

Unclassified**English - Or. English**

21 November 2023

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 2 on Competition and Regulation****Competition and Professional Sports – Note by India**

4 December 2023

This document reproduces a written contribution from India submitted for Item 4 of the 76th meeting of Working Party 2 on 4 December 2023.

More documents related to this discussion can be found at
www.oecd.org/daf/competition/competition-and-professional-sports.htm.

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1. Introduction

1. In the context of the intersection between competition and sports, Competition Commission of India (hereinafter, 'CCI'), has intervened in cases where sports associations and federations have been alleged to be indulging in conduct that were anti-competitive agreements or indicative of an abuse of their respective dominant position, sometimes involving both. The present contribution discusses various cases examined by CCI over the years in the sports sector.

2. Nature of Sports associations/federations: Regulatory Functions Vs. Economic pursuits

2. CCI has examined several cases¹ involving allegations against various sports associations/federations in different sports including Cricket, Volleyball, Hockey, Chess, Baseball etc. In all such cases dealt by CCI, the sports associations/federations have consistently challenged the jurisdiction of CCI on the ground that they cannot be termed as 'enterprise'² as envisaged under Section 2(h) of the Competition Act, 2002 (hereinafter "the Act") which is a pre-requisite to hold an entity responsible for contravention under the Act, especially in respect of cases pertaining to abuse of dominant position.

3. The determination of being an 'enterprise' bears notable importance in the determination of whether provisions of the Act can be applied to such associations/federations. If an entity fails to qualify as an enterprise, provisions of the Act may not apply to such entities³.

4. The contention made by these associations/federations rested primarily on two grounds—*firstly*, that they are not involved in any commercial activities with the objective

¹ *Dhanraj Pillay and Ors v. Hockey India* (Case No. 73 of 2011), *Surinder Singh Barmi v. Board of Control of Cricket in India* (Case No. 61 of 2010), *Hemant Sharma & Ors v. All India Chess Federation* (Case No. 79 of 2011), *Shravan Yadav & Others v. Volleyball Federation of India & Another* (Case No. 01 of 2019), *TT Friendly Super League Association v. Suburban Table Tennis Association* (Case No. 19 of 2021), *Pan India Infraprojects Private Limited v. Board of Control for Cricket in India* (Case No. 91 of 2013) and *Confederation of Professional Baseball Softball Clubs v. Amateur Baseball Federation of India* (Case No. 3 of 2021).

² Section 2(h) of Competition Act, 2002- "enterprise" means a person or a department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic 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, 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.

³ There are few exceptions to this e.g. under Section 3(3) of the Act which deals with horizontal agreements, decisions taken by trade associations which may not be an enterprise can also be subjected to scrutiny/examination under the Act.

of earning profits and *secondly*, they do not engage in any economic activity.⁴ In *Board of Control of Cricket in India (BCCI)* case,⁵ CCI observed that sports federations may not have the intention to necessarily make profit. However, the enterprise status as an entity does not depend upon profit motive alone. The defining feature of the concept ‘enterprise’ is that it engages in an economic activity covered within the ambit of Section 2(h) of the Act.⁶ The engagement of sports federation in regulatory activities such as framing rules and undertaking measures to preserve the integrity of the sport does not alter its status as an enterprise if it is pursuing some activities which can be termed as economic.

5. These sports federations/associations are performing multifarious roles in the value chain of sporting events and their actions are not only limited to sports governance/regulation but also to organisation of sporting events which results in market facing interactions such as granting media rights to broadcasters, entering into franchisee arrangements with business houses, raising sponsorship, *etc.* While assessing the claims of sports federations/associations, CCI laid emphasis on the nature of activity performed by them. As regards BCCI, CCI noted that ‘*[i]n addition to being the custodian of cricket in India, BCCI also organizes different formats of cricket matches/ tournament. By organizing such matches/tournament, it generates income.*’ Similar observations were made in the *Hockey India* case⁷ and *All India Chess Federation (AICF)* case⁸.

3. Delineation of the Relevant Market and Assessment of Dominance

6. The allegations against sports associations/federations examined by CCI pertained to abuse of dominant position, requiring delineation of relevant market and assessment of dominance.

3.1. Delineation of Relevant Market

7. Substitutability lies at the heart of relevant market determination under the Act. In cases examined by CCI, the sports federations/associations proposed broader relevant markets asserting that a sporting event and general entertainment television programmes are substitutable and form part of the same relevant product market. Further, different sports have also been contended to be substitutable. However, CCI noted that every sport has unique characteristics, leading to the development of its own fan-following. While popularity of each sport depends upon, the players, teams and the tournament involved, none is interchangeable with the other by virtue of such characteristics. Thus, a cricket match cannot be perceived to be substitutable with any other sport based on characteristics of the game. This perspective was discussed in detail in the BCCI case. In the said case, CCI had underscored the importance of demand-side substitutability in delineating relevant product market and observed that professional domestic leagues like the Indian Premier League (IPL) differ from other formats of cricket in several ways. In case of international cricket or general domestic cricket events, the teams represent nations or the concerned

⁴ *Surinder Singh Barmi v. Board of Control of Cricket in India* (Case No. 61 of 2010); *TT Friendly Super League Association v. Suburban Table Tennis Association* (Case No. 19 of 2021).

⁵ *Surinder Singh Barmi v. Board of Control of Cricket in India* (Case No. 61 of 2010).

⁶ *Surinder Singh Barmi v. Board of Control of Cricket in India* (Case No. 61 of 2010).

⁷ *Dhanraj Pillay and Ors v. Hockey India* (Case No. 73 of 2011).

⁸ *Hemant Sharma & Ors v. All India Chess Federation* (Case No. 79 of 2011)

states and the members of the team comprise of national level players or players belonging to the concerned state, as the case may be. On the other hand, in private leagues like IPL, the teams represent clubs/franchisees and may also include foreign players. Unlike other formats of cricket events, the private franchisees who own the IPL teams see it as a profit-making venture. Further, the format of the matches and the process of selection of players are markedly different in the case of professional domestic leagues like IPL. The entire organization of IPL like event, including selection of players through bidding process by private clubs is different from the mainstream cricket events. However, since the specificity of every sport plays a significant role in ascertaining substitutability, in another case (namely the *AICF* case), the CCI did not sub-segment the market based on different levels of organisation of the tournaments as the impugned restrictions imposed by the said association/federation applied to all types of professional chess tournaments/ events organised in India.

8. Another important observation made by CCI in its orders while delineating the relevant market is regarding the multitude of relationships of sports federations/associations that co-exist in the sports sector. In *Hockey India* case⁹, the CCI observed that a sports federation may be a seller of various rights such as media rights, sponsorship rights, and franchise rights associated with sport event (s) under its purview and correspondingly, there would be a separate set of consumers for each of such rights. However, the ultimate viewers of sport events are the end consumers, who influence the popularity of the sport, which in-turn determines the value proposition of the commercials associated in different verticals. Also, a sports federation requires services of players, officials *etc.* for staging an event which makes sports federations themselves as consumers. In this multitude of relationships, CCI viewed that defining the relevant consumer would enable defining the relevant market.¹⁰ Accordingly, CCI defined relevant market (as the *market for organization of private, professional hockey leagues in India*) in respect of foreclosure of the market for hockey events to rival leagues' from the view point of the spectator *i.e.*, the ultimate viewer of sport. Further, in *Amateur Baseball Federation of India (ABFI) Case*¹¹, the said Federation was alleged to have abused its position by prohibiting the State Baseball Associations not to entertain unrecognised bodies and threatening disciplinary action. Considering the fact that the sport of Baseball is not substitutable by any other sport in all aspects, CCI assessed the relevant product market as *market for organization of baseball leagues/events/ tournaments*.

3.2. Assessment of Dominance

9. While assessing dominance in cases concerning sports sector, CCI recognised the existence of “pyramid structure” in various sports and consequent dominance emanating from the said structure¹². Under such structure, a single national association per sport operates under the umbrella of a continental or a worldwide federation and such national

⁹ *Dhanraj Pillay and Ors v. Hockey India* (Case No. 73 of 2011).

¹⁰ *Dhanraj Pillay v. Hockey India* (Case No. 73 of 2011).

¹¹ *Confederation of Professional Baseball Softball Clubs v. Amateur Baseball Federation of India* (Case No. 3 of 2021).

¹² *Surinder Singh Barmi v. Board of Control of Cricket in India* (Case No. 61 of 2010), *TT Friendly Super League Association v. the Suburban Table Tennis Association* (Case No. 19 of 2021), *Confederation of Professional Baseball Softball Clubs v. Amateur Baseball Federation of India* (Case No. 3 of 2021).

federations are required to ensure that their statutes, practice and activities are in conformity with that of the worldwide federation (and the Olympic Charter in case of Olympic sports), conferring upon them a monopoly status in regulating a particular sport. This, has been recognised by CCI as an important factor attributing to the dominance of the sports federations/association giving them an ability to leverage their position in different markets in their favour.¹³

4. Competition Issues

10. Undoubtedly, the pyramid structure may be suitable for achieving the overall objectives of regulation as it leads to standardization of regulatory approach, non-discrimination between various regulated entities, orderly growth of the concerned sector and prevention of wastage of resources on duplicate bodies meant to perform the same role. However, it has been observed that such position is often used by sports federations/associations to affect the competitors or consumers or the relevant market in their favour, requiring an intervention. In a case decided by CCI against BCCI, it was observed that competition cases relating to sports federations usually arise due to the conflict between their regulatory functions and their economic activities. The ensuing paragraphs cover the conducts examined by CCI in the cases dealt by it in the sports sector.

4.1. Limiting/denial of market access to organisation of competing league

11. In the *BCCI* case, the CCI was confronted with examining certain clauses inserted by BCCI in the Media Rights agreement with the broadcasters for broadcasting of IPL event. Under the said agreement, BCCI undertook that it shall not organize, sanction, recognize, or support during the Rights period another professional domestic Indian T20 competition that is competing with IPL. This, as per the allegations, foreclosed entry and led to denial of market access to other competitive leagues. Applying the reasonability test, CCI recognised that though free entry is one of the necessary conditions for competition to flourish, in view of the specificities of certain sectors/sports, entry may be subject to regulatory conditions. Thus, it is necessary that the effects of such entry rules stipulated by the regulator is evaluated on a case-by-case basis taking into account the legitimate regulatory goals such as quality, safety, orderly growth of the sector *etc.* In the *BCCI* case, CCI decided that the clause appearing in the Media Rights Agreement led to insurmountable entry barrier in contravention of competition law which cannot be justified on the ground of specificities of sport.

12. In the *Hockey India* case, the issue revolved around the alleged exclusion of certain players from the selection of *probables* for the Indian national team due to their participation in a non-sanctioned event called World Series Hockey League (WSH). CCI investigated whether Hockey India was misusing its regulatory powers and promoting its own Hockey League to the exclusion of WSH and engaging in practices that resulted in the denial of market access to rivals, in contravention of the provisions of the Act. CCI found no evidence that the exclusion of certain players from the selection of *probables* for the Indian team was due to their participation in WSH. Instead, it was due to their non-participation in the mandatory training camp. Applying the inherent proportionality test, CCI found no contravention against Hockey India. However, while commenting on the structural aspect, CCI observed that the nature of the structure gives rise to conflict of

¹³ *Shravan Yadav & Others v. Volleyball Federation of India & Another* (Case No. 01 of 2019).

interest between the ‘regulatory’ and ‘organising of events’ roles of Hockey India, which may raise potential competition concerns.

4.2. Unreasonable restrictions on freedom of choice of players/ players’ movements

13. In some cases, CCI examined whether the restrictive actions taken by the respective sports federations were in contravention of the provisions of the Act.

14. In *AICF* case, the Federation required chess players to give a declaration that they would not participate in any tournament/ championship not authorised by it and violation of the said condition would bar them from participating in recognized events for one year and might affect their Elo rankings adversely. Further, chess players could participate in the competition under the category ‘special/ donor entry’ wherein AICF would collect fifty (50) percent of the entry fee.

15. CCI observed that AICF’s restriction on chess players to participate in so-called unauthorised events and attendant punitive consequences restricted the movement of chess players and placed them and the potential organisers of chess tournaments in a disproportional disadvantage. Hence, such stipulation was held as an unreasonable restriction on chess players and denial of market access to organisers of chess events/ tournaments. The restrictions on chess players were further held to be in the nature of exclusive distribution and refusal to deal.

16. Further, in the *ABFI* case, Confederation of Professional Baseball Softball Clubs (CPBSC)¹⁴ alleged that ABFI abused its dominant position by prohibiting State associations from dealing with bodies and leagues not recognized by it. ABFI also threatened disciplinary action against players participating in leagues and tournaments not recognized by ABFI. As a result, the clubs began to withdraw and the situation forced CPBSC to cancel arrangements they had made for the event, which led to significant financial distress for CPBSC. After detailed investigation, CCI found that ABFI’s action resulted in denying market access to other associations wishing to organize such tournaments and also restricted the provision of services. Furthermore, there were communications indicating strict action against players participating in tournaments organized by unrecognized bodies. The conduct was seen detrimental to the objective of promoting baseball in India, which is an obligation of a national sports federation like ABFI.

17. In the *Hockey India* case, there was an allegation that the sports federation prohibited the players from participation in domestic hockey events organized by competitors of Hockey India, through the terms and conditions included in Code of Conduct agreement entered into with Hockey players.¹⁵ These conditions included disciplinary action against any player or official who participates in any event which is not sanctioned by Hockey India; requirement to obtain a ‘No Objection Certificate (NOC)’ from Hockey India before playing for any foreign team/club etc. However, the conditions were found to be proportionate to the objectives of Hockey India.

¹⁴ CPBSC is a not-for-profit organization dedicated to promoting and developing the sports of baseball and softball in India. They engage with various stakeholders in the baseball ecosystem, including players, coaches, clubs, and partners within India and internationally.

¹⁵ *Dhanraj Pillai v. Hockey India* (Case No. 73/2011).

4.3. Others Issues: Recognising the ‘Specificity of Sport’

18. In all cases dealt by CCI, specificity of a particular sport has been an underlying consideration for assessment. In *VFI Case*¹⁶, it alleged that VFI entered into an agreement with a private entity (Baseline) granting it exclusive rights for organizing Volleyball League for Men, Women and Beach Volleyball in India for ten years. It was alleged to have restricted the market of organising Volleyball leagues for all other persons/enterprises except for Baseline for a period of ten years at any level in India or abroad. It further restricted the availability of Volleyball players for other leagues, in India or abroad. Thus, it was alleged to have abused its dominant position by taking away the opportunity from thousands of Volleyball players across the country that were not picked by any team in Baseline’s Volleyball League, to play in other events. CCI, however, noted the specificities of volleyball, which as a sport had not yet gained much popularity in India as compared to other established sports, like Cricket and Football, Hockey *etc.* and found no contravention.

5. Concluding Remarks

19. The decisional practice of CCI as well as the international jurisprudence supports the view that though sports bodies discharge certain functions which are purely regulatory in nature, the potential ability of such rules to have implications on the commercial sphere brings them within the ambit of competition laws. However, while analysing all such cases, a cautious approach has been adopted by CCI interweaving the competition analysis with the specificities of sports to ensure optimal enforcement/outcomes.

20. Further, in cases where CCI found the sports federations/associations to be indulging in anti-competitive conduct, monetary as well as non-monetary sanctions were imposed by it. In some cases (*e.g. ABFI case*), CCI also took note of the course correction¹⁷ undertaken by the sports federations/associations during enquiry, which was considered as a mitigating factor while imposing monetary penalty.

¹⁶ *Shravan Yadav & Others v. Volleyball Federation of India & Another* (Case No. 01 of 2019).

¹⁷ ABFI withdrew the impugned letter issued to its affiliated State Baseball Associations that warned of strict action against the players who participate in the tournaments organised by bodies which are not ‘recognised’ by ABFI.