

BEFORE

THE COMPETITION COMMISSION OF INDIA

CASE NO.61/2010

Date: 08.02. 2013

INFORMANT

Sh. Surinder Singh Barmi

OPPOSITE PARTY

Board for Control of Cricket in India (BCCI)

Order

1. This case was initiated on the basis of information filed by Sh. Surinder Singh Barmi, a cricket fan from New Delhi against Board for Control of Cricket in India (hereinafter "BCCI") to the Competition Commission of India (hereinafter "Commission") under Section 19(1)(a) of The Competition Act, 2002 (hereinafter "Act") on November 02, 2010. The Commission, upon examination of the facts of the information, passed an order under Section 26(1), on December 09, 2010 recording its opinion that there exists a *prima facie* case, and directed the Director General (hereinafter "DG") to investigate into the matter.
- 1.1 The DG submitted the investigation report on February 21, 2012. The investigation report was sent to the parties seeking their response on the same and further process of inquiry was undertaken in accordance with the provisions of the Act and relevant regulations thereunder. Full opportunity was given to both BCCI and the informant for perusal

of all relevant records and making their submissions, both in writing and orally before the Commission.

2. Factual Background

- 2.1 The Opposite Party(OP), BCCI, is a society registered under Tamil Nadu Societies Registration Act, 1975 with the primary objectives as stated in the Memorandum of Association (MoA) of controlling the game of cricket in India, promoting the game in India, framing the laws of cricket in India, selecting teams to represent India in Test Matches, ODIs and Twenty 20 matches played in India or abroad. It is a '*full member*' of International Cricket Council ("ICC")
- 2.2 A party related to the OP is ICC. ICC is the global governing body for international cricket. It is responsible for administration of men's and women's cricket including the management of playing conditions and officials for Test Match and One Day International (ODI) Cricket and the staging of international cricket events for men, women and juniors. It has three categories of members viz. Full Members, Associate Members and Affiliate Members.
- 2.3 Full Members are the governing bodies for cricket of a country recognised by the ICC, or nations associated for cricket purposes, or a geographical area, from which representative teams are qualified to play official Test matches (10 Members).
- 2.4 Associate Members are the governing bodies for cricket of a country recognised by the ICC, or countries associated for cricket purposes, or a geographical area, which does not qualify as a Full Member, but where cricket is firmly established and organised (36 Members).
- 2.5 Affiliate Members are the governing bodies for cricket of a country recognised by ICC, or countries associated for cricket purposes, or a geographical area (which is not part of one of those already constituted as a Full Member or Associate Member) where the ICC recognises that cricket is played in accordance with the Laws of Cricket (60 Members).

Allegations

- 2.6 The allegations levelled by the informant centre on the following three dimensions of organization of Indian Premier League (IPL), a Twenty 20, professional cricket league tournament conducted by BCCI:
- a. Irregularities in the grant of franchise rights for team ownership.
 - b. Irregularities in the grant of media rights for coverage of the league.
 - c. Irregularities in the award of sponsorship rights and other local contracts related to organization of IPL.

3. Summary of DG's findings and submissions of the OP

- 3.1 The DG investigated the matter with respect to the following issues:
- i. Whether the Act is applicable to BCCI or not? and whether BCCI is an 'enterprise' as defined u/s 2(h) of the Act.
 - ii. What would be the relevant market in the said case?
 - iii. Whether BCCI has a dominant position in the relevant market as determined?
 - iv. If so, whether BCCI has abused its dominant position in the relevant market in contravention of the provisions of Section 4 of the Act?
- 3.2 In order to examine the issues framed above, questionnaires were sent by DG to the various parties to the case viz. all the successful and unsuccessful bidders for franchise rights of IPL Teams, Essel Sports Private Ltd.(the promoters of Indian Cricket League), media companies involved in bidding for media rights and other parties related to the case. DG also examined the concerned representatives of parties on oath and obtained their statements and perused all the documents related to bidding for franchise or media rights for IPL.
- 3.3 After examination of the replies/documents etc. received from the parties, the submissions of the Informant, DG analysed the various issues.

Applicability of Competition Act on BCCI

BCCI's submissions

- 3.4 During the course of investigation, BCCI contended that it is a 'not-for-profit' society for the promotion of sport of cricket and its activities is outside the purview of the Act, especially Section 3 and 4. It also submitted that its commitments are neither driven by nor conditional upon commercial considerations. The revenue obtained by BCCI is ploughed back into the game of cricket.
- 3.5 BCCI also cited a decision by Hon'ble Supreme Court of India in Secretary, Ministry of Information and Broadcasting(MoI&B), Govt. of India(GoI) and Others Vs. Cricket Association of Bengal and Others reported as (1995 2 SCC 161). The SC in that case held,
- "...It must further be remembered that sporting organizations such as BCCI/CAB in the present case, have not been established only to organize the sports events or to broadcast or telecast them. The organization of sports events is only a part of their various objects, as pointed out earlier and even when they organize the events, they are primarily to educate the sportsmen, to promote and popularize the sports and also to inform and entertain the viewers. The organization of such events involves huge costs. Whatever surplus is left after defraying all the expenses is ploughed back by them in the organization itself. It will be taking a deliberately distorted view of the right claimed by such organizations to telecast the sporting event to call it an assertion of a commercial right. Yet the MIB has chosen to advance such contention which can only be described as most unfortunate. It is needless to say that we are, in the circumstances, unable to accept the argument. The Ministry or the Government as a whole should not denigrate the sporting organizations such as BCCI/CAB by placing them at par with business organizations sponsoring sporting events for profit and the access claimed by them to telecasting as an assertion of commercial interest".*
- 3.6 On the basis of aforesaid arguments and owing to the nature of its activities, BCCI contended that it cannot be compared to a commercial organization and it does not qualify to be an enterprise within the meaning of Section 2(h) of the Act.

DG's Findings

- 3.7 The DG concluded that though BCCI is a society and supposed to be a non-profit organization, its activities related to IPL such as grant of franchise rights, media rights and other sponsorship rights, where huge revenue is involved, are different from so called non-profit activities. These activities fall in the commercial sphere and the whole tendering process for such rights is motivated by profits.
- 3.8 The DG also relied on findings of Income Tax Department as revealed in the Income Tax Assessment Order u/s 143 (3) of the Income Tax Act for Assessment Year 2008-09. Registration of BCCI granted u/s 12A of the Income Tax Act was withdrawn by IT Authority (Director of Income Tax – Exemptions) vide order dated 28.12.2009, considering the changes in the status and memorandum of BCCI.
- 3.9 The DG also placed reliance over the EC decision in case of Abuse of Dominance by FIFA (International Federation of Association Football). EC in their decision, held that World Cup comprises of various activities of economic nature like sale of entrance tickets, commercial exploitation of FIFA emblems, conclusion of contracts for advertising on panels within the grounds, conclusion of contracts related to television broadcasting rights etc. and for all such purpose, FIFA is an 'undertaking'.
- 3.10 The DG also drew support from the decision of Hon'ble High Court in WP(C) 5770/2011 in the case of Hemant Sharma and Others Vs. Union of India and Others, where while disposing the writ petition, Hon'ble High Court considered Chess Federation as an enterprise within the meaning of provisions of Section 2(h) of the Act. DG considered similarity in roles of BCCI and Chess Federation as National Associations for sport of Cricket and Chess respectively and accordingly based his findings.
- 3.11 In view of the activities of BCCI being in commercial sphere and legal principles as laid down in the above decisions, DG concluded that BCCI is an enterprise for the purpose of Section 2(h) of the Act.

Relevant Market

BCCI's submissions

- 3.12 BCCI submitted that the market for various rights related to IPL such as franchise rights, media rights etc. are separate markets as these rights are not interchangeable..
- 3.13 BCCI also stated that each of the rights in relation to IPL is intrinsically different, with different price, demand function and end users and therefore cannot be considered as substitutable to each other

DG's Findings

- 3.14 The DG focussed on the fact that rights related to economic activities in connection to IPL are exclusive in nature and cannot be awarded by any other agency except BCCI as BCCI is the only agency approved by ICC to organize Twenty 20 cricket in India.
- 3.15 The DG concluded the relevant market as the “underlying economic activities which are ancillary for organizing the IPL Twenty 20 cricket tournament being carried out under the aegis of BCCI”.

Assessment of Dominance

BCCI's submissions

- 3.16 BCCI admitted that it holds a monopoly, but it should be treated on a different footing owing to the unique nature of the market for professional sports league and the pro-competitive effects of the existence of single professional sports league. BCCI stated that this is especially true in situations like that of BCCI where it is not acting for profit, because that means the negative effects of monopoly, including seeking economic rent from the activity, do not take place.
- 3.17 It also stated that the dominance of BCCI can additionally be attributed to ICC, which typically recognizes one cricket board/authority from each country as its member.

DG's Findings

- 3.18 The DG based its' findings on the following:

- a. BCCI is the national governing body for all types of cricket activities in India. It is a member of ICC and has the authority to select players, umpires and officials to participate in international events and exercises total control over them. Without its' approval, no recognized competitive cricket involving BCCI contracted players can be hosted within or outside the country.
- b. The relevant objects of BCCI as contained in their Memorandum provide for controlling the game of cricket in India.
- c. The DG considered the conduct of BCCI when a rival competing league ICL was formed. The promoters of ICL stated that the application of ICL for grant of recognition was rejected by ICC on the influence of BCCI. They also stated that, right from the inception of ICL, BCCI took steps to ensure that cricket stadiums are not made available to ICL and also restrained players from participating in the activities of ICL. As a consequence of actions of BCCI, ICL has at present suspended its operations temporarily.

3.19 On the basis of above facts as analysed, DG held that BCCI is in a position of strength, in the relevant market.

DG's findings on alleged Abuse of Dominance

Issue 1: Grant of franchise rights

- 4.1. The informant had alleged that there were irregularities in the process of grant of franchise rights for teams such as agreement between the IPL and bidders and bidders were advised about the amount of bid for a particular team. This lack of transparency was alleged as an act of bid rigging and leading to creation of entry barriers to new entrants in the market.
- 4.2 DG examined in detail the process of grant of franchise rights as well as the terms of franchise agreements.
- 4.3 As per the DG, there were attempts of bid rigging by using arm twisting tactics by IPL Commissioner Sh. Lalit Modi. DG's findings on this were based on the contents of the show cause notices issued by

BCCI to Sh. Lalit Modi. BCCI defended by submitting that (i) the agreement (if any) between the BCCI-IPL and the bidders does not qualify as horizontal agreement envisaged under Section 3 of the Act;(ii) Sh. Lalit Modi was acting outside the scope of his authority;(iii) the Invitation to Tender (ITT) containing the onerous provisions was cancelled and franchise rights for two additional teams was granted on the basis of fresh ITT. The DG rejected the submissions of BCCI and concluded that the decisions were not taken in the capacity of Chairman and Commissioner, IPL, impliedly with the consent and approval of IPL Committee. This was being reported to BCCI on regular basis and ratified by the Governing Council. Therefore, for all acts of commission and omission, BCCI cannot be absolved from its responsibility in the process of tendering.

- 4.4 Another contravention was found by DG in respect of rights of franchise teams been given till the IPL continues. According to DG, the agreement so made will have the effect infinitum. BCCI has countered the same by submitting that the agreement contains the termination clause and secondly there is a clause which permits sale of franchise rights after an initial lock in period of three years. The lock in condition has also been dropped for the two new franchises created later. BCCI also stated that the franchise agreement specifically contemplated listing of the franchise on the stock exchange thereby providing an opportunity to public at large to invest in such franchise.
- 4.5 The DG also found contravention in the fixation of franchise fee by BCCI for grant of franchise rights. The minimum franchise fee was fixed at USD 50 million, whichDG held to be a very high capital cost of entry. BCCI submitted that the minimumfloor price pre requirement of the bidders is not unreasonable and based oncommercial expedience. It further submitted that bids were allowed by various companies as a consortium.
- 4.6 The DG also found contravention to the fact that terms of the franchise agreements were loaded in favour of BCCI and franchises had no say in the terms of contract. BCCI on this issue submitted that providing the draft franchise agreement with ITT is a globally accepted

commercial practice. It further stated that the clarifications/further information sought by the bidders in relation to ITT and Franchise Agreement were satisfactorily answered by the BCCI. BCCI also stated that as franchise rights were to be awarded to multiple successful bidders, there was a need for non-discriminatory and consistent terms and conditions to be applied on uniform basis to all the bidders, thereby creating level playing field and maintaining integrity of IPL.

4.7 The DG also found Clause 5.5 of the Franchise Agreement to be unfair and discriminatory, as it provides restrictive conditions on the franchises for not selling the product of IPL without prior approval of BCCI. BCCI submitted that the underlying product in Clause 5.5 is the league marks of BCCI, which are its intellectual property and the clause is not intended to act as an hindrance, but for protection of intellectual property. Also, as the same condition is applicable to all the franchises, it cannot be regarded as discriminatory.

4.8 On the issue of grant of franchise rights, DG found BCCI guilty of contravention of Sections 4(2)(a)(i), 4(2)(b)(i) and 4(2)(c) of the Act.

Issue 2: Grant of media rights

5.1 On November 30, 2007, BCCI issued an ITT for IPL media rights for a period of 10 years commencing 2008 and ending 2017 on a worldwide basis. The media rights were to be granted for 5 IPL seasons with an option to the successful bidder to renew for further 5 seasons. Also, it was clarified by BCCI that bids for 10 year period would be considered. The bids were to be submitted for the Global package, India Package and International Package. The tender documents were purchased by 6 companies namely Nimbus, Ten Sports, SET India, ESPN Software India, World Sports Group (WSGI) and Providence Equity.

5.2 Of the 6 companies above, Nimbus, Ten Sports and Providence Equity did not submit the bids. The other 3 submitted the bids. During this period, WSG approached MSM/Sony to explore whether it was willing to be WSG's Indian broadcaster for IPL tender as the broadcasting business was one of the requirements of IPL Global Package which could not be satisfied by WSGI. On 10th January 2008, MSM's

representative indicated to WSGI that they would support WSGI's bid for IPL tender. On the date of opening of bids i.e. January 14, 2008, there were 3 bidders present. The Chairman of IPL informed that Sony had pulled out of their individual bid to partner in a consortium with WSG. ESPN bid was declared not eligible. It implied that there was only one party left in the bid that was WSG-Sony consortium.

5.3 WSGI-Sony won the bid with an offer of USD 1.026 billion for a period of 10 years Global Package. The breakup of the bid amount was as under:

- a) USD 276 million – Rights for Indian subcontinent to Sony for first 5 years.
- b) USD 550 million – Rights to WSGI for Indian subcontinent for next 5 years
- c) USD 92 million – Rights for RoW to WSGI for 10 years
- d) USD 108 million – Committed promotional spending for IPL

Accordingly the following agreements were entered into:-

- a) MSM (Sony) Media Rights (India Territory) Agreement dated 21 January 2008 (1st Indian Territory Agreement).
- b) WSG India – Media Rights (Rest of the World) Agreement dated 21 January 2008 (1stRoW Agreement)

It was submitted that separate agreements were entered into to accommodate the request of consortium partners. And this necessitated insertion of Clause 29 of 1stRoW Agreement which provided that

“If the Sony Agreement ends for whatever reason prior to end of the rights period, the licensor will be required to meet with the licensee as soon as practicable with a view to agreeing in good faith which of the parties and on what basis the rights pursuant to the Sony Agreement will be exploited within the Indian subcontinent. Licensor acknowledges that a failure to comply with this clause may have a material impact on the licensee's rights and obligations pursuant to this agreement”.

- 5.4 On March 14 2009, as submitted by BCCI, due to certain irremediable breaches of the 1st India Territory Agreement by Sony, the agreement was terminated. On 15th March 2009, the 1stRoW Agreement was also terminated by a deed of mutual agreed termination made between BCCI, WSGI and WSG Mauritius (not a party to original agreement). Pursuant to termination of 1st India Territory Agreement with Sony, as required under Clause 29 (as above), BCCI entered into 2nd India Territory Agreement with WSG Mauritius granting the rights till 31st December 2017. This agreement contained Clause 13.5 which provided that WSG Mauritius shall sub licence rights under the said agreement within 72 hours of the signing. In the event of failure to sub-licence, the agreement shall stand automatically terminated. WSGI failed to sub-licence even during extended time provided by BCCI and as a result, a termination letter dated 25th March 2009 was issued to WSG Mauritius, duly acknowledged by WSG Mauritius. For RoW, the 2ndRoW agreement was entered into again with WSGI for the period ending December 31, 2017. The rights for Indian subcontinent for the period 2009-2016 were again licensed to Sony by 3rd India Territory Agreement. The 2ndRoW Agreement contained a clause that Sony was to pay USD 80 Million in accordance with Deed for facilitation fee entered into between Sony and WSG Mauritius. In the absence of such payment, BCCI would have the option of terminating 3rd India Territory Agreement or paying WSG, the money or the bank guarantee.
- 5.5 The 2ndRoW agreement between WSGI and BCCI was terminated on 28th June 2010 on the grounds that the same was vitiated by fraud. The provision relating to bank guarantee/payment in case of Sony's default was inserted by Sh. Lalit Modi without any authority of BCCI. Also the basis of 3rd India Territory agreement was challenged. These are still under litigation in Bombay High Court. After setting aside the 2ndRoW agreement, the 3rd India Territory agreement was modified to increase the amount of media rights fee by Rs.300 Crores (USD 80 Million as reduced by Rs.125 Crore apparently paid by Sony to WSG).

5.6 In 2011, ITT was called for RoW rights again and this time the rights were granted to Times Internet and Nimbus consortium through Agreement dated March 20 2011.

5.7 The DG made the following observations:

- i. The first meeting of tender committee was postponed from 11 am to 1 pm in order to facilitate and allow WSG and Sony to form a consortium.
- ii. Though Sony and WSGI had submitted the bids separately, they were facilitated to form a consortium and bid was entertained in the capacity of consortium.
- iii. The period of media rights i.e 10 years is very long and creates foreclosure of market.
- iv. The subsequent agreement (3rd India territory agreement) was entered into with the same party i.e. Sony whose agreement was terminated on very serious irremediable breaches within 11 days without following any tender process. Similar approach was followed for RoW tender also.

On the basis of these submissions, DG concluded contravention of Section 4(2)(a) and Section 4(2)(b) of the Act.

5.8 BCCI maintained that market for media rights is a different relevant market in which BCCI has no dominance. However, it still made submission on the allegations of abuse of dominance. It attributed the non-calling of fresh tenders after termination of 1st India and RoW Agreement to the unilateral conduct of Sh. Modi. In fact, BCCI stated that a show cause notice dated April 26, 2010 to Sh. Modi had been given on this issue. The period was attributed to nascent stage of IPL and consequent revenue assurance for both the parties.

Issue 3: Grant of Other Rights

6.1 Global Title sponsorship rights were awarded to DLF pursuant to open tender process. Associate Sponsorship rights were awarded to various companies for different period and amount without any tender process, based on discussions, negotiations and proposals. The size of the agreement was Rs.444 crores. On the award of contracts for transport, event management, catering, tickets etc. BCCI, stated that

based on operational requirement, they suggested hotels/airlines/vendors to franchisees who in turn entered into an agreement. Almost all the franchisees also admitted that BCCI has '*facilitated*' the award of contracts to various vendors. Based on this testimony of BCCI and its franchisees the DG concluded contravention of Section 4(2)(c).

- 6.2 BCCI submitted that the contracts for associate sponsorship rights did not involve substantial consideration vis a vis, consideration paid for franchise rights. It was aware that the market for associate sponsorship rights was thin and the cost of tendering and inviting bids would have been a cost and time intensive process. Thus, it was a prudent decision on part of BCCI to award rights on private placement basis. Also, the contracts were of short duration, which implies open market to other interested parties to approach BCCI. On other rights, BCCI submitted that it was merely a facilitator, who recommended name of the vendors, the decision to award contract was vested with franchises themselves.

Analysis and findings of the Commission

- 7.1 On examination of the depositions and the DGs investigation report the Commission observes that the allegations levelled by the informant centre around the organization of IPL and irregularities in the sale of various rights associated with IPL viz. Franchise Rights, Media Rights and Other Sponsorship Rights. In its submissions to the DG, BCCI while refuting the allegations also claimed that its actions do not come under the purview of the Competition Act as it is a not for profit making body involved in promotion and development of the sport of cricket in India. DG however concluded that BCCI is an enterprise for the purpose of the Competition Act and cannot claim any immunity from the Act.

The Commission noted that the issues required to be addressed at the outset are under:

- a. Whether BCCI is an enterprise for the purpose of the Competition Act?
- b. Whether the actions of BCCI associated with organization of IPL contravene any of the provisions of the Act?

- 7.2 The case relates to sports and the allegations pertain to irregularities in the organisation of cricket events, the Commission felt it necessary to look into the specificities of the sports activities to understand the differences with other business activities. During the course of analysis, an important observation was made relating to lack of clarity on the actual status of BCCI. It appeared that BCCI was acting as a regulator of the sport of cricket i.e. it had the status of a National Sports Federation but the same was not a result of any statutory provision. At the same time, BCCI was acting as an organizer of cricket events and was thus a commercial beneficiary of the sport. The dual roles of BCCI indicated the need to look further into the possibility of overlaps in the two roles in functioning of BCCI leading to competition concern.
- 7.3 Thus in addition to the issues as pointed out above, the Commission examined the dual role of BCCI for anti-competitive practices. Therefore the issues for determination in this case are:
- i. What is the *defacto* status of BCCI?
 - ii. Whether BCCI has abused its dominant position in the relevant market in contravention of Section 4 of the Act? This involves the following steps:-
 - a. Defining the relevant market
 - b. Assessment of dominance of BCCI in the relevant market as defined
 - c. Analysis of conduct of BCCI for contravention of Section 4 of the Act.
- 7.4 As stated above, sports activities are considered to have specificities that make them distinct businesses. This aspect has been emphasised by the opposite party. Thus, before examining the above issues, a review of sports sector is necessary to understand the specificities of sport, cricket in particular.

Review of Sports Sector

Sports Organizational Structure: A pyramid

- 8.1 Major sports are invariably organised within a pyramidal structure. Pyramid structure means a single national sport association per sport and Member State, which operates under the umbrella of a single continental/ national federation and a single worldwide federation.

Cricket, which is the subject matter of the case, also follows the well-established “pyramid structure” of sport governance. At the top of pyramid is the International Cricket Council (ICC), which is incorporated as a Company limited by guarantee and not having share capital. It has three categories of members viz. Full Members, Associate Members and Affiliate Members. BCCI is a full member of ICC and is thus recognized as ‘*custodian*’ of cricket in India vested with the requisite powers of framing rules, organising events, selections of teams etc. owing to its affiliation to ICC. All state cricket associations in India in turn are the members of BCCI and in turn various cricket clubs are affiliated to their respective State Federation.

- 8.2 The pyramid structure is considered important for ensuring the freedom of internal organization of sports associations, and indispensable to the performance of essential regulatory task of sports associations which includes, setting the rules of the game, uniformity in application of rules of the sport, maintaining the integrity of the game, orderly promotion of the game and maintaining the fairness of the game (anti-doping regulations) etc. In this structure, three kinds of sports rules can be identified: the “rules of the game”; “club rules” and “competition rules”.
- The “rules of the game” are the technical rules according to which a game is played.
 - The “club rules or statutes” are those adopted by each sports organisation to regulate its own functioning.
 - The “competition rules” are all the rules that govern competitive events organised for a given sport over a given period.

Cricket in India

- 8.3 After understanding the pyramid structure, the Commission considered the cricket events organized by BCCI in India. Cricket events in India now (with the entry of IPL) get classified into two broader categories:
- i) First Class Cricket and International Cricket
 - ii) Private Professional League Cricket.

8.4 *First Class Cricket/International Cricket* events are structured in a format where the participating teams represent their respective states/nation by donning the state/national colours. The success of teams bestows the honour to the team and respective state/nation. Playing for honour is the essence of the sport in this format. This structure forming part of pyramid goes right down to grass root level targeting development of talent pool of players and preparing them for rigours of International Cricket. There are several levels/rounds of cricket matches and based on the performance in these matches players are eventually selected for representing the country.

The various events forming part of First Class Cricket/ International Cricket in India include:

- i. **Ranji Trophy:** The Ranji Trophy is a domestic first-class cricket championship played in India between different city and state sides, equivalent to the County Championship in England and the Sheffield Shield in Australia. Most of the teams playing in the Ranji Trophy represent states of India; there are three teams that represent individual cities (Mumbai, Baroda and Hyderabad) and two teams based in Delhi but with no regional affiliations (Railways and Services). Moreover, teams representing regions within a state also participate (Saurashtra and Vidarbha).
- ii. **Duleep Trophy:** The Duleep Trophy is a domestic first-class cricket competition played in India between teams representing geographical zones of India. Five Indian zonal teams regularly take part in the Duleep Trophy – North Zone, South Zone, East Zone, West Zone and Central Zone. The original format was that the five teams played each other on a knock-out basis. From the 1993–94 season, the competition converted to a league format.
- iii. **Irani Trophy:** The Irani Cup (also called Irani Trophy) tournament was conceived during the 1959-60 season to mark the completion of 25 years of the Ranji Trophy championship and was named after the late Z.R. Irani, who was associated with the Board of Control for Cricket in India (BCCI) from its inception in 1928, till his death in 1970. The fixture is always played between the previous year's Ranji Trophy winners and the Rest of India Team. Leading

players take part in the game which has often been a sort of selection trial to pick the Indian team for foreign tours.

- iv. International Cricket: According to ICC definition, 'First Class Cricket' also includes; (a) any *Test Match, One Day International Match* or *Twenty20 International Match*; (b) any *Match* played as part of an ICC Event; or (c) any other *Match* organised or sanctioned by the ICC from time to time to which the ICC deems it appropriate that the *Regulations* should apply such as ICC Standard Twenty 20 International Playing Conditions.

8.5 *Private Professional Leagues* are structured on private franchise based ownership model and the franchise owners obvious objective is ensuring commercial gains by providing competitive cricket with an added entertainment factor. IPL and temporarily suspended ICL belong to this genre of cricket in India. The objective is maximization of revenue through commercial exploitation of the popularity of the game. The players can be from any country apart from Indian players and there is no concept of playing for the country or donning the national colours.

8.6 Against the brief review of the sports sector including the specificities of pyramid structure, and classification of various cricket events organized in India, we examine the issues stated above.

i) What is the defacto status of BCCI?

8.7 This question is of prime importance as the role of BCCI has never been clearly articulated. During the deposition, in clarification to a question raised by the Commission as to the exact nature of BCCI, whether it is a regulator (*defacto* or *dejure*) or an enterprise or a completely different body that needs defining, BCCI stated that it is not a regulator. BCCI further elaborated that the team which participates in International events is representative of BCCI and not India. Despite these assertions, the Commission notes that BCCI both in their written and oral submissions refer alternatively to their role either as custodian of cricket or organizer of events depending on the role considered appropriate for the circumstances. For instance, in the submissions BCCI has referred to its role in setting the rules and regulations of the game which are considered as regulatory activities. DG in his report

also refers to the regulatory activities of BCCI. In the case of IPL, BCCI however, has assumed the role of organiser of events. Donning two hats by BCCI without clarity on roles merits an examination on whether BCCI is a regulator and whether in its capacity as custodian of cricket it extends its role to organising of events.

- 8.8 At the outset it is to be noted that BCCI has no '**statutory status**', but their actions in terms of laying down the rules of the game and team selection fall within the ambit of a regulatory role. This status arises on account of the institutional form of BCCI and its inter-linkages with ICC. The approach of Government of India on this matter also needs to be considered. The background and historical evolution of BCCI will enable to discern the issue.

Background of BCCI

- 8.9 The historical background of BCCI is very important to understand the present form of BCCI. The Commission considered the details available on BCCI's website www.bcci.tv and following facts were noted. Though the history of Cricket in India dates back to the Eighteenth Century, it was only after the World War I ended in the year 1918 that it was thought upon to constitute an administrative body for management of sport in the country. Thereafter, 2 members of the Calcutta Cricket Club were allowed by the Imperial Cricket Conference to attend the ICC meeting at Lord's on 31st of May and 28th of July 1926. Initially permission was granted contingent upon a condition that an administrative body for the control of Cricket in India would soon be formed.
- 8.10 After the directive had been passed by the ICC, a number of Cricket bodies in India started interacting and discussing about the formation of a central Cricket body in the nation. All the Cricket associations of India agreed upon the belief that a central administrative organization for the control of Cricket in India was very essential for improvement of the sport in the country.
- 8.11 On November 27 1927, a group of 45 people representing the Cricket associations located in different parts of India got together at the

Roshnara Club in Delhi to take some concrete initiatives towards the formation of such an association. There was consensus that a Board of Cricket Control was essential to ensure the following:

- Arrange and control inter-territorial, foreign and other cricket matches.
- Make arrangements incidental to visits of teams to India, and to manage and control all-India representatives playing within and outside India.
- If necessary, to control and arrange all or any inter-territorial disputes.
- To settle disputes or differences between Associations affiliated to the Board and appeals referred to it by any such Associations.
- To adopt if desirable, all rules or amendments passed by the Marylebone Cricket Club as soon as eight territorial cricket associations were created. Representatives of the eight associations would then come together to constitute the Board. In late 1928, only six associations - Southern Punjab Cricket Association, Cricket Association of Bengal, Assam Cricket Association, Madras Cricket Association and Northern India Cricket Association - had been formed.

8.12 The Provisional Board met in Mumbai in December 1928 during the Quadrangular tournament to discuss the next course of action. It was at this meeting that decision to form a proper board for control of cricket in India was taken and BCCI was established. Five months later, the ICC admitted BCCI as a Full Member representing India.

Institutional Form of BCCI

8.13 At present, BCCI is registered under Tamil Nadu Societies Registration Act, 1975 as a private society. In its institutional form, BCCI is an autonomous body, administration of which does not seem to be controlled by any other authority including Government of India. It is also noted that presently BCCI does not take any financial assistance from GoI and it is not expressly recognized by GOI as the National Association for the sport of cricket in India.

8.14 Despite the fact that BCCI is not recognized by GOI as the regulator of cricket in India, the examination of object clause of Memorandum of Association of BCCI reveals that in substance, BCCI considers it as the regulator of cricket in India. Some relevant clauses are as under:

Clause 2(a): 'To **control the game of cricket in India** and give its decision on all matters including women's cricket which may be referred to it by any member association in India'.

Clause 2(d): ' To arrange, control, regulate and finance visits of an **Indian Cricket Team** to tour countries that are members of ICC or elsewhere in conjunction with the **bodies governing cricket in the countries to be visited**'.

Clause 2(s): '**To select teams to represent India in Test Matches**, One Day Internationals and Twenty/20 matches played in India or abroad, and to select such other teams as the Board may decide from time to time'.

Clause 2(v): **To appoint India's representative** or representatives on the ICC and other Conferences, Seminars, connected with the game of cricket'.

Linkages with ICC

8.15 BCCI is a full member of ICC and as such BCCI follows the rules/bye laws made by ICC. Specifically, attention is drawn to Section 32 of ICC Regulations which prescribes the definition of 'disapproved cricket; the authority of the members of ICC to 'approve' cricket leagues; and the course of action to deal with 'disapproved cricket'.

8.16 The explanatory notes to Section 32 of ICC Regulations were also examined.

Section 32 provided;

"A cricket match will be deemed to be "Disapproved Cricket", and the terms of section 32.4 will apply to it, if:

*32.1.1 it has not been approved by the Member in whose territory it is played;
or*

32.1.2 it is the subject of a Disapproval Notice issued by the ICC pursuant to Section 32.2.

For these purposes, "**Member**" means any member board recognised as such by the ICC from time to time."

8.17 It is very clear from the reading of the clause that the members of ICC are authorised to permit/deny the entry of competing leagues. **Thus by virtue of Section 32 of ICC rules, the 'right of approval' is vested with BCCI. This 'right of approval' is clearly a regulatory role.**

8.18 ICC also vests the rights of deciding on any factor related to cricket with its members and declares the members as 'custodian' of sport as stated in Explanatory note to Section 32.3.

*"...Any other factor that the Member, as the **custodian** of the sport in its territory, considers to be relevant".*

8.19 ICC very clearly declares that the members of ICC are the custodian of sport of cricket. **The word 'custodian' clearly highlights the intent of ICC and its members to regulate/control the sport of cricket in their respective jurisdictions.**

8.20 Another evidence of BCCI as being a de facto regulator and the team participating in International events being **Indian team and not a representative of BCCI** is found in the ICC guidelines specifying full member criteria. It expressly states the performance of '**national team**' as one of the parameters.

8.21 Some of the important statements from the ICC Player Eligibility Regulations are quoted as under;

*"The ICC is the international federation responsible for the global governance of the sport of cricket and the Player Eligibility Regulations (the "Regulations") are adopted and implemented in order to: (a) clarify the criteria relating to the eligibility of Players **to represent National Cricket Federations** in International Matches and ICC Events; and (b) provide guidance as to the procedures that need to be followed and documents that need to be produced when applying the qualification criteria set out herein".*

*"It is acknowledged that certain National Cricket Federations may promulgate other rules that govern the eligibility of Players **to represent***

their national representative teams and that particular circumstances may implicate not only the Regulations but also such other rules that may apply”.

- 8.22 The combined reading of the text suggests;
- a) BCCI is considered as a National Cricket Federation by ICC for India
 - b) The teams are addressed as National Teams/National Representative Teams
 - c) The definition of Test Matches as given in ICC manual also clearly states that the teams playing are representing the countries of Full Members such as BCCI.

Approach of Government of India

- 8.23 The GoI had filed an affidavit in the Supreme Court case against BCCI stating that Board was always subject to de facto control of Ministry of Youth Affairs and Sports in regard to international matches played domestically and internationally. In the said affidavit, it is also stated that the Government of India has granted de-facto recognition to the Board and continues to so recognise the Board as the Apex National Body for regulating the game of Cricket in India. In the said affidavit it is also stated that it is because of such recognition granted by the Government of India that the team selected by the Board is able to represent itself as the Indian cricket team and if there had not been such recognition the team could not have represented the country as the Indian cricket team in the international cricket arena. It is also stated that Board has to seek prior permission and approval from the Government of India whenever it has to travel outside the country to represent the country. Even in regard to Board's invitation to the foreign teams to visit India the Board has to take prior permission of the Government of India and the Board is bound by any decision taken by the Government of India in this regard. It is further stated that in the year 2002 the Government had refused permission to the Board to play cricket in Pakistan. It is also submitted that the Government of India accepts the recommendation of the Board in regard to awarding "Arjuna Awards" as the National Sports Federation representing cricket. In the said affidavit the Government of India has stated before

this Court that the activities of the Board are like that of a public body and not that of a private club.

8.24 The following conclusions can be drawn from the aforementioned facts:

- a) The historical evolution of BCCI enabled it to attain a monopoly status, a first-mover advantage, in the organization of cricket events in India. But the position that BCCI has attained today could not have come without the support of Government of India. BCCI has been a beneficiary on account of provision of land for stadiums at subsidized rates, tax exemptions in the past even if no specific earmarked grants by GoI have been given. In substance the 'first mover' advantage and the implicit recognition by GoI as the national association for cricket, have contributed to the present status of BCCI.
- b) The institutional form of a society is not of much relevance to the analysis of the case as generally all National Sports Associations are registered as a society eg. Hockey India or All India Chess Federation etc. What is important is the conduct of the organization and not the form in which it operates. The Object Clauses of BCCI's Memorandum of Association contradicts the BCCI's stand that it is not a regulator and the team is representing the Board and not India.
- c) The linkages with ICC and the mandate/rules/bye laws of ICC make it very clear that BCCI is the regulator/custodian of sport of cricket in India. The ICC bye laws also makes it very clear that the team is Indian National team and that BCCI is the National Sports Federation.
- d) The submission of GoI to the SC as detailed above and the recent attempts made by GoI to bring BCCI within the ambit of Right to Information makes the Government intent clear, even if there is absence of any documentary evidence to suggest that BCCI is explicitly declared as a National Association for the sport of cricket in India.

The Commission from the above evidence concludes that BCCI is a *de facto* regulator of sport of cricket in India.

(ii) ***Whether BCCI is an enterprise for the purpose of the Act?***

8.25 BCCI during the course of investigation has stated that it is a 'not for profit' organisation and the objectives of BCCI as clearly stated in their Memorandum of Association (MoA) are for encouraging and promoting the game of cricket. The DG however contended that BCCI although a "not-for-profit" registered society, its activities fall in the commercial sphere.

According to 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 the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating 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". (Section 2(h))

8.26 The Act focuses on the functional aspects of an entity rather than institutional aspects. The scope of the definition on the institutional front has been kept broad enough to include virtually all the entities as it includes 'person' as well as departments of the government. The specific exception has been provided only to the activities related to the sovereign functions of the government. It is in substance the nature of activity that would decide whether the entity is an enterprise for the purpose of the Act or not. Thus, from the discussion, it suffices that the 'not-for-profit' society form as claimed by the OP does not take BCCI out of the definition of the enterprise and the activities of BCCI would be tested for its status as an enterprise.

8.27 The same view has been held internationally in a number of cases related to sports bodies. The Grand Chamber of ECJ observed in a

similar case against ELPA (the authority participating in authorisation by a public body of motor cycling events and also responsible for organising motor sports competitions in Greece):

*“..The fact that MOTOE, the applicant in the main proceedings, is itself a non-profit-making association has, from that point of view, no effect on the classification as an undertaking of a legal person such as ELPA. First, it is not inconceivable that, in Greece, there exist, in addition to the associations whose activities consist in organising and commercially exploiting motorcycling events without seeking to make a profit, associations which are engaged in that activity and do seek to make a profit and which are thus in competition with ELPA. Second, non-profit-making associations which offer goods or services on a given market may find themselves in competition with one another. The success or economic survival of such associations depends ultimately on their being able to impose, on the relevant market, their services to the detriment of those offered by the other operators...”[Case No: C-49/07, REFERENCE for a preliminary ruling under Article 234 EC, from the Diikitiko Efetio Athinon (Greece), made by decision of 21 November 2006, received at the Court on 5 February 2007, in the proceedings, **Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio**, THE COURT (Grand Chamber)]*

8.28 The activities of BCCI centre both on ‘custodian and ‘organiser’ role, as already detailed. In this broad based objective, BCCI is involved in selection of Team India to represent India in international events, to work for development of cricket by arranging training camps etc. as well as organizing the game. These activities fall under the custodian function of BCCI, however, the aspect of ‘**organization**’ brings in activities contributing to the revenues of BCCI such as grant of media rights, sale of tickets etc. The activities of ‘organising events’ are definitely economic activities as there is revenue dimension to the organizational activities of BCCI. The Grand Chamber of ECJ on the case against ELPA had also observed on the question of whether sports constitute economic activity:

“.....It should be borne in mind in this regard that any activity consisting in offering goods or services on a given market is an economic activity (see, in particular, Case

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

Thus, it is conclusive that all Sports Associations are to be regarded as an enterprise in so far as their entrepreneurial conduct is concerned and treated at par with other business establishments.

8.29 In India also in a recent decision, Delhi High Court held All India Chess Federation (which performs similar functions as BCCI for the game of Chess) to be an enterprise for the purpose of the Act.

(Source: Hemant Sharma & Others Vs Union of India, Delhi High Court, WP(C) 5770/2011, date of decision 04/11/2011).

8.30 In line with the provisions of the Act, international jurisprudence, and Delhi High Court decision in case of Chess Federation, **it is concluded that BCCI is an enterprise for the purpose of the Act, and therefore, within the jurisdiction of the Commission.**

(iii) Whether BCCI has abused its dominant position in the relevant market in contravention of Section 4 of the Act?

(a) Determining the relevant market

8.31 The pivotal inquiry in a case of alleged abuse of dominance is whether the OP is in a dominant position in the relevant market. As per explanation to Section 4 of the Act, "dominant position means a position of strength, enjoyed by an enterprise in the relevant market..." Therefore, assessment of dominance is to be preceded by delineation of the correct relevant market in which

dominance of the enterprise under consideration is to be assessed.

- 8.32 There are three components that make a market, viz. the producer on the supply side, the consumer on the demand side and the underlying product or service. The Act considers relevant market as the market of various goods or services that are regarded as interchangeable by consumer with reference to product characteristics, intended use and price. The objective of this definition is for precise understanding of the competitive constraints the market forces are subjected to.
- 8.33 The Act emphasises that definition of relevant market needs to be viewed from the demand perspective and based on characteristics of the product, price and intended use. The Commission considered the definition in accordance with the parameters laid down under the Act.
- 8.34 Every sports event is unique in itself and commands its own fan following. Cricket also has its own characteristics that differentiate it from other sporting events or other entertainment events. A cricket match cannot be perceived as substitutable by any other sports/entertainment event based on characteristics. It can also be argued that the intention of the ultimate viewer is entertainment and therefore, there is a case for broadening the definition and including other sports and entertainment forms. This argument however does not hold if we consider the demand substitutability of the various forms of entertainment.
- 8.35 The Commission noted the viewership data related to TRP ratings available on website www.indiantelevision.com and the revenue impact of cricket as a sport vis a vis other sports and other forms of entertainment as an indicator of demand preferences of the ultimate viewer of the sport. The data is as under:

Revenue from Cricket data:

a) As per information in public domain, the total advertisement revenue for the year 2009-10 was Rs.9000 crore. An amount of Rs.700 crore was made by Sony Max in 45 days of IPL. Doordarshan was expected to earn only Rs.110 Crore from the Commonwealth Games telecast (Source: <http://business.rediff.com/report/2010/oct/11/dd-set-to-cross-games-revenue-target.htm>).

b) '3 Idiots', was described in Economic Times as the most expensive movie on TV was telecasted in July 2010 and advertisement slots were offered at Rs.2.2 lakh for 10 seconds, while the general rate for 45 day long IPL event for that year was around Rs.4-5 lakh per 10 seconds, which subsequently increased to Rs.10 lakh for 10 seconds. This evidences that cricket is not comparable to the general entertainment programs in terms of ad revenue.

(Source: http://articles.economictimes.indiatimes.com/2010-07-08/news/28479684_1_idiots-advertisers-broadcaster and <http://www.livemint.com/Consumer/ZvAVAktNggpvLMVuyWA1QL/SET-Max-quotes-Rs-10-lakh-per-10-sec-for-IPL-final.html>).

c) The general entertainment programs such as Saath Nibhana Saathiya which have consistent TRP of 4, don't earn more than 1.5-2 lakhs for prime time slot.

(Source: <http://business.outlookindia.com/article.aspx?281725>)

d) The channel's revenue market share (Set Max) increased from a pre IPL level of 5.7% to 28.8%. Its share of prime time viewership went up to 29%, higher than the cumulative market share of top 9 Hindi General Entertainment Channels. The channel's Ad revenue from IPL alone is likely to be around 7% of total ad revenue of the industry for the year.

(Source: <http://www.daijiworld.com/news/printer.asp?nid=47095>)

Viewership data:

a) KPMG-FICCI Report on media and entertainment industry notes

“ Sports are one of the few things that still have people tuning in by the million. As the number of channels have multiplied, large audiences have become much harder to find, but Sports has retained its ability to generate eyeballs for the broadcasters. In fact, the average time spent watching sports channels in C&S households has been increasing steadily. With the growth in sports viewership, the number of advertisers have also risen steadily.....”, “As a result of growth in advertising revenues from sports, the scramble for sports broadcasts rights has also been getting frantic... “, “In India Sports and cricket are almost synonymous”.

Among the three mega sports events in recent years in India, TV viewership of Cricket World Cup 2007 was highest (113 mn) followed by Olympics 2004 (65 mn) and FIFA World Cup 2006 (39 mn). The latest entrant to the sports leagues was the WSH league. It attracted the cumulative TV viewership of 10.43 million (Source – TAM, CS 4+). The tennis viewership (Grand slam events) was 42.4 million in 2007 as per KPMG- FICCI report on Media and entertainment industry. In comparison, the IPL 5 which was plagued with controversies and talk of excessive cricket attracted a viewership of 122.44 million. Thus, it is very clear that the other sports are not in same market as a cricket league event.

b) Before going into analysis of TAM ratings, it is stated that the TRP rating of 4 is considered as extremely good in the age of so many channels and consumer choices. The analysis of TAM Top 100 Programs of the week as available on Indiantelevision.com reveal that:

i) Set Max before and after the IPL remain on around 9th position with around 4 programs making to the list of Top 100 with all of them having TRP of less than 1.

ii) During IPL, Set Max jumps to the 1st or 2nd position with around 13-15 programs making to Top 100 and the TRP's generally being in excess of 4 and even 5 or 6. For matches such as IPL semi-final or final, the TRP exceeds 10.

iii) The analysis of Top 10 programs of the week reveal that Set Max does not make to the Top 10 category without IPL and with IPL, it has around 5 to 7 programs in Top 10.

The changes in TRP suggest that the regular soaps such as Sathiya...are not preferred once the IPL is on, which emphasises the attractiveness and uniqueness of the cricket events.

8.36 Considering the basic test of non-transitory relative price rise of 5% to 10% also known as SNNIP test for a cricket event and considering the consumer behaviour, it seems quite unreasonable to believe that a consumer would substitute cricket event with any other form of entertainment viz. Films, TV shows etc. or any other sporting event. There is enough behavioural evidence to suggest the same is reflected in data regarding viewership above.

8.37 The price of cricket event be it the price of tickets for live audience or the prices for advertisement slots for broadcasts also points to a truly distinct market. The uniqueness of cricket events from the view point of the stakeholders as well as the ultimate viewers is reflected in revenues associated with sport vis a vis other sports/entertainment forms and viewership data analysis. These are discussed at length in the section related to media rights market.

8.38 After concluding that cricket is not substitutable with other sports or other entertainment events, the Commission considers it necessary to examine whether there are inherent differences between the two broad categories of events also viz. First Class/International events and Private Professional League Cricket events as noted in review of sports sector above which merit examination for determination of relevant market. The important fundamental differences noted are as under:

a. In case of First Class/International Cricket, the teams represent states/nation and comprises of players who are

Indian nationals while in case of Private Professional Leagues the teams represent private clubs and can also have foreign players.

- b. Revenue generation becomes incidental to the main objective of development and promotion of sport in case of First Class/International events while revenue is the primary consideration in Private Professional Leagues.

This distinction as we noted earlier arose from the fact that entry of private professional leagues saw the merger of media and entertainment to raise the level of cricket to a different height altogether, contributing to the commercialization of the game. A new genre of cricket emerged with a market distinct from existing cricket events. The Commission, therefore, opines that the relevant market is the Organization of Private Professional Cricket Leagues/Events in India.

(b) Assessment of Dominance of BCCI in market for Organization of Private Professional League Cricket events

- 8.40 Undoubtedly the most significant source of dominance is the regulatory powers of BCCI. BCCI is a monopoly in organization of cricket is axiomatic as BCCI is the de-facto regulator of the game. But the assessment of dominance of BCCI in the market for Organisation of Private Professional Leagues needs examination. The Commission takes cognizance of the pyramid structure and notes that monopoly of sports federations is a natural outcome of the structure. The merits of pyramid structure in sports permits uniformity in application of rules of the sport, orderly development of the sport, 'keeping the sport free from the taints of doping and corruption etc. as has been discussed. It is equally important to note that a number of matters that are dealt with under the pyramid structure may not necessarily be inherent and proportionate to the achievements of purely sporting objectives; rather they contain a strong commercial dimension, especially related to club rules or the statutes. There are concerns that the sports federations may go beyond what is required for the proper

organization of sport. With a phenomenal increase in commercial dimensions of the sport, there is a great incentive for Sports Federations to use their regulatory powers for protecting their own commercial interests. The situation where the regulator is also the economic beneficiary leading to role overlap is definitely a competition concern. The Commission, while it appreciates the regulation of the sport, is mandated to examine if the system of regulation falls foul of the Act, in its organisational role especially where, commercial dimension of the sport is involved.

- 8.41 In the given case, BCCI was already the monopoly organizer of First Class Cricket leagues and matches in India. With the advent of the 'private professional league', BCCI extended its monopoly to the new genre of cricket in the establishment of Indian Premier League, IPL. In their justification of venturing to IPL, BCCI refers to re-ploughing of funds generated in the development of game as a primary objective in addition to other objectives of IPL such as: i) to identify and nurture Indian talent and provide a platform for them to perform; ii) to promote the game of cricket with a sense of competition at the domestic level, and provide opportunity and international exposure to players playing at domestic level; and iii) to bring in newer audiences to the sport especially women and children.
- 8.42 It is already noted that BCCI is a *defacto* regulator within the pyramid and in this capacity is vested with certain rights by ICC. BCCI has assumed the right to sanction/approve cricket events in India. This right vests BCCI from the conditions laid down in Section 32 under the heading "Disapproved Cricket", with the onerous task of ensuring a free and transparent sanctioning of competing private professional leagues.
- 8.43 This right to approve leagues has significant impact on any private professional league which might be proposed to be organized. The significance of seeking approval for rival leagues

can be made out by a reading of Section 32.4 of ICC bye laws. As per Section 32.4,

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

32.4.1 not participate in any way in any form of disapproved cricket;

32.4.2 not release or permit any players, match officials, coaching or management staff contracted to the member to participate in any way in any form of disapproved cricket;

32.4.3 prohibit the participation by organizations and individuals under its jurisdiction in any form of Disapproved Cricket;

32.4.4 prohibit organizations under its jurisdiction from releasing or permitting any players, match officials, coaching or management staff contracted to them to participate in any form of Disapproved Cricket;

32.4.5 impose appropriate disciplinary sanctions on any organization or individual under its jurisdiction who breaches the foregoing prohibitions;

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

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

8.44 Thus, considering the ICC bye laws as above, the Commission notes that BCCI approval is required by any prospective private professional leagues and binding for access to the vital inputs (stadium, list players) required to ensure successful conduct of the league. Thus, the approval of BCCI is critical to the organization and success of any competing league and is a very important source of dominance for BCCI.

8.45 The concern on regulatory powers being a potential source for abuse of dominance was also expressed in the decision of Grand Chamber of the European Court of Justice in MOTOE case. The Court insisted that, *"...a system of undistorted competition, such as that provided for by the treaty, can be guaranteed only if equality of opportunity is secured between the various economic operators. To entrust a legal person such as ELPA, the National Association for Motorcycling in Greece, which itself organizes and commercially exploits motorcycling events, the task of giving the competent administration its consent to applications for authorization to organize such events, is tantamount de facto to conferring upon it the power to designate the persons authorized to organize those events and to set the conditions in which those events are organized, thereby placing that entity at an obvious advantage over its competitors. Such a right may therefore lead the undertaking which possesses it to deny other operators access to the relevant market..."*

*[Source C-49/07, REFERENCE for a preliminary ruling under Article 234 EC, from the Diikitiko Efetio Athinon (Greece), made by decision of 21 November 2006, received at the Court on 5 February 2007, in the proceedings, **Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio**, THE COURT (Grand Chamber)]*

8.46 Similar concern was also expressed in a 'Statement of Good Governance Principles' issued in a conference held in Europe on governance of sport on 26th and 27th February 2001 to guide the sports bodies. The report states *"Governing bodies occasionally become involved in commercial aspects of sport. However, the wider interests of sport may not always coincide with specific commercial objectives. Therefore, it is acknowledged that there should be a clear demarcation between the governing body's governance function and any commercial activities. It is acknowledged that this demarcation may be achieved by the allocation of the various roles to different committees or bodies. In such a case each committee or body should have clearly defined responsibilities and reporting lines. The committee or body with commercial responsibilities shall, where appropriate, consider the possibility of open tenders for any commercial contracts*

and any contracts. Such contracts should be no longer in duration and no more exclusive or restrictive than is demonstrably essential”.

- 8.47 It emerges from above that internationally too there has been concern that role overlap may lead to competition concern. In the present case, it is strengthened by the powers vested with BCCI to give consent to application for authorisation to organise cricket events. The concern deepens if this power is not subjected to restrictions, obligations and review, sports associations such as BCCI in the present case, to thwart competition by favouring events which it organises or those in whose organisation it participates.
- 8.48 The other significant factor is the infrastructure owned and controlled by BCCI. Over a period of time, BCCI or its member sports federations were allotted land by GoI at subsidized rates for construction of stadiums to help the cause of development of the sport and was also granted tax exemptions. With the changed paradigm in cricket this emerged as a tool of significant commercial advantage for BCCI.
- 8.49 Dominance also stems from the role of BCCI as an organizer of First Class/International Cricket events. With this role, BCCI controls a pool of cricketers under contract with BCCI for First Class/International events. The sentiments of Indian fans are reflected in the slogan seen at many matches which reads, “Cricket is my religion and Sachin is my God”. Thus to an Indian cricket fan, these players are icons and their participation can make any league a success. BCCI’s ability to control an input which is indispensable to the success of cricket events is also a source of dominance for it.
- 8.50 If historical evidences are considered, we have the case of ICL which is now temporarily suspended. The reasons for the failure of the league were lack of infrastructure facilities, BCCI/ICC’s refusal to approve the league and provide infrastructural support, among other reasons that might be relevant (Source:

DG's Report). Thus, while it cannot be conclusively said that ICL's failure was solely attributable to BCCI's dominance, it can be said that BCCI's dominance was definitely a factor in ICL's failure.

- 8.51 Thus, owing to regulatory role, monopoly status, control over infrastructure, control over players, ability to control entry of other leagues, historical evidences, BCCI is concluded to be in a dominant position in the market for organizing private professional league cricket events in India.

(c) Analysis of conduct of BCCI for any contravention of Section 4 of the Act

- 8.52 Having determined that BCCI is dominant in the relevant market, the Commission proceeded to examine the next issue as to whether BCCI has abused its dominance in contravention of Section 4 of the Act.

The Commission noted that Organizing Private Professional League Cricket events is a relatively new concept, which was propagated in India when ICL was organized in the year 2005. The effort, however, did not succeed. On the issue of ICL DG considered the submissions of ICL and referred to the minutes of meeting of IPL held at Jaipur on 17th November 2007 and noted:-

“This clearly indicates that BCCI had a concern over the organization of ICL and the allegations made by ICL shows that BCCI owing to its dominant position has tried to sabotage the ICL tournament through various ways and means and subsequently the ICL tournament was not organized”

- 8.53 Opposing reasons have been advanced to explain the failure of this initiative. On the one hand the arguments were made that BCCI's decision of not granting approval to ICL was responsible for ICL failure. On the other hand, BCCI in its submissions attributed ICL failure to factors such as lack of transparency for award of media rights, low television viewership, failure to

attract crowds, underinvestment, and lack of fan appeal. All of BCCI's submissions lead to questions being raised regarding the overall viability of the business model of ICL.

8.54 ICL, the first attempt to create a private professional league cricket event relates to the period when the provisions of Section 3 and 4 of the Act were not notified and, is therefore, not being factored into the decision of the Commission.

8.55 The Commission examined all the related issues, including the procedures followed and the agreements entered into, to determine whether there was any anti-competitive conduct on the part of BCCI. On examination of the IPL media rights agreement, the Commission noted Clause 9.1(c)(i), which reads as follows:

"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".

This agreement as noted earlier, has been entered between BCCI and MSM for a period of 10 years. Thus, BCCI has clearly bound itself not to organize, sanction, recognize any other private professional domestic league/event which could compete with IPL. Clause 9.1(c)(i) clearly and unambiguously amounts to a practice through a contractually binding agreement resulting in denial of market access to any potential competitor, and is decidedly a violation of Section 4(2)(c) of the Act.

8.56 The Commission examined the above clause further considering the provisions in ICC bye laws Section 32 regarding "Disapproved Cricket". The insistence on rival leagues to get approval from National Sports Federation defended on the grounds of the same being inherent and proportionate remedy to preserve the integrity of the sport, orderly development and consistency in application of technical rules of the sport may have certain merit. But the creation of monopoly by a regulatory

power is an overreach to protect the market and the regulatory power to approve an event should not be used for this purpose.

8.57 The Commission notes that ICC in Section 32 of ICC Rules provide;

“...As for the reference to “agreements to which the ICC and/or one or more Members is a party”, it is common for a sport’s commercial partners to require certain commitments to protect their respective investments in the sport. For example, 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. 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”.

Examination of Section 32 reveals that the intent behind this regulation introduced by the international regulator at the top of pyramid ICC is not so much in preserving the specificities of sport, rather of assuring revenue for Cricket Sports Federations under the guise of pyramid structure.

8.58 The role and functioning of BCCI have already been examined in detail earlier in this order. An analysis of the position clearly brings out that there is an overlap between the way BCCI is discharging its regulatory and commercial roles respectively, and the modus operandi/decision making process does not clearly separate the two roles. The conduct of BCCI in incorporating the clause (Clause 9.1(c)(i)) mentioned above in its agreement conclusively indicates that BCCI has also used its regulatory power in the process of arriving at a commercial agreement. It is to be noted that regulatory power of BCCI enables it to make a commitment not to recognize or sanction any competing event to other parties, who, in turn would not have given any credence to such a commitment but for the regulatory power exercised by BCCI. The Commission notes that by explicitly agreeing not to sanction any competitive league during the currency of media rights agreement BCCI has used its regulatory powers in arriving at a commercial agreement, which is at the root of a violation of Section 4(2)(c).

8.59 The Commission has noted that, BCCI by virtue of its role as the custodian of cricket vested with the rights to sanction a cricket event thereby facilitating the success of the event took unto itself the right of restricting economic competition in sporting event. The Commission however, strongly holds the view that competition is essentially for benefits to be widespread. The game of cricket and the monetary benefits of playing professional league matches must be spread out and not concentrated in a few hands, in a few franchisees. In a country of large young population more private professional leagues opens up more venues for youngsters to play cricket, to earn a livelihood and to find champions where least expected. BCCI in its dual role of custodian of cricket and organizer of events has on account of role overlap restricted competition and the benefits of competition. The objective of BCCI to promote and develop the game of cricket has been compromised.

The Commission, therefore, concludes that BCCI has abused its dominant position in contravention of Section 4(2)(c) of the Act.

Order under Section 27 of the Act

The Commission finds BCCI guilty of contravention of Section 4(2)(c) of the Act. In view of the above and in exercise of powers under Section 27 of the Act, the Commission directs BCCI:-

- i) to cease and desist from any practice in future denying market access to potential competitors, including inclusion of similar clauses in any agreement in future.
- ii) to cease and desist from using its regulatory powers in any way in the process of considering and deciding on any matters relating to its commercial activities. To

ensure this, BCCI will set up an effective internal control system to its own satisfaction, in good faith and after due diligence.

- iii) To delete the violative clause 9.1(c)(i) in the Media Rights Agreement.
- iv) The Commission considers that the abuse by BCCI was of a grave nature and the quantum of penalty that needs to be levied should be commensurate with the gravity of the violation. The Commission has to keep in mind the nature of barriers created and whether such barriers can be surmounted by the competitors and the type of hindrances by the dominant enterprise against entry of competitors into the market. The Commission has also to keep in mind the economic power of enterprise, which is normally leveraged to create such barriers and the impact of these barriers on the consumers and on the other persons affected by such barriers.

BCCI's economic power is enormous as a regulator that enables it to pick winners. BCCI has gained tremendously from IPL format of the cricket in financial terms. Virtually, there is no other competitor in the market nor was anyone allowed to emerge due to BCCI's strategy of monopolizing the entire market. The policy of BCCI to keep out other competitors and to use their position as a *defacto* regulatory body has prevented many players who could have opted for the competitive league. The dependence of competitors on BCCI for sanctioning of the events and dependence of players and consumers for the same reason has been total. BCCI knowing this had foreclosed the competition by openly declaring that it was not going to sanction any other event. BCCI undermined the moral responsibility of a custodian and *defacto* regulator. The Commission however, notes that BCCI in their submissions have claimed that the funds of

IPL have been re-ploughed in developing the game and considers it appropriate that the penalty of 6% of the average annual revenue of BCCI for past three years be imposed under Section 27(b) of the Act as under:

Name	Gross Turnover for 2007-2008 (Rs. Crore)	Gross Turnover for 2008-2009 (Rs. Crore)	Gross Turnover for 2009-2010 (Rs. Crore)	Average Turnover for 3 Years* (Rs. Crore)	Penalty @ 6% of Average Turnover (Rs. Crore)
BCCI	1000.41	725.83	886.11	870.78	52.24

* Data as available from DG's Report

The Commission decides accordingly. The directions of the Commission must be complied within 90 days of receipt of this Order. The amount of penalty determined of Rs.52.24 Crore must also be deposited within a period of 90 days from the date of receipt of this Order.

The Secretary is directed to communicate this order as per regulations to the party.

Sd/-
Member(G)

Sd/-
Member(GG)

Sd/-
Member(AG)

Sd/-
Member(D)

Sd/-
Chairperson