

Competition act

Business



To know Act is clear to the presenting group Q. Define Competition Act 2002.

A. An Act to provide, keeping In view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

Q. What is an enterprise? A.

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, defense and space.

Fair trade regulator competition commission on Friday held that the Indian cricket board indulged in ant-competitive practices and slapped a penalty of ₹ 52.24 crore on it.

Observing that BCC abused its dominant position, the intention commission directed it to “cease and desist” from any practice in future denying market access to potential competitors, including inclusion of similar clauses in any future agreement. The complaint was filed by a city-based individual, Suresh Singh Barmy against BCC in November 2010. His allegations were based on issues related to PL and a professional cricket league tournament conducted by BCC.

The abuse by BCC was of a grave nature and the quantum of penalty that needs to be levied should be commensurate with the gravity of the violation,” CLC said in an order on Friday. The fair trade regulator has imposed a penalty of ₹ 52.

24 crore on BCC. Among others, the complainant had alleged irregularities in the grant of franchise rights for team ownership, media rights for coverage of the league and award of sponsorship rights. Noting that BCCI’s economic power is enormous “as a regulator that enables it to pick winners”, the regulator said the cricket board has gained tremendously in financial terms from the Indian Premier League (PL) cricket format. 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 order said. The regulatory body has prevented many players who could have opted for the competitive league, it added.

“The dependence of competitors on BCC for sanctioning of the events and dependence of players and consumers for the same reason has been total. BCC knowing this had foreclosed the competition by openly declaring that it

was not going to sanction any other event,” CLC said. The commission observed that BCC undermined the moral responsibility of a custodian and De facto regulator. However, it said that BCC in their submissions have claimed that the funds of PL have been re-ploughed in developing the game.

On account of this, the regulator said that it considers “ appropriate that the penalty of six per cent of average annual revenue of BCC for past three years”. Thus, the penalty amount works out to ₹ 52.

₹ 24 crore, which is to be deposited within a period of 90 days from the date of receipt of this order. The complaint against BCC was referred to the commission’s director general (G) in December 2010. G is the investigating arm of the fair trade regulator. Q. Does BCC fall under the Competition Act?
A.

BCC briefs about itself saying “ it is a ‘ not-for- profit’ society for the promotion of sport of cricket and its activities is outside the rules of the Act.

Also its commitments are neither driven by nor conditional upon commercial considerations. The revenue obtained by BCC is invested back into the game of cricket. ” On the basis, it argues that it is a non-profit organization and cannot be compared to an enterprise within the meaning of Act. Now, BCC, the richest board of India, so called “ not-for-profit” organization, its activities related to PL 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.

Now keeping in mind, that, the activities of BCC is profit oriented and there's a huge revenue that they generate out of cricket, BCC was declared an enterprise and the Income Tax department too had withdrawn BCC from tax relaxation under the Income Tax Act. Q. Can BCC be considered as the dominating body? A. According to the rules of ICC, it considers only one body managing the cricket for the country. Hence, BCC is registered as the managing body of Indian cricket.

Hence, it could not be considered as the dominating one. This is as explained below: 1. BCC 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 have total control over them.

Without its' approval, no agonized competitive cricket involving BCC contracted players can be hosted within or outside the country. 2.

The relevant objects of BCC as contained in their Memorandum provide for controlling the game of cricket in India. The G considered the conduct of BCC when a rival competing league ICILY was formed. The promoters of ICILY stated that the application of ICILY for grant of recognition was rejected by ICC on the influence of BCC. They also stated that, right from the start-up of ICILY, BCC took steps to ensure that cricket stadiums are not made available to ICILY ND also restricted players from participating in the activities of ICILY. As a consequence of actions of BCC, ICILY has at present suspended its operations Q.

Briefly talk about the loophole in Competition Act India.

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A. On receiving a case, the Commission directs the Director-General to initiate an investigation into the allegations on which the G needs to submit a report within a specified period of time. Based on the report, the Commission starts hearing the affected parties. While this Section explicitly gives CLC the power to direct the G to investigate matters, to lose the matter if the G finds no contravention and to order for a further investigation if the G finds a contravention in his report, it does not explicitly give CLC the power to disagree with the G and close the matter even when the G has found a contravention.

Though there have been various cases till now where the CLC has disagreed with the G and closed the matter therewith but there has also been a dissenting opinion in all these cases stating the inability of the CLC to pass such orders as there is no Section or provision giving CLC such powers. CASE STUDY Allegation by the HTH service providers The present memorandum was filed by Shari Belong Miser, Trustee, Consumer Online Foundation, alleging contravention of various provisions of the Competition Act, 2002 by the four HTH service providers named above.

(I) The complainant has alleged that the above mentioned four Direct to Home (HTH) service providers are limiting competition among themselves, forcing the consumers to buy bundled hardware and creating entry barrier for new hardware manufacturers.

These practices are anti- competitive and violate Sec 3 & 4 of Competition Act, 2002. To avail HTH service, a customer requires 4 instruments beside the television. 1) A small dish antenna (usually fixed on terraces) to gather

HTH signal, 2) a small radio-size device (usually placed over the TV set and colloquially called set top box) to read the HTH signal, 3) a control instrument (usually incorporated within the SST) called conditional access module CAM which ensures that the consumer avails only what he has paid for, and last 4) a smart card to identify the user. (iii) Ideally the antenna and the SST should be available in the open market and HTH service provider should provide only the

CAM + smart card (or possibly only a smart card).

So that whenever a consumer wishes he can buy another CAM + card from another HTH service. This way the HTH operators would compete on service, quality and price. (v) The HTH operators in the Country are selling CAM + card + SST + antenna bundled together and charging the consumer for all these products. Most popular schemes of the operators state that the consumer gets hardware 'FREE' with 6 month subscription (nearly RSI. 1800). The amount actually includes the cost of hardware, but the operator denies its ownership to the customer and tells him that the hardware is owned by the HTH operator.

Moreover, they have manipulated the SST so that it cannot work for any other HTH operator. (v) This way they are able to withhold their customer who is loath to buy the entire hardware again if he wishes to change the HTH operator. The HTH Company understands that the customer is stuck and thereafter regularly overcharges him by small amounts in the monthly recharge. (vi) Old HTH operators use set top box of MPEG-2 format, while the

later entrants have installed the advanced MPEG-4 format. MPEG-4 set top box can work on the type 2 format, but vice versa is not true.

Thus, interoperability of older players' instrument is limited. (vii) government regulations, but the HTH companies hide this option. (viii) Consumers are generally unaware that as per government rules, the set top box from one HTH is required to work with smart card of another operator and also that the consumer has an option to rent, hire purchase or outright purchase the hardware from the HTH operator. (xx) In US, consumers can buy the SST in open market or from the HTH Company, and the service is interoperable. The HTH companies were giving discounts on their Stabs and this was hurting other SST manufacturers. The authority mulled banning such discounts, but allowed waiver to the HTH operators for 3 years, primarily because it was benefiting consumers.

Q. What effect does it have on the market as a whole? A. Consumers: (i) Tacit understanding among the HTH service providers to reduce competition among themselves by preventing interoperability of the service.

HTH service providers limiting competition among them by putting restrictive conditions in the subscription agreement which discourages migration of the consumer. (ii) HTH service providers are forcing the consumers to buy / take on rent the Stabs along with the HTH service (tie-in or bundling).

(v) Exclusive dealing agreements between the HTH service providers and Set top Box manufacturers is suspected. New entrants: By restricting interoperability of the Set Top Boxes (SST), HTH service providers are denying access to market for enterprises which only manufacture Stabs and <https://assignbuster.com/competition-act/>

thus abusing their dominant position. Similarly, they are also creating barrier to entry for prospective SST manufacturers who may want to enter the market.