions to each of the franchise is, in fact, fair and non-discriminatory in nature, providing a level playing field to all bidders and maintaining the integrity of IPL, which is in compliance with the provisions of the Act.

Media Rights

126. Coming to the findings on abuse of dominant position in relation to grant of Media Rights, it was submitted by BCCI that it cannot be found to have abused its dominant position with regard to any conduct in relation to: (a) the Media Rights License Agreement ('1st India Territory Agreement') executed between BCCI and MSM which *inter alia* provided for the grant of media rights on exclusive basis for the Indian sub-continent to MSM from 2008-2012 with an option for a renewal for a further 5 year period; (b) the Media Rights License Agreement ('1st ROW Agreement') executed between BCCI and WSGI which *inter alia* provided for the grant of Media Rights on an exclusive basis for the rest of the world (excluding India) to WSGI from 2008-2017; and (c) the 2nd India Territory Agreement on account of the fact that these agreements were terminated by BCCI prior to the date of notification of section(s) 3 and 4 of the Act *i.e.* 20 May 2009. In other words, the arrangement under the said agreements ceased to be valid, operative, subsisting and binding on parties prior to the notification date.
127. In this regard, before proceeding any further, it may be noted that Hon'ble Bombay High Court in the case of *Kingfisher Airlines Limited v. Competition Commission of India* held that all acts committed prior to coming into force of the Act would be valid and cannot be questioned unless such actions have a continuing effect after the notification date.
128. Regarding the allegation of adoption of unfair or discriminatory practices by BCCI in relation to the award of media rights, it has been submitted by

BCCI that engaging in such conduct would not benefit BCCI in any manner. Given that media rights have accounted for 45%-65% of the revenue of BCCI in past 3 years, it is clear that BCCI has no incentive to engage in any kind of unfair or discriminatory practices in relation to the award of media rights.

129. As far as the extension of the time for the submission of bids for media rights from 11:00 a.m. to 1:00 p.m. on 14 January 2008 is concerned, BCCI has submitted that the DG has not furnished any evidence to substantiate the claim that the extension of deadline for the submission of bids for media rights was done with a view to facilitate the submission of the WSGI bid. Further, neither NDTV nor ESPN Star Sports (ESS) has complained that BCCI's conduct was anti-competitive. In fact, the DG in paragraph 10.6 of the DG's Report has quoted ESS as stating that it has no complaint against BCCI and that they are not aware of any unfair or discriminatory conduct of the BCCI. Therefore, BCCI contended that it cannot be held liable for any anti-competitive conduct under the provisions of the Act.
130. BCCI has also submitted that in response to the Media ITT only two bids were received by the BCCI from WSGI and BCCI entered into two separate agreements: (a) ROW Agreement; and (b) 1st India Territory Agreement.
131. In relation to the finding by the DG that WSGI and MSM were favoured over the other bidders by BCCI, it had submitted that WSGI Bid was the only eligible bid received in response to the Media ITT. BCCI is not under any obligation under the Media ITT or applicable law to entertain any request for extension of the deadline for submission of bids for media rights. Regarding the finding of the DG that BCCI was aware of the pre-bid arrangement between MSM and WSGI, BCCI has submitted that it is completely unsubstantiated. As per BCCI, there is no evidence, direct or circumstantial, to corroborate the claim that BCCI was aware of any bid proposal agreed amongst WSGI and MSM prior to submission of the WSGI bid.

132. BCCI has further stated that the submission of WSG-MSM bid and execution of separate agreements with WSGI and MSM are not anti-competitive in nature. The DG has raised two-fold objections in relation to the submission of the WSG-MSM Bid: (i) the Media ITT was purchased separately by WSGI and MSM but the bid was submitted as a consortium by WSGI and MSM; and (ii) even though WSGI Bid was a consortium bid, separate agreements were entered into with WSGI and MSM. BCCI has submitted that the BCCI entered into separate agreements at the behest of and upon the insistence of WSGI and MSM. Further, the execution of separate agreements does not violate the provisions of the Media ITT or applicable law. It was commercially expedient to execute separate agreements for Media Rights, given that only WSGI Bid qualified for Media Rights, that WSGI and MSM agreed to use their respective synergies and work towards the broadcast of IPL, in India as well as worldwide.
133. Referring to the observation of the DG that the WSG-MSM Bid was conditional in nature, it was submitted that stipulation which is based on commercial expedience, does not constitute condition and the allegation by the DG that the WSG-MSM Bid is conditional is vague and unsubstantiated. As per BCCI, the aforesaid stipulation merely relates to a provision for shortfall which is a fairly common provision in an agreement of the nature such as the Media ITT and does not render the bid conditional.
134. It was submitted by BCCI that the duration of the Media ITT was fixed at 10 years, pursuant to the requests made by the bidders for the Media ITT. It was queried by the bidders whether BCCI would consider accepting bids for a 10 year term even if there exists a provision under the Media ITT to renew the Media Rights, for a further 5 years. To the extent, BCCI clarified that such bids will be considered. Accordingly, the extension of the duration of the Media ITT was made known to all the bidders and was therefore applied in a uniform and non-discriminatory manner to all the bidders and BCCI

took into account the requirements indicated by the bidders, commercial considerations and extended the term of the Media ITT to 10 years.

135. As per BCCI, there was no established market for IPL. IPL was a completely new idea introduced by BCCI. Therefore, given the nascence of IPL in the Indian market and the short duration of its existence (i.e. only 2 months), it was important to first create a market for T-20 IPL cricket (especially among women and children) and attract consumer attention towards the new format introduced in cricket, and then to develop that market with increased popularity and viewership to increase IPL's market share and make it a profitable venture. Thus, it was important to grant long term contracts for media rights, in order to attract the broadcaster to invest in the new product to create and develop a market of its own, given the short duration in which it was operational. Therefore, given that nascency of IPL in India, having no market of its own, and thus required substantial development; the streamlining of viewership to the new T20 format of cricket and increase the market share of IPL; the limited duration of the broadcast of IPL season in India; the high risk involved in the new venture; and the inherent constraints prevalent in the market for broadcasting (i.e. advertisement being the only source, limited channels, limited viewership), as per BCCI, it was imperative to grant long term Media Rights based on justifiable objective economic reasons.

136. I have carefully examined the rival submissions. I have gone through clause 9.1(c)(1) of the media rights agreement and the same is quoted below:

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

It may be pointed out that IPL, being a new format, it was necessary to incorporate such a clause to the potential customers since the success of the format could not be predicted with any precision when the format was at its infancy. Moreover, BCCI while putting such clause was only acting in

consonance with the terms of section 32 of the ICC rules which provides that in agreements to which a member of ICC is a party, it is common for a sport's commercial partners to require certain commitments to protect their respective investments in the sport. Illustratively, it is provided under the aforesaid rules that a commercial partner investing significant sums in a Member or the ICC may require assurances that Members and/or the ICC will not thereafter establish (or permit the establishment of) competing events. Further, it is mandated that Members ought not to put themselves or the ICC in breach of their respective commitments to those commercial partners, as this would threaten the generation of commercial income for distribution throughout the sport. From these rules of ICC, it is evident that BCCI is not acting on its own while putting the impugned clauses in the agreement as the same are in accordance with the international practice as reflected in the ICC rules and no infirmity can be found therewith by me in the conduct of BCCI on this count.

Further, the minimum turnover requirement and net worth requirement set out in the Media ITT cannot be said to be anti-competitive as the same were incorporated with a view to ensure financial stability of the bidders as their inability to perform their obligations could jeopardize the conduct of IPL. I may also note that the term and conditions of the invitation to tender were uniform and non-discriminatory for all the bidders. Further, accepting a bid from a bidder who is not the highest bidder cannot be assailed *per se* as being discriminatory as price consideration alone need not always be the determining factor while awarding a contract. Past track record, experience and expertise, presence in the industry historically, available resources and economies of scale are also relevant non-price considerations.

137. The terms of an ITT fall in the realm of contract and as such the same are not amenable within the jurisdiction of the Commission unless they are demonstrably anti-competitive. The Commission may interfere with the provisions of standard form contracts only in instances where it appears

that a party may have exercised undue influence over the weaker counterparty in contravention of the provisions of the Act.

138. In view of the above, I am of the opinion that in relation to grant of media rights, BCCI has adhered to a fair tendering process and there has been no abuse of dominant position by BCCI in relation thereto in terms of the provisions of section 4(2) of the Act.

Web Portal Rights

139. Next, it is contended that the market for web portal rights is a separate relevant market and BCCI does not have a dominant position in such markets. The market for web portal rights is a sub-market within the broader market of internet portals. Unlike franchise rights which are specific to IPL, the web portal rights are not a unique product. There are various substitutes available to an investor looking to invest in web portal rights. Accordingly, it was submitted by BCCI that it does not hold a dominant position in the market for web portal rights. Further, BCCI submits that, assuming but not conceding, it has a dominant position in the market for web portals, it is argued that BCCI has not abused its dominant position or engaged in any unfair or discriminatory practice in relation to the award of web portal rights.

140. As per BCCI, the tender notice for the grant of web portal rights was opened on 17 December 2011 inviting bids for web portal rights for a period of 4 years. However, only one bid was received in this regard from the Cricket Network which failed to meet the eligibility criteria. Since there were no successful bidders for web portal rights, a memorandum of understanding was executed on 16 April 2008 with Live Current Media ('Web Portal MoU') for a period of 10 years. In this regard, BCCI submitted that it had issued a show cause notice dated 26 April 2010 to Shri Lalit Modi in relation to the Web Portal MoU and the irregularities in the grant of web portal rights to Live Current Media. Shri Modi had acted outside the scope of his authority

in relation to grant of web portal rights. The Web Portal MoU was terminated by BCCI and the web portal is currently operated/ managed by BCCI itself. Accordingly, BCCI has contended that the conclusion of the DG in relation to the violation of section 4(2) (a) and (b) of the Act by BCCI in relation to the grant of web portal rights, is erroneous as it would be incorrect to impute the responsibility for the purported misconduct of Shri Modi in relation to grant of web portal rights to BCCI.

141. I have carefully examined the rival submissions. The plea of BCCI that market for web portal rights is a separate relevant market and BCCI does not have a dominant position in such markets is misconceived. As held by me, BCCI is in a dominant position in the relevant market as delineated *supra*. Web portal rights being incidental and consequential rights flowing from the relevant market of development and regulation of sport of cricket in India, the plea of BCCI is rejected. However, I am satisfied that in the matter of grant of web portal rights, BCCI cannot be said to have acted in an abusive manner as is reflected from the reply of BCCI as noted above. Besides, I am of opinion that an improper act/ misconduct by/ of an employee which is beyond the authority conferred by the employer-actual or apparent cannot be imputed to the employer so as to hold it in contravention of the provisions of the Act.

Global title sponsorship rights and associated sponsorship rights

142. Adverting to the issues relating to grant of global title sponsorship rights and associated sponsorship rights, it has been stated that the rights for global title sponsorship were awarded to DLF as it was the highest bidder as noted in the minutes of the meeting of the IPL GC dated 13 February 2008. However, with reference to associate sponsorship rights, it has been pointed out the same were granted to the 6 parties without any advertisement or issue of public tender.

143. In this regard, BCCI submitted that the aforesaid contracts for associate sponsorship (including umpire sponsorship rights and strategic time out

rights) were awarded by BCCI without any advertisement or tendering process as these contracts were granted for relatively short duration of time (*i.e.* for 2-5 years) and did not involve substantial consideration *vis-a-vis* the consideration paid for franchise rights. Additionally, any interested party has the option of approaching BCCI for associate sponsorship rights for the remaining period of IPL. BCCI was aware that the market for the associate sponsorship rights is thin and did not anticipate widespread interest from the vendors in relation to the same. The cost of tendering and inviting bids for associate sponsorship rights from the public would have been a cost and time intensive process given the constrained time lines for the launch of IPL, it was a prudent decision on the part of BCCI. Further, there is no complaint filed by the bidders or any other interested party in relation to the award of the associate sponsorship rights by BCCI to award the associate sponsorship rights on a private placement basis which as per BCCI is indicative of the fact that there was no economic harm or foreclosure of the market caused as a result of private placement of contracts for associate sponsorship rights by BCCI. Consequently, BCCI has argued that there has been no breach of the provisions of the Act in relation to the grant of the associate sponsorship rights.

144. I am satisfied that no contravention of the provisions of the Act is made out on this count also. As submitted by BCCI the contracts for associate sponsorship were awarded without any advertisement or tendering process as these contracts were granted for relatively short duration of time and did not involve substantial consideration *vis-a-vis* the consideration paid for franchise rights. The cost of tendering and inviting bids for associate sponsorship rights from the public would have been a cost and time intensive process given the constrained time lines for the launch of IPL, I am satisfied that no contravention of the Act has taken place.

145. With reference to the allegation relating to other rights, it may be noted that such contracts were either directly entered into by the franchisee with the relevant vendors (which may or may not have been recommended by BCCI);

tripartite agreements that were executed with BCCI, relevant vendor and the franchisee as the parties; or executed between BCCI and the relevant vendor with the expenses subsequently debited to the relevant franchisee by BCCI. As such, BCCI cannot be held liable for any anti-competitive conduct or abusive behavior in these matters where the contract is essentially between franchisee and third party vendors.

146. Lastly, a response has been made to the actions relating to Indian Cricket League (ICL) launched by M/s Essel Sports Pvt. Ltd. in 2007. In this connection, BCCI has challenged the finding of the DG to the effect that the allegations made by ICL showed that BCCI owing to its dominant position had tried to sabotage ICL tournament through various ways and means and subsequently ICL tournament was not organized.
147. In this regard, BCCI had submitted that there is nothing to substantiate the allegation that BCCI has abused its dominant position to the detriment of ICL. Further, it was submitted that the demise of ICL is attributable to its own inefficiencies and the weakness of its business and marketing model and not to the conduct of BCCI and that such failure of ICL cannot be a ground for holding that BCCI has abused its dominant position as the events relating to ICL took place in 2007-08, which preceded the introduction of IPL and also preceded the date of notification of sections 3 and 4 of the Act *i.e.* 20 May 2009. In this regard, BCCI had also relied upon the judgment of the Hon'ble Bombay High Court in the case of *Kingfisher Airlines Limited v. Competition Commission of India* wherein it was held that all acts committed prior to coming into force of the Act would be valid and cannot be questioned unless such actions have a continuing effect after the notification date.
148. Further, it has been pointed out that the dispute between ICL and BCCI is pending adjudication before the Hon'ble Delhi High Court on the similar issue. Irrespective of this, it was submitted that given that acts alleged by the DG against BCCI in relation to ICL related to the period prior to the

notification date under the Act, the Commission has no jurisdiction in relation to this issue.

149. It is noted that in the present proceedings, I have confined myself to the issues relating to the grant of contracts and rights with respect to franchisee, catering, ticketing, media rights *etc.* The issues relating to the conduct of BCCI *vis-à-vis* rival leagues and players participating in such leagues have neither been alleged specifically in the information nor any detailed investigation in this regard was carried out by the DG. Accordingly, the same are left open to be decided in an appropriate case.

Whether the provisions of section 3 of the Act have been violated?

150. The DG's report has stated that based on the show cause notice, BCCI itself is of the opinion that bid rigging/collusive bidding has taken place in relation to award of franchise rights for two teams in the year 2010. The DG's report further provides that BCCI is of the opinion that the 'arm twisting' tactics were applied to provide benefit to some parties.

151. In this regard, BCCI has submitted that the Act clearly includes bid rigging as a part of horizontal anti-competitive agreement *i.e.* an agreement between competitors. The only place where bid rigging is mentioned in the Act is in section 3(3)(d), which deals with agreements between enterprises engaged in identical or similar trade of goods or provision of services (*i.e.* agreements between competitors). Bid rigging is, in fact, specifically defined in the explanation to section 3(3) of the Act, as 'any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely effecting or manipulating the process for bidding.' Therefore, as per BCCI, given that the definition of bid rigging refers to an agreement amongst competitors and BCCI and the franchisees are not competitors as such,

BCCI cannot be held liable for a breach under section 3(3) of the Act. As per BCCI, this may be further emphasized by placing reliance upon the order of the Commission in *Arun Kumar Tyagi* case (*supra*) where the Commission has specifically stated that the enterprise floating a tender and the enterprise bidding for it cannot be guilty of entering into an agreement violating section 3(3) of the Act.

152. I may observe that essentially, bid rigging involves a collusive decision on how to respond to a particular bid. The object of a bid rigging agreement is usually to avoid competition between bidders/competitors for a product, to the detriment of the vendor. As per the scheme of the Act, such agreement or arrangement must be among enterprises engaged in identical or similar trade of goods or provision of services. BCCI and its franchisees are not competitors and are in fact at different stages or levels of the production chain. This is because the upstream product (franchisee rights, media rights) is indispensable for the supply of the downstream product. *i.e.* the media rights awarded by BCCI are indispensable for the business of the media rights franchisee holder. BCCI sells the media rights which the franchisee purchases. This buyer-seller relationship is a hallmark of a vertical agreement and hence BCCI and the franchisee holders are not competitors or persons engaged in 'identical or similar trade of goods or provision of services.' Consequently no bid rigging arrangements may be held to exist among such entities.

153. In the view of the aforesaid and given the fact that the investigation against Shri Lalit Modi for being involved in bid rigging activities and for other alleged malpractices in the awarding of contracts related to IPL tournament are pending, I am of the opinion that it is not necessary to form an opinion whether Shri Lalit Modi had acted beyond the scope of his authority.

154. Therefore, in view of the forgoing discussion and after perusing the entire material available on record, I am of the considered view that no

contravention of the provisions contained in sections 3 and 4 of the Act is established against the opposite parties.

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

Sd/-
(M.L. Tayal)
Member