TEAM CODE: T-32

16th NLU ANTITRUST
MOOT COURT COMPETITION
2025

BEFORE

THE HON'BLE SUPREME COURT OF ARRAKIS

UNDER

ARTICLE 53T OF THE COMPETITION ACT, 2002

CA No. 786/2024
&
CA No. 7/2025
&
CA No. 13/2025
&
CA No. 26/2025

ARRAKIAN SMASH LEAGUE ("ASL") ……..……..……APPELLANT 1
DREAMSPAY……..….APPELLANT 1

V.

COMPETITION COMMISSION OF ARRAKIS ("CCA") ……RESPONDENT 1
BADMINTON ARRAKIS ("BA") ……..…….……..RESPONDENT 2
TENET SPORTS ..…….……..……..……..RESPONDENT 3

MEMORIAL ON BEHALF OF APPELLANTS

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LIST OF ABBREVIATIONS

Abbreviation	Meaning
%	Percentage
&	And
§	Section
¶	Paragraph
AAEC	Appreciable Adverse Effect on Competition
ADCA	Arrakian Digital Competition Act
Anr.	Another
Arrakis	The Republic of Arrakis
Art.	Article
ASL	Arrakian Smash League
BA	Badminton Arrakis
BCCI	Board of Control of Cricket in India
BWC	Badminton World Cup
CCA	Competition Commission of Arrakis
CCI	Competition Commission of India
Co.	Company
DMA	Digital Markets Act
ECR	European Court Reports
Ed.	Edition
Etc.	Etcetera
EU	European Union
EZC	Elizabeth Championship

FMCG	Fast-Moving Consumer Goods
FY	Financial Year
GC	George Championship
IP	Intellectual Property
IPC	Integration Planning Committee
Ltd.	Limited
Ors.	Others
Pvt.	Private
SPA	Share Purchase Agreement
SSDE	Systemically Significant Digital Enterprise
UOI	Union of India
v.	Versus
VR	Vertical Restraint

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STATEMENT OF JURISDICTION

The Counsels humbly submit this memorandum on behalf of the Appellants before the Hon'ble Supreme Court of Arrakis for CA NO. 786/2024 & CA NO. 7/2025 & CA NO. 13/2025 & CA NO. 26/2025 under §53T of the Competition Act, 2002.

STATEMENT OF FACTS

BACKGROUND FACTS

Arrakis enacted the Arrakis Competition Act in 2002 to regulate market competition. The CCA was established under this statute to ensure fair competition. The CCA also enforces the ADCA. The Supreme Court of Arrakis hears appeals against decisions of the CCA. The Supreme Court regards the decisions of prominent antitrust regulators as having high persuasive value.

DISPUTE BETWEEN ASL & BA

The ASL was aimed to revitalise professional badminton in Arrakis. The league involved national and international players, who were split between franchises based on Arrakian cities. BA is the national federation responsible for regulating badminton in Arrakis. ASL sought to partner with BA for the first edition of its league. However, BA refused. Regardless, the first edition of ASL achieved major success.

After observing its success, BA collaborated with ASL for its second and third editions in exchange for a 6% revenue share. The partnership greatly increased the success of ASL and resulted in greater opportunities and financial rewards for players. However, the collaboration ended in 2021 owing to personal clashes between the management of ASL & BA.

BA scheduled a senior national camp in February 2022 that coincided with the final matches of ASL. BA announced that participation in the camp was mandatory for selection in international tournaments, forcing several players to withdraw from ASL. The scheduling also affected ASL's viewership figures. ASL sought to resolve the scheduling conflict with BA for its 2024 season. BA, though initially enthusiastic, backtracked and refused to change its calendar. Further, BA announced the launching of their own badminton league in 2026.

AGREEMENT BETWEEN DREAMSPAY & ASL

The market for sports fantasy applications is an **emerging market**. Enterprises in this market enter into agreements to produce officially licensed fantasy versions of their leagues. The market share of the different enterprises is attached here. Enterprises were not restricted from producing generic variants of the fantasy leagues. DreamsPay, a sports fantasy platform, entered into an exclusive licensing agreement with ASL in 2022 for an **8-year term** that prohibited generic versions of ASL's fantasy game. Tenet Sports produced an unauthorized, generic version of ASL's fantasy game in 2022. This prompted DreamsPay to take legal action for **IP infringement**.

Sl. No.	**Name**	**FY2023-24**	**FY 2022-23**	**FY 2021-22**	**Licenses held**
1	DreamsPay	41%	37%	32%	ASL
2	Tenet Sports	32%	34%	36%	APL
3	Los Alamos	14%	16%	18%	AHL
4	Edmund Games	9%	8%	9%	NFL
5	WayneX	4%	5%	5%	AKL

DREAMSPAY'S CLASSIFICATION UNDER THE ADCA

The ADCA was enacted in 2024. DreamsPay did not meet the quantitative requirements for being an SSDE and, thus, did not self-report. However, the CCA designated DreamsPay as an SSDE based on qualitative factors under the ADCA. Further, the CCA alleged that DreamsPay had engaged in **self-preferencing**. DreamsPay contested this classification, arguing that it did not fulfil the qualitative requirements.

DREAMSPAY'S ACQUISITION OF EDMUND GAMES

DreamsPay sought to acquire Edmund Games. DreamsPay notified the CCA of the acquisition, as required by the Competition Act. An IPC was created to facilitate the acquisition. Dr King Schultz, Chief Financial Officer of DreamsPay and Ms Beatrix Kiddo, Managing Director of Edmund Games, acted as advisors to the IPC. The CCA alleged that discussions involving Dr Schultz and Ms Kiddo violated standstill obligations under §6(2A) of the Competition Act and imposed penalties on DreamsPay.

PROCEEDINGS

ASL filed information with CCA in December 2023, alleging that BA's actions amount to an abuse of dominance under §4 of the Competition Act. In its final order, the CCA held that BA had not abused its dominance. The NCLAT upheld the CCA's findings. ASL now appeals before the Supreme Court **('CA No. 13/2025')**.

Tenet Sports has filed a complaint before the CCA accusing DreamsPay of violating §3(4) of the Competition Act. The CCA held that the agreement between ASL and DreamsPay had resulted in an appreciable adverse effect on competition (AEEC) and imposed penalties. DreamsPay and ASL appealed to NCLAT, which upheld the CCA's findings. Tenet Sports now appeals before the Supreme Court **('CA. No. 786/2024').**

Further, DreamsPay has challenged its classification as an SSDE in NCLAT, which upheld the CCA's order. DreamsPay now appeals before the Supreme Court **('CA. No. 26/2025')**.

Moreover, DreamsPay has challenged the CCA's findings with regard to its acquisition of Edmund Games to NCLAT, which upheld the CCA's order but reduced the imposed penalty. DreamsPay now appeals before the Supreme Court **('CA. No. 7/2025')**.

Owing to the similarity in issues and parties, the Supreme Court has decided to hear the appeals consecutively.

ISSUES FOR CONSIDERATION

ISSUE 1

Whether actions of BA with regards to dealings with ASL resulted in abuse of its dominant position under Section 4 of the Competition Act?

ISSUE 2

Whether the action of DreamsPay and ASL to enter into an exclusive dealing agreement restraining competitors from providing generic versions of the game amounted to an infringement of Section 3(4) of the Competition Act?

ISSUE 3

Whether DreamsPay qualifies as a SSDE under the ADCA?

ISSUE 4

Whether DreamsPay infringed Section 6(2A) of the Competition Act by allowing Dr Schultz and Ms Kiddo to act as advisors to the IPC, and actively discussing business activities and plans of Edmund Games before approval from the CCA?

SUMMARY OF ARGUMENTS

ISSUE 1

It is submitted that BA has abused its dominance under §4 of the Competition Act. BA qualifies as an 'enterprise' under the Act, regardless of its regulatory powers, owing to the economic nature of its activities. Further, the relevant product market is the 'market for organisation of professional badminton events in Arrakis' and not the 'market for organisation of badminton leagues in Arrakis' since the relevant forms of badminton have a common consumer base and consider the products to be substitutable. Furthermore, BA is a dominant enterprise in the relevant product market since it holds sole regulatory authority over badminton events and since badminton players have low countervailing buying power. Market revenue is not the sole indicator of dominance. Thus, contrary to BA's contentions, BA is not excused by its low market revenue. Lastly, by deliberately organizing a national camp that coincides with the final stages of ASL, BA has placed discriminatory conditions on sports players for international representation, reduced market access to ASL and tried to leverage its position to enter into the "market for services of badminton players in Arrakis". Further, BA's actions go against the interests of sports players and thus cannot be justified on the grounds of growth or development of the sport. Therefore, BA has abused its dominant position.

ISSUE 2

It is submitted that the exclusive dealing agreement between DreamsPay and ASL does not contravene §3(4) of the Act. Firstly, DreamsPay does not hold market power to cause an AAEC. The relevant market is broader than just badminton fantasy sports and encompasses the "market for fantasy sports games in Arrakis." DreamsPay's market share of 31%, along

with several other competitors, indicates that it does not possess the market power necessary to cause an AAEC.

Secondly, the agreement does not meet the criteria for AAEC under §19(3). It does not create barriers to entry, as multiple competitors remain active in the market. It also does not drive competitors out or cause anti-competitive market foreclosure, as the market remains competitive with various platforms. Furthermore, the agreement provides pro-competitive benefits, such as consumer benefits from increased choice and improved platform features, as well as technical and economic development in the industry.

Finally, the agreement is justified by objective business considerations, including solving the free-riding problem, protecting intellectual property, and incentivizing investment. Therefore, the exclusive dealing agreement is not anti-competitive and does not violate §3(4) of the Act.

ISSUE 3

It is submitted that DreamsPay is not a Systemically Significant Digital Enterprise (SSDE) under the ADCA since it does not meet the 16 requirements under legislation. DreamsPay did not employ its platform to create unnecessary reliance among users or limit users' capacity to switch to other services, as stipulated in §3(3)(v) and (vi). Also, it did not create obstacles to new businesses seeking to enter the market or expand, as stipulated in §3(3)(viii). Also, DreamsPay did not reduce the bargaining power of buyers or business partners in negotiating improved terms, as stipulated in §3(3)(xii).

DreamsPay’s market share is tenuous and has only grown recently; it has never held a position of dominance over time. It is also lacking in the substantial user base, financial resources, and overall size of the market required to meet the requirements outlined in §3(3)(i–iii). Furthermore, DreamsPay lacks lasting control of the market and the ability to suppress

competition, as outlined in §3(3)(iv), (vii), and (xv). As DreamsPay lacks the size, power, and market control required to qualify as a powerful digital platform, it does not meet the requirements for designation as an SSDE under the ADCA.

ISSUE 4

It is submitted that DreamsPay did not violate §6(2A) of the Competition Act, 2002 while acquiring Edmund Games. Firstly, it is respectfully submitted that assisting in mere future planning and strategizing as part of standard pre-merger activities does not, in itself, amount to gun-jumping. The exchange of information and preparation for integration, so long as it does not result in premature control or influence over the target company, is a legitimate aspect of merger proceedings. DreamsPay's conduct remained within these permissible boundaries, as their involvement was limited to facilitating an efficient transition post-acquisition.

Secondly, Dr Schultz and Ms Kiddo, who served solely as advisors to the Integration Planning Committee (IPC), did not materially influence or control the strategic or operational decisions of Edmund Games prior to the acquisition's completion. Their roles were confined to providing strategic insights for integration purposes without extending to any form of decisive influence over Edmund Games' internal management or decision-making processes.

Thirdly, the IPC meeting itself did not constitute anti-competitive collusion. There was no evidence of 'concerted action' or an 'agreement' between the parties to distort competition. This is further demonstrated by the fact that Edmund Games and DreamsPay placed separate bids, maintaining their competitive independence throughout the transaction.

WRITTEN ARGUMENTS

1. BA HAS ABUSED ITS DOMINANT POSITION UNDER §4 OF THE COMPETITION ACT

¶1. §4 of the Act prohibits any group or enterprise from abusing its dominant position in a relevant market.[1]

¶2. It is submitted that, *first*, BA qualifies as an 'enterprise' under the Act **[1.1]**. *Second*, the relevant market is the "market for organisation of professional badminton events in Arrakis" and not the "market for organisation of badminton leagues in Arrakis" **[1.2]**. *Third,* BA is a dominant enterprise in the relevant market **[1.3]**. *Fourth*, BA has abused its dominance in the relevant market **[1.4]**.

1.1. *BA qualifies as an 'enterprise' under the Act*

¶3. §2(h) of the Act defines an 'enterprise' as an organisation carrying out an economic activity.[2] An entity was considered an enterprise as it had an organisational role and generated revenue through the grant of media rights & sale of tickets.[3] Material records proving the economic nature of a sports regulator qualify it as an enterprise.[4]

¶4. *In casu*, BA had a profit motive as evidenced by its collaboration with BA & ASL in 2020 and 2022, wherein BA obtained 6% of the revenue earned by ASL.[5] Further, in 2022, BA sought to renegotiate the collaboration with ASL to obtain 10% revenue. Moreover, in 2024,

[1] Competition Act 2002, s4.

[2] Competition Act 2002, s2(h).

[3] *Surinder Singh Barmi v. The Board Of Control For Cricket In India*, Case No. 61/2010 [16].

[4] *Hemant Sharma & Others v. All India Chess Federation*, Case No. 79/2011 [26].

[5] Proposition, ¶8.

BA announced the launch of its own badminton league.[6] Therefore, BA is not merely a regulatory body but an 'enterprise' with an economic motive.

1.2. *The relevant market is the "market for organisation of professional badminton events in Arrakis," and not the "market for organisation of badminton leagues in Arrakis"*

¶5. §2(r) defines 'relevant market' in terms of geographical market, product market, or both.[7] The relevant geographic market is the market in Arrakis and both parties submit to this fact.[8]

¶6. §2(t) of the Act defines a relevant product market as products or services that a consumer can consider as substitutable.[9] The relevant product market is decided by the availability of substitutes in that market.[10] To determine substitution, the relevant consumer must be defined.[11]

¶7. It is submitted that, *first*, the final viewers of sports events are the relevant consumers **[1.2.1]**. *Second*, badminton is not substitutable by any other sport or entertainment program **[1.2.2]**. *Third*, the criterion of substitutability is not met if the relevant market is the "market for organisation of badminton leagues in Arrakis" **[1.2.3]**.

1.2.1. The final viewers of the sports event are the relevant consumers

¶8. The final viewers directly influence the commercial viability of the event and the returns of advertisers.[12] When Sports organisers sell media, sponsorship, and franchise rights, the

[6] Proposition, ¶12.

[7] Competition Act 2002, s2(r).

[8] Proposition, ¶1.

[9] Competition Act 2002, s12(t).

[10] *Hemant Sharma* (n 4) 32.

[11] Competition Act 2002, s2(t).

[12] *Shravan Yadav v. Volleyball Federation of India*, Case No. 01/2019 [23].

purchasers of such rights provide services ultimately consumed by the final viewers of the sport.[13]

¶9. *In casu*, ASL & other sporting leagues were streamed on TV and had substantial viewer bases.[14] After the success of ASL, badminton players were worshipped and earned huge sums of money.[15] These facts demonstrate that the sporting event's final viewers are the relevant consumers.

1.2.2. Badminton is not substitutable by any other sport or entertainment program

¶10. To determine the substitutability of two programmes, factors such as target audience, distinctive characteristics and temporal/spatial availability are taken into consideration.[16] When defining the relevant market, '*consumer preference'*,[17] & '*existence of specialized products'*,[18] are taken into consideration. Sport is not substitutable with other forms of general entertainment.[19] Every sport has unique distinguishable characteristics with a specific target audience.[20] They also have a distinct character that creates a strong consumer preference.[21]

¶11. *In casu,* ASL and BA are involved in the organisation of badminton events.[22] Badminton has unique characteristics and is not substitutable by other entertainment programmes or sports.

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[13] ibid.

[14] Proposition, ¶7.

[15] Proposition, ¶7.

[16] *Surinder Singh Barmi* (n 3) 33.

[17] Competition Act 2002, s19(7)(c).

[18] Competition Act 2002, s19(2)(e).

[19] *Shravan Yadav* (n 12) 24.

[20] *Hemant Sharma* (n 4) 36.

[21] *Surinder Singh Barmi* (n 3) 34.

[22] Proposition, ¶6.

Viewers of badminton programmes cannot be said to be viewers of other sports. Therefore, badminton is not substitutable with other sports or entertainment programmes.

1.2.3. The criterion of substitutability is not met if the relevant market is the "market for organisation of badminton leagues in Arrakis"

¶12. The relevant product market is dependent on the substitutability of a good or service.[23] If two products have a common consumer base, consumers consider the two products to be substitutable.[24]

¶13. *In casu,* the final viewers, that is, the consumers, are the same. Viewers who watch ASL are also the viewers who are likely to engage with the badminton events organised by BA. Therefore, the events organised by BA can be said to be substitutable by ASL and vice-versa. Further, the intermediate consumers, i.e., the badminton players, also remain the same. Therefore, the relevant product market is not the "market for organisation of badminton leagues in Arrakis."

1.3. ***BA is a dominant enterprise in the relevant product market.***

¶14. §19(4) of the Act lays down determining factors of dominance.[25] The sole and exclusive regulatory authority, extending to a selection of players, conducting tournaments, and placing restrictions on player participation, can be indicative of dominance.[26] Such authority may be proved in case of recognition or affiliation of the enterprise by/with an international regulatory

[23] Competition Act 2002, s2(t).

[24] *Mr. Ashish Ahuja v. Snapdeal.com* (Case No. 17 of 2014, CCI, 2014) [16].

[25] Competition Act 2002, s19(4).

[26] *Confederation of Professional Baseball Softball Clubs v. Amateur Baseball Federation of India,* Case No. 03/2021 [31].

body governing the sport.[27] The CCI also looks at other factors beyond those under §19(4), such as market dynamics.[28]

¶15. It is submitted that *firs*t, BA holds sole and exclusive regulatory authority **[1.3.1.]**. *Second*, Badminton players have low countervailing Buying Power. **[1.3.2]**; *Third*, Market revenue is not the sole indicator of dominance in a relevant market **[1.3.3]**.

1.3.1. BA holds sole and exclusive regulatory authority

¶16. The market share and the size and importance of an enterprise are relevant factors under §19(4).[29] Sports regulators are considered to have a dominant position by virtue of being the sole regulatory authority of a sport.[30]

¶17. *In casu*, BA is a national federation responsible for governing badminton in Arrakis.[31] WB recognises BA as an authorised representative of badminton in Arrakis.[32] BA enjoys the right to nominate representatives to international events and impose conditions on players.[33] Thus, BA enjoys sole and exclusive regulatory authority over badminton in Arrakis.

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[27] *Sh. Dhanraj Pillay and Others vs M/S Hockey India* (Case No. 73 of 2011, CCI, 2013); *Surinder Singh Barmi* (n 3) 5.

[28] *Mcx Stock Exchange Ltd. & Ors vs National Stock Exchange Of India Ltd.*, (Case No. 13 of 2009, CCI, 2011) [8].

[29] Competition Act 2002, s 19(4).

[30] *Shravan Yadav* (n 12) 30; *Confederation of Professional Baseball Softball Clubs* (n 26) 31; *Surinder Singh Barmi* (n 3) 37.

[31] Proposition, ¶6.

[32] Proposition, ¶6.

[33] Proposition, ¶9.

1.3.2. Badminton players have low Countervailing Buying Power

¶18. §19(4)(i) factors countervailing the buying power of the consumers.[34] Countervailing buying power refers to the power of the consumers to negotiate or bargain with the sellers.[35] The dependence of the consumer is indicative of low countervailing buying power.[36] Players of a sport are intermediate consumers whose interests must also be taken into account in a relevant market where viewers are the final consumers.[37]

¶19. *In casu*, badminton players are the intermediate consumers of badminton events. These players rely on BA as it is the sole regulatory authority of badminton events in in Arrakis.[38] With a short career span of 10–15 years, badminton players are highly vulnerable and dependent on sporting regulators' decisions.[39] Further, they directly rely on BA for nominations to international tournaments.[40] Thus, the facts demonstrate the low countervailing buying power of the badminton players.

1.3.3. Market revenue is not the sole indicator of dominance in a relevant market

¶20. The Respondent might argue that revenue should be considered as the sole or primary indicator of dominance in a particular market. However, economic power is only one of the

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[34] Competition Act 2002, s19(4)(i).

[35] K Colitti, 'Countervailing Buyer Power and Its Role in Competition Analysis' (2016) 12(2–3) European Competition Journal 361 <https://doi.org/10.1080/17441056.2017.1286877> accessed 13th March, 2025.

[36] Rahul Rai and others, *Legal & Economic Standards Used in Vertical Restraint & Abuse of Dominance Cases by the CCI: A Study* (20 November 2021) [140].

[37] *Sh. Dhanraj Pillay* (n 27) 131.

[38] Proposition, ¶6.

[39] Abián P, Simón-Chico L, Bravo-Sánchez A and Abián-Vicén J, 'Elite Badminton Is Getting Older: Ages of the Top 100 Ranked Badminton Players from 1994 to 2020' (2021) 18(22) *International Journal of Environmental Research and Public Health* 11779 <https://doi.org/10.3390/ijerph182211779> accessed 13 March 2025.

[40] Proposition, ¶9.

factors denoting dominance under §19(4).[41] Market dynamics are also considered when determining dominance.[42] The BCCI was held to be the de facto regulator of cricket and thus considered dominant in the market.[43] The CCI noted that even large advertisers with similar economic stature to Google were dependent on Google for their advertising.[44] Similarly, in the case of sporting events, private leagues are dependent on the regulators for survival.[45] Due to the presence of other competitors in the market, Uber could not use its market revenue to become dominant in the market as Uber's ability to act independently was clipped by competitors.[46] Even if an enterprise has 60% of the market share, it may not be dominant in the market due to the presence of competitors.[47]

¶21. *In casu*, BA is a national federation responsible for governing badminton events in Arrakis.[48] BA holds significant regulatory power over scheduling, and organising 85% of all professional badminton events in Arrakis, either directly or indirectly.[49] Contrary to BA's assertions,[50] the regulator is in a dominant position regardless of their revenue share. ASL neither has any scheduling power nor does it have the ability to influence the market in any viable manner. BA's scheduling, which led major ASL players to switch to BA events, further

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[41] Competition Act 2002, s19(4).

[42] *Mcx* (n 28) 8.

[43] *Surinder Singh Barmi* (n 3) 37.

[44] *Matrimony.Com Limited vs Google LLC & Others* (Case No. 07&30 of 2012, CCI, 2018) [124].

[45] *Surinder Singh Barmi* (n 3) 8.40.

[46] *Meru v. Uber India Syestems Pvt Ltd* (Case No. 96 of 2015, CCI, 2021) [37].

[47] Malaysian Aviation Commission, Draft Guidelines on Abuse of Dominant Position (December 2017) https://www.mavcom.my/wp-content/uploads/2017/12/Draft-Guidelines-on-Abuse-of-Dominant-Position.pdf accessed 13 March 2025 [3.12].

[48] Proposition, ¶6.

[49] Proposition, ¶12.

[50] Proposition, ¶12.

proves its influence.[51] Moreover, BA, as the only authority to send badminton players to international events such as the Olympics, is naturally going to be prioritised over ASL.[52] Therefore, although ASL might have a higher market revenue share, BA is still the dominant player in the market.

1.4. *BA has abused its dominance in the relevant market*

¶22. §4 of the Act prohibits abuse of dominance.[53] Abusive conduct that adversely affects & hinders competition.[54] A dominant enterprise has a positive obligation to ensure its conduct does not distort competition.[55]

¶23. §4(2) gives an exhaustive list of practices that are prohibited.[56] It is submitted that, *first*, BA has violated §4(2)(a)(i) by placing discriminatory conditions on players **[1.4.1]**. *Second,* BA has violated §4(2)(c) by reducing market access to ASL **[1.4.2]**. *Third*, BA has violated §4(2)(e) by trying to leverage dominance to enter BA has violated §4(2)(e) by leveraging its dominance to entry into the "market for services of badminton players in Arrakis" **[1.4.3]**. *Fourth*, BA's actions cannot be justified on grounds of the promotion or development of sports **[1.4.4]**.

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[51] Proposition, ¶10.

[52] Proposition, ¶9.

[53] Competition Act 2002, s4.

[54] Office of Fair Trading, "Abuse of a dominant position, Understanding Competition Law" (2004) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284422/oft402.pdf> accessed 13 March 2025.

[55] *Michelin NV v. Commission of the European Communities* (Case 83/313) [1983] OJ C322/81 [57]**;** *East India Petroleum Pvt. Ltd. v. South Asia Lpg Company Pvt. Ltd* (Case No. 76 of 2011, CCI, 2018) [56].

[56] Competition Act 2002, s4(2).

1.4.1. BA has violated §4(2)(a)(i) by placing discriminatory conditions on badminton players

¶24. §4(2)(a)(i) states that if an enterprise places an unfair or discriminatory condition in the purchase or sale of goods or services, it is considered an abuse of dominance.[57] A dominant player is able to dictate terms in an overwhelmingly one-sided matter such that the other party is left with a 'take it or leave it' proposition.[58]

¶25. *In casu*, as already established, the Badminton Players are the intermediate consumers in the relevant market.[59] BA had announced that players who would not be joining the senior camps would not be considered for selection in GC and EZC.[60] Further, in 2023, BA announced that only participants of its 2024 senior camps would be allotted an Olympic quota.[61] This forced players to choose between national representation and ASL's financial incentives, making it a coercive and discriminatory 'take it or leave it' proposition. Therefore, BA has violated §4(2)(a)(i).

[57] Competition Act 2002, s4(2)(a)(i).

[58] *Prachi Kohli v. WhatsApp LLC* (Case No. 5 of 2021, CCI, 2021) [136].

[59] See ¶19.

[60] Proposition, ¶10.

[61] Proposition, ¶10.

1.4.2. BA has violated §4(2)(c) by refusing market access to ASL

¶26. §4(2)(c) of the Act states that the denial of market access is an act of abuse of dominance.[62] Even a partial denial of market access is violative of §4(2)(c).[63] Monopolistic practices intending to maintain a monopoly can be regarded as a refusal of market access.[64]

¶27. *In casu*, BA had sought 10% of ASL's revenue in exchange for the accommodation of ASL into its schedule.[65] Further, BA had denied market access to ASL by deliberately scheduling the programs to ensure ASL lost its intermediate consumers, i.e., the badminton players, which in turn caused its dipping viewership. Moreover, in 2024, BA announced the creation of its own league.[66] The actions of BA can be seen as a refusal of market access.

1.4.3. BA has violated §4(2)(e) by leveraging its dominance to enter into the "market for services of badminton players in Arrakis"

¶28. §4(2)(e) of the Competition Act prohibits an enterprise or group from using its dominant position in one relevant market to enter into or protect another relevant market.[67] Leveraging refers to a situation where the conduct of an enterprise is felt in a market distinct from the one

[62] Competition Act 2002, s4(2)(c).

[63] *International Spirits and Wines Association of India v. Prohibition & Excise Department, Government of Andhra Pradesh,* Case No. 45/2021 [129].

[64] *Shri Shamsher Kataria vs Honda Siel Cars India Ltd* (Case No. 3 of 2011, CCI, 2014) [20].

[65] Proposition, ¶9.

[66] Proposition, ¶12.

[67] Competition Act 2002, s4(2)(e).

in which the defendant is said to be dominant.[68] §4(2)(e) requires the establishment of dominance in one market and usage of that dominance to enter into a different market.[69]

¶29. *In casu*, BA is dominant in the market for the '*organisation of professional badminton events in Arrakis.*[70] Badminton players provide a monetizable service through their skills.[71] BA and ASL, by hosting events, procure these services, creating a distinct market for player participation in competitive events.[72] BA's actions led to a *de facto* restriction on badminton players. By creating a calendar that overlaps with ASL's final matches,[73] BA forced badminton players to choose between playing in a professional league and representing their country. Representing one's country is prestigious and patriotic, making it highly appealing to athletes. By leveraging its regulatory authority, BA pressured players providing services to ASL to withdraw, restricting their professional opportunities. This amounts to leveraging under §4(2)(e) to enter into the relevant market.

1.4.4. BA's actions cannot be justified on grounds of growth or development of sports

¶30. Restrictions by sports associations are not anti-competitive if they serve the development of the sport or preserve its integrity.[74] However**,** restrictions that go beyond the inherent

[68] Patrick F. Todd, 'Digital Platforms and the Leverage Problem' (2019) 98(2) Nebraska LR <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?params=/context/nlr/article/3255/&path_info=211_Todd_NLR_98_2.pdf> accessed 13 March 2025.

[69] *Mcx* (n 28) 37.

[70] Proposition, ¶21.

[71] Proposition, ¶¶7,10.

[72] Proposition, ¶¶7,10.

[73] Proposition, ¶10.

[74] *Surinder Singh Barmi* (n 3) 42.

objective of protecting the integrity of the sport are disproportionate.[75] Reducing the available opportunities for players is detrimental to the development of the sports.[76]

¶31. *In casu*, it had only been a few years in the increase in popularity of badminton players due to ASL's success, and opportunities were still very few.[77] ASL was a massive earning opportunity for badminton players, and BA gave them the opportunity to represent the country.[78] With badminton's short career span and limited opportunities, forcing players to choose between ASL and BA's summer camps cannot be justified on the grounds of sports development.

¶32. Therefore, BA has abused its dominance under §4 of the Act.

[75] *Hemant Sharma* (n 4) 53.

[76] *Hemant Sharma* (n 4) 58.

[77] Proposition, ¶10.

[78] ibid.

2. THE EXCLUSIVE DEALING AGREEMENT BETWEEN DREAMSPAY AND ASL IS NOT IN CONTRAVENTION OF §3(4) OF THE ACT

¶33. §3(4)(c) of the Act holds a VR agreement in the form of an exclusive dealing agreement to be anti-competitive if it is found to have an AAEC.[79]

¶34. It is submitted that the Exclusive Dealing Agreement is not violative of §3(4).[80] *First,* DreamsPay does not have the market power to cause AAEC **[2.1]**. *Second***,** the agreement cannot be deemed to have an AAEC **[2.2]**. *Third,* the agreement is justified by objective business justifications **[2.3]**.

2.1. *DreamsPay does not have market power to cause AAEC in the relevant market*

¶35. The weighing of pro or anti-competitive effects in cases of VRs is only undertaken upon determining the market power of the undertaking in question.[81]

¶36. It is submitted that *first,* the relevant product market is the broader 'market for fantasy sports games in Arrakis' **[2.1.1]**. *Second*, DreamsPay does not have market power in the relevant market to cause an AAEC **[2.1.2]**.

2.1.1. The Relevant Product Market Is the Broader "Market for Fantasy Sports Games in Arrakis"

¶37. §2(t) defines a 'relevant product market' as a market in which the goods can be considered to be substitutable or interchangeable by a consumer.[82]

[79] Competition Act 2002, s3(4)(a).

[80] Competition Act 2002, s3(4)(c).

[81] Rahul Rai (n 36). [240].

[82] Competition Act 2002, s2(t).

¶38. *In casu,* fantasy sports games are substitutable as users are attracted to the monetary cash prizes attached to the game.[83] The fantasy sports game is an emerging market in Arrakis.[84] Fantasy sports consumers are drawn to the interface, monetary rewards, and competitive thrill. Since cricket and badminton fantasy games are interchangeable, the relevant market should encompass the broader 'fantasy sports games' market rather than just 'badminton fantasy sports games.'

2.1.2. DreamsPay does not have market power in the relevant product market

¶39. Vertical restraint agreements are not anti-competitive per-se.[85] The impact of such an agreement is determined based on the market power of the companies involved.[86] The existence of multiple competitors within the market is unlikely to hold an AAEC.[87] Dominance is unlikely if an enterprise has a market share below 40% in the relevant market.[88]

¶40. *In casu,* DreamsPay, at the time of the enactment of the exclusive deal, only had a 31% market share.[89] Further, there were multiple companies, including Tenet Sports, which had a

[83] Proposition, ¶17.

[84] Proposition, ¶17.

[85] 'Vertical agreements in Indian competition law' (Shardul Amarchand Mangaldas, March 4 2021) <https://www.amsshardul.com/insight/vertical-agreements-in-indian-competition-law/> accessed on 13 March 2025.

[86] *Swarna Properties v Vestas Wind Technology India Pvt Ltd* (Case No 24 of 2018, CCI, 10 March 2024) [13].

[87] *Anay Choksey v Religare Securities Ltd* (Case No 79 of 2013, CCI, 2014) [8].

[88] Commission, *'Guidance on the Commission's Enforcement Priorities in Applying Article 82 of the EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings'* [2009] OJ C45/7.

[89] Proposition, Annexure I.

bigger market share in 2020, amounting to 36%.[90] Therefore, DreamsPay did not have the market power to cause an AAEC.

2.2. *The agreement does not qualify as an AAEC*

¶41. §19(3) lays down various factors to ascertain AAEC.[91] The analysis of anti-competitive agreement comprises an assessment of negative and positive factors laid out in §19(3).[92] The overall impact on competition is determined by analysing all the factors.[93]

¶42. It is submitted that, *first*, the negative factors under §19(3) are not fulfilled **[2.2.1]**. *Second*, the agreement is justified by its pro-competitive effects. **[B]**.

2.2.1. The negative factors under §19(3) are not fulfilled

¶43. The existence of AAEC is demonstrated by the existence of the three negative factors as laid down in §19(3).[94] It is submitted that the agreement does not lead to AAEC because, *first*, the agreement does not create entry barriers **[i]**. *Second*, the agreement does not drive existing competitors out of the market **[ii]**. *Third*, the agreement does not cause an anti-competitive market foreclosure **[iii]**.

[90] Proposition, Annexure I.

[91] Competition Act 2002, s19(3).

[92] *Shamsher Kataria (n 64)* 20.6.11.

[93] *Automobiles Dealers Association And Ors. vs. Global Automobiles* (Case No. 33 of 2011, CCI, 3 July 2012).

[94] SM Dugar, *Guide to Competition Law*, vol 1 (Sudhanshu Kumar ed, 8th edn, LexisNexis 2020) 814.

2.2.1.1. The agreement does not create entry barriers

¶44. §19(3)(a) lays down 'entry barriers to new entrants' in the market as a factor causing AAEC.[95] The existence of certain barriers alone does not necessarily imply that they are adequate to obstruct timely, likely, and sufficient entry.[96] The rapid growth of a sector, along with the presence of multiple market players, indicates a lack of entry barriers.[97]

¶45. *In casu*, the market of fantasy sports applications has continued to expand, with competitors such as Tenet Sports, DreamsPay, Los Alamos and WayneX.[98] Clause 9 did not create an entry barrier, as multiple competitors remained in the market without any significant decline in market share.[99] These competitors continue to exist in the form of other sports fantasy games.[100] Moreover, only generic versions of ASL were prohibited, and competitors could still make badminton fantasy sports games that did not fall under this category.[101] Therefore, the agreement did not create any entry barriers.

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[95] Competition Act 2002, s19(3).

[96] Ioannis Lianos and others, Competition Law: Analysis, Cases, & Materials (1st ed,, Oxford University Press 2019).

[97] *United States v Syufy Enterprises* 903 F.2d 659 (9th Cir 1990).

[98] Proposition, ¶16.

[99] Proposition, Annexure I.

[100] Proposition, Annexure I.

[101] Proposition, ¶19.

2.2.1.2. The agreement does not drive existing competitors out of the market

¶46. §19(3)(b) of the act considers 'driving out existing competitors' out of the market as a factor causing AAEC.[102] The ready availability of other brands' consumer consumption indicated that a VR agreement did not drive competitors out of the market.[103]

¶47. *In casu*, the fantasy sports market in Arrakis remained dynamic, with Tenet Sports, Dreamspay, Los Alamos, and WayneX operating despite the exclusive dealing clause.[104] The presence of these players showed that the agreement did not eliminate competitors. They operated without significant market share loss, keeping the market sufficiently competitive.[105] Therefore, the agreement did not drive existing competitors out of the market.

2.2.1.3. The agreement does not cause anti-competitive market foreclosure

¶48. Anti-competitive foreclosure refers to actions restricting competitors' access to markets by effectively excluding them from competition.[106] 'Anti-competitive foreclosure' is distinct from mere foreclosure, where a dominant entity competes with its superior efficiency rather than restricting competition.[107] Assessing the substantiality of foreclosure requires consideration of factors such as the effect on competition, market power, etc.[108] The presence

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[102] Competition Act 2002, s19(3)(b).

[103] *Mr. Vijay Gopal vs Inox Leisure Ltd. & Other* (Case No. 29 of 2018, CCI, 2019) [27].

[104] Proposition, ¶16.

[105] Proposition, Annexure I.

[106] 'Foreclosure', *Concurrences Antitrust Dictionary* <https://www.concurrences.com/en/dictionary/foreclosure-117887> accessed 13 March 2025.

[107] Richard Whish and David Bailey, Competition Law (10th edn, OUP 2021).

[108] Tampa Electric Co v Nashville Coal Co 365 US 320 (1961).

of active competitors in the market suggests that competition remains effective and is not significantly impaired.[109]

¶49. *In casu*, the fantasy sports application market remained fairly competitive, with multiple players, including Tenet Sports, Los Alamos, WayneX, continuing to operate.[110] User engagement in fantasy sports applications was not concentrated in a single platform, and consumer choice was not affected.[111] Therefore, the agreement did not lead to anti-competitive foreclosure.

2.2.2. The Agreement Is Justified by its Pro-Competitive Effects

¶50. The presence of the positive factors, as laid down in §19(3), indicates that there is no AAEC.[112] Furthermore, a mere absence of these factors does not automatically cause AAEC.[113]

¶51. It is submitted that the agreement is justified and does not cause AAEC. *First*, the agreement results in accrual benefits to consumers **[2.2.2.1].** Second, the agreement improves production and distribution and promotes technical, scientific and economic development **[2.2.2.2]**.

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[109] *Fast Track Call Cab Pvt Ltd vs Ani Technologies Pvt Ltd* (Case No. 74 of 2015, CCI, 2015) [38].

[110] Proposition, ¶16.

[111] Proposition, ¶16.

[112] Competition Act 2002, s19(3)(d).

[113] SM Dugar (n 94) 468.

2.2.2.1. The agreement results in accrual benefits to consumer benefits

¶52. Accrual benefits to consumers are an important factor in determining the alleged AAEC of an agreement.[114] Vertical restraints are of crucial importance in expanding consumer choices by allowing producers to enter new markets and establish efficient distribution networks.[115]

¶53. *In casu*, the fantasy sports application market in Arrakis continued to thrive, with consumers having access to diverse platforms actively competing with each other.[116] The sub-clause in the agreement did not restrict consumer choice, as multiple alternatives remained accessible. The agreement allowed DreamsPay, alongside ASL, to improve platform features and user experience by having the exclusive incentive of official branding and licensing.[117] The continued presence of competitive platforms in the fantasy sports market promoted consumer benefits. Therefore, the agreement resulted in consumer benefits.

2.2.2.2. The agreement improves production and distribution and promotes technical, scientific and economic development

¶54. §19(3)(e) & (f) recognises improved production, distribution, and the promotion of technical, scientific, and economic development as pro-competitive benefits of VRs.[118] Historically, it has been established on multiple occasions that vertical restraints often exist to

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[114] Competition Act 2002, s19(3)(d).

[115] Oliver Budzinski, 'Pluralism of Competition Policy Paradigms and the Call for Regulatory Diversity' (1 October 2003) Philipps-University of Marburg, Volkswirtschaftliche Beitraege No 14/2003 <https://ssrn.com/abstract=452900> accessed 13 March 2025.

[116] Proposition, ¶16.

[117] Proposition, ¶19.

[118] Competition Act 2002, ss19(3)(e), 19(3)(f).

improve efficiency.[119] Constraints of such nature, while they may limit intra-brand competition, significantly help increase inter-brand competition.[120] Vertical restraints can be assessed for their potential to improve efficiency, even if they may primarily limit intra-brand competition.[121]

¶55. *In casu*, the agreement ensured exclusivity,[122] which in turn contributed to the improvement of the platform and consumer experience through its exclusivity, platform optimisation, reduced operational inefficiencies, etc. The standardisation allowed for improved technical integration and economic development within the industry. There is no evidence to suggest that the agreement deteriorated product quality or consumer options. Therefore, the agreement improved production and distribution without resulting in anti-competitive effects.

2.3. *The exclusive dealing agreement is justified by objective business justifications*

¶56. The CCI has accepted objective business justifications to uphold the validity of VR agreements in the past.[123]

¶57. It is submitted that, *first,* the exclusive dealing agreement solves the problem of free-riding **[2.3.1]**. *Second,* it protects the intellectual property considerations of ASL & DreamsPay **[2.3.2]**. *Third,* it incentivises investment **[2.3.3]**.

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[119] Vikas Kathuria, 'Vertical Restraints under Indian Competition Law: Whither Law and Economics' (2022) 10 J Antitrust Enforcement 194 <https://doi.org/10.1093/jaenfo/jnab002> accessed 13 March 2025.

[120] Richard Posner, 'The Chicago School of Antitrust Analysis' (1979) 127 UPaLRev 925.

[121] Tilottama Raychaudhuri, 'Vertical Restraints in Competition Law: The Need to Strike the Right Balance Between Regulation and Competition' (2011) 4 NUJS L Rev 609, 612.

[122] Proposition, ¶19.

[123] *Rahul Rai* (n 36) 209.

2.3.1. It solves the problem of free-riding

¶58. Exclusive agreements are objectively justifiable on grounds such as to solve the free-riding problem.[124] Free riding is the practice of an entity profiting from another's activities and endeavours without bearing any of the associated expenses.[125] Vertical restraints incentivise distribution agreements as the threat to the problem of free-riding could otherwise discourage distributors from making necessary investments.[126]

¶59. *In casu*, although generic versions lacked licensed team names and full player names, they relied on real-world stats, team performance, and game formats, making them functionally identical. Tenet Sports and others leveraged ASL's goodwill while avoiding licensing costs.[127] Licensed operators like DreamsPay paid for exclusive rights, while others avoided licensing fees, using the savings to offer better prizes and undercut legitimately licensed competitors.[128] The agreement was a necessary response to prevent competitors from unfairly profiting off its market investment and branding efforts. Therefore, the agreement was necessary to solve the problem of free-riding.

2.3.2. It protects the IP & trademark considerations of ASL & DreamsPay

¶60. §3(5) of the act enables an IP holder to impose certain reasonable conditions to protect its IP.[129] The CCI has accepted that exclusive agreements intended to protect intellectual property

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[124] *Shri Ghanshyam Das Vij vs M/S Bajaj Corp. Ltd. & Others* (Case No. 68 of 2013, CCI, 2013) [75].

[125] 'Free-riding', *Concurrences Antitrust Dictionary* <https://www.concurrences.com/en/dictionary/free-riding-117887> accessed 13 March 2025.

[126] Commission of the European Communities, 'Green Paper on Vertical Restraints in EC Competition Policy' (COM(96) 721 final, 22 January 1997) [205].

[127] Proposition, ¶17.

[128] Proposition, ¶17.

[129] Competition Act 2002, s3(5)(e).

are not anti-competitive.[130] A trademark proprietor can prevent third parties from using identical or similar signs that unfairly benefit from or harm the mark's distinctiveness or reputation, even without causing confusion, if done without the proprietor's consent.[131]

¶61. In *casu,* ASL was the first to have a badminton league in the country of Arrakis which had a specific format.[132] ASL has the right to restrict the recreation of its format and league in the digital sphere. DreamsPay has officially collaborated with ASL to make the badminton fantasy sports game.[133] DreamsPay has the right to its own intellectual property and can reasonably restrict the recreation of its product by other competitors. DreamsPay has only restricted the creation of a generic version of ASL fantasy sports games,[134] and therefore, the clause should be protected and not deemed to be anti-competitive.

2.3.3. The agreement incentivises investment

¶62. Reciprocal promises of exclusivity, which result in a case of refusal to deal, are justified if they incentivise investment.[135] Agreements that allow for incentivising a company to step into a market can be justified.[136] A restrictive agreement aimed at popularising a less popular

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[130] *M/S Karni Communication Pvt Ltd v Haicheng Vivo Mobile (India) Pvt Ltd* (Case No 35 of 2018, CCI, 2019) [24].

[131] Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 on the approximation of the laws of the Member States relating to trade marks [2015] OJ L336/1.

[132] Proposition, ¶19.

[133] Proposition, ¶19.

[134] Proposition, ¶6.

[135] *Rahul Rai (n 36)* 213.

[136] *Jindal Steel & Power Ltd vs Steel Authority Of India Ltd* (Case No. 11 of 2009, CCI, 2011) [137].

sports like volleyball can be considered to be justified if it does not cause total restriction in the market. [137]

¶63. *In casu*, the licensing agreement can be considered a reciprocal promise of exclusivity. ASL was the exclusive partner of DreamsPay's badminton fantasy game and was not allowed to partner up with other companies.[138] This fantasy game was aimed at popularising badminton, which became popular relatively recently compared to other sports like cricket.[139] Therefore, the agreement was justified as it incentivised investment.

¶64. Therefore, DreamsPay and ASL have not caused any AAEC due to their exclusive dealing agreement.

[137] *Shravan Yadav* (n 12) [38].

[138] Proposition, ¶19.

[139] Proposition, ¶16.

3. DREAMSPAY DOES NOT QUALIFY AS AN SSDE UNDER ADCA

¶65. An enterprise is an SSDE if such an enterprise has a significant presence in a Core Digital Service, based on the 16 qualitative factors under §3(3) of the ADCA.[140]

¶66. DreamsPay does not meet the 16 qualitative criteria for the following reasons, *first,* the permissibility of generic versions in the industry indicates that DreamsPay is not an SSDE since it does not meet the qualitative requirements under §3(3)(v), (vi), (ix), (x), (viii) and (xii) of the ADCA **[3.1]**. *Second,* the inference from the market share statistics indicates that DreamsPay is not an SSDE since it does not satisfy the qualitative thresholds under §3(3)(i)–(iv), (vii), (xiii) and (xv) of the ADCA **[3.2]**.

3.1. *The permissibility of generic versions in the industry indicates that DreamsPay is not an SSDE since it does not meet the qualitative requirements under §3(3)(v), (vi), (ix), (viii), (x) and (xii) of the ADCA*

¶67. *First*, DreamsPay does not restrict the independence of business and end users by integrating multiple sides of the market under §3(3)(v) & (vi) **[3.1.1]**.[141] *Second,* DreamsPay did not pose barriers to entry and expansion under §3(3)(viii) **[3.1.2]**.[142] *Third,* DreamsPay did not use network effects to lock in users under §3(3)(ix) & (x) **[3.1.3]**.[143] *Fourth,* DreamsPay did not restrict countervailing buying power in the market under §3(3)(xii) **[3.1.4]**.[144]

[140] ADCA, s3(3).

[141] ADCA, ss3(3)(v), 3(3)(vi).

[142] ADCA, s3(3)(viii).

[143] ADCA, s3(3)(ix).

[144] ADCA, s3(3)(xii).

3.1.1. DreamsPay does not restrict the independence of business and end users by integrating multiple sides of the market under §3(3)(v) & (vi)

¶68. DreamsPay is not an SSDE by interlinking or integrating multiple sides of the market.[145] §3(3)(vi) classifies those firms on which end users and business users are dependent as SSDEs.[146] Users are ranked based on their strategies, sports knowledge, and live-game analysis.[147] In the case of multi-sided markets, intermediaries possess relative market power when other undertakings depend on their services to gain access to supply and sales markets with no reasonable alternative.[148] Widespread and commonly used digital services mostly directly intermediate between business users and end users through the multi-sidedness of these services.[149] Multi-homing refers to a situation where users tend to use several competing platform services in parallel.[150] A lack of multi-homing can have a detrimental effect on the end users' and business users' choices.[151] In order to promote multi-homing, the business users of those gatekeepers should be free to choose the distribution channel that they consider the most appropriate.[152]

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[145] ADCA*,* s3(3)(v).

[146] ADCA, s 3(3)(vi).

[147] Proposition, ¶24.

[148] Committee on Digital Competition Law, 'Report of the Committee on Digital Competition Law' (Ministry of Corporate Affairs, Government of India, 2024) 45; Act Against Restraint of Competition, s20(1) (Germany).

[149] Council Regulation 2022/1925 of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) [2022] OJ L265/1, [13].

[150] E Barcevičius, D Caturianas, A Leming and G Skardžiūtė, *Multi-homing – Obstacles, opportunities, facilitating factors – Analytical paper 7* (European Commission: Directorate-General for Communications Networks, Content and Technology, Publications Office, 2021) <https://data.europa.eu/doi/10.2759/220253> accessed 13 March 2025.

[151] ibid [2]

[152] ibid [40].

¶69. *In casu,* generic versions, which were popularly accepted by users, were allowed to stimulate competition in the market.[153] Tenet Sports had the licensing rights for APL games.[154] During the investigation period (2021–2024), the ASL, the only sporting tournament that DreamsPay had official licensing for, posted the lowest ratings in its history.[155] This would indicate a lack of engagement in ASL games on DreamsPay as users would have to perform live-game analysis, which would be impossible without viewership. However, this period witnessed consistent growth for DreamsPay year-on-year.[156] This may be attributed to the ability of DreamsPay to offer lucrative prizes in other sports using generic versions. All the players in the market could use such generic versions in equal measure. Further, sports leagues also had the choice to pick their platform, which is demonstrated by the APL-Tenet Sports agreement. The users were provided with ample choice and freedom to choose platform services. This clearly points towards sufficient multi-homing and independence within the market. Therefore, DreamsPay is not an SSDE under §3(3)(v) & (vi) as it does not restrict independence through its position as an intermediary.

3.1.2. DreamsPay did not pose a barrier to entry and expansion as per §3(3)(viii)

¶70. §3(3)(viii) states that firms that pose a barrier to entry or expansion are SSDEs.[157] This includes marketing costs, data leveraging barriers, economies of scale and scope barriers and the high cost of substitutable goods or services for end users or business users.[158] A typical

[153] Proposition, ¶17.

[154] Proposition, ¶20.

[155] Proposition, ¶¶19, 11.

[156] Proposition, Annexure I.

[157] ADCA, s3(3)(viii).

[158] ADCA, s3(3)(viii).

fantasy sports app consists of free and paid contests that users are free to choose from.[159] Fantasy sports users tend to explore several sports on fantasy sports apps based on their seasonality.[160] Once the size of a firm grows, thereby increasing the data collected, there is a significant networking effect tipping in their favour.[161] Increase in capacity and retention of users increases data collected.[162]

¶71. *In casu*, marketing costs were not imposed by virtue of DreamsPay's position in the market. The increase in marketing costs are probably attributable to the rise in popularity of the badminton players and their endorsement of FMCG brands.[163] The seasonal nature of the fantasy sports industry would indicate that any data leveraged would be futile as the industry is volatile in nature.[164] As part of a recently emerging industry, DreamsPay could not have had enough time to collect sufficient data to gain a competitive, data-driven edge.[165] Users do not undertake any costs in substituting one good with another as the fantasy sports industry permits players to play games that are free of cost. A low scale of resources in a nascent industry would

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[159] Federation of Indian Fantasy Sports (FIFS) and Deloitte, *Fantasy Sports: Creating a virtuous cycle of sports development* (Deloitte, February 2022), [11].

[160] ibid [8].

[161] Dr. Abha Yadav and Mr. Tarun Donadi, '*Competition Law and Significance of Data in Determination of Market Position*' (2021) 6(1), ICLR <http://iclr.in/wp-content/uploads/2024/03/ICLR-Volume-61-Article-3-pp-43-56.pdf> accessed 13 March 2025 [43].

[162] Fabiana Di Porto and Gustavo Ghidini, '*Big Data between privacy and competition: dominance by exploitation? Which remedies?*' (2018) 5 ASCOLA <https://www.law.nyu.edu/sites/default/files/upload_documents/Di%20Porto%20and%20Ghidini.pdf> accessed 13 March 2025.

[163] Proposition, ¶7.

[164] Federation of India (n 159) [8].

[165] Moot Proposition, ¶¶ 16, 17.

make it improbable for DreamsPay to enjoy scale effects.[166] Therefore, DreamsPay does not create barriers to entry and expansion.

3.1.3. DreamsPay does not use network effects to lock in users under §3(3)(ix) & (x)

¶72. §3(3)(ix) assesses the extent of the end user lock-in and switching costs, including behavioural biases while switching.[167] §3(3)(x) classifies firms that experience data-driven advantages and network effects as an SSDE.[168] Platforms use network effects to lock in their consumers within their service ecosystem to obtain market control.[169] A firm shows strong network effects when a growing end-user base attracts more business users through a positive feedback loop.[170] Platforms tend to create an ecosystem to entrench their position in the market further, giving rise to anti-competitiveness.[171] Multiple interdependent segments in an ecosystem lock in consumers.[172]

¶73. *In casu*, DreamsPay acts as an intermediary between the sports tournaments and the consumers themselves.[173] In this restricted sphere, generic alternatives make it impossible for DreamsPay to lock in consumers, as they can freely switch to other platforms without restrictions. The retention and increase of users are due to the lucrative prizes DreamsPay has

[166] Moot Proposition, ¶7.

[167] ADCA, s3(3)(ix).

[168] ADCA, s3(3)(x).

[169] Abir Roy, '*Competition law in India: A Practical Guide'* (2nd Edn, Kluwer Law International, 2024) [449].

[170] *Apple - iPadOS* (Case DMA.100047) Commission Decision C (2024) 2500 [2024] OJ C, C/2024/4374 4.7.2024.

[171] Abir Roy (n 169).

[172] Abir Roy (n 169) [448].

[173] Proposition, ¶24.

been able to offer.[174] User engagement is attributed to recommendations of such contests and not by using consumer data.[175] Therefore, DreamsPay does not lock in consumers using network effects or data.

3.1.4. DreamsPay did not restrict countervailing buying power in the market under §3(3)(xii)

¶74. Firms that do not allow countervailing buying power in the market are SSDEs under §3(3)(xii).[176] Countervailing buying power refers to situations where buyers use their power to resist attempts of firms with a high degree of seller power to increase prices.[177] End users and customers must have a reasonable alternative in choosing their platforms.[178] The business users are fully dependent on the platform, which is perceived as non-substitutable when they lack countervailing buying power.[179] Further, end users must also feel that they do not have an alternative.[180]

¶75. *In casu*, DreamsPay does not hinder the countervailing buying power of other firms. Sports leagues had alternatives to choose to enter into licensing agreements with. Tenet Sports, a competing firm, entered into a licensing agreement with APL.[181] Business users, thereby, were free to choose their fantasy sports partners. Further, generic versions offered by

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[174] Proposition, ¶17.

[175] Proposition, ¶27.

[176] ADCA, s3(3)(xii).

[177] Ioannis Kokkoris, '*Buyer Power Assessment in Competition Law: A Boon or a Menace?*' (2006) 29(1) World Competition <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2896430> accessed 13 March 2025.

[178] *Umar Javeed vs. Google LLC* (Case No. 39 of 2018, CCI, 2022) [123].

[179] ibid [124].

[180] ibid [127].

[181] Proposition, ¶20.

competing companies also gave end users ample choice to play whichever sports fantasy leagues they wanted.[182] Therefore, DreamsPay did not hinder the countervailing buying power of competing firms.

3.2. *The division of market share between DreamsPay and its competitors indicates that DreamsPay is not an SSDE as it does not meet the qualitative requirements under §3(3)(i), (ii), (iii), (iv), and (vii) of the ADCA*

¶76. The importance of an enterprise's market share reduces with the amount of time the market share was held.[183] Further, the importance of an enterprise's market share reduces with the difference in market share between competitors in the market.[184]

¶77. *In casu*, the relevant market deals with "sports fantasy applications."[185] DreamsPay had a market share of 41% in the FY 2023–2024, while Tenet Sports had a market share of 32% in the same financial year.[186] DreamsPay has held this market share only for a year, since just two years ago, Tenet Sports held the highest market share in the relevant market.[187]

¶78. *First,* the size, resources and volume enjoyed by DreamsPay indicate that it is not an SSDE under §3(3)(i) & (ii) **[3.2.1]**. *Second*, DreamsPay does not possess a significant number of end users as per §3(3)(iii) **[3.2.2]**. *Third,* DreamsPay does not possess significant economic power or monopoly under §3(3)(iv) & (vii) **[3.2.3]**. *Fourth,* the market structure of the relevant

[182] Proposition, ¶17.

[183] Office of Fair Trading (n 54).

[184] ibid.

[185] Proposition, ¶17.

[186] Proposition, Annexure I.

[187] Proposition, Annexure I.

market does not indicate that DreamsPay is a significant enterprise, as required by §(3)(xv) **[3.2.4].**

3.2.1. The size, resources and volume of commerce enjoyed by DreamsPay indicate that it is not an SSDE under §3(3)(i) & (ii)

¶79. §3(3)(i) states that an enterprise's commerce volume determines its significance.[188] The 'volume of commerce' is a synonym for the 'sales volume' of an enterprise.[189] When there is no clear metric to determine the "units sold" by an enterprise, market share for the enterprises in the relevant market is calculated in terms of revenue.[190] §3(3)(ii) states that the size and resources of an enterprise determines its significance.[191] The size of an enterprise is primarily measured by the number of employees it employs.[192] The resources of an enterprise typically refer to the capital owned by the enterprise.[193] A higher market share indicates a higher revenue,[194] which allows a company to increase employment and grow its assets.[195] Thus, there exists a direct correlation between size, resources and market share.

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[188] Competition Act 2002, s3(3)(i).

[189] 'Sales volume', Cambridge Business English Dictionary (Cambridge University Press, 2011).

[190] 'India Fantasy Sports Market Size & Share Analysis' (2025) <https://www.mordorintelligence.com/industry-reports/india-fantasy-sports-market> accessed 13 March 2025.

[191] Competition Act 2002, s3(3)(ii).

[192] Statistics Explained, 'Enterprise size' (Eurostat, 2021) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Enterprise_size> accessed 13 March 2025.

[193] *Belaire Owners' Association v. DLF Limited* (Case No. 19 of 2010, CCI, 2013) [5].

[194] 'India Fantasy Sports Market Size & Share Analysis' (n 190).

[195] The Donor Committee for Enterprise Development, 'Increased productivity / revenues lead to increased employment' <https://www.enterprise-development.org/what-works-and-why/evidence-framework/increased-productivity-revenues-employment/> accessed 13 March 2025

¶80. *In casu*, the emerging nature of the market and the existence of generic versions indicate that there is competitive pricing in the market for sports fantasy applications. Thus, it is concluded that there is no extreme difference in price between the games hosted by DreamsPay and its competitors. It then follows that the enterprises' market share and sales volume in the relevant market will have a direct correlation. DreamsPay's low market share and strong competition show it lacks the size, resources, and commerce volume to be a significant market player. Even if DreamsPay's market share is deemed to be significant, it does not possess significant size or resources. DreamsPay's market share was 37% in the FY2022–2023 and 32% in the FY2021–2022. In this FY, Tenet Sports held a market share 4% higher than DreamsPay.[196] DreamsPay's recent emergence as the largest holder of market share in the relevant market means that it did not have the time to capitalize on its increased revenue.

3.2.2. DreamsPay does not possess a significant number of end users under §3(3)(iii)

¶81. §3(3)(iii) states that the number of end users of an enterprise determines its significance.[197] When there is no extreme difference in consumer retention and average purchase value between market players, there is a direct correlation between end users and the revenue and, consequently, a company's market share.

¶82. *In casu*, since market share correlates with end users, its distribution among enterprises reflects how consumers are spread across different applications. The market's emerging nature and availability of generic versions make it easier for consumers to switch between applications. This keeps the market volatile and prone to changes in consumer behaviour. Further, the metric of 'active end users' must be considered.[198] 'Active end users' can be

[196] Proposition, Annexure 1.

[197] Competition Act 2002, s3(3)(iii).

[198] Digital Markets Act 2022, art 3(2)(b).

defined as the number of unique users of a service in a month.[199] In fantasy sports games, end users can be split on the basis of whether they consider fantasy sports a game of skill or chance. Approximately 21% of users fall under the former category, who also display longer amounts of participation and higher spending.[200] The rest of the players are labelled as 'casual players', have minor spending and do not show regular interaction with fantasy sports.[201] It then follows that a significant portion of 'casual players' will not fall into the category of active end users. Therefore, DreamsPay does not possess a significant number of end users.

3.2.3. DreamsPay does not possess significant economic power or monopoly under §3(3)(iv) & (vii)

¶83. §3(3)(iv) states that the economic power of an enterprise determines its significance.[202] 'Market power' is the ability of a firm to raise prices without facing a proportionate decrease in sales.[203] Economic power is understood to be synonymous with market power.[204] The CCI has noted that all else being equal, a higher market share will lead to higher market power.[205] Thus, there is a direct correlation between market share and market power.

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[199] General Secretariat of the Council, 'Draft Annex – DMA' (2021) WK 11038/2021 INIT, <https://mcusercontent.com/eadd815aa84a99cfc5f5116ec/files/60749f56-c346-04f5-042d-edb1a9fcfade/2021_09_27_dma_conseil_annexe_utilisateurs_mensuels.pdf> accessed 13 March 2025

[200] Lee K. Farquhar and Robert Meeds, 'Types of Fantasy Sports Users and Their Motivations' (2007) 12 J Computer-Mediated Communication 1208.

[201] ibid.

[202] Competition Act 2002, s3(3(iv).

[203] *Jefferson Parish Hosp. Dist. No. 2 v. Hyde,* [1984] 2 US 466 [27].

[204] Wallace C Peterson, 'Market Power and the Economy' (Kluwer Academic Publishers 1988) [55].

[205] Meloria Meschi, 'Assessing the Importance of Market Power in Competition Investigations' <https://www.cci.gov.in/public/images/economicconference/en/2assessing-the-importance-of-market-power-in-competition-investigations1652334908.pdf> accessed 13 March 2025.

¶84. §3(3)(vii) lays down that firms that acquire monopoly status by virtue of being a government company or a public sector enterprise or otherwise are to be classified as SSDEs.[206] A monopoly requires an undertaking to hold significant economic strength, allowing it to act independently of competitors, customers, and consumers.[207] Thus, a monopoly requires a high degree of market power.

¶85. *In casu*, it is established that DreamsPay's market share of 41% is not significant.[208] It then follows that whatever market power it enjoys consequently also does not confer significance on it. Prices in emerging markets remain competitive as consumers can easily switch between companies for goods or services. Thus, DreamsPay does not possess a significant ability to control prices. DreamsPay does not possess significant market power. Therefore, DreamsPay cannot enjoy a monopoly over the relevant market.

3.2.4. The market structure of the relevant market does not indicate that DreamsPay is a significant enterprise as per §3(3)(xv)

¶86. §3(3)(xv) states that the market structure of the relevant market determines whether an enterprise is an SSDE.[209] When a market is of recent origin, no enterprise enjoys a durable or entrenched position. Further, enterprises in such markets are competitive.[210] When enterprises

[206] Competition Act 2002, s3(3)(vii).

[207] Case 27/76 *United Brands Company v. Commission of the European* Communities [1978] ECR 00207 [65].

[208] See ¶83.

[209] Competition Act 2002, s3(3)(xv).

[210] OECD, 'Monopolisation, Moat Building and Entrenchment Strategies – Background Note' (2024) <https://one.oecd.org/document/DAF/COMP/WP3(2024)1/en/pdf> accessed 13 March 2025.

are competitive, profit margins tend to be lower.[211] Competitive markets also tend to be volatile.[212]

¶87. *In casu*, the market for fantasy sports leagues involves a product of recent origin.[213] Thus, no enterprise enjoys a durable or entrenched position in the relevant market. As a consequence, enterprises in this market are competitive. Further, profit margins are low and the market is volatile. All these factors combined demonstrate that no firm can enjoy a position of significance.

¶88. Therefore, the market structure demonstrates that DreamsPay is not a significant enterprise.

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[211] Kristina Russo, 'What Is a Good Retail Profit Margin?' (2025) <https://www.netsuite.com/portal/resource/articles/accounting/retail-profit-margins.shtml> accessed 13 March 2025.

[212] Hussein Abdoh and Oscar Varela, 'Product market competition, idiosyncratic and systematic volatility' [2017] 43 Journal of Corporate Finance <https://www.sciencedirect.com/science/article/abs/pii/S0929119917301025> accessed 13 March 2025

[213] Proposition, ¶17.

4. DREAMSPAY DID NOT INFRINGE §6(2A) OF THE ACT

¶89. DreamsPay did not infringe §6(2A),[214] of the Act by allowing Dr Schultz and Ms Kiddo to act as advisors to the IPC.

¶90. It is submitted that the acquisition was not consummated before regulatory approval. *First*, future planning and strategizing do not amount to Gun Jumping **[4.1].** *Second*, Dr Schultz and Ms Kiddo did not materially influence Edmund Games' decisions and operations **[4.2].** *Third*, the act of bidding separately does not amount to coordinated business transactions **[4.3].**

4.1. Future planning and strategizing do not amount to gun jumping

¶91. As per §43A of the Competition Act, 2002, substantive gun-jumping occurs when an enterprise breaches standstill obligations by prematurely giving effect to the transaction before CCI approval.[215] Comprehensive, proactive planning with information exchange is crucial in acquisition activities to ensure successful transactions.[216] Purely unilateral actions and integration planning are not considered gun-jumping.[217] The acquirer has a legitimate interest in limited oversight over the target while the merger review is pending.[218] Competitively sensitive information must not be exchanged between competitors outside of clean team

[214] Competition Act 2002, s6(2A).

[215] Competition Act 2002, s43A.

[216] Paul A Pautler, 'The Effects of Mergers and Post-Merger Integration: A Review of Business Consulting Literature' (2003) <http://www. ftc.gov/be/rt/ businesreviewpaper.pdf> accessed 13 March 2025.

[217] 'How to avoid the gun-jumping fever' (Dentons, Dec 17 2019) <https://www.dentons.com/en/insights/articles/2019/december/17/how-to-avoid-the-gun-jumping-fever> accessed on 13 Mar, 2025.

[218] European Commission: Directorate-General for Competition, *Competition Merger Brief*, Issue 1/2018 (July 2018) <https://data.europa.eu/doi/10.2763/84661> accessed 13 March 2025 [15].

structures.[219] Commercially sensitive information includes prices, customer lists, production costs, capacities and investment, marketing, or strategic plans.[220]

¶92. *In casu*, the IPC was set up with Dr Schultz and Ms Kiddo as advisors to the IPC, given their positions and their knowledge of their respective companies.[221] They did not discuss or influence the IPC or vote in agendas but rather were present to clarify questions regarding the transactions.[222] The meeting concerning the NFL bid was inconclusive.[223] No concrete plan or strategy was agreed upon that influenced Edmund Games' actions. Their participation in joint bid discussions aimed to assist IPC with future planning and strategy rather than coordinate competitive behaviour.[224] No commercially sensitive information on individual plans or strategies was exchanged, and the meeting only discussed the feasibility of a future joint bid.[225] Therefore, Dr Schultz and Ms Kiddo only assisted in pre-merger integration planning and did not indulge in information exchange. Therefore, §6(2A) was not violated.

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[219] Thomas Wilson 'Integration Planning and Pre-closing conduct: gun jumping risks'(*Kluwer Competition Law Blog,* 29 June 2017) <https://competitionlawblog-kluwercompetitionlaw-com.peacepalace.idm.oclc.org/2017/06/29/integration-planning-pre-closing-conduct-gun-jumping-risks/> accessed on 13 March 2025.

[220] ibid.

[221] Proposition, ¶¶29, 30.

[222] Proposition, ¶33.

[223] Proposition, ¶34.

[224] Proposition, ¶34.

[225] Proposition, ¶34.

4.2. Dr Schultz and Ms Kiddo did not control Edmund Games' decisions before CCA approval by materially influencing them

¶93. Explanation (a) to §5 of the Act defines control as the ability to exert material influence over the management of affairs or strategic commercial decisions.[226] During the time before merging, parties must maintain separate control.[227] Material influence, which is the lowest threshold, implies the presence of factors such as structural/financial arrangements to exercise control over the target company.[228] The exercise of control over strategic and commercial decisions is based on its nexus with the likely economic behaviour of the target.[229] Control is the possibility of exercising material influence rather than its actual exercise.[230] In its decisional practice, the CCI has not considered a bundle of rights as conferring control unless one or more of such rights is/are Strategic Rights.[231] Such rights allow an investor to participate in the day-to-day management and affairs of the business.[232]

¶94. *In casu*, the role of Dr Schultz and Ms Kiddo was confined to strategic input and facilitation of financial guarantees.[233] Further, they did not vote, influence voting, or express

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[226] Competition Act 2002, s5(a); Competition and Markets Authority, Mergers: *Guidance on the CMA's Jurisdiction and Procedure* (CMA2, 2024) [4.17].

[227] Stephane Dionnet and Pauline Giroux, 'Gun Jumping' (*Skadden*) <https://www.skadden.com/-/media/files/publications/2017/01/gun_jumping#:~:text=Substantive%20gun%20jumping%20occurs%20when,parties%20to%20a%20merger%20transaction> accessed 13 March 2025.

[228] UltraTech Cement Limited, 'Notice under Section 6(2) of the Competition Act, 2002' (Combination Regn No C-2015/02/246,CCI). [12.10].

[229] Abir Roy, *Competition law in India: A Practical Guide* (2nd Edn, Kluwer Law International, 2024) [293].

[230] *In re: Proceedings against Bharti Airtel Limited and Lion Meadow Investment Limited under Section 43A of the Competition Act, 2002*, CCI (2023) [37-40].

[231] ibid, [19].

[232] ibid.

[233] Proposition, ¶31.

their opinions on the agendas of IPC meetings.[234] The meeting regarding the NFL bid in which Dr Schultz and Ms Kiddo participated was inconclusive in nature.[235] The financial guarantee executed does not correspond to a financial arrangement that exerts control or restricts the activities of Edmund Games.[236] Further, the guarantee was merely facilitated, and Dr Schultz and Ms Kiddo did not provide the guarantee themselves.[237] Edmund Games' economic behaviour indicates that there was no control by DreamsPay since they placed their bid for the NFL in competition with DreamsPay.[238] Moreover, the limited role of the two advisory members suggests they lacked involvement in Edmund Games' daily operations during the standstill period.[239] Therefore, DreamsPay did not materially influence Edmund Games through the conduct of Dr Schultz and Ms Kiddo.

4.3. The discussions in the IPC meeting did not constitute anti-competitive collusion

¶95. Antitrust rules impose a standstill obligation to prevent premature coordination and pre-closing integration, which occur when merging parties coordinate their business operations or exchange competitively sensitive information before regulatory approval.[240] However, they do not prohibit all forms of integration planning before regulatory approval.[241] Integration

[234] Proposition, ¶31.

[235] Proposition, ¶34.

[236] Proposition, ¶33.

[237] Proposition, ¶31.

[238] Proposition, ¶34.

[239] Proposition, ¶33.

[240] 'Antitrust & Your Deal: Pre-Closing Conduct Matters' (Goodwin Procter LLP, 5 May 2016) <https://www.goodwinlaw.com/en/insights/publications/2016/05/05_03_16-antitrust-and-your-deal_preclosing> accessed 13 March 2025.

[241] Thomas Obersteiner, 'Pre-Merger Integration Planning - Antitrust Law in the Context of Strategic Transactions with Competitors' (2020) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3515733> accessed 13 March 2025.

planning before regulatory approval and closing can yield efficiencies without necessarily restricting competition.[242]

¶96. It is submitted that, *first*, there was a lack of 'agreement' or 'concerted action' between DreamsPay & Edmund Games to manipulate the bidding process **[A]**. *Second*, DreamsPay & Edmund Games placed independent bids, maintaining competitive conduct. **[B]**.

4.3.1. There was a lack of 'agreement' or 'concerted action' between DreamsPay & Edmund Games to manipulate the bidding process

¶97. §3(3) of the Act presumes that agreements that determine prices, limit supply, allocate markets, or involve collusive bidding are anti-competitive.[243] Evidence of concerted actions or meeting of minds is required to establish an anti-competitive agreement.[244] An agreement can be established when "*a concert of action is contemplated*" and the concerned parties "*conform to that arrangemen.t*"[245] Evidence that rules out the possibility of independent action must be present.[246] Direct or circumstantial proof that the parties had a conscious commitment to a common scheme designed to achieve an unlawful objective needs to be presented.[247] A concerted practice is characterised by way of communication and then acting consistently on it.[248] Under the plus factor framework, the most important threshold element of proof is to

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[242] Max Flötotto and others, 'Getting a head start on joint integration planning using a safe zone' (McKinsey & Company 2015) <https://shorturl.at/rovdw> accessed 13 March 2025.

[243] The Competition Act 2002, s3(3).

[244] Nisha Kaur Uberoi, 'Investigation of Cartels: A Comparative Assessment of the Approaches Adopted by the Indian and EU Competition Regulators' (2015) 1 NLS Bus L Rev <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1026&context=nlsblr> accessed 13 March 2025.

[245] *United States v. Paramount Pictures* 334 U.S. 131 (1948).

[246] *Monsanto Co v Spray-Rite Service Corp* 465 US 752, 768 (1984).

[247] ibid.

[248] Oliver Black, *Conceptual Foundations of Antitrust* (Cambridge University Press 2005).

demonstrate how the defendants communicated their intentions and committed to a proposed course of action, thereby ruling out independent decision-making.[249]

¶98. *In casu*, DreamsPay and Edmund Games are independent entities in the same market.[250] The formation of the IPC was supported by its objective to plan the implementation of the SPA without falling foul of standstill obligations.[251] The IPC contained two external advisors whose roles were limited to merely providing assistance in case a clarification was necessary.[252] While the meetings, as recorded in the minutes, may have included discussions of the upcoming NFL deal bid by DreamsPay, there was no conclusive coordination or commitment to concerted action, [253] and both entities had placed independent bids.[254] Since there is no conclusive evidence of coordination or a conscious commitment to restrict competition, the claim of manipulating the bidding process remains unsubstantiated. Therefore, there was no 'agreement' or 'concerted action' between DreamsPay & Edmund Games to manipulate the bidding process.

4.3.2. DreamsPay & Edmund Games placed independent bids, maintaining competitive conduct

¶99. §3(3)(d) prohibits arrangements between enterprises operating at the same market level in similar goods or services that directly or indirectly lead to bid rigging or collusive bidding.[255]

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[249] William E Kovacic and others, 'Plus Factors and Agreement in Antitrust Law' (2011) 110 Mich L Rev 393.

[250] Proposition, ¶16

[251] Proposition, ¶29

[252] Proposition, ¶ 33.

[253] Proposition, ¶34.

[254] ibid.

[255] Competition Act 2002, s3(3)(d).

Allegations of bid rigging require evidence of collusion among bidders.[256] Meetings among competitors shortly before the bidding process may be indicative of collusion, but alone are not sufficient to establish anti-competitive behaviour.[257] Without proof of an agreement or concerted action to rig bids, such allegations cannot be sustained.[258] Price parallelism is not sufficient to establish collusion independently.[259]

¶100. *In casu*, the minutes of the meetings contained a discussion on the upcoming bid by DreamsPay.[260] The meeting yielded no conclusion, and Edmund Games placed an independent bid.[261] There is no direct or indirect evidence to suggest any form of concerted action in furtherance of collusion or manipulation of bids. Therefore, DreamsPay & Edmund Games placed independent bids, maintaining competitive conduct.

¶101. Therefore, DreamsPay did not infringe §6(2)(a) of the Act.

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[256] *Reprographic India, New Delhi vs The CCI* (Case No. 09 of 2019, CCI, 2019).

[257] *Rajasthan Cylinders And Containers vs U.O.I And Anr*, AIRONLINE 2018 SC 736.

[258] ibid.

[259] *People's All India Anti-Corruption vs Usha International Ltd. & Others* (Case No. 90 of 2016, CCI, 2021).

[260] Proposition, ¶34.

[261] Proposition, ¶34.

PRAYER

Wherefore, in the light of facts stated, issues raised, arguments advanced and authorities cited, it is most humbly and respectfully prayed before this Hon'ble Court that it may be pleased to declare that:

1. **BA Has Not Abused Its Dominant Position Under §4 of the Act.**
2. **The Exclusive Dealing Agreement Between DreamsPay and ASL Is Not in Contravention of §3(4) of the Act.**
3. **DreamsPay Does Not Qualify as an SSDE Under ADCA.**
4. **DreamsPay Did Not Infringe §6(2)(a) of the Act and Is Therefore Not Required To Pay the Penalty of 0.5 Million Solaris.**

And pass any other order or grant any other relief, which this Hon'ble Tribunal may deem fit in the ends of justice, equity and good conscience.

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Counsel for the Appellants.