

## Surinder Singh Barmi v. The Board of Control for Cricket in India (Case No. 61 of 2010)

---

**Decision Date:** 29.11.2017

**Keywords:** *abuse of dominant position; relevant market*

**Issue:** Whether BCCI has contravened the provisions of the Competition Act, 2002 through abuse of dominant position?

**Rule:** Sec. 4(2)(c) of the Competition Act, 2002

BCCI for the conduct of IPL series entered into IPL Media Rights agreement with broadcasters. This agreement stated that “*it [BCCI] shall not organize, sanction, recognize, or support during the Rights period another professional domestic Indian T20 competition that is competitive to the league*”.<sup>1</sup> This was alleged to be abuse of dominant position under Sec. 4(2)(c) of the Competition Act, 2002.

The primary contention of BCCI was that it is not an ‘enterprise’ within the meaning of Sec. 2(h) and thereby not governed by Sec.4. The basis for this was that BCCI is not profit motivated and is not carrying on a business.<sup>2</sup> However, the Commission rejected this argument identifying BCCI to be a person that carries on economic activity and thereby falling under the definition of ‘enterprise’.<sup>3</sup>

The DG in its investigation had identified the relevant market to be ‘organization of professional domestic cricket leagues/events in India’.<sup>4</sup> BCCI tried to define this market as broad as possible by placing reliance on the substitutability of cricket with other entertainment programs.<sup>5</sup> This is to deny its dominant position in the broad relevant market. Commission without reliance on proper empirical data on consumer preferences, concluded that cricket is non-substitutable with other sports.<sup>6</sup> The Commission agreed with the DG’s conclusion on relevant market citing the lack of evidence by BCCI to rebut this finding.<sup>7</sup>

---

<sup>1</sup> Para 1.

<sup>2</sup> Para 16.

<sup>3</sup> Paras 16, 17.

<sup>4</sup> Para 19.

<sup>5</sup> Para 19.

<sup>6</sup> Para 20.

<sup>7</sup> Para 34.

In the pyramidal structure of sport governance, BCCI enjoy substantial regulatory powers<sup>8</sup> with economic power.<sup>9</sup> No relevance is to be placed on the source of this power, a mere existence is sufficient to prove the dominance.<sup>10</sup> Therefore, BCCI enjoyed such dominance in the relevant market. The Commission having regard to the high governing control of BCCI over the sport and various restrictive provisions in its rules, held the clause in the IPL Media Agreement to be one that “*forecloses the market for organization of professional domestic cricket leagues/events in India*”.<sup>11</sup> Even though BCCI argued the protection of commercial interest of media company,<sup>12</sup> it failed to establish the protection of greater interest of cricket as a sport and the consumers. The Commission noted that the action was to further the monopoly that it enjoys.<sup>13</sup>

BCCI was guilty of abusing its dominant position in the market under Sec. 4(2)(c) read with Sec. 4(1), and imposed a penalty of Rs 52.24 Cr.<sup>14</sup> However, perusal through the order shows that BCCI failed to put up a strong case for itself and glaringly avoided the efficiency defence to support its claim.

## THE CENTRE FOR COMPETITION & REGULATION

NATIONAL LAW SCHOOL OF INDIA UNIVERSITY

---

<sup>8</sup> Para 37.

<sup>9</sup> Para 38.

<sup>10</sup> Para 39.

<sup>11</sup> Para 44.

<sup>12</sup> Para 48.

<sup>13</sup> Para 48.

<sup>14</sup> Para 58.