



## THE THIRTEENTH NLU ANTITRUST LAW MOOT COURT COMPETITION, 2022

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*National Law University, Jodhpur*

*in association with*

*Cyril Amarchand Mangaldas*



cyril amarchand mangaldas  
advocates & solicitors

*KNOWLEDGE & RESEARCH PARTNERS*



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## PROPOSITION

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**Background facts:**

1. The Republic of Nidavellir (“**Nidavellir**”) is a federal republic located in the South Asian region with its capital in the city of Sakaar, and its laws are *pari materia* with the laws of the Republic of India (Any limited exceptions are laid out in this Proposition). Nidavellir is widely regarded as one of the most innovative countries in the South Asian region and has consistently seen multiple tech start-ups and new age innovations in the last few years. Increased industrialisation and over population have resulted in significant greenhouse gas emissions in the environment which has led to an enhanced awareness amongst the population to address the effects of such environmental pollution. To counter the issues surrounding climate change such as massive vehicular emissions, the Government of Nidavellir (“**GoN**”) has launched various initiatives, *inter alia*, actively promoting new age vehicular technology such as electric cars and development of related infrastructure.
2. The Nidavellir Federal Trade Commission (“**NFTC**”) treats decisions of courts and antitrust regulators of common law countries (such as, countries in the European Union, India, United Kingdom, Australia, and the United States of America) to have high persuasive value. The NFTC has been established under the aegis of the Nidavellir Antitrust Regulation Act, 2002 (the “**Act**”). The NFTC and the GoN have, from time to time introduced various regulations, notifications, and amendments published in the Gazette of Nidavellir.
3. Eitri Manufacturers Limited (“**Eitri**”) is a major manufacturer of wireless charging electric cars in the world that use 6G, 7G and 8G technology for charging. It is an established player in the electric automotive manufacturing industry in Nidavellir with a market share of 51% based on the value of sales and 30% in terms of the volume. However, the electric automotive manufacturing industry is only 20% of the overall automotive manufacturing industry.
4. A new technology developed by Eitri which enables remote charging of an electric car has emerged in the electric automotive manufacturing industry in Nidavellir. This technology has garnered immense focus and investments to support infrastructural development in

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Nidavellir. This new technology uses a Car Smart Chip (“**CSC**”) fitted into the electric cars, that intercepts 8G Ultra High Frequency (“**8G UHF**”) to remotely charge electric cars. The CSC intercepts 8G UHF from vast distances, up to a range of 100 km.

5. Previously, electric cars required a smartphone to receive the 8G UHF signals to be able to charge the vehicles. For this purpose, a smartphone was mandatorily required to be placed close to the vehicle. While the charging receiver in the electric cars and smartphones had to be in close contact, it was difficult to position the vehicle accurately over the charger and the distance between the smartphone and the charging receiver installed in the vehicle may be bigger. However, the CSC technology enables electric cars to be charged remotely, by harnessing its access to 8G UHF, and does not require a smartphone altogether.
6. Ultron Telecom Limited (“**Ultron**”) is a prominent network service provider that only provides the 8G frequency network, unlike other network providers such as Loki Digital Limited and Thanos-Tel Limited that provide 6G and 7G frequency networks. Eitri has recently entered into a deal with Ultron in Nidavellir, to enable the CSC in Eitri’s electric cars to access 8G UHF to remotely charge them. At present, Ultron provides the 8G frequency network service to Eitri on terms that they would not engage in a similar business relationship to provide the network services to a comparable remote charging facility in other electric cars.
7. The allocation, regulation, licensing and distribution of frequency allocation in Nidavellir is regulated by the sectoral regulator, Telecom Variance Authority of Nidavellir (“**TVA**”). TVA’s functions are governed under the Telecom Variance Authority of Nidavellir Act, 1991 (the “**TVA Act**”) as well as related regulations, rules, circulars etc. All questions and clarifications of contractual disputes, complaints and violation of rights and obligations of concerned parties pertaining to frequency allocation are to be settled by authorities appointed under the TVA Act and the relevant appellate tribunal.
8. Odin Automobiles Limited (“**Odin**”), Hela Motor Company (“**Hela**”) and Fury Vehicles Corporation (“**Fury**”) are three other competitors in the automobile manufacturing industry

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in Nidavellir and have been the most popular car companies in Nidavellir since liberalization in 1991. Odin, Hella and Fury have recently formed a Joint Venture (“JV”) and forayed into building electric cars along with developing remote charging for their electric cars by investing huge capital. The JV’s research teams have been closely observing, studying and examining global trends in electric cars and remote battery charging as green alternatives, including scrutinising Eitri’s popular CSC models. The culmination of the same was development of an integrated circuit chip set installed in the car battery with the ability to access 6G and 7G signal. This integrated circuit chip has also demonstrated a sporadic ability to pick up 8G signals.

9. Representatives of Eitri, Odin, Hela and Fury usually interact with each other at the Annual Green Tech for Automobiles Conference (“**Annual Conference**”), where various auto and auto-parts companies from across the globe would congregate. These companies would discuss about issues and products related to the industry in an open table format.
10. The Key Managerial Personnel (“**KMP**”) of the JV represented the JV while attending the Annual Conference. Due care was taken by the KMP to not exchange commercially sensitive information, during such meetings, and the same was done primarily for the purpose of advancement of the remote charging technology owned by the JV only.

**Licensing Issues:**

11. The JV approached Ultron to have an arrangement to access the 8G frequency network service provided by Ultron through issuance of a license. However, Ultron refused, as they were contractually bound by their exclusive agreement with Eitri.
12. Eitri also began selling CSC enabled hybrid electric cars at exclusive packages with Ultron’s 8G network facilities, to meet the competition from other competitors like the JV’s models. The JV however, continued to make good sales, invigorated by their integrated circuit chip

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set installed car battery, though the charging was not as fast and efficient as Eitri's CSC models. The electric cars being made by the JV also seemed to have a very similar premium price range, seemingly to reduce cut-throat competition with Eitri, despite the specifications of their charging frequency being different.

**Proceedings before the TVA:**

13. Under the TVA Act, telecom frequency is a national asset in Nidavellir. GoN through its notification has specified that any automobile manufacturer using frequency for mobility is required to obtain license for the usage of 8G UHF akin to telecom services provider.
14. Noticing the sudden growth of the JV in the market, Eitri did some internal investigation to understand the mechanism their cars were using for electric charging. Eitri was shocked to find startling resemblances of the charging system in the cars of the JV to the CSC, and also found that the JV had no license to use the 8G UHF services. It was also surprised to find that their 6G and 7G frequency chargers were able to intermittently capture the signals of 8G UHF.
15. Eitri discussed the issue with its senior executives and legal team which suggested that this is a fit case for violation of TVA Act.
16. Consequently, Eitri filed a complaint with the TVA on 3 December 2021 alleging that the JV was offering charging facilities with access to the 8G UHF, without having a valid license / authorisation to do so. The matter is presently pending before the TVA.

**NFTC Proceedings against Eitri (Case No. 05 of 2022):**

17. On 15 December 2021, the NFTC received an anonymous information which alleged that Eitri and Ultron are resorting to exclusive arrangements for usage of 8G UHF and that Eitri is abusing its market position violating the provisions of Section 3 and 4 of the Act.

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18. The NFTC after examining the facts and circumstances, passed an order under Section 26(1) of the Act and directed the Director General (“DG”) to initiate an investigation into issues of exclusive arrangement between Eitri and Ultron and abuse of dominant position by Eitri in Case No. 05 of 2022, on 20 January 2022.

**Proceedings before High Court of Sakaar:**

19. Thereafter, Eitri filed a writ petition in the Sakaar High Court seeking that the DG investigation be stayed in Case No. 05 of 2022, as issues pertaining to unique CSC technology and licensing of 8G UHF service were already pending before the TVA. However, the Sakaar High Court was not inclined to agree with Eitri, and on 28 March 2022, ordered the DG’s investigation to resume, despite the fact that proceedings before the TVA were pending.

**NFTC Proceedings against the JV (Case No. 06 of 2022):**

20. In the proceedings before the NFTC under Case No. 05 of 2022, the DG report was filed after conclusion of investigation. During the investigation into Eitri’s conduct, the DG gathered certain material by way of e-mail chains which indicated that the KMP of the JV were exchanging information on manufacture, research and development, and distribution of electric cars related to Odin, Hela and Fury; beyond the purview of the JV.
21. The DG observed that the evidence so collected indicated collusion among Odin, Hela and Fury to counter Eitri’s 8G UHF charging technology. The DG found that the representatives of the JV met on several occasions and exchanged commercially sensitive information, such as, deciding tender bids for acquiring raw material etc., beyond that which pertained solely to the functioning of the JV. The material indicated that these three car manufacturers might have indulged in price manipulation through concerted action under the garb of the JV. The DG found evidence in the form of email correspondences, and WhatsApp messages shared among executives of Odin, Hela and Fury.

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22. The NFTC, consequently, passed a *suo moto* order under Section 26(1) of the Act on 20 February 2022 and directed the DG to initiate an investigation against Odin, Hela and Fury for cartelization under Section 3 of the Act (Case No. 06 of 2022). Odin, Hela and Fury contended before the NFTC that any coordination between them pertained to development of technology in terms of the JV only and was in fact, promoting technological innovation.
23. Thereafter, the DG concluded its investigation in both cases and filed the investigation reports before the NFTC. The NFTC passed two orders on 5 May 2022 in Case No. 05 of 2022 and in *Suo Motu* Case No. 06 of 2022, under Section 27 of the Act. The NFTC found that Eitri was in violation of Section 3(4) and Section 4 of the Act, however did not levy any penalty and issued only a cease and desist order. Further, the NFTC also found Odin, Hela and Fury to be in violation of Section 3(3) read with Section 3(1) of the Act and levied a penalty of 3 crore on each of them.

**Proceedings before the National Appellate Tribunal:**

24. Odin, Hela and Fury appealed against the NFTC's final order dated 5 May 2022 before the National Appellate Tribunal ("NAT") against the penalty levied on them in Case No. 06 of 2022 and the same was defended by the NFTC. The NAT heard this appeal and dismissed it on 11 June 2022 and declined to alter the collusion charges against Odin, Hela and Fury as well as the quantum of penalty levied. Odin, Hela and Fury have appealed against this decision before the Supreme Court *vide* SLP No. 08 of 2022.
25. Likewise, Eitri also filed its appeal against the final order of the NFTC dated 5 May 2022 in Case No. 05 of 2022 before the NAT. The NAT heard this appeal and dismissed it on 20 June 2022. Eitri has appealed against this decision before the Supreme Court *vide* SLP No. 16 of 2022.
26. Taking cognizance of the similarities in the broad issues in the two SLPs, i.e., (i) the SLP No. 08 of 2022 filed by Odin, Hela and Fury against the NAT decision dated 11 June 2022, and

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(ii) the SLP No. 16 of 2022 filed by Eitri against the NAT decision dated 20 June 2022, the Supreme Court has tagged the SLPs of Eitri and Odin, Hela and Fury together for hearing, and decided to hear the matters on the following grounds:

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- a. Whether NFTC's jurisdiction supersedes that of the TVA and the NFTC erred by passing its final order when the matter was sub-judice before the TVA?
- b. Whether Eitri is in violation of section 3(4)(c) of the Act?
- c. Whether Eitri is in violation of section 4 of the Act?
- d. Whether Odin, Hela and Fury violated section 3 of the Act?

**Notes:**

27. Counsels for both sides are required to address the issues and arguments specifically mentioned in the Proposition, if any. However, they are free to frame sub-issues and make other arguments, including on grounds of jurisdiction and maintainability, that they deem fit. Further, the counsels are at liberty to place reliance on the relevant sub-provisions of Sections 3 and 4, as well as other provisions under the Act, for their arguments.
28. In relation to issue (a), counsels will represent either Eitri **OR** NFTC.
29. In relation to issues (b) and (c), counsels will represent either Eitri **OR** the NFTC.
30. In relation to issue (d), counsels will represent either Odin, Hela Fury **OR** the NFTC.

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