



COMPETITION COMMISSION OF INDIA

Case No. 03 of 2021

In Re:

**Confederation of Professional Baseball Softball Clubs
A-119, 1st Floor, Krishe Emarald
Wework, Kondapur Main Road, Laxmi -Cyber City
Whitefields, Kondapur, Hyderabad
Telangana -500081**

Informant

And

**Amateur Baseball Federation of India
B- 19, 1st Floor, Sushant Lok Phase 2
Sector-56, Gurugram
Haryana- 122011**

Opposite Party

CORAM

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**

Appearances:

For the Informant : Mr. Vamsi Krishna Kondreddi, Director of the Informant

For the Opposite Party : Mr. Ashok Kumar Sharma, Advocate with Mr. Harish Kumar, Secretary General of the Opposite Party.



Order under Section 27 of the Competition Act, 2002

1. The present Information was filed by Confederation of Professional Baseball Softball Clubs (CPBSC/ 'the Informant') under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Amateur Baseball Federation of India (ABFI/ 'Opposite Party'/ 'OP') alleging *inter alia* contravention of the provisions of Section 4 of the Act.
2. Facts as stated in the Information may be briefly noted.
3. The Informant is stated to be a not-for-profit organisation and avers to work with the sole objective of promotion and development of sports of baseball and softball in India. The Informant, as a member of the baseball ecosystem, engages with players, coaches, clubs, and other partners in India and abroad. OP is a society registered under the Haryana Registration and Regulation of Societies Act, 2012 and it has been recognized as National Sports Federation by Ministry of Youth Affairs and Sports, Government of India and is primarily working for the general promotion of baseball and players. It is the responsibility of ABFI to conduct Zonal, National and International Baseball Tournaments in India. ABFI is affiliated to Baseball Federation of Asia (BFA) and also to World Baseball and Softball Confederation (WBSC).
4. The Informant scheduled to organise 'Club National 2021' Championship in Hyderabad, India during 16.02.2021-21.02.2021 with an objective to provide a platform for the best baseball clubs to compete with each other and also intended to encourage players to enhance their skill in their respective playing careers in order to play in the major baseball leagues.
5. The Informant further stated that it received 14 (fourteen) club registration requests to participate in the aforesaid event and it shortlisted 8 (eight) clubs in the final pool for the event. Subsequently, it came to the knowledge of the



Informant, that a letter dated 07.01.2021 was sent by ABFI to the Presidents/ Secretaries of State Baseball Associations throughout the country prohibiting the State Associations from dealing with bodies and leagues not recognised by it and threatening with disciplinary action if any of the players took part in the leagues and tournaments not recognised by it.

6. As a consequence of the OP letter, the clubs who had paid their registration fees and expressed their interest to participate in the event started withdrawing their participation due to the fear of getting banned and threats by the OP. Resultantly, the Informant had to cancel the ground, transportation, accommodation bookings made for the event leading to severe financial distress for the organisation. The Informant rescheduled the event to 30.03.2021-04.04.2021 and announced the revised schedule to all the members of the event.
7. Subsequent to the filing of the Information, the Informant brought to the attention of the Commission, another communication dated 01.03.2021 issued by ABFI to its State Associations whereby OP announced to conduct the 34th Senior National Baseball Championship from 29.03.2021-03.04.2021 at Nandyal, Kurnool in Andhra Pradesh. The Informant alleged that the motive of OP in organising this event was to sabotage the event of the Informant by scheduling it during 29.03.2021-03.04.2021 i.e. starting it just one day prior to the beginning of the Club Nationals 2021 and closing one day prior to the closing of the same. In the said letter, OP directed that that no team will be allowed to leave the station before the closing ceremony of the championship and also informed that men and women players will be selected during the said championship by Selection Committee for participation in forthcoming International events.
8. The Commission considered the Information in the ordinary meeting held on 23.03.2021 and directed to forward a copy thereof to OP with a direction to



file its para-wise reply thereto, with an advance copy to the Informant. The Informant was thereafter allowed to file its rejoinder thereto, if so desired.

9. OP in its reply submitted that it may be a 'person' as defined under Section 2(i)(v) of the Act, however, it is not involved in any commercial activity and as such not an 'enterprise' in terms of the definition thereof as provided under Section 2(h) of the Act. It was also submitted by OP that it was not in a dominant position in the market and so had no occasion to abuse the same. OP further submitted that it was not aware of the functioning of the Informant, as it was not an affiliated body to ABFI. It was reported to ABFI that some un-affiliated organizations were planning to conduct Baseball Tournaments, only with a profit motive, without the permission or approval of ABFI and since it was not in the best interest of the Baseball Game as such or the players, ABFI with a view to restrict such illegal and unauthorized events, sent letter dated 07.01.2021 to the office bearers of the affiliated State Baseball Associations requesting them not to entertain such unrecognized bodies to conduct such events. OP further submitted that letter was issued without any malafide intention or ill-motive to any particular organization but to apply generally, all over India in the best interest of the game and its players. ABFI had control only over the players attached to the Affiliated State Associations or the District Associations and so ABFI was not causing any obstruction to the functioning of the CPBSC or its players. Therefore, there was no violation of the provisions of Section 4 of the Act.
10. The Informant in its rejoinder submitted that OP conducts tournaments and participates in international events and generates revenue through such activities which are economic in nature hence they fall within the purview of the term 'enterprise' as defined under Section 2(h) of the Act. The Informant also submitted that the announcement to conduct the 34th Senior National Baseball Championship from 29.03.2021 to 03.04.2021, starting one day prior to the beginning of the Club Nationals 2021 and closing one day prior



to the closing of the Club Nationals 2021 so that no player considers appearing or making himself available for the event in Hyderabad was to only sabotage the Informant event. Therefore, CPBSC had to reschedule Club Nationals 2021 to June, 2021 by suffering financial loss and mental trauma.

11. The Commission considered the Information and other material available on record and based on the allegations levelled in the Information, it was observed that there exists a *prima-facie* case of contravention of the provisions of Section 4 of the Act by the Opposite Party. Accordingly, the Commission passed an order dated 03.06.2021, under Section 26(1) of the Act, directing the Director General (“DG”) to cause an investigation into the matter.
12. The Commission also granted interim relief in the matter by passing an order dated 03.06.2021 under Section 33 of the Act whereby the Commission restrained ABFI to issue any communication to its affiliated State Associations dissuading them, in any manner whatsoever, from allowing their players from participation in tournaments organized by the bodies which are not recognized by ABFI. In addition, ABFI was further directed not to threaten the players who wanted to participate in such events. This arrangement was directed to be continued till further orders or passing of final order in the matter, whichever is earlier.

Investigation by the DG

13. A brief summary of the issues identified by the DG for investigation and his findings thereon, are noted below:



Issue (a)

- (i) What is the relevant market in the present case? Whether the Opposite Party is in a dominant position in the relevant market as per the provisions of the Act?

Findings:

The DG delineated relevant market as ‘market for organization of Baseball leagues/events/ tournaments in India’. On dominance, the DG pointed out that OP being the apex body for Baseball activities in India in the pyramidal structure; it is governing all the activities in relation to the Baseball events undertaken in India and for representation of India in any international Baseball event also. Therefore, investigation concluded that in terms of Explanation (a) to Section 4, ABFI can be said to be in a dominant position in the relevant market.

Issue (b)

Whether the Opposite Party has abused its dominant position in violation of the provisions of Section 4 of the Act, in the matter?

Findings:

- (i) Investigation concluded that the letter dated 07.01.2021 sent by ABFI to its affiliated units directing them not to allow their players to participate in non-authorized tournaments/events, is not justifiable. Therefore, ABFI has misused its regulatory powers by imposing this unfair and discriminatory condition on the Baseball Players which is the contravention of the provisions of Section 4 (2)(a)(i) of the Act.
- (ii) The restrictions placed on players from participating in the events/tournaments not recognised by ABFI/its affiliated units limit/restrict the services of players for the organisers of such



tournaments such as the Informant. The imposition of such restrictive anti-competitive conditions by ABFI tantamount to contravention of the provisions of Section 4 (2) (b) (i) of the Act.

- (iii) By circulating the impugned letter dated 07.01.2021, ABFI somehow disrupted the growth of every stakeholder of the sports of Baseball and most importantly the players who are the key to this entire ecosystem. Hence, such conduct of ABFI in foreclosing the market of organisation of Baseball tournaments/events/leagues was in violation of the provisions of Section 4 (2) (c) of the Act.

Issue (c)

Whether there is any violation of the provisions of Section 3(3) of the Act?

Finding: Investigation concluded that no contravention of the provisions of Section 3(3) the Act has been found as there exists a vertical relationship between ABFI and all its affiliated units - ABFI being on the top level. Therefore, the decision taken by the ABFI *vide* its impugned letter dated 07.01.2021 to its affiliated units, cannot be termed as an agreement between these entities, hence the same does not fall within the purview of the Section 3(3) of the Act.

14. The Commission, after considering the investigation report of the DG in its ordinary meeting held on 11.01.2022, *vide* its order of even date decided to forward an electronic copy of the investigation report to the Informant and OP for filing their respective objections/ suggestions thereto, if any, on or before 18.02.2022. The matter was directed to be listed for final hearing on 29.03.2022.
15. The Informant and OP submitted their objections/suggestions to the DG report.



Objections/ suggestions of the Informant

16. The Informant agreed with the assessment undertaken by the DG and, as such, supported the findings recorded by the DG in the Investigation Report. The Informant also submitted that it has successfully organized the 1st Edition of the tournament titled Club Nationals 2021, in Hyderabad during 08.02.2022 - 13.02.2022.

Objections/suggestions of OP

17. OP submitted a brief reply of 02 pages stating that findings and conclusions of the DG investigation report are based on hearsay evidence. OP also emphasised that 34th Senior National Baseball Championship was never organized by it in competition with Club National 2021. OP in its AGM held on 28.10.2017, long before the formation of CPBSC, decided to organize the 34th Senior National Baseball Championship at Tripuati through A.P. Baseball Association during March 26 - 30, 2020. Due to the pandemic and the Government guidelines, the said 34th Senior National Baseball Championship had to be postponed and accordingly the said tournament was organized in Nandyal, Distt. Kurnul (A.P.) during March 29, 2021 to 03 April, 2021 by A.P. Baseball Association.

Analysis

18. The Commission has perused the Information, Investigation Report and the objections/ suggestions thereto filed by the parties as also written and oral submissions filed/ submitted by the parties. During the course of final hearing on 29.03.2022, the learned counsel appearing on behalf of the Opposite Party submitted before the Commission that it is ready to withdraw the letter sent to affiliated State Baseball Associations whereby they were requested not to entertain “unrecognised” bodies (*i.e.* the bodies which are not recognized/ associated with ABFI); not to allow their respective State players to participate in any of the tournaments organised by such ‘unrecognized’



bodies and a warning of strict action was given against players who are found to participate in such tournaments. Accordingly, the Commission vide its order dated 29.03.2022 directed that the needful be done within the period of 07 days as prayed for by the learned counsel appearing on behalf of OP/ ABFI and an affidavit in this regard was directed to be filed with an advance copy to the Informant.

19. Shri Harish Kumar, Secretary General of ABFI through an e-mail dated 03.04.2022, has submitted an affidavit before the Commission stating therein that the letter dated 07.01.2021 issued by him to member State Associations, but not put into effect, is hereby withdrawn/cancelled with immediate effect and declared ineffective and also submitted that it will encourage healthy and fair competition for promotion of game of baseball from local to national level and will also encourage baseball players and competitors without any hindrance. The Informant *vide* an email dated 12.04.2022, however, objected to the affidavit stating that OP has attempted to circumvent the order of this Commission by serving a vague affidavit without clarifying the subject matter of the issue in hand which is contrary to the orders of the Commission which directed the OP to withdraw all the claims made in the impugned Notice dated 07.01.2021 by way of a detailed affidavit addressed to its State affiliated units.

20. At the outset, the Commission notes that the Informant is primarily aggrieved of the communications sent by ABFI to its affiliated State Baseball Associations whereby and whereunder they have been requested not to entertain unrecognized bodies and not to allow State level players to participate in any of the tournaments organized by them. The communication also threatens that strict action will be taken against the players who participate in such tournaments. This is alleged to be an abusive conduct by ABFI in contravention of the provisions of Section 4 of the Act.



21. Before examining the issue of abuse of dominant position, the Commission deems it appropriate to deal with the preliminary objection raised by ABFI that since it is not involved in any commercial activity, it is not an ‘enterprise’ within the meaning of the term as defined in Section 2(h) of the Act and as such it cannot be proceeded against under the Act.
22. In this backdrop, it is apposite to reiterate that Section 2(h) of the Act defines ‘enterprise’ *inter alia* as a person or a Department of the Government, which is 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. The definition is very wide in its amplitude and covers all activities of specified nature of any kind. Further, as per Section 2(u) of the Act, ‘service’ means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.
23. The thrust of the definition of the term ‘enterprise’ is on the economic nature of the activities discharged by the entities concerned. It is immaterial whether such economic activities were undertaken for profit making/ commercial purpose or for philanthropic purpose. Thus, even non-commercial economic activities would be subject to the discipline of the Act as the Act does not distinguish economic activities based on commercial or non-commercial nature thereof. In ascertaining as to whether an entity qualifies to be an ‘enterprise’, the Commission examines this aspect from a functional than a formal approach. Viewed in the above statutory scheme, it cannot be denied that ABFI is *inter alia* involved in controlling the provision of services which is manifested from its communication dated 07.01.2021 whereby the players



affiliated to its State Baseball Associations have been warned not to participate in the tournaments organized by the bodies which are not recognized by it. Accordingly, the plea of ABFI, being misdirected, is rejected. It is held that ABFI is an 'enterprise' within the meaning of the term as defined in Section 2(h) of the Act and is therefore subject to the discipline of Section 4 of the Act which prohibits abuse of dominant position.

24. Now, the Commission proceeds to examine the issue of abuse of dominant position. In this regard, first the relevant market needs to be defined and thereafter the dominance of the enterprise or group concerned has to be ascertained therein before proceeding any further to examine the alleged abusive conduct.
25. As per Section 2(r) of the Act, 'relevant market' means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or both. Further, the term 'relevant product market' has been defined in Section 2(t) of the Act as a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of their characteristics, prices or intended use. The term 'relevant geographic market' has been defined in Section 2(s) of the Act to mean a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.
26. For determining whether a market constitutes a 'relevant market' for the purposes of the Act, the Commission is required to have due regard to the 'relevant geographic market' and the 'relevant product market' by virtue of the provisions contained in Section 19(5) of the Act.



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27. In light of the aforesaid statutory landscape, the Commission proceeds to determine the relevant market in the instant case. Keeping in view nature of allegation and considering the fact that the that the sport of Baseball is not substitutable by any other sport in all aspects, Commission assesses the relevant product market as '*market for organization of baseball leagues/events/ tournaments*'. Further, in any baseball leagues/events/ tournaments, baseball club from any part of India may participate, the relevant geographic market may be taken as whole of India. Accordingly, the Commission delineated the relevant market as "*market for organization of Baseball leagues/events/ tournaments in India*".

28. On the issue of dominance of OP in the afore-delineated relevant market, the Commission notes that the OP is an apex institution for nurturing the baseball talent in India for National and International events. Since its inception, the OP is involved in various activities such as organising National Championships, training programs, selection in the National, International, Asian & Olympic etc in various age categories. It also engages in supervision and assistance to the state units in their activities and also sets up coaching camps for the grass root level. Therefore, dominance of OP is evident. In this regard, the Commission has also taken note of the fact that OP is a part of the pyramidal structure and is affiliated to World Baseball Softball Confederation (WBSC) and through WBSC to Baseball Federation of Asia (BFA). ABFI recognizes, accepts, applies observes and abides by the constitution, rules and regulations of WBSC and BFA. Regulatory powers enjoyed by ABFI including sanctioning/ disapproving proposals for organisation of baseball events and subjecting players to disciplinary action, make it predominant controller of the services provided by baseball players who have less bargaining power. Additionally, there are high regulatory barriers in the sport of baseball since ABFI is the only body recognized by Ministry of Youth Affairs & Sports, Government of India, International Baseball Federation and Indian Olympic Association. As a result, OP enjoys



a monopoly position in the relevant market and accordingly, it is held that ABFI is in a dominant position in the afore-delineated relevant market.

29. Before advertng to the alleged abusive conduct, the Commission deems it appropriate to deal with the plea raised by ABFI that it has not given effect to the circular dated 07.01.2021 issued by it. The plea is untenable and is factually incorrect. As brought out by the Informant, ABFI, even after issuance of circular dated 07.01.2021, continued to act in furtherance thereof and, in fact, issued another communication dated 01.03.2021 to its State Associations announcing its National Championship during a period which effectively coincided and overlapped with the proposed event of the Informant. ABFI *vide* its circular dated 01.03.2021 revealed that the said Championship would be organized during March 29, 2021 to April 03, 2021 whereas CPBSC had already decided and communicated on 08.01.2021 *vide* its email of even date to the participating teams that its event would be organized during March 30, 2021 to April 04, 2021. Be that as it may, once an entity is found to be dominant, it is immaterial whether the impugned restrictions were given effect to or not, as the very fact of imposition of such unfair and restrictive condition by a dominant undertaking, stands captured within the framework of Section 4 of the Act which proscribes abuse of dominant position. The Commission also notes that the present matter is based on documentary evidence by way of circulars and in this backdrop, the plea of ABFI that the investigation report is based upon hearsay evidence, is thoroughly misconceived and is rejected accordingly.

30. Coming to the issue of abuse of dominant position, it is observed that the point of concern arises mainly from the letter dated 07.01.2021 issued by OP to all State Baseball Associations in the country requesting them not to entertain any unrecognized body and further not to allow their respective State players to participate in any of the tournaments organized by such unauthorized bodies. The letter further mentions that if players participate in



such tournaments, strict action will be taken against them. Specifically, the letter highlighted that Dreams Olympic Sports & PLB (the associate sponsor of the Informant's baseball activities and subsequently, the commercial rights holder including the Club Nationals) is an unauthorised body and is not associated with ABFI.

31. The Commission notes that there is no dispute about the authenticity and veracity of the letter dated 07.01.2021 which was issued by ABFI to its affiliated State Baseball Associations. In fact, as pointed out previously, the learned counsel appearing on behalf of ABFI during the course of final hearing before the Commission fairly submitted that ABFI is ready to withdraw the letter. In this view of the admitted factual position, the Commission is inclined to take a lenient view in the matter, as detailed in the succeeding paras.

32. The Commission observes that ABFI by issuing communication dated 07.01.2021 to its affiliated State Baseball Associations requesting them not to entertain the unrecognised bodies and further by requesting them not to allow their respective State players to participate in any of the tournaments organised by such unrecognised bodies, has violated the provisions of Section 4(2)(c) of the Act as it results in denial of market access to other associations who wish to conduct such tournaments. Also, such conduct results in limiting and restricting the provision of services and market therefor, in contravention of the provisions of Section 4(2)(b)(i) of the Act. As already noted, ABFI has acknowledged that it has sent the impugned communication dated 07.02.2021 to its affiliated State Associations.

33. The Commission also notes that the communication dated 07.02.2021 has further warned of strict action against the players who participate in the tournaments organised by bodies which are not 'recognised' by ABFI. Such conduct imposes an unfair condition upon the players and thereby falls foul



of the provisions of Section 4(2)(a)(i) of the Act besides stultifying the very objective of promoting the cause of baseball in India, which a National Sports Federation is obligated to discharge.

34. In view of the foregoing, the Commission is of the considered opinion that ABFI through its impugned conduct has violated the various provisions of Section 4 of the Act, as detailed above.

ORDER

35. ABFI is found in contravention of the provisions of Section (4)(2)(a)(i), 4(2)(b)(i), and 4(2)(c) of the Act for the reasons adumbrated in this order. Accordingly, OP is hereby directed to cease and desist from indulging in future in the conduct which has been found to violate the provisions of the Act.
36. As regards imposition monetary penalty, the Commission notes that ABFI has already withdrawn the impugned letter and to that extent the necessary market correction has already taken place. The Commission has also taken into consideration the submission of the Informant that it has successfully organized the 1st Edition of the tournament titled Club Nationals 2021, in Hyderabad during 08.02.2022 - 13.02.2022.
37. Considering these aspects, the Commission refrains from imposing any monetary penalty upon ABFI. It may, however, be noted that any such future conduct of ABFI would be construed as recidivism with attendant aggravated consequences not only for ABFI but its office bearers in their personal capacity.



38. The Secretary is directed to communicate to the parties, accordingly.

Sd/-

Ashok Kumar Gupta
(Chairperson)

Sd/-

Sangeeta Verma
(Member)

Sd/-

Bhagwant Singh Bishnoi
(Member)

New Delhi

Date: 03/06/2022