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EFFECT OF COMPETITION LAW IN THE SPORTS GOVERNING BODIES

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"*Competition is the spice of sports, but if you make spice the whole meal, you will be sick*"[1]

INTRODUCTION

The domain of sports can said to be one of the largest industries among the other industries that prevail. The sports diaspora has brought along with it not only the gaming activities but served other purposes such as recreational, political, cultural and business purposes as well. However, with a proliferation in globalization and other developments, the sports industry is emerging to be one of the most commercialized industries. The economic aspects in this industry have received a major boom over the course of time. The essence of sports which used to revolve around gaming at some point of time has majorly transformed today into a money-making business. On the other hand, commercialization is coupled with the competition. Wherever commercialization comes into the picture, competition law also comes into picture.

One argument regarding the commercialized nature of the sports industry is that the industry being a unique one deserves a differential treatment and should, therefore, be kept out of the clutches of competition law in the country. The sports industry follows a pattern in the structure of the pyramid in which at the apex lies the sole international federation who shelters the National sports bodies. The pyramidical pattern of working is followed in the sports sector. The contemporary legal framework which administers sports in India is "National Sports Development Code of India 2011" but the matters of concern which fall within the territory of

[1] Rishika Mendiratta, "*A Take On India's Emerging Competition Law Jurisprudence: Deciphering India's Leading Sports Law Cases (Part 2)*" (*KhelAdhikar,* 2018) Available at <https://kheladhikar.com/2018/08/25/a-take-on-indias-emerging-competition-law-jurisprudencedeciphering-indias-leading-sports-law-cases-part-2/>.

competition law are absent in this legal framework.

Within a decade of operation of the Competition Act 2002, which effectively came into force in 2009, several high-profile disputes relating to business of sports have been adjudicated by competition regulators in India. Proliferation of professional sports leagues in cricket, hockey etc. in the last decade has resulted in numerous controversies on assignment of media rights, restrictions on players and on rival leagues, that have raised questions on potential violations of the provisions of the Competition Act, 2002.

LITERATURE REVIEW

Farzin, Leah (2015): The twin forces of globalisation and commercialisation have turned sports into a global business. Yet there are a multitude of ways in which sports entities remain significantly different than other business organisations. The monopolistic nature of sports organisations and the inherent need for maintaining competitive balance between teams have resulted in emergence of many forms of economic restraints like revenue-sharing, spending caps, drafts, non-tampering clauses.[2] Although these restraints are commonplace in modern sports, they have inevitably attracted the attention of competition law which aims to protect markets from anti-competitive restraints and their legality under competition laws have often been questioned in different jurisdictions on a regular basis.[3]**(Ross Stepehn F., 2004)** India has been no exception in this regard.

One of the major shifts they signify is the growing recognition of competition law as a legitimate and effective source of accountability for sports governing bodies **(**SGBs**).** Rivals and stakeholders aggrieved by decisions of SGBs see the discipline of competition law as a helpful tool for ensuring accountability. This is particularly exemplified in the AICF case, where the Delhi High Court itself directed an investigation by the CCI as a relief in a writ petition. Although the writ petition had sought a writ of mandamus against the AICF, the High Court opined that the allegations against the AICF might constitute a contravention of the Competition Act and needed a thorough investigation by the CCI. In view of the extensive powers that the

[2] Leah Farzin, "*On the Antitrust Exemption for Professional Sports in the United States and Europe*", Jeffrey S. Moorad Sports Law Journal, Vol. 22, 2015, p. 75.
[3] Stephen F. Ross, "*Player Restraints and Competition Law Throughout the World"*, Marquette Sports Law Review, Vol. 15, 2004, p. 49;

High Courts in India enjoy under Article 226 of the Constitution[4] and the prolonged recent history of judicial oversight over sports under writ jurisdiction,[5] **(Singh & Lalit)** the choice of reference to the Competition Commission was, in the author's view, remarkable. That the court chose not to intervene directly and ordered an investigation by the Competition Commission constituted a vital judicial endorsement of the role of competition law in sports.

Mudgal & Singhania: Equally significant in this regard is the case against the AFI. The complaint was filed by the Department of Sports, Ministry of Youth Affairs and Sports (**MYAS**), Government of India. The MYAS has exercised fairly extensive control of National SGBs through the system of recognition, financial and infrastructure support and tax-exemptions as provided in the National Sports Development Code 2011. Thus, it had several weapons in its armour to confront the AFI. Yet, the MYAS opted for a complaint to the CCI. The decision of the MYAS to not use its bureaucratic powers and opt for remedies under the Competition Act 2002 is another symbolic step forward in entrenchment of Competition Law in sports in India.[6]

RESEARCH QUESTION

Whether differential treatment in terms of competition given to sports valid and to what extent Competition Act can govern the Sports Governing bodies under the statute.

WHETHER SUCH INSTITUTIONS ARE ENTREPRISES UNDER THE ACT

Section 2(h) of the Act[7] defines "enterprise" as a "person"[8] or as a department of the

[4] S.P. Sathe, "*Judicial Activism: The Indian Experience"*, Washington University Journal of Law & Policy, Vol. 6, 2001, pp. 29; Manoj Mate, "The Rise of Judicial Governance in the Supreme Court of India", Boston University International Law Journal, Vol. 33, 2015, pp. 169.

[5] Shivam Singh and Shreeyash Uday Lalit, "*Public Interest Litigation and Sports in India*" in Dagupta, L. & Sen, S. (eds.), Sports Law in India: Policy, Regulation and Commercialisation, New Delhi, Sage, 2018, pp. 83-99;

[6] Mukul Mudgal and Vidushpat Singhania, *Law and Sports in India: Developments, issues and Challenges*, New Delhi, LexisNexis, 2016, pp.53-63.

[7] Section 2(h)- ""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 relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space."

[8] Section 2(i)- "person" includes—(i) an individual;(ii) a Hindu undivided family; (iii) a company; (iv) a firm; (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

Government.[9] It was observed in *Standard Oil*[10], that the word "person" in Section 2 of the Act, as construed by reference to Section 8 thereof, implies a corporation as well as an individual.[11] Apart from companies or partnership firms which are normally taken as enterprises, such bodies are also so taken for the purpose of the Act, as sporting bodies**,** professional bodies, trade associations agricultural co-operatives etc.[12] A society registered under the Societies Registration Act is a legal body capable of holding property and becoming a member of a company[13]. It must be observed, in the context of competition law, that the concept of an undertaking encompasses every entity engaged in economic activity regardless of its legal status and the way it is financed[14].

But at the same time the definition of enterprise, *"an enterprise can be characterized as an undertaking within the definition of the term only when it is engaged in the production, supply, distribution or control of goods of any description or the provision of service of any kind."*[15] This indicates that for an entity to be classified as an enterprise for the purpose of this act, it needs to be engaged in the activities mentioned in the section like production, storage, supply, distribution acquisition etc or it needs engaged in the provision of services or in the business of acquiring, holding or underwriting of shares. Hence from a reading of this definition it can be said that the emphasis of the definition is more on the nature of the activity carried out by an entity. The definition does not seem to provide importance to the nature and purpose of an entity i.e. whether it is carried out for commercial, profit making or any other purpose.

In the case of *Surinder Singh Barmi Vs. The Board of Control for Cricket in India*[16], the CCI answered the question whether BCCI is an entreprise in affirmative. The BCCI is a society registered under Tamil Nadu Societies Registration Act, 1975 which established to promote the sport of cricket in India. BCCI is not engaged in any commercial activity with the objective of

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(vi)any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); (vii) any body corporate incorporated by or under the laws of a country outside India; (viii) a co-operative society registered under any law relating to co-operative societies; (ix) a local authority; (x) every artificial juridical person, not falling within any of the preceding sub-clauses.

[9] D.P. Mittal, Competition Law & Practice 97 (Taxmann's, 3d ed. 2011).[hereinafter Mittal]

[10] Standard Oil Co. of New Jersey v. United States 221 US 1 (1910) ¶ 3.

[11] VershaVahani, Indian Competition Law 64 (Lexis Nexis, 2016).

[12] *Supra* Note 8.

[13] Board of Trustees Ayurvedic and Unani Tibia College, Delhi v. State of Delhi, A.I.R. 1962 S.C. 458.

[14] MITTAL, supra note 8.

[15] Carew & Co. Ltd. v. Union of India, A.I.R. 1975 S.C. 2260, ¶ 9.

[16] 2013 S.C.C. Online C.C.I. 8.

earning profits. Its primary objective are of controlling the game of cricket in India, promoting the game in India and framing the laws of cricket in India. On the basis of this it was contended by the BCCI that it is a "not-for-profit" society for the promotion of sport of cricket and its activities are outside the purview of the Act, especially Section 3 and 4. It was also further submitted by the BCCI that its commitments are neither driven by nor conditional upon commercial considerations. Strictly going by the main objectives of the BCCI and its contentions above, it can be argued and established that the BCCI cannot be considered as an enterprise for the purpose of the Act.

The commission said that *"The activities of BCCI centre both on "custodian" and "organizer" role….The activities of "organising events" are definitely economic activities as there is revenue dimension to the organizational activities of BCCI." The commission also held that "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." and that "BCCI is an enterprise for the purpose of the Act."* Further in *In re, Surinder Singh Barni v. Board of Control for Cricket in India*[17], the commission again upheld its previous judgement and held "BCCI to be an "enterprise" within the meaning of Section 2(h) of the Act."

It is submitted that the classification of BCCI as an "enterprise" can be disputed based on the reading of the term under the Act. While the CCI has clearly laid down its reasons for concluding that the BCCI is an enterprise, it must be noted that the plain reading of the definition of the term

"enterprise" indicates that for an entity to be considered as an enterprise, it is required to be engaged in the activities specified under the definition of the term or engaged in 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. It is evident that the BCCI is not engaged in any of the above mentioned activities.

The CCI has stressed on the commercial nature of the activities of the BCCI. It has observed that since the BCCI conducts activities that contribute to its revenue, it can be classified as enterprise. However it seems to have disregarded that the definition of the term "enterprise" focuses on the functional aspects of an entity. The definition in its present form does not take into account factors regarding revenue generation and commercial purpose of an entity. The CCI

[17] 2017 Indlaw C.C.I. 76 ¶ 17.

has relied on the fact that there is revenue/economic dimension to the entity in this case (BCCI) and on that basis concluded that it is an enterprise.

Also, in a similar case of *Sh. Dhanraj Pillay and Others v. M/s. Hockey India*[18], the commission held that *"the National Sports Federations do not have any immunity under the Act and the Competition laws are applicable to these bodies."* In another case Delhi High Court held All India Chess Federation to be an enterprise for the purpose of the Act[19] where the National Governing Body for chess was alleged to abuse its dominant position.

The fact that an activity has a connection with sport does not hinder the application of the rules of the Treaty including those governing competition law.[20] In Minnesota Made hockey Inc. case[21] the US District Court ruled in a similar manner: *"The exchange of money for services, even by a non-profit organization, is a quintessential commercial transaction."*

Therefore, the various rulings of the CCI clearly establishes that the sport governing bodies comes under the ambit of competition act and are enterprises for the purposes of the act.

RELEVANT MARKET FOR THE SPORTS GOVERNING BODIES

It is the ability of the enterprise to act independently of the competitive forces in the relevant market that determines the dominant position[22]. Dominance can be determined in the context of the relevant market, in India[23]. Therefore, in each and every case of abuse of dominant position, it mandatorily required to determine the relevant market.

The Supreme Court of United States defines the relevant market as "the area of effective competition, within which the defendant operates"[24].

In the Competition Act, 2002, the term is used for such a market where the status of competition has to be evaluated. This term has been defined in Section 2(r) of the Act read with Sub-sections (s) and (t) of Section 2.[25] The Act defines relevant market as "*the market which may be determined by the Commission with reference to the relevant product market or the*

[18] 2013 Comp LR 543 (CCI) ¶ 9.7.5.
[19] Hemant Sharma &Ors. v. Union of India &Ors. ILR (2012) I Delhi 620 ¶ 31.
[20] B.N.O. Walrave and L.J.N. Koch v. Association Union Cyclisteinternationale, Koninklijke Nederlandsche Wielren Unie and Federación Española Ciclismo, [1974] ECR 1405 ¶ 4. Meca-Medina and Majcen v. Commission [2006] ECR I-6991 ¶ 22 & ¶ 28.
[21] Minnesota Made Hockey, Inc. v. Minnesota Hockey, Inc., Civil No. 10-3884 (JRT/JJK).
[22] Dr. V.K. Agarwal, Competition Act, 2002 146 (Bharat, 2011).
[23] *Id*.
[24] Standard Oil Co. of California and Standard Stations Inc. v. United States, 337 US 293.
[25] MCX Stock Exchange Ltd. v. National Stock Exchange of India, 2011 Comp LR 0129 (CCI) ¶ 21.2.

relevant geographic market or with reference to both the markets." Hence the Act has given the discretion to the CCI to determine in each case what constitutes a relevant market

In the case of Sh. Surinder Singh Barmi v. Board of Control for Cricket in India[26], the commission concluded that "cricket is not substitutable with other sports or other entertainment events". The commission held that "The relevant market is the Organization of Private Professional Cricket Leagues/Events in India". Further in, In re, Surinder Singh Barniv. Board of Control for Cricket in India[27], the commission upheld its previous decision and held that, "Cricket, as a product, is completely different and not comparable with general entertainment television programmes and other sports, although there may be common viewership." Hence, the Commission ruled that relevant market is "the market for organization of professional domestic cricket leagues/events in India."

In the similar case of Sh. Dhanraj Pillay and Others v. M/s. Hockey India[28], the commission said that, *"the relevant product market, as regards the allegation of foreclosure of rival leagues is, the market for organization of private professional hockey leagues in India."*

Hence, usually the relevant market for such sport governing bodies is the market for organization of professional sports leagues (of the sport of which it is the governing body) in India.

DOMINANT POSITION OF SPORTS GOVERNING BODIES

"A dominant position is a position of economic strength enjoyed by an undertaking which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors and customers and ultimately of consumers."[29]

The concept of abuse of dominant position of market power refers to anti-competitive business practices in which a dominant enterprise may engage into maintain or increase its position in the market.[30] The explanation to section 4 provides that an entity is in a dominant position if it enjoys a position of strength which allows it to operate independently of competitive forces prevailing in the relevant market or affect its competitors or consumers or the

[26] 2013 S.C.C. Online C.C.I. 8, ¶ 31-39.
[27] 2017 Indlaw C.C.I. 76, ¶ 20 & ¶ 34.
[28] 2013 Comp LR 543 (CCI).
[29] NV Nederlands che Banden Industrie Michelin v. Commission of the European Communities, [1983] ECR 3461.
[30] Mittal, supra *note* 8.

relevant market in its favor.

The existence of a dominant position is not itself against the rule of competition. Only when dominance is exploited, consumers suffer, prices being higher than if the market were subject to competition.[31] An enterprise does not violate the competition law merely because it has a sufficiently large share of the marketplace such that it is a monopoly in economic terms.[32] There is no violation if the monopoly power grows or develops as a consequence of a superior product, business acumen or historical accident.[33] Thus an enterprise cannot be penalised because it has developed monopoly *via* legitimate means.[34] A monopolist is immune from statutory liability if it owes its monopoly solely to a superior skill, superior products, natural advantages (including access to raw materials or markets).[35]

Let us take the example of BCCI

The BCCI is the *de facto* regulator of cricket in India as it conducts cricket tournaments at the domestic and national levels, and selects teams to represent the country in international tournaments as well. Therefore, BCCI is a monopoly in organization of cricket is axiomatic as BRCI is the de-facto regulator of the game[36]. ICC declares its members like BCCI as the "custodian" of cricket in the concerned territory and vests them the right of deciding on any matter relating to the said sport[37]. Therefore it can be said that the historical evolution of BCCI enabled it to attain a monopoly status, a first-mover advantage, in the organization of cricket events in India.[38] It is the exclusive right and responsibility of each National Cricket Federation to retain control over cricket matches and events played within its territory, and therefore to determine whether or not a particular match played within its territory should be recognised or not.[39]

But this is also the case that if there are statutory regulations preventing new entry, it would

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[31] *Ibid.*
[32] *Ibid.*
[33] Smith v. Northern Mich. Hospitals, 518 F. Supp. 644.
[34] Mittal, supra *note* 8.
[35] *Id.*
[36] Sh. Surinder Singh Barmi v. Board of Control for Cricket in India,2013 S.C.C. Online C.C.I.¶ 8.40.
[37] Mahesh v U.P.F.C., A.I.R. 1993 S.C. 935. Also see, ICC Regulations On Sanctioning Of Events, art 2.4: In determining whether or not to grant sanction under Article 2.1, the ICC and its National Cricket Federations shall act in accordance with their obligations as custodians of the sport.
[38] Sh. Surinder Singh Barmi v. Board of Control for Cricket in India, 2013 S.C.C. Online C.C.I. ¶ 8.24.
[39] ICC Code of Conduct, Explanatory note to section 32.1.

help existing enterprises to reach a dominant position[40]. By virtue of the conditions laid down in Section 32 of the ICC Manual (now the ICC Regulations on sanctioning of events), only BCCI has the exclusive authority to sanction/ approve cricket events in India. The aspects of granting sanctions for a league and giving NOCs for participation are regulatory in nature, but are in a clear position to impact the market for organising events and are a vital source of dominance.[41]

Sec 4(2)(c) of the Act prohibits denying or market access to potential competitors[42]. A monopolist has a duty to provide competitors with reasonable access to "essential facilities", facilities under the monopolist's control and without which one cannot effectively compete in a given market [see *Southern Pac. Communications Co.* v. *AT&T*[43]][44]. A facility is essential when it is vitally important for competition in the marketplace and also critical to an undertaking's competitive vitality, i.e., when it cannot compete without it and that duplication or practical alternatives are not available. This is the "Doctrine of Essential facility"[45]. BCCI's 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[46].

In re, Surinder Singh Barni v. Board of Control for Cricket in India[47]*, the commission held that "Rule 28(b) of the BCCI Rules, amounts to denial of market access for organization of professional domestic cricket leagues/ events in India, in contravention of Section 4(2)(c) read with Section 4(1) of the Act."* If historical evidences are to be considered, similar issues were raised against the BCCI in the past as well regarding the organization of similar Private Professional Cricket League named Indian Cricket League (ICL) where it was said that BCCI was definitely a factor in ICL's failure.[48]

Having due regard to the above discussed factors, it is clear that BCCI enjoys a dominant position in the relevant market for "organization of professional domestic cricket leagues/events in India."

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[40] T. Ramappa, Competition Law in India 165 (Oxford, 3d ed. 2014).
[41] Sh Dhanraj Pillay and Others v. M/s. Hockey India, 2013 Comp LR 543 (CCI) ¶ 9.9.2.
[42] The Competition Act, 2002, No. 12, Acts of Parliament, 2013, Section 4(2)(c)- "There shall be an abuse of dominant position if an enterprise or a group limits or restricts or indulges in practice or practices resulting in denial of market access in any manner"
[43] 740 F.2d 980 (D.C Cir. 1984).
[44] Mittal, *supra* note 8.
[45] *Id*.
[46] Sh. Surinder Singh Barmi v. Board of Control for Cricket in India, 2013 S.C.C. Online C.C.I.¶ 8.44.
[47] 2017 Indlaw C.C.I. 76 ¶ 49.
[48] Pan India Infra Projects Private Limited v. Competition Commission of India, 2015 S.C.C. Online Comp AT 312; Essel Sports Pvt. Ltd. v. Board of Control for Cricket in India &Ors, 2011 S.C.C. Online Del 1629.

Other examples

In, Motosykletistiki Omospondia Ellados NPID (MOTOE) v. Elliniko Dimosio[49], the Court (Grand Chamber) insisted that: "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 fact... Such a right may therefore lead the undertaking which possesses it to deny other operators access to the relevant market…"

In the case of In Re Department of Sports, MYAS and Athletics Federation of India[50], the CCI ruled that even though Atheletes Federation of India (AFI) was in a dominant position, its conduct was not abusive. Also, in the case of In Re Hemant Sharma and All India Chess Federation[51], the CCI held that AICF enjoys dominant position.

Hence, such sports governing bodies clearly enjoys dominant position in their respective sport.

INSTANCES OF ABUSE OF DOMINANT POSITION

1. In Re Hemant Sharma and All India Chess Federation[52] (AICF Case)

This case is unique in so far as it emerged from the directions of the Delhi High Court in 2011 on a writ petition that had asked the High Court to direct the Ministry of Youth Affairs and Sports and the AICF to not ban or threaten to ban chess players who had associated with the rival body, Chess Association of India (CAI). The AICF had written to the Fédération Internationale des Échecs (FIDE), the international governing body for chess to remove the ELO ratings of several players and had banned four players for participation in unauthorised competitions organised by CAI. The High Court instead directed the CCI to enquire into the contravention of the Competition Act that were alleged in the writ petition.

In its July 2018 order, the CCI came to the conclusion that the consequences of participating in any unauthorised events as per Clause (z) of the AICF Code of Conduct for the Players are very harsh since it entails a life ban and there is no provision of seeking any permission or any hearing in which players can provide an explanation. Further, it alluded to the fact that neither

[49] [2009] ALL ER (EC) ¶ 51.
[50] Case No. 01 of 2015.
[51] 2011 SCC OnLine Del 4642
[52] *Id.*

the by- laws nor the constitution of AICF defined what an unauthorised tournament is, nor did they lay down any parameters for grant of authorisation for tournaments.

Therefore, the Commission concluded that the rules and restrictions imposed by AICF for participating in non-approved tournaments had the object as well as the effect of restricting free movement of chess players and thereby, foreclosing the entry of potential organisers. These practices consequently led to denial of market access and constituted abuse of dominance as defined in Section 4 (2) of the Competition Act.

2. *In Re Pan India Infra projects Private Limited and Board of Control for Cricket in India[53] (ICL Case)*

The complaint was filed by proprietors of the Indian Cricket League (ICL) against the BCCI in 2013.The ICL was a privately-owned league. They alleged that the BCCI imposed a number of restraints on them as they saw them as a rival. These restraints included ban on players, directives to affiliated entities to terminate employment of players associated with ICL, denial of access to cricket facilities. In addition, eligibility conditions for allocation of media rights for the IPL specifically excluded any bidder "*involved in any litigation proceedings of any kind*" with the BCCI, resulting in exclusion of proprietors of ICL. which denied them market access.

The CCI ruled that the BCCI enjoys a dominant position in relevant market of organisation of professional cricket leagues in India and had systematically excluded the complainant from participation in this market by not recognising the ICL. With regards to blacklisting of proprietors from bidding for the broadcast rights for IPL, it observed that "*[t]he sequence of events and the nature of restriction suggests that the conditions were specifically targeted*" against the company which ran the ICL and the modifications in the eligibility conditions for allocation of broadcast rights were "*intended to prevent*" that company from bidding for the media rights for IPL. Therefore, the CCI held that there was a prima facie case of abuse of dominance as defined by section 4 (2) (c) of the Competition Act and directed the DG to carry out an investigation within 60 days.

3. *In Re Surinder Singh Barmi and Board of Control for Cricket in India*

CCI in this case held that the representation given by the Board for Control of Cricket in India **(BCCI)** in the IPL Media Rights agreement with the broadcasters that it shall not organize,

[53] 2018 SCC OnLine CCI 43.

recognise or support another rival Indian T20 competition amounted to abuse of dominance

INSTANCES WHERE DOMINANT POSITION IS NOT ABUSED

1. ***Dhanraj Pillay and Others v. M/s. Hockey India***[54]

A complaint filed by Dhanraj Pillay, former India hockey great, against Hockey India (HI), which claimed that the restrictive conditions imposed by HI through its revised Code of Conduct (CoC) Agreement with its players, on participation in un-sanctioned prospective private professional leagues resulted in undue restrictions on mobility of players and on prospective private professional leagues. The CCI ruled that while HI was in a position of dominance, it had neither abused its dominant position nor entered into any anticompetitive agreements with the players.

2. In Re Department of Sports, MYAS and Athletics Federation of India (AFI case)[55]

A complaint against the AFI relating to the decision taken in one of its 2015 Annual General Meeting (AGM) to act against its state-level member-associations, their officials, and athletes who encourage unauthorised marathons without the permission of AFI as anti-competitive.

The CCI initially took the view that there existed a prima facie case of contravention of provisions of Section 4 of the Act by AFI and directed the DG to investigate the complaint. In its final order, however, the CCI did not find any violation. It ruled that the complaint was based on the Draft Minutes of the 2015 AGM and that the final minutes of the said meeting does not contain anything which can be said to abusive in terms of Section 4 of the Act.

The CCI also averred that the practice showed that AFI recognised only 11 marathons out of more than 300 conducted every year throughout the country. Thus, it inferred that AFI's restriction on the organisers for conducting marathons or road races do not have the effect of limiting the market for organisation of athletic activities in India or foreclosing the market to the organisers, sponsors and participating athletes. Consequently, the CCI ruled that even though AFI was in a dominant position, its conduct was not abusive.

Therefore it can be said that such sports regulating bodies enjoys dominant position. But till the time they are performing their functions they cannot be said to be abusing their dominant

[54] 2013 Comp LR 543 (CCI).
[55] Supra *footnote* 48.

position.

PYRAMIDICAL STRUCTURE OF SPORT

In its order in the Surinder Singh Bhurni case, the CCI itself has admitted this by stating "The Commission takes cognizance of the pyramid structure and notes that monopoly of sports federations is a natural outcome of the structure", thereby acknowledging the challenges posed by the pyramidical structure of sports governance under competition law, since monopoly and market dominance of Sports governing bodies is an inherent product of such pyramidic model.

For instance, the CCI acknowledged in the AICF case that a *"system of approval under the pyramid structure of sports governance is a normal phenomenon of sports administration.*"[56] Similarly, it observed in the ICL case that *"the sports federations engaged in organization of tournaments/leagues are put to advantage if they also possess the authority to grant approval for organization of similar events by others and set conditions for such organization.*"[57] The same refrain is found in the AFI case where the CCI noted that *"since the OP is the leading organiser of athletics/ athletic activities in India as well as the apex body to control and manage the sports of athletics and related activities in India, it has a definite advantage over the other organisers of athletic events in India."*[58]

At the same time, the CCI has refrained from terming such monopolistic model of sports governance and the associated restrictions that flow from such model as inherently anti-competitive and illegal. In fact, the CCI accepted that while some rules governing the players and the organisation of sport events/tournaments often create a restrictive environment for the economic activities that are incidental to sport but they could be justified in the context of the sport.[59] So the mere fact that some of the rules of the sporting organisations have a restrictive impact on mobility of players or freedom of competition would not make those rules violative of principles of competition law. The test would be to assess whether "*the restraint on competition is a necessary requirement to serve the development of sport or preserve its integrity.*"[60]

This approach is most starkly reflected in the *AICF* case where the CCI approved the use of grant of "*wild card entries"* to some players on a selective basis noting that such practices are

[56] 2011 SCC OnLine Del 4642 ¶ 53.
[57] 2015 S.C.C. Online Comp AT 312 ¶ 28.
[58] Case No. 01 of 2015 ¶ 44.
[59] Supra footnote 48.
[60] *Ibid.*

internationally accepted part of the sport and allowed organisers to give a chance to "*special talents*".[61]

Even, the ICL case which found a prima facie case of abuse of dominant position is an example of this approach. One of the animating factors for the CCI was the fact that the sequence of events and the nature of restriction indicated that the relevant conditions were not imposed in furtherance of any sporting consideration but instead were specifically targeted at the rival league.

These orders have reiterated that that while there may not be any special exemption for sports from competition law in India, sporting traditions and interests may indeed justify certain disabling restraints that may be considered abhorrent in other businesses.

CONCLUSION

The orders of the CCI in the recent cases have reinforced the growing relevance of competition law in regulation of sports governing bodies in India, the growing use of competition law in the above discussed cases highlights the complementary role that the discipline can play in enhancing accountability of Sports governing bodies.

The sport governing bodies are enterprises and clearly enjoys dominant position in their respective sport and hence, their actions can be scrutinized by the Competition commission of India

These cases also take forward the incipient standard of inherent proportionality in assessing the impact of competition law on restraints arising out of pyramidal structure of sports. In their reiteration of the standard that the dominant position of these bodies does not by itself render restraints imposed by them as illegal, these orders illustrate how the legality of such restraints are determined on the basis of their purported sporting justification.

[61] Supra Footnote 52 ¶ 67-69.