
**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 RESPONDENT

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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
CFO	Chief Financial Officer
Co.	Company
DMA	Digital Markets Act
ECR	European Court Reports
Ed.	Edition
Etc.	Etcetera
EU	European Union

-List of Abbreviations-

EZC	Elizabeth Championship
FMCG	Fast-Moving Consumer Goods
GC	George Championship
IP	Intellectual Property
IPC	Integration Planning Committee
Ltd.	Limited
MD.	Managing Director
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 Respondents 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 ACA in 2002 to regulate market competition. The CCA was established under this statute to ensure fair competition. The CCA is also responsible for the enforcement of 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 ASLAND BA

The ASL involved national and international players, who were split between franchises that were based in 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, owing to ASL's nascency. The first edition of ASL was commercially successful and brought personal fame to Paul Atreides.

BA collaborated with ASL for its second and third editions in exchange for a 6% revenue share. The partnership further increased the financial success of ASL. However, the collaboration ended in 2021 when ASL refused to grant a higher share of revenue to BA for the league's inclusion in the national calendar.

BA scheduled a senior national camp in February 2022 for the selection of Arrakian representatives for world badminton championships and the Olympics. The camp coincided with the final stages of ASL. The coincidental timings created a dilemma for badminton players. Several players decided to withdraw from ASL. ASL sought to resolve the scheduling conflict with BA for 2024. However, these talks were not productive. The market shares of different applications are attached below:

<u>Sl. No.</u>	<u>Name</u>	<u>FY2023-24</u>	<u>FY 2022-23</u>	<u>FY 2021-22</u>	<u>Licenses held</u>
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

AGREEMENT BETWEEN DREAMSPAY AND ASL

The market for sports fantasy applications is an emerging market. Enterprises in this market enter into agreements with sports leagues to produce officially licensed fantasy versions of their leagues. However, enterprises were not restricted from producing generic variants of the fantasy leagues. DreamsPay, a sports fantasy platform, sought to reduce competition by entering into an exclusive licensing agreement with ASL in 2022 for an eight-year term that prohibited generic versions of ASL's fantasy game. DreamsPay was involved in producing generic versions of other fantasy sports. Tenet Sports produced a generic version of ASL's fantasy game in 2022. DreamsPay responded by taking legal action for IP infringement.

DREAMSPAY'S CLASSIFICATION UNDER THE ADCA

The ADCA was enacted in 2024. DreamsPay did not meet the quantitative requirements for being an AADE. However, the CCA designated DreamsPay as an SSDE on the fulfilment of 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 laid down by the ADCA.

DREAMSPAY'S ACQUISITION OF EDMUND GAMES

DreamsPay sought to acquire Edmund Games, another enterprise involved in producing sports fantasy applications. Edmund Games agreed to the same, and DreamsPay notified the CCA of the acquisition, as required by the Competition Act. An Integration Planning Committee (“**IPC**”) was created to facilitate the acquisition. Dr King Schultz, CFO 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 an information with the CCA in December 2023, alleging that BA's actions amount to an abuse of dominance under §4 of the Competition Act. The CCA held that BA had not abused its dominant position. The National Company Law Appellate Tribunal (“**NCLAT**”) upheld the CCA's findings. ASL now appeals before the Supreme Court (**'CA No. 13/25'**).

Tenet Sports 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 was violative of competition law and imposed penalties. DreamsPay and ASL appealed to NCLAT, which upheld the CCA's findings. They now appeal before the Supreme Court (**'CA No. 786/24'**).

DreamsPay challenged its classification as an SSDE in NCLAT, which upheld the CCA's order. DreamsPay now appeals before the Supreme Court (**'CA No. 26/25'**).

DreamsPay 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. 7/25'**).

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 not abused its dominant position under §4 of the Competition Act. The relevant market is the “market for organisation of badminton leagues in Arrakis” since sports events conducted in different formats are not substitutable for the relevant consumer. Further, BA is not dominant in the relevant market since it does not organise badminton events in a “league” format and since the consumers of badminton leagues do not depend on BA. Furthermore, even if the claimant’s definition of the relevant market is accepted, BA is not dominant owing to the high market shares of its competitors, high countervailing buying power enjoyed by consumers and the lack of entry barriers. Lastly, even if BA is dominant, its actions do not restrict competition. BA has the prerogative to organise camps as a regulatory body. Thus, it has not denied market access to ASL. Players made the decision to withdraw voluntarily, and no penalty was imposed on them for participating in ASL. Thus, BA did not place unfair or discriminatory conditions on players. The “market for procurement of services of badminton players” is not a valid market. Thus, BA could not have leveraged its position to enter into this market. Even if BA’s actions were anti-competitive, they are justified since they were necessary for the development of the sport. Thus, BA has not abused its dominance.

ISSUE 2

It is submitted exclusive distribution agreement between DreamsPay and ASL is argued to be anti-competitive under §3(4) of the Act, as it causes an AAEC. DreamsPay holds significant market power in the relevant market, defined as the “market for badminton fantasy sports games,” with a dominant position of 32-41% market share over recent years. The agreement between DreamsPay and ASL is an exclusive distribution deal, which restricts ASL from

sublicensing rights and prevents the creation of generic versions of the badminton fantasy game, thereby limiting competition.

This exclusivity creates barriers to entry for new competitors. It could drive existing competitors out of the market, as shown by the significant market share shift in favour of DreamsPay after the agreement was implemented. The agreement also forecloses competition by preventing competing products from entering the market.

Further, the agreement lacks pro-competitive benefits. It does not improve production or distribution, nor does it foster technical or economic development. By restricting consumer choice and eliminating competition, it harms the competitive landscape. The CCI should prioritize the anti-competitive effects over any claimed benefits, leading to the conclusion that the agreement is anti-competitive and likely causes AAEC under §3(4) of the Act.

ISSUE 3

It is submitted that DreamsPay is an SSDE pursuant to the ADCA. DreamsPay fulfills all 16 qualitative criteria set forth in §3(3) of the ADCA. DreamsPay's considerable market share shows that they qualify for the applicable thresholds under §3(3)(i)-(iv) and (v) by virtue of their substantial amount of commerce, enormous resources, vast number of end users, significant economic influence, and the overall market configuration within which they have a presence. Collectively, these criteria establish DreamsPay's systemic impact and deeply rooted market presence.

In addition, the exclusionary licensing contracts signed by DreamsPay represent strong proof that the thresholds outlined in §3(3)(v)-(xii) are met. The market behaviour of DreamsPay demonstrates an evident dominance through numerous practices, such as the combination of market sides to concentrate power, the cultivation of user dependence on its platform, the

imposition of high barriers to entry and growth for potential competitors, the locking in users in its platform, the use of vast data resources to solidify market control, and the limitation of buyer power by confining competitive choices.

Secondly, as an SSDE, DreamsPay practised self-preferencing by giving undue preference to its own products and services over those of its third-party rivals.

ISSUE 4

It is submitted that DreamsPay violated §6(2A) of the Competition Act during its acquisition of Edmund Games. There was a premature transfer of control from Edmund Games to DreamsPay before the formal completion of the acquisition. Moreover, sensitive information was exchanged during the IPC meetings, where Dr Schultz and Ms Kiddo were present. The presence of senior advisors at these meetings underscores the concern that this flow of sensitive information may have influenced market conduct or strategic decision-making. Further, DreamsPay and Edmund Games engaged in coordinated market conduct through their bidding process. The alignment of actions during bidding raises concerns about coordinated behaviour.

WRITTEN ARGUEMENTS

1. BA HAS NOT ABUSED ITS DOMINANT POSITION UNDER §4 OF THE COMPETITION ACT

¶1. §4 of the Competition Act prohibits abuse of a dominant position by a group or enterprise.¹

The dominance of an enterprise is determined with respect to the relevant geographic and product market.² Dominance is the *sine qua none* to establish a case of §4 violation.³

¶2. It is submitted that, *first*, BA does not qualify as the dominant enterprise [1.1]. *In arguendo*, if BA is found to be dominant, it has not abused its dominant position in the relevant market [1.2].

1.1 BA does not qualify as a dominant enterprise

¶3. It is submitted that, *first*, BA is not dominant in the relevant market [1.1.1]. *Second*, consumers have countervailing buying powers [1.1.2]. *Third*, there are no entry barriers in the market [1.1.3].

1.1.1. BA is not dominant in the relevant market

¶4. Determining the relevant market is crucial to identifying actual competitors and recognising who can place constraints on free competition.⁴

¹ Competition Act 2002, s4.

² Competition Act 2002, s4.

³ SM Dugar, *Guide to Competition Law*, (8th edn, LexisNexis 2020) 487.

⁴ S Chakrabarthy, 'Relevant Market In Competition' (CIRC) <<https://circ.in/relevant-market-in-competition-case-analyses.php#:~:text=Delineation%20of%20%E2%80%9Crelevant%20market%E2%80%9D%20is,of%20the%20market%20players%20concerned>> accessed on 13 March 2025.

¶5. It is submitted that, *first*, the relevant product market is “the market for organisation of badminton leagues in Arrakis” [1.1.1.1]. *Second*, BA is not dominant in the relevant market [1.1.1.2]. *In arguendo*, even if the relevant market is “the market for organisation of badminton events in Arrakis”, BA is not dominant [1.1.1.3].

1.1.1.1. The relevant market is the “market for organisation of badminton leagues in Arrakis”

¶6. §2(t) of the Act defines a relevant product market to be a market where products or services are regarded as interchangeable or substitutable by the consumer.⁵ To determine substitution, the relevant consumer must be defined.⁶ When a sport's format is unique, viewers don't see it as substitutable with other sports.⁷ The existence of a bidding process, an association of a player with a franchise rather than a region, and the primary motive being profit differentiated IPL from other formats of cricket.⁸

¶7. *In casu*, a parallel can be drawn between ASL and IPL. ASL is a private league featuring an auctioneering process for the selection of players. Further, even though the teams have regional identities, the players themselves need not be Arrakian. The league's commercial nature is evident from team ownership by businessmen and celebrities and exclusive streaming and TV rights deals associated with the league. Further, ASL has a very specific group play

⁵ Competition Act 2002, s2(t).

⁶ *ibid*.

⁷ *Surinder Singh Barmi v The Board Of Control For Cricket In India*, Case No. 61/2010 [20].

⁸ *ibid* [22].

format different from the standard format of other badminton events.⁹ This format is unique to the ASL. Thus, ASL is not substitutable by any other format of badminton.

1.1.1.2. BA is not dominant in the “market for organization of badminton leagues in Arrakis”

¶8. Factors such as ‘size of competitors’ & ‘dependence of consumers on the enterprise’ are crucial to determining the relevant market under §19(4).¹⁰

¶9. *In casu*, BA hosted badminton competitions that were completely different from badminton leagues like that of ASL. ASL follows a unique format that has never been used.¹¹ Further, ASL has a distinctly private nature, as is evident from its commercial ventures.¹² Thus, BA’s events are not substitutable for badminton leagues, making it impossible for BA to be dominant in this market. In the relevant market, the size and importance of competitors, such as ASL, greatly exceed that of BA. Further, there is no dependence on BA for the consumption of badminton leagues. Therefore, BA is not dominant in the relevant market.

1.1.1.3. Even if the relevant market is the “market for organization of badminton events in Arrakis”, BA is not a dominant enterprise

¶10. §19(4) provides for determining factors to prove dominance in a relevant market, with a major factor being economic power & market share.¹³ In a relevant market, only one enterprise

⁹ Erin Maher, ‘Badminton 101: Olympic competition format’ (NBC Olympics, 2024) <<https://www.nbcolympics.com/news/badminton-101-olympic-competition-format>> accessed 13 March 2025

¹⁰ Competition Act 2002, s19(4).

¹¹ Proposition, ¶5.

¹² Proposition, ¶7.

¹³ Competition Act 2002, s19(4).

can be said to be dominant.¹⁴ An enterprise having a substantial market share is likely to be viewed as dominant by the CCI.¹⁵ It has been held that it is impossible to hold the other party to be in a dominant position when the appellants themselves hold a 74% market share.¹⁶ The ability of an undertaking to operate independently of competitive dynamics or to positively impact its rivals, customers, or the relevant market is made possible by its market power.¹⁷

¶11. *In casu*, ASL itself held approximately 70% of market revenue in the relevant market.¹⁸ ASL provided financial incentives to players, which BA could not provide given its far lesser financial capabilities.¹⁹ This fact is evident with many players choosing to take part in ASL instead of BA's camps.²⁰ Therefore, BA cannot be said to be dominant in the relevant market.

1.1.2. The consumers have countervailing buying power

¶12. §19(4)(i) factors countervailing the buying power of the consumers in the determination of dominance.²¹ Countervailing buying power refers to the consumers' or purchasers' power to negotiate or bargain with the sellers.²² A lower amount of dependency of the consumers on the

¹⁴ *Fast Track Call Cab Pvt Ltd v ANI Technologies Pvt Ltd* (Case No. 6&74 of 2015, CCI, 2017) [109]

¹⁵ Kajal Dhiman, 'Abuse of Dominant Position under Competition Act 2002' (Manupatra, 20 June 2022) <<https://articles.manupatra.com/article-details/ABUSE-OF-DOMINANT-POSITION-UNDER->> accessed on 13 March 2025.

¹⁶ *Mr Dhruv Suri v Mundra Port* (Case No. 18 of 2009, CCI, 2010) [18,19].

¹⁷ *CCI v Fast Way Transmission Private Limited and Ors* [2018] 3 SCC 316 [8].

¹⁸ Proposition, ¶12.

¹⁹ Proposition, ¶7.

²⁰ Proposition, ¶10.

²¹ Competition Act 2002, s19(4)(i).

²² 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.

enterprise is indicative of countervailing buying power. Players of a sport are intermediate consumers while the viewers are final consumers.²³

¶13. *In casu*, the intermediate consumers i.e., the players had the ability to decide whether they wanted to attend BA's training camps or ASL's badminton leagues.²⁴ This fact is further evidenced by many players who had decided to join ASL instead of BA's camps, causing a bad performance of Arrakis in international badminton tournaments. Further, the final viewers of badminton could choose between watching ASL or any other television programme. Therefore, the consumers have countervailing buying power.

1.1.3. There are no entry barriers in the market

¶14. §19(4)(i) factors entry barriers the consumers in the determination of dominance of an enterprise.²⁵ The strength of an enterprise to create barriers to potential entrants proves its dominant position.²⁶ To prove barriers to entry, the enterprise should have the ability to engage in conduct that prevents newcomers into the relevant market.²⁷

¶15. *In casu*, BA has not stopped any enterprise from organising badminton leagues or events.²⁸ In fact, BA collaborated with ASL for its second & third seasons, indicating their support for new entrants. BA's scheduling cannot be called an entry barrier as there is no prevention of newcomers from entering the relevant market. Further, ASL organised its first

²³ *Sh. Dhanraj Pillay and Others v M/S Hockey India* (Case No. 73of 2011, CCI, 2013) [131].

²⁴ Proposition, ¶10.

²⁵ Competition Act 2002, s19(4)(i).

²⁶ Rahul Rai and others, *Legal & Economic Standards Used in Vertical Restraint & Abuse of Dominance Cases by the CCI: A Study* (20 November 2021) [151].

²⁷ *Google Llc & Anr v Competition Commission Of India & Ors* (Competition Appeal (AT) No.01 of 2023, NCLAT, 2023) [129].

²⁸ Proposition, ¶10.

season successfully without the support of BA.²⁹ This indicates that the express approval of BA is not required for the organisation of badminton leagues of events. Therefore, there are no entry barriers in the market.

1.2. BA has not abused its dominant position

¶16. In the case of regulatory authorities, an action would constitute an abuse of dominance if it restricts competition and does not have reasonable justifications.³⁰ A restrictive action can be justified as a necessary requirement to serve the development of sport or preserve its integrity.³¹

¶17. It is submitted that, *first*, BA's actions do not restrict competition [1.2.1]. *Second*, it is a necessary requirement to serve the development of the sport [1.2.2].

1.2.1. BA's actions do not restrict competition

¶18. §4(2) of the Act gives an exhaustive list of practices that constitute an abuse of dominant position and expectedly prohibits them.³²

¶19. It is submitted that BA has not abused its dominance. *First*, BA's actions do not cause a denial of market access [1.2.1.1]. *Second*, BA's actions do not place unfair or discriminatory conditions in the relevant market [1.2.1.2]. *Third*, BA has not used its dominant position in one relevant market to enter another [1.2.1.3].

²⁹ Proposition, ¶6.

³⁰ *Surinder Singh* (n 7) [16]; *Shravan Yadav v Volleyball Federation of India*, (Case No. 01 of 2019, CCI, 2019) [30]; *Hemant Sharma & Others v All India Chess Federation*, (Case No. 79 of 2011, CCI, 2018) [50].

³¹ *ibid*.

³² Competition Act 2002, s4(2).

1.2.1.1 BA's actions do not cause denial of market access

¶20. §4(2)(c) prohibits practices that result in denial of market access.³³ An action that restricts competition constitutes an exclusionary abuse.³⁴

¶21. *In casu*, the alleged abuse of dominance involves the organisation of a senior camp for the selection of Arrakian representatives to international badminton competitions.³⁵ BA did not impose any restrictions on player participation,³⁶ as badminton players interested in playing with ASL were allowed to do so. Scheduling conflicts between competitions is a common challenge in sports, forcing athletes to prioritize which events they will participate in. Financial incentives and desires for recognition influence player choices. The reduction in participation in ASL is attributable to player preferences and the presence of incentives rather than any restrictive or exclusionary action by BA. Moreover, when ASL changed its schedule for the 2024 season, it saw the restoration of its viewership, indicating no permanent denial of market access.³⁷ Therefore, BA's actions do not restrict competition.

1.2.1.2. BA's actions do not place unfair or discriminatory conditions

¶22. §4(2)(a) holds that imposition of unfair or discriminatory conditions in the purchase or sale of goods or services is an abuse of the dominant position.³⁸ The VFI's decision to only sanction volleyball leagues organised by Baseline Ventures was deemed non-restrictive and

³³ Competition Act 2002, s4(2)(c).

³⁴ *Shamsher Kataria v Honda Siel Cars India Ltd and others* (Case No. 3 of 2011, CCI, 25 August 2014) [20.5.84].

³⁵ Proposition, ¶9.

³⁶ Proposition, ¶9.

³⁷ Proposition, ¶13.

³⁸ Competition Act 2002, s4(2)(a).

non-discriminatory, as it aimed to promote the growth of the underdeveloped volleyball game.³⁹

¶23. *In casu*, BA has the prerogative to organise camps for the selection of Arrakian representatives for international badminton events. Participation in these camps was completely voluntary, and no penalties were levied on any player for non-participation.⁴⁰ The overlapping schedules of BA's selection camps and ASL caused many badminton players to choose between the two. However, this dilemma was a matter of private consideration. Further, many players had chosen ASL over BA's camps.⁴¹ Therefore, BA's actions do not place unfair or discriminatory conditions.

1.2.1.3. BA's actions cannot be constituted to be leveraged to enter another market

¶24. §4(2)(e) prohibits a dominant enterprise from leveraging its position to enter into another market.⁴² An enterprise needs to be dominant in one market and should want to protect or enter a new market to find a contravention under §4(2)(e). Contravention of §4(2)(e) cannot be possible if there is only one market.⁴³ If consumers perceive a product as distinct from other products due to its unique nature, characteristics, intended use, or pricing, it will constitute a separate relevant market.⁴⁴

¶25. *In casu*, the 'procurement of services of badminton players' is not a valid market as it is not a separate relevant market. The organisation of badminton leagues necessarily involves

³⁹ *Shravan Yadav* (n 31) 38.

⁴⁰ Proposition, ¶10.

⁴¹ Proposition, ¶10.

⁴² Competition Act 2002, s4(2)(e).

⁴³ *All India Online Vendors Assn v. Flipkart India Pvt Ltd* (Case No. 20 of 2018, CCI, 2018).

⁴⁴ *Case 27/76 United Brands Company v. Commission of the European Communities* [1978] ECR II-00207.

procuring the services of badminton players and cannot be separated into a separate market. The procurement of services of badminton players is not a substitutable market. Star players like Irulan Shaddam and Gurney Halleck, for example, cannot be substituted by other individuals. Moreover, the badminton players choose to either take part in BA's camp or ASL out of their own volition.⁴⁵ Therefore, BA did not leverage its position in the relevant market to enter the 'market for procurement for services of badminton'.

1.2.2. BA's actions were a necessary requirement to serve the development of the sport

¶26. Any action that reduces the opportunities available to players goes against the development of a sport.⁴⁶ It necessarily follows that any action that increases the opportunities available to players serves the development of a sport. The CCI has noted that restrictions imposed in an 'inherent & proportionate' manner to further the objectives of Hockey India as a governance body were justified.⁴⁷

¶27. *In casu*, the organization of senior camps by BA was aimed at finding players to represent the nation in the Badminton World Championship, George Championship and Elizabeth Championship.⁴⁸ These camps, though conducted with the primary aim of securing Arrakian representation, also had the secondary goal of increasing the opportunities available to Arrakian badminton players.⁴⁹ It is BA's prerogative to decide when such camps are to be held, and it need not take into consideration the timings of a private league in the absence of a formal

⁴⁵ Proposition, ¶10.

⁴⁶ *Shravan Yadav* (n 31) 46.

⁴⁷ *Sh. Dhanraj Pillay* (n 23) 81.

⁴⁸ Proposition, ¶9.

⁴⁹ Proposition, ¶10.

contract.⁵⁰ Further, these camps were conducted to ensure proper training of badminton players to ensure that they could represent Arrakis in international tournaments and as a result, the camps furthered the objectives of BA as a regulatory body. Thus, BA's actions were a necessary requirement to serve the development of the sport.

¶28. Therefore, BA has not abused its dominant position under §4 of the Act.

⁵⁰ Proposition, ¶6.

2. THE EXCLUSIVE DISTRIBUTION AGREEMENT BETWEEN DREAMSPAY AND ASL IS ANTI-COMPETITIVE UNDER §3(4) AS IT CAUSES AN AAEC

¶29. §3 of the Act prohibits anti-competitive agreements.⁵¹ Vertical restraint agreements are deemed anti-competitive if they cause an AAEC.⁵² The CCI has consistently adopted a three-step test for determining AAEC. First, it looks at the market power. Second, it looks at the business justifications given by the party. And third, it balances the harms and weighs them against possible benefits.⁵³ Agreements mentioned under §3(4) are deemed to have an AAEC if they qualify under the factors under §19(3) of the Act.⁵⁴

¶30. It is submitted that, *first*, DreamsPay has substantial market power in the relevant market [2.1]. *Second*, DreamsPay had an exclusive dealing agreement with ASL [2.2]. *Third*, the agreement caused refusal to deal [2.3]. *Fourth*, the agreement is likely to cause an AAEC [2.4].

2.1. DreamsPay has substantial market power in the relevant market

¶31. An exclusive dealing agreement is not anti-competitive per-se and must be assessed under the rule of reason approach.⁵⁵ An enterprise with substantial market power is more likely to cause an AAEC.⁵⁶

¶32. It is submitted that *first*, the relevant market is the ‘market for badminton fantasy sports game’[2.1.1]. *Second*, DreamsPay has market power in the relevant market [2.1.2].

⁵¹ Competition Act 2002, s3.

⁵² Competition Act 2002, s19(3).

⁵³ Rahul Rai (n 26) [240].

⁵⁴ *ibid*.

⁵⁵ Continental Television Inc v GTE Sylvania Inc 433 US 36 (1977).

⁵⁶ '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.

Inarguendo, even if the relevant market is the market for fantasy sports game in Arrakis, Dreamspay has substantial market power [2.1.3].

2.1.1. The relevant market is the “market for badminton fantasy sports game”

¶33. §2(r) defines relevant market with reference to either the relevant geographic market, the relevant product market or both.⁵⁷

¶34. It is submitted: *first*, the relevant geographic market is the market in Arrakis [2.1.1.1]. *Second*, the relevant product market is the “market for badminton fantasy sports games.” [2.1.1.2].

2.1.1.1. The relevant geographic market is the market in Arrakis

¶35. §2(s) defines a “relevant geographic market” as a region of homogenous competitive conditions that is distinct from other adjacent areas.⁵⁸ §19(6) lists down the factors to determine the ‘relevant geographic market.’⁵⁹ The EU was considered a distinct geographic market, separate from other countries, due to the unique competitive conditions that existed in the market within its borders.⁶⁰

¶36. *In casu*, the geographic market of Arrakis is homogenous with respect to its regulatory trade barriers, local specification norms, consumer preferences, and other factors. Additionally, the market in Arrakis can be separated from the rules and regulations of other countries.⁶¹ Therefore, the relevant geographic market is Arrakis.

⁵⁷ Competition Act 2002, s2(r).

⁵⁸ Competition Act 2002, s2(s).

⁵⁹ Competition Act 2002, s19(6).

⁶⁰ *Wood Pulp* (Commission Decision 85/202/EEC [1984] OJ L85/1).

⁶¹ *ibid.*

2.1.1.2. The relevant Product market is the “market for badminton fantasy sports game”

¶37. §2(t) of the Act defines a relevant product market as a market that includes all products and substitutes considered interchangeable or substitutable by consumers based on their characteristics, pricing, intended use, consumer preferences, etc.⁶² Determining the relevant product market depends on the availability of substitutes for the product within that market.⁶³ The relevant consumer is determined by demand-side substitutability. If consumers perceive a product as distinct from other products due to its unique nature, characteristics, intended use, or pricing, it will constitute a separate relevant market.⁶⁴

¶38. *In casu*, DreamsPay & ASL both were operating in the same “market for badminton fantasy sports games.”⁶⁵ Badminton fantasy sports games cater to consumers who specifically seek fantasy gaming experiences centred around badminton. These games operate differently from other fantasy sports games as they involve distinct player selection strategies, scoring criteria, and consumer engagement, making them non-substitutable by other sports fantasy applications.

2.1.2. DreamsPay has market power in the relevant market

¶39. Market power can be defined as the ability of a firm to set prices above marginal cost and act independently of its competitors.⁶⁶ In the assessment and analysis of competition, market

⁶² Competition Act 2002, ss19(6), 2(t).

⁶³ *Hemant Sharma (n 30)* [32]; *Adani Gas Limited vs CCI & Anr* (Case No. 33 of 2017, NCLAT, 2020) [7].

⁶⁴ *United Brands Company v Commission of the European Communities* (Case 27/76) [1978] ECR 207.

⁶⁵ Proposition, ¶21.

⁶⁶ Meloria Meschi, Montek Mayal and Avinash Mehrotra, ‘Assessing the Importance of Market Power in Competition Investigations’ (Competition Commission of India, 2022)

power serves as an indicator of the ability of a firm to maintain prices above the competitive level and engage in anti-competitive conduct.⁶⁷ Predatory conduct and market strength can indicate significant market power, even without the presence of absolute dominance.⁶⁸

¶40. *In casu*, DreamsPay holds a monopoly position in the relevant market.⁶⁹ DreamsPay currently holds the exclusive license to create a badminton fantasy league game in collaboration with ASL.⁷⁰ No other enterprise is allowed to make a generic version of the game.⁷¹ Therefore, DreamsPay has no competitors, and any vertical restraint agreement it enters into is bound to impact the market. Therefore, DreamsPay holds market power in the relevant market.

2.1.3. In arguendo, even if the relevant market is the ‘market for fantasy sports games Arrakis’, DreamsPay has market power

¶41. The CCI proceeds with an analysis under §19(3) if an enterprise has 30-40% market power.⁷² This number is just an indicative threshold and typically, the CCI tries only to proceed when the party has a minimum of 30% market share in the relevant market.⁷³

<<https://www.cci.gov.in/public/images/economicconference/en/2assessing-the-importance-of-market-power-in-competition-investigations1652334908.pdf>> accessed 13 March 2025.

⁶⁷ *ibid*.

⁶⁸ *Mcx Stock Exchange Ltd. & Ors vs National Stock Exchange Of India Ltd* (Case No. 13 of 2009, CCI, 2011) [8].

⁶⁹ Proposition, ¶19.

⁷⁰ Proposition, ¶19.

⁷¹ Proposition, ¶19.

⁷² *Tamil Nadu Consumer Products Distributers Association v Fangs Technology Pvt Ltd* (Case No. 15 of 2018, CCI, 2018).

⁷³ Nishith Desai Associates, ‘Competition Law in India’ (December 2020) <https://www.nishithdesai.com/Content/document/pdf/ResearchPapers/Competition-Law-in-India.pdf> accessed 13 March 2025.

¶42. *In casu*, DreamsPay had a substantial market share of 32% in the Financial Year 2021-2022.⁷⁴ Further, this share rose to 41% in 2023-2024.⁷⁵ Therefore, regardless of the relevant market, DreamsPay has market power.

2.2. DreamsPay had an exclusive dealing agreement with ASL

¶43. §3(4) gives an indicative list of agreements that may be anticompetitive.⁷⁶ Exclusive distribution agreements fall under §3(4)(b) as such agreements may limit consumer choices in the market economy.⁷⁷ To determine whether an exclusive dealing arrangement substantially reduces competition, it is to be assessed whether the agreement forecloses a substantial share of the market.⁷⁸

¶44. It is submitted that, *first*, there is an agreement between DreamsPay & ASL [2.2.1]; *second*, the agreement is in nature of exclusive distribution [2.2.2].

2.2.1. There is an agreement between DreamsPay and ASL

¶45. An agreement includes any understanding between two or more parties that may not be in writing or legally enforceable.⁷⁹ Vertical agreements are agreements between different enterprises at different levels of production.⁸⁰ The existence of an agreement can be inferred

⁷⁴ Proposition, Annexure I.

⁷⁵ Proposition, Annexure I.

⁷⁶ Competition Act 2002, s3(4).

⁷⁷ *Pandrol Rahee Technology Pvt Ltd v. Delhi Metro Rail Corp & Ors* (Case No. 3 of 2010, CCI, 2011).

⁷⁸ *Tampa Electric Co v Nashville Coal Co*, 365 US 320 (1961).

⁷⁹ *Technip SA v SMS Holding Pvt Ltd* (2005) 5 SCC 465 [13].

⁸⁰ 'Vertical Agreement' (Concurrences, 2025) <<https://www.concurrences.com/en/dictionary/Vertical-agreement>> accessed 13 March 2025.

from the conduct of the parties while trying to enforce their agreement with respect to each other and third parties.⁸¹

¶46. *In casu*, DreasmPay and ASL had a legally enforceable 8 year licensing-agreement between each other.⁸² Further, ASL and DreamsPay's conduct against Tenet Sports indicated their intention to implement Clause 9 of their contract.⁸³ Therefore, there was an agreement between DreamPay & ASL.

2.2.2. The Agreement is in the nature of exclusive distribution

¶47. §3(4)(b) states that an exclusive dealing agreement can be deemed to be anti-competitive.⁸⁴ An exclusive dealing agreement is a vertical agreement that limits the buyer or seller from purchasing, selling or engaging with products or services outside those provided by the seller.⁸⁵ Exclusive arrangements are detrimental to competition in comparison to non-exclusive agreements.⁸⁶

¶48. *In casu*, DreamsPay has entered into an exclusive dealing agreement with ASL.⁸⁷ Clause 9 of the contract creates the imposition of a coercive unilateral policy.⁸⁸ Clause 9 forbids the

⁸¹ *All India Tyre Dealers Federation v Tyre Manufacturers* (Case No. MRTP RTPE 20/2008, CCI, 2013).

⁸² Proposition, ¶19.

⁸³ Proposition, ¶20.

⁸⁴ Competition Act 2002, s3(4)(b).

⁸⁵ Vertical Agreements in Indian Competition Act (n 56).

⁸⁶ European Commission, 'Guidelines on Vertical Restraints' [2022] <https://competition-policy.ec.europa.eu/system/files/2022-05/20220510_guidelines_vertical_restraints_art101_TFEU_.pdf> [2.2].

⁸⁷ Proposition, ¶19.

⁸⁸ Proposition, ¶19.

creation of all generic versions of the game, thereby limiting distribution.⁸⁹ Therefore, the agreement is in the nature of exclusive distribution.

2.3. The agreement causes refusal to deal

¶49. §3(4)(d) includes agreements that cause refusal to deal in the purview of anti-competitive conduct provided such agreements cause AAEC.⁹⁰ Any agreement that restricts or is likely to restrict any person or classes of persons who may be a buyer or seller can be deemed to fall under ‘refusal to deal.’⁹¹

¶50. *In casu*, the agreement between ASL & DreamsPay causes ‘refusal to deal.’ Clause 9 of the licensing agreement restricts ASL from sub-licensing the rights of the sports fantasy game.⁹² Therefore, the agreement causes refusal to deal.

2.4. The agreement is likely to cause an AAEC

¶51. The CCI looks at various factors to determine an AAEC.⁹³ The assessment framework, as prescribed under §19(3) of the Act, is primarily used.⁹⁴ Market power & business justifications are also taken into consideration while determining the case.⁹⁵ Any agreement in contravention of fair market practices is anti-competitive and likely to cause AAEC.⁹⁶

⁸⁹ Proposition, ¶19.

⁹⁰ Competition Act 2002, s3(4)(d).

⁹¹ Pandrol Rahee (n 75) [43].

⁹² Proposition, ¶19.

⁹³ Rahul Rai (n 26) [240].

⁹⁴ Competition Act 2002, s19(3).

⁹⁵ Rahul Rai (n 26) [251].

⁹⁶ *Saint Gobain Glass India Ltd v. Gujarat Gas Company Ltd* (Case No. 20 of 2013, CCI, 2013); *Exclusive Motors Pvt. Ltd. v. Automobili Lamborghini S.P.A.* (2014)

¶52. It is submitted that, *first*, DreamsPay has a substantial market share in the relevant market [2.4.1]. Second, the agreement creates a barrier to entry [2.4.2]. Third, the agreement is likely to drive existing competitors out of the market [2.4.3]. *Fourth*, the agreement forecloses competition [2.4.4]. *Fifth*, the agreement cannot be justified under any objective business justifications [2.4.5].

2.4.1. DreamsPay has a substantial market share in the relevant market

¶53. When a dominant player in a market chooses to enter into an exclusive distribution agreement without proper justification, it can be said to be foreclosing competition.⁹⁷ When both parties have considerable presence in their respective markets and enter into an exclusive distribution deal, they have the potential to cause an AAEC.⁹⁸

¶54. *In casu*, as already established, DreamsPay has substantial market power.⁹⁹ Further, ASL also has a substantial market revenue of around 70%, proving that it has a considerable presence in the market.¹⁰⁰ Therefore, DreamsPay has a substantial market share in the relevant market.

2.4.2. The agreement creates a barrier to entry

¶55. §19(3)(a) of that Act states that the creation of entry barriers by an enterprise is indicative of AAEC.¹⁰¹ The imposition of unfair conditions that restrict access to opportunities is

⁹⁷ *Jindal Steel & Power Ltd v Steel Authority Of India Ltd* (Case No. 11 of 2009, CCI, 2011) [117].

⁹⁸ *Federation Of Hotel & Restaurant v. Makemytrip India Pvt Ltd* (Case No. 14 of 2019, CCI, 2019) [58].

⁹⁹ *See 2.1.*

¹⁰⁰ Proposition, ¶12.

¹⁰¹ Competition Act 2002, s19(3)(a).

considered a barrier to entry.¹⁰² The presence of competitive constraints, i.e. other competitors, is an indication of a lack of entry barriers in a relevant market.¹⁰³

¶56. *In casu*, Clause 9 of the Agreement between DreamPay and ASL creates a situation where no entrants can enter the new market as all generic versions of the badminton fantasy sports game are barred.¹⁰⁴ This fact is further substantiated by the fact that DreamPay had launched an IP Infringement against Tenet Sports for creating a generic version of a badminton fantasy sports game.¹⁰⁵ Further, there were no other competitive constraints in the relevant market. Therefore, the agreement creates a barrier to entry.

2.4.3. The agreement is likely to drive existing competitors out of the market

¶57. §19(3)(b) states that agreements that drive existing competitors out of the market are likely to cause an AAEC.¹⁰⁶

¶58. *In casu*, the licensing agreement created a situation where no existing competitors could be a part of the market. Generic versions were allowed as a market practice in the market for fantasy sports.¹⁰⁷ This fact is further evidenced by BCCA, who rejected Tenet Sports' offer to introduce a similar clause in their licensing for APL.¹⁰⁸ If there were any enterprises offering generic versions of ASL games, then by the enforcement of Clause 9, they would have to leave the market. Therefore, the agreement drives existing competitors out of the market.

¹⁰² *Hemant Sharma (n 30)* [78].

¹⁰³ *Mohit Manglani v. M/s Flipkart India Private Limited & Ors* (Case No. 80 of 2014, CCI, 2015) [16].

¹⁰⁴ Proposition, ¶19.

¹⁰⁵ Proposition, ¶20.

¹⁰⁶ Competition Act 2002, s19(3)(b).

¹⁰⁷ Proposition, ¶17.

¹⁰⁸ Proposition, ¶20.

2.4.4. The agreement forecloses competition

¶59. §19(3)(c) classifies agreements that foreclose competition as likely to cause an AAEC.¹⁰⁹

Foreclosure refers to a dominant enterprise adversely & negatively influencing a market to its advantage.¹¹⁰ The decline in competitors' profits and the increase in profits of the enterprise in question can indicate market foreclosure if such changes can be attributed to the enterprise in question.¹¹¹ Exclusive dealing agreements preventing dealers from selling competing products may have foreclosure effects by restricting market access and consumer choice, which is likely to cause AAEC.¹¹²

¶60. *In casu*, the effects of the licensing agreement and its foreclosing effects can be clearly seen by looking at the change in market share after the agreement came into effect. While in the Financial year 2021-2022, DreamsPay's market share was only 32%, second to Tenant Sports' 36%, the situation had completely reversed by the Financial Year 2023-2024.¹¹³ In 2023-2024, the market share of DreamsPay substantially increased to 41%, a rise of 9% in just 2 years of incorporation of the licensing agreement.¹¹⁴ Further, the market share of almost all other competitors fell, including that of Tenet Sports, Los Almos & WayneX.¹¹⁵ This change cannot be attributed to any other factor except the incorporation of the licensing agreement and DreamsPay's decision to launch IP infringement against those who launch a generic version of

¹⁰⁹Competition Act 2002, s19(3)(c).

¹¹⁰ 'Foreclosure' *Concurrences* *Antitrust* *Dictionary*
<<https://www.concurrences.com/en/dictionary/foreclosure-117887>> accessed 13 March 2025.

¹¹¹ *Kapoor Glass Pvt Ltd v. CCI* (Appeal No. 91 of 2012, CCI, 2014) [56].

¹¹² *Fx Enterprise Solutions India Pvt. Ltd. v. Hyundai Motor India Ltd.* (2017)

¹¹³ Proposition, Annexure I.

¹¹⁴ Proposition, Annexure I.

¹¹⁵ Proposition, Annexure I.

ASL. Therefore, the agreement and specifically Clause 9 of the licensing agreement forecloses competition.

2.4.5. The agreement cannot be justified under any objective business justifications

¶61. §19(3)(d)-(f) lists down the pro-competitive benefits of an agreement under §3(4) which the Commission is bound to weigh against the potential harms of the agreement.¹¹⁶

¶62. It is submitted, *first*, that the agreement does not have any pro-competitive benefits [2.4.5.1]. *In arguendo*, the agreement cannot be justified by any pro-competitive benefit [2.4.5.2].

2.4.5.1. The agreement does not have any pro-competitive benefits

¶63. §19(3)(d) states that the benefit of an agreement for its consumers should be factored in while determining whether an agreement caused an AAEC.¹¹⁷ Agreements that restrict consumer choice cannot be said to be beneficial to consumers.¹¹⁸ §19(3)(e) factors in improvements of production & distribution & §19(3)(f) factors improvements in the promotion of technical, scientific & economic development.¹¹⁹

¶64. *In casu*, the agreement between ASL & DreamsPay had no benefit for consumers i.e players of badminton fantasy sports games. The agreement restricts consumer choice and, therefore, was not beneficial. Further, the agreement neither improved the production or distribution of goods or services as the agreement simply restricted the creation of generic

¹¹⁶ Proposition, ¶20.

¹¹⁶ Competition Act 2002, ss19(3)(d), ss19(3)(e), ss19(3)(f),

¹¹⁷ Competition Act 2002, s19(3)(d).

¹¹⁸ V Jeeva, 'Anti-Competitive Agreement' (2023) IJRASET J Res Appl Sci Eng Technol <<https://www.ijraset.com/research-paper/anti-competitive-agreement>> accessed 13 March 2025.

¹¹⁹ Competition Act 2002, ss19(3)(e), 19(3)(f),

versions without having any efficiency enhancing effects.¹²⁰ The agreement merely restricted generic ASL versions without fostering technical, scientific, or economic development in production or distribution, failing to contribute any meaningful advancement in these areas. The usual market practice was to allow the creation of generic versions.¹²¹ This fact is further evidenced by BCCA's refusal to allow such clauses into their contract.¹²² Therefore other competitors were not opting for similar practices, further showing that there were no pro-competitive benefits. Therefore, the agreement did not have any pro-competitive benefits.

2.4.5.2. In arguendo, the agreement cannot be justified by any pro-competitive benefit

¶65. The CCI is required to weigh the pro & anti-competitive nature of an agreement to analyse the effect of any agreement on competitive welfare.¹²³ Any efficiency-enhancing agreement that allows an enterprise to completely eliminate competition in the market and indulge in exclusionary practices cannot be allowed.¹²⁴ In such situations, the factors listed in §19(3)(a)-(c) should be prioritized over the factors listed in §19(3)(d)-(f).¹²⁵

¶66. *In casu*, even if there were some pro-competitive benefits to the licensing agreement between ASL & DreamsPay, it cannot be allowed. The agreement completely restricts the creation of any generic versions of ASL.¹²⁶ Therefore, it completely restricts competition in market. Therefore, such agreements cannot be allowed.

¹²⁰ Proposition, ¶19.

¹²¹ Proposition, ¶19.

¹²² Proposition, ¶20.

¹²³ Rahul Rai (n 26) [235].

¹²⁴ *Shamsher Kataria* (n 34) ([20.6.11, 20.6.34].

¹²⁵ *ibid.*

¹²⁶ Proposition, ¶19.

¶67. In conclusion, the agreement between DreasmPay & ASL is anti-competitive under §3(4).

3. DREAMSPAY QUALIFIES AS AN SSDE UNDER ADCA

¶68. It is submitted that DreamsPay qualifies as an SSDE under the ADCA. Even though they do not meet the quantitative thresholds because, *first*, DreamsPay meets the qualitative thresholds laid down §3(3) under the ADCA [3.1]. *Second*, DreamsPay engaged in self-preferencing [3.2].

3.1. *DreamsPay meets the qualitative threshold laid down under §3(3) of the ADCA*

¶69. In order to be designated as an SSDE, an enterprise must fulfil the 16 qualitative factors.¹²⁷

¶70. It is submitted that DreamsPay meets the 16 qualitative criteria specified in §3(3) of the ADCA. *First*, the inference from the market share statistics indicates that DreamsPay is an SSDE since it satisfies the qualitative thresholds under §3(3)(i)-(iv) and (xv) of the ADCA [3.1.1]. *Second*, the permissibility of generic versions in the industry indicates that DreamsPay is an SSDE since it meets the qualitative requirements under §3(3)(v), (vi), (ix), (x) and (xii) of the ADCA [3.1.2].

3.1.1. The inference from the market share statistics indicates that DreamsPay is an SSDE since it satisfies the qualitative thresholds under §3(3)(i)-(iv) and (xv) of the ADCA

¶71. Where competitors have low market shares, firms with 40-50% market share may be held to be dominant.¹²⁸

¹²⁷ Competition Act 2002, s3(3).

¹²⁸ European Commission, *The application of Article 82 of the Treaty to exclusionary abuses* DG Competition Article 82 (DG Competition, 2005) 31

¶72. *In casu*, DreamsPay had a market share of 41% in the FY 2023-24.¹²⁹ Its biggest competitor, Tenet Sports, had a market share of 32% in the same financial year. The other competitors in the market have a market share lower than 15%. Thus, DreamsPay has enough market share to indicate dominance. Thus, it must necessarily have “significant” market share under the ADCA.

¶73. It is submitted that DreamsPay is an SSDE. *First*, DreamsPay has a high volume of commerce, as required under §(3)(i) [3.1.1.1]. *Second*, it has significant size and resources, as required under §(3)(ii) [3.1.1.2]. *Third*, it has a large number of end users, as required by §(3)(iii) [3.1.1.3]. *Fourth*, DreamsPay has considerable economic power, as required under §(3)(iv) [3.1.1.4]. *Fifth*, the market structure of the relevant market indicates that DreamsPay is a significant enterprise [3.1.1.5].

3.1.1.1. DreamsPay has a high volume of commerce, as required under §(3)(i)

¶74. The “volume of commerce” is a general indicator of quantity sold after accounting for price changes.¹³⁰ It is, therefore, a synonym for ‘sales volume’ of an enterprise.¹³¹ The market share of an enterprise is primarily calculated in terms of revenue and number of units sold.¹³²

¹²⁹ Proposition, Annexure I.

¹³⁰ Statistics Netherlands, ‘The volume concept in economic publications’ <<https://www.cbs.nl/en-gb/our-services/methods/surveys/comprehensive-description/the-volume-concept-in-economic-publications>> accessed 12 March 2025

¹³¹ "Sales volume", Cambridge Business English Dictionary (Cambridge University Press).

¹³² Competition Bureau Canada, ‘Abuse of Dominance Enforcement Guidelines’ (2019) <<https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/abuse-dominance-enforcement-guidelines>> accessed 12 March 2025

Business with larger market shares tend to have more cumulative sales, as there is a decrease in costs accompanying an increase in revenue.¹³³

¶75. *In casu*, consumers choose a certain number of sports players as part of their team and then compare the statistical performance of those players in real games to determine the best fantasy team. These comparisons are usually organised in a tournament format, with one team eventually winning the prize money.¹³⁴ Thus, the primary indicator of the presence of a company in a fantasy sports market is the number of such tournaments that are held in its game. This can be considered equivalent to the “units sold” metric, as is used in market share calculations. It then follows that the market share of the companies will have a direct correlation with the “units sold” by the companies. Thus, the market share is a direct indicator of the “volume of commerce” of a company. The market share of DreamsPay is 41%. Therefore, DreamsPay has a high volume of commerce.

3.1.1.2. DreamsPay does have a significant size or a significant amount of resources at its disposal

¶76. The size of an enterprise is measured by the number of employees it employs.¹³⁵ The resources of an enterprise typically refer to the fixed assets owned by the enterprise and the capital employed by it.¹³⁶ There exists a direct correlation between size, resources and market

¹³³ Robert D. Buzzell, Bradley T. Gale and Ralph G.M. Sultan, ‘Market Share – a Key to Profitability’ (Harvard Business Review, 1975) <<https://hbr.org/1975/01/market-share-a-key-to-profitability>> accessed 12 March 2025

¹³⁴ Rob Neyer, ‘Fantasy Sport’ (Encyclopaedia Britannica) <<https://www.britannica.com/sports/sabermetrics/The-rise-of-advanced-statistics>> last accessed on 13 Mar 2025).

¹³⁵ Statistics Explained, ‘Enterprise size’ (Eurostat, 2021) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Enterprise_size> accessed 12 March 2025

¹³⁶ *Belair Owners' Association v. DLF Limited*, Case No. 19/2010 [5].

share.¹³⁷ A higher market share is indicative of higher revenue, since the calculation of market share is on total sales. A higher revenue, in turn, allows a company to increase employment and grow its assets.

¶77. *In casu*, DreamsPay possesses the highest market share of 41% in the relevant market. This market share is 9% more than its largest competitor. Further, DreamsPay's market share has seen a steady and significant increase – around 4-5% every year. The most common way to acquire market share is by using additional size and/or resources. Therefore, DreamsPay possess significant size and resources.

3.1.1.3. DreamsPay possess a significant number of end-users

¶78. If consumer retention and average purchase value are similar across market players, a company's revenue directly correlates with its number of end users.¹³⁸ However, this correlation is not linear. The increase in market share provides additional resources to the enterprise to increase its customer base. However, the very characteristic of higher market share creates an expectation of higher quality benefits and thus has a positive effect on the number of end users.¹³⁹

¶79. *In casu*, the market is not inherently susceptible to extreme differences in consumer retention or average purchase values. Further, consumers have the choice of availing services

¹³⁷ *Mcx Stock Exchange Ltd. & Ors vs National Stock Exchange Of India Ltd.*, Case No. 13/2009 [8].

¹³⁸ FasterCapital, 'Revenue Correlation: Identifying Key Revenue Metrics' (2024) <<https://fastercapital.com/content/Revenue-Correlation--How-to-Analyze-Your-Revenue-Correlation-and-Understand-Your-Revenue-Relationships.html>> accessed 13 March 2025.

¹³⁹ A. Bhattacharya, N.A Morgan and L.L Rego, 'Examining Why and When Market Share Drives Firm Profit' [2022] 86(4) Journal of Marketing <<https://journals.sagepub.com/doi/10.1177/00222429211031922>> accessed 12 March 2025

from multiple providers at the same time.¹⁴⁰ Being the largest player in the market,¹⁴¹ DreamsPay would have the highest exposure to existing and potential consumers. Thus, DreamsPay would enjoy a larger number of end users. Since DreamsPay has the highest market share in the relevant market, it would enjoy the largest amount of end users. Therefore, DreamsPay has a significant number of end users.

3.1.1.4. DreamsPay has considerable economic power, as required under §(3)(iv)

¶80. Market power is the ability of a firm to control prices and exclude rivals.¹⁴² Economic power is understood to be synonymous with market power.¹⁴³ Higher market share is indicative of higher market power.¹⁴⁴ There is a direct correlation between market share and market power.¹⁴⁵

¶81. *In casu*, the market share of DreamsPay is 41%. Since market share and market power have a direct correlation, it can be inferred that DreamsPay has significant market power. DreamsPay's market power is also visible through the advantageous contracts it holds with sports leagues. DreamsPay is the only enterprise in the economy that has restricted rights over the creation of generic versions of its officially licensed league.¹⁴⁶ Therefore, DreamsPay holds significant economic power.

¹⁴⁰ Proposition, ¶16.

¹⁴¹ Proposition, Annexure 1.

¹⁴² Market Power, Concurrences Anti Trust Dictionary <<https://www.concurrences.com/en/dictionary/market-power#:~:text=Author%20Definition-Definition,from%20competitors%2C%20customers%20or%20consumers>> accessed on 13 March 2025.

¹⁴³ Douglas F. Greer, *Market Power and the Economy* (Kluwer Academic Publications) 55.

¹⁴⁴ Meloria Meschi, (n 66) [2.5].

¹⁴⁵ *ibid.*

¹⁴⁶ Proposition, ¶16.

3.1.1.5. The market structure of the relevant market indicates that DreamsPay is a significant enterprise

¶82. A market with a large concentration of sellers and significant barriers to entry enables a firm with a significant market share to enjoy monopoly profits.¹⁴⁷ A firm that enjoys such profits would be a significant enterprise. A market with a large concentration of sellers and significant barriers to entry could enable a firm with a significant market share to enjoy monopoly profits

¶83. *In casu*, five enterprises make up the entirety of the market for fantasy sports games. Therefore, the market has an extremely large concentration of sellers. Further, these five enterprises account for 100% of the market share. Therefore, even after three years of existence, new players have not entered the relevant market, indicating that there exist entry barriers. Further, the restriction of generic versions by DreamsPay has increased these entry barriers. It is established that DreamsPay has a significant market share, at 41%.¹⁴⁸ It follows that DreamsPay has significant power in the market. Therefore, the market structure indicates that DreamsPay is a significant enterprise.

3.1.2. The permissibility of generic versions in the industry indicate that DreamsPay is an SSDE since it meets the qualitative requirements under §3(3)(v), (vi), (ix), (x) and (xii) of the ADCA

¶84. It is submitted that DreamsPay satisfies the qualitative requirements of an SSDE for the following reasons. *First*, DreamsPay integrated multiple sides of the market under §3(3)(v) [3.1.2.1]. *Second*, end users and business users were dependent on DreamsPay under §3(3)(vi)

¹⁴⁷ H. Michael Mann, 'Seller Concentration, Barriers to Entry, and Rates of Return in Thirty Industries, 1950-1960.' [1966] *The Review of Economics and Statistics*, 48(3) <https://doi.org/10.2307/1927085> accessed 12 March 2025.

¹⁴⁸ Proposition, Annexure I.

[3.1.2.2]. *Third*, DreamsPay posed barriers to entry and expansion under §3(3)(viii) [3.1.2.3]. *Fourth*, DreamsPay locked in business and end users under §3(3)(ix) [3.1.2.4]. *Fifth*, DreamsPay enjoyed data-driven advantages and network effects under §3(3)(x) [3.1.2.5]. *Sixth*, DreamsPay restricted countervailing buying power under §3(3)(xii) [3.1.2.6].

3.1.2.1. DreamsPay integrated multiple sides of the market under §3(3)(v)

¶85. Integration or interlinkages of the enterprise with multiple sides of the market qualifies an enterprise as an SSDE.¹⁴⁹ In the case of multi-sided markets, intermediaries possess relative market power when undertakings are dependent on their services for accessing supply and sales markets with no other alternative.¹⁵⁰ The demand for the platform on one side is dependent on its demand on the other side.¹⁵¹ Widespread and commonly used digital services mostly directly intermediate between business users and end users through the multi-sidedness of these services.¹⁵²

¶86. *In casu*, DreamsPay intermediated between the sports leagues and the users of DreamsPay.¹⁵³ DreamsPay restricted the use of generic versions of their game by competitors while entering into the licensing agreement with ASL.¹⁵⁴ This restricted the end users from accessing ASL fantasy games apart from the ones provided by DreamsPay. The exclusivity created by this arrangement is likely to generate greater demand for DreamsPay games by end

¹⁴⁹ ADCA, s3(3)(v).

¹⁵⁰ Act Against Restraint of Competition, s20(1) (Germany).

¹⁵¹ Daniel Mandrescu, 'Abusive Pricing Practices by Online Platforms: A Framework Review of Article 102 TFEU for Future Cases' (2022) 10(3) J Antitrust Enforcement 469 <https://doi.org/10.1093/jaenfo/jnac001> accessed 11 March 2025.

¹⁵² 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].

¹⁵³ Proposition, ¶24.

¹⁵⁴ Proposition, ¶19.

users. This increase in demand attracts sports leagues to enter licensing agreements, thereby creating a self-perpetuating cycle further. Therefore, DreamsPay is an SSDE by virtue of its position in a multi-sided market.

3.1.2.2. End users and business users were dependent on DreamsPay under §3(3)(vi)

¶87. Under §3(3)(vi), the level of dependence of end users and business users on the enterprise is a prerequisite to being classified as an SSDE.¹⁵⁵ Economic dependency occurs when there is a high level of concentration or dominance in the market.¹⁵⁶ Consumers' dependence on an enterprise is an important parameter to gauge the strength of an enterprise.¹⁵⁷ Major platforms that enter into exclusivity contracts with sellers have gone on to enjoy customer dependence.¹⁵⁸

¶88. *In casu*, DreamsPay performs the duty of a core digital service.¹⁵⁹ It is a dominant enterprise in the sports fantasy industry.¹⁶⁰ Further, the exclusivity contract entered with ASL would inevitably create dependence on the platform due to a lack of choice for end users.¹⁶¹ Consumers are evidently dependent on DreamsPay for fantasy sports. Therefore, DreamsPay is an SSDE due to the dependence of users.

¹⁵⁵ ADCA, s3(3)(vi).

¹⁵⁶ P. Alexiadis & Alexandre de Steel, 'Designing an EU Intervention Standard for Digital Platforms' (2020) Robert Schuman Centre for Advanced Studies Research Paper No. 2020/14, 8 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3544694 accessed 11 March 2025.

¹⁵⁷ *Federation of Hotel & Restaurant Associations of India v. Make My Trip India (P) Ltd.*, 2022 SCC OnLine CCI 58, [229].

¹⁵⁸ Competition Commission of India, 'Market Study on E-Commerce in India' (Competition Commission of India 2020) [51] <<https://www.cci.gov.in/economics-research/market-studies/details/18/6>> accessed 11 March 2025.

¹⁵⁹ ADCA, Schedule 1; Proposition, ¶24.

¹⁶⁰ Proposition, Annexure I; Issue 2

¹⁶¹ Proposition, ¶19.

3.1.2.3. DreamsPay posed a barrier to entry and expansion under §3(3)(viii)

¶89. §3(3)(viii) designates firms that pose a barrier to entry and expansion as an SSDE.¹⁶² Examples of such barriers include economies of scale and scope and the high cost of substitutable goods and services for end users and business users.¹⁶³ Economies of scale effects are more extreme in digital services.¹⁶⁴ Digital goods and services are produced at a significant fixed cost but little variable cost.¹⁶⁵ The cost of production is almost inversely proportional to the number of customers.¹⁶⁶

¶90. *In casu*, DreamsPay, a digital service provider, benefits from scale effects. DreamsPay can maximise its production by broadening its customer base. The market share and the restrictions imposed on generic versions are indicative of this.¹⁶⁷ Further, DreamsPay does not incur any variable costs due to being a digital service.¹⁶⁸ The dominant position it enjoys and the absence of an increase in its production costs point towards DreamsPay enjoying scale effects. Therefore, DreamsPay is an SSDE under §3(3)(viii).

¹⁶² ADCA s 3(3)(viii).

¹⁶³ *ibid*.

¹⁶⁴ Committee on Digital Competition Law, 'Report of the Committee on Digital Competition Law' (Ministry of Corporate Affairs, Government of India, 2024) 95 .

¹⁶⁵ Hal R. Varian, Joseph Farrell and Carl Shapiro, *The Economics of Information Technology* (Cambridge University Press 2010).

¹⁶⁶ Georgios Petropoulos, 'Competition Economics of Digital Ecosystems' (134th Meeting of the OECD Competition Committee, Paris, December 2020).

¹⁶⁷ Proposition, Annexure I; Proposition, ¶19.

¹⁶⁸ ADCA, Schedule 1; Proposition, ¶24.

3.1.2.4. *DreamsPay locked in business and end users under §3(3)(ix)*

¶91. End user and business user lock-in coupled with behavioural biases while switching and multi-homing makes an enterprise an SSDE.¹⁶⁹ Platforms' unique strategy to lock in consumers through leveraging network effects must be analysed in the context of market control.¹⁷⁰ The tendency of platforms to create an ecosystem to entrench their position in the market further also becomes a crucial factor in determining anti-competitiveness.¹⁷¹ The interdependency of multiple segments within an ecosystem can lock in consumers, reinforcing market control and limiting their ability to switch.¹⁷² Multi-homing is where users tend to use several competing platform services in parallel.¹⁷³ 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.¹⁷⁴

¶92. *In casu*, DreamsPay locked in users by creating an ecosystem. DreamsPay's tendency to restrict generic versions and their growing domain over other leagues such as the NFL points towards their ability to create an ecosystem.¹⁷⁵ The ability to restrict competition from other fantasy sports companies creates a system of interdependence between the leagues and the users. This system of interdependence locks in users and restricts them from switching to other

¹⁶⁹ ADCA s 3(3)(ix).

¹⁷⁰ Abir Roy, *Competition law in India: A Practical Guide* (2nd Edn, Kluwer Law International, 2024) [449].

¹⁷¹ *ibid.*

¹⁷² *ibid.*

¹⁷³ 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 11 March 2025.

¹⁷⁴ Council Regulation (n 152) [40].

¹⁷⁵ Proposition, ¶¶19, 31.

platforms. There is an evident absence of multi-homing as DreamsPay has ensured that users remain locked in their platforms by restricting generic versions of their licensed sports. Therefore, DreamsPay is an SSDE under §3(3)(ix).

3.1.2.5. DreamsPay enjoyed data-driven advantages and network effects under §3(3)(x)

¶93. Network effects and data-driven advantages are indicators of an SSDE.¹⁷⁶ In order to exhibit strong network effects, a firm must benefit from a positive feedback loop stemming from the increasing end-user base and the ensuing concentration of business users to reach this valuable customer population.¹⁷⁷ In data-driven markets, a dominant undertaking can exclude its rivals from accessing user data and thus deprive them of scale in markets characterized by network effects.¹⁷⁸ Prizes are generated on the basis of the prize pool generated by users through their Contest Entry Amount ('CEA') in fantasy sports leagues.¹⁷⁹

¶94. *In casu*, DreamsPay has argued that player recommendations were solely based on popularity.¹⁸⁰ DreamsPay's increasing share in the market, coupled with its exclusive licensing mechanism with ASL, indicates an increasing end-user base.¹⁸¹ This results in a positive feedback loop as greater participation leads to a greater prize pool. This further incentivises

¹⁷⁶ ADCA, s3(3)(x).

¹⁷⁷ *Apple - iPadOS* (Case DMA.100047) Commission Decision C (2024) 2500 OJ C, C/2024/4374, 4.7.2024 [2024].

¹⁷⁸ Vikas Kathuria and Jure Globocnik, 'Exclusionary Conduct in Data-Driven Markets: Limitations of Data Sharing Remedy' (2020) 8(3) J Antitrust Enforcement 511 <https://doi.org/10.1093/jaenfo/jnz036>.

¹⁷⁹ Federation of Indian Fantasy Sports (FIFS) and Deloitte, *Fantasy Sports: Creating a virtuous cycle of sports development* (Deloitte, February 2022) [12].

¹⁸⁰ Proposition, ¶27.

¹⁸¹ Proposition, ¶19; Proposition, Annexure I.

users to participate as prizes attract them.¹⁸² DreamsPay's recommendations, being based on popularity, indicate that the enterprise is dependent on the data of the users to generate business, as it would not be possible to recommend players without historical data collection. Therefore, network effects and data-driven advantages experienced by DreamsPay make them an SSDE.

3.1.2.6. DreamsPay restricted countervailing buying power under §3(3)(xii)

¶95. The extent of countervailing buying power determines whether an enterprise is an SSDE.¹⁸³ 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.¹⁸⁴ End users and customers must have a reasonable alternative in choosing their platforms.¹⁸⁵ The business users are fully dependent on the platform when there is a lack of countervailing buying power.¹⁸⁶ Further, end users must feel that there are no substitutes.¹⁸⁷

¶96. *In casu*, DreamsPay entered into an 8-year exclusive agreement with ASL.¹⁸⁸ Further, the restriction of generic versions deprives end users of the choice of other fantasy sports platforms which may offer better prizes.¹⁸⁹ Business users entering into agreements with DreamsPay experience a decline in their buying power as DreamsPay has locked them in for long-term

¹⁸² Proposition, ¶19.

¹⁸³ ADCA, s 3(3)(xii).

¹⁸⁴ 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.

¹⁸⁵ Umar Javeed v. Google LLC, 2022 SCC OnLine CCI 61 [123].

¹⁸⁶ *ibid* [124].

¹⁸⁷ *ibid* [127].

¹⁸⁸ Proposition, ¶19.

¹⁸⁹ Proposition, ¶19.

agreements.¹⁹⁰ This restricts them from switching to other platforms with ease. Therefore, DreamsPay has restricted countervailing buying power in the market by using its growing dominant position.

3.2. DreamsPay engaged in self-preferencing

¶97. An SSDE should not directly or indirectly favour its own services of its related parties.¹⁹¹ Further, SSDEs should not favour third parties who enjoy the provision of services over them on the Core Digital Service.¹⁹² ‘Self-preferencing’ refers to a platform favouring its own products and services over those of third parties that operate on the platform.¹⁹³ Self-preferencing practices are undesirable, even when they may result in consumer welfare.¹⁹⁴ Favourable positioning and display of search result pages is anti-competitive conduct.¹⁹⁵

¶98. *In casu*, DreamsPay prioritised contests hosted by its sister companies.¹⁹⁶ Sister companies would fit into the category of third parties as they enjoy the service of DreamsPay on the platform. The contention that recommendations were made on popularity does not hold

¹⁹⁰ Proposition, ¶19.

¹⁹¹ ADCA, s11.

¹⁹² ADCA, s11.

¹⁹³ Guillaume Duquesne and others, ‘What constitutes self-preferencing and its proliferation in digital markets’ (*Global Competition Review*, 2 October 2024).

<https://globalcompetitionreview.com/guide/digital-markets-guide/fourth-edition/article/what-constitutes-self-preferencing-and-its-proliferation-in-digital-markets#footnote-064-backlink> accessed 11 March 2025.

¹⁹⁴ Bipasha Kundu, ‘Too Deferential: Critiquing CCI’s Approach in the Amazon Private Label Brands Case’ (*Law School Policy Review*, 22 January 2023) <https://lawschoolpolicyreview.com/2023/01/22/too-deferential-critiquing-ccis-approach-in-the-amazon-private-label-brands-case/> accessed 13 March 2025.

¹⁹⁵ *Google Search (Shopping) Case* (Case AT.39740) Commission Decision (2017)4444 [2017] OJ C9/11.

¹⁹⁶ Proposition, ¶26.

weight as there was a pattern of the same contests being recommended.¹⁹⁷ Therefore, DreamsPay engaged in self-preferencing.

¶99. Therefore, DreamsPay qualifies as an SSDE under ADCA.

¹⁹⁷ Proposition, ¶27.

4. DREAMSPAY INFRINGED 6(2A) BY ALLOWING DR SCHULTZ & MS KIDDO TO ACT AS ADVISORS TO THE INTEGRATION PLANNING COMMITTEE ('IPC'), AND DISCUSSING BUSINESS ACTIVITIES AND PLANS OF EDMUND GAMES BEFORE APPROVAL FROM THE CCA

¶100. §6(2) of the Act mandates a standstill obligation that a combination cannot take effect until 150 days have passed since notification to the commission or until the approval of the CCI.¹⁹⁸ The parties are to act as independent entities during this period.¹⁹⁹ Under §5, a combination involves acquiring control, shares, or assets of one or more enterprises or the merger/amalgamation of enterprises.²⁰⁰

¶101. It is submitted that DreamsPay has infringed §6(2A) because, *first*, there existed a premature transfer of control [4.1]. *Second*, the meetings contained an exchange of competitively sensitive information [4.2]. *Third*, DreamsPay & Edmund Games engaged in coordinated market conduct [4.3].

4.1. There existed a premature transfer of control

¶102. §6(2A) demands that no combination may come into effect until 150 days have passed since notifying the commission.²⁰¹ 'Acquiring control' amounts to making the combination come into effect.²⁰²

¹⁹⁸Competition Act 2002, s6(2)(A).

¹⁹⁹ Praveen Raju & Janhavi Joshi, 'Gun Jumping Under The Merger Control Regime' (Mondaq, 15 Sep, 2022) <<https://www.mondaq.com/india/corporate-and-company-law/1230292/gun-jumping-under-the-merger-control-regime>> accessed on 13 March 2025.

²⁰⁰ Competition Act 2002, s5.

²⁰¹ Competition Act 2002, s6(2)(A).

²⁰² Competition Act 2002, s5(a)(i).

¶103. §5(a) of the Competition Act defines “control” as “controlling the affairs or management by one or more enterprises, either jointly or singly, over another enterprise or group”.²⁰³ Control could be ‘material influence’, *de facto* control or *de jure* control.²⁰⁴ A person with status and expertise can influence another enterprise’s management, constituting “material influence.”²⁰⁵ Integration planning typically involves a ‘*clean team*’ to prevent violations of competition law.²⁰⁶ A ‘clean team’ should comprise a restricted group of individuals that are not involved in the day-to-day operation of the business.²⁰⁷

¶104. *In casu*, DreamsPay sought to acquire Edmund Games, and a Share Purchase Agreement was signed for the same.²⁰⁸ This transaction was approved on 10 September 2024.²⁰⁹ Therefore, any action resulting in the combination coming into effect before 10 September violates §6(2A). The IPC constituted by DreamsPay and Edmund Games involved the Chief Financial Officer of DreamsPay and the Managing Director of Edmund Games.²¹⁰ Since these authorities are involved in the daily functioning of the concerned enterprises, DreamsPay and Edmund Games failed to adhere to the requirements of a ‘clean team.’ Therefore, the presence of the Chief Financial Officer and Managing Director amounts to “material influence”. Material

²⁰³ Competition Act 2002, Explanation (a).

²⁰⁴ Notice given under Section 6(2) of the Competition Act, 2002 by UltraTech Cement Limited [2018] C-2015/02/246 [12.9]

²⁰⁵ *ibid.*

²⁰⁶ Neetu Ahlawat and Ritwik Bhattacharya, ‘Clean up the Deal Team! Indian competition law perspective’ (Kluwer Competition Law Blog, 2018) <<https://competitionlawblog.kluwercompetitionlaw.com/2018/04/03/clean-deal-team-indian-competition-law-perspective/>> accessed 13 March 2025

²⁰⁷ *Altice/PT Portugal* (Case M.7993) Commission Decision 139/2004/EC [2018] OJ C 315/7 [422]

²⁰⁸ Proposition, ¶29.

²⁰⁹ Proposition, ¶29.

²¹⁰ Proposition, ¶31.

influence is a form of control and IPC was constituted before the approval of the combination by the CCI. Therefore, there existed a premature transfer of control.

4.2. Competitively sensitive information was exchanged with Dr Schultz and Ms Kiddo during IPC meetings

¶105. Commercially sensitive information includes bid strategies, pricing strategies and customer information.²¹¹ ‘Clean team’ arrangements ensure that only those who do not have commercially sensitive information of their own company have access to the commercially sensitive information of the other party.²¹² For the exchange of commercially sensitive information, clean teams should not consist of anyone with operational/business responsibilities.²¹³ Disclosing competitively sensitive information without safeguards and providing a competitor insights into strategy violates the standstill obligation in mergers or acquisitions.²¹⁴ Mere attendance in meetings where commercially sensitive information is discussed can influence the independent decision-making ability of the competitor.²¹⁵

¶107. *In casu*, Dr Schultz and Ms Kiddo were the CFO and the Managing Director (‘MD’) of DreamsPay and Edmund Games, respectively.²¹⁶ They were advisors to the clean team, the

²¹¹ ‘Information Exchange – A Standalone Violation under Indian Competition Law’ (*AZB & Partners*, 1 December 2021) <https://www.azbpartners.com/bank/information-exchange-a-standalone-violation-under-indian-competition-law/#_ftn2> accessed 13 March 2025.

²¹² *ibid.*

²¹³ 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 10 March 2025.

²¹⁴ *Altice/PT Portugal case* (Case M.7993) Commission Decision C(2018) 2418 [2018] OJ C315/05 [471].

²¹⁵ *Anti-competitive Conduct in the Paper Manufacturing Industry v. Banwari Paper Mills Ltd*, 2021 SCC OnLine CCI 74 [199].

²¹⁶ Proposition, ¶30.

Integration Planning Committee.²¹⁷ Both of them were present during the IPC meeting regarding bidding on the NFL.²¹⁸ Further, they actively contributed to the discussion on whether DreamsPay and Edmund Games must jointly bid on the league.²¹⁹ The nature of the IPC, a clean team, is considered to be highly restrictive with the purpose of not falling foul of standstill obligations.²²⁰ Dr Schultz and Ms Kiddo's presence in a meeting on bidding strategies exposes them to commercially sensitive information from both companies. As CFO and MD, they also possess confidential insights about their own company, raising concerns about potential competitive advantages and conflicts. This knowledge would make them ineligible to be present at a meeting where bidding strategies were discussed. Further, the fact that the meeting was inconclusive is immaterial, as attendance alone is enough to affect the independent decision-making of the other party. The non-application of the information exchanged does not alter the position that standstill obligations were violated. Therefore, competitively sensitive information was exchanged during IPC meetings

4.3. DreamsPay & Edmund Games engaged in coordinated market conduct

¶108. Under §3(3) of the Act, anti-competitive conduct can be established when there is a concerted action or meeting of minds between enterprises, leading to anti-competitive effects.²²¹ Coordination does not require a formal agreement but can be inferred from conduct that excludes the possibility of independent decisions.²²² In order to establish coordinated action in accordance with the plus factor framework, the most important threshold element of

²¹⁷ Proposition, ¶30.

²¹⁸ Proposition, ¶34.

²¹⁹ Proposition, ¶34.

²²⁰ Proposition, ¶29.

²²¹ Competition Act 2002, s3(3).

²²² *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 142 (1948).

proof is the evidence demonstrating how the defendants communicate their intentions and commit to a proposed course of action, which rules out independent decision-making.²²³ To prove an agreement through circumstantial evidence, the evidence must tend to “exclude the possibility of independent action.”²²⁴ An anti-competitive practice or agreement may be inferred from a series of coincidences and indicia, which, taken together, constitute evidence of collusion in the absence of any plausible alternative explanation.²²⁵ Collusion requires (a) an agreement, (b) involvement in similar trade, and (c) an adverse impact on competition or bidding.²²⁶

¶109. *In casu*, DreamsPay & Edmund Games engaged in discussions within the IPC meetings regarding whether both the entities should bid separately or not for the NFL deal.²²⁷ Dr Schultz and Ms Kiddo, who held key positions in the respective entities, actively contributed to these discussions, demonstrating a concerted exchange of strategic information.²²⁸ This conduct excluded the possibility of independent decision making as evidenced by Edmund Games submitting a bid 2% lower than DreamsPay, suggesting coordination rather than competition.²²⁹ Therefore, DreamsPay & Edmund Games engaged in anti-competitive coordinated market conduct.

²²³ William E Kovacic and others, ‘Plus Factors and Agreement in Antitrust Law’ (2011) 110(393) Mich L Rev <<https://www.bateswhite.com/assets/htmldocuments/media.498.pdf>> accessed 13 March 2025.

²²⁴ *In Re: Suo-Motu LPG Cylinder* (Case No 03/2011, CCI, 24 February 2012) [5.2.8].

²²⁵ *Ms. Shikha Roy vs Jet Airways (India) Limited And Others* (Case No. 32 of 2016, CCI, 3 June, 2021) [26].

²²⁶ *Rajasthan Cylinders and Containers vs U.O.I*, AIR ONLINE 2018 SC 736.

²²⁷ Proposition, ¶34

²²⁸ *ibid.*

²²⁹ *ibid.*

¶110. Therefore, DreamsPay infringed 6(2A) by allowing Dr Schultz & Ms Kiddo to act as advisors to the IPC, and discussing business activities and plans of Edmund Games before approval from the CCA.

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 Abused Its Dominant Position Under §4 of the Act.**
- 2. The Exclusive Dealing Agreement Between DreamsPay and ASL Is in Contravention of §3(4) of the Act.**
- 3. DreamsPay Qualifies as an SSDE Under ADCA.**
- 4. DreamsPay Infringed §6(2)(a) of the Act and is 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 Respondents.