

THE BUSINESS OF SPORTS REGULATION: CCI GOES HEAD-TO-HEAD WITH THE BCCI

1. INTRODUCTION

In an order dated November 29, 2017 (the “**Order**”)<sup>1</sup>, the Competition Commission of India (the “**Commission**”) found the Board of Control for Cricket (the “**BCCI**”) guilty of abusing its dominant position in contravention of the provisions of Section 4(2)(c) (*denial of market access*) of the Competition Act, 2002 (the “**Act**”), for entering into an anti-competitive agreement in relation to media rights with the broadcasters of the Indian Premier League (the “**IPL**”).

2. BACKGROUND

In an agreement for media rights with the broadcasters of the IPL (the “**IPL Agreement**”), the BCCI gave a representation that it shall not organize, sanction, recognize, or support another professional domestic Indian T20 competition that is competitive to the IPL, for a sustained period of ten years.

Back in 2013, the Commission held the BCCI to be guilty of denial of market access in contravention of the Act. However, the BCCI appealed before the Competition Appellate Tribunal (the “**COMPAT**”) who set aside the order on the grounds of violation of principles of natural justice. The matter was then remitted back to the Commission for reconsideration after providing an opportunity for hearing to the BCCI on its representations, after which, the Director General (the “**DG**”) was directed to conduct further investigation into the matter.

3. KEY HIGHLIGHTS

3.1. Enterprise status of BCCI

While interpreting the definition of ‘enterprise’ under Section 2(h) of the Act, the Commission noted that it was wide enough to include within its purview *any* economic activity carried on by any entity. In this regard, the Commission observed that although the BCCI is a not-for-profit society, it also undertakes several activities which are economic in nature, which hypothesis was further supported by news reports on the economic value of the IPL, as well as its contribution to India’s gross domestic product.

Flowing from this, the Commission held that despite the revenues generated from the activities of the BCCI being ploughed back into cricket and allied activities and even though sports federations may not have the intention to necessarily make a profit, the *enterprise* status of an entity does not depend on the  *motive* to make a profit alone, and therefore, so long as it is engaged in any economic activity, the BCCI shall be considered an “*enterprise*”.

3.2. Relevant Market

<sup>1</sup> Ref. Case No. 6 of 2010 (also available at <http://www.cci.gov.in/sites/default/files/61%20of%202010.pdf>)

The Commission noted that no sport is interchangeable or substitutable with any other sport based on the characteristics of the game, and further observed that cricket has a strong consumer preference in India. Moreover, private professional cricketing leagues such as the IPL, involving private clubs, franchises and the selection of players through a bidding process by participating clubs, differs from other cricketing formats, especially since profit generation is the primary consideration for such events.

The Commission further noted that the sentiment and experience of viewers, fans and other stakeholders for this form of cricket has reached an unmatched level, contributing to the commercialization of the game and as a result, a completely new *genre* of cricket has emerged with a market *distinct* from other formats of cricket.

### 3.3. Dominant Position

The Commission noted that the International Cricket Council (the “ICC”) declares its members, such as the BCCI as the ‘custodian’ of cricket in the concerned territory and vests in them the right of deciding on any matter relating to the said sport.

Thus, the BCCI assumes the role of *de facto* regulator of cricket in India on account of the pyramid structure of sports governance and endorsement from the ICC. Moreover, by virtue of the conditions laid down in Section 32 of the ICC manual, the BCCI has the *exclusive* authority to sanction and approve cricket events in India. Therefore, the BCCI clearly benefits from its *sole* authority to grant approval for similar events as those organized by it and to set conditions for such organization.

In addition to the above factors, the Commission also referred to the DG’s report and drew attention to the BCCI’s size, resources and economic power to conclude its dominant position in the relevant market for the organization of professional domestic cricket leagues and events in India.

### 3.4. Abuse of Dominant Position

The BCCI had given a representation under the IPL agreement that:

*“it [the BCCI] shall not organize, sanction, recognize or support during the Rights Period (10 years) another domestic Indian T20 competition which is competitive to the League [the IPL].”*

Further, it should be noted that Rules 28 and 29 of the BCCI have the effect of delegitimizing any tournament of competition of cricket organized in India without the approval or support of the BCCI. Rule 29 goes so far as to impose a restriction on the BCCI’s members or its affiliates and associate members from participating or extending any assistance to such un-approved tournaments. It further prohibits cricket players, umpires and scorers registered with the BCCI (or its affiliates and associate members) from taking part in such un-approved tournaments.

The Commission further observed in light of this background, that the impugned clause had the effect of foreclosing the market for organization of any other professional domestic cricket leagues or events in India for a sustained period of ten years altogether. While reasonable restrictions in any regulatory framework may be inserted in order to serve as a protectionist measure, such a restriction may only form part of a regulatory framework *if* it serves the purpose of development or protection of the relevant market.

In the absence of any plausible explanation as to why the monopoly of the IPL (created through the self-imposed restriction) had to operate for a sustained period of ten years and how it serves the legitimate interest of cricket, the Commission

found that the impugned clause was pursued solely to enhance the commercial interest of the bidders of broadcasting rights and the consideration received by BCCI in return therefor.

In conclusion, the Commission held that such an unreasonable restriction had the effect of creating an insurmountable barrier for any other body or association to organize domestic professional cricket leagues in India and amounted to a complete denial of market access which contravened Section 4(2)(c) read with Section 4 of the Act.

### 3.3 Order and Penalty

The Commission *inter alia* gave directions to the BCCI to: (i) cease and desist from indulging in practices contravening Section 4 of the Act; and (ii) remove blanket restrictions on organization of professional domestic cricket league and events by non-members, subject to such conditions relating to approvals that are necessary to serve the interest of the sport. Accordingly, the Commission proceeded to impose a penalty of INR. 52.24 crores on the BCCI. Keeping in line with the settled legal position in the Supreme Court judgment of *Excel Crop Care v. CCP*<sup>2</sup>, the penalty has been levied at the rate of 4.48 % of the *average relevant turnover* of the BCCI for the preceding three financial years.

## 4. INDUSLAW VIEW

The Commission has taken a clear view that the source of authority is immaterial in determining questions of competition law and regulatory bodies which have been vested with an authority govern a sport can be held to be *dominant enterprises* if they discharge some activity which is economic in nature, by virtue of the presence of sellers and consumers in the particular relevant market.

This order also has a far reaching impact on other similar sporting bodies; and each such body would be dominant in the specific relevant market for the organisation and regulation of that particular sport. Moreover, each such body, much like the BCCI, would also be engaging in advertising, distribution of broadcasting and sponsorship activities which may be perceived to be in the nature of economic activities. Therefore, depending on the circumstances of any event promoting a particular format of a sport, competition law issues are likely to arise.

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<sup>2</sup> AIR 2017 SC 2734